APPENDIX

Emergency Application to Chief Justice John Roberts

Pursuant to Rule 26.6 Certiorari was filed on 27 June 2023
Pursuant to Rule 26.6 Certiorari was granted on ____ day of _____ 2023

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EXHIBITS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-59-BO

SIDDHANTH SHARMA,
Plaintiff,

v.

DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, STELLA ANDERSON, in her official capacity as a member of the North Carolina State Board of Elections, JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections, STACY EGGERS IV, in his official capacity as a member of the North Carolina State Board of Elections, TOMMY TUCKER, in his official capacity as a member of the North Carolina State Board of Elections, KAREN BRINSON BELL, in her official capacity as the Executive Director of the North Carolina State Board of Elections, the NORTH CAROLINA BOARD OF ELECTIONS,
Defendants.

ORDER

This cause comes before the Court on plaintiff's *pro se* motion for a temporary restraining order [DE 26], defendants' motion for an extension of time [DE 27], plaintiff's motion to deny the motion for extension of time and for judgement on the pleadings and for default judgement [DE 28], defendants' motion to dismiss [DE 30], and plaintiff's motion to expedite consideration of this case [DE 35]. All pending motions are ripe for adjudication. For the reasons that follow, defendants' motion for an extension of time [DE 27] is granted and the motion to dismiss is deemed timely filed. Plaintiff's motion to expedite [DE 35] is granted. Defendants' motion to dismiss [DE 30] is granted. Plaintiff's second motion for a temporary restraining order [DE 26] is denied.

Plaintiff's motion to deny the motion for an extension [DE 28] is denied in part and the remainder is denied in part as moot. The complaint in this case is dismissed without prejudice.

BACKGROUND

On February 7, 2022, plaintiff filed a *pro se* complaint alleging that several North Carolina State Board of Elections' ("the Board") candidate filing requirements for the 2022 mid-term elections are unconstitutional. Plaintiff argues that the following provisions are invalid: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days; and 3) that they do not have any felony convictions. Plaintiff is an incarcerated individual with a prior felony conviction who is not registered to vote. Plaintiff states that he attempted to file as a U.S. House of Representatives candidate in North Carolina's 2022 mid-term elections, but ultimately did not file when he discovered the statutory restrictions. It is not clear whether he intended to become a party-affiliated candidate in the primary election or whether he intended to run as an unaffiliated candidate in the general election. Plaintiff appears to challenge some provisions that apply to the primary and one that applies to the general election.

In order to become an official House candidate on a primary ballot in North Carolina, a candidate must file a notice of candidacy with the North Carolina State Board of Elections. N.C. Gen. Stat. Ann. § 163-106.2. In 2022, party-affiliated primary candidates must file a notice between February 24 and March 4 to appear on the ballot for the May 17, 2022 primary election. *Candidate Filing for 2022 Elections to Resume on February 24*, North Carolina State Board of Elections (Feb. 9, 2022), https://www.ncsbe.gov/news/press-releases/2022/02/09/candidate-filing-2022-elections-resume-february-24. A primary candidate must be "affiliated with that party for at least 90 days[.]" § 163-106.1. A primary candidate must file a certificate "stating that the person is registered to vote in that county[.]" § 163-106.5. If the candidate is not registered to vote

in the county in which they are running, the board of elections shall "cancel the notice of candidacy[.]" *Id.*

If the primary candidate has ever been convicted of a felony, the candidate must "provide the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction" on a form available for the public record in the Office of the Board of Elections. § 163-106(e). The form states that "a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored." *Id.* If the candidate with a prior felony conviction fails to file this form, "the individual's name shall not appear on the ballot as a candidate, and votes for that individual shall not be counted." *Id.*

Unaffiliated candidates who do not participate in a primary may still appear on the general election ballot and must file a notice of candidacy on or before May 17, 2022. *See* § 163-122(a)(2). A person who is precluded from running in a particular party's primary may still run in a general election as an unaffiliated candidate, so long as he is a "qualified voter" and collects a certain number of signatures on a petition supporting his candidacy on or before noon of the day of the primary election. § 163-122(a)(1) and (2). The state will cancel the petition of "any person who does not meet the constitutional or statutory qualifications for the office, including residency." *Id.* at § 163-122(d).[1]

Plaintiff states that he is unconstitutionally barred from becoming a candidate because he is a felon who may not register to vote in North Carolina. Plaintiff states that he did not file a notice of candidacy in either election at least in part because it would be futile. Plaintiff states that he filed this suit because the Board threatened to arrest him for failing to successfully file a notice of candidacy. Plaintiff seeks declaratory and injunctive relief, asking that this Court stay the candidate

[1] This process is appealable by a hearing. § 163-122(d).

filing deadline, declare North Carolina's candidate qualifications for federal office unconstitutional, and order that plaintiff be allowed to participate in the 2022 mid-term election for seats in the U.S. House of Representatives.

On February 7, 2022, plaintiff filed a motion for a temporary restraining order and a motion to consolidate this case with one brought by Representative Madison Cawthorn in this district. On February 9, 2022, this Court denied both motions. On February 28, plaintiff filed a second motion for a temporary restraining order. On March 1, defendants filed a motion for an extension of time to file an answer in this case. On March 3, plaintiff filed a motion to deny the motion for an extension, which included requests for judgement on the pleadings and default judgement. On March 22, defendants filed a motion to dismiss for lack of jurisdiction and for failure to state a claim. On April 15, plaintiff filed a motion to expedite proceedings and requested that this case be adjudicated by May 17, 2022.

DISCUSSION

As an initial matter, the Court finds that good cause exists and grants defendants' motion [DE 27] for an extension of time to answer or otherwise respond to plaintiff's complaint. Plaintiff's motion [DE 28] to deny the motion for an extension is denied in part. Accordingly, the Court finds that defendants' motion to dismiss [DE 30] is timely filed.

Defendants filed a motion to dismiss plaintiff's complaint for lack of personal jurisdiction due to failure to serve, pursuant to Federal Rule of Civil Procedure 12(b)(2) and (5); lack of subject matter jurisdiction due to lack of standing, pursuant to Rule 12(b)(1); and for failure to state a claim, pursuant to Rule 12(b)(6). The Court construes plaintiff's filing titled "Plaintiff's reply in support of plaintiff's motion for declaratory relief" as a response in opposition, at least in part, to

defendants' motion to dismiss. Even if, *ad arguendo*, service in this case was proper, the Court finds that it lacks subject matter jurisdiction and the motion to dismiss must be granted.

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a claim for lack of subject matter jurisdiction. When subject matter jurisdiction is challenged, the plaintiff has the burden of proving jurisdiction to survive the motion. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647-50 (4th Cir. 1999). "In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). The movant's motion to dismiss should be granted if the material jurisdictional facts are not in dispute and the movant is entitled to prevail as a matter of law. *Id.* Defendants argue that this Court does not have subject matter jurisdiction over the controversy because plaintiff has not alleged an injury, and thus has not asserted standing, or that the controversy is not yet ripe.

Standing

To satisfy the standing requirement for subject matter jurisdiction at the pleading stage, a plaintiff must allege a case or controversy under Article II and "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "The party invoking federal jurisdiction bears the burden of establishing" the elements of standing. *Lujan*, 504 U.S. at 561. "At the pleading stage, general factual allegations of injury resulting from the

defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Id.* (internal quotations omitted) (substitution in original).

A plaintiff lacks standing when his claimed injury is "premised on a speculative chain of possibilities." *Clapper v. Amnesty, Int'l USA*, 568 U.S. 398, 410 (2013); *see Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Trump v. New York*, 141 S. Ct. 530, 544 (2020) (dismissing for lack of standing and ripeness because the plaintiff's alleged injury was predictive at best and noting "any prediction about future injury [is] just that—a prediction"). Future injuries are only sufficient if they are "*certainly impending*" and "[a]llegations of *possible* future injury are not sufficient." *Amnesty Int'l USA*, 568 U.S. at 409 (internal quotations and citation omitted) (emphasis in original). When a plaintiff is challenging the constitutionality of a statute before it is enforced upon the plaintiff, a "credible threat of enforcement is critical to establishing an injury in fact." *Buscemi v. Bell*, 964 F.3d 252, 259 (4th Cir. 2020), *cert. denied sub nom. Kopitke v. Bell*, 141 S. Ct. 1388, 209 L. Ed. 2d 129 (2021) (quotations omitted).

Defendants argue that plaintiff has not yet sustained an injury and fails to allege a sufficiently concrete future injury. Plaintiff argues that, although he has not applied and been denied ballot access, his future injury is sufficiently predictable and imminent because North Carolina law prohibits him, as an unregistered felon, from registering as a candidate in the primary or general election.[2]

The Court starts from the proposition that states may not require U.S. House of Representative candidates to submit to any qualifications that are not listed in Article I, Section 2,

[2] Plaintiff alleges that if his requested relief is not granted, he will suffer the future harm of not being able to "run for office[] where he will be able to help his constituents from the evils and tyranny of the democratic party in North Carolina." *Complaint* at p. 13. Plaintiff also alleges he will be arrested by the Board of Elections.

Clause 2 or in Section 3 of the Fourteenth Amendment. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800–01 (1995) ("the Framers intended the Constitution to be the exclusive source of qualifications for Members of Congress, and that the Framers thereby "divested" States of any power to add qualifications."); *see also Cook v. Gralike*, 531 U.S. 510, 525-26 (2001). According to the Constitution, a House member must be at least twenty-five years of age; must have been a U.S. citizen for at least seven years; be an inhabitant of the state he represents at the time he was elected; and, if he had previously sworn an oath to uphold the Constitution, he must not have subsequently engaged in an insurrection in violation of that oath. U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. amend. XIV, § 3. This list of qualifications is exclusive. *Thornton*, 514 U.S. at 800–01. Accordingly, any state statutory qualifications not listed in the Constitution are invalid. *See Thornton*, 514 U.S. at 800–01.

To demonstrate standing in this case, plaintiff has the burden of alleging "general factual allegations of injury resulting from" the defendants' conduct. *Lujan*, 504 U.S. at 561. An injury sufficient for standing in this case would be alleged if plaintiff was prevented from running for the House of Representatives due to an unconstitutional restriction on ballot access by the State of North Carolina.

In North Carolina, felons who are currently incarcerated may not register to vote. *Update on Voter Eligibility for People Serving Felony Sentences*, North Carolina State Board of Elections, https://www.ncsbe.gov/registering/who-can-register/registering-person-criminal-justice-system (last visited May 13, 2022). North Carolina's § 163-106(e) prohibits felons who have not had their rights restored from running in the primary election, and § 163-122(a) prohibits unaffiliated candidates who are not registered voters from running in the general election. Taken together, no felon who is currently incarcerated may run in North Carolina's House of Representatives election.

The U.S. Constitution does not require a Representative to be a registered voter or to be devoid of a felony conviction. The North Carolina State Board of Elections admits in its briefing that the state's restriction on felons running in the primary election, pursuant to § 163-106(e), is unenforceable against plaintiff because it conflicts with the constitutional requirements. The Board also admits that the state's requirement that unaffiliated candidates who run in the general election must be registered voters, pursuant to § 163-122(a), is unenforceable against plaintiff.

It is undisputed that, at the time of the filings, plaintiff has not filed a notice of candidacy for either the 2022 primary or general election. DE 34 at p. 8. Plaintiff does not assert that he plans to file a notice of candidacy, but instead states that it is futile. Plaintiff alleges that future injury is definite because, on its face, the disputed provisions conflict with Constitutional requirements. It appears that plaintiff has made a facial constitutional challenge to North Carolina's ballot access laws. *See Thornton*, 514 U.S. at 800–01; *Gralike*, 531 U.S. at 525-26.

Defendants argue that plaintiff will not actually face the future harm he alleges because North Carolina will not enforce § 163-122(a) and § 163-106(e) against plaintiff. Defendants admit that § 163-122(a) and § 163-106(e) are unenforceable against plaintiff, but they argue that North Carolina law provides a mechanism by which to avoid this conflict in the primary election, stating that "§ 163-106.5(b) prohibits the State Board from rejecting a congressional candidate's [primary] notice because that candidate is a felon." *Defendants' Memorandum in Support of Defendants' Motion to Dismiss* at p. 20. In fact, § 163-106.5(b) states that the State Board must "cancel the notice of [primary] candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency." The plain language of § 163-106.5(b) makes it appear that North Carolina requires primary candidates to satisfy *both* the Constitutional and statutory qualifications. Defendants' argument that this provision actually avoids a constitutional

conflict appears to stretch the text. The Court does not find persuasive defendants' argument that plaintiff will not suffer future harm because the state will not enforce its own laws, due to those laws being unconstitutional.

However, plaintiff has not demonstrated a "credible threat of enforcement." *Buscemi*, 964 F.3d at 259. Without a showing that plaintiff actually has or will file a notice of candidacy and be denied—sustaining the predicted injury—the Court cannot find that the injury is "certainly impending." *Amnesty Int'l USA*, 568 U.S. at 410. Without having filed a notice of candidacy, allegations of a possible future injury are too remote to be cognizable as of the date of this order. *See id.* at 409-10. Thus, plaintiff has failed to state an injury in fact. Accordingly, plaintiff lacks standing. *See Spokeo, Inc. v. Robins*, 578 U.S. at 339.

Ripeness

Even if plaintiff had sufficiently asserted a future injury, at least part of this controversy is not yet ripe. Defendants argue that since plaintiff may still file a notice of candidacy in the general election, the controversy is not ripe. The Court agrees.

"Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-08 (2003) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967)). "Determining whether administrative action is ripe for judicial review requires us to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration" *Id.* at 808. The case or cause of action

must "not [be] dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all." *Trump v. New York*, 141 S. Ct. 530, 535 (2020) (quotations omitted).

Plaintiff cannot satisfy the first prong as it relates to the general election. The deadline for filing a notice of candidacy in North Carolina's general election is "on or before noon of the day of the primary election." § 163-122(a)(2). For the upcoming general election, the deadline to file is before noon on May 17, 2022. This controversy is not fit for judicial decision because filing a notice of candidacy is still available to plaintiff as of the date of this order. Because plaintiff has not actually filed a notice of candidacy and been denied, there has been no state action that this Court may pass judgement upon. The potential injury in this case is contingent on plaintiff actually filing and actually being denied, which has not happened. *See Trump*, 141 S. Ct. at 544. Plaintiff's ability to run for the U.S. House of Representatives has not yet been restricted by either time or the actions of the State of North Carolina.

Plaintiff also cannot satisfy the second prong. Under the second prong, hardship "is measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law." *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208-09 (4th Cir. 1992). Nothing currently prevents plaintiff from filing notice of candidacy in the general election. Accordingly, this controversy is, at least as to the general election, not ripe.

In conclusion, plaintiff has failed to demonstrate standing and at least part of this controversy is not yet ripe. The Court, therefore, lacks subject matter jurisdiction. Accordingly, defendants' motion to dismiss for lack of subject matter jurisdiction is granted. Since the Court has found that plaintiff has not shown an injury, let alone irreparable harm, plaintiff's second motion for a temporary restraining order is denied. Since the Court has found that there is no subject matter

jurisdiction to consider this controversy, plaintiff's motion for judgement on the pleadings and for default judgement is denied in part as moot. As this controversy had been adjudicated before plaintiff's requested May 17, 2022, deadline, plaintiff's motion to expedite is granted.

CONCLUSION

Accordingly, for the foregoing reasons, defendants' motion for an extension of time [DE 27] is GRANTED. Defendants' motion to dismiss [DE 28] is deemed timely filed and is GRANTED. Plaintiff's motion to expedite [DE 35] is GRANTED. Plaintiff's second motion for a temporary restraining order [DE 26] is DENIED. Plaintiff's motion to deny the requested extension [DE 28] is DENIED IN PART, and to the extent that it is a motion for summary judgement and for default judgement, it is DENIED AS MOOT. Plaintiff's complaint is dismissed without prejudice.

SO ORDERED, this 16 day of May, 2022.

Terrence Boyle

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-59-BO

SIDDHANTH SHARMA, *Plaintiff,*	)	
v.	)	ORDER
DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, STELLA ANDERSON, in her official capacity as a member of the North Carolina State Board of Elections, JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections, STACY EGGERS IV, in his official capacity as a member of the North Carolina State Board of Elections, TOMMY TUCKER, in his official capacity as a member of the North Carolina State Board of Elections, KAREN BRINSON BELL, in her official capacity as the Executive Director of the North Carolina State Board of Elections, the NORTH CAROLINA BOARD OF ELECTIONS, *Defendants.*	)	

This cause comes before the Court on plaintiff's *pro se* motion for reconsideration, expedition, pretrial conference/hearing/oral argument, counterclaim, preliminary injunction/TRO, and exceed word count. [DE 42]. Defendants have responded, plaintiff has filed a reply, and the matter is ripe for ruling. For the reasons that follow, plaintiff's motion is granted in part and denied in part.

BACKGROUND

On February 7, 2022, plaintiff filed a *pro se* complaint alleging that several North Carolina State Board of Elections ("the Board") candidate filing requirements for the 2022 mid-term

elections are unconstitutional. Plaintiff argued that the following provisions are invalid: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days; and 3) that they do not have any felony convictions. Plaintiff at the time was an incarcerated individual with a prior felony conviction who was not registered to vote. Plaintiff attempted to file as a U.S. House of Representatives candidate in North Carolina's 2022 mid-term elections, but ultimately did not file when he discovered the statutory restrictions. Plaintiff alleged that he was unconstitutionally barred from becoming a candidate because he is a felon who may not register to vote in North Carolina.

On a motion by the defendants, the Court dismissed plaintiff's complaint for lack of subject matter jurisdiction by order entered May 16, 2022. [DE 38]. Specifically, the Court held that plaintiff lacked standing because he had not stated an injury in fact as required under Article III. The Court further held that at least a portion of the controversy was not ripe.

On February 9, 2023, plaintiff filed the instant motion. Plaintiff requests, *inter alia*, reconsideration of the dismissal of his complaint pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, specifically citing Rule 60(b)(1), (2), and (3). He primarily asserts that following his release from state custody he was able to obtain evidence not previously presented with his complaint, specifically proof that he had been denied the right to vote prior to his instituting this suit. *See, generally,* [DE 42 p. 4]; [DE 42-3]. Plaintiff also cites to sections of the North Carolina General Statutes, primarily N.C. Gen. Stat. §§ 163-275, 13-1, which he claims he did not have access to in order to cite in opposition to dismissal because he was incarcerated. The relief which plaintiff seeks is an order directing defendants to hold a special election in North Carolina District 13.

DISCUSSION

Federal Rule of Civil Procedure 60(b) includes several grounds for relief from a final judgment, order, or proceeding, including: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; and (3) fraud, misrepresentation, or misconduct by an opposing party. Fed. R. Civ. P. 60(b)(1); (2); (3).

> It is a well settled principle of law that a Rule 60(b) motion seeking relief from a final judgment is not a substitute for a timely and proper appeal. Therefore, before a party may seek relief under Rule 60(b), a party first must show 'timeliness, a meritorious defense, a lack of unfair prejudice to the opposing party, and exceptional circumstances.'

Dowell v. State Farm Fire & Casualty Auto. Ins. Co., 993 F.2d 46, 48 (4th Cir. 1993) (internal citations omitted); *see also Williams v. Griffin*, 98 Fed. App'x. 947, 947 (4th Cir. 2004). "Where the motion is nothing more than a request that the district court change its mind, however, it is not authorized by Rule 60(b)." *U.S. v. Williams*, 674 F.2d 310, 313 (4th Cir. 1982) (unpublished).

Plaintiff's motion is timely as it was filed within one year of this Court's final judgment. Fed. R. Civ. P. 60(c)(1). However, even assuming, without deciding, that plaintiff could demonstrate the remaining threshold requirements, he cannot show he is entitled to relief under any of the specific sections of Rule 60(b) on which he relies. *See Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 299 (4th Cir. 2017).

Plaintiff has not demonstrated any mistake, inadvertence, surprise, or excusable neglect. Nor has he shown any fraud, misrepresentation, or misconduct. Accordingly, he has not demonstrated that he should be relieved from the judgment in this case under Rule 60(b)(1) or 60(b)(3).

Nor can he show that relief from final judgment is appropriate under Rule 60(b)(2). Under this rule, the evidence must be *newly* discovered, and it could not have been previously discovered

with reasonable diligence – "evidence that was available to the movant prior to the entry of judgment 'as a matter of law' cannot be grounds for granting a 60(b)(2) motion." *Clayton v. Ameriquest Mortg. Co.*, 388 F. Supp. 2d 601, 609 (M.D.N.C. 2005).

As noted above, plaintiff primarily proceeds under a theory that he has newly discovered evidence which justifies relief from final judgment. The letter notifying plaintiff that his voter registration form had been denied due to his active felon status was not only previously available to plaintiff, it was also filed by plaintiff as an exhibit prior to entry of judgment. *Compare* [DE 42-3] *with* [DE 34-3]. Moreover, plaintiff's citations to provisions of the North Carolina General Statutes do not constitute evidence which was previously unavailable and could not have been discovered with reasonable diligence.

In sum, plaintiff has presented no ground for relief from this Court's judgment. His motion for reconsideration is therefore denied. The Court has considered plaintiff's filing in full and therefore grants his request to exceed the word count limitation. The remaining relief sought by plaintiff – to expedite, for pretrial conference/hearing/oral argument, counterclaim, and preliminary injunction/TRO – is denied. As there are no grounds for re-opening this case, there is no need for any pretrial conference, hearing, or oral argument. There are further no grounds upon which to enter relief under Fed. R. Civ. P. 65 as the Court has determined that it lacks subject matter jurisdiction over plaintiff's claims. Finally, the Court has considered the motion in a timely manner and there are no grounds to permit plaintiff to assert a counterclaim. These requests for relief are appropriately denied.

Finally, plaintiff has filed a document styled as a "motion for correspondence" [DE 43], which appears to be a notice that he has complied with this Court's Local Civil Rules. As no relief has been requested, the clerk may terminate this motion.

CONCLUSION

Accordingly, for the foregoing reasons, plaintiff's motion for reconsideration [DE 42] is GRANTED IN PART and DENIED IN PART. Plaintiff's request to exceed the word count is GRANTED. All other relief requested is DENIED. The clerk may terminate as pending plaintiff's motion for correspondence. [DE 43].

SO ORDERED, this 11 day of May 2023.

Terrence Boyle

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:22-cv-59-BO

SIDDHANTH SHARMA, Plaintiff, v. DAMON CIRCOSTA, et al., Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF STATE BOARD DEFENDANTS' MOTION TO DISMISS**

NOW COME Defendants, Damon Circosta, Stella Anderson, Jeff Carmon, Stacy Eggers, IV, Tommy Tucker, Karen Brinson Bell, and the North Carolina State Board of Elections ("Defendants" or "State Board Defendants"), through counsel, to provide this memorandum in support of their motion to dismiss.

Nature of the Case

Plaintiff filed a Complaint alleging that several of the North Carolina State Board of Elections' candidate filing requirements for the 2022 mid-term elections are unconstitutional under the U.S. Constitution's First and Fourteenth Amendments; Qualifications Clause for members of the U.S. House of Representatives contained in Article I, Section 2, Clause 2; and Supremacy Clause in Article VI, Section 2. [D.E. 1]. According to Plaintiff, the invalid requirements are as follows: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days; and 3) that they not have any felony convictions. [D.E. 1]. Plaintiff contends these requirements are preventing him from accessing the ballot as a candidate for North Carolina's 2022 primary election and requests declaratory and injunctive relief. Specifically, he asks that the Court stay the candidate filing deadline, at least as it

concerns the filing deadline for U.S. House of Representative candidates; declare the State Board's candidate qualifications for federal office unconstitutional; and order that he be allowed to participate in the 2022 mid-term election for seats in the U.S. House of Representatives.

Plaintiff filed an affidavit of service purporting that he served Defendants with his Complaint on February 8, 2022. [D.E. 15]. With the Complaint, Plaintiff also filed a Motion for Preliminary Injunction, for a Temporary Restraining Order, and to Consolidate, all of which were denied by the Court on February 9, 2022. [D.E. 2, 3, & 7]. Plaintiff filed a second Motion for a Temporary Protective Order on February 28, 2022, which remains pending. [D.E. 26].

This Court should dismiss Plaintiff's Complaint for lack of personal jurisdiction and insufficient service of process under Rules 12(b)(2) and (5) of the Federal Rules of Civil Procedure. The Court should also dismiss the Complaint under Rule 12(b)(1) because Plaintiff lacks standing and because his cause of action is both not ripe and also moot. Plaintiff's claims are not ripe because he never actually attempted to file a notice of candidacy form with the State Board, and they are moot because the time for candidate filing closed on March 4, 2022. And, finally, Plaintiff's claims are subject to dismissal under Rule 12(b)(6), because he has failed to state a claim upon which relief can be granted.

Statement of Facts

Plaintiff's Allegations

Plaintiff alleges that he has "officially become a [Republican] candidate" for a seat in the U.S. House of Representatives in North Carolina's District 2 for the 2022 mid-term election. [D.E. 1 at 3 & Ex. 1]. According to Plaintiff, when he attempted to file as a candidate for District 2 with the State Board of Elections ("the State Board" or "the Board"), he found out that the Board has unconstitutional requirements for candidate filings and that the Board threatened to

arrest him for failing to meet its candidate qualifications. [*Id.* at 3-4]. Petitioner claims he is in fact bringing the present action to prevent the Board from arresting him. [*Id.* at 4].

Plaintiff notes in his Complaint that the North Carolina Supreme Court had stayed candidate filing for the 2022 primary election, such that the Board was accepting candidate filings between February 24 and March 4, 2022.[1] Plaintiff alleges that it was the N.C. Supreme Court's stay of candidate filing which prompted him to file the present action. [*Id.*]

Filing a Notice of Candidacy in North Carolina and Qualifications to Serve in Congress

To be placed on a primary election ballot in North Carolina, a person must file a notice of candidacy with either a county board of elections or the State Board, depending upon the office for which the candidate files the notice. N.C.G.S. § 163-106(a) (2021). A notice of candidacy for a seat in the U.S. House of Representatives must be filed with the State Board. *Id.*, -106.2. "No person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy." *Id.*, -106.1. The method by which North Carolinians affiliate with a particular political party is by designating that party affiliation on their voter registration forms. *Id.*, -82.4(d) (requiring that the voter registration form must have a place "for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an 'unaffiliated' voter"); *see also id.*, -96 (providing the definition of "political party"). It follows that candidates filing for a partisan primary must have been a registered voter with the North

[1]As Plaintiff's allegations in his Complaint indicate, candidate filing in North Carolina did occur between February 24 and March 4, 2022 for the May 17, 2022 primary election. https://www.ncsbe.gov/news/press-releases/2022/02/22/state-board-issues-11-reminders-candidate-filing-resumes-thursday (last visited Mar. 21, 2022). Plaintiff filed his Complaint prior to the time candidate filing resumed. The allegations in Plaintiff's Complaint show he did not intend to file a notice of candidacy during the filing period. Nor did he. *See* @AFFIDAVIT?

Carolina political party in whose primary they seek to file for at least ninety days prior to filing a notice of candidacy. *See, e.g., In Re Cormos*, N.C. State Bd. Order (Mar. 21, 2022) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Cancellation%20of%20Notice%20of%20Candidacy/Cormos_2022_CD3.pdf (last visited Mar. 21, 2022).

However, even if a person has not been affiliated with a party for the requisite period of time, and is thereby precluded from running in a particular party's primary, he still has the option to run as an unaffiliated candidate in the general election, if he collects a certain number of signatures on a petition supporting his candidacy. *Id.*, -122.

State statute dictates that all individuals filing a notice of candidacy, except for those running for sheriff,[2] must answer the following question on the notice of candidacy form, "Have you ever been convicted of a felony?" *Id.*, -106(e). If the candidate answers, "yes," he must provide "the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction." *Id.* A candidate must also swear or affirm, under penalty of being convicted of a Class I felony, that the information he provides about his felony conviction, if any, is "true, correct, and complete to the best of the candidate's knowledge or belief." *Id.* If an individual fails to provide the above-noted answer or information within forty-eight hours of filing his notice of candidacy, his filing is considered incomplete, his name "shall not appear on the ballot as a candidate, and votes for that individual shall not be counted." *Id.*

State statute also dictates that those individuals required to file their notice of candidacy with the State Board, including individuals filing notices of candidacy for U.S. House, must file with their notice "a certificate signed by the chairman of the board of elections or the director of

[2] Candidates for sheriff are subject to different felony reporting requirements. *See* N.C.G.S. § 163-106(f).

elections of the county in which they are registered to vote, stating that the person is registered to vote in that county[.]" *Id.*, -163-106.2 & -106.5(a).

The substantive qualifications to serve in the U.S. House of Representatives are provided for in the U.S. Constitution. *See* U.S. Const. art. I, § 2, cl. 2, and amend. 14, § 3. According to the Constitution, to qualify for office, a Representative must be at least twenty-five years of age, he must have been a United States citizen for at least seven years, he must be an inhabitant of the state he represents at the time he was elected, and if he has previously sworn an oath to uphold the Constitution, he subsequently could not have engaged in insurrection in violation of that oath. *Id.* This list of qualifications is exclusive. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800-01 (1995); *see also Cook v. Gralike*, 531 U.S. 510, 525-26 (2001). Accordingly, any state constitutional or state statutory candidate qualifications not listed in the U.S. Constitution are inapplicable to and not enforceable against a candidate for the U.S. House of Representatives, as such application or enforcement would violate the U.S. Constitution. *See id.*

> When any candidate files a notice of candidacy with a board of elections . . . , the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

N.C.G.S. § 163-106.5(b).

"The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled[.]" *Id.* A candidate who is "adversely affected by a cancellation" can request a hearing concerning the cancellation. *Id.* When requested, a hearing is conducted by a panel of county board of elections members, which will issue a written ruling following the hearing. *Id.*, -106.5(b), -163-127.3, & -127.4. The panel's ruling is immediately appealable to the State Board, and the State Board's decision is appealable as of right to the North Carolina Court of Appeals.

Id., -127.6. Further review is available from the North Carolina Supreme Court and even the United States Supreme Court, assuming there is a justiciable federal issue. *See* N.C.G.S. §§ 7A-30 & -31; U.S. S. Ct. R. 13.

Legal Argument

I. PLAINTIFF'S CLAIM SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

This Court is without personal or subject matter jurisdiction. It should therefore dismiss Plaintiff's Complaint under Rule 12(b)(1), (2), and (5) for the reasons discussed below.

A. The Court Lacks Personal Jurisdiction Due to Plaintiff's Improper Service.

Under Rule 12(b)(2) and (5), failure to properly serve process on a defendant deprives the Court of personal jurisdiction. *Scott v. N.C. Dep't of Revenue*, No. 3:13-CV-00294, 2014 WL 1267248, at *1 (W.D.N.C. Mar. 25, 2014). "Actual notice of a lawsuit is insufficient to confer jurisdiction over the person of a defendant, and improper service of process, even if it results in notice, is not sufficient to confer personal jurisdiction." *Id.* (quoting *Bowman v. Weeks Marine, Inc.*, 936 F. Supp. 329, 336-37 (D.S.C. 1996) (citing *Mid—Continent Wood Prods., Inc. v. Harris*, 936 F.2d 297 (7th Cir.1991)), abrogated on other grounds by, *Murphy Bros., Inc. v. Michetti Pipestringing, Inc.*, 526 U.S. 344 (1999))). Under Rule 4(j) of the Federal Rules of Civil Procedure, and North Carolina's service rules, the State Board may be served through an appointed "process agent." Fed. R. Civ. P. 4(j); N.C.G.S. § 1A-1, Rule 4(j)(4)a. The appointed process agent for the State Board is its general counsel. *See* N.C. Dep't of Justice, Process Agent Directory, *available at* https://bit.ly/3hWizlQ (last visited Mar. 21, 2022). The same methods for service on state agencies apply to state officers. *See* N.C.G.S. § 1A-1, Rule 4(j)(4)d.

Plaintiff's Affidavit of Service states that Monika Sharma hand-delivered process to Ms. Ernestine Watkins, Office Administrator at the North Carolina State Board of Elections, and that

she agreed to accept service on behalf of the Members and Executive Director of the State Board. [D.E. 15 at 2]. This description is not accurate. Even if a hand delivery took place when Ms. Watkins received a package from a person who walked into the State Board offices, that is not legal acceptance of service of process. Nor is it sufficient service under North Carolina law because Ms. Watkins is not authorized to accept service on behalf of the Defendants. N.C.G.S. § 1A-1, Rule 4(j)(4)a. Ms. Watkins is an Office Administrator, and not the designated process agent for the State Board. Thus, Plaintiff failed to properly serve Defendants, and as a result, this Court lacks personal jurisdiction over them. *See Scott*, 2014 WL 1267248, at *7 ("Under Federal Rule of Civil Procedure 4(j)(2)(A), delivering a copy of the Summons and Complaint to Defendant's chief executive officer would have been proper service. However, 'the word 'delivering' in Rule 4(j) indicates that personal service should be made upon that particular individual.' (citing 4B Fed. Prac. & Proc. Civ. § 1109 (3d. ed. 2013) (collecting cases)).

B. This Court Lacks Subject Matter Jurisdiction.

This Court lacks subject matter jurisdiction because Plaintiff lacks standing and his case is both not ripe and now moot. Plaintiff bears the burden of proving subject matter jurisdiction on a motion to dismiss. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). When a defendant challenges the factual predicate of subject matter jurisdiction, a court "'is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) (citation and internal quotation marks omitted); *see also Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999); *Velasco v. Gov't of Indon.*, 370 F.3d 392, 398 (4th Cir. 2004)("Generally, when a defendant challenges subject matter jurisdiction via a Rule 12(b)(1) motion to dismiss, the

district court may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." (citing *Bain*, 697 F.2d at 1219, and *Evans*, 166 F.3d at 647)).

1. Plaintiff Fails to Allege an Injury for Standing as it Concerns All of His Claims.

To satisfy the standing requirement at the pleading stage, a plaintiff must plausibly allege (1) an injury in fact, (2) that is fairly traceable to the defendant's challenged conduct, and (3) that is likely redressable by a favorable judicial decision. *Spokeo, Inc. v. Robins,* 578 U.S. 330, 338 (2016).

Plaintiff cannot demonstrate an actual injury to support standing for any of his claims. Article III standing exists only when a plaintiff "personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 99 (1979). If a plaintiff has not suffered an injury, there is no standing, and the matter is subject to dismissal for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). *See Allen v. Wright*, 468 U.S. 737, 750-66 (1984).

"To establish injury in fact, a plaintiff must show that he suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Beck v. McDonald*, 848 F.3d 262, 270-71 (4th Cir. 2017) (citation omitted). A plaintiff lacks standing when his claimed injury is "premised on a speculative chain of possibilities." *Clapper v. Amnesty, Int'l USA*, 568 U.S. 398, 410 (2013). Thus, allegations of a merely possible future injury do not create standing. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Trump v. New York*, 141 S. Ct. 530, 544 (2020) (dismissing for lack of standing and ripeness because the plaintiff's alleged injury was predictive at best, and noting "any prediction about future injury [is] just that—a prediction").

Future injury can satisfy Article III but only when 'the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.'" *Planned Parenthood S. Atl. v. Kerr*, ___ F.3d ___, ___, 2022 U.S. App. LEXIS 6038, at *13 (4th Cir. 2022) (citations omitted). "[S]ome day intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the 'actual or imminent' injury that [the Supreme Court's] cases require." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (citation omitted).

Plaintiff's allegations are purely speculative at best because he has made his claim before he has suffered any harm, or even any "certainly impeding" harm. *Kerr,* 2022 U.S. App. LEXIS at *13. Plaintiff never filed a notice of candidacy with the State Board, much less had a notice of candidacy rejected by the Board. See the Affidavit of Ariel Bushel, ¶ 7, attached hereto as Exhibit 1. Without having filed a notice of candidacy, the entirety of Plaintiff's allegations that his candidacy would be rejected, or that he would be arrested for even trying to file as a candidate, are entirely speculative and do not satisfy the injury-in-fact requirements of Article III standing.

The speculative nature of Plaintiff's injuries is further explored in the sections below, which are incorporated by reference in support of this argument. Given the harm Plaintiff alleges for all claims is purely speculative, he fails to allege an injury sufficient to survive a motion to dismiss made under Rule 12(b)(1) for lack of subject matter jurisdiction.

2. Even if the Court were to determine the alleged harm underlying that claim is more than speculative, Plaintiff does not have standing to bring his third claim.

Even assuming arguendo Plaintiff's allegation of injury were more than speculative, he still lacks standing to raise his third claim, in which he challenges the requirement in N.C.G.S. § 163-106(e) that candidates in North Carolina cannot be felons. Not only is there still no injury in

fact under the theory of future enforcement, but Plaintiff also cannot show the other criteria necessary for standing, namely traceability and redressability. The no-felony requirement in N.C.G.S. § 163-106(e) is not enforceable against Plaintiff. As stated in the facts section above, the qualifications for U.S. House of Representative members are exclusively provided for by the United States Constitution, and states cannot create additional qualifications. *See* U.S. Const. art. I, § 2, cl. 2, and amend. 14, § 3; *Term Limits*, 514 U.S. at 800-01. Accordingly, any state constitutional or state statutory candidate qualification not listed in the U.S. Constitution, such as requiring that candidates not be convicted felons, is inapplicable to a candidate for the U.S. House of Representatives. See *id.* Thus, had Plaintiff, or any other candidate for U.S. House of Representatives who is currently serving a period of incarceration based upon a felony conviction, or who has prior felony convictions, actually attempted to file a notice of candidacy with the State Board, the Board would not have rejected their notices of candidacy based *solely* upon their status as felons or prior felons, pursuant to N.C.G.S. § 163-106(e).

To have Article III standing to bring a challenge for future enforcement of a statute, plaintiffs must plausibly allege a "credible threat of enforcement." *Abbott v. Pastides*, 900 F.3d 160, 176 (4th Cir. 2018). Plausible allegations of a credible enforcement threat require "more than the fact that state officials stand ready to perform their general duty to enforce laws." *Doe v. Duling*, 782 F.2d 1202, 1206 (4th Cir. 1986). Instead, the "most obvious" way to allege a credible threat of enforcement is to point to past enforcement actions. *Abbott*, 900 F.3d at 176. If plaintiffs cannot do so, they must allege some "objective reason" to believe that an enforcement authority will begin to enforce the statute against them. *See id.* at 177.

Plaintiff has not alleged (1) a history of past enforcement or (2) any objective reason to believe that the State Board will enforce the no-felony provision to prevent him from appearing

on the ballot. He thus has not shown an injury-in-fact, particularly where his claim three is concerned. Plaintiff alleges in his Complaint that he did attempt to file a notice of candidacy, but the Board threatened him with arrest if he did so. The State Board is not aware of why Plaintiff believes this and is unaware of any such conversation, but, regardless, there is no record of Plaintiff even attempting to file any notice of candidacy with the State Board. (Ex. 1, ¶ 7) Also, the State Board employs no peace officers, nor has any arrest power.

The Fourth Circuit found lack of an injury to support standing under similar circumstances in *Buscemi v. Bell*, 964 F.3d 252 (4th Cir. 2020). In *Buscemi*, one of the plaintiffs, a Michigan resident who sought ballot access to run as an unaffiliated candidate for president in North Carolina, challenged a North Carolina elections regulation requiring candidates to be "qualified" voters. *Id.* at 259. The plaintiff contended "qualified" voter meant a voter "who satisfies the statutory requirements to vote in North Carolina and has registered to vote." *Id.* The plaintiff was a registered voter, but not in North Carolina, and alleged the "qualified" voter provision violated the Constitution because it conflicted with the list of constitutional qualifications for president, which does not contain a state residency requirement. *Id.* The State Board agreed that if "qualified" resident meant what the plaintiff contended, it was an unconstitutional qualification. *Id.* at 259-60. But the Board argued that the plaintiff did not have standing, stipulating that it had never enforced the requirement to exclude unaffiliated nonresident presidential candidates and that it would not exclude the plaintiff. *Id.* at 260. The Fourth Circuit concluded, given the Board's history and stipulation that it would not enforce the challenged requirement, and the plaintiff's failure to allege the Board had enforced the requirement in the past, the Michigan plaintiff in *Buscemi* "failed to allege 'a credible threat of

enforcement'" and, therefore, did not have standing to challenge the "qualified" voter provision. *Id.* (quoting *Abbott,* 900 F.3d at 176).

Buscemi is highly persuasive, if not binding here. The State Board Defendants hereby give an assurance that it would not have enforced the no-felony requirement against Plaintiff had he filed his notice of candidacy, and he does not allege that the Board has enforced the requirement against a congressional candidate in the past. This assurance should not be misunderstood to be a waiver of all other qualifications, including the requirement that he have been affiliated with a political party for ninety days prior to filing to run in that party's primary, but rather that Plaintiff would not be rejected based solely on his status as a current felon. In accordance with *Buscemi*, Plaintiff has failed to allege an injury in fact.

In addition to not establishing an injury as to his third claim, Plaintiff fails to show either redressability or traceability. First, Plaintiff has not plausibly alleged an injury that is fairly traceable to any action or decision of the State Board. Traceability "examines the causal connection between the assertedly unlawful conduct and the alleged injury." *Allen*, 468 U.S. at 753 n.19. Here, Plaintiff's alleged injury is his exclusion from the ballot. But that injury is not fairly traceable to the State Board Defendants' alleged potential future enforcement of the no-felony requirement. Instead, Plaintiff's potential exclusion from the primarily ballot would be directly attributable to his inability to satisfy another candidate-filing requirement, namely that he was not registered as affiliated with a particular party for ninety days before filing as a candidate for that party's primary. *See* N.C.G.S. § 163-106.1, *and* discussion *infra.* As a result, Plaintiff's injury would not be fairly traceable to the State Board Defendants' alleged conduct.

Second and relatedly, Plaintiff has not plausibly alleged an injury that is likely redressable by a favorable judicial decision. Redressability "examines the causal connection

between the alleged injury and the judicial relief requested." *Allen*, 468 U.S. at 753 n.19. As indicated above, this Court does not have the remedial power to require the State Board to put Plaintiff's name on the ballot because he does not meet other ballot requirements. Thus, Plaintiff would still be excluded from the ballot, even if the court enjoined the State Board from enforcing N.C.G.S. § 163-106(e) to exclude felons from running for Congress. As a result, Plaintiff's injury is not redressable by a favorable judicial decision.

Because Plaintiff has not plausibly alleged injury, traceability, or redressability, he does not have Article III standing to sue as to his third claim, and it should be dismissed for lack of jurisdiction.

3. Plaintiff's Claims are Not Ripe.

Plaintiff also lacks standing because his claims are not ripe. The ripeness doctrine aims to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Abbott established a two-pronged test for ripeness: (1) whether the issues are fit for judicial decision and (2) whether hardship will fall to the petitioning party on withholding court consideration. *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208-09 (4th Cir. 1992). Under the first prong, a case is fit for judicial review if "the issues to be considered are purely legal ones and where the agency rule or action giving rise to the controversy is final and not dependent upon future uncertainties or intervening agency rulings." *Id.* Under the second prong, hardship "is measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law." *Id.*

Plaintiff cannot satisfy the first prong, and that alone renders the present claims not yet ripe for this Court's review. Plaintiff has alleged that because he is a convicted felon who is currently incarcerated and has not yet had his rights of citizenship restored under North Carolina law, he will be prevented from filing to run as a candidate to the United States House of Representatives. [D.E. 1, pp. 4-10]. By filing this lawsuit, Plaintiff has asked the legal questions of whether his notice of candidacy would be accepted by the State Board, but because he did not actually file a notice of candidacy, no agency action has occurred, much less an adverse agency action that could give rise to injury. (Ex. 1, ¶ 7) Plaintiff therefore cannot show that he has been or will imminently be injured. It follows that his claims should be dismissed per *Abbot*'s first prong as not yet ripe because the alleged harm is entirely dependent on "future uncertainties [and] intervening agency rulings." *Charter Fed. Sav. Bank*, 976 F.2d at 208-09 ("[I]n the context of an administrative case, there must be 'an administrative decision [that] has been formalized and its effects felt in a concrete way by the challenging parties.'" (citation omitted)).

Similarly, Plaintiff cannot satisfy the second prong of *Abbot*'s ripeness analysis. Under that prong, withholding court consideration until a later date, if at all, presents no additional hardship to Plaintiff. Contrary to his unsupported allegations, Plaintiff did not file a notice of candidacy prior to filing his Complaint, the State Board did not prevent Plaintiff from filing a notice of candidacy, and even after the filing of his Complaint, nothing prevented Plaintiff from filing a notice of candidacy during the candidate filing period. Nothing prevented him from filing the notice after this Court denied his request for injunctive relief either.

The candidate filing period was open from December 6, 2021 to December 8, 2021, before it was suspended by order the Supreme Court of North Carolina as a result of redistricting litigation. *See Harper, et al. v. Moore, et al.*, No. 413PA21, Dkt. No. 10 (December 8, 2021),

available at

https://appellate.nccourts.org/orders.php?t=PA&court=1&id=395618&pdf=1&a=0&docket=1&dev=1 (last visited Mar. 21, 2022). The State Board received no notice of candidacy from Plaintiff during that window. (Ex. 1, ¶¶ 6-7)

Plaintiff filed his initial Complaint in this action on February 7, 2022. [D.E. 1]. Along with his pleadings, he filed a motion for a temporary restraining order and preliminary injunction. [D.E. 2, 3]. On February 9, 2022, this Court denied all requested injunctive relief. [D.E. 7].

The candidate filing period resumed on February 24, 2022 and continued until noon on March 4, 2022. (Ex. 1, ¶ 6) The State Board received no notice of candidacy from Plaintiff during that later window. (Ex. 1, ¶¶ 6-7) While candidate filing was occurring, on February 28, 2022, Plaintiff filed a second motion for a temporary restraining order based on the same grounds as the first and without any change to his pleadings. [D.E. 26]. Before candidate filing closed, Plaintiff filed opposition to Defendants' request for an extension on March 2, 2022. [D.E. 28].

Thus, both before Plaintiff filed his Complaint, and after his initial motions for injunctive relief were denied, Plaintiff had the opportunity to file a notice of candidacy with the State Board and chose not to do so. This cannot be blamed on his status as an incarcerated individual. As indicated above, he was able to prepare and file a second motion for a temporary restraining order on February 28, and he was able to prepare and file opposition to Defendants' request for an extension on March 2. [D.E. 26, 28].

The time period within which to file a notice of candidacy for the primary election ended at noon on March 4, 2022. *See* n.1 *supra.* Thus, to the extent Plaintiff desires to file as a party

candidate ahead of the partisan primary, Plaintiff took no action to so, and the time to do so has expired. This inaction cannot be attributed to Defendants.

Plaintiff's claims are not ripe because no state action occurred to cause him harm. To the extent Plaintiff desires to file a notice of candidacy for the primary election in the next cycle in two years, he will have the opportunity to do so then. But any potential harm that may arise out of that has not yet occurred, remains speculative, and is not yet ripe for adjudication.

Most importantly to this analysis, Plaintiff still has time to attempt to become a candidate for United States House of Representatives during this election cycle. Pursuant to N.C.G.S. § 163-122(a)(2), an individual who wishes to be an unaffiliated candidate appearing on the general election ballot must file a written petition with the State Board of Elections supporting that voter's candidacy for office on or before noon on the day of the primary election. N.C.G.S. § 163-122(a)(2) (2021). Section 163-122(a)(2) requires unaffiliated candidates to be registered voters. *Id.* However, that requirement is not enforceable against congressional candidates. *See* Part II-A *supra.*

Insisting that Plaintiff first actually file a notice of candidacy and permitting the matter to proceed from there does not in any way limit Plaintiff's ability to challenge any adverse action. If Plaintiff's filing was rejected by the State Board for any reason, he is free to challenge that decision. He is entitled to a hearing on that challenge, and if he receives an adverse ruling from the State Board, he can seek an appeal as of right to the North Carolina Court of Appeals. N.C.G.S. §§ 163-106.5(b), -127.4, & -127.6. He will then have the option to seek further review from the North Carolina Supreme Court and even the United States Supreme Court, assuming he has a justiciable federal issue. *See* N.C.G.S. §§ 7A-30 & -31; U.S. S. Ct. R. 13.

Interceding at this point is unnecessary. The candidate filing process preserves Plaintiff's ability to seek office and presents no hardship to Plaintiff. Plaintiff must avail himself of the administrative process, and only if he is injured after that process is completed would he have a ripe claim.

Other courts considering similar challenges to an agency administrative process have routinely found that such matters are not yet ripe for judicial determination. In *Babbitt*, the Fourth Circuit found that the case was sufficiently ripe because the outcome of the agency process, while not formally finished, was all but final and the injury to the party was clear. *Id.* at 668. For comparison, in *Charter Federal Savings Bank*, the Fourth Circuit held that where an agency was required to make multiple decisions and take several actions before an injury could occur, the issues at hand were not ripe for judicial decision. 976 F.2d at 208-09.

Similarly, in *Doe v. Va. Dep't of State Police,* the Fourth Circuit applied the two-pronged *Abbott* analysis to reject plaintiff's challenge to statutes that led to her placement on the sex offender registry as not ripe because she had not petitioned the state court for removal, the outcome of which was wholly speculative.[3] 713 F.3d 745, 758-760 (4th Cir. 2013). With *Doe,* the Fourth Circuit further explained that even though "the Virginia law itself is harsh on Doe, requiring her to wait to bring this case to federal court until after she has sought permission from a Virginia circuit court will not cause her undue hardship." *Id.*, at 759.

Here, the matter is not yet ripe because there was no attempt by Plaintiff to file his notice of candidacy whatsoever; no harm is possible until he takes that first initial step. Moreover, Plaintiff does not suffer hardship because each of his arguments may be heard via the process

[3] The *Doe* court found that the plaintiff did have standing to challenge her placement on the registry, as that had already occurred, but dismissed that claim nonetheless under Rule 12(b)(6). *Id.* at 759-60.

outlined in governing state statutes, which include an appeal as of right to the North Carolina Court of Appeals. N.C.G.S. §§ 163-106.5(b), -127.4, & -127.6.

Finally, the longstanding doctrine of constitutional avoidance also supports application of the ripeness doctrine. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Rescue Army v. Mun. Court of L.A.*, 331 U.S. 549, 568-69, 570 n.34 (1947) (quoting *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101, 105 (1944)). Courts should therefore reject requests to resolve a constitution question placed before the court in advance of the necessity for such a decision, or based upon "abstract, hypothetical, or contingent questions . . . ." *Id.* (citations omitted).

In sum, to the extent Plaintiff believes he will be injured if and when at some point in the future he attempts to seek office, those claims are not ripe because he has not yet attempted to file a notice of candidacy with the State Board, and still has the opportunity to seek office during this election cycle, if he chooses to do so.

4. Plaintiff's Claims are Moot.

To the extent Plaintiff's claims are exclusively based on his efforts to file as a member of the Republican Party and appear as a Republican in the May 17, 2022 primary, his claims are now moot. [D.E. 1, pp. 5-8 & Ex. 1].

Federal courts are constitutionally limited to adjudicating only "actual cases or controversies." *Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983); U.S. Const. art. III, § 2. Thus, when an actual case or controversy no longer exists, a federal court must dismiss the action as moot, regardless of "how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)

(citation omitted). "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

As Plaintiff acknowledges in his Complaint, candidate filing in North Carolina resumed on February 24, 2022 and ended on March 4, 2022. [D.E. 1 at 4]; see also n.1 *supra*. Moreover, pursuant to N.C.G.S. § 163-227.10, absentee ballots are already being finalized and will soon be distributed, as they must be mailed out by county boards starting fifty days before the primary on March 28, 2022. *See* N.C.G.S. § 163-227.10. As discussed in the sections above, Plaintiff chose not to file during the candidate filing period, and candidate filing has now closed. Therefore, all of his claims are moot, to the extent his claims are exclusively based on his efforts to file as a member of the Republican Party and appear as a Republican in the May 17, 2022 primary.

For the above-discussed reasons, there is no justiciable issue in this case. As such, it should be dismissed for lack of jurisdiction under Rule 12(b)(1).

II. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM.

Should the Court choose to exercise jurisdiction over Plaintiff's claims, they should still be dismissed under Rule 12(b)(6), because Plaintiff fails to state a claim. To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter . . . 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678.

Here, Plaintiff appears to argue that three statutory requirements applicable to his notice of candidacy for a seat in the U.S. House of Representatives are actually unconstitutional qualifications, rather than constitutional ballot-access restrictions. To that end, he raises three

claims alleging the following three North Carolina candidate-filing requirements are unlawful: (1) a candidate must be a registered voter, (2) a candidate for the partisan primary must be affiliated with that particular party for at least ninety days prior to filing his notices of candidacy, and (3) a candidate for Congress cannot run for office if he is a felon.

A. Plaintiff Fails to State a Claim as to his First and Third Claim.

As indicated above, State Board Defendants admit that the no-felony candidate requirement of N.C.G.S. § 163-106(e) is not enforceable against Plaintiff. His third claim therefore fails.

Pursuant to N.C.G.S. § 163-106.5(b), the State Board must "cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency." This means that the State Board will cancel a congressional candidate's notice *only* when the candidate fails to "meet the constitutional or statutory qualifications for the office." *See id.* Under the Constitution, not being a felon is not a qualification for a member of the U.S. House of Representatives. U.S. Const. art. I, § 1, cl. 2. This Court need not make any determination as to the constitutionality of N.C.G.S. § 163-106(e) as applied to Plaintiff. This is because, in light of Article I, Section 2, Clause 2, N.C.G.S. § 163-106.5(b) prohibits the State Board from rejecting a congressional candidate's notice because that candidate is a felon. Therefore, Plaintiff's third claim is subject to dismissal under Rule 12(b)(6).

This same reasoning extends to Plaintiff's first claim in which he alleges being registered to vote is an unconstitutional additional qualification for U.S. House candidates. According to Plaintiff, because he is a candidate for Congress who cannot register to vote, it is unconstitutional to apply the state-statutory registered-voter requirement to his notice of candidacy. Under the Constitution, registering to vote is not a qualification for a member of the

U.S. House of Representatives. U.S. Const. art. I, § 1, cl. 2. For the reasons stated below, it is not unconstitutional to require a candidate to register to vote *as affiliated with a particular party* for a certain period of time to establish his party affiliation to be able to participate in a partisan primary. However, requiring candidates to be registered voters is unenforceable against congressional candidates because it would act as an additional qualification to that office beyond those contained within the U.S. Constitution. Therefore, Plaintiff would not be barred solely because he was not a registered voter. *See* N.C.G.S. § 163-106.5(b), *and* discussion *supra*. As a result, Plaintiff's first claim is subject to dismissal under Rule 12(b)(6).

B. Plaintiff Fails to State a Claim as to his Second Claim.

Plaintiff's second claim is are also subject to dismissal under Rule 12(b)(6). Requiring candidates to register as being affiliated with a particular party ninety days before filing a notice of candidacy, is not an additional, unconstitutional qualification for U.S. House candidates. Nor are they invalid ballot-access restrictions.

1. The challenged party affiliation requirement is not an unconstitutional qualification.

The challenged requirement to be affiliated with a party for ninety days is not a qualification for office. It is instead a typical time, place, and manner restriction justified by important state interests. *See* U.S. Const. art. I, § 4, cl. 1.

The Supreme Court explored the distinction between qualifications and regulations of time, place, and manner in *Storer v. Brown*, 415 U.S. 724 (1974), *United States Term Limits v. Thornton*, 514 U.S. 779, and *Cook v. Gralike*, 531 U.S. 510.

In *Storer,* the Supreme Court rejected the argument that a state's disaffiliation law added a qualification for congressional office over and above those provided for in the U.S. Constitution. 415 U.S. at 726. That law denied an otherwise qualified independent candidate a

place on the general-election ballot where "he voted in the immediately preceding primary or if he had registered affiliation with a qualified political party at any time within one year prior to the immediately preceding primary election" *Id.* (citations omitted). In addressing the State's constitutional authority to impose the disaffiliation and other election laws, the Court in *Storer* emphasized that

> the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates. . . . It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases[.]

Id. at 730.

According to the Court in *Storer*, the disaffiliation law was not an unconstitutional qualification. It was instead a constitutional time, place, and manner requirement that preserved election integrity by protecting, among other compelling interests, "the stability of [the state's] political system" and "the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot." *Id.* at 735. The Court further concluded that the law "works against independent candidacies prompted by short-range political goals, pique, or personal quarrel." *Id.* at 735, 736 (considering "'the stability of [a state's] political system' as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status").

In *United States Term Limits,* 514 U.S. 779, the Court invalidated a state constitutional amendment imposing term limits on "otherwise-eligible candidates for Congress." *Id.* at 783. This was because the amendment had "the likely effect of handicapping a class of candidates," those being candidates who served in Congress for the length of time designated by the

amendment, and had "the sole purpose of creating additional qualifications," albeit doing so indirectly. *Id.* at 836. The Court made it clear that the only qualifications for congressional office were those in the Constitution and that the State had no authority to add others. *Id.*

According to the Court in *U.S. Term Limits*, the authority granted to the states concerning elections "is a grant of authority to issue procedural regulations," not "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 833-34. The Court recognized the laws at issue in *Storer* did none of these things. Rather, they

> regulated election procedures and did not even arguably impose any substantive qualification rendering a class of candidates ineligible for ballot position. They served the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service in Congress.

U.S. Term Limits, 514 U.S. at 835.

As the Supreme Court acknowledged in *U.S. Term Limits*, it has "approved of state regulations designed to ensure that elections are fair and honest and . . . [that] some sort of order, rather than chaos, . . . accompan[ies] the democratic processes." *Id.* at 834-35 (internal quotation marks and citation omitted) (alterations in original). It also acknowledged it has recognized the State's interest in preserving election integrity included "preventing interparty raiding"; "maintaining . . . the various routes to the ballot"; "avoiding voter confusion, ballot overcrowding, or the presence of frivolous candidacies"; "seeking to assure that elections are operated equitably and efficiently"; and "guarding against irregularity and error in the tabulation of votes." *Id.* at 834 (internal quotation marks and citations omitted).

Later, in *Cook*, 531 U.S. 510, the Supreme Court concluded a requirement that state ballots for federal congressional offices must indicate whether a candidate supported a federal

constitutional amendment to impose term limits was an unconstitutional qualification, because it "attempted to 'dictate electoral outcomes.'" *Id.* at 526 (quoting *U.S. Term Limits*, 514 U.S. at 833-34)). According to the Supreme Court, the required ballot notation in *Cook* was "[a] Scarlet Letter," intended to "handicap candidates at the most crucial stage in the election process—the instant before the vote is cast." *Id.* at 525 (citation and internal quotation omitted).

Here, requiring a candidate for a partisan primary to register as being affiliated with that party at least ninety days before the primary election to run in that election, are procedural regulations, not qualifications. Unlike term limits or declarations that a candidate does or does not support a particular issue, but similar to the disaffiliation law at issue in *Storer,* these regulations do not "dictate electoral outcomes" or "evade important constitutional restraints." *U.S. Term Limits*, 514 U.S. at 833-34. Nor do they "even arguably impose any substantive qualification rendering a class of candidates ineligible for ballot position." *Id.* at 835. Everyone filing a notice of candidacy to run in the primary must abide by these regulations, regardless of party, *see* N.C.G.S. § 163-106.1, and any candidate who is not registered with the party 90 days prior to filing, or who does not wish to be a party candidate, is free to seek access to the general election ballot through the petition process. *See* N.C.G.S. § 163-122(a)(2).

More importantly, they "serve[] the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service in Congress." *Cook*, 531 U.S. at 835. Indeed, requiring voter registration and registration for a minimum of ninety-days in the name of the party holding the primary in which a candidate wishes to participate preserves many of the same compelling interest protected by the disaffiliation law in *Storer.* Specifically, those requirements preserve "the stability of [North Carolina's] political system"

and "the direct primary process by refusing to recognize [] candidates who do not make early plans," and who are "prompted by short-range political goals[.]" *Cook,* 531 U.S. at 735. In this same vain, they "force potential candidates for office to think ahead before the filing deadline, thus weeding out frivolous candidacies and only permitting serious candidates to go forward." *McClure v. Galvin*, 386 F.3d 36, 43 (1st Cir. 2004) (concluding a state law which prohibited a candidate for a state office, who was running as an independent, from being affiliated with a political party ninety days prior to the primary filing deadline, and holding that the law was not an unconstitutional ballot-access restriction).

Other courts have found similar requirements for candidates to be procedural regulations and not additional, unconstitutional qualifications. *See, e.g.*, *Storer*, 415 U.S. 724; *Cartwright v. Barnes*, 304 F.3d 1138, 1139 (11th Cir. 2002) (providing that state law requiring candidates to obtain signatures from five percent of the state's registered voters to appear on the ballot was a constitutional elections regulation and not an additional qualification, while noting that the law required a demonstration of "substantial community support," which the Supreme Court had long recognized as a valid state interest); *Libertarian Party of Ill. v. Rednour*, 108 F.3d 768, 776-77 (7th Cir. 1997) (concluding state elections scheme for determining which parties were established parties, and were thus entitled to hold a primary, and which new parties' candidates could appear on the general election ballot, were procedural regulations and not additional unconstitutional qualifications, while noting that the requirements maintained "the integrity and regularity of the electoral process"); *De La Fuente v. Simon*, 940 N.W.2d 477, 491-92 (Minn. 2020) (concluding that state law directing parties to determine who will be the parties' presidential candidates, then to submit the names to the Secretary of State, was "not a substantive eligibility" equating to the constitutional qualifications for president, but part of a process which,

among other things, allowed the Secretary "to prepare, print, and distribute ballots that comply with state and federal election laws").

Because the state statutory ninety-day party affiliation requirement challenged by Plaintiff is a procedural regulation, not a qualification for office, and does not act as a total bar to office because any candidate may still seek to run as an unaffiliated candidate, it does not violate those portions of the U.S. Constitution exclusively establishing the only qualifications for members of the U.S. House of Representatives.

2. The challenged procedural regulation is a constitutional ballot-access restriction.

The challenged procedural regulation is a constitutional ballot-access restriction, and therefore, despite Plaintiff's contention to the contrary, it does not violate the First and Fourteenth Amendments to the U.S. Constitution.

"It is well established that ballot-access restrictions 'implicate substantial voting, associational and expressive rights protected by the First and Fourteenth Amendments.'" *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014) (quoting *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995)). In analyzing whether state election laws impermissibly infringe on such rights, the Supreme Court has instructed lower courts to 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." *Id.* (citing *Anderson*, 460 U.S. at 789 (1983), *and Burdick v. Takshi*, 504 U.S. 428, 434 (1992)). "Election laws will invariably impose some burden upon individual voters. Each provision of a code, 'whether it governs the registration and qualifications of voters, the selection and eligibility of

candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote[.]'" *Burdick*, 504 U.S. at 433 (quoting *Anderson*, 460 U.S. at 788).

"[E]lection laws that impose a severe burden on ballot access are subject to strict scrutiny, and a court applying strict scrutiny may uphold the restrictions only if they are 'narrowly drawn to advance a state interest of compelling importance.'" *Pisano*, 743 F.3d at 933 (citation omitted). However, "if a statute imposes only modest burdens, then a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.*

> The Supreme Court has emphasized that ballot access restrictions must be assessed as a complex whole. . . . [A] reviewing court must determine whether "the totality of the [state's] restrictive laws taken as a whole imposes a[n unconstitutional] burden on voting and associational rights."

McLaughlin, 65 F.3d at 1223 (quoting *Williams v. Rhodes*, 393 U.S. 23, 34 (1968)). The party challenging the election scheme has the initial burden of showing that the ballot access requirements seriously restrict the availability of political opportunity. *American Party of Texas v. White*, 415 U.S. 767, 781 (1974).

Registering to vote as affiliated with the party in whose primary election a candidate wishes to participate for ninety days is not an unconstitutional ballot-access restriction. Comparing such candidate requirements with others, they are similar to those restrictions for which courts have concluded the burden they impose on candidates is moderate. They are certainly not severe and thus not subject to strict scrutiny.[4] *See, e.g., Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997) (finding that state law prohibiting candidate from appearing as more than one party's choice on a ballot did burden a party's ballot access and

[4] Even if subject to strict scrutiny, the challenged regulations are narrowly tailored to advance the State's compelling interest discussed *supra*.

associational rights, but that burden was not severe, and thus applying a lesser level of review to conclude the law was constitutional); *McClure*, 386 F.3d at 44 (applying lesser scrutiny to a state law which provided that a candidate for a state office who was running as an independent could not be affiliated with a political party ninety days prior to the primary filing deadline, and finding the law was constitutional); *see also Pisano*, 743 F.3d at 936 (finding a North Carolina statutory requirement that to establish a new party, voters must obtain signatures from a certain percentage of the number of people voting in the last election for its governor, one week following the primary, imposed a modest burden and was a constitutional ballot-access restriction).

That the ninety-day candidate requirement in particular imposes at most a moderate burden is particularly true, when taking into account the entirety of North Carolina's candidate-filing scheme, which this Court is required to do. *See McLaughlin*, 65 F.3d at 1223. Under that elections scheme, a person still has the opportunity to become a candidate for U.S. House of Representatives, even if he is unable to participate in a primary because he was not affiliated with a party for the requisite period of time. Pursuant to N.C.G.S. § 163-122(a)(2), any person who wishes to be an unaffiliated candidate appearing on the general election ballot can do so by filing a written petition with the State Board of Elections supporting that voter's candidacy for office on or before noon on the day of the primary election. N.C.G.S. § 163-122(a)(2). And, as indicated *supra*, Section 163-122(a)(2)'s requirement that unaffiliated candidates be registered voters is not enforceable against congressional candidates. *See* Part II-A *supra*

Moreover, the burden, if any, imposed by the candidate filing requirements Plaintiff challenges is undoubtedly outweighed by the compelling interest of the State. "[A] State has an interest, *if not a duty*, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972) (emphasis added);

Timmons, 520 U.S. at 358 ("It is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder."). States also have an interest in "avoiding confusion, deception, and even frustration of the democratic process at the general election," and "in ensuring orderly, fair, and efficient procedures for the election of public officials." *Pisano,* 743 F.3d at 937 (cleaned up).

"States are not required 'to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.'" *Pisano*, 743 F.3d at 937 (*Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986)). This Court has held that "[i]n cases where strict scrutiny does not apply, [courts] ask only that the state 'articulate[ ]' its asserted interests." *Libertarian Party v. Alcorn*, 826 F.3d 708, 719 (4th Cir. 2016) (citation omitted). "This is not a high bar." *Id.* "Reasoned, credible argument" is enough to support a state's asserted interests. *Id.* The importance of a state's interests may therefore be decided as a matter of law on a Rule 12(b)(6) motion. *See id.* (affirming Rule 12(b)(6) dismissal).

As discussed above, it is obvious that the requirements challenged by Plaintiff preserve compelling interests, including "the stability of [North Carolina's] political system" and "the direct primary process by refusing to recognize [] candidates who do not make early plans," and who are "prompted by short-range political goals[.]" *Cook,* 531 U.S. at 735. They undoubtedly "force potential candidates for office to think ahead before the filing deadline, thus weeding out frivolous candidacies and only permitting serious candidates to go forward."[5] *McClure*, 386 F.3d

[5] North Carolina has long considered the challenged regulations important components in maintaining election security. The requirement that a candidate for a partisan primary be affiliated with the political party for which they seek to be a candidate for at least ninety days prior to the filing date for the office dates back to at least 1991. *See* N.C.G.S. § 163-106(b) (1991) (recodified as N.C.G.S. § 163-106.1 in 2018).

at 43. It follows that the challenged regulations are constitutional ballot-access restrictions, and Plaintiff therefore fails to state a claim under the First and Fourteenth Amendment with his contentions to the contrary.

Other courts have found similar laws to be valid ballot-access restrictions based upon the protection they provide to interests which are similar to the interests protected by the restrictions challenged here. *See, e.g., McClure*, 386 F.3d at 44; *Thournir v. Meyer*, 708 F. Supp. 1183, 1187 (D. Colo. 1989) (concluding state law requiring unaffiliated candidate to register as an unaffiliated voter for one year or more before filing as a candidate was constitutional, because it "work[ed] against would be independent candidates prompted by short-range political or personal motives, or who seek to bleed off votes in the general election that otherwise might go to a particular major party candidate," and worked to preserve the state's "interest in insuring that voters are not presented with a 'laundry list' of candidates who have decided on the eve of a major election to seek public office"), *aff'd*, 909 F.2d 408 (10th Cir. 1991); *cf. Rosario v. Rockefeller*, 410 U.S. 752, 760-61 (1973) (holding state law requiring voters to register thirty days prior to the general election to vote in the next party primary was constitutional, as its purpose was to preserve election integrity by preventing party raiding in primary elections).

At bottom, not only does not this Court not have jurisdiction, Plaintiff fails to state a claim for which relief can be granted.

Conclusion

For the reasons above, Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted this the 22nd day of March, 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** was served on pro se Plaintiff in this action via email on this date, and by U.S. Mail, postage prepaid, on March 23, 2022 as follows:

Siddhanth Sharma
8508 Micollet Court
Raleigh, NC 27603
sidforoffice@gmail.com

This the 22nd day of March, 2022.

JOSHUA H. STEIN
Attorney General

/s/ Mary Carla Babb
Mary Carla Babb
Special Deputy Attorney General

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:22-cv-59-BO

SIDDHANTH SHARMA, Plaintiff, v. DAMON CIRCOSTA, et al., Defendants.	)	**AFFIDAVIT OF ARIEL BUSHEL**

I, Ariel Bushel, 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. I have personal knowledge of the facts set forth in this affidavit.

2. I currently serve as an Assistant Election Program Specialist at the North Carolina State Board of Elections (the "State Board").

3. In that role, I have access to Notice of Candidacy forms filed with the State Board.

4. This includes Notices of Candidacy for any candidate seeking to run for the U.S. House of Representatives, who must file their Notice of Candidacy form with the State Board pursuant to N.C.G.S. § 163-106.2.

5. When a potential candidate files a Notice of Candidacy form with the State Board, it is reviewed and accepted or rejected depending on whether the candidate meets the qualifications for office. All Notice of Candidacy forms filed with the State Board,

whether accepted or rejected, are public records of the State Board, and are kept and maintained in the course of our candidate filing process, which is a regularly conducted activity of the State Board.

6. I have reviewed the Notice of Candidacy forms filed with the State Board for the May 2022 primary election. This includes forms that were filed with the State Board during the initial phase of candidate filing on December 6 and 7, 2021, and when it resumed from February 24, 2022 to March 4, 2022.

7. The State Board has no records indicating that the Plaintiff in this matter, Siddhanth Sharma, attempted to file a Notice of Candidacy form with the State Board. The State Board has no records indicating that the State Board received, reviewed, accepted, or rejected any Notice of Candidacy from Siddhanth Sharma.

This concludes my affidavit.

Pursuant to 28 U.S.C. § 1746(2), I verify under penalty of perjury that the foregoing Affidavit is true and correct in substance and in fact to the best of my knowledge and belief.

This the 22 day of March, 2022.

Ariel Bushel
Assistant Elections Program Specialist
N.C. State Board of Elections

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

NO. 5:22-CV-00059-BO

SIDDHANTH SHARMA, an individual,)

Plaintiff,

VS.)

- **MR. DAMON CIRCOSTA**, in his official capacity as Chair of the North Carolina State Board of Elections),
- **MS. STELLA ANDERSON**, in her official capacity as a member of the North Carolina State Board of Elections),
- **MR. JEFF CARMON**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MR. STACY EGGERS IV**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MR. TOMMY TUCKER**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MS. KAREN BRINSON BELL**, in her official capacity as the Executive Director of the North Carolina State Board of Elections),
- **NC State Board of Elections**

Defendants.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR DECLARATORY RELIEF

(FEDERAL RULES OF CIVIL PROCEDURE 12(a)(C)

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

NO. 5:22-CV-00059-BO

SIDDHANTH SHARMA, an individual,)

Plaintiff,

VS.)

- **MR. DAMON CIRCOSTA**, in his official capacity as Chair of the North Carolina State Board of Elections),
- **MS. STELLA ANDERSON**, in her official capacity as a member of the North Carolina State Board of Elections),
- **MR. JEFF CARMON**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MR. STACY EGGERS IV**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MR. TOMMY TUCKER**, in his official capacity as a member of the North Carolina State Board of Elections),
- **MS. KAREN BRINSON BELL**, in her official capacity as the Executive Director of the North Carolina State Board of Elections),
- **NC State Board of Elections**

Defendants.

PLAINTIFF'S REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR DECLARATORY RELIEF

(FEDERAL RULES OF CIVIL PROCEDURE 12(a)(C)

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INTRODUCTION/WHAT HAPPENED??

- **DEFENDANTS FILED A FRIVOLOUS BRIEF** [See Exhibit 1, 5:22-CV-00059-BO Docket, DE# 31].
- Petitioner does NOT and should NOT have to respond.
- This is a **CLEAR ATTEMPT** by defendants to **PROLONG THIS CASE PAST MAY 17, 2022.**
- Defendants **ADMIT** on pages 5, 10, 20-30 to Petitioner's allegations ---- AND MAKE NO ATTEMPT TO EXPLAIN *why* or *how* these are "ballot restrictions":

  Defendants only make "general statements".

- Petitioner stated in his complaint that defendants will **FAIL TO EXPLAIN WHY THESE REQUISITES ARE NECESSARY** ---- *Petitioner was right.* [See Exhibit 2, pages 6-9 for Declaratory Relief].
- Defendants are committing a crime by **DENYING FELONS: THE RIGHT TO VOTE** (this was found on pages 10, 20-30 of defendants' brief that Petitioner will go into GREATER DETAILS *in this brief.*
- Defendants say "they got the power" ---- **but nowhere do they explain how or why** ---- defendants just "assume". **defendants filed this brief in violation of rule 11(b)(2) and rule 11(b)(4) of federal rules of civil procedure.**

ARGUMENTS:

[RESPONDENTS' BRIEF PAGES 6-7]: THIS COURT DOES NOT LACK PERSONAL JURISDICTION.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants state that this case should be dismissed due to IMPROPER SERVICE. This Court accepted service on Ms. Watkins, as proper, for all defendants on February 8, 2022, hence ordering defendants to respond by March 1, 2022. Thus, defendants' request to deny must be DENIED, due to defendants being served [See Exhibit 1, DE# 8-14, Proof of Service].

[RESPONDENTS' BRIEF PAGES 8-9]: PLAINTIFF DOES ALLEGE AN INJURY FOR STANDING.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants say Petitioner has not alleged an injury --- that is a false statement. Plaintiff HAS established an injury --- because Petitioner IS A CONVICTED FELON. Convicted felons *cannot* be a "registered voter". Thus, defendants SUBLIMINARILY deny felons via NCGS 163-82.1(2), 163-106.5(b), Article VI, sec. 2(3), Article VI, sec. 8 of the North Carolina Constitution. Therefore, Petitioner DOES IN FACT SUFFER AN INJURY because *on the form itself it says on Number 10*: "Fraudulently or falsely competing this form is a Class I Felony -----" since Petitioner is a convicted felon and does not have his rights of citizenship restored --- he CANNOT be a registered voter, thus, if Petitioner would attempt to file a notice of candidacy: he would be committing a

felony. Therefore, making Plaintiff's injury ALL-THE-MORE-REAL and the defendants' method of practice ALL THE MORE DUBIOUS: defendants are submitting "would-be federal candidates" to overly burdensome hurdles of state law requirements for federal office: namely NCGS 163-82.1(2), 163-106.5(b), the North Carolina Constitution Article VI, sec. 2(3) and Article VI, sec. 8.

Petitioner *does in fact* suffer an injury: he is a convicted felon and pursuant to NCGS 163-82.1(2), Petitioner CANNOT BE a registered voter, thus, pursuant to NCGS 163-106.5(b), defendants *must* disqualify Petitioner **had he chose to file candidacy**. Not only that, had Petitioner *filed* a notice of candidacy, he would be committing a felony in North Carolina. The defendants would then have to refer Petitioner to the State of North Carolina Attorney General's Office for prosecution [on page 11, defendants say they have no arrest power – *but someone has to make the referral*, otherwise, who else would know Petitioner fraudulently filed a form??] therefore making Petitioner's attempted injury **ALL THE MORE IMMEDIATE AND CLEARLY FORSEABLE**. Not only that but defendants would have subjected Petitioner to the defendants' **DUBIOUS APPELLATE SYSTEM** – namely NCGS 163-127 et seq; which direct appeal lies with the North Carolina Court of Appeals and the NC Supreme Court. Thus, were Petitioner to argue his "right to run for federal office" to the North Carolina Court of Appeals and the NC Supreme Court: they would have **DENIED PETITIONER** pursuant to Article VI, sec. 2(3) and Article VI, sec. 8 of the North Carolina Constitution. This makes defendants subjecting felons – who-would-be-federal-candidates to "a hopeless state appellate system", this is the **real atrocity**.

[RESPONDENTS' BRIEF PAGES 9-13]: PLAINTIFF STILL HAS STANDING ON HIS THIRD CLAIM.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

On pages 5, 10, 20-30, defendants ADMIT *they have no power to regulate the qualifications for federal office*. Therefore, defendants subliminally concede to Petitioner's allegations --- the defendants admit they have no power to alter the qualifications --- defendants *indirectly do so, namely, altering the qualifications for federal office by inventing these three requisites:*

although defendants say "they wouldn't remove" solely on the status of a felon --- *here is the problem:*

the fact that defendants have the "power to remove":

IS THE PROBLEM.

Defendants do NOT have "that" power: "that power" is reserved for Article I, sec. 5. So when defendants say "they wouldn't remove" --- *that* power is ONLY RESERVED FOR CONGRESS, yet defendants "think" they have that "power". They are WRONG – hence that's why defendants "thought" they had the "power" to **deny U.S. Representative Madison Cawthorn** (5:22-CV-00050-M).

Defendants only have the power to **ACCEPT:**

NOT REJECT

The power to qualify comes from Article I, sec. 5, thus, defendants *admit* they have no power. So who gave defendants "power" to disqualify U.S. Representative Madison Cawthorn?? What about Petitioner??:

The *criminalistic*: DEFENDANTS.

So, when defendants ADMIT to Petitioner's allegations, defendants admit they violate the U.S. Constitution.

Defendants cited *Buscemi vs. Bell,* 964 F.3d 252 (4th Cir. 2020) --- *Buscemi* is INAPPLICABLE to the proceeding because in *Buscemi*:

***Buscemi*:** dealt with "unaffiliated candidate" running for President.

Petitioner's case: Petitioner is running as a candidate of the Republican Party (one of the two major parties in America) and Petitioner is running for CONGRESS, *not President* --- which has a *different set of qualifications* for those particular offices; therefore, *Buscemi* is INAPPLICABLE for Petitioner running for Congress --- *not President.*

[RESPONDENTS' BRIEF PAGES 13-18]: PLAINTIFF'S CLAIM IS RIPE.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants cited *Abbott Labs vs. Gardner*, 387 U.S. 136, 148 (1967). Petitioner will discuss this here:

Defendants say Petitioner's claim is not ripe because he failed to file for candidacy. This MUST fail because the reason Petitioner can NOT fill up a form is because he is a convicted felon and pursuant to NCGS 163-82.1(2), 163-106.5(b), Article

VI, sec. 2(3) and Article VI, sec. 8 of the North Carolina Constitution, Petitioner cannot be a registered voter; defendants are CLEARLY AWARE of the dubious methods to deny felons from coming into office --- hence, that's why NCGS 163-82.1(2) and NCGS 163-106.5(b) were invented for federal office --- thus, filing for candidacy is **POINTLESS**. Petitioner's injury is REAL AND IMMEDIATE because since Petitioner is a convicted felon – he cannot be a registered voter; thus, when Petitioner "attempts" to be a registered voter --- Petitioner was DENIED [See Exhibit 3, Voter Registration and Letter from NCSBE]. Thus, based on NCGS 163-82.1(2), 163-106.5(b), Article VI, sec. 2(3) and Article VI, sec. 8 of the North Carolina Constitution, it says Petitioner cannot run for federal office --- thus, Petitioner did not have to file a candidacy form --- and appeal is **FUTILE in the North Carolina Court of Appeals since in the North Carolina Constitution, felons can't vote**. Defendants' appeal process namely NCGS 163-127.1 et seq is a dubious sham which has direct appeal to the North Carolina Court of Appeals and the North Carolina Supreme Court. This appellate process is a dubious sham only to make it appear that the NC Courts honor the Constitution – *when in fact they don't* – it is just another dubious way to deny FEDERAL RIGHTS.

Petitioner clearly satisfies the first prong of *Abbott*. Petitioner will CLEARLY SUFFER HARDSHIP because Petitioner's campaign is suffering -because Petitioner is not on the State ballot --- Petitoner satisfies the second prong under *Abbott*.

[RESPONDENTS' BRIEF PAGES 18-19]: PLAINTIFF'S CLAIMS ARE NOT MOOT.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants say Petitioner's claim is moot because he did not file a candidacy with defendants. This argument MUST FAIL for all reasons previously explained in all previous sub-sections of this reply.

[RESPONDENTS' BRIEF PAGES 19-21]: PLAINTIFF DOES IN FACT STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

NCGS 163-106.5(b) says "the State Board must cancel the notice ..... of anybody who does not meet the constitutional or statutory qualifications." Since Petitioner is a STATE FELON, defendants are FORCED TO DENY PETITIONER --- thus, defendants made a **FALSE STATEMENT** on page 10. Defendants' actions **AMOUNT TO CRIMINALITY** since they subliminally deny felons via N.C. Constitution Article VI, sec. 2(3) and Article VI, sec. 8 and NCGS 163-82.1(2).

*******This Court must rule on the constitutionality of**

NCGS 163-106.5(b)

NCGS 163-106-82.1(2)

Article VI, sec. 2(3) of the North Carolina Constitution and

Article VI, sec. 8 of the North Carolina Constitution*****

because: it denies felons from coming into federal office.

[RESPONDENTS' BRIEF PAGES 21-26]: PARTY AFFILIATION REQUIREMENT IS AN UNCONSTITUTIONAL QUALIFICATION.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants DARE SAY these requisites are applicable to Article I, sec. 4 of the United States Constitution --- that is a sick joke that Petitioner **VEHEMENTLY DISAGREES WITH.**

Defendants argued *Storer vs. Brown*, 415 U.S. 724 (1974). Defendants are **WRONG:** there is a BIG DIFFERENCE between Petitioner's case and *Storer.*

Storer: wanted to run for President and get an unaffiliated party into California --- different set of qualifications.

Petitioner: running for CONGRESS – *not President* and is part of the Republican Party.

The difference is: **different offices with different set of qualifications.**

Thus, defendants' reliance on *Storer* is WRONG AND MISPLACED.

Defendants seem to believe Petitioner when they cited *United States Term Limits vs. Thornton*, 514 U.S. 779 at 836 because the Court in *United States Term Limits* at 836 says the qualifications for Congressional office were those in the Constitution and that the State had no authority to add others.

Therefore, the affiliation for ninety days is a constitutional violation.

[RESPONDENTS' BRIEF PAGES 26-30]: THIS IS NOT A CONSTITUTIONAL BALLOT-ACCESS RESTRICTION.

All case laws defendants cited do not apply to Petitioner in the slightest. These quotations that defendants cited are only made for phraseology purposes, therefore, showing how frivolous their claims really are.

Defendants make a daring attempt to say these requisites are "ballot-access restrictions" but **FAIL TO EXPLAIN HOW OR WHY.**

Defendants *know* these requisites are "qualifications" and *not* "ballot-access restrictions" **otherwise** ---- they would have explained how these are "ballot-access restrictions" as they FALSELY PROCLAIMED in Defendants' foot note on page 27 of their response. Therefore, defendants filed a brief in violation of Rule 11(b)(2) and Rule 11(b)(4) of the Federal Rules of Civil Procedure.

Defendants cited *Timmons vs. Twin Cities Area New Party*, 520 U.S. 351 (1997). Once again, *Timmons* does not apply.

Timmons: doesn't apply because that case had to deal with a candidate who wanted to appear on two different ballots of different political parties --- *that* would be subjected to Article I, sec. 4 --- *but not Petitioner's case.*

Petitioner's case: deals with him trying to appear on the ballot for the **REPUBLICAN PARTY** --- *subjected to Article I, sec. 5.*

Thus: *Timmons* **DOES NOT APPLY TO PETITIONER AT ALL.**

Defendants cited *Burdick vs. Takushi*, 504 U.S. 428 (1992). *Burdick vs. Takushi* DOES NOT APPLY.

Burdick: doesn't apply because that case had to deal with a Petitioner wanting to vote for a "person not on the ballot".

Petitioner's case: deals with him trying to appear on the ballot for the **REPUBLICAN PARTY** --- *subjected to Article I, sec. 5.*

Thus, *Burdick* **DOES NOT APPLY AS TO PETITIONER.**

Defendants maintain in a foot note on page 29 of their brief that the ninety day party affiliation specifically NCGS 163-106.1 has been in effect since 1991; however, defendants **FAIL TO EXPLAIN WHY OR HOW** this statute acts as a "ballot-access restriction".

RELIEF/CONCLUSION

Wherefore, Petitioner humbly requests this Court to grant declaratory and injunctive relief and also impose sanctions on the defendants pursuant to Rule 11(b)(2) and Rule 11(b)(4) of Federal Rules of Civil Procedure.

This the 12th day of April, 2022.

Siddhanth Sharma

Siddhanth Sharma

Petitioner (Pro Se)

8508 Micollet Court

Raleigh, NC 27613

CERTIFICATE OF FILING AND SERVICE

Petitioner certifies that this Reply has been filed with the Clerk of Court, Mr. Peter A Moore, Jr., United States Courthouse, 310 New Bern Avenue, Raleigh, NC 27601/PO Box 25670, Raleigh, NC 27611, by deposit in the United States mail, first-class and postage prepaid or hand delivery.

Petitioner further certifies that a copy of the Reply has been served on the following by deposit in the United States mail, first-class and postage prepaid or hand delivery:

NC State Board of Elections
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Raleigh, NC 27611

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Mr. Jeff Carmon
North Carolina State Board of Elections
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Mr. Stacy Eggers IV
North Carolina State Board of Elections
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Siddhanth Sharma
Siddhanth Sharma

Certificate of Compliance with TYPE-Volume Limit

Petitioner certifies that this document complies with the word limit of Local Civil Rule 7.2(f)(2)(3) because, excluding the parts of the document exempted by Local Civil Rule 7.2(f)(1), this document contains 2,155 words and does not exceed 10 pages. All word counts were generated by the word processing software used.

Siddhanth Sharma
Siddhanth Sharma

Jury Trial,USMJ Numbers

U.S. District Court
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)
CIVIL DOCKET FOR CASE #: 5:22-cv-00059-BO

Sharma v. Circosta et al
Assigned to: District Judge Terrence W. Boyle
Cause: 42:1983 Civil Rights Act

Date Filed: 02/07/2022
Jury Demand: Plaintiff
Nature of Suit: 440 Civil Rights: Other
Jurisdiction: Federal Question

Plaintiff

Siddhanth Sharma

represented by **Siddhanth Sharma**
8508 Micollet Court
Raleigh, NC 27613
PRO SE

V.

Defendant

Damon Circosta
in his official capacity as Chair of the North Carolina State Board of Elections

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Defendant

Stella Anderson
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terence Steed
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jeff Carmon
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ATTORNEY TO BE NOTICED

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ATTORNEY TO BE NOTICED

Terence Steed
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Tommy Tucker
in his official capacity as a member of the North Carolina State Board of Elections

represented by **Mary Carla Babb**
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terence Steed
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Karen Brinson Bell
in her official capacity as the Executive Director of the North Carolina State Board of Elections

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ATTORNEY TO BE NOTICED

Terence Steed
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

NC State Board of Elections

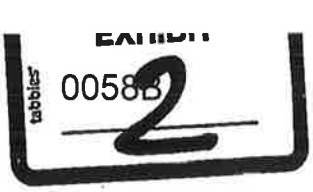
represented by **Mary Carla Babb**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Terence Steed
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/07/2022	1	**COMPLAINT** against All Defendants (Filing fee $ 402.00 receipt number RAL089986), filed by Siddhanth Sharma. (Attachments: # 1 Exhibit 1– Candidate and committee profiles, # 2 Exhibit 2– North Carolina State Board of Elections General Candidate Requirements, # 3 Exhibit 3– Texas Secretary of State Qualifications for All Public Offices, # 4 Exhibit 4– Copy of Webpage from New York State Board of Elections, # 5 Civil Cover Sheet) (Rudd, D.) (Entered: 02/07/2022)
02/07/2022	2	MOTION for Temporary Restraining Order, MOTION for Preliminary Injunction filed by Siddhanth Sharma. (Attachments: # 1 Exhibit 1– Candidate and committee profiles, # 2 Exhibit 2– North Carolina Sate Board of Elections General Candidate Requirements, # 3 Exhibit 3– Texas Secretary of State – Qualifications for all Public Offices, # 4 Exhibit 4– Copy of Webpage from New York State Board of Elections) (Rudd, D.) (Entered: 02/07/2022)

02/07/2022	3	MOTION to Consolidate Cases filed by Siddhanth Sharma. (Attachments: # 1 Exhibit 1– Copy of Docket Sheet 5:21–CT–3311–M, # 2 Exhibit 2– Copy of motion in 5:21–CT–3311–M, # 3 Exhibit 3– Copy of docket sheet in 5:22–CV–50–M, # 4 Exhibit Copy of complaint of [DE #1], # 5 Exhibit 5– Copy of Docket Sheet from Western District of North Carolina (3:21–CV–679–MOC–DCK)) (Rudd, D.) (Entered: 02/07/2022)
02/07/2022	4	Summons Issued as to Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. *(Summons issued at intake)* (Rudd, D.) (Entered: 02/07/2022)
02/08/2022	5	Notice of Self–Representation filed by Siddhanth Sharma. (Stouch, L.) (Entered: 02/08/2022)
02/08/2022	6	Financial Disclosure Statement filed by Siddhanth Sharma. (Stouch, L.) (Entered: 02/08/2022)
02/09/2022	7	ORDER denying 2 Motion for Temporary Restraining Order; denying 2 Motion for Preliminary Injunction; denying 3 Motion to Consolidate Cases. Signed by District Judge Terrence W. Boyle on 2/9/2022. Copy sent via US Mail to Siddhanth Sharma at 8508 Micollet Court, Raleigh, NC 27613. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	8	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Damon Circosta served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	9	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Stella Anderson served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	10	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Jeff Carmon served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	11	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Stacy Eggers, IV served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	12	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Tommy Tucker served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	13	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. Karen Brinson Bell served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/09/2022	14	Proof of Service – SUMMONS Returned Executed by Siddhanth Sharma. NC State Board of Elections served on 2/8/2022, answer due 3/1/2022. (Stouch, L.) (Entered: 02/09/2022)
02/11/2022	15	Affidavit of Service for COMPLAINT, Verified against ALL DEFENDANTS, Civil Cover Sheet, MOTION for Emergency Temporary Restraining Order (TRO) and Preliminary Injunctive Relief, Motion for Consolidation, Summons served on Damon Circosta, Stella Anderson, Jeff Carmon, Stacy Eggers, Tommy Tucker, Karen Bell, NC State Board of Elections on 2/8/2022. (Stouch, L.) (Entered: 02/11/2022)
02/11/2022	16	Notice of Appearance filed by Terence Steed on behalf of Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	17	Notice of Appearance filed by Mary Carla Babb on behalf of Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Babb, Mary) (Entered: 02/11/2022)
02/11/2022	18	Financial Disclosure Statement by Stella Anderson (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	19	Financial Disclosure Statement by Karen Brinson Bell (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	20	Financial Disclosure Statement by Jeff Carmon (Steed, Terence) (Entered: 02/11/2022)

02/11/2022	21	Financial Disclosure Statement by Damon Circosta (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	22	Financial Disclosure Statement by Stacy Eggers, IV (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	23	Financial Disclosure Statement by NC State Board of Elections (Steed, Terence) (Entered: 02/11/2022)
02/11/2022	24	Financial Disclosure Statement by Tommy Tucker (Steed, Terence) (Entered: 02/11/2022)
02/16/2022	25	Notice filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker regarding 17 Notice of Appearance, 23 Financial Disclosure Statement, 20 Financial Disclosure Statement, 16 Notice of Appearance, 18 Financial Disclosure Statement, 21 Financial Disclosure Statement, 22 Financial Disclosure Statement, 19 Financial Disclosure Statement, 24 Financial Disclosure Statement *of Certificate of Service*. (Steed, Terence) (Entered: 02/16/2022)
02/28/2022	26	MOTION for Temporary Restraining Order filed by Siddhanth Sharma. (Attachments: # 1 Exhibit 1 – Candidacy Information, # 2 Exhibit 2 – NC General Candidate Requirements and Notice of Candidacy Form, # 3 Exhibit 3 – Qualifications for All Public Offices) (Stouch, L.) (Entered: 02/28/2022)
03/01/2022	27	MOTION for Extension of Time to File Answer regarding 1 Complaint, filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Attachments: # 1 Text of Proposed Order) (Steed, Terence) (Entered: 03/01/2022)
03/02/2022	28	MOTION to Deny Extension regarding 27 MOTION for Extension of Time to File Answer regarding 1 Complaint, MOTION for Judgment on the Pleadings, MOTION for Default Judgment. (Attachments: # 1 Exhibit 1 – Docket Sheet for 5:22–cv–50–M Cawthorn v. Circosta et al, # 2 Exhibit 2 – Proceedings and Orders in Moore, et al. v. Harper, et al.) (Stouch, L.) (Entered: 03/02/2022)
03/16/2022	29	REPLY to Response to Motion regarding 27 MOTION for Extension of Time to File Answer regarding 1 Complaint, filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Steed, Terence) (Entered: 03/16/2022)
03/22/2022	30	MOTION to Dismiss for Lack of Jurisdiction , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Attachments: # 1 Exhibit Exhibit 1 Affidavit of Ariel Bushel) (Babb, Mary) (Entered: 03/22/2022)
03/22/2022	31	Memorandum in Support regarding 30 MOTION to Dismiss for Lack of Jurisdiction MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Attachments: # 1 Exhibit Exhibit 1 Affidavit of Ariel Bushel) (Babb, Mary) (Entered: 03/22/2022)
03/22/2022	32	RESPONSE to Motion regarding 26 MOTION for Temporary Restraining Order filed by Stella Anderson, Karen Brinson Bell, Jeff Carmon, Damon Circosta, Stacy Eggers, IV, NC State Board of Elections, Tommy Tucker. (Steed, Terence) (Entered: 03/22/2022)



Petitioner argues that the requisite that Petitioner needs to be "affiliated with a Political Party for 90 Days" DEFIES COMMON SENSE Because:

How does this rule apply to *independent candidates*?? NC Board of Elections will *FAIL* to explain why OR how the rule is applicable.

Petitioner *can* answer this question for this Court:

The Independent Party is NOT a Political Party with a Name so: How do we affiliate ourselves IF there is no Party to be affiliated with??

The answer is simple: NC Board of Elections invented this requisite with the intention to DISCRIMINATE and OPPRESS Petitioner to "snub" him out of running for office.

Not only that but the *fact* to be affiliated for the time-frame of "90 days" DEFIES COMMON SENSE because when you are affiliated, you are affiliated FOR LIFE until you decide to switch sides. Thus, whether you are affiliated for 1 day, 90 days, 100 days or a thousand days WON'T change a *single thing* because: You are already AFFILIATED. Thus, the fact of "how long" we are affiliated MAKES NO DIFFERENCE.

Thus, the fact that NC Board of Elections invented this requisite was with the intention to: DISCRIMINATE and OPPRESS PETITIONER to 'snub" him out of running for office and NC Board of Elections will FAIL to

explain how or why this requisite is necessary. Thus, this requisite VIOLATES the 1st and 14th Amendments since Defendants are violating Petitioner's RIGHT to assemble via STATE AGENCY; the requisite violates Article I, Sec 2 Clause 2 of the U.S. Constitution and Article VI, Sec 2 of the U.S. Constitution.

There is no point in challenging NC Board of Elections because they invented an Appellate System BUT within their own agency, thus, only being the judge of THEIR own rules; therefore, they cannot be fair to the Petitioner since they would be reviewing their own qualification requisites that they *invented themselves*. Thus, there is no point in even challenging NC Board of Elections' general statute 163-213.3, .4, .5 because they cannot betray their "own rules" which are not even coded in Chapter 163: which are the requisites.

C.) NOT HAVING A FELONY CONVICTION IS IN VIOLATION OF THE CONSTITUTION

Petitioner argues that the requisite of *not* having a felony conviction to run for office VIOLATES the Federal Constitution because *this requisite* is NOT in the FEDERAL CONSTITUTION nor is it in Title 52 of the U.S.C. 10101, 10301 *et seq*. Petitioner needs to remind this Court that he is running

for FEDERAL OFFICE, *not* State Office, thus, a STATE AGENCY has ABSOLUTELY NO SAY-SO on the *qualifications* for FEDERAL office. The federal and state Government are Separate Sovereignty jurisdictions as declared in *Gamble vs. United States*, 17-646 (2019) WL 249 3923 (2019). Thus since Petitioner is running for FEDERAL office, he has NO FEDERAL felony convictions because the State of North Carolina and the United States of America are two DIFFERENT TYPES OF GOVERNMENT with DIFFERENT RULES and LAWS.

There is ABSOLUTELY NO BASIS on why a felony conviction prevents somebody from running for office and NC Board of Elections will FAIL to explain why OR how, thus, the ONLY reason they invented the requisite was to DISCRIMINATE and OPPRESS Petitioner to prevent him from running for office.

The reason a felony conviction requirement was NOT put in the Constitution is because ALL our founding fathers were FELONS and criminals because they were branded as such by King George III during America's founding and our founding fathers were well aware that crimes are a function of Politics, thus, what a crime is today MAY not be a crime tomorrow – HENCE – that is why our founding fathers NEVER put a felony conviction requirement to run for office – OR RATHER: FEDERAL office.

Thus, this requisite of *not* being a Felon is UNCONSTITUTIONAL and is in direct VIOLATION of the 1st and 14th Amendment to the U.S. Constitution. The requisite is in direct VIOLATION of Article I, Sec 2 Clause 2 and Article VI, Sec 2 of the U.S. Constitution.

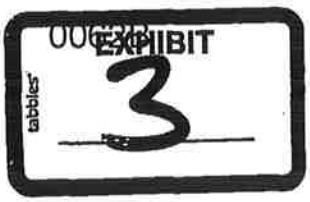
There is no point in challenging NC Board of Elections because they invented an Appellate System BUT within their own agency, thus, only being the judge of THEIR own rules; therefore, they cannot be fair to the Petitioner since they would be reviewing their own qualification requisites that they *invented themselves*. Thus, there is no point in even challenging NC Board of Elections' general statute 163-213.3, .4, .5 because they cannot betray their "own rules" which are not even coded in Chapter 163: which are the requisites.

PART 1 B: THESE ALLEGATIONS PASS THE FOUR-PRONG *WINTER* TEST

1 B-A: PLAINTIFF CAN ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS

WAKE COUNTY BOARD OF ELECTIONS

P O BOX 695
RALEIGH, NC 27602
Phone: (919) 404-4040 ▪ Fax: (919) 231-5737 ▪ voter@wakegov.com



January 06, 2022

TO: SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH, NC 27613

RE: **NOTICE OF REMOVAL DUE TO FELONY CONVICTION**

Voter Name:	SIDDHANTH SHARMA
Residential Address:	8508 MICOLLET CT
	RALEIGH, NC 27613
Date of Birth:	12/17/1996
Party:	REPUBLICAN

Our office has received a notice of your recent felony conviction. As an active felon, you are not qualified to vote in North Carolina. Please note that active felons **include** persons currently serving a felony sentence, including any probation, parole, or post-release supervision. However, based on a recent court order, you are qualified to vote if you are serving an extended term of probation, post-release supervision, or parole, you have outstanding fines, fees or restitution, and you do not know of another reason that your probation, post-release supervision, or parole was extended. In addition, if you have been discharged from probation, parole, or post-release supervision, you are eligible to register to vote even if you still owe money or have a civil lien.

It is a felony to vote if you are not qualified to do so. Please note that because you are a convicted felon, your voter registration in WAKE County **will be cancelled in 30 days (if it has not already been cancelled).**

A convicted felon's rights of citizenship are restored automatically upon discharge of the felony sentence, including periods of probation, parole, post-release supervision, **or** upon receiving a full pardon. At that time, provided that you are under no other active felony convictions, you will be qualified to vote. No additional documentation is needed. Upon completion of your sentence, you must submit a **new voter registration form** to the county board of elections office where you reside.

If you are in a *deferred prosecution* status for a felony, please contact our office immediately to provide us the name and telephone number of your current probation officer and the attorney who represented you. Persons who are on *deferred prosecution* may not be subject to removal and may avoid removal from the voter registration rolls.

If you disagree with the finding that you are an active felon and wish to object to the removal of your name from the list of registered voters, you must **object in writing within 30 days of this notice.** If you object, you will be notified to appear at a hearing to determine whether you are qualified to vote.

Please mail your written objection and any documentation to the attention of WAKE COUNTY BOARD OF ELECTIONS P O BOX 695 RALEIGH, NC 27602.

If you have any questions, you may contact your county board of elections at (919) 404-4040.

I, SIDDHANTH SHARMA, object to my removal as a voter on the following grounds:

State reason for objection here:

Sign and date here and return within 30 days of the date on this notice. Attach any additional documentation.

Sign: **Date:**

11293514-1451-1-1"

WAKE COUNTY BOARD OF ELECTIONS
PO BOX 695
RALEIGH NC 27602-0695

**********AUTO**ALL FOR AADC 275
11293514 9223-VRC 1451 1 1 1

SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH NC 27613-6963

NOTICE OF REGISTRATION	The attached **Voter Registration Card** confirms your voter registration in Wake County. Your assigned precinct and voting place are shown at the bottom of the card. Please review the information on your card for accuracy. If you need to make an update, you may use the form on the card. Your signature will be required. Be sure to detach the card from this notice and affix proper postage before mailing the card back to our office. You are not required to show your voter registration card to vote.
IF YOU MOVE	If you move within this county, you must provide our office with your new address. If you move outside of this county, you will no longer be eligible to vote in this county after 30 days from the date of your move. You must be registered in the county where you reside.
PHOTO ID REQUIREMENTS	Currently, voters are not required to show photo ID in elections in North Carolina. A court injunction blocked the photo ID requirement from taking effect.

If you have any questions regarding this notice, please contact the Wake County Board of Elections.
(919) 404-4040 • voter@wakegov.com

For more information on voter registration and voting in North Carolina, visit: www.NCSBE.gov

THIS IS AN IMPORTANT VOTING NOTICE

RETAIN THIS CARD AND DESTROY ALL PREVIOUSLY MAILED VOTER CARDS TO AVOID CONFUSION
Your registration record will reflect information as shown on this card, for all future elections, unless you return this card with corrections or the Postal Service returns this card as undeliverable.

9223PVRC 5/19/21 Process Blue, K

000100882019-1

WAKE COUNTY VOTER CARD

WAKE COUNTY NORTH CAROLINA

Wake County Board of Elections
1200 N. New Hope Road
PO Box 695
Raleigh, NC 27602-0695

(Fold Here)

GEN	PARTY	REGISTRATION DATE
U	REP	01/03/2022
VOTER REG.ID	NCID	DATE ISSUED
000100882019	EH1362331	01/10/2022

SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH, NC 27613

SIGNATURE OF VOTER

VOTING PLACE
LONG LAKE CLUBHOUSE 7481 SILVER VIEW LN RALEIGH, NC 27613
PRECINCT - ELECTION DISTRICTS
CONGRESSIONAL DISTRICT 05 NC SUPERIOR COURT DISTRICT 10C NC JUDICIAL DISTRICT 10D NC SENATE DISTRICT 18 NC HOUSE DISTRICT 040 COUNTY COMMISSIONER DISTRICT 7 BOARD OF EDUCATION DISTRICT 7 MUNICIPALITY RALEIGH MUNICIPAL DISTRICT R-E PRECINCT 08-11

United States District Court
Eastern District of North Carolina
Western Division

No. 5:22-CV-00059-BO

Siddhanth Sharma Vs. Circosta	Motion for Reconsideration, Expedition, Pre-Trial Conference/Hearing/Oral Argument, Counterclaim, Preliminary Injunction/TRO, Exceed Word Count FRCP 5.1, 7 13 16, 60, 65 Local Rule 7.1(h), (j), 7.2(a)(4), (f)(2),(f)(3)

Motion for Reconsideration, Expedition, Pre-Trial Conference/Hearing/Oral Argument, Counterclaim, Preliminary Injunction/TRO, Exceed Word Count

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- Exhibit 9 – https://www.nytimes.com/2018/08/02/us/arrested-voting-north-carolina.html
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0070B

United States District Court
Eastern District of North Carolina
Western Division

No. 5:22-CV-00059-BO

Siddhanth Sharma Vs. Circosta	Motion for Reconsideration, Expedition, Pre-Trial Conference/Hearing/Oral Argument, Counterclaim, Preliminary Injunction/TRO, Exceed Word Count FRCP 5.1, 7 13 16, 60, 65 Local Rule 7.1(h), (j), 7.2(a)(4), (f)(2),(f)(3)

Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 for a Motion for Reconsideration of [D.E. 38, 41] because at the time the Court gave its judgment on 16 May 2022 [D.E.38 p.9-11] the Court told Petitioner to run for a "different political party." *See* NCGS. 163-122. On page 2 of [D.E. 41] The Court states that relief cannot be granted unless Petitioner cures the Jurisdictional Deficiency: WHICH PETITIONER WILL BE ABLE TO PROVE.

What is new is that Petitioner HAS been denied being a Registered Voter on account of Petitioner being a felon; Petitioner believes is what the Court didn't understand is by making this judgment the REQUISITES ARE STILL THE SAME FOR AN UNAFFILIATED CANDIDATE (see NCGS 163-122(d)): 1.) Petitioner must be a Registered Voter; 2.) NOT be a felon; 3.) Be part of a political party for 90 days; by insisting that Petitioner "File an Application for Candidacy" the Court is inducing Petitioner to BREAK/VIOLATE NC LAW. *See* NCGS 163-275. This Court must understand that Petitioner ran as a REPUBLICAN, thus based on precedent, by telling Petitioner to run for a "Different Political Party" is a violation of Petitioner's 1st Amendment Right to association/assemble for that would be the government choosing the candidate[s] when it should be the people: this is exactly what Petitioner's lawsuit deals with: the government choosing the candidate when it should be the people.

Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 to Reconsider its ruling in [D.E. 38] because Petitioner does in fact have Standing as stated in Spokeo Inc. v. Robbins, 578 U.S. 330, 338 (2016); Lujan v. Defs. Of Wildlife, 504 U.S. 555, 560 (1992). This is *slightly* due to Petitioner's fault as he **HAS** been denied to be a "Registered Voter" on the basis of him being a felon. Explanation WILL be given.

Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 to Reconsider its ruling in [D.E. 38] because Petitioner's case is ripe for jurisdiction as stated in Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807-08 (2003).

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

Pursuant to FRCP 7(b) Petitioner requests this Court that this motion/case be **EXPEDITED** as the 118th Congress has already started since 3 January 2023 – the office/election cycle Petitioner sought to be in. Every day delayed is a day Petitioner would not be able to serve in the U.S. House of Representatives.

Petitioner requests this Court pursuant to FRCP 7(b) for oral arguments if necessary to dispute the matter.

Petitioner requests this Court pursuant to FRCP 7(b) to **EXCEED** the word count for Good Cause.

Petitioner requests this Court pursuant to FRCP 65 for a Preliminary Injunction/TRO.

Petitioner requests this Court pursuant to FRCP 13 for a Counterclaim to [D.E. 31] which is essentially this entire motion. But major aspects that Petitioner would like this Court to rule

UNCONSTITUIONAL as to the Candidacy for U.S. House of Representatives is NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 106.5(a) 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 as violative of the 1st , 14th amendments, 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.

Petitioner requests this Court pursuant to FRCP 16 and Local Rule 7.1(j) for a Pre-Trial Conference/Hearing.

Petitioner shows the Court the following:

FACTS/HISTORY

- Pursuant to Judge Boyle's Preferences since this document will encompass more than 20 pages Petitioner will be sending a Courtesy Copy enclosed in a 3-Ring Binder(for orderly organizational purposes) to the intended address and another Courtesy Copy in a 3-Ring Binder(for orderly organizational purposes) to Judge Boyle's office(Federal Courthouse) in Elizabeth City as this is a HIGHLY URGENT matter. Petitioner will, after this motion has been filed, file a Notice in the docket which will encompass the Tracking Numbers. *See* Judge Boyle's Preference.
- The Court *must* understand that the filing of this motion was the ABSOLUTE EARLIEST TIME that Petitioner could do. Petitioner found the PROOF OF DENIAL to be a Registered Voter [Exh 1 Denial to be a Registered Voter] sometime in January of 2023 [Exh 2 Petitioner's Affidavit]. It took Petitioner the rest of the time to craft this motion. Also Petitioner had serious transportation and financial issues to where he would not even to be able to come to E.D.N.C. to file a motion or have the money to mail this

motion – this occurred through December 2022-January 2023. The issue of money and transportation is no longer a problem [Exh 2 Petitioner's Affidavit]

- Petitioner was released from prison on 7 December 2022 [Exh 3]
- It is undisputed Petitioner ran as a REPUBLICAN [See 1st Exhibit of D.E. 1; D.E. 31 p. 2, 18-19] [Exh 4]
- Defendants recommended[D.E. 31] [Exh 5] and this Court affirmed on [D.E. 38 p. 9-11] that Petitioner run as an Unaffiliated candidate. [Exh 6]
- It is UNDISPUTED that the candidacy form to run for FEDERAL congress requires that the candidates be: 1.) Registered Voter; 2.) Part of a Political Party for 90 days; 3.) Not be a felon. [Exh 7]
- Petitioner *actually* HAD[1] been denied the right to vote on account of him being a felon on 3 January 2022: one of the prerequisites Petitioner challenges in this very lawsuit. However the reason Petitioner could/chose not to cite the proof is because his Parents had "misplaced" the documents and Petitioner didn't feel comfortable citing his attempt to get "registered" via affidavit for it would not seem that compelling compared to the bare record. Upon Petitioner's release from prison he sought to find those documents which proved he was denied the right to vote, which to his avail: he did.
- The reason Petitioner decided to file a counterclaim and not cite the actual statutes in the original complaint is because while Petitioner filed this lawsuit he was in prison and could not receive legal mail and had his legal taken from prison staff several times. This matter is being debated in a separate lawsuit [5:21-CT-3311-M]. Thus, Petitioner had to

[1] As the Court can see Petitioner did NOT seek to become a Registered Voter after the Court made its ruling in [D.E. 38]: this event happened before the lawsuit was even filed. The Court MUST understand that Petitioner did try to comply with state law even BEFORE he filed this lawsuit. It was upon this realization of him being denied to be a Registered Voter that he filed this petition, since it is a requisite for candidacy for U.S. House of Representatives.

receive news/legal information from his parents orally via telephone which at some points he could not get the statutes.

- 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 prevent Petitioner from running for U.S. House of Representatives due to his status as a Felon. [Exh 8]
- People in the past *had* been arrested for voting as a felon. *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 [Exh 9, 10, 11, 12, 13]

- The Proposed Order for the Preliminary Injunction/TRO will contain a duplicate so that one may remain as an exhibit and the other can be used for initiation [Exh 14]. An affidavit will accompany the TRO [Exh 15]
- The Proposed Order for Pre-Trial Conference/Hearing/Oral Arguments will contain a duplicate so that one may remain as an exhibit and the other can be used for initiation [Exh 16]

Dunn v. Blumstein, 405 U.S. 330, 335 (1972); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); Carrington v. Rash, 380 U.S. 89 (1968) Williams v. Rhodes, 393 U.S. 23 (1968); U.S. Term Limits v. Thornton, 514 U.S. 779 (1995); Lubin v. Panish, 415 U.S. 709 (1974); Cook v. Gralike, 531 U.S. 510 (2001); *Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U. S. 173 (1979); *Democratic Party of United States v. Wisconsin ex rel. La Follette,* 450 U.S. at 450 U. S. 123-124; Eu v. San Francisco County Democratic Central Cmte., 489 U.S. 214, 222 (1989); Tashjian v. Republican Party, 479 U.S. at 224 (1986); Kusper v. Pontikes, 414 U.S. 51 (1973); Cousins v. Wigoda, 419 U.S. 477 (1975); Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979); . Lujan, 504 U. S. 544, 560 (1992); Davison v. Randall, 912 F.3d 666, 678 (4th Cir. 2019); Kenny v. Wilson, 885 F.3d 280, 287-88 (4th Cir. 2018); Washington v. Finlay, 664 F.2d 913, 927-28 (4th Cir. 1981); *Abbott Laboratories* v. *Gardner, 387* U. S. 136, 148-149 (1967); Newcomb v. Brennan, 558 F. 2d 825, 828 (7th Cir. 1977); Mclaughlin v. North Carolina Bd. of Elections 65 F.3d 1215, 1220-1222 (4th Cir. 1995); Winter v. Nat. Res. Def Council, 555 U.S. 7, 20 (2008); State ex rel Chavez v. Evans, 446 P.2d, 448-450 (N.M. 1968); Gray v. Saunders, 372 U.S. 368 (1963); Elrod v. Burns, 427 U.S. 347, 373 (1976); Ross v. Meese, 818 F.2d 1132, 1135 (4th Cir. 1987); Giovani Carandola, Ltd. v. Bason, 303 F.3d 507, 511 (4th Cir.2002); Beautiful Struggle v. Baltimore Police Dep 't, 2 F.4th 330, 346 (4th Cir. 2021); Clements v. Fashing, 457 U.S. 957 at 986 (1982); Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd., 354 F. 3d 249, 261 (4th Cir. 2003) [Exh 17] is controlling authority pursuant to Local Rule 7.1(j)

JURISDICTION/CAN THIS COURT STILL GRANT RELIEF?

Pursuant to FRCP 60 this Court does have jurisdiction of this case still. FRCP 60 reads:

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so Rule 61 FEDERAL RULES OF CIVIL PROCEDURE 84 on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION. (1) Timing. A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

I. [D.E. 38] was issued on 16 May 2022 therefore this motion is TIMELY since it is within the 1-year-timeline of FRCP 60(c) and coincidentally this motion is in pursuit of FRCP 60(b)(1), (2), (3).

II. This motion is being made in response to [D.E. 31,38, 41] [Exh 5,6]

III. Petitioner *was* correct that the board would threaten to arrest him [D.E. 1 p. 3] – he just didn't have the statute at hand. *See* NCGS 163-275, NCGS 13-1 [Exh 8]. "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 [Exh 17] (quoting *Harman v. Forssenius,* 380 U. S. 528, 380 U. S. 540 (1965)). *See also Garrity v. New Jersey,* 385 U. S. 493 (1967), and cases cited therein; *Spevack v. Klein,* 385 U. S. 511, 385 U. S. 515 (1967). It seems Petitioner's claim that Defendants would arrest him seemingly didn't persuade the Court (pursuant to FRCP 11 all motions that are filed are sworn to and attested that all information is correct), thus, Petitioner believes he shouldn't be punished by [D.E. 38] [Exh 6] for his failure to cite NCGS 163-275, NCGS 13-1 [Exh 8] when he was correct on the ultimate fact [D.E. 1 p. 3]. Defendants have enforced NCGS 163-275 in the past as well – 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 [9 10, 11, 12, 13], therefore defendants have misrepresented their claim that Petitioner wouldn't be arrested [D.E. 31 p. 9-13, 20-30] [Exh 5]. Petitioner therefore requests that the Court should Reconsider which would be appropriate via FRCP 60(b)(1)(2)(3).

IV. Petitioner *had* been denied the right to vote and to become a Registered Voter. *See* NCGS 13-1, 163-275 [Exh 8]. Based on Petitioner finding [Exh 1] this constitutes new evidence pursuant to FRCP 60(b)(2). The Court must understand that [Exh 1] was commenced 1 month PRIOR to the filing of [D.E. 1] its just that Petitioner could not locate the document in time until he was released from Prison [Exh 3]. Petitioner believes he shouldn't be punished by [D.E. 38] [Exh 6] simply because he didn't have the "physical proof" at the time. The event[s] most certainly happened and there is no better proof than the "physical truth," thus, Petitioner believed the Court wanted to see 100% proof and Petitioner waited until he found the document denying him the right to vote on account of him being a felon. It seems Petitioner's claim that Defendants would arrest him didn't persuade the Court (pursuant to FRCP 11 all motions that are filed are sworn to and attested that all information is correct), thus, based on Defendants response [D.E. 31] [Exh 5] they have misrepresented[2] their entire argument, based on their knowledge of NCGS 163-275 and NCGS 13-1 [Exh 8], and have thus influenced the Court's decision in [D.E. 38] [Exh 6]. "[s]ometimes

[2] This will be the subject of debate throughout the entire motion since Defendants were clearly aware of NCGS 163-275. Petitioner made a mentioning of this fact without citing the actual statute in [D.E. 1/p.3].

the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson*, 403 U. S. 431, 403 U. S. 442 (1971)). Petitioner requests that the Court reconsider pursuant to FRCP 60(b)(3).

V. Contrary to the Board's contention [D.E. 31 p. 13] the asserted injuries are redressable, based on NCGS 163-275 and NCGS 13-1, because the district court has the power to grant the relief sought. It is well-settled that a court has equitable authority to order that a candidate's name be placed on an election ballot. See McCarthy v. Briscoe, 429 U.S. 1317, 1322-23 (1976); Williams v. Rhodes, 393 U.S. 23, 34-35 (1968).

VI. The Court *must* understand that this lawsuit had to have been filed on 7 February 2022 while Petitioner was in prison otherwise there could have been the argument that Petitioner's lawsuit would be untimely had he chose to file this lawsuit when he got out of prison – that would then force Petitioner to wait till 2024 to be able to run for office and then, provided he wins the general election, 2025 to start serving : 3 years since the filing of this lawsuit: which would most certainly be irreparable harm. Thus if Petitioner filed this lawsuit when he got out of prison which was 7 December 2022 then he would have to wait until 2024 to challenge the provisions he deems unconstitutional and he probably won't succeed at *that particular point* in time because by that time he would regain his voting rights(which he is currently denied now via NCGS 13-1) [Exh 8] and then the potential argument against Petitioner *may or may not* qualify as a constitutional ballot-access restriction, if Petitioner were to file this lawsuit for the 2024 Midterms. Due to Petitioners status as an active felon

NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 106.5(a), 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 [Exh 8] prevent Petitioner the *constitutional right* to appear on the ballot for U.S. House of Representatives: these ballot restrictions are very similar to what happened in Kusper v. Pontikes, 414 U.S. 51 (1973) [Exh 17]. This is why this motion is being filed now – there would be NO OPPURTUNITY to make the challenge Petitioner makes in a separate/later lawsuit: that Felons are denied the right to vote which is a requisite to file for candidacy for U.S. House of Representatives, at least in North Carolina. *See* NCGS 163-106.5(a), (b) [Exh 8] Petitioner shouldn't have to wait 2-3 years for the *right* to run for Federal Office. *See* Kusper v. Pontikes, 414 U.S. 51 (1973) [Exh 17].

VII. Petitioner *strongly urges* the Court to Reconsider because it would be unfair to tell Petitioner to "try again next time" as this is a serious constitutional matter that can only be litigated now, due to the time Petitioner filed this lawsuit and the harsh statute of NCGS 13-1 [Exh 8]. Plus it would be impossible for Petitioner to make the argument next election cycle for that would be the irreparable harm that Petitioner argues now. Petitioner reiterates that nothing new has changed: 1.) Petitioner was correct on the ultimate fact that Defendants would arrest him [D.E. p. 3] via NCGS 163-275 – he just didn't have the statute at hand. Petitioner *was* denied to be a Registered Voter [Exh 1]: its just that he was unable to locate the document in time.

MOTION TO EXCEED WORD COUNT

Pursuant to FRCP 7(b) Petitioner requests to EXCEED the word count prescribed in Local Rule 7.2(f)(2), (f)(3) for Good Cause as will be seen in this motion. If this motion were to get granted the next step would, if Petitioner were to guess, probably be oral argument, hearings, thus, Petitioner chose to add a Preliminary Injunction/TRO so that Defendants can have a fair chance to respond. The Motion for Preliminary Injunction/TRO exceeded 7500 words, thus, Petitioner decided to consolidate everything into one motion so as to not waste any time.

1.A.) PETITIONER DOES HAVE STANDING

Our cases have established that the "irreducible constitutional minimum" of standing consists of three elements. Lujan, 504 U. S., at 560. The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. Id., at 560–561. When a plaintiff challenges the constitutionality of a statute, the plaintiff must show that "there is a 'realistic danger' that" the plaintiff "will 'sustain[] a direct injury' as a result of the terms of the" statute. Curtis v. Propel Prop. Tax Funding, LLC,915 F.3d 234, 241 (4th Cir. 2019) (alteration in original) (quoting Babbitt v. United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979)) [Exh 17]. "[A] credible threat of enforcement is critical" to establishing an injury in fact. Abbott v. Pastides, 900 F.3d 160, 176 (4th Cir. 2018). And prior enforcement of the challenged statute is "[t]he most obvious way to demonstrate a credible threat of enforcement in the future." Id.

I.A. FIRST PRONG OF LUJAN

On 6 January 2022 Petitioner *was* denied by his county to be a "Registered Voter" based on Petitioner being a felon. [Exh 1]. The primary reason Petitioner did/could not cite this *proof* of denial was simply because his parents "misplaced" the document and could not locate the document and Petitioner was in prison at the time of filing this lawsuit and was not released until 7 December 2022 to which he ended up finding the document not too long after [Exh 2]. The Court *must* note that this complaint was filed on 7 February 2022[D.E. 1]: Petitioner was denied to be a "Registered Voter on 6 January 2022: one month prior; Petitioner thought it best not to cite an affidavit and wait for the "bare record" to prove itself.

I.B. 2ND PRONG OF LUJAN

It is no dispute that the candidacy form for U.S. House of Representatives requires the candidate to be a 1.) Registered Voter; 2.) Part of a Political Party for 90 days 3.) Not be a Felon [Exh 7]. Therefore, Petitioner was denied to be a Registered Voter on account of him being a felon, thus, he could not run for U.S. House of Representatives making his injury in fact all the more real. The Court by recommending that Petitioner file a candidacy form would be inducing Petitioner to commit an I Class Felony under NCGS 163-275: Petitioner respectfully declines to break the law as this has already happened to other individuals before in the past. 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 [Exh 9, 10, 11, 12, 13].

For Defendants to say they wouldn't arrest Petitioner on account of him trying to be a Registered Voter or on account of him being a felon is simply not true, Defendants were clearly aware of NCGS 163-275, NCGS 13-1 [Exh 8] which denies and criminalizes felons to be a Registered Voter. For example, in a similar scenario, if Petitioner had a problem with the unconstitutionality of a Murder statute: Defendants would tell Petitioner to kill somebody just to have standing? Here in North Carolina the *right* to vote/be a Registered Voter is a crime, at least, for felons. The only difference between murder and the case *sub judice* is that the process to be a Registered Voter, which is a constitutional right, is a crime for felons: which in turn denies Petitioner the right to run for U.S. House of Representatives (see Exh 7): this is a right protected by the 1st amendment; murder is not protected under any federal constitutional right, yet the right to run for federal office comes with a criminal penalty. Petitioner has been to prison before and is NOT trying to go back again on the account of him exercising a right guaranteed by the 1st Amendment. See NCGS 163-275, NCGS 13-1. "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.' . . ." Blumestein at 341 [Exh 17] (quoting *Harman v. Forssenius,* 380 U. S. 528, 380 U. S. 540 (1965)). *See also Garrity v. New Jersey,* 385 U. S. 493 (1967), and cases cited therein; *Spevack v. Klein,* 385 U. S. 511, 385 U. S. 515 (1967). It is illogical for the Court to

induce Petitioner to break NC law just to have standing: There is a more civil way of challenging the law and that is via 42USC1983.

I.C. 3RD PRONG OF LUJAN

Petitioner believes that based upon these new facts of 1.) Petitioner *actually* having been denied to be a Registered Voter on account of him being a felon 2.) NCGS 163-275, NCGS 13-1 and 3.) Defendants *past actions* on enforcing NCGS 163-275 ["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**] [Exh 9, 10, 11, 12, 13], Petitioner believes this will result in a favorable decision of which he goes a little bit more in depth in his Motion for Preliminary Injunction. Based on everything presented, pursuant to FRCP 60, Petitioner requests this Court to Reconsider.

Petitioner has established standing by 1.) being denied to be a Registered Voter on account of him being a felon [Exh 1] and 2.) 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 prevent Petitioner from running for U.S. House of Representatives due to his status as a Felon. [Exh 8], as well as past action by Defendants [Exh 9, 10, 11, 12, 13].

Petitioner therefore also satisfies the 3 prongs of *Lujan* because 1.) being a Registered Voter is a requisite to run for Federal Office (which Petitioner has been denied on account of him being a felon) 2.) this injury is caused by defendants since they regulate the elections/election process in North Carolina and 3.) Petitioner is denied ballot access which is a 1st, 14th amendment violation which is due to be redressable by a favorable judicial ruling due to precedent.

II.A. OTHER REASONS PETITIONER HAS STANDING

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) [Exh 17], as amended (Jan. 9, 2019) (quoting Cooksey v. Futrell, 721 F.3d 226, 235 (4th Cir. 2013)). Here, Petitioner 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, Petitioner "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)) [Exh 17].

The Supreme Court has recognized that an Article III injury may be sufficient for standing purposes by the threatened enforcement of a law. Petitioner meets this *very* component by NCGS 13-1, NCGS 163-275 [Exh 8] 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)) [Exh 17].

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)) [Exh 17]. " [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 through NCGS 13-1, to which Petitioner 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 [Exh 9, 10, 11, 12, 13]

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 Defendants Response [D.E. 31 pg 9-13, 20-30[3]] [Exh 5]. 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)) [Exh 17]. "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, Plaintiff filed a lawsuit alleging that defendants are imposing 3 additional qualifications which bar Petitioner from running for Federal Congress [Exh 7], due to Petitioner's status as a felon pursuant to NCGS 163-275, NCGS 13-1 [Exh 8], Petitioner would not only be barred from seeking candidacy for U.S. House of Representatives but would also get arrested in the

[3] This means that Defendants were all too aware of NCGS 163-275, NCGS 13-1. Thus defendants made a false statement to the Court that Petitioner wouldn't be arrested on the basis of Petitioner being a felon. Defendants were very aware that you cannot be a Registered Voter on account of being a convicted felon. Defendants have thus used finesse/deception/manipulation of state laws to influence the Court's decision in [D.E. 38]. Petitioner was thus correct on pg. 4 of [D.E. 1] that Defendants would threaten to arrest Petitioner: Petitioner was correct on the ultimate fact he just couldn't cite the statute because he didn't have it on hand while he was in prison : for this Petitioner should not be punished by the Court's decision in [D.E. 38]. If this Court reconsiders its ruling a Motion of Sanctions would be appropriate (made by Petitioner) because Defendants entire response was misrepresented through means of deceit.

process. Under the statute, Petitioner would be in jail for exercising a 1st amendment right. Thus, on February 7, 2022 when Petitioner filed this lawsuit, Petitioner 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, Petitioner established the first prong by showing he sought candidacy in the U.S. House of Representatives for the 2022 election [Exh 4], 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) [Exh 17]; 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 [Exh 8] prevent Petitioner from running for U.S. House of Representatives due to his status as a Felon.

Plaintiff also demonstrated the second prong of the Babbitt standard. Petitioner would be arrested had he filed his notice of candidacy, he was subject to NCGS 13-1, NCGS 163-275 [Exh 8], and he was compelled to prepare a defense to the challenges pursuant to a statute that shifts the burden of persuasion onto the Petitioner.

Petitioner has satisfied the two *Babbitt* prongs.

B.) PETITIONER'S CLAIM IS RIPE FOR ADJUDICATION

Ripeness is a justiciability doctrine designed "to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the808challenging parties." *Abbott Laboratories* v. *Gardner, 387* U. S. 136, 148-149 (1967)' [Exh 17]; accord, *Ohio Forestry Assn., Inc.* v. *Sierra Club,* 523 U. S. 726, 732-733 (1998). The ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction," *Reno* v. *Catholic Social Services, Inc., 509* U. S. 43, 57, n. 18 (1993) (citations omitted), but, even in a case raising only prudential concerns, the question of ripeness may be considered on a court's own motion. *Ibid.* (citing *Regional Rail Reorganization Act Cases,* 419 U. S. 102, 138 (1974)). Determining whether administrative action is ripe for judicial review requires us to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration. *Abbott Laboratories, supra,* at 149.

I.A. FITNESS OF ISSUES FOR JUDICIAL DECISION

It is no doubt now that Petitioner's claim is ripe for adjudication because 1.a) Petitioner has been denied to be a Registered Voter on account of him being a felon b.) Petitioner has shown past enforcement of defendants actions based on NCGS 13-1, NCGS 163-275 [Exh 8], and the "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** [Exh 9, 10, 11, 12, 13].

2.) The harm of withholding court consideration is that Petitioner is now suffering each and every day because the 118th congress has started since 3 January 2023.

The Court on pg. 9-10 of [D.E. 38] [Exh 8] said that Petitioner's claim was not ripe because he could run as an unaffiliated candidate. Petitioner asks the Court to Reconsider based on Defendant's misrepresentation of their argument [D.E. 31] [Exh 5], Petitioner's denial of being a Registered Voter [Exh 1], Past Proof of Defendant's Actions [Exh 9,10, 11, 12, 13], NCGS 163-275, NCGS 13-1 [Exh 8], and the fact that Petitioner ran as a Republican Candidate[See 1st Exhibit of D.E. 1; D.E. 31 p. 2, 18-19] [Exh 4].

I.B. THE PROBLEMS WITH RUNNING AS AN UNAFFILIATED CANDIDATE

If Petitioner were to run as an unaffiliated candidate he would *still* be denied the right to run for U.S. House of Representatives due to his status as a felon and also due to Defendant's requiring that Petitioner be a 1.) Registered Voter; 2.) Part of an unaffiliated party for 90 days [Exh 7]; 3.) Not be a felon. *See* NCGS. 163-122(d).

The Court gave its ruling on 16 May 2022 [Exh 6] and candidate filing for unaffiliated candidates ended 17 May 2021 with extreme hurdles that no person could comply within that short amount of time. There would be ABSOLUTELY NO TIME for Petitioner to comply with NCGS 163-122 nor would he even be allowed on the ballot due to Defendant's 3 Requirements that Petitioner challenges now. *If* Petitioner ran as an unaffiliated candidate: he would have said so: but instead Petitioner chose to run as a REPUBLICAN [See 1st Exhibit of D.E. 1; D.E. 31 p. 2, 18-19] [Exh 4] and the filing date closed 4 March 2022, thus, making the matter Ripe for Disposition. More problems that arise for recommending Petitioner 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 Petitioner's votes and confuse his constituents but Petitioner would lose MAJOR endorsements as well for 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 Party [simply because there is/was time to do so]." *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 is/was time to do so]." *Id.* at 450 U. S. 124." Tashjian v. Republican Party, 479 U.S. at 224 (1986) [Exh 17].

Petitioner must ask the Court a question:

Who benefits from the Court's recommendation that Petitioner run as an "Unaffiliated Candidate" when even Defendants were aware that Petitioner ran as a Republican?

In a similar scenario would the fact that Defendant's recommendation that Petitioner change his party affiliation (to which the Court affirmed) not be similarly the same thing as telling Petitioner to change his religion as a "Man of Faith" to that of an "Atheist, simply because there was time?" The point Petitioner is trying to make is that the right to run for office ALSO comes with the right to associate with the political party of one's choosing the right goes hand in hand like "2 sides of the same coin." Defendants try to diminish that right by "recommending" that Petitioner run as an unaffiliated candidate. Would that not be the government choosing the candidate when it should be the people: is that not what Petitioner's lawsuit *exactly* deals with??

Petitioner's lawsuit is simple: defendants violate the 1st, 14th amendments, Article 1 Section 2 Clause 2, Article 1 Section 4 Clause 1, Article 1 Section 5, Article 6 Clause 2 of the U.S. Constitution by imposing additional requirements that a candidate for U.S. House of Representatives also 1.) Be a Registered Voter; 2.) Be Part of a Political Party for 90 days; 3.) Not be a felon [Exh 7, 8]

Petitioner requests the Court to change its judgment which pursuant to FRCP 60. Petitioner requests this Court that defendants hold a:

SPECIAL ELECTION

The results of this evaluation will not be automatic; as we have recognized, there is "no substitute for the hard judgments that must be made." *Storer v. Brown, supra,* at 730.

MOTION FOR PRELIMINARY INJUNCTION/TRO

Generally, preliminary injunctions are designed to preserve the status quo and prevent irreparable harm during the pendency of litigation. JO.P. v. US Dep't of Homeland Sec., 409 F. Supp. 3d 367, 375 (D. Md. 2019). To prevail, a movant must demonstrate: (1) their suit's likelihood of success on the merits, (2) irreparable harm in the absence of the requested relief, (3) that the balance of equities tip in their favor, and finally (4) that issuing the requested preliminary relief is in the public interest. Id. at 376 (citing Winter v. Nat. Res. Def Council, 555 U.S. 7, 20 (2008)). The movant must establish all four elements to prevail and "courts considering whether to impose preliminary injunctions must separately consider each Winter factor." Pashby v. Delia, 709 F.3d 307, 320-21 (4th Cir. 2013). A party seeking a permanent injunction must demonstrate " actual success" on the merits, rather than a mere "likelihood of success" required to obtain a preliminary injunction. Mayor of Baltimore v. Azar, 973 F.3d 258, 274 (4th Cir. 2020), cert. granted sub nom. Cochran v. Mayor & City Council of Baltimore, 141 S. Ct. 1369, 209 L. Ed. 2d 118 (2021), and cert. dismissed sub nom. Becerra v. Mayor & City Council of Baltimore, 141 S. Ct. 2170, 209 L. Ed. 2d 747 (2021) (quoting Amoco Prod. Co. v. Vill. of Gambell, 480 U.S. 531, 546 n.12 (1987)); see also Winter, 555 U.S. at 32

A.) 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). Despite its explicit endorsement of the Anderson approach, the Burdick Court also reaffirmed a single modification, that election laws which place "severe" burdens upon constitutional rights are subject to strict scrutiny: "the regulation must be `narrowly drawn to advance a state interest of compelling importance.'" Id. (quoting Norman v. Reed, 112 S.Ct. 698, 705 (1992)). See also Eu v. San Francisco County Democratic Central Cmte., 489 U.S. 214, 222 (1989); Illinois Election Bd. v. Socialist Workers Party, 440 U.S. 173, 184-85 (1979) (severe restriction must be "least drastic means" to serve compelling interest).... When facing any constitutional challenge to a state's election laws, a court must first determine whether protected rights are severely burdened. If so, strict scrutiny applies. If not, the court must balance the character and magnitude of the burdens imposed against the extent to which the regulations advance the state's interests in ensuring that "order, rather than chaos, is to accompany the democratic processes." Storer v. Brown, 415 U.S. 724, 730 (1974)..... As a rule, state laws that restrict a political party's access to the ballot always implicate substantial voting, associational and expressive rights protected by the First and

Fourteenth Amendments. That is because "it is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech," Anderson, 460 U.S. at 787 (internal quotation omitted), and because "[t]he right to form a party for the advancement of political goals means little if a party can be kept off the election ballot and thus denied an equal opportunity to win votes." Williams v. Rhodes, 393 U.S. 23, 31 (1968); see also Norman v. Reed, supra, 112 S.Ct. at 705; Tashjian v. Republican Party of Connecticut, 479 U.S. 208, 214 (1986)." Mclaughlin v. North Carolina Bd. of Elections 65 F.3d 1215, 1220-1222 (4th Cir. 1995) [Exh 17].

"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. *See Williams v. Rhodes, supra,* at 393 U. S. 30-31; *Bullock v. Carter,* 405 U.S. at 405 U. S. 142-143; *American Party of Texas v. White,* 415 U. S. 767, 415 U. S. 780-781 (1974); *Illinois Elections Bd. v. Socialist Workers Party,* 440 U. S. 173, 440 U. S. 183 (1979)." Anderson at 789. [Exh 17]

I.A. BEING A REGISTERED VOTER IS A REQUISTE DEFENDANTS REQUIRE FOR U.S. HOUSE OF REPRESENTATIVES

Due to Petitioner's status as a Felon and the reality of NCGS 163-275, 106.5, NCGS 13-1, Petitioner *has* and will be denied as well as penalized for trying to be a Registered Voter [Exh 1, 8] – thus the "Strict Scrutiny" test under *Anderson* is appropriate. There is no doubt that Defendants require Petitioner to be a Registered Voter [Exh 7] to run for U.S. House of Representatives. However due to Petitioner's status as a felon NCGS 163-275, NCGS 13-1 [Exh 8] takes place and *criminalizes* felons for voting. On the Candidacy Form [Exh 7] it requires Petitioner to be a Registered Voter, yet NCGS 106.5(a) says that you can't be a candidate if you are not a Registered Voter; in NC felons cant be Registered Voters via NCGS 13-1, NCGS 163-275, Article VI Section 2 Clause 3, Article VI Section 8 of the NC Constitution. The events of felons being penalized for voting has happened quite a few times in North Carolina - *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%2020-26_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 [Exh 9, 10, 11, 12, 13]. 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 doesn't allow felons to hold office either [Exh 8].

Carrington v. Rash, 380 U.S. 89 (1965) [Exh 17] is almost 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 denies felons the right to vote – even those who are paroled; Article VI Section 8 of the NC Constitution denies felons from running for office. It is no doubt that Defendants require that Petitioner be a Registered Voter to apply for candidacy for Federal Office and due to Petitioner's status as a felon he cannot exercise his right to run for U.S. House of Representatives due to NCGS 163-275. Not only is NCGS 163-275 preventing Petitioner but Petitioner even applied to be a Registered Voter and got denied [Exh]. 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. Petitioner sees no distinction from *Carrington* and the case *sub judice*: Petitioner asks the Court to rule 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 UNCONSTITUTIONAL, as it violates the 1st , 14th amendments, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution, as it applies to Felons running for Federal Office.

"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.' . . ." Blumestein at 341 [Exh 17] (quoting *Harman v. Forssenius,* 380 U. S. 528, 380 U. S. 540 (1965)). *See also Garrity v. New Jersey,* 385 U. S.

493 (1967), and cases cited therein; *Spevack v. Klein,* 385 U. S. 511, 385 U. S. 515 (1967). "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)]. "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." Blumestein at 355 quoting Carrington v Rash, 380 U.S. at 380 U. S. 94 [Exh 17]. "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. "And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States." *Williams v. Rhodes,* 393 U. S. 23, 393 U. S. 30-31 (1968). 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 [Exh 17].

"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 Pp. 479 U. S. 213-217 [Exh17].

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson,* 403 U. S. 431, 403 U. S. 442 (1971).

Petitioner 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(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 [Exh 8], violate the 1st , 14th amendments, Article I Section 2 Clause 2, Article 1 Section 4, Article I Section 5, Article VI Clause 2 of the U.S. Constitution.

I.B. CSI v. Moore

Petitioner is aware that CSI v. Moore, 871 S.E.2d 510 (N.C. 2022) is currently pending review. *CSI* wont apply to Petitioner in the slightest as that case only deals with felons' right to vote while on *Parole or Probation.* Petitioner was incarcerated when he filed [D.E. 1], thus, the ruling of *CSI*, whether it gets granted or not, doesn't apply to Petitioner in the slightest. This Court must note that *CSI* doesn't challenge felons' voting rights as it pertains to a qualification of candidacy for U.S. House of Representatives nor does *CSI* challenge the 90-day Party Affiliation Requirement: Petitioner's lawsuit *does*. It would thus be pointless to wait on the decision of *CSI* because it only deals with a STATE constitutional matter. Petitioner is well aware that *CSI* challenges NCGS 13-1, the same statute that Petitioner challenges, yet Petitioner's challenges the statute and much more on a Federal-Constitutional-Rights basis as to run for U.S. House of Representatives.

The problem that we are dealing with in Petitioner's lawsuit is that due to the fact that Petitioner was incarcerated the candidacy-filing period for the 2022 midterms were going on. Petitioner would be getting out one month after the general election [Exh 3] so he chose to run for office. However due to Petitioner being a felon/incarcerated when he filed this lawsuit, Defendants additional qualifications [Exh 7] and 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 [Exh 8] Petitioner would be denied to file for candidacy; this would force Petitioner another 2 years to file another lawsuit so he can run for Federal Office?? *See* Kusper v. Pontikes, 414 U.S. 51 (1973). Thus, would it be fair to deny Petitioner the *right* to run for Federal Office on account of him being a felon?

In the event the Court does find that *CSI* pertains to Petitioner then Defendants would still be required to hold a **special election** due to the timing and fact that Petitioner filed this lawsuit while he was incarcerated.

I.C The Chavez Decision

Before Petitioner goes into this argument he *must admit* that this Court nor any federal court is bound by the decision in State ex rel Chavez v. Evans, 446 P.2d, 448-450 (N.M. 1968) because it is a STATE CASE LAW. Nonetheless it is HIGHLY PERSUASIVE as it shows a great respect for the U.S. Constitution as judges even back in the day, when there was hardly any precedent, had no question as to the simplicity of the U.S. Constitution: Namely Article 1 Section 2 Clause. 2.

{5} Petitioners Sedillo and Higgs are candidates of the aforementioned party for United States Representative in Congress, New Mexico Districts 2 and 1.

{6} Section 3—18—3, N.M.S.A. 1953, so far as pertinent, reads:

'Each candidate for the office of representative in Congress shall be a resident and qualified elector of the district in which he seeks office.'

{7} It is admitted that Wilfredo Sedillo, candidate for representative in Congress from District 2, resides and is a registered elector in District 1, and that William Higgs is not and will not, at the time of the election, be a qualified elector within the State of New Mexico.

{8} The petitioner argue that art. I, s 2, clause 2, of the United States Constitution prescribes the qualifications for representatives in Congress; that the New Mexico statute, supra, purports to

add additional qualifications for a representative in Congress and is unconstitutional. Art. I, s 2, clause 2, reads:

'No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.'

{9} The constitutional qualifications for membership in the lower house of Congress exclude all other qualifications, and state law can neither add to nor subtract from them. In re O'Connor, 173 Misc. 419, 17 N.Y.S.2d 758 (1940); State ex rel. Eaton v. Schmahl, 140 Minn. 219, 167 N.W. 481 (1918); State ex rel. Chandler v. Howell, 104 Wash. 99, 175 P. 569 (1918); Ekwall v. Stadelman, 146 Or. 439, 30 P.2d 1037 (1934); Stockton v. McFarland, 56 Ariz. 138, 106 P.2d 328 (1940). The state may provide such qualifications and restrictions as it may deem proper for offices created by the state; but for offices created by the United States Constitution, we must look to the creating authority for all qualifications and restrictions.

{10} Clearly, s 3—18—3, supra, by requiring that each candidate for representative in Congress be a resident of and a qualified elector of the district in which he seeks office, adds additional qualifications to becoming a candidate for that office. Accordingly, we must hold the provisions of the Federal Constitution prevail and that this statute unconstitutionally adds additional qualifications.

{11} Although it is admitted that petitioner Higgs came to New Mexico only recently and for a particular purpose, he has filed herein his affidavit wherein he states that he has all the constitutional qualifications for the office that he seeks and 'is now an inhabitant of and residing in the State of New Mexico, and that he intends to be an inhabitant of and reside in the State of New Mexico on November 5, 1968, and thereafter.' However, the question of whether or not,

under the circumstances recited, he can be described as a 'sojourner' so as to disqualify him from holding the office, if elected, is not for us to decide. We understand the law to be as stated in 107 A.L.R. 205, 206, that: 'Article I, s 5, of the Constitution of the United States, relating to the powers of Congress, provides that 'each house shall be the judge of the elections, returns, and qualifications of its own members.' State ex rel Chavez v. Evans, 446.P.2d, 448-450 (N.M. 1968).

In *Chavez* the Court struck down the provision that candidates for U.S House of Representatives be a resident of the district and a qualified elector as UNCONSTITUTIONAL. Just as Defendants in North Carolina in the case *sub judice* have added that candidates for U.S. House of Representatives be "Registered Voters", Part of a Political Party for 90-days, and not be a Felon is no more different than what happened in *Chavez*. Thus regardless of Petitioner being a Felon, the fact that he has to be a Registered Voter and affiliated with a political party for 90 days is unconstitutional as it pertains to qualifications for U.S. House of Representatives.

Petitioner 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(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, violate 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.

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

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

Due to Petitioner's status as a Felon and the reality of NCGS 163-106(b), 163-275, NCGS 13-1 [Exh 8] Petitioner is and will be denied access to the ballot for U.S. House of Representatives– thus the "Strict Scrutiny" test under *Anderson* is appropriate. In order to be affiliated with a Political Party for 90 day: you have to be a Registered Voter (see NCGS 163-106.5(b)) [Exh 8]; however felons cant 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 [Exh 8] take effect. How else would Defendants know that someone has been affiliated with a political party for 90 days?? Only way that's possible is being a Registered Voter.

Dunn v Blumstein, 405 U.S. 330 (1972) [Exh 17] 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. In *Dunn v. Blumstein,* 405 U. S. 330, 358 (1972) it was said "Given modern communications, and given the clear indication that campaign spending and voter education occur largely during the month before an election, 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:" 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. "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)]. Anderson at 806. "[Being affiliated with a Political Party for 90 days] completely bars from voting all residents not meeting the fixed durational standards. By denying some citizens the right to vote, such laws deprive them of '*a fundamental political right, . . . preservative of all rights.' Reynolds v. Sims, 377 U. S. 533, 377 U. S. 562 (1964). There is no need to repeat now the labors undertaken in earlier cases to analyze this right to vote and to explain in detail the judicial role in reviewing state statutes that selectively distribute the franchise. In decision after decision, this Court has made clear that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. See, e.g., Evans v. Cornman, 398 U. S. 419, 398 U. S. 421-422, 398 U. S. 426 (1970); Kramer v. Union Free School District, 395 U. S. 621, 395 U. S. 626-628 (1969); Cipriano v. City of Houma, 395 U. S. 701, 395 U. S. 706 (1969); Harper v. Virginia Board of Elections, 383 U. S. 663, 383 U. S. 667 (1966); Carrington v. Rash, 380 U. S. 89, 380 U. S. 93-94 (1965); Reynolds v. Sims, supra.*" Dunn v Blumstein at 336 [Exh 17].

II.B. CSI v. Moore

Petitioner is aware that CSI v. Moore, 871 S.E.2d 510 (N.C. 2022) is currently pending review. *CSI* wont apply to Petitioner in the slightest as that case only deals with felons' right to vote while on *Parole or Probation*. Petitioner was incarcerated when he filed [D.E. 1], thus, the ruling of *CSI*, whether it gets granted or not, doesn't apply to Petitioner in the slightest. This Court must note that *CSI* doesn't challenge felons' voting rights as it pertains to a qualification of candidacy for U.S. House of Representatives nor does *CSI* challenge the 90-day Party Affiliation Requirement; Petitioner's lawsuit *does*. It would thus be pointless to wait on the decision of *CSI* because it only deals with a STATE constitutional matter. Petitioner is well aware that *CSI* challenges NCGS 13-1, the same statute that Petitioner challenges, yet Petitioner's challenges the statute and much more on a Federal-Constitutional-Rights basis as to run for U.S. House of Representatives.

The problem that we are dealing with in Petitioner's lawsuit is that due to the fact that Petitioner was incarcerated the candidacy-filing period for the 2022 midterms were going on. Petitioner would be getting out one month after the general election [Exh 3] so he chose to run for office. However due to Petitioner being a felon/incarcerated when he filed this lawsuit, Defendants additional qualifications [Exh 7] and 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* as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [Exh 8] Petitioner would be denied to file for candidacy; this would force Petitioner another 2 years to file another lawsuit so he can run for Federal Office?? *See* Kusper v. Pontikes, 414 U.S. 51 (1973). Thus, would it be fair to deny Petitioner the *right* to run for Federal Office on account of him being a felon?

In the event the Court does find that *CSI* pertains to Petitioner then Defendants would still be required to hold a **special election** due to the timing and fact that Petitioner filed this lawsuit while he was incarcerated.

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson,* 403 U. S. 431, 403 U. S. 442 (1971) [Exh 17].

Petitioner requests that the Court rule 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, violate 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.

The remedy that Petitioner requests of the Court is to:

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III.A. DEFENDANTS "RECOMMENDED" THAT PETITIONER RUN AS AN UNAFFILIATED CANDIDATE

Defendants in [D.E. 31] [Exh 5] recommended that Petitioner run as an unaffiliated candidate [D.E. 31 p. 16, 24, 28] [Exh 5]. "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. . . . The right to associate

with the political party of one's choice is an integral part of this basic constitutional freedom."); Kusper v. Pontikes, 414 U.S. 51, 56-57 (1973) [Exh 17]. *If* Petitioner were to run as an unaffiliated candidate he would *still* be denied the right to run for U.S. House of Representatives due to his status as a felon and also due to Defendant's requiring that Petitioner be a 1.) Registered Voter; 2.) Part of an unaffiliated party for 90 days; 3.) Not be a felon. *See* NCGS. 163-122(d).

The Court gave its ruling on 16 May 2022 [Exh 6] and candidate filing for unaffiliated candidates ended 17 May 2021 with extreme hurdles that no person could comply within that short amount of time. There would be ABSOLUTELY NO TIME for Petitioner to comply with NCGS 163-122 nor would he even be allowed on the ballot due to Defendant's 3 Requirements that Petitioner challenges now. *If* Petitioner ran as an unaffiliated candidate: he would have said so: but instead Petitioner chose to run as a REPUBLICAN [See 1st Exhibit of D.E. 1; D.E. 31 p. 2, 18-19] [Exh 4] and the filing date closed 4 March 2022, thus, making the matter Ripe for Disposition. More problems that arise for recommending Petitioner 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 Petitioner's votes and confuse his constituents but Petitioner would lose MAJOR endorsements for 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) [Exh 17]. "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 Party [simply because there is/was time to do so]." *Democratic Party of United States v. Wisconsin ex rel. La Follette,* 450 U.S. at 450 U. S. 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 is/was time to do so]." *Id.* at 450 U. S. 124." Tashjian v. Republican Party, 479 U.S. at 224 (1986) [Exh 17]. "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.

"Imposing limitations 'on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association.'" EU v. San Francisco Democratic Comm. 489 U.S. 214 224-25 (1989) (quoting Citizens Against Rent Control/coalition for Fair Housing v. Berkeley, 454 U.S. 290, 296 (1981)) [Exh 17]. "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 [Exh 17]."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) [Exh17]."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) [Exh 17]."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. *NAACP v. Button,* 371 U. S. 415, 371 U. S. 430; *Bates v. Little Rock,* 361 U. S. 516, 361 U. S. 522-523; *NAACP v. Alabama,* 357 U. S. 449, 357 U. S. 460-461. 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. *Cf. United States v. Robel,* 389 U. S. 258." Kusper v Pontikes, 414 at 56-57 (1973) [Exh 17].

III.B CSI v. Moore

Petitioner is aware that CSI v. Moore, 871 S.E.2d 510 (N.C. 2022) is currently pending review. *CSI* wont apply to Petitioner in the slightest as that case only deals with felons' right to vote while on *Parole or Probation.* Petitioner was incarcerated when he filed [D.E. 1], thus, the ruling of *CSI,* whether it gets granted or not, doesn't apply to Petitioner in the slightest. This Court must note that *CSI* doesn't challenge felons' voting rights as it pertains to a qualification of candidacy for U.S. House of Representatives nor does *CSI* challenge the 90-day Party Affiliation Requirement: Petitioner's lawsuit *does*. It would thus be pointless to wait on the decision of *CSI* because it only deals with a STATE constitutional matter. Petitioner is well aware that *CSI* challenges NCGS 13-1, the same statute that Petitioner challenges, yet

Petitioner's challenges the statute and much more on a Federal-Constitutional-Rights basis as to run for U.S. House of Representatives.

The problem that we are dealing with in Petitioner's lawsuit is that due to the fact that Petitioner was incarcerated the candidacy-filing period for the 2022 midterms were going on. Petitioner would be getting out one month after the general election [Exh 3] so he chose to run for office. However due to Petitioner being a felon/incarcerated when he filed this lawsuit, Defendants additional qualifications [Exh 7] and 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* as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution [Exh 8] Petitioner would be denied to file for candidacy; this would force Petitioner another 2 years to file another lawsuit so he can run for Federal Office?? *See* Kusper v. Pontikes, 414 U.S. 51 (1973). Thus, would it be fair to deny Petitioner the *right* to run for Federal Office on account of him being a felon?

In the event the Court does find that *CSI* pertains to Petitioner then Defendants would still be required to hold a **special election** due to the timing and fact that Petitioner filed this lawsuit while he was incarcerated.

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson,* 403 U. S. 431, 403 U. S. 442 (1971) [Exh 17].

Petitioner 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* as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution, violate 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.

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

IV.A. EVEN IF PETITIONER WAS NOT A FELON THE 3 REQUIREMENTS IMPOSED BY DEFENDANTS ARE STILL REPUGNANT TO THE U.S. CONSTITUTION

Petitioner believes that these 3 statutes would still be wrong REGARDLESS if Petitioner was a felon. The primary reason is that any of these requirements would be unconstitutional for the President of the United States: for the simple fact that his qualifications are listed in the U.S. Constitution just like the qualifications for U.S. House of Representatives are in the U.S. Constitution. Also "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) [Exh 17]. "And of course this freedom protected against federal encroachment by the First Amendment is entitled under the Fourteenth Amendment to the same protection from infringement by the States." *Williams v. Rhodes,* 393 U. S. 23, 393 U. S. 30-31 (1968). 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 [Exh 17].

IV.B. The Chavez Decision

Before Petitioner goes into this argument he *must admit* that this Court nor any federal court is bound by the decision in State ex rel Chavez v. Evans, 446 P.2d, 448-450 (N.M. 1968) because it is a STATE CASE LAW. Nonetheless it is HIGHLY PERSUASIVE as it shows a great respect for the U.S. Constitution as judges even back in the day, when there was hardly any precedent, had no question as to the simplicity of the U.S. Constitution: Namely Article 1, Section 2 Clause 2.

{5} Petitioners Sedillo and Higgs are candidates of the aforementioned party for United States Representative in Congress, New Mexico Districts 2 and 1.

{6} Section 3—18—3, N.M.S.A. 1953, so far as pertinent, reads:

'Each candidate for the office of representative in Congress shall be a resident and qualified elector of the district in which he seeks office.'

{7} It is admitted that Wilfredo Sedillo, candidate for representative in Congress from District 2, resides and is a registered elector in District 1, and that William Higgs is not and will not, at the time of the election, be a qualified elector within the State of New Mexico.

{8} The petitioner argue that art. I, s 2, clause 2, of the United States Constitution prescribes the qualifications for representatives in Congress; that the New Mexico statute, supra, purports to add additional qualifications for a representative in Congress and is unconstitutional. Art. I, s 2, clause 2, reads:

'No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.'

{9} The constitutional qualifications for membership in the lower house of Congress exclude all other qualifications, and state law can neither add to nor subtract from them. In re O'Connor, 173 Misc. 419, 17 N.Y.S.2d 758 (1940); State ex rel. Eaton v. Schmahl, 140 Minn. 219, 167 N.W. 481 (1918); State ex rel. Chandler v. Howell, 104 Wash. 99, 175 P. 569 (1918); Ekwall v. Stadelman, 146 Or. 439, 30 P.2d 1037 (1934); Stockton v. McFarland, 56 Ariz. 138, 106 P.2d 328 (1940). The state may provide such qualifications and restrictions as it may deem proper for offices created by the state; but for offices created by the United States Constitution, we must look to the creating authority for all qualifications and restrictions.

{10} Clearly, s 3—18—3, supra, by requiring that each candidate for representative in Congress be a resident of and a qualified elector of the district in which he seeks office, adds additional qualifications to becoming a candidate for that office. Accordingly, we must hold the provisions of the Federal Constitution prevail and that this statute unconstitutionally adds additional qualifications.

{11} Although it is admitted that petitioner Higgs came to New Mexico only recently and for a particular purpose, he has filed herein his affidavit wherein he states that he has all the constitutional qualifications for the office that he seeks and 'is now an inhabitant of and residing in the State of New Mexico, and that he intends to be an inhabitant of and reside in the State of New Mexico on November 5, 1968, and thereafter.' However, the question of whether or not, under the circumstances recited, he can be described as a 'sojourner' so as to disqualify him from holding the office, if elected, is not for us to decide. We understand the law to be as stated in 107

A.L.R. 205, 206, that: 'Article I, s 5, of the Constitution of the United States, relating to the powers of Congress, provides that 'each house shall be the judge of the elections, returns, and qualifications of its own members.' State ex rel Chavez v. Evans, 446 P.2d, 448-450 (N.M. 1968) [Exh 17].

In *Chavez* the Court struck down the provision that candidates for U.S House of Representatives be a resident of the district and a qualified elector UNCONSTITUTIONAL. Just as Defendants in North Carolina in the case *sub judice* have added that candidates for U.S. House of Representatives be "Registered Voters", Part of a Political Party for 90-days, and not be a Felon is no more different than what happened in *Chavez*. Thus regardless of Petitioner being a Felon, the fact that he has to be a Registered Voter and affiliated with a political party for 90-days is unconstitutional as it pertains to qualifications for U.S. House of Representatives.

It makes no sense for Petitioner to be a Registered Voter if he is the one being voted in. It neither makes sense for Petitioner to be affiliated with a political party for 90-days for that is matter between Petitioner and the Republican party – the State(Defendants) should have no interest in how long someone has been affiliated: but nonetheless if Petitioner has not been affiliated for 90-days then he cannot be on the ballot for U.S. House of Representatives. Defendants said on pg 24-25 of [D.E. 31] that the intention that someone become a Registered Voter and affiliated with a political party for 90 days is for serious candidates and candidates not prompted by short range political goals?? The 90-day theory is very similar if not identical to the situation in Dunn v. Blumstein, 405 U.S. 330, 335 (1972) [Exh 17]. Defendant's Registered Voter requirement is highly reminiscent of *Anderson v. Celebrezze*, 460 U.S. 780 (1983); U.S. Term Limits v. Thornton, 514 U.S. 779 (1995); Cook v. Gralike, 531 U.S. 510 (2001); Carrington v. Rash; 380 U.S. 89 (1965) [Exh 17].

Defendants on pg 24-25 of [D.E. 31] try to say that these restrictions are applied to everybody and say that anyone who doesn't comply can go through the petition process…….. Defendants reasoning has been condemned *many* times as unconstitutional as in Dunn v. Blumstein, 405 U.S. 330, 335 (1972); *Anderson v. Celebrezze*, 460 U.S. 780 (1983); Carrington v. Rash; 380 U.S. 89 (1965); Tashjian v. Republican Party, 479 U.S. 208 (1986); Kusper v. Pontikes, 414 U.S. 51 (1973); ; U.S. Term Limits v. Thornton, 514 U.S. 779 (1995); Lubin v. Panish, 415 U.S. 709 (1974); Cook v. Gralike, 531 U.S. 510 (2001); *Illinois State Bd. of Elections v. Socialist Workers Party,* 440 U. S. 173 (1979); *Lubin v. Panish,* 415 U. S. 709 (1974); *American Party of Texas v. White,* 415 U. S. 767 (1974); *Bullock v. Carter,* 405 U. S. 134, 405 U. S. 142-143 (1972); *Williams v. Rhodes,* 393 U. S. 23, 393 U. S. 34 (1968) [Exh 17]. "Imposing limitations 'on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association.'" EU v. San Francisco Democratic Comm. 489 U.S. 214 224-25 (1989) (quoting Citizens Against Rent Control/coalition for Fair Housing v. Berkeley, 454 U.S. 290, 296 (1981)) [Exh 17].

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson,* 403 U. S. 431, 403 U. S. 442 (1971) [Exh 17].

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

B.) 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) [Exh 17]; Rockefeller, 917 F. Supp. At 166. There is no doubt that Petitioner is suffering irreparable harm EVERY SINGLE DAY because the 118th Congress has started on 3 January 2023 – the very election Petitioner 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) [Exh 17]. "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) [Exh 17].

Petitioner can not make the claim he is making now during the next election cycle for that would be even more irreparable harm. Due to Petitioner's status as an active felon (NCGS 13-1) The Court *must* understand that this lawsuit had to have been filed on 7 February 2022 while Petitioner was in prison otherwise there could have been the argument that Petitioner's lawsuit would be untimely had he chose to file this lawsuit when he got out of prison – that would then force Petitioner to wait till 2024 to be able to run for office and then, provided he wins the general election, 2025 to start serving : 3 years since the filing of this lawsuit – that would be *devastating* given that Petitioner's lawsuit deals with the 1st and 14th Amendments. Thus if

Petitioner filed this lawsuit when he got out of prison which was 7 December 2022 then he would have to wait until 2024 to challenge the provisions he deems unconstitutional and he probably won't succeed at *that particular point* in time because by that time he would regain his voting rights(**which he is currently denied now**) and then the potential argument against Petitioner *may or may not* qualify as a constitutional ballot-access restriction, if Petitioner were to file this lawsuit for the 2024 Midterms – one thing that is agreeable is that it would be repugnant to wait that long just because Petitioner is a felon, thus, this part of the argument is very similar to the one made in Kusper v. Pontikes, 414 U.S. 51 (1973) [Exh 17]. *See* NCGS 13-1. One thing is for certain is that due to the timing of all events 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 [Exh 8] DENIES Petitioner the *right* to run for U.S. House of Representatives. This is why this motion is being filed now – there would be NO OPPURTUNITY to make the challenge Petitioner makes in this current lawsuit in a separate lawsuit: that Felons are denied the right to vote which is a requisite to file for candidacy for U.S. House of Representatives, at least in North Carolina. Petitioner shouldn't have to wait 2-3 years for the *right* to run for Federal Office. *See* Kusper v. Pontikes, 414 U.S. 51 (1973) [Exh 17]. "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.' . . ." Blumestein at 341 [Exh 17] (quoting *Harman v. Forssenius,* 380 U. S. 528, 380 U. S. 540 (1965)). *See also Garrity v. New Jersey,* 385 U. S. 493 (1967), and cases cited therein; *Spevack v. Klein,* 385 U. S. 511, 385 U. S. 515 (1967). "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 [Exh 17].

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson,* 403 U. S. 431, 403 U. S. 442 (1971)) [Exh 17].

Irreparable harm is everywhere and Petitioner will continue to suffer everyday since the 118th congress has started on 3 January 2023. Petitioner would probably not be able to file this lawsuit at a later time due to NCGS 13-1, thus, showing a furtherance of irreparable harm and the need to be heard.

C.) BALANCE OF EQUITIES TIPS IN PETITIONER'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) [Exh 17]

(quoting Centro Tepeyac v. Montgomery Cty., 722 F.3d 184, 191 (4th Cir. 2013)) (internal quotation marks omitted). "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)."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 [Exh 17].

There would be NO HARM TO DEFENDANTS AT ALL by granting this injunction. In the worst case scenario the Constitution would be : upheld/honored. Granting this injunction would succumb 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. 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 the same to deny any person on the ballot simply because of their ethnicity.

The federal offices at stake "aris[e] from the Constitution itself." *U.* S. *Term Limits, Inc.* v. *Thornton,* 514 U. S., at 805. Because any state authority to regulate election to those offices could not precede their very creation by the Constitution, such power "had to be delegated to, rather than reserved by, the States." *Id.,* at 804. Cf. 1 Story § 627 ("It is no original prerogative of state power to appoint a representative, a senator, or president for the union"). Through the Elections Clause, the Constitution delegated to the States the power to regulate the "Times, Places and Manner of holding Elections for Senators and Representatives," subject to a

grant of authority to Congress to "make or alter such Regulations." Art. I, § 4, cl. 1; see *United States* v. *Classic,* 313 U. S. 299, 315 (1941). Cook v. Gralike 531 U.S. 510, 522 (2001) [Exh 17].

To be sure, the Elections Clause grants to the States "broad power" to prescribe the procedural mechanisms for holding congressional elections. *Tashjian* v. *Republican Party of Conn.*, 479 U. S. 208, 217 (1986); see also *Smiley* v. *Holm,* 285 U. S. 355, 366 (1932) ("It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections"). Nevertheless, [to be a Registered Voter and affiliated with a political party for 90 days] falls outside of that grant of authority. 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. Cook at 523 [Exh 17].

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

D.) INJUNCTION IN THE PUBLIC INTEREST

"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 determining salary, hours, or working conditions of its own employees. 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); *Lubin v. Panish,* 415 U. S. 709 (1974); *American Party of Texas v. White,* 415 U. S. 767 (1974); *Bullock v. Carter,* 405 U. S. 134, 405 U. S. 142-143 (1972); *Williams v. Rhodes,* 393 U. S. 23, 393 U. S. 34 (1968)." Clements v. Fashing, 457 U.S. 957 at 986 (1982) [Exh 17].

Upholding constitutional rights serves the public interest. Newsom ex rel. Newsom v. Albemarle Cty. Sch. Bd., 354 F. 3d 249, 261 (4th Cir. 2003) [Exh 17]."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 [Exh 17]. In the worst-case scenario, the Constitution would be: upheld/honored. Granting this injunction would succumb 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. 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 [Exh 17]. [to be a Registered Voter and affiliated with a political party for 90 days] is not a procedural regulation. It does not regulate the time of elections; it does not regulate the place of elections; nor, we believe, does it regulate the manner of elections.18 As to the last point, [to be a Registered Voter and affiliated with a political party for 90 days] bears no relation to the "manner" of elections as we understand it, for in our commonsense view that term encompasses matters like 'notices, registration, supervision of voting, protection of voters, prevention of fraud ...[to be a Registered Voter and affiliated with a political party for 90 days] does not regulate the time, place, or manner of elections. Corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.' *Smiley,* 285 U. S., at 366; see also *U.* S. *Term Limits, Inc.* v. *Thornton,* 514 U. S., at 833. In short, [to be a Registered Voter and affiliated with a political party for 90 days] is not among 'the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.'" Cook at 523-24(quoting *Smiley, 285* U. S., at 366) [Exh 17].

Morgan v. United States, 801 F.2d 445 (D.C. Cir. 1986); Cook v. Gralike 531 U.S. 510, 522 (2001); *U.* S. *Term Limits, Inc.* v. *Thornton,* 514 U. S., at 805 [Exh 17] dictate that the qualifications for U.S. House of Representatives is mandated in Article I Section 2 Clause 2: Petitioner requests the Court to order Defendants to keep it that way.

Petitioner 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, as well as Article VI, Section 2 Clause 3 of the NC Constitution, Article VI Section 8 of the NC Constitution, violate 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.

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

"[s]ometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike." Anderson at 801 (quoting *Jenness v. Fortson*, 403 U. S. 431, 403 U. S. 442 (1971)) [Exh 17].

A Proposed Order for the TRO [Exh 13] will be accompanied by affidavit [Exh 14]

MOTION FOR PRE-TRIAL CONFERENCE/HEARING/ORAL ARGUMENTS

Pursuant to FRCP 16 and Local Rule 7.1(j) Petitioner believes a Pre-Trial Conference is necessary to discuss this motion. The Proposed Order for Pre-Trial Conference/Hearing will contain a duplicate so that one may remain as an exhibit and the other can be used for initiation [Exh 15].Petitioner pursuant to FRCP 7(b) requests for a Motion for Oral Argument. Petitioner thinks that Oral Arguments will be best as it should quickly dispense the issues at hand.

The Proposed Order for Request for Oral Arguments will contain a duplicate so that one may remain as an exhibit and the other can be used for initiation [Exh 16]

MOTION FOR EXPEDITION

Petitioner pursuant to FRCP 7(b) requests for a Motion for Expedition Petitioner believes that expedition is proper since the 118th congress has already started since 3 January 2023 – the congress that Petitioner intended to serve in.

RELIEF/CONCLUSION

WHEREFORE, Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 for a Motion for Reconsideration of [D.E. 38, 41] because at the time the Court gave its judgment on 16 May 2022 [D.E.38 p.9-11] the Court told Petitioner to run for a "different political party." *See* NCGS. 163-122. On page 2 of [D.E. 41] The Court states that relief cannot be granted unless Petitioner cures the Jurisdictional Deficiency: WHICH PETITIONER WILL BE ABLE TO PROVE.

What is new is that Petitioner HAS been denied being a Registered Voter on account of Petitioner being a felon; Petitioner believes is what the Court didn't understand is by making this judgment the REQUISITES ARE STILL THE SAME FOR AN UNAFFILIATED CANDIDATE (see NCGS 163-122(d)): 1.) Petitioner must be a Registered Voter; 2.) NOT be a felon; 3.) Be part of a political party for 90 days; by insisting that Petitioner "File an Application for Candidacy" the Court is inducing Petitioner to BREAK/VIOLATE NC LAW. *See* NCGS 163-275. This Court must understand that Petitioner ran as a REPUBLICAN, thus based on precedent, by telling Petitioner to run for a "Different Political Party" is a violation of

Petitioner's 1st Amendment Right to association/assemble for that would be the government choosing the candidate[s] when it should be the people: this is exactly what Petitioner's lawsuit deals with: the government choosing the candidate when it should be the people.

Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 to Reconsider its ruling in [D.E. 38] because Petitioner does in fact have Standing as stated in Spokeo Inc. v. Robbins, 578 U.S. 330, 338 (2016); Lujan v. Defs. Of Wildlife, 504 U.S. 555, 560 (1992). This is *slightly* due to Petitioner's fault as he **HAS** been denied to be a "Registered Voter" on the basis of him being a felon. Explanation WILL be given.

Petitioner, in good faith and sound judgment, requests this Court pursuant to FRCP 60 to Reconsider its ruling in [D.E. 38] because Petitioner's case is ripe for jurisdiction as stated in Nat'l Park Hosp. Ass'n v. Dep't of Interior, 538 U.S. 803, 807-08 (2003).

The remedy that Petitioner requests of the Court is to:

ORDER DEFENDANTS TO HOLD A SPECIAL ELECTION

Pursuant to FRCP 7(b) Petitioner requests this Court that this motion/case be **EXPEDITED** as the 118th Congress has already started since 3 January 2023 – the office/election cycle Petitioner sought to be in. Every day delayed is a day Petitioner would not be able to serve in the U.S. House of Representatives.

Petitioner requests this Court pursuant to FRCP 7(b) for oral arguments if necessary to dispute the matter.

Petitioner requests this Court pursuant to FRCP 7(b) to EXCEED the word count for Good Cause.

Petitioner requests this Court pursuant to FRCP 65 for a Preliminary Injunction/TRO.

Petitioner requests this Court pursuant to FRCP 13 for a Counterclaim to [D.E. 31] which is essentially this entire motion. But major aspects that Petitioner would like this Court to rule UNCONSTITUIONAL as to the Candidacy for U.S. House of Representatives is NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 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.

Petitioner requests this Court pursuant to FRCP 16 and Local Rule 7.1(j) for a Pre-Trial Conference/Hearing.

/Sign/ Siddhanth Sharma

Siddhanth Sharma *Pro Se*

/Date/ 2-9-23

Siddhanth Sharma
8508 Micollet Ct.
Raleigh, NC, 27613
(919) 880-3394
Siddhanthsharma1996@yahoo.com

CERTIFICATE OF FILING/SERVICE/COMPLIANCE WITH LOCAL RULE 7.2(f)(3) AND PENALTY OF PERJURY

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

Petitioner certifies that this motion is **NOT** in compliance with Local Rule 7.2(f)(3) as it is **OVER 30 pages** and the word count is **16,497 words**.

Petitioner certifies that this Motion has been filed with the Clerk of Court, Mr. Peter A Moore, Jr., United States Courthouse, 310 New Bern Avenue, Raleigh, NC 27601/PO Box 25670, Raleigh, NC 27611, via hand delivery and/or first class mail.

Petitioner also certifies that a copy has been sent to ALL PARTIES via mail/hand delivery as follows:

Terence Steed
NC Department of Justice
P.O. Box 629
Raleigh, NC, 27602
919-716-6567
919-716-6761
Email: tsteed@ncdoj.gov

Sign: Siddhanth Sharma

Siddhanth Sharma *Pro Se*

Date: 2-9-23

EXHIBITS

11293514-1451-1-1*

WAKE COUNTY BOARD OF ELECTIONS
PO BOX 695
RALEIGH NC 27602-0695

**********AUTO**ALL FOR AADC 275
11293514 9223-VRC 1451 1 1 1

SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH NC 27613-6963

NOTICE OF REGISTRATION	The attached **Voter Registration Card** confirms your voter registration in Wake County. Your assigned precinct and voting place are shown at the bottom of the card. Please review the information on your card for accuracy. If you need to make an update, you may use the form on the card. Your signature will be required. Be sure to detach the card from this notice and affix proper postage before mailing the card back to our office. You are not required to show your voter registration card to vote.
IF YOU MOVE	If you move within this county, you must provide our office with your new address. If you move outside of this county, you will no longer be eligible to vote in this county after 30 days from the date of your move. You must be registered in the county where you reside.
PHOTO ID REQUIREMENTS	Currently, voters are not required to show photo ID in elections in North Carolina. A court injunction blocked the photo ID requirement from taking effect.

If you have any questions regarding this notice, please contact the Wake County Board of Elections.
(919) 404-4040 • voter@wakegov.com

For more information on voter registration and voting in North Carolina, visit: www.NCSBE.gov

EXHIBIT
tabbies
1

THIS IS AN IMPORTANT VOTING NOTICE

RETAIN THIS CARD AND DESTROY ALL PREVIOUSLY MAILED VOTER CARDS TO AVOID CONFUSION
Your registration record will reflect information as shown on this card, for all future elections, unless you return this card with corrections or the Postal Service returns this card as undeliverable.

9223PVRC 5/19/21 Process Blue, K

000100882019-1

WAKE COUNTY VOTER CARD

WAKE COUNTY NORTH CAROLINA

Wake County Board of Elections
1200 N. New Hope Road
PO Box 695
Raleigh, NC 27602-0695

(Fold Here)

GEN	PARTY	REGISTRATION DATE
U	REP	01/03/2022
VOTER REG.ID	NCID	DATE ISSUED
000100882019	EH1362331	01/10/2022

SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH, NC 27613

SIGNATURE OF VOTER

VOTING PLACE
LONG LAKE CLUBHOUSE 7481 SILVER VIEW LN RALEIGH, NC 27613
PRECINCT - ELECTION DISTRICTS
CONGRESSIONAL DISTRICT 05 NC SUPERIOR COURT DISTRICT 10C NC JUDICIAL DISTRICT 10D NC SENATE DISTRICT 18 NC HOUSE DISTRICT 040 COUNTY COMMISSIONER DISTRICT 7 BOARD OF EDUCATION DISTRICT 7 MUNICIPALITY RALEIGH MUNICIPAL DISTRICT R-E PRECINCT 08-11

New Search

SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH, NC 27613

Collapse all sections | Expand all sections

YOUR VOTER DETAILS

County:	WAKE
Status:	ACTIVE
Voter Reg Num:	000100882019
NCID:	EH1362331
Party:	REP
Race:	UNDESIGNATED
Ethnicity:	UNDESIGNATED
Gender:	UNDESIGNATED
Registration Date:	01/03/2022
NCDMV Customer:	No

YOUR JURISDICTIONS

Precinct:	PRECINCT 08-11
Congress:	CONGRESSIONAL DISTRICT 5
NC Senate:	NC SENATE DISTRICT 18
NC House:	NC HOUSE DISTRICT 40
Superior Court:	NC SUPERIOR COURT DISTRICT 10C
Judicial:	NC JUDICIAL DISTRICT 10D
Prosecutorial:	10TH PROSECUTORIAL
County Commissioner:	COUNTY COMMISSIONER 7
Municipality:	RALEIGH
Ward:	RALEIGH MUNICIPAL DISTRICT E
School:	BOARD OF EDUCATION 7

WAKE COUNTY BOARD OF ELECTIONS

P O BOX 695
RALEIGH, NC 27602
Phone: (919) 404-4040 • Fax: (919) 231-5737 • voter@wakegov.com

January 06, 2022

TO: SIDDHANTH SHARMA
8508 MICOLLET CT
RALEIGH, NC 27613

RE: **NOTICE OF REMOVAL DUE TO FELONY CONVICTION**

Voter Name:	SIDDHANTH SHARMA
Residential Address:	8508 MICOLLET CT
	RALEIGH, NC 27613
Date of Birth:	12/17/1996
Party:	REPUBLICAN

Our office has received a notice of your recent felony conviction. As an active felon, you are not qualified to vote in North Carolina. Please note that active felons **include** persons currently serving a felony sentence, including any probation, parole, or post-release supervision. However, based on a recent court order, you are qualified to vote if you are serving an extended term of probation, post-release supervision, or parole, you have outstanding fines, fees or restitution, and you do not know of another reason that your probation, post-release supervision, or parole was extended. In addition, if you have been discharged from probation, parole, or post-release supervision, you are eligible to register to vote even if you still owe money or have a civil lien.

It is a felony to vote if you are not qualified to do so. Please note that because you are a convicted felon, your voter registration in WAKE County **will be cancelled in 30 days (if it has not already been cancelled).**

A convicted felon's rights of citizenship are restored automatically upon discharge of the felony sentence, including periods of probation, parole, post-release supervision, **or** upon receiving a full pardon. At that time, provided that you are under no other active felony convictions, you will be qualified to vote. No additional documentation is needed. Upon completion of your sentence, you must submit a **new voter registration form** to the county board of elections office where you reside.

If you are in a *deferred prosecution* status for a felony, please contact our office immediately to provide us the name and telephone number of your current probation officer and the attorney who represented you. Persons who are on *deferred prosecution* may not be subject to removal and may avoid removal from the voter registration rolls.

If you disagree with the finding that you are an active felon and wish to object to the removal of your name from the list of registered voters, you must **object in writing within 30 days of this notice.** If you object, you will be notified to appear at a hearing to determine whether you are qualified to vote.

Please mail your written objection and any documentation to the attention of WAKE COUNTY BOARD OF ELECTIONS P O BOX 695 RALEIGH, NC 27602.

If you have any questions, you may contact your county board of elections at (919) 404-4040.

I, SIDDHANTH SHARMA, object to my removal as a voter on the following grounds:

State reason for objection here:

Sign and date here and return within 30 days of the date on this notice. Attach any additional documentation.

Sign: **Date:**

AFFIDAVIT

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

I Siddhanth Sharma got released from prison on 7 December 2022. My parents misplaced the Denial of me being a Registered Voter not too long after it was issued but most certainly before the issuance of [D.E. 1]. I ended up finding the denial of me to be a Registered Voter sometime in mid-January of 2023 after I got out of prison. I wanted to include the denial in my original complaint but felt it best not to use affidavits to prove that I was denied as opposed to using the "bare record." This information would not show up on ANY election website as my family received this document ONLY in the mail – and only one copy too. The form even said that I was committing a felony, thus, I chose not to file a candidacy form and instead file this current lawsuit.

During the time of my release I had serious transportation and financial problems where I wouldn't even be able to mail a motion and my time of going to EDNC was only one a month. That ended around the end of January 2023. It is no longer a problem now.

Sign: Siddhanth Sharma

Date: 2-9-23

SIDDHANTH SHARMA

Offender ID: 1415950
Inmate Status: POST RELEASE
Probation/Parole/Post Release Status: ACTIVE
Gender: MALE
Race: AMERICAN INDIAN/ALASKAN NATIVE
Ethnic Group: NOT HISPANIC/LATINO
Birth Date: 12/17/1996
Age: 26
Probation/Parole Office: DISTRICT 10 UNIT G

Name(s) Of Record

Last Name	Suffix	First Name	Middle Name	Name Type
SHARMA		SIDDHANTH		COMMITTED

Most Recent Incarceration Summary

Incarceration Status: INACTIVE
Conviction Date: 12/20/2018
Primary Crime: POSSESSION OF FIREARM BY FELON (PRINCIPAL)
Special Characteristics: REGULAR
Admission Date: 01/14/2019
Control Status: REGULAR POPULATION
Custody Classification: CLOSE
Current Location: WAKE COUNTY
Last Movement : PAROLE/RETURN TO PAR

Total Incarceration Term: 7 YEARS 2 MONTHS 20 DAYS
Projected Release Date: 12/07/2022
Primary Crime Type: FELON
Current Status: FELON
Admission Facility: CRAVEN CI
Next Control Review: UNKNOWN
Next Custody Review: UNKNOWN
Previous Location: SCOTLAND CI
Last Movement Date: 12/07/2022

Escapes?: N

Offender Sentence History

Most Recent Period of Incarceration Record

Sentence Number: BB-001
Conviction Date: 12/20/2018
Service Status: POST REL
Sentence Status: AMENDED

Commitment Type: INMATE
County Of Conviction: WAKE
Sentence Begin Date: 12/20/2018
Actual Release Date: 12/07/2022

EXHIBIT
tabbies 4

Candidate and committee profiles

SEARCH CANDIDATE AND COMMITTEE PROFILES

h2nc02303

Candidate results

1 total results

SHARMA, SIDDHANTH

Candidate for House NC - District 02 REPUBLICAN PARTY ID: H2NC02303

Principal committee: SID FOR OFFICE **Most recent election:** 2022

SHARMA, SIDDHANTH

CANDIDATE FOR HOUSE

NORTH CAROLINA - 02

ID: H2NC02303

REPUBLICAN PARTY

Financial summary

ELECTION

2022

Time period:

2021-2022

Data is included from these committees:

- SID FOR OFFICE (C00796268)

We don't have **SHARMA, SIDDHANTH** for **2021–2022.**

This can be because:

- We're still processing the data. Try looking for raw versions of committee filings. Raw files are only available for electronic filers.
- No one filed this type of activity during the time period.
- The filing deadline hasn't passed yet.

Think this result is a mistake or have questions?

Send us more information in the feedback box or contact us.

North Carolina - House District 02

2022 | HOUSE

Election data and reporting deadlines

Dates and deadlines

All federal North Carolina elections

All federal House elections

ELECTION

2022

Candidate financial totals

Incumbent Export

Candidate	Party	Total receipts	Total disbursements	Cash on hand	Source reports
SHARMA, SIDDHANTH	REPUBLICAN PARTY	$0.00	$0.00	$0.00	No processed data this period.
ROBERSON, CHARLES BRENT	REPUBLICAN PARTY	$0.00	$0.00	$0.00	No processed data this period.
HOLDING, GEORGE E MR.	REPUBLICAN PARTY	$0.00	$17,479.35	$116,592.67	Coverage ending: 09/30/2021 View all

Results per page: 10

Showing 11 to 13 of 13 entries

This table only shows candidates who have registered and filed a financial report. Information in this table may not include the most recently submitted filings.

Congressional committee reports:

Quarterly filing and pre-/post-election reports

Convention and Primary deadlines | General deadlines

2022

See also: North Carolina's 2nd Congressional District election, 2022

Note: At this time, Ballotpedia is combining all declared candidates for this election into one list under a general election heading. As primary election dates are published, this information will be updated. Before the candidate filing deadline passes, Ballotpedia will separate these candidates into their respective primaries as appropriate.

General election

The general election will occur on November 8, 2022.

General election for U.S. House North Carolina District 2

The following candidates are running in the general election for U.S. House North Carolina District 2 on November 8, 2022.

Scroll for more ↓

Donald Davis (D)

James Gallliard (D)

Erica Smith (D)

Richard Ahrens (R)

Charles Roberson (R)

Sandy Roberson (R)

Adina Safta (R)

Sid Sharma (R)

Sandy Smith (R)

Sandy Smith (N) ©

Billy Strickland (R)

BP Incumbents are **bolded and underlined**.
© = candidate completed the Ballotpedia Candidate Connection survey.
Do you want a spreadsheet of this type of data? Contact our sales team.

2020

See also: North Carolina's 2nd Congressional District election, 2020
North Carolina's 2nd Congressional District election, 2020 (March 3 Republican primary)
North Carolina's 2nd Congressional District election, 2020 (March 3 Democratic primary)

General election

General election for U.S. House North Carolina District 2

Deborah Ross defeated Alan Swain and Jeff Matemu in the general election for U.S. House North Carolina District 2 on November 3, 2020.

		Candidate	%	Votes
✓		Deborah Ross (D)	63.0	311,887
		Alan Swain (R) ©	34.8	172,544
		Jeff Matemu (L)	2.2	10,914

BP There were no incumbents in this race. The results have been certified. Source

Total votes: 495,345

© = candidate completed the Ballotpedia Candidate Connection survey.
Do you want a spreadsheet of this type of data? Contact our sales team.

Democratic primary election

Democratic primary for U.S. House North Carolina District 2

Deborah Ross defeated Monika Johnson-Hostler, Andrew Terrell, and Ollie Nelson in the Democratic primary for U.S. House North Carolina District 2 on March 3, 2020.

	Candidate	%	Votes

Financial Disclosure Electronic Filing System

U.S. House of Representatives, Office of the Clerk

A new account in the U.S. House of Representatives Financial Disclosure System has been created for you. To log in, access your information and update your profile, visit https://fd.house.gov/. Remember to change your password after your first login. Below is a summary of your account information:

Username: [redacted]
Temporary Password: [redacted]

Name: Siddhanth Sharma
Work Address: [redacted]
Work Phone:
Filer Type: Candidate
Filing Requirement: Required

An initial filing deadline for your Candidate Report report for filing year 2021 has been set as **1/22/2022.**

If you believe you received this notice in error, please contact the Office of the Clerk, Legislative Resource Center at (202) 226-5200.

ONE HUNDRED SEVENTEENTH CONGRESS

U.S. House of Representatives

COMMITTEE ON ETHICS

1015 Longworth House Office Building
Washington, D.C. 20515-6328
Telephone: (202) 225-7103
Facsimile: (202) 225-7392

TO: Candidates for the U.S. House of Representatives

FROM: Committee on Ethics

SUBJECT: Financial Disclosure Statement Pursuant to Title I of the Ethics in Government Act

Under the Ethics in Government Act (EIGA), each candidate for the U.S. House of Representatives is required to file a personal Financial Disclosure Statement with the Clerk of the U.S. House of Representatives. A candidate is an individual who has raised (either through contributions or loans) or spent in excess of $5,000 for his or her campaign. The Statement must be filed within 30 days after the individual has exceeded the $5,000 level or by May 15 of the calendar year in which this dollar level is reached, whichever comes later, but no less than 30 days before the election.

A candidate must continue to file annual an Financial Disclosure Statement by May 15 of each succeeding year in which he or she continues to be a candidate. You will not receive another reminder regarding this requirement. If the day on which a report is required to be filed falls on a weekend or holiday, the filing deadline shall be the next business day. *Please note that this personal Financial Disclosure Statement is separate from, and in addition to, any reports required to be filed with the Federal Election Commission by your campaign committee.*

If you have not yet raised or spent in excess of $5,000 for your campaign or if you have formally withdrawn your candidacy before the filing deadline, you should notify the Clerk in writing. A form is enclosed for this purpose.

You may file your statement either by utilizing the electronic filing system or by filing on paper. You can log onto the electronic filing system at **https://fd.house.gov**. Your initial username and password is included in this packet. You can find a copy of the paper form and the instruction guide on the Committee on Ethics' Web site, www.ethics.house.gov, under the "Financial Disclosure" tab. **The Committee strongly recommends using the electronic filing system to complete your Statement.**

The Clerk of the House will make the completed Statements available to the public on its Web site http://clerk.house.gov/. Also, your Statement will be reviewed by the Committee. **If your paper filing includes copies of bank account or brokerage account statements, please redact the account numbers and account access numbers (such as PINs), as these statements will also be made public.**

The Committee may grant reasonable extensions of time for filing a Financial Disclosure Statement. An extension request form is available either through the electronic system filing or on the Committee's Web site, http://ethics.house.gov, under the "Financial Disclosure" tab. The extension request must be signed by the candidate either electronically or on paper. The EIGA provides that any individual who files a report required more than 30 days after the due date shall pay a $200 filing fee to the United States Treasury. In addition, a maximum civil penalty of up to more than $61,585 may be assessed against any individual who knowingly and willfully fails to file or falsifies any Statement, and the Committee is required to refer to the Attorney General the name of any individual who it has reasonable cause to believe has done so.

Please read the instruction booklet carefully before completing the Statement. If you have any questions concerning the reporting requirements, or you would like a prescreen of your report, contact the Committee at (202) 225-7103 or financial.disclosure@mail.house.gov. If you use the electronic filing system, you may submit your filing electronically. If you file in paper, the completed Statement (with two copies) should be sent in the enclosed envelope or hand delivered to the Legislative Resource Center, B-81 Cannon House Office Building, Washington, DC 20515.

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TuesdayAssociatesLLC.com

Holly Robichaud
Founder

Daniel K. Webster
President

Mr. Sid Sharma
[redacted]
Dear Sid,

Congratulations on your decision to run for the United States Congress. It is essential to the future of our country that we stop the socialist Democrats.

For more than 25 years, we have worked to elect Republicans to office. Our firm is a multi-Pollie award winner for our strategies, direct mail and fundraising. In fact, we have been recognized for running the best campaign in the country. Over the past 8 years, we have won 94% of our primaries and a great record of winning General Elections.

Whether it is a Primary or General Election, our winning campaigns entail an understanding of message, strategy, tactics, management, fundraising, direct mail, and media relations.

Wouldn't you like to have the edge?

We are a boutique consulting firm that only handles a limited number of clients. We customize campaign and fundraising plans to maximize results for our clients.

Let us make a difference for your campaign by tailoring and implementing a strategic plan that will result in your victory.

I hope that we can speak in the near future to discuss your candidacy.

Sincerely,

Holly Robichaud
President

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:22-cv-59-BO

SIDDHANTH SHARMA, Plaintiff, v. DAMON CIRCOSTA, et al., Defendants.	**MEMORANDUM OF LAW IN SUPPORT OF STATE BOARD DEFENDANTS' MOTION TO DISMISS**

NOW COME Defendants, Damon Circosta, Stella Anderson, Jeff Carmon, Stacy Eggers, IV, Tommy Tucker, Karen Brinson Bell, and the North Carolina State Board of Elections ("Defendants" or "State Board Defendants"), through counsel, to provide this memorandum in support of their motion to dismiss.

Nature of the Case

Plaintiff filed a Complaint alleging that several of the North Carolina State Board of Elections' candidate filing requirements for the 2022 mid-term elections are unconstitutional under the U.S. Constitution's First and Fourteenth Amendments; Qualifications Clause for members of the U.S. House of Representatives contained in Article I, Section 2, Clause 2; and Supremacy Clause in Article VI, Section 2. [D.E. 1]. According to Plaintiff, the invalid requirements are as follows: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days; and 3) that they not have any felony convictions. [D.E. 1]. Plaintiff contends these requirements are preventing him from accessing the ballot as a candidate for North Carolina's 2022 primary election and requests declaratory and injunctive relief. Specifically, he asks that the Court stay the candidate filing deadline, at least as it

concerns the filing deadline for U.S. House of Representative candidates; declare the State Board's candidate qualifications for federal office unconstitutional; and order that he be allowed to participate in the 2022 mid-term election for seats in the U.S. House of Representatives.

Plaintiff filed an affidavit of service purporting that he served Defendants with his Complaint on February 8, 2022. [D.E. 15]. With the Complaint, Plaintiff also filed a Motion for Preliminary Injunction, for a Temporary Restraining Order, and to Consolidate, all of which were denied by the Court on February 9, 2022. [D.E. 2, 3, & 7]. Plaintiff filed a second Motion for a Temporary Protective Order on February 28, 2022, which remains pending. [D.E. 26].

This Court should dismiss Plaintiff's Complaint for lack of personal jurisdiction and insufficient service of process under Rules 12(b)(2) and (5) of the Federal Rules of Civil Procedure. The Court should also dismiss the Complaint under Rule 12(b)(1) because Plaintiff lacks standing and because his cause of action is both not ripe and also moot. Plaintiff's claims are not ripe because he never actually attempted to file a notice of candidacy form with the State Board, and they are moot because the time for candidate filing closed on March 4, 2022. And, finally, Plaintiff's claims are subject to dismissal under Rule 12(b)(6), because he has failed to state a claim upon which relief can be granted.

Statement of Facts

Plaintiff's Allegations

Plaintiff alleges that he has "officially become a [Republican] candidate" for a seat in the U.S. House of Representatives in North Carolina's District 2 for the 2022 mid-term election. [D.E. 1 at 3 & Ex. 1]. According to Plaintiff, when he attempted to file as a candidate for District 2 with the State Board of Elections ("the State Board" or "the Board"), he found out that the Board has unconstitutional requirements for candidate filings and that the Board threatened to

arrest him for failing to meet its candidate qualifications. [*Id.* at 3-4]. Petitioner claims he is in fact bringing the present action to prevent the Board from arresting him. [*Id.* at 4].

Plaintiff notes in his Complaint that the North Carolina Supreme Court had stayed candidate filing for the 2022 primary election, such that the Board was accepting candidate filings between February 24 and March 4, 2022.[1] Plaintiff alleges that it was the N.C. Supreme Court's stay of candidate filing which prompted him to file the present action. [*Id.*]

Filing a Notice of Candidacy in North Carolina and Qualifications to Serve in Congress

To be placed on a primary election ballot in North Carolina, a person must file a notice of candidacy with either a county board of elections or the State Board, depending upon the office for which the candidate files the notice. N.C.G.S. § 163-106(a) (2021). A notice of candidacy for a seat in the U.S. House of Representatives must be filed with the State Board. *Id.*, -106.2. "No person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy." *Id.*, -106.1. The method by which North Carolinians affiliate with a particular political party is by designating that party affiliation on their voter registration forms. *Id.*, -82.4(d) (requiring that the voter registration form must have a place "for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an 'unaffiliated' voter"); *see also id.*, -96 (providing the definition of "political party"). It follows that candidates filing for a partisan primary must have been a registered voter with the North

[1]As Plaintiff's allegations in his Complaint indicate, candidate filing in North Carolina did occur between February 24 and March 4, 2022 for the May 17, 2022 primary election. https://www.ncsbe.gov/news/press-releases/2022/02/22/state-board-issues-11-reminders-candidate-filing-resumes-thursday (last visited Mar. 21, 2022). Plaintiff filed his Complaint prior to the time candidate filing resumed. The allegations in Plaintiff's Complaint show he did not intend to file a notice of candidacy during the filing period. Nor did he. *See* @AFFIDAVIT?

Carolina political party in whose primary they seek to file for at least ninety days prior to filing a notice of candidacy. *See, e.g., In Re Cormos*, N.C. State Bd. Order (Mar. 21, 2022) https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Cancellation%20of%20Notice%20of%20Candidacy/Cormos_2022_CD3.pdf (last visited Mar. 21, 2022).

However, even if a person has not been affiliated with a party for the requisite period of time, and is thereby precluded from running in a particular party's primary, he still has the option to run as an unaffiliated candidate in the general election, if he collects a certain number of signatures on a petition supporting his candidacy. *Id.*, -122.

State statute dictates that all individuals filing a notice of candidacy, except for those running for sheriff,[2] must answer the following question on the notice of candidacy form, "Have you ever been convicted of a felony?" *Id.*, -106(e). If the candidate answers, "yes," he must provide "the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction." *Id.* A candidate must also swear or affirm, under penalty of being convicted of a Class I felony, that the information he provides about his felony conviction, if any, is "true, correct, and complete to the best of the candidate's knowledge or belief." *Id.* If an individual fails to provide the above-noted answer or information within forty-eight hours of filing his notice of candidacy, his filing is considered incomplete, his name "shall not appear on the ballot as a candidate, and votes for that individual shall not be counted." *Id.*

State statute also dictates that those individuals required to file their notice of candidacy with the State Board, including individuals filing notices of candidacy for U.S. House, must file with their notice "a certificate signed by the chairman of the board of elections or the director of

[2] Candidates for sheriff are subject to different felony reporting requirements. *See* N.C.G.S. § 163-106(f).

elections of the county in which they are registered to vote, stating that the person is registered to vote in that county[.]" *Id.*, -163-106.2 & -106.5(a).

The substantive qualifications to serve in the U.S. House of Representatives are provided for in the U.S. Constitution. *See* U.S. Const. art. I, § 2, cl. 2, and amend. 14, § 3. According to the Constitution, to qualify for office, a Representative must be at least twenty-five years of age, he must have been a United States citizen for at least seven years, he must be an inhabitant of the state he represents at the time he was elected, and if he has previously sworn an oath to uphold the Constitution, he subsequently could not have engaged in insurrection in violation of that oath. *Id.* This list of qualifications is exclusive. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800-01 (1995); *see also Cook v. Gralike*, 531 U.S. 510, 525-26 (2001). Accordingly, any state constitutional or state statutory candidate qualifications not listed in the U.S. Constitution are inapplicable to and not enforceable against a candidate for the U.S. House of Representatives, as such application or enforcement would violate the U.S. Constitution. *See id.*

> When any candidate files a notice of candidacy with a board of elections . . . , the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

N.C.G.S. § 163-106.5(b).

"The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled[.]" *Id.* A candidate who is "adversely affected by a cancellation" can request a hearing concerning the cancellation. *Id.* When requested, a hearing is conducted by a panel of county board of elections members, which will issue a written ruling following the hearing. *Id.*, -106.5(b), -163-127.3, & -127.4. The panel's ruling is immediately appealable to the State Board, and the State Board's decision is appealable as of right to the North Carolina Court of Appeals.

Id., -127.6. Further review is available from the North Carolina Supreme Court and even the United States Supreme Court, assuming there is a justiciable federal issue. *See* N.C.G.S. §§ 7A-30 & -31; U.S. S. Ct. R. 13.

Legal Argument

I. PLAINTIFF'S CLAIM SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

This Court is without personal or subject matter jurisdiction. It should therefore dismiss Plaintiff's Complaint under Rule 12(b)(1), (2), and (5) for the reasons discussed below.

A. The Court Lacks Personal Jurisdiction Due to Plaintiff's Improper Service.

Under Rule 12(b)(2) and (5), failure to properly serve process on a defendant deprives the Court of personal jurisdiction. *Scott v. N.C. Dep't of Revenue*, No. 3:13-CV-00294, 2014 WL 1267248, at *1 (W.D.N.C. Mar. 25, 2014). "Actual notice of a lawsuit is insufficient to confer jurisdiction over the person of a defendant, and improper service of process, even if it results in notice, is not sufficient to confer personal jurisdiction." *Id.* (quoting *Bowman v. Weeks Marine, Inc.*, 936 F. Supp. 329, 336-37 (D.S.C. 1996) (citing *Mid—Continent Wood Prods., Inc. v. Harris*, 936 F.2d 297 (7th Cir.1991)), abrogated on other grounds by, *Murphy Bros., Inc. v. Michetti Pipestringing, Inc.*, 526 U.S. 344 (1999))). Under Rule 4(j) of the Federal Rules of Civil Procedure, and North Carolina's service rules, the State Board may be served through an appointed "process agent." Fed. R. Civ. P. 4(j); N.C.G.S. § 1A-1, Rule 4(j)(4)a. The appointed process agent for the State Board is its general counsel. *See* N.C. Dep't of Justice, Process Agent Directory, *available at* https://bit.ly/3hWizlQ (last visited Mar. 21, 2022). The same methods for service on state agencies apply to state officers. *See* N.C.G.S. § 1A-1, Rule 4(j)(4)d.

Plaintiff's Affidavit of Service states that Monika Sharma hand-delivered process to Ms. Ernestine Watkins, Office Administrator at the North Carolina State Board of Elections, and that

she agreed to accept service on behalf of the Members and Executive Director of the State Board. [D.E. 15 at 2]. This description is not accurate. Even if a hand delivery took place when Ms. Watkins received a package from a person who walked into the State Board offices, that is not legal acceptance of service of process. Nor is it sufficient service under North Carolina law because Ms. Watkins is not authorized to accept service on behalf of the Defendants. N.C.G.S. § 1A-1, Rule 4(j)(4)a. Ms. Watkins is an Office Administrator, and not the designated process agent for the State Board. Thus, Plaintiff failed to properly serve Defendants, and as a result, this Court lacks personal jurisdiction over them. *See Scott*, 2014 WL 1267248, at *7 ("Under Federal Rule of Civil Procedure 4(j)(2)(A), delivering a copy of the Summons and Complaint to Defendant's chief executive officer would have been proper service. However, 'the word 'delivering' in Rule 4(j) indicates that personal service should be made upon that particular individual.' (citing 4B Fed. Prac. & Proc. Civ. § 1109 (3d. ed. 2013) (collecting cases)).

B. This Court Lacks Subject Matter Jurisdiction.

This Court lacks subject matter jurisdiction because Plaintiff lacks standing and his case is both not ripe and now moot. Plaintiff bears the burden of proving subject matter jurisdiction on a motion to dismiss. *Adams v. Bain*, 697 F.2d 1213, 1219 (4th Cir. 1982). When a defendant challenges the factual predicate of subject matter jurisdiction, a court "'is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991) (citation and internal quotation marks omitted); *see also Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647 (4th Cir. 1999); *Velasco v. Gov't of Indon.*, 370 F.3d 392, 398 (4th Cir. 2004)("Generally, when a defendant challenges subject matter jurisdiction via a Rule 12(b)(1) motion to dismiss, the

district court may regard the pleadings as mere evidence on the issue and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." (citing *Bain*, 697 F.2d at 1219, and *Evans*, 166 F.3d at 647)).

1. Plaintiff Fails to Allege an Injury for Standing as it Concerns All of His Claims.

To satisfy the standing requirement at the pleading stage, a plaintiff must plausibly allege (1) an injury in fact, (2) that is fairly traceable to the defendant's challenged conduct, and (3) that is likely redressable by a favorable judicial decision. *Spokeo, Inc. v. Robins,* 578 U.S. 330, 338 (2016).

Plaintiff cannot demonstrate an actual injury to support standing for any of his claims. Article III standing exists only when a plaintiff "personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant." *Gladstone, Realtors v. Bellwood*, 441 U.S. 91, 99 (1979). If a plaintiff has not suffered an injury, there is no standing, and the matter is subject to dismissal for lack of subject matter jurisdiction pursuant to Rule 12(b)(1). *See Allen v. Wright*, 468 U.S. 737, 750-66 (1984).

"To establish injury in fact, a plaintiff must show that he suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Beck v. McDonald*, 848 F.3d 262, 270-71 (4th Cir. 2017) (citation omitted). A plaintiff lacks standing when his claimed injury is "premised on a speculative chain of possibilities." *Clapper v. Amnesty, Int'l USA*, 568 U.S. 398, 410 (2013). Thus, allegations of a merely possible future injury do not create standing. *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Trump v. New York*, 141 S. Ct. 530, 544 (2020) (dismissing for lack of standing and ripeness because the plaintiff's alleged injury was predictive at best, and noting "any prediction about future injury [is] just that—a prediction").

Future injury can satisfy Article III but only when 'the threatened injury is certainly impending, or there is a substantial risk that the harm will occur.'" *Planned Parenthood S. Atl. v. Kerr*, ___ F.3d ___, ___, 2022 U.S. App. LEXIS 6038, at *13 (4th Cir. 2022) (citations omitted). "[S]ome day intentions—without any description of concrete plans, or indeed even any specification of when the some day will be—do not support a finding of the 'actual or imminent' injury that [the Supreme Court's] cases require." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 564 (1992) (citation omitted).

Plaintiff's allegations are purely speculative at best because he has made his claim before he has suffered any harm, or even any "certainly impeding" harm. *Kerr,* 2022 U.S. App. LEXIS at *13. Plaintiff never filed a notice of candidacy with the State Board, much less had a notice of candidacy rejected by the Board. See the Affidavit of Ariel Bushel, ¶ 7, attached hereto as Exhibit 1. Without having filed a notice of candidacy, the entirety of Plaintiff's allegations that his candidacy would be rejected, or that he would be arrested for even trying to file as a candidate, are entirely speculative and do not satisfy the injury-in-fact requirements of Article III standing.

The speculative nature of Plaintiff's injuries is further explored in the sections below, which are incorporated by reference in support of this argument. Given the harm Plaintiff alleges for all claims is purely speculative, he fails to allege an injury sufficient to survive a motion to dismiss made under Rule 12(b)(1) for lack of subject matter jurisdiction.

2. Even if the Court were to determine the alleged harm underlying that claim is more than speculative, Plaintiff does not have standing to bring his third claim.

Even assuming arguendo Plaintiff's allegation of injury were more than speculative, he still lacks standing to raise his third claim, in which he challenges the requirement in N.C.G.S. § 163-106(e) that candidates in North Carolina cannot be felons. Not only is there still no injury in

fact under the theory of future enforcement, but Plaintiff also cannot show the other criteria necessary for standing, namely traceability and redressability. The no-felony requirement in N.C.G.S. § 163-106(e) is not enforceable against Plaintiff. As stated in the facts section above, the qualifications for U.S. House of Representative members are exclusively provided for by the United States Constitution, and states cannot create additional qualifications. *See* U.S. Const. art. I, § 2, cl. 2, and amend. 14, § 3; *Term Limits*, 514 U.S. at 800-01. Accordingly, any state constitutional or state statutory candidate qualification not listed in the U.S. Constitution, such as requiring that candidates not be convicted felons, is inapplicable to a candidate for the U.S. House of Representatives. See *id.* Thus, had Plaintiff, or any other candidate for U.S. House of Representatives who is currently serving a period of incarceration based upon a felony conviction, or who has prior felony convictions, actually attempted to file a notice of candidacy with the State Board, the Board would not have rejected their notices of candidacy based *solely* upon their status as felons or prior felons, pursuant to N.C.G.S. § 163-106(e).

To have Article III standing to bring a challenge for future enforcement of a statute, plaintiffs must plausibly allege a "credible threat of enforcement." *Abbott v. Pastides*, 900 F.3d 160, 176 (4th Cir. 2018). Plausible allegations of a credible enforcement threat require "more than the fact that state officials stand ready to perform their general duty to enforce laws." *Doe v. Duling*, 782 F.2d 1202, 1206 (4th Cir. 1986). Instead, the "most obvious" way to allege a credible threat of enforcement is to point to past enforcement actions. *Abbott*, 900 F.3d at 176. If plaintiffs cannot do so, they must allege some "objective reason" to believe that an enforcement authority will begin to enforce the statute against them. *See id.* at 177.

Plaintiff has not alleged (1) a history of past enforcement or (2) any objective reason to believe that the State Board will enforce the no-felony provision to prevent him from appearing

on the ballot. He thus has not shown an injury-in-fact, particularly where his claim three is concerned. Plaintiff alleges in his Complaint that he did attempt to file a notice of candidacy, but the Board threatened him with arrest if he did so. The State Board is not aware of why Plaintiff believes this and is unaware of any such conversation, but, regardless, there is no record of Plaintiff even attempting to file any notice of candidacy with the State Board. (Ex. 1, ¶ 7) Also, the State Board employs no peace officers, nor has any arrest power.

The Fourth Circuit found lack of an injury to support standing under similar circumstances in *Buscemi v. Bell*, 964 F.3d 252 (4th Cir. 2020). In *Buscemi*, one of the plaintiffs, a Michigan resident who sought ballot access to run as an unaffiliated candidate for president in North Carolina, challenged a North Carolina elections regulation requiring candidates to be "qualified" voters. *Id.* at 259. The plaintiff contended "qualified" voter meant a voter "who satisfies the statutory requirements to vote in North Carolina and has registered to vote." *Id.* The plaintiff was a registered voter, but not in North Carolina, and alleged the "qualified" voter provision violated the Constitution because it conflicted with the list of constitutional qualifications for president, which does not contain a state residency requirement. *Id.* The State Board agreed that if "qualified" resident meant what the plaintiff contended, it was an unconstitutional qualification. *Id.* at 259-60. But the Board argued that the plaintiff did not have standing, stipulating that it had never enforced the requirement to exclude unaffiliated nonresident presidential candidates and that it would not exclude the plaintiff. *Id.* at 260. The Fourth Circuit concluded, given the Board's history and stipulation that it would not enforce the challenged requirement, and the plaintiff's failure to allege the Board had enforced the requirement in the past, the Michigan plaintiff in *Buscemi* "failed to allege 'a credible threat of

enforcement'" and, therefore, did not have standing to challenge the "qualified" voter provision. *Id.* (quoting *Abbott,* 900 F.3d at 176).

Buscemi is highly persuasive, if not binding here. The State Board Defendants hereby give an assurance that it would not have enforced the no-felony requirement against Plaintiff had he filed his notice of candidacy, and he does not allege that the Board has enforced the requirement against a congressional candidate in the past. This assurance should not be misunderstood to be a waiver of all other qualifications, including the requirement that he have been affiliated with a political party for ninety days prior to filing to run in that party's primary, but rather that Plaintiff would not be rejected based solely on his status as a current felon. In accordance with *Buscemi*, Plaintiff has failed to allege an injury in fact.

In addition to not establishing an injury as to his third claim, Plaintiff fails to show either redressability or traceability. First, Plaintiff has not plausibly alleged an injury that is fairly traceable to any action or decision of the State Board. Traceability "examines the causal connection between the assertedly unlawful conduct and the alleged injury." *Allen*, 468 U.S. at 753 n.19. Here, Plaintiff's alleged injury is his exclusion from the ballot. But that injury is not fairly traceable to the State Board Defendants' alleged potential future enforcement of the no-felony requirement. Instead, Plaintiff's potential exclusion from the primarily ballot would be directly attributable to his inability to satisfy another candidate-filing requirement, namely that he was not registered as affiliated with a particular party for ninety days before filing as a candidate for that party's primary. *See* N.C.G.S. § 163-106.1, *and* discussion *infra.* As a result, Plaintiff's injury would not be fairly traceable to the State Board Defendants' alleged conduct.

Second and relatedly, Plaintiff has not plausibly alleged an injury that is likely redressable by a favorable judicial decision. Redressability "examines the causal connection

between the alleged injury and the judicial relief requested." *Allen*, 468 U.S. at 753 n.19. As indicated above, this Court does not have the remedial power to require the State Board to put Plaintiff's name on the ballot because he does not meet other ballot requirements. Thus, Plaintiff would still be excluded from the ballot, even if the court enjoined the State Board from enforcing N.C.G.S. § 163-106(e) to exclude felons from running for Congress. As a result, Plaintiff's injury is not redressable by a favorable judicial decision.

Because Plaintiff has not plausibly alleged injury, traceability, or redressability, he does not have Article III standing to sue as to his third claim, and it should be dismissed for lack of jurisdiction.

3. Plaintiff's Claims are Not Ripe.

Plaintiff also lacks standing because his claims are not ripe. The ripeness doctrine aims to "prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies." *Abbott Labs. v. Gardner*, 387 U.S. 136, 148 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

Abbott established a two-pronged test for ripeness: (1) whether the issues are fit for judicial decision and (2) whether hardship will fall to the petitioning party on withholding court consideration. *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208-09 (4th Cir. 1992). Under the first prong, a case is fit for judicial review if "the issues to be considered are purely legal ones and where the agency rule or action giving rise to the controversy is final and not dependent upon future uncertainties or intervening agency rulings." *Id.* Under the second prong, hardship "is measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law." *Id.*

Plaintiff cannot satisfy the first prong, and that alone renders the present claims not yet ripe for this Court's review. Plaintiff has alleged that because he is a convicted felon who is currently incarcerated and has not yet had his rights of citizenship restored under North Carolina law, he will be prevented from filing to run as a candidate to the United States House of Representatives. [D.E. 1, pp. 4-10]. By filing this lawsuit, Plaintiff has asked the legal questions of whether his notice of candidacy would be accepted by the State Board, but because he did not actually file a notice of candidacy, no agency action has occurred, much less an adverse agency action that could give rise to injury. (Ex. 1, ¶ 7) Plaintiff therefore cannot show that he has been or will imminently be injured. It follows that his claims should be dismissed per *Abbot*'s first prong as not yet ripe because the alleged harm is entirely dependent on "future uncertainties [and] intervening agency rulings." *Charter Fed. Sav. Bank*, 976 F.2d at 208-09 ("[I]n the context of an administrative case, there must be 'an administrative decision [that] has been formalized and its effects felt in a concrete way by the challenging parties.'" (citation omitted)).

Similarly, Plaintiff cannot satisfy the second prong of *Abbot*'s ripeness analysis. Under that prong, withholding court consideration until a later date, if at all, presents no additional hardship to Plaintiff. Contrary to his unsupported allegations, Plaintiff did not file a notice of candidacy prior to filing his Complaint, the State Board did not prevent Plaintiff from filing a notice of candidacy, and even after the filing of his Complaint, nothing prevented Plaintiff from filing a notice of candidacy during the candidate filing period. Nothing prevented him from filing the notice after this Court denied his request for injunctive relief either.

The candidate filing period was open from December 6, 2021 to December 8, 2021, before it was suspended by order the Supreme Court of North Carolina as a result of redistricting litigation. *See Harper, et al. v. Moore, et al.*, No. 413PA21, Dkt. No. 10 (December 8, 2021),

available at

https://appellate.nccourts.org/orders.php?t=PA&court=1&id=395618&pdf=1&a=0&docket=1&dev=1 (last visited Mar. 21, 2022). The State Board received no notice of candidacy from Plaintiff during that window. (Ex. 1, ¶¶ 6-7)

Plaintiff filed his initial Complaint in this action on February 7, 2022. [D.E. 1]. Along with his pleadings, he filed a motion for a temporary restraining order and preliminary injunction. [D.E. 2, 3]. On February 9, 2022, this Court denied all requested injunctive relief. [D.E. 7].

The candidate filing period resumed on February 24, 2022 and continued until noon on March 4, 2022. (Ex. 1, ¶ 6) The State Board received no notice of candidacy from Plaintiff during that later window. (Ex. 1, ¶¶ 6-7) While candidate filing was occurring, on February 28, 2022, Plaintiff filed a second motion for a temporary restraining order based on the same grounds as the first and without any change to his pleadings. [D.E. 26]. Before candidate filing closed, Plaintiff filed opposition to Defendants' request for an extension on March 2, 2022. [D.E. 28].

Thus, both before Plaintiff filed his Complaint, and after his initial motions for injunctive relief were denied, Plaintiff had the opportunity to file a notice of candidacy with the State Board and chose not to do so. This cannot be blamed on his status as an incarcerated individual. As indicated above, he was able to prepare and file a second motion for a temporary restraining order on February 28, and he was able to prepare and file opposition to Defendants' request for an extension on March 2. [D.E. 26, 28].

The time period within which to file a notice of candidacy for the primary election ended at noon on March 4, 2022. *See* n.1 *supra.* Thus, to the extent Plaintiff desires to file as a party

candidate ahead of the partisan primary, Plaintiff took no action to so, and the time to do so has expired. This inaction cannot be attributed to Defendants.

Plaintiff's claims are not ripe because no state action occurred to cause him harm. To the extent Plaintiff desires to file a notice of candidacy for the primary election in the next cycle in two years, he will have the opportunity to do so then. But any potential harm that may arise out of that has not yet occurred, remains speculative, and is not yet ripe for adjudication.

Most importantly to this analysis, Plaintiff still has time to attempt to become a candidate for United States House of Representatives during this election cycle. Pursuant to N.C.G.S. § 163-122(a)(2), an individual who wishes to be an unaffiliated candidate appearing on the general election ballot must file a written petition with the State Board of Elections supporting that voter's candidacy for office on or before noon on the day of the primary election. N.C.G.S. § 163-122(a)(2) (2021). Section 163-122(a)(2) requires unaffiliated candidates to be registered voters. *Id.* However, that requirement is not enforceable against congressional candidates. *See* Part II-A *supra.*

Insisting that Plaintiff first actually file a notice of candidacy and permitting the matter to proceed from there does not in any way limit Plaintiff's ability to challenge any adverse action. If Plaintiff's filing was rejected by the State Board for any reason, he is free to challenge that decision. He is entitled to a hearing on that challenge, and if he receives an adverse ruling from the State Board, he can seek an appeal as of right to the North Carolina Court of Appeals. N.C.G.S. §§ 163-106.5(b), -127.4, & -127.6. He will then have the option to seek further review from the North Carolina Supreme Court and even the United States Supreme Court, assuming he has a justiciable federal issue. *See* N.C.G.S. §§ 7A-30 & -31; U.S. S. Ct. R. 13.

Interceding at this point is unnecessary. The candidate filing process preserves Plaintiff's ability to seek office and presents no hardship to Plaintiff. Plaintiff must avail himself of the administrative process, and only if he is injured after that process is completed would he have a ripe claim.

Other courts considering similar challenges to an agency administrative process have routinely found that such matters are not yet ripe for judicial determination. In *Babbitt*, the Fourth Circuit found that the case was sufficiently ripe because the outcome of the agency process, while not formally finished, was all but final and the injury to the party was clear. *Id.* at 668. For comparison, in *Charter Federal Savings Bank*, the Fourth Circuit held that where an agency was required to make multiple decisions and take several actions before an injury could occur, the issues at hand were not ripe for judicial decision. 976 F.2d at 208-09.

Similarly, in *Doe v. Va. Dep't of State Police,* the Fourth Circuit applied the two-pronged *Abbott* analysis to reject plaintiff's challenge to statutes that led to her placement on the sex offender registry as not ripe because she had not petitioned the state court for removal, the outcome of which was wholly speculative.[3] 713 F.3d 745, 758-760 (4th Cir. 2013). With *Doe,* the Fourth Circuit further explained that even though "the Virginia law itself is harsh on Doe, requiring her to wait to bring this case to federal court until after she has sought permission from a Virginia circuit court will not cause her undue hardship." *Id.*, at 759.

Here, the matter is not yet ripe because there was no attempt by Plaintiff to file his notice of candidacy whatsoever; no harm is possible until he takes that first initial step. Moreover, Plaintiff does not suffer hardship because each of his arguments may be heard via the process

[3] The *Doe* court found that the plaintiff did have standing to challenge her placement on the registry, as that had already occurred, but dismissed that claim nonetheless under Rule 12(b)(6). *Id.* at 759-60.

outlined in governing state statutes, which include an appeal as of right to the North Carolina Court of Appeals. N.C.G.S. §§ 163-106.5(b), -127.4, & -127.6.

Finally, the longstanding doctrine of constitutional avoidance also supports application of the ripeness doctrine. "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Rescue Army v. Mun. Court of L.A.*, 331 U.S. 549, 568-69, 570 n.34 (1947) (quoting *Spector Motor Service* v. *McLaughlin*, 323 U.S. 101, 105 (1944)). Courts should therefore reject requests to resolve a constitution question placed before the court in advance of the necessity for such a decision, or based upon "abstract, hypothetical, or contingent questions . . . ." *Id.* (citations omitted).

In sum, to the extent Plaintiff believes he will be injured if and when at some point in the future he attempts to seek office, those claims are not ripe because he has not yet attempted to file a notice of candidacy with the State Board, and still has the opportunity to seek office during this election cycle, if he chooses to do so.

4. Plaintiff's Claims are Moot.

To the extent Plaintiff's claims are exclusively based on his efforts to file as a member of the Republican Party and appear as a Republican in the May 17, 2022 primary, his claims are now moot. [D.E. 1, pp. 5-8 & Ex. 1].

Federal courts are constitutionally limited to adjudicating only "actual cases or controversies." *Iron Arrow Honor Soc'y v. Heckler*, 464 U.S. 67, 70 (1983); U.S. Const. art. III, § 2. Thus, when an actual case or controversy no longer exists, a federal court must dismiss the action as moot, regardless of "how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit." *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013)

(citation omitted). "A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

As Plaintiff acknowledges in his Complaint, candidate filing in North Carolina resumed on February 24, 2022 and ended on March 4, 2022. [D.E. 1 at 4]; see also n.1 *supra*. Moreover, pursuant to N.C.G.S. § 163-227.10, absentee ballots are already being finalized and will soon be distributed, as they must be mailed out by county boards starting fifty days before the primary on March 28, 2022. *See* N.C.G.S. § 163-227.10. As discussed in the sections above, Plaintiff chose not to file during the candidate filing period, and candidate filing has now closed. Therefore, all of his claims are moot, to the extent his claims are exclusively based on his efforts to file as a member of the Republican Party and appear as a Republican in the May 17, 2022 primary.

For the above-discussed reasons, there is no justiciable issue in this case. As such, it should be dismissed for lack of jurisdiction under Rule 12(b)(1).

II. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE IT FAILS TO STATE A CLAIM.

Should the Court choose to exercise jurisdiction over Plaintiff's claims, they should still be dismissed under Rule 12(b)(6), because Plaintiff fails to state a claim. To survive a Rule 12(b)(6) motion, "a complaint must contain sufficient factual matter . . . 'to state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678.

Here, Plaintiff appears to argue that three statutory requirements applicable to his notice of candidacy for a seat in the U.S. House of Representatives are actually unconstitutional qualifications, rather than constitutional ballot-access restrictions. To that end, he raises three

claims alleging the following three North Carolina candidate-filing requirements are unlawful: (1) a candidate must be a registered voter, (2) a candidate for the partisan primary must be affiliated with that particular party for at least ninety days prior to filing his notices of candidacy, and (3) a candidate for Congress cannot run for office if he is a felon.

A. Plaintiff Fails to State a Claim as to his First and Third Claim.

As indicated above, State Board Defendants admit that the no-felony candidate requirement of N.C.G.S. § 163-106(e) is not enforceable against Plaintiff. His third claim therefore fails.

Pursuant to N.C.G.S. § 163-106.5(b), the State Board must "cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency." This means that the State Board will cancel a congressional candidate's notice *only* when the candidate fails to "meet the constitutional or statutory qualifications for the office." *See id.* Under the Constitution, not being a felon is not a qualification for a member of the U.S. House of Representatives. U.S. Const. art. I, § 1, cl. 2. This Court need not make any determination as to the constitutionality of N.C.G.S. § 163-106(e) as applied to Plaintiff. This is because, in light of Article I, Section 2, Clause 2, N.C.G.S. § 163-106.5(b) prohibits the State Board from rejecting a congressional candidate's notice because that candidate is a felon. Therefore, Plaintiff's third claim is subject to dismissal under Rule 12(b)(6).

This same reasoning extends to Plaintiff's first claim in which he alleges being registered to vote is an unconstitutional additional qualification for U.S. House candidates. According to Plaintiff, because he is a candidate for Congress who cannot register to vote, it is unconstitutional to apply the state-statutory registered-voter requirement to his notice of candidacy. Under the Constitution, registering to vote is not a qualification for a member of the

U.S. House of Representatives. U.S. Const. art. I, § 1, cl. 2. For the reasons stated below, it is not unconstitutional to require a candidate to register to vote *as affiliated with a particular party* for a certain period of time to establish his party affiliation to be able to participate in a partisan primary. However, requiring candidates to be registered voters is unenforceable against congressional candidates because it would act as an additional qualification to that office beyond those contained within the U.S. Constitution. Therefore, Plaintiff would not be barred solely because he was not a registered voter. *See* N.C.G.S. § 163-106.5(b), *and* discussion *supra*. As a result, Plaintiff's first claim is subject to dismissal under Rule 12(b)(6).

B. Plaintiff Fails to State a Claim as to his Second Claim.

Plaintiff's second claim is are also subject to dismissal under Rule 12(b)(6). Requiring candidates to register as being affiliated with a particular party ninety days before filing a notice of candidacy, is not an additional, unconstitutional qualification for U.S. House candidates. Nor are they invalid ballot-access restrictions.

1. The challenged party affiliation requirement is not an unconstitutional qualification.

The challenged requirement to be affiliated with a party for ninety days is not a qualification for office. It is instead a typical time, place, and manner restriction justified by important state interests. *See* U.S. Const. art. I, § 4, cl. 1.

The Supreme Court explored the distinction between qualifications and regulations of time, place, and manner in *Storer v. Brown*, 415 U.S. 724 (1974), *United States Term Limits v. Thornton*, 514 U.S. 779, and *Cook v. Gralike*, 531 U.S. 510.

In *Storer,* the Supreme Court rejected the argument that a state's disaffiliation law added a qualification for congressional office over and above those provided for in the U.S. Constitution. 415 U.S. at 726. That law denied an otherwise qualified independent candidate a

place on the general-election ballot where "he voted in the immediately preceding primary or if he had registered affiliation with a qualified political party at any time within one year prior to the immediately preceding primary election" *Id.* (citations omitted). In addressing the State's constitutional authority to impose the disaffiliation and other election laws, the Court in *Storer* emphasized that

> the States have evolved comprehensive, and in many respects complex, election codes regulating in most substantial ways, with respect to both federal and state elections, the time, place, and manner of holding primary and general elections, the registration and qualifications of voters, and the selection and qualification of candidates. . . . It is very unlikely that all or even a large portion of the state election laws would fail to pass muster under our cases[.]

Id. at 730.

According to the Court in *Storer*, the disaffiliation law was not an unconstitutional qualification. It was instead a constitutional time, place, and manner requirement that preserved election integrity by protecting, among other compelling interests, "the stability of [the state's] political system" and "the direct primary process by refusing to recognize independent candidates who do not make early plans to leave a party and take the alternative course to the ballot." *Id.* at 735. The Court further concluded that the law "works against independent candidacies prompted by short-range political goals, pique, or personal quarrel." *Id.* at 735, 736 (considering "'the stability of [a state's] political system' as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status").

In *United States Term Limits,* 514 U.S. 779, the Court invalidated a state constitutional amendment imposing term limits on "otherwise-eligible candidates for Congress." *Id.* at 783. This was because the amendment had "the likely effect of handicapping a class of candidates," those being candidates who served in Congress for the length of time designated by the

amendment, and had "the sole purpose of creating additional qualifications," albeit doing so indirectly. *Id.* at 836. The Court made it clear that the only qualifications for congressional office were those in the Constitution and that the State had no authority to add others. *Id.*

According to the Court in *U.S. Term Limits*, the authority granted to the states concerning elections "is a grant of authority to issue procedural regulations," not "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 833-34. The Court recognized the laws at issue in *Storer* did none of these things. Rather, they

> regulated election procedures and did not even arguably impose any substantive qualification rendering a class of candidates ineligible for ballot position. They served the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service in Congress.

U.S. Term Limits, 514 U.S. at 835.

As the Supreme Court acknowledged in *U.S. Term Limits*, it has "approved of state regulations designed to ensure that elections are fair and honest and . . . [that] some sort of order, rather than chaos, . . . accompan[ies] the democratic processes." *Id.* at 834-35 (internal quotation marks and citation omitted) (alterations in original). It also acknowledged it has recognized the State's interest in preserving election integrity included "preventing interparty raiding"; "maintaining . . . the various routes to the ballot"; "avoiding voter confusion, ballot overcrowding, or the presence of frivolous candidacies"; "seeking to assure that elections are operated equitably and efficiently"; and "guarding against irregularity and error in the tabulation of votes." *Id.* at 834 (internal quotation marks and citations omitted).

Later, in *Cook*, 531 U.S. 510, the Supreme Court concluded a requirement that state ballots for federal congressional offices must indicate whether a candidate supported a federal

constitutional amendment to impose term limits was an unconstitutional qualification, because it "attempted to 'dictate electoral outcomes.'" *Id.* at 526 (quoting *U.S. Term Limits*, 514 U.S. at 833-34)). According to the Supreme Court, the required ballot notation in *Cook* was "[a] Scarlet Letter," intended to "handicap candidates at the most crucial stage in the election process—the instant before the vote is cast." *Id.* at 525 (citation and internal quotation omitted).

Here, requiring a candidate for a partisan primary to register as being affiliated with that party at least ninety days before the primary election to run in that election, are procedural regulations, not qualifications. Unlike term limits or declarations that a candidate does or does not support a particular issue, but similar to the disaffiliation law at issue in *Storer,* these regulations do not "dictate electoral outcomes" or "evade important constitutional restraints." *U.S. Term Limits*, 514 U.S. at 833-34. Nor do they "even arguably impose any substantive qualification rendering a class of candidates ineligible for ballot position." *Id.* at 835. Everyone filing a notice of candidacy to run in the primary must abide by these regulations, regardless of party, *see* N.C.G.S. § 163-106.1, and any candidate who is not registered with the party 90 days prior to filing, or who does not wish to be a party candidate, is free to seek access to the general election ballot through the petition process. *See* N.C.G.S. § 163-122(a)(2).

More importantly, they "serve[] the state interest in protecting the integrity and regularity of the election process, an interest independent of any attempt to evade the constitutional prohibition against the imposition of additional qualifications for service in Congress." *Cook*, 531 U.S. at 835. Indeed, requiring voter registration and registration for a minimum of ninety-days in the name of the party holding the primary in which a candidate wishes to participate preserves many of the same compelling interest protected by the disaffiliation law in *Storer.* Specifically, those requirements preserve "the stability of [North Carolina's] political system"

and "the direct primary process by refusing to recognize [] candidates who do not make early plans," and who are "prompted by short-range political goals[.]" *Cook*, 531 U.S. at 735. In this same vain, they "force potential candidates for office to think ahead before the filing deadline, thus weeding out frivolous candidacies and only permitting serious candidates to go forward." *McClure v. Galvin*, 386 F.3d 36, 43 (1st Cir. 2004) (concluding a state law which prohibited a candidate for a state office, who was running as an independent, from being affiliated with a political party ninety days prior to the primary filing deadline, and holding that the law was not an unconstitutional ballot-access restriction).

Other courts have found similar requirements for candidates to be procedural regulations and not additional, unconstitutional qualifications. *See, e.g.*, *Storer*, 415 U.S. 724; *Cartwright v. Barnes*, 304 F.3d 1138, 1139 (11th Cir. 2002) (providing that state law requiring candidates to obtain signatures from five percent of the state's registered voters to appear on the ballot was a constitutional elections regulation and not an additional qualification, while noting that the law required a demonstration of "substantial community support," which the Supreme Court had long recognized as a valid state interest); *Libertarian Party of Ill. v. Rednour*, 108 F.3d 768, 776-77 (7th Cir. 1997) (concluding state elections scheme for determining which parties were established parties, and were thus entitled to hold a primary, and which new parties' candidates could appear on the general election ballot, were procedural regulations and not additional unconstitutional qualifications, while noting that the requirements maintained "the integrity and regularity of the electoral process"); *De La Fuente v. Simon*, 940 N.W.2d 477, 491-92 (Minn. 2020) (concluding that state law directing parties to determine who will be the parties' presidential candidates, then to submit the names to the Secretary of State, was "not a substantive eligibility" equating to the constitutional qualifications for president, but part of a process which,

among other things, allowed the Secretary "to prepare, print, and distribute ballots that comply with state and federal election laws").

Because the state statutory ninety-day party affiliation requirement challenged by Plaintiff is a procedural regulation, not a qualification for office, and does not act as a total bar to office because any candidate may still seek to run as an unaffiliated candidate, it does not violate those portions of the U.S. Constitution exclusively establishing the only qualifications for members of the U.S. House of Representatives.

2. The challenged procedural regulation is a constitutional ballot-access restriction.

The challenged procedural regulation is a constitutional ballot-access restriction, and therefore, despite Plaintiff's contention to the contrary, it does not violate the First and Fourteenth Amendments to the U.S. Constitution.

"It is well established that ballot-access restrictions 'implicate substantial voting, associational and expressive rights protected by the First and Fourteenth Amendments.'" *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014) (quoting *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995)). In analyzing whether state election laws impermissibly infringe on such rights, the Supreme Court has instructed lower courts to 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." *Id.* (citing *Anderson*, 460 U.S. at 789 (1983), *and Burdick v. Takshi*, 504 U.S. 428, 434 (1992)). "Election laws will invariably impose some burden upon individual voters. Each provision of a code, 'whether it governs the registration and qualifications of voters, the selection and eligibility of

candidates, or the voting process itself, inevitably affects-at least to some degree-the individual's right to vote[.]'" *Burdick*, 504 U.S. at 433 (quoting *Anderson*, 460 U.S. at 788).

"[E]lection laws that impose a severe burden on ballot access are subject to strict scrutiny, and a court applying strict scrutiny may uphold the restrictions only if they are 'narrowly drawn to advance a state interest of compelling importance.'" *Pisano*, 743 F.3d at 933 (citation omitted). However, "if a statute imposes only modest burdens, then a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions." *Id.*

> The Supreme Court has emphasized that ballot access restrictions must be assessed as a complex whole. . . . [A] reviewing court must determine whether "the totality of the [state's] restrictive laws taken as a whole imposes a[n unconstitutional] burden on voting and associational rights."

McLaughlin, 65 F.3d at 1223 (quoting *Williams v. Rhodes*, 393 U.S. 23, 34 (1968)). The party challenging the election scheme has the initial burden of showing that the ballot access requirements seriously restrict the availability of political opportunity. *American Party of Texas v. White*, 415 U.S. 767, 781 (1974).

Registering to vote as affiliated with the party in whose primary election a candidate wishes to participate for ninety days is not an unconstitutional ballot-access restriction. Comparing such candidate requirements with others, they are similar to those restrictions for which courts have concluded the burden they impose on candidates is moderate. They are certainly not severe and thus not subject to strict scrutiny.[4] *See, e.g., Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363 (1997) (finding that state law prohibiting candidate from appearing as more than one party's choice on a ballot did burden a party's ballot access and

[4] Even if subject to strict scrutiny, the challenged regulations are narrowly tailored to advance the State's compelling interest discussed *supra*.

associational rights, but that burden was not severe, and thus applying a lesser level of review to conclude the law was constitutional); *McClure*, 386 F.3d at 44 (applying lesser scrutiny to a state law which provided that a candidate for a state office who was running as an independent could not be affiliated with a political party ninety days prior to the primary filing deadline, and finding the law was constitutional); *see also Pisano*, 743 F.3d at 936 (finding a North Carolina statutory requirement that to establish a new party, voters must obtain signatures from a certain percentage of the number of people voting in the last election for its governor, one week following the primary, imposed a modest burden and was a constitutional ballot-access restriction).

That the ninety-day candidate requirement in particular imposes at most a moderate burden is particularly true, when taking into account the entirety of North Carolina's candidate-filing scheme, which this Court is required to do. *See McLaughlin*, 65 F.3d at 1223. Under that elections scheme, a person still has the opportunity to become a candidate for U.S. House of Representatives, even if he is unable to participate in a primary because he was not affiliated with a party for the requisite period of time. Pursuant to N.C.G.S. § 163-122(a)(2), any person who wishes to be an unaffiliated candidate appearing on the general election ballot can do so by filing a written petition with the State Board of Elections supporting that voter's candidacy for office on or before noon on the day of the primary election. N.C.G.S. § 163-122(a)(2). And, as indicated *supra*, Section 163-122(a)(2)'s requirement that unaffiliated candidates be registered voters is not enforceable against congressional candidates. *See* Part II-A *supra*

Moreover, the burden, if any, imposed by the candidate filing requirements Plaintiff challenges is undoubtedly outweighed by the compelling interest of the State. "[A] State has an interest, *if not a duty*, to protect the integrity of its political processes from frivolous or fraudulent candidacies." *Bullock v. Carter*, 405 U.S. 134, 145 (1972) (emphasis added);

Timmons, 520 U.S. at 358 ("It is also clear that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder."). States also have an interest in "avoiding confusion, deception, and even frustration of the democratic process at the general election," and "in ensuring orderly, fair, and efficient procedures for the election of public officials." *Pisano,* 743 F.3d at 937 (cleaned up).

"States are not required 'to make a particularized showing of the existence of voter confusion, ballot overcrowding, or the presence of frivolous candidacies prior to the imposition of reasonable restrictions on ballot access.'" *Pisano*, 743 F.3d at 937 (*Munro v. Socialist Workers Party*, 479 U.S. 189, 194-95 (1986)). This Court has held that "[i]n cases where strict scrutiny does not apply, [courts] ask only that the state 'articulate[ ]' its asserted interests." *Libertarian Party v. Alcorn*, 826 F.3d 708, 719 (4th Cir. 2016) (citation omitted). "This is not a high bar." *Id.* "Reasoned, credible argument" is enough to support a state's asserted interests. *Id.* The importance of a state's interests may therefore be decided as a matter of law on a Rule 12(b)(6) motion. *See id.* (affirming Rule 12(b)(6) dismissal).

As discussed above, it is obvious that the requirements challenged by Plaintiff preserve compelling interests, including "the stability of [North Carolina's] political system" and "the direct primary process by refusing to recognize [] candidates who do not make early plans," and who are "prompted by short-range political goals[.]" *Cook,* 531 U.S. at 735. They undoubtedly "force potential candidates for office to think ahead before the filing deadline, thus weeding out frivolous candidacies and only permitting serious candidates to go forward."[5] *McClure*, 386 F.3d

[5] North Carolina has long considered the challenged regulations important components in maintaining election security. The requirement that a candidate for a partisan primary be affiliated with the political party for which they seek to be a candidate for at least ninety days prior to the filing date for the office dates back to at least 1991. *See* N.C.G.S. § 163-106(b) (1991) (recodified as N.C.G.S. § 163-106.1 in 2018).

at 43. It follows that the challenged regulations are constitutional ballot-access restrictions, and Plaintiff therefore fails to state a claim under the First and Fourteenth Amendment with his contentions to the contrary.

Other courts have found similar laws to be valid ballot-access restrictions based upon the protection they provide to interests which are similar to the interests protected by the restrictions challenged here. *See, e.g., McClure*, 386 F.3d at 44; *Thournir v. Meyer*, 708 F. Supp. 1183, 1187 (D. Colo. 1989) (concluding state law requiring unaffiliated candidate to register as an unaffiliated voter for one year or more before filing as a candidate was constitutional, because it "work[ed] against would be independent candidates prompted by short-range political or personal motives, or who seek to bleed off votes in the general election that otherwise might go to a particular major party candidate," and worked to preserve the state's "interest in insuring that voters are not presented with a 'laundry list' of candidates who have decided on the eve of a major election to seek public office"), *aff'd*, 909 F.2d 408 (10th Cir. 1991); *cf. Rosario v. Rockefeller*, 410 U.S. 752, 760-61 (1973) (holding state law requiring voters to register thirty days prior to the general election to vote in the next party primary was constitutional, as its purpose was to preserve election integrity by preventing party raiding in primary elections).

At bottom, not only does not this Court not have jurisdiction, Plaintiff fails to state a claim for which relief can be granted.

Conclusion

For the reasons above, Defendants respectfully request that Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted this the 22nd day of March, 2022.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** was served on pro se Plaintiff in this action via email on this date, and by U.S. Mail, postage prepaid, on March 23, 2022 as follows:

Siddhanth Sharma
8508 Micollet Court
Raleigh, NC 27603
sidforoffice@gmail.com

This the 22nd day of March, 2022.

JOSHUA H. STEIN
Attorney General

/s/ Mary Carla Babb
Mary Carla Babb
Special Deputy Attorney General

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:22-CV-59-BO

SIDDHANTH SHARMA,
Plaintiff,

v.

DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, STELLA ANDERSON, in her official capacity as a member of the North Carolina State Board of Elections, JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections, STACY EGGERS IV, in his official capacity as a member of the North Carolina State Board of Elections, TOMMY TUCKER, in his official capacity as a member of the North Carolina State Board of Elections, KAREN BRINSON BELL, in her official capacity as the Executive Director of the North Carolina State Board of Elections, the NORTH CAROLINA BOARD OF ELECTIONS,
Defendants.

ORDER

This cause comes before the Court on plaintiff's *pro se* motion for a temporary restraining order [DE 26], defendants' motion for an extension of time [DE 27], plaintiff's motion to deny the motion for extension of time and for judgement on the pleadings and for default judgement [DE 28], defendants' motion to dismiss [DE 30], and plaintiff's motion to expedite consideration of this case [DE 35]. All pending motions are ripe for adjudication. For the reasons that follow, defendants' motion for an extension of time [DE 27] is granted and the motion to dismiss is deemed timely filed. Plaintiff's motion to expedite [DE 35] is granted. Defendants' motion to dismiss [DE 30] is granted. Plaintiff's second motion for a temporary restraining order [DE 26] is denied.

Plaintiff's motion to deny the motion for an extension [DE 28] is denied in part and the remainder is denied in part as moot. The complaint in this case is dismissed without prejudice.

BACKGROUND

On February 7, 2022, plaintiff filed a *pro se* complaint alleging that several North Carolina State Board of Elections' ("the Board") candidate filing requirements for the 2022 mid-term elections are unconstitutional. Plaintiff argues that the following provisions are invalid: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days; and 3) that they do not have any felony convictions. Plaintiff is an incarcerated individual with a prior felony conviction who is not registered to vote. Plaintiff states that he attempted to file as a U.S. House of Representatives candidate in North Carolina's 2022 mid-term elections, but ultimately did not file when he discovered the statutory restrictions. It is not clear whether he intended to become a party-affiliated candidate in the primary election or whether he intended to run as an unaffiliated candidate in the general election. Plaintiff appears to challenge some provisions that apply to the primary and one that applies to the general election.

In order to become an official House candidate on a primary ballot in North Carolina, a candidate must file a notice of candidacy with the North Carolina State Board of Elections. N.C. Gen. Stat. Ann. § 163-106.2. In 2022, party-affiliated primary candidates must file a notice between February 24 and March 4 to appear on the ballot for the May 17, 2022 primary election. *Candidate Filing for 2022 Elections to Resume on February 24*, North Carolina State Board of Elections (Feb. 9, 2022), https://www.ncsbe.gov/news/press-releases/2022/02/09/candidate-filing-2022-elections-resume-february-24. A primary candidate must be "affiliated with that party for at least 90 days[.]" § 163-106.1. A primary candidate must file a certificate "stating that the person is registered to vote in that county[.]" § 163-106.5. If the candidate is not registered to vote

in the county in which they are running, the board of elections shall "cancel the notice of candidacy[.]" *Id.*

If the primary candidate has ever been convicted of a felony, the candidate must "provide the name of the offense, the date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction" on a form available for the public record in the Office of the Board of Elections. § 163-106(e). The form states that "a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored." *Id.* If the candidate with a prior felony conviction fails to file this form, "the individual's name shall not appear on the ballot as a candidate, and votes for that individual shall not be counted." *Id.*

Unaffiliated candidates who do not participate in a primary may still appear on the general election ballot and must file a notice of candidacy on or before May 17, 2022. *See* § 163-122(a)(2). A person who is precluded from running in a particular party's primary may still run in a general election as an unaffiliated candidate, so long as he is a "qualified voter" and collects a certain number of signatures on a petition supporting his candidacy on or before noon of the day of the primary election. § 163-122(a)(1) and (2). The state will cancel the petition of "any person who does not meet the constitutional or statutory qualifications for the office, including residency." *Id.* at § 163-122(d).[1]

Plaintiff states that he is unconstitutionally barred from becoming a candidate because he is a felon who may not register to vote in North Carolina. Plaintiff states that he did not file a notice of candidacy in either election at least in part because it would be futile. Plaintiff states that he filed this suit because the Board threatened to arrest him for failing to successfully file a notice of candidacy. Plaintiff seeks declaratory and injunctive relief, asking that this Court stay the candidate

[1] This process is appealable by a hearing. § 163-122(d).

filing deadline, declare North Carolina's candidate qualifications for federal office unconstitutional, and order that plaintiff be allowed to participate in the 2022 mid-term election for seats in the U.S. House of Representatives.

On February 7, 2022, plaintiff filed a motion for a temporary restraining order and a motion to consolidate this case with one brought by Representative Madison Cawthorn in this district. On February 9, 2022, this Court denied both motions. On February 28, plaintiff filed a second motion for a temporary restraining order. On March 1, defendants filed a motion for an extension of time to file an answer in this case. On March 3, plaintiff filed a motion to deny the motion for an extension, which included requests for judgement on the pleadings and default judgement. On March 22, defendants filed a motion to dismiss for lack of jurisdiction and for failure to state a claim. On April 15, plaintiff filed a motion to expedite proceedings and requested that this case be adjudicated by May 17, 2022.

DISCUSSION

As an initial matter, the Court finds that good cause exists and grants defendants' motion [DE 27] for an extension of time to answer or otherwise respond to plaintiff's complaint. Plaintiff's motion [DE 28] to deny the motion for an extension is denied in part. Accordingly, the Court finds that defendants' motion to dismiss [DE 30] is timely filed.

Defendants filed a motion to dismiss plaintiff's complaint for lack of personal jurisdiction due to failure to serve, pursuant to Federal Rule of Civil Procedure 12(b)(2) and (5); lack of subject matter jurisdiction due to lack of standing, pursuant to Rule 12(b)(1); and for failure to state a claim, pursuant to Rule 12(b)(6). The Court construes plaintiff's filing titled "Plaintiff's reply in support of plaintiff's motion for declaratory relief" as a response in opposition, at least in part, to

defendants' motion to dismiss. Even if, *ad arguendo*, service in this case was proper, the Court finds that it lacks subject matter jurisdiction and the motion to dismiss must be granted.

Federal Rule of Civil Procedure 12(b)(1) authorizes dismissal of a claim for lack of subject matter jurisdiction. When subject matter jurisdiction is challenged, the plaintiff has the burden of proving jurisdiction to survive the motion. *Evans v. B.F. Perkins Co.*, 166 F.3d 642, 647-50 (4th Cir. 1999). "In determining whether jurisdiction exists, the district court is to regard the pleadings' allegations as mere evidence on the issue, and may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Richmond, Fredericksburg & Potomac R.R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991). The movant's motion to dismiss should be granted if the material jurisdictional facts are not in dispute and the movant is entitled to prevail as a matter of law. *Id.* Defendants argue that this Court does not have subject matter jurisdiction over the controversy because plaintiff has not alleged an injury, and thus has not asserted standing, or that the controversy is not yet ripe.

Standing

To satisfy the standing requirement for subject matter jurisdiction at the pleading stage, a plaintiff must allege a case or controversy under Article II and "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). "To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). "The party invoking federal jurisdiction bears the burden of establishing" the elements of standing. *Lujan*, 504 U.S. at 561. "At the pleading stage, general factual allegations of injury resulting from the

defendant's conduct may suffice, for on a motion to dismiss we presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Id.* (internal quotations omitted) (substitution in original).

A plaintiff lacks standing when his claimed injury is "premised on a speculative chain of possibilities." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013); *see Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990); *Trump v. New York*, 141 S. Ct. 530, 544 (2020) (dismissing for lack of standing and ripeness because the plaintiff's alleged injury was predictive at best and noting "any prediction about future injury [is] just that—a prediction"). Future injuries are only sufficient if they are "*certainly impending*" and "[a]llegations of *possible* future injury are not sufficient." *Amnesty Int'l USA*, 568 U.S. at 409 (internal quotations and citation omitted) (emphasis in original). When a plaintiff is challenging the constitutionality of a statute before it is enforced upon the plaintiff, a "credible threat of enforcement is critical to establishing an injury in fact." *Buscemi v. Bell*, 964 F.3d 252, 259 (4th Cir. 2020), *cert. denied sub nom. Kopitke v. Bell*, 141 S. Ct. 1388, 209 L. Ed. 2d 129 (2021) (quotations omitted).

Defendants argue that plaintiff has not yet sustained an injury and fails to allege a sufficiently concrete future injury. Plaintiff argues that, although he has not applied and been denied ballot access, his future injury is sufficiently predictable and imminent because North Carolina law prohibits him, as an unregistered felon, from registering as a candidate in the primary or general election.[2]

The Court starts from the proposition that states may not require U.S. House of Representative candidates to submit to any qualifications that are not listed in Article I, Section 2,

[2] Plaintiff alleges that if his requested relief is not granted, he will suffer the future harm of not being able to "run for office[] where he will be able to help his constituents from the evils and tyranny of the democratic party in North Carolina." *Complaint* at p. 13. Plaintiff also alleges he will be arrested by the Board of Elections.

Clause 2 or in Section 3 of the Fourteenth Amendment. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800–01 (1995) ("the Framers intended the Constitution to be the exclusive source of qualifications for Members of Congress, and that the Framers thereby "divested" States of any power to add qualifications."); *see also Cook v. Gralike*, 531 U.S. 510, 525-26 (2001). According to the Constitution, a House member must be at least twenty-five years of age; must have been a U.S. citizen for at least seven years; be an inhabitant of the state he represents at the time he was elected; and, if he had previously sworn an oath to uphold the Constitution, he must not have subsequently engaged in an insurrection in violation of that oath. U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. amend. XIV, § 3. This list of qualifications is exclusive. *Thornton*, 514 U.S. at 800–01. Accordingly, any state statutory qualifications not listed in the Constitution are invalid. *See Thornton*, 514 U.S. at 800–01.

To demonstrate standing in this case, plaintiff has the burden of alleging "general factual allegations of injury resulting from" the defendants' conduct. *Lujan*, 504 U.S. at 561. An injury sufficient for standing in this case would be alleged if plaintiff was prevented from running for the House of Representatives due to an unconstitutional restriction on ballot access by the State of North Carolina.

In North Carolina, felons who are currently incarcerated may not register to vote. *Update on Voter Eligibility for People Serving Felony Sentences*, North Carolina State Board of Elections, https://www.ncsbe.gov/registering/who-can-register/registering-person-criminal-justice-system (last visited May 13, 2022). North Carolina's § 163-106(e) prohibits felons who have not had their rights restored from running in the primary election, and § 163-122(a) prohibits unaffiliated candidates who are not registered voters from running in the general election. Taken together, no felon who is currently incarcerated may run in North Carolina's House of Representatives election.

The U.S. Constitution does not require a Representative to be a registered voter or to be devoid of a felony conviction. The North Carolina State Board of Elections admits in its briefing that the state's restriction on felons running in the primary election, pursuant to § 163-106(e), is unenforceable against plaintiff because it conflicts with the constitutional requirements. The Board also admits that the state's requirement that unaffiliated candidates who run in the general election must be registered voters, pursuant to § 163-122(a), is unenforceable against plaintiff.

It is undisputed that, at the time of the filings, plaintiff has not filed a notice of candidacy for either the 2022 primary or general election. DE 34 at p. 8. Plaintiff does not assert that he plans to file a notice of candidacy, but instead states that it is futile. Plaintiff alleges that future injury is definite because, on its face, the disputed provisions conflict with Constitutional requirements. It appears that plaintiff has made a facial constitutional challenge to North Carolina's ballot access laws. *See Thornton*, 514 U.S. at 800–01; *Gralike*, 531 U.S. at 525-26.

Defendants argue that plaintiff will not actually face the future harm he alleges because North Carolina will not enforce § 163-122(a) and § 163-106(e) against plaintiff. Defendants admit that § 163-122(a) and § 163-106(e) are unenforceable against plaintiff, but they argue that North Carolina law provides a mechanism by which to avoid this conflict in the primary election, stating that "§ 163-106.5(b) prohibits the State Board from rejecting a congressional candidate's [primary] notice because that candidate is a felon." *Defendants' Memorandum in Support of Defendants' Motion to Dismiss* at p. 20. In fact, § 163-106.5(b) states that the State Board must "cancel the notice of [primary] candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency." The plain language of § 163-106.5(b) makes it appear that North Carolina requires primary candidates to satisfy *both* the Constitutional and statutory qualifications. Defendants' argument that this provision actually avoids a constitutional

conflict appears to stretch the text. The Court does not find persuasive defendants' argument that plaintiff will not suffer future harm because the state will not enforce its own laws, due to those laws being unconstitutional.

However, plaintiff has not demonstrated a "credible threat of enforcement." *Buscemi*, 964 F.3d at 259. Without a showing that plaintiff actually has or will file a notice of candidacy and be denied—sustaining the predicted injury—the Court cannot find that the injury is "certainly impending." *Amnesty Int'l USA*, 568 U.S. at 410. Without having filed a notice of candidacy, allegations of a possible future injury are too remote to be cognizable as of the date of this order. *See id.* at 409-10. Thus, plaintiff has failed to state an injury in fact. Accordingly, plaintiff lacks standing. *See Spokeo, Inc. v. Robins*, 578 U.S. at 339.

Ripeness

Even if plaintiff had sufficiently asserted a future injury, at least part of this controversy is not yet ripe. Defendants argue that since plaintiff may still file a notice of candidacy in the general election, the controversy is not ripe. The Court agrees.

"Ripeness is a justiciability doctrine designed 'to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties.'" *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-08 (2003) (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148–49 (1967)). "Determining whether administrative action is ripe for judicial review requires us to evaluate (1) the fitness of the issues for judicial decision and (2) the hardship to the parties of withholding court consideration" *Id.* at 808. The case or cause of action

must "not [be] dependent on contingent future events that may not occur as anticipated, or indeed may not occur at all." *Trump v. New York*, 141 S. Ct. 530, 535 (2020) (quotations omitted).

Plaintiff cannot satisfy the first prong as it relates to the general election. The deadline for filing a notice of candidacy in North Carolina's general election is "on or before noon of the day of the primary election." § 163-122(a)(2). For the upcoming general election, the deadline to file is before noon on May 17, 2022. This controversy is not fit for judicial decision because filing a notice of candidacy is still available to plaintiff as of the date of this order. Because plaintiff has not actually filed a notice of candidacy and been denied, there has been no state action that this Court may pass judgement upon. The potential injury in this case is contingent on plaintiff actually filing and actually being denied, which has not happened. *See Trump*, 141 S. Ct. at 544. Plaintiff's ability to run for the U.S. House of Representatives has not yet been restricted by either time or the actions of the State of North Carolina.

Plaintiff also cannot satisfy the second prong. Under the second prong, hardship "is measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law." *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208-09 (4th Cir. 1992). Nothing currently prevents plaintiff from filing notice of candidacy in the general election. Accordingly, this controversy is, at least as to the general election, not ripe.

In conclusion, plaintiff has failed to demonstrate standing and at least part of this controversy is not yet ripe. The Court, therefore, lacks subject matter jurisdiction. Accordingly, defendants' motion to dismiss for lack of subject matter jurisdiction is granted. Since the Court has found that plaintiff has not shown an injury, let alone irreparable harm, plaintiff's second motion for a temporary restraining order is denied. Since the Court has found that there is no subject matter

jurisdiction to consider this controversy, plaintiff's motion for judgement on the pleadings and for default judgement is denied in part as moot. As this controversy had been adjudicated before plaintiff's requested May 17, 2022, deadline, plaintiff's motion to expedite is granted.

CONCLUSION

Accordingly, for the foregoing reasons, defendants' motion for an extension of time [DE 27] is GRANTED. Defendants' motion to dismiss [DE 28] is deemed timely filed and is GRANTED. Plaintiff's motion to expedite [DE 35] is GRANTED. Plaintiff's second motion for a temporary restraining order [DE 26] is DENIED. Plaintiff's motion to deny the requested extension [DE 28] is DENIED IN PART, and to the extent that it is a motion for summary judgement and for default judgement, it is DENIED AS MOOT. Plaintiff's complaint is dismissed without prejudice.

SO ORDERED, this 16 day of May, 2022.

Terrence Boyle

TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

North Carolina
Notice of Candidacy

EXHIBIT 7 tabbies

0189B

G.S. 163-106

Election information

1
Title of the office sought _____
District or ward *(if applicable)* _____ Seat *(judicial contest)* _____
Election _____ Election date *(mm/dd/yyyy)* _____

Candidate information

You must provide your **full legal name** in this section. This information will be public.

2
Last name _____ Suffix (Jr, Sr., II, III, IV) _____
First name _____ Middle name _____
Name to appear on ballot _____
Campaign phone number _____ Campaign email _____
NC State Bar number *(Judicial and District Attorney candidates only)* _____

Residential address

This information will be public.

3
Address *(not P.O. Box)* _____
City _____ State _____ Zip _____
County _____

Mailing address

This information will be public.

☐ Same as above

4
Address or P.O. Box _____
City _____ State _____ Zip _____

Candidate's pledge

Check 1 box and complete the pledge that applies to the office that you are seeking candidacy for.

☐ **I am filing for a partisan contest:**

I hereby file notice as a candidate for nomination as _____
in the _____ party primary election to be held on *(mm/dd/yyyy)* _____.
I affiliate with the _____ party (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party).

5
I pledge that I have been affiliated with that party for at least 90 days as of the date of the filing of the notice of candidacy. I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election.

☐ **I am filing for a non-partisan contest:**

I hereby file notice that I am a candidate for election to the office of _____
(District/Ward) _____ for the governing body of _____
in the regular election to be held on *(mm/dd/yyyy)* _____.

Felony disclosure

6
Have you ever been convicted of a felony? ☐ Yes ☐ No

If you have been convicted of a felony, you must complete a **Candidate Felony Disclosure** form within **48 hours** of submitting this notice (G.S. 163-106). The required form can be obtained from any election office or from the NC State Board of Elections website at www.NCSBE.gov. A prior felony conviction does not preclude holding elected office if rights of citizenship have been restored (Candidates who are running for Sheriff must have no previous or current felony convictions. If there are any felony convictions, the candidate is not eligible to file for this office.). Felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement.

Affidavit attesting to nickname

Complete only if you would like an acceptable nickname to appear on the ballot in lieu of your legal name.

Even if your nickname is accepted, your legal last name will still appear on the ballot.

7

I,_____, have been duly sworn, hereby state under oath that I have been commonly known by the nickname_____for at least five years and request that my name be placed on the ballot as follows:_____.

In the event that another candidate with the same last name as mine files notice of candidacy for the same office for which I am a candidate, my name should be listed as:_____.

State of North Carolina,_____County.

I hereby certify that_____, the candidate who signed this Affidavit attesting to nickname, personally appeared before me this day and signed this document in my presence.

Sworn to and subscribed before me this_____day of_____,_____.

Name of notary _____

My commission expires *(mm/dd/yyyy)* _____

Notary seal

Notary, sign here

X _____

Acknowledgment of notice of candidacy

This section must be completed by a certifying officer or notary.
See G.S. 163-106(a)

8

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

State of North Carolina,_____County.

I hereby certify that _____, the candidate who signed this notice of candidacy, personally appeared before me this day and signed this document in my presence or acknowledged his/her signature to be the same.

Sworn to and subscribed before me this_____day of_____,_____.

Name of certifying officer or notary _____

Title of certifying officer _____

My commission expires *(mm/dd/yyyy)* _____

Notary seal

Certifying or notary, sign here

X _____

County board of elections certification

If you are required to file your notice of candidacy with the State Board of Elections, you must have this certificate signed by the chairman of the board of elections or the director of elections of the county.
See G.S. 163-106.5.

9

I have examined the voter registration records in_____County,

and found that_____:

☐ is a registered voter in this county

☐ is registered as_____*(indicate candidate's party affiliation or "unaffiliated", if applicable)*

☐ has been affiliated with that party for at least 90 days as of the date of the filing of the notice of candidacy

☐ *(Superior Court or District Court Judge only)* is a resident of superior court district _____

or district court district_____.

Title of county official_____ Date *(mm/dd/yyyy)* _____

Board chair or director of elections, sign here

X _____

Candidate's certification

Fraudulently or falsely completing this form is a Class I Felony under Chapter 163 of the NC General Statutes.

10

I swear or affirm that the statements on this form are true, correct and complete to the best of my knowledge or belief.

Candidate, sign and date here *(Required)*

X		Date *(mm/dd/yyyy)*

Sign and date this section in the presence of the certifying or notary from section 8.

Submit this form to the board of elections in the jurisdiction in which you plan to be a candidate.

Chapter 13.

Citizenship Restored.

§ 13-1. Restoration of citizenship.

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.

(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon. (1971, c. 902; 1973, c. 251; c. 1262, s. 10; 1977, c. 813, s. 1; 1991, c. 274, s. 1; 2011-145, s. 19.1(h); 2012-83, s. 18; 2013-410, s. 2.)

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in the precinct in which the person resides. Removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which the person has removed until 30 days after the person's removal.

Except as provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts. – For purposes of qualification to vote in an election, a person's residence in a precinct shall be determined in accordance with G.S. 163-57. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. – For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18; 2005-2, s. 2; 2008-150, s. 5(a); 2009-541, s. 5; 2013-381, s. 49.1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Article 7A.

Registration of Voters.

§ 163-82.1. General principles of voter registration.

(a) Prerequisite to Voting. – No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) County Board's Duty to Register. – A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) Permanent Registration. – Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

(1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or

(2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or

(3) The county board of elections determines, through the procedure outlined in G.S. 163-82.14, that it can no longer confirm where the voter resides. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 25; 1975, c. 395; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1985, c. 211, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 7(a); 2013-381, s. 12.1(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. - The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(8) Ethnicity,
(9) Political party affiliation, if any, in accordance with subsection (d) of this section,
(10) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(11) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) No Drivers License or Social Security Number Issued. - The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(c) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. - The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).
(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(d) Party Affiliation or Unaffiliated Status. - The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as

"unaffiliated", except that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(e) Citizenship and Age Questions. - Voter registration application forms shall include all of the following:

(1) The following question and statement:
   a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.
   b. "If you checked "no' in response to this question, do not submit this form."

(2) The following question and statement:
   a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.
   b. "If you checked "no' in response to this question, do not submit this form."

(f) Correcting Registration Forms. - If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4; 2005-428, s. 15; 2007-391, s. 20; 2008-187, s. 33(a); 2009-541, s. 9(a); 2013-381, s. 12.1(c); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Parties.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. - A political party within the meaning of the election laws of this State shall be one of the following:

(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.

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of three congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chair of the proposed new political party.

(3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. To be effective, the group must file their documentation with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith verify the documentation filed with it and shall immediately communicate its determination to the State chair of the proposed new political party.

(b) Petitions for New Political Party. - Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ____ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ____ AND WHOSE STATE CHAIRMAN IS _____, RESIDING AT _____ AND WHO CAN BE REACHED BY TELEPHONE AT ____."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the State Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(c) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection [subdivision] (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27; 1999-424, s. 5(a); 2004-127, s. 14; 2006-234, s. 1; 2017-6, s. 3; 2017-214, s. 1; 2018-146, s. 3.1(a), (b).)

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing.

(a) Notice and Pledge. - No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section and G.S. 163-106.1, 163-106.2, 163-106.3, 163-106.5, and 163-106.6. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in G.S. 163-106.2, a notice and pledge in the following form:

Date _____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on _____, _____ I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election.

Signed_____

(Name of Candidate)

Witness:

_____

_____

(Title of witness)

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

(b) [Name of Candidate. -] In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(c) [Agent's Signature Invalid. -] A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

(d) [Forms Provided by State Board. -] Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(e) Except for candidates to the office of sheriff as provided in subsection (f) of this section, at the same time the candidate files notice of candidacy under this section and G.S. 163-106.1, 163-106.2, 163-106.3, 163-106,5, and 163-106.6, the candidate shall file with the same office a statement answering the following question: "Have you ever been convicted of a felony?" The State Board of Elections shall adapt the notice of candidacy form to include the statement required by this subsection. The form shall make clear that a felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require a candidate who answers "yes" to the question to provide the name of the offense, the

date of conviction, the date of the restoration of citizenship rights, and the county and state of conviction. The form shall require the candidate to swear or affirm that the statements on the form are true, correct, and complete to the best of the candidate's knowledge or belief. The form shall be available as a public record in the office of the board of elections where the candidate files notice of candidacy and shall contain an explanation that a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored. This subsection shall also apply to individuals who become candidates for election by the people under G.S. 163-114, 163-122, 163-123, 163-98, 115C-37, 130A-50, Article 24 of this Chapter, or any other statute or local act. Those individuals shall complete the question at the time the documents are filed initiating their candidacy. The State Board of Elections shall adapt those documents to include the statement required by this subsection. If an individual does not complete the statement required by this subsection, the board of elections accepting the filing shall notify the individual of the omission, and the individual shall have 48 hours after notice to complete the statement. If the individual does not complete the statement at the time of filing or within 48 hours after the notice, the individual's filing is not complete, the individual's name shall not appear on the ballot as a candidate, and votes for that individual shall not be counted. It is a Class I felony to complete the form knowing that information as to felony conviction or restoration of citizenship is untrue. This subsection shall not apply to candidates required by G.S. 138A-22(f) to file Statements of Economic Interest.

(f) Every candidate to the office of sheriff, at the time of filing the notice of candidacy, shall file a valid disclosure statement prepared in accordance with G.S. 17E-20 verifying that the candidate has no prior felony convictions or expungements of felony convictions. If a candidate does not file such valid disclosure statement required by this subsection, that candidate's filing is not complete, the candidate's name shall not appear on the ballot as a candidate, and votes for that candidate shall not be counted in accordance with Section 2 of Article VII of the North Carolina Constitution. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2021-107, s. 2.)

§ 163-106.1. Eligibility to file.

No person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy. A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-106.2. Time for filing notice of candidacy.

(a) Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board no earlier than 12:00 noon on the first Monday in December and no later than 12:00 noon on the third Friday in December preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court
Judges of the Court of Appeals
Judges of the superior court
Judges of the district court
United States Senators
Members of the House of Representatives of the United States
District attorneys

(b) Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in December and no later than 12:00 noon on the third Friday in December preceding the primary:

State Senators
Members of the State House of Representatives
All county offices. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-21, s. 2; 2018-146, s. 3.1(a), (b).)

§ 163-106.5. Certificate of registration to vote in county and party affiliation; cancellation of candidacy; residency requirements for judges.

(a) Candidates required to file their notice of candidacy with the State Board of Elections under G.S. 163-106.2 shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under G.S. 163-106.2. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(b) When any candidate files a notice of candidacy with a board of elections under G.S. 163-106.2 or under G.S. 163-291(2), the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this section by mail or by having the notice served on him by the sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this section may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of this Chapter.

(c) No person may file a notice of candidacy for superior court judge, unless that person is, at the time of filing the notice of candidacy, a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114, unless that person is, at the time of nomination, a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Section 9(1) of Article IV of the North Carolina Constitution, which requires regular superior court judges to reside in the district for which elected. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.3. Panel to conduct the hearing on a challenge.

Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the State Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the State Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The State Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The State Board shall designate a chair for the panel. A meeting of the State Board to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the State Board. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The State Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by State Board. – The State Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.5. Burden of proof.

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.6. Appeals.

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(1) or G.S. 163-127.3(2) may be appealed as of right to the State Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the State Board by the end of the second business day after the written decision was filed by the panel. The State Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The State Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the State Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the State Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

ARTICLE VI
SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. Qualifications of voter.

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(4) Photo identification for voting in person. Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions. (2018-128, s. 1.)

Sec. 3. Registration; Voting in Person.

(1) Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

(2) Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions. (2018-128, s. 2.)

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

Arrested, Jailed and Charged With a Felony. For Voting.

EXHIBIT 9

- Give this article
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Whitney Brown and Keith Sellars are among those who voted in the 2016 election while on felony probation or parole and who are now being prosecuted.Credit...Travis Dove for The New York Times

By Jack Healy

- Aug. 2, 2018

GRAHAM, N.C. — Keith Sellars and his daughters were driving home from dinner at a Mexican restaurant last December when he was pulled over for running a red light. The officer ran a background check and came back with bad news for Mr. Sellars. There was a warrant out for his arrest.

As his girls cried in the back seat, Mr. Sellars was handcuffed and taken to jail.

His crime: Illegal voting.

"I didn't know," said Mr. Sellars, who spent the night in jail before his family paid his $2,500 bond. "I thought I was practicing my right."

Mr. Sellars, 44, is one of a dozen people in Alamance County in North Carolina who have been charged with voting illegally in the 2016 presidential election. All were on probation or parole for felony convictions, which in North Carolina and many other states disqualifies a person from voting. If convicted, they face up to two years in prison.

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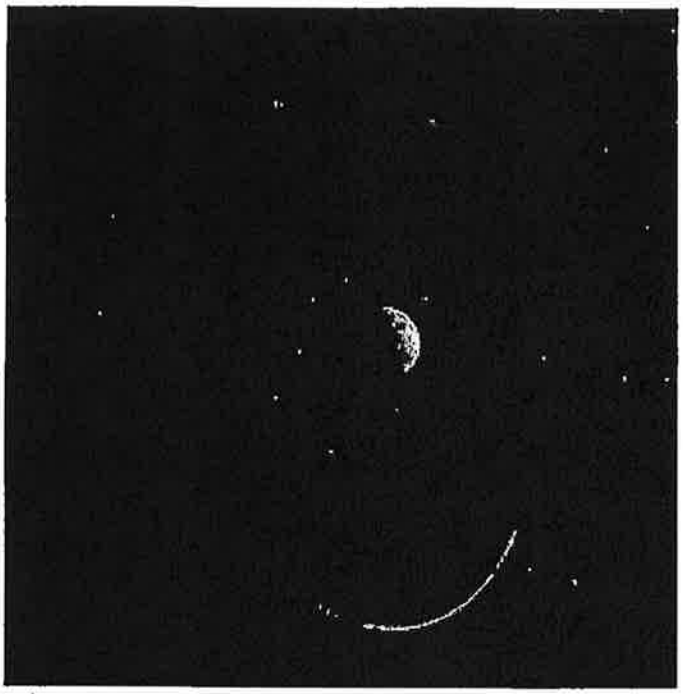
While election experts and public officials across the country say there is no evidence of widespread voter fraud, local prosecutors and state officials in North Carolina, Texas,

Kansas, Idaho and other states have sought to send a tough message by filing criminal charges against the tiny fraction of people who are caught voting illegally.

"That's the law," said Pat Nadolski, the Republican district attorney in Alamance County. "You can't do it. If we have clear cases, we're going to prosecute."

The cases are rare compared with the tens of millions of votes cast in state and national elections. In 2017, at least 11 people nationwide were convicted of illegal voting because they were felons or noncitizens, according to a database of voting prosecutions compiled by the conservative Heritage Foundation. Others have been convicted of voting twice, filing false registrations or casting a ballot for a family member.

Brazil's Lula Promised 'More Books in Place of Guns.' Can He Deliver?



There's a Ring Around This Dwarf Planet. It Shouldn't Be There.

Where #Vanlife Meets #Skibum

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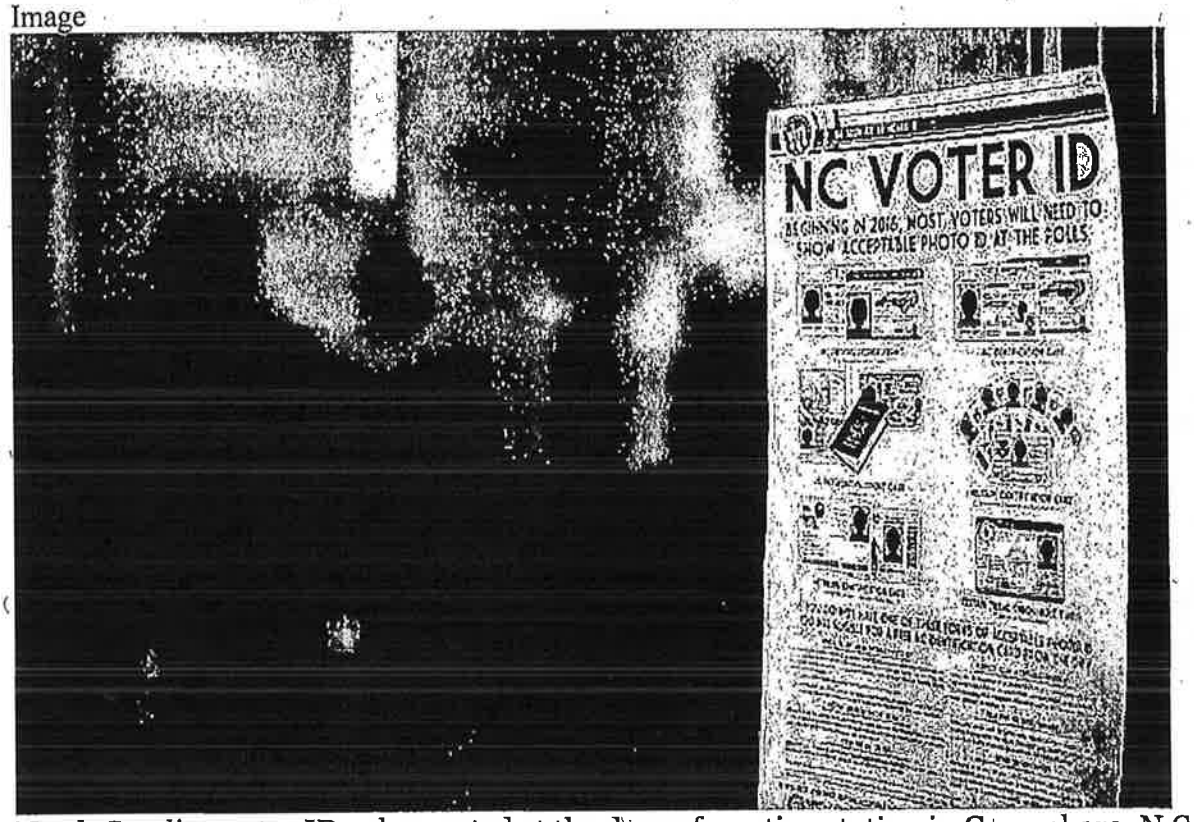
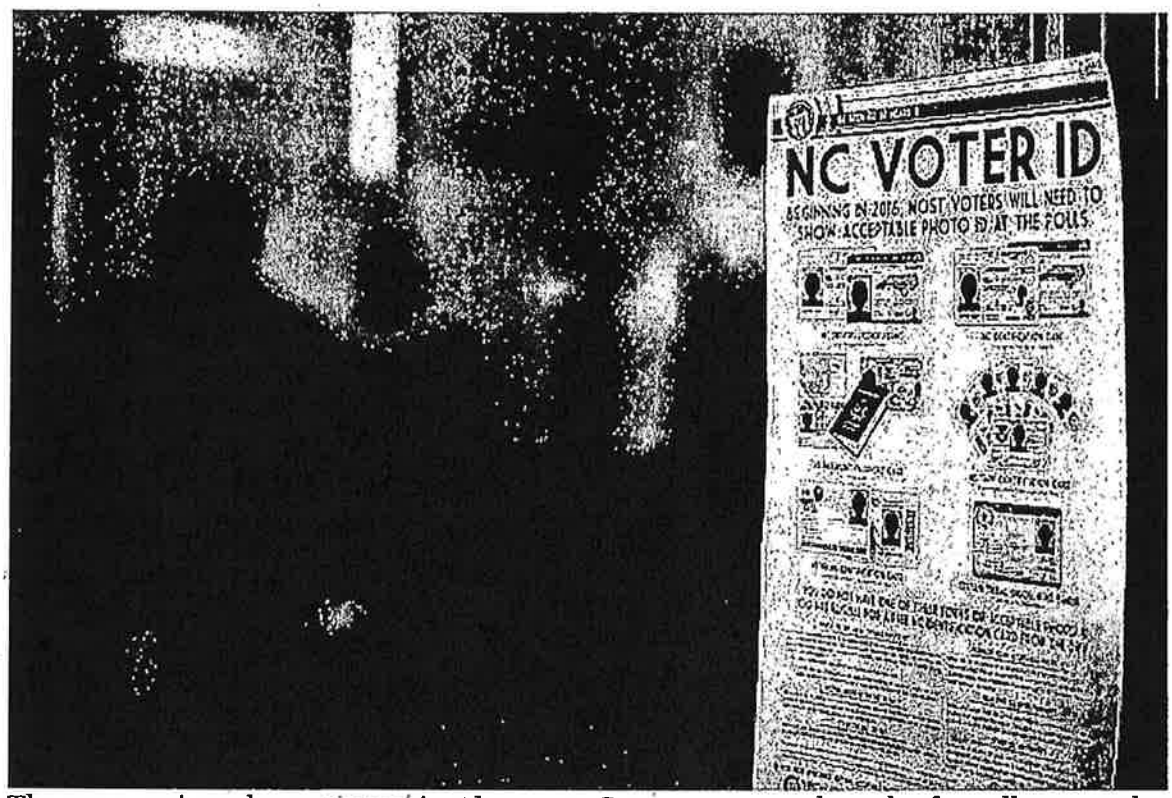


North Carolina voter ID rules posted at the door of a voting station in Greensboro, N.C., in March 2016. A federal appeals court has since blocked the law requiring voters to show identification.Credit...Andrew Krech/News & Record, via Associated Press



The case against the 12 voters in Alamance County — a patchwork of small towns about an hour west of the state's booming Research Triangle — is unusual for the sheer number of people charged at once. And because nine of the defendants are black, the case has touched a nerve in a state with a history of suppressing African-American votes.

Local civil-rights groups and black leaders have urged the district attorney to drop the prosecution, saying that black voters were being disproportionately punished for an unwitting mistake. African-Americans in North Carolina are more likely to be disqualified from voting because of felony convictions; their rate of incarceration is more than four times that of white residents, according to the Prison Policy Initiative, a nonprofit organization.

"It smacks of Jim Crow," said Barrett Brown, the head of the Alamance County N.A.A.C.P. Referring to the district attorney, he added, "I don't think he targeted black people. But if you cast that net, you're going to catch more African-Americans."

Mr. Nadolski said that race and ethnicity are not a factor in any case he prosecutes.

The prosecution comes even as several states are reconsidering longstanding laws that strip voting rights from an estimated 6 million Americans who have been convicted of felonies. A growing national movement is encouraging former felons to register to vote,

or to push to have their rights restored, with the hope of empowering them and shedding the stigma of criminal convictions.

[*Read a Q. and A. with Jack Healy about the case and American election law.*]

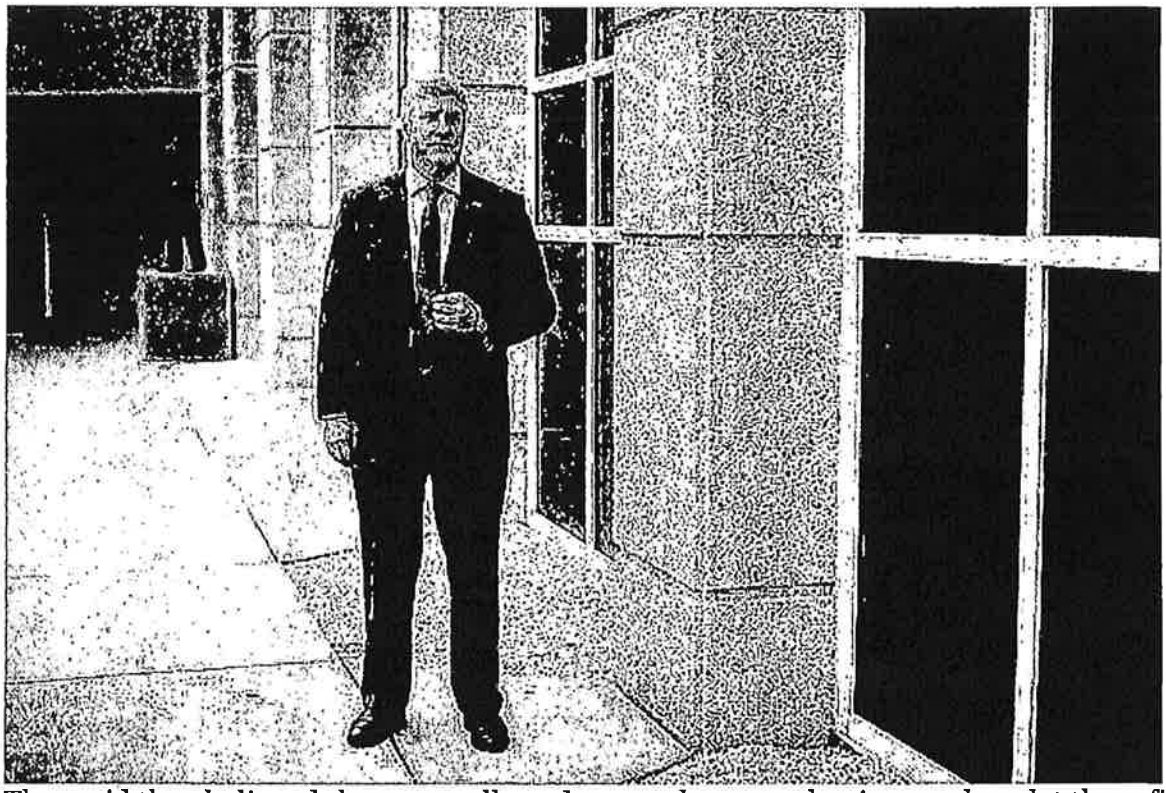
The North Carolina case also has become part of a partisan war over voting rights ahead of this November's midterm elections. At a rally on Tuesday, President Trump — who has made baseless claims that millions of people voted illegally in 2016 — renewed his calls for laws requiring voters to show photo identification. He said, incorrectly, that shoppers need to show identification to buy groceries, while people voting for president and senator do not.

When asked Wednesday about the president's comments, Sarah Huckabee Sanders, the White House press secretary, said that Mr. Trump "wants to see the integrity of our elections system upheld."

In separate interviews, five of the defendants in Alamance County said their votes were an unwitting mistake — a product of not understanding the voter forms they signed and not knowing the law.

Image

Pat Nadolski, the Alamance County district attorney, says he is defending the integrity of the election system by prosecuting people who voted while on felony parole or probation.Credit...Travis Dove for The New York Times



They said they believed they were allowed to vote because election workers let them fill out voter registration and eligibility forms, then handed them ballots. They said they never would have voted if anyone had told them they were ineligible.

The case began after North Carolina elections officials ran an audit that found 441 felons had voted improperly in the 2016 election. While most local prosecutors did not pursue these cases, Mr. Nadolski decided to file felony charges.

"We want to maintain the integrity of the voting system," Mr. Nadolski said.

Most of the voters did not know one another before the prosecution, but as they attended court together and as their story spread through this conservative county, people started referring to them as one: the Alamance 12.

Activists have protested outside the county courthouse and asked supporters to flood the district attorney's office with letters and phone calls on the defendants' behalf.

Whitney Brown, 32, said that no judge, lawyer or probation officer ever told her that she had temporarily lost her right to vote after she pleaded guilty to a 2014 charge of writing bad checks. Her sentence did not include prison time.

By November 2016, she was complying with her probation and focused on moving ahead with her life, caring for her two sons, who are now 6 and 9 years old, and taking online classes to become a medical receptionist. So when her mother invited her to come with her to vote for president, Ms. Brown said she did so without a second thought.

Months later, she got a letter from state election officials telling her she appeared to have voted illegally. "My heart dropped," she said.

Continue reading the main story

Image

Taranta Holman, 28, had never voted before 2016. He spent years bouncing between low-paying jobs, criminal charges and probation.Credit...Travis Dove for The New York Times

In North Carolina, people's voting rights are automatically restored once they finish every step of their felony sentence, including probation.

But every state is different. Vermont and Maine do not strip felons of voting rights, according to the National Conference of State Legislatures. Other states allow people to vote again as soon as they leave prison. Others permanently take away felons' right to vote or make them ask to have their rights restored.

In North Carolina, people can be found guilty of voting as felons even if they did not know their status or did not mean to break any voting laws. This spring, lawmakers tried to pass a bill that would have added intent as an element of felon-voting crimes, but the bill died.

Like other voters across North Carolina, each of the Alamance 12 would have been required to sign a form saying they were eligible to vote and were not serving a felony sentence. But the defendants said they did not remember filling out any forms beyond the ballots.

"People get confused," said John Carella, an attorney with the Southern Coalition for Social Justice, which is representing Ms. Brown and four other defendants. The group has also filed a motion in court arguing that North Carolina's original 1901 law barring felons from voting is unconstitutional because it is steeped in racist efforts to keep African-Americans from voting.

After the state audit that found 441 felons had voted, North Carolina's Board of Elections and Ethics Enforcement changed the layout of the voter forms, adding check boxes to make them easier to understand. The board said it was also working with courts and probation officials to make sure people are aware that they lose their voting rights while serving a felony sentence and probation.

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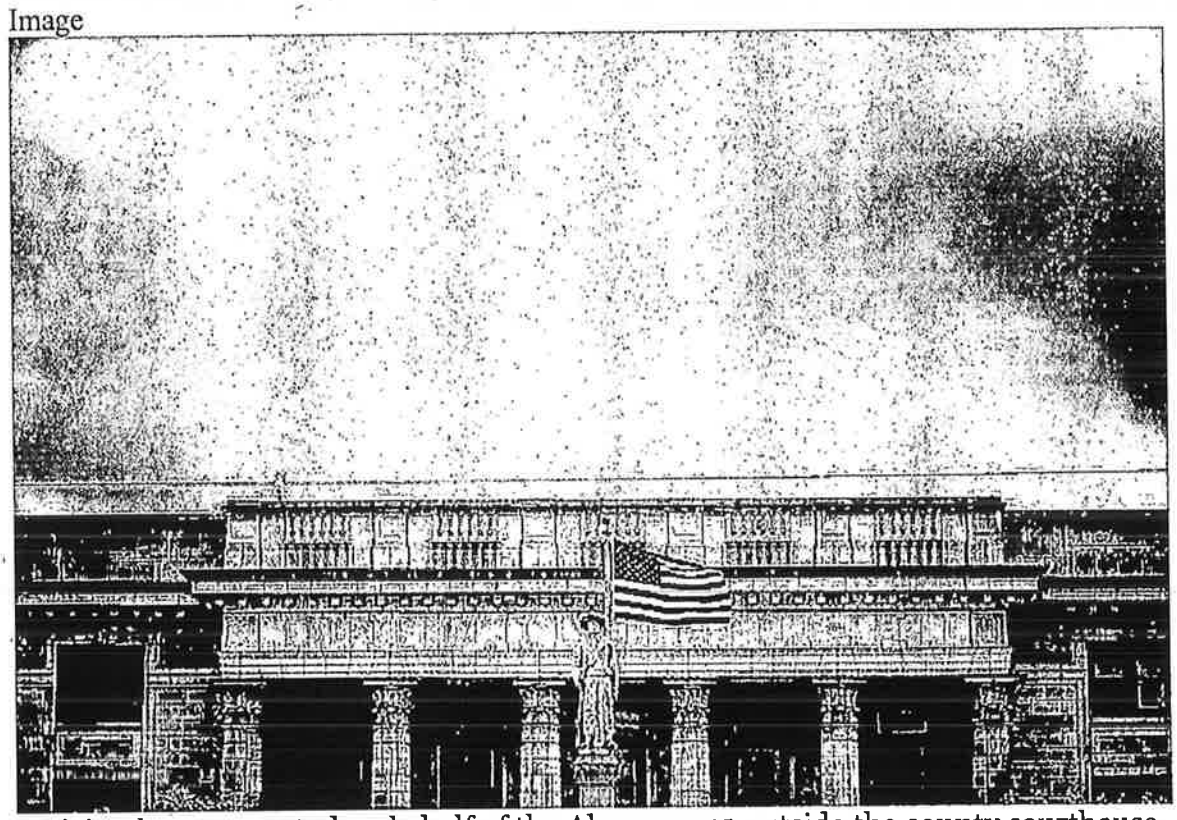
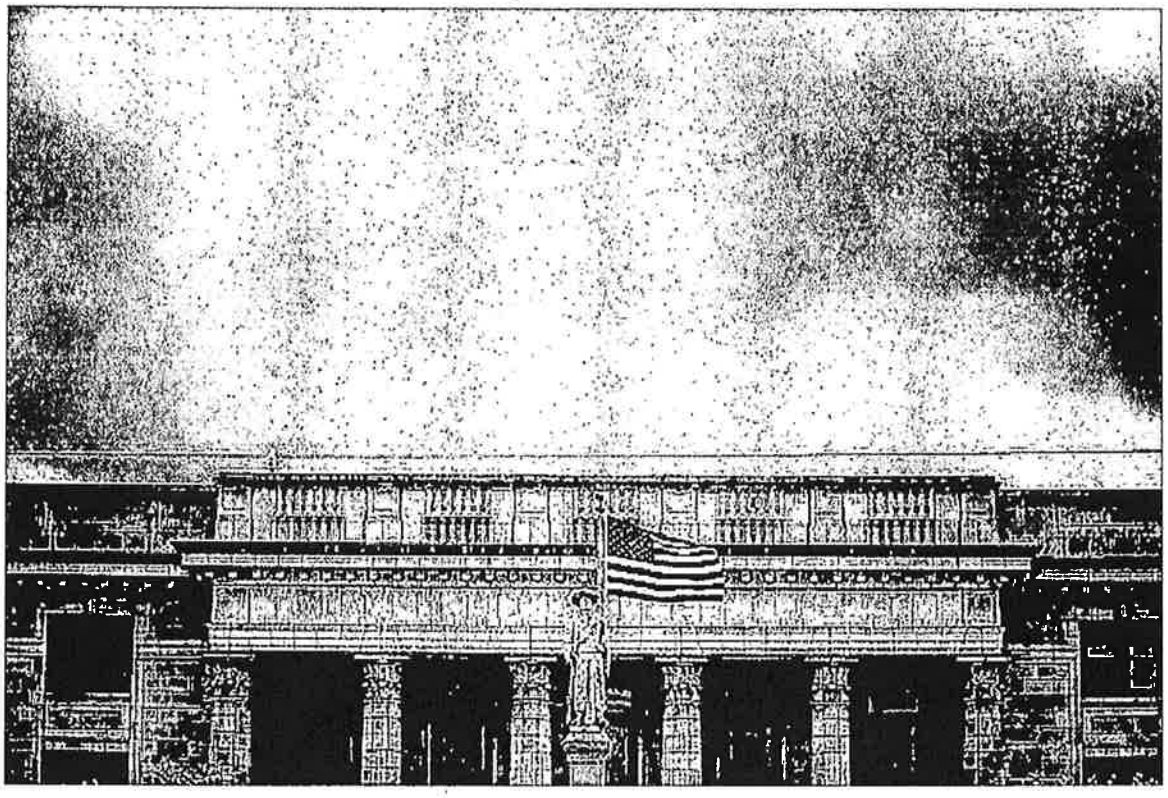
Activists are now worried that the fear of prosecution may suppress black turnout in the midterm elections. North Carolina lawmakers have put a constitutional amendment on November ballots that would change the state constitution to require voter identification.

Image



Activists have protested on behalf of the Alamance 12 outside the county courthouse, where defendants must walk past a Confederate monument on their way to hearings.Credit...Travis Dove for The New York Times



An earlier law adding such a requirement was struck down in 2016 by a federal appeals panel, which called it "the most restrictive voting law North Carolina has seen since the era of Jim Crow." The ruling said Republicans had targeted "African-Americans with almost surgical precision."

George Lettley, who runs a popular catering hall in Alamance County with his wife Elois, said he saw the prosecutions as the latest example of a pattern of discrimination against African-Americans by white leaders in his state.

"They're looking for any way they can find to stop any momentum we have," said Mr. Lettley, reflecting on the case as he and his wife rested and polished silverware after dinner. "It's a no-win situation for us."

When he and his wife heard that one of the 12 defendants had lost his job and had been sleeping in his car, they hired him to work at their restaurant.

Taranta Holman, 28, said he had never voted before 2016. He spent years bouncing between low-paying jobs, criminal charges and probation, and he saw little incentive to vote for either Hillary Clinton or Donald Trump.

Continue reading the main story

But he said he voted at the urging of his mother. In December 2017, when news of the charges appeared in the local newspaper, Mr. Holman said that relatives called him to say there was a warrant out for his arrest.

"I thought they were playing with me," he said.

Three of the defendants have taken deals pleading to lesser misdemeanors that come with probation and community service. For the moment, Mr. Holman was planning to fight the charges. He said he could not afford the fees that come with a probation sentence and did not want to stay under the scrutiny of the legal system.

"I feel like I've got a better chance with a jury than the D.A.," he said.

But Mr. Holman said that, win or lose in court, he will never cast another ballot.

"Even when I get this cleared up, I still won't vote," he said. "That's too much of a risk."

A version of this article appears in print on Aug. 5, 2018, Section A, Page 1 of the New York edition with the headline: Penalty: Up to 2 Years in Prison. Charge: Casting an Illegal Vote.. Order Reprints | Today's Paper | Subscribe

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EXHIBIT 10

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The fight to vote

This article is more than **2 years old**

A black woman faces prison for a voting mistake. Prosecutors just doubled the charges

Lanisha Bratcher, who voted while on probation in North Carolina without knowing she was ineligible, now faces two felony charges

Sam Levine

Tue 21 Jul 2020 08.00 EDT

A North Carolina prosecutor accused of using a racist law to prosecute an African American woman for voter fraud has now doubled the charges against her, the Guardian has learned.

The case involves Lanisha Bratcher, a 32-year-old woman who voted in 2016 while on probation for a felony assault charge (North Carolina prohibits those on felony probation from voting), as the Guardian reported in December. Bratcher says she had no idea she was ineligible to vote, but the district attorney in Hoke county, where Bratcher voted, decided to charge her with a class I felony for voting while serving a criminal sentence. She faced up to 19 months in prison.

The case has been pending since late last year and Bratcher has since begun working at a beauty store and is expecting her third child in December. But in early June, the district attorney's office brought new charges against Bratcher. Prosecutors told her attorney they intended to dismiss the original charge against her, but provided two new grand jury indictments against Bratcher under a different provision of the same law that makes it a felony to knowingly swear a false statement in an election.

It's a small tweak that allowed the district attorney to double the charges against Bratcher, who was arrested last year but is out on bond. She was initially just charged with a single felony for illegal voting, but because Bratcher swore she was eligible to vote on both her voter registration and early voting form, the district attorney is now pursuing charges on two felony counts. She now faces a maximum of 19 months in prison for each count, her attorney said, though a judge could sentence her to less or probation of she is convicted.

"It feels like in some ways she's being punished or targeted for fighting back," said John Carella, Bratcher's lawyer. "She's certainly upset this is still going on. She is trying to move on with her life."

The original decision to bring voter fraud charges against Bratcher and three other

African American people in Hoke county was unusual. Prosecutors across the state chose not to pursue many cases of illegal voting in 2016, a Guardian review of state data last year found. And nearly a year before she was charged, investigators from the state board of elections wrote a letter to the Hoke county district attorney, Kristy Newton, saying that many felons are not told about restrictions on voting that it was possible Bratcher and the three others just made a mistake, according to documents obtained by the Guardian. The investigators told the prosecutor they did not have the resources to investigate the circumstances of Bratcher's case. Newton, the district attorney, chose to bring the charges anyway. After the charges were announced, mugshots of Bratcher and the other defendants appeared on the local news. One of the three other men has since pleaded guilty, Carella said, and charges against the two other defendants are still pending.

Carella disputed the original charge by arguing that the law prohibiting those with felony convictions from voting was unconstitutional and racist. In a court filing, he noted that North Carolina's felon disenfranchisement statute dates back to the late 19th century, when white lawmakers used it openly as a tool to disenfranchise African Americans and diminish their political power after the civil war. A North Carolina Democratic handbook from 1898 speaks of rescuing the "white people of the East" from "negro domination". In 1903, Charles Aycock, the state's governor, said the solution to the "negro problem" was to "disenfranchise him".

Since the 19th century, North Carolina lawmakers have adjusted the law, but its core practice of disenfranchising all felons until they finish their sentence remains intact. Of the 441 people with felony convictions the state suspected of voting in 2016, 68% were black. At the end of 2016, African Americans made up 46% of the 52,000 people on parole or probation and 22% of registered voters in the state.

Voters cast their ballots in Charlotte, North Carolina, in 2016. The state's felon disenfranchisement statute has been used as a tool to prevent African Americans from voting. Photograph: Chris Keane/Reuters

"In response to being made aware of the explicitly white supremacist history of the law and the unconstitutional way in which it was applied, the DA decided, rather than to dismiss or back off those charges, to essentially double down with more felonies and try to prevent that history and that unconstitutional challenge from being aired in court," Carella said.

"The prosecutions serve the same purpose as the original law - to intimidate black voters in North Carolina," he added.

It's unclear why the district attorney changed the charges against Bratcher. Michael Hardin, the prosecutor handling the case, declined to comment on the case because it was pending.

A prosecutor deciding to switch charges can signal that their original case was vulnerable to the defense, said David Freedman, a criminal defense attorney in North Carolina who is not involved in the case.

"When a prosecutor switches the charges it's because they feel, for whatever reason, that the evidence is easier to convict under the new charges than under the old

charges," Freedman said.

"Singling somebody out for this does not seem proper. It doesn't seem like that's justice
David Freedman

The new charges will require prosecutors to show that Bratcher "knowingly" made a false statement about her eligibility to vote. Even though Bratcher says she had no idea she was ineligible, prosecutors could rely on the fact that she signed the voter registration and early voting applications, both of which contain warnings that you cannot vote while serving a felony sentence, Freedman said. Having the documents with Bratcher's signature, Freedman said, bolsters the prosecution's case.

Still, Freedman said it was surprising that the prosecutor in the case was continuing to pursue the charges against Bratcher. "Singling somebody out for this does not seem proper. It doesn't seem like that's justice," he said. "I don't know why the prosecutor is still pursuing this, with everything else going on."

The new charges against Bratcher were brought amid protests across the country focused on systemic racism after the death of George Floyd. Floyd was born in Hoke county and the district attorney secured the new charges against Bratcher just two days after his family, some of whom still live in North Carolina, held a memorial service there.

"To basically try to silence the argument and increase the punishments and just move ahead with this is just really kind of stunning, that it's happening right now," Carella said.

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Betsy Reed
Editor, Guardian US

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FAQ: What To Know About Illegal Voting In North Carolina

WFAE | By Dashiell Coleman

Published October 13, 2020 at 12:29 PM EDT

Vox Efx / Wikimedia Commons/CC BY 2.0

In one of his many campaign-season visits to North Carolina this year, President Trump said this in Wilmington:

"If you get the unsolicited ballots, send it in and then go — make sure it counted. And if it doesn't tabulate, you vote. You just vote. And then if they tabulate it very late, which they shouldn't be doing, they'll see you voted, and so it won't count. So, send it in early, and then go and vote. And if it's not tabulated — you vote. And the vote is going to count."

Well, voting twice in North Carolina is a felony — something the state's elections director reiterated with a warning the morning after Trump's visit.

But, to be fair, this is a confusing election season. We're living in strange times, and the coronavirus pandemic is changing the way many of us cast our ballots. With that in mind, WFAE asked the North

Carolina State Board of Elections for tips on how voters can make sure what they're doing is above board — and what the consequences are for running afoul of the rules.

What Are The Legal Consequences Of Voting Twice?

Again, this is blatantly illegal. State law, which you can read here, makes it a felony for any voter "with intent to commit a fraud to register or vote at more than one precinct or more than one time ... in the same primary or election."

Not only is voting twice illegal but so is soliciting someone to vote twice.

What Kinds Of Illegal Voting Are There?

There's more than one way to vote illegally. And it's important to note that some people may not *intend* to vote illegally but still inadvertently wind up doing the wrong thing.

Absentee-ballot requests have skyrocketed this year, and there are several things voters should be aware of if they're filling out ballots from home.

For example, it's generally not OK for voters to let someone else fill out their absentee ballot, although there are some exceptions for legal guardians or near relatives. If they're not available, the voter is able to request help.

It's also illegal for someone other than the voter or close relative or guardian to take a voter's absentee ballot back to the county board of elections (or even to deliver the ballot to the voter).

Here's more if you want to brush up.

Mail voting aside, there are still several election-related activities that can get people in trouble. Here are a few things that can wind up getting you charged with a felony:

- Fraudulently getting your name (or anyone else's) on the registration books in more than one precinct. If you need to check your registration to make sure it's accurate, you can do so here.
- Asking for or agreeing to receive money, property or "any other thing of value whatsoever" in exchange for your vote.
- Threatening or assaulting any elections official.
- Trying to convince someone who is not a U.S. citizen to vote.

And there are also plenty of rules for elections officials, too, with felony charges possible for officials who do things like alter ballots or take kickbacks from candidates.

Here's a full list.

And it's worth noting that penalties were increased for some absentee-by-mail violations in 2019. That came on the heels of election fraud in the 9th U.S. House District.

Can Felons Vote?

Yes. But things can be tricky.

For example, The New York Times in 2018 profiled several cases of people being prosecuted for illegal voting in Alamance County. Several of the people interviewed were on probation or parole and, no

longer physically being locked up, were unaware they weren't supposed to vote.

It's usually unintentional.

"Often, this is because the voter did not understand his/her rights at the time of the vote," said a State Board of Elections spokesperson.

And the law just changed again this year.

In September, a Wake County Superior Court judge ruled that convicted felons can't be denied the right to vote solely because they still owe money in fines, fees or other court-imposed obligations. But that's only the case if they've completed *all other* parts of their sentences, including probation and parole.

Here's a memo from the state's elections chief, Karen Brinson Bell, explaining the changes to county boards of elections.

How Does the State Investigate Allegations Of Illegal Voting?

First things first: Cases of illegal voting are few and far between.

"In North Carolina, elections violations are neither widespread nor nonexistent," reads an explainer from the state. "They involve a very small fraction of those who participate in elections. Elections violations are most often isolated events that are typically not coordinated and are not confined to any single political party."

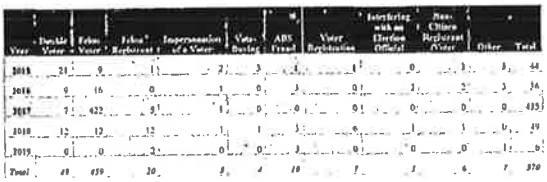
The state is also quick to point out there's a difference between election fraud and voter fraud. Election fraud

is when people try to interfere with the actual process of an election through schemes like buying votes, harvesting ballots or altering ballots. Voter fraud, meanwhile, is when someone who knows they're not allowed to vote does so anyway.

The North Carolina State Board of Elections launches reviews when it's notified about potential cases of illegal voting or other voting irregularities. If the complaint meets the criteria for a possible violation of the law, the state opens a formal investigation.

The state board can even issue subpoenas and hold hearings, as seen in early 2019 during the fallout over the previous year's 9th District election, which was eventually redone.

If there's evidence of illegal activity, the State Board of Elections refers its findings to county prosecutors. In a five-year period ending in 2019, that happened 570 times. Keep in mind, that number represents all kinds of illegal voting, and 81% of those cases involved convicted felons who voted before their sentences were completed. Forty-nine cases involved people allegedly voting twice, and 10 cases involved absentee-ballot fraud. Also worth keeping in mind: Just because something gets referred to a district attorney's office doesn't mean cases always move forward to trial.



North Carolina State Board Of Elections /

This chart shows all cases of potential illegal voting referred to county prosecutors by the North Carolina State Board of Elections over a five-year period ending in 2019.

Are There Safeguards In Place?

Photo IDs are not required in order to vote in this year's election. Voters are, however, asked to verify their identity by other means at their polling sites, such as by name and address of registration.

Poll workers have books with information about people who have already voted, so if someone shows up as having already voted, they'll be denied a regular ballot. If they feel like that's an error, they can request a provisional ballot, and elections staff will later "determine whether it should be counted" after Election Day during an audit for irregularities.

Of course, if you're doing everything right, it would be a jarring experience to be told that someone else has already used your name to vote.

"This is a rare occurrence and may happen occasionally as a result of poll worker error, such as a Jr./Sr. mix-up," a State Board of Elections spokesperson said in an email. "A voter may alert an election official that he or she has not already voted and cast a provisional ballot."

What Should You Do If You Suspect Illegal Voting?

Here's what the state says: "If you suspect an elections violation, please report the violation to your county board of elections or to the State Board of Elections. If you notice suspicious activity at a polling site, please notify a poll worker and follow up with your county board of elections."

What's The Best Way To Make Sure You're Not Accidentally Doing Something Illegal?

The state says first-time mail voters should read up on the procedures here. It's also recommended that voters carefully read the instructions. If you need help, we have a handy guide ready to go.

According to the state, incomplete witness information is so far the biggest problem with absentee ballots. As of now, the State Board of Elections is awaiting a judge ruling on what to do with ballots with errors. Those ballots are being kept in a secure location until the courts issue a final decision.

If you've filled out an absentee ballot ***but not returned it*** you may still vote in person.

"If you request an absentee ballot and decide you'd rather vote in person, you may do so as long as you did not complete and return the absentee ballot," the state says. "Simply tear up and throw away the absentee ballot."

EXHIBIT 12

0235B

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611

(919) 814-0700 or
(866) 522-4723

Fax: (919) 715-0135

NORTH CAROLINA
STATE BOARD OF ELECTIONS

NOTICE ON THE RESTORATION OF VOTING RIGHTS TO CERTAIN INDIVIDUALS ON EXTENDED PROBATION

If you are currently serving a term of extended probation, parole, or post-release supervision because you have outstanding monetary obligations (fines, fees, restitution), you are now eligible to register to vote.

You may now re-register to vote, or register for the first time to vote, if all of the following apply to you:

- You are serving a term of extended probation, parole, or post-release supervision;
- You still have outstanding fines, fees, or restitution as a result of your felony conviction;
- You do not know of another reason that your probation, parole, or post-release supervision was extended.

If you were registered to vote before your felony conviction, your registration was cancelled by your county board of elections. You must submit a new voter registration form to re-register. To register to vote you must also be a U.S. citizen, at least 18 years old by the date of the general election, and a resident of North Carolina and your county for 30 days before the election.

To register to vote, complete the voter registration form at https://s3.amazonaws.com/dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf and mail or hand-deliver it to your county board of elections office by **October 9, 2020**. If you are a DMV customer, you may register to vote online at https://www.ncdot.gov/dmv/offices-services/online/Pages/voter-registration-application.aspx.

If you miss the regular voter registration deadline, you may register and vote at the same time at any one-stop early-voting site in your county during the early voting period from **October 15 to October 31, 2020**. Sites and hours for one-stop early-voting sites vary and are available at https://vt.ncsbe.gov/ossite/ or by calling your county board of elections office.

County boards of elections office addresses and locations are available at https://vt.ncsbe.gov/BOEInfo/.

If you have questions about the particular circumstances of your extension of probation, please contact your probation officer. If you have further questions about your restoration of rights, the following organizations can assist you:

Forward Justice
http://www.ForwardJustice.org
Email: vote@forwardjustice.org
Toll-Free Phone: 877-880-8683 | 877-880-VOTE

North Carolina Second Chance Alliance
http://www.ncsecondchance.org

NORTH CAROLINA
STATE BOARD OF ELECTIONS

Mailing Address:
P.O. Box 27255
Raleigh, NC 27611

(919) 814-0700 or
(866) 522-4723

Fax: (919) 715-0135

Numbered Memo 2020-26

TO: County Boards of Elections

FROM: Karen Brinson Bell, Executive Director

RE: Restoration of Voting Rights of Certain Individuals on Extended Probation

DATE: September 23, 2020

On September 4, 2020, a Wake County Superior Court entered an injunction requiring that individuals serving an extended term of probation, parole, or post-release supervision solely because of outstanding monetary obligations (fines, fees, or restitution) be permitted to register and vote.[1]

Voters may now register to vote if all the following criteria apply:

1. **The voter is serving a term of extended probation, parole, or post-release supervision;**
2. **The voter has outstanding fines, fees, or restitution as a result of their felony conviction; and**
3. **The voter does not know of another reason that their probation, parole, or post-release supervision was extended.**

Voters who are currently serving a felony sentence and do not meet all three criteria are not permitted to register to vote.

Voters who are now eligible to register and vote under the court order must re-register to vote if they were previously registered. The State Board is sending a letter and voter registration form to voters identified as potentially eligible to register to vote under the order.

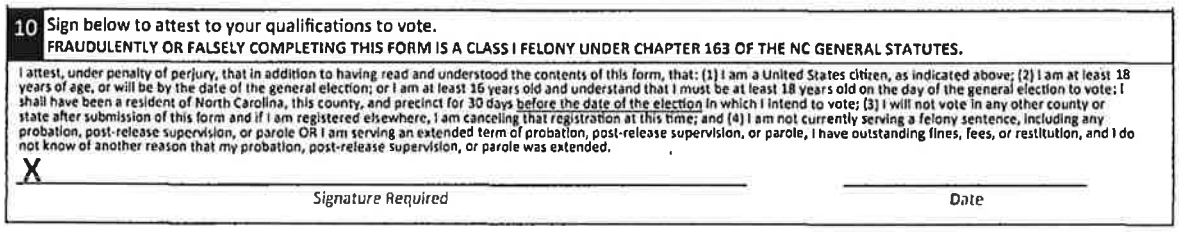
An updated voter registration form is available on the State Board's website in English and in Spanish. You may direct voters with questions about the order to the Notice of Restoration of Voting Rights to Certain Individuals on Extended Probation on the State Board's website and attached to this memo.

Individuals who may now be eligible to register to vote under the order are now flagged in the data the State Board receives from DPS. As of tomorrow, September 24, 2020, the State Board will

[1] *Community Success Initiative v. Moore*, No. 19 CVS 15941, Order on Inj. Relief at 10 (Wake Cty. Sup. Ct.).

process the data so that the felon data provided to the county boards of elections will no longer includes these potentially eligible individuals. This data is used for automated list maintenance processes for denials and removals due to felony conviction flagged by SEIMS and for the Felony Conviction Reports found on the intranet.

Staff are working to determine whether it is possible to update forms in SEIMS used for in-person voting. If you have forms that you use outside of SEIMS or if your county does not use the standard forms provided by the State Board (e.g., ATV, One-Stop Application, etc.), you will need to update the language to reflect the new attestation on the voter registration form. A sample of the updated attestation is included here for reference.



10 Sign below to attest to your qualifications to vote.
FRAUDULENTLY OR FALSELY COMPLETING THIS FORM IS A CLASS I FELONY UNDER CHAPTER 163 OF THE NC GENERAL STATUTES.

I attest, under penalty of perjury, that in addition to having read and understood the contents of this form, that: (1) I am a United States citizen, as indicated above; (2) I am at least 18 years of age, or will be by the date of the general election; or I am at least 16 years old and understand that I must be at least 18 years old on the day of the general election to vote; I shall have been a resident of North Carolina, this county, and precinct for 30 days before the date of the election in which I intend to vote; (3) I will not vote in any other county or state after submission of this form and if I am registered elsewhere, I am canceling that registration at this time; and (4) I am not currently serving a felony sentence, including any probation, post-release supervision, or parole OR I am serving an extended term of probation, post-release supervision, or parole, I have outstanding fines, fees, or restitution, and I do not know of another reason that my probation, post-release supervision, or parole was extended.

X _____ _____

Signature Required *Date*

The following forms are being STEPPS: the ATV, One-Stop Application, Notice to Same-Day Registrants, and Provisional Application. Letters and notices, including the denial and removal letters, will also be updated in SEIMS.

Individuals who have been discharged from probation are also eligible to register and vote, even if they still owe money or have a civil lien. These individuals do not appear in the data the State Board receives from DPS because they are not serving a current felony sentence.

EXHIBIT
13

Post-Election Audit Report

April 21, 2017

General Election 2016

NORTH CAROLINA
State Board *of* Elections

BACKGROUND

The N.C. State Board of Elections (NCSBE) is an independent and bipartisan agency charged with oversight of elections in North Carolina. Advances in database technology and data quality and the formation of an in-house investigative team now allow the agency to develop audits that flag irregularities for review by investigators. These "post-election integrity audits" compare voter and election records with various government databases to identify potentially ineligible voters and irregularities, ranging from unintentional violations to intentional voter fraud and elections tampering. **[Appendix 1: Audit Descriptions]**

Conducting integrity audits requires NCSBE to walk an extremely tight line: Preserving processes that ensure broad access to the polls while preventing unlawful participation. Data cannot tell the whole story and audit results must be analyzed carefully by those who know the limitations of individual data sources. Data analysts work alongside trained investigators with prior experience in state and federal law enforcement to review cases before drawing conclusions or involving prosecutors.

State law requires our agency to investigate "frauds and irregularities in elections" and to report violations to the attorney general or district attorneys. **[Appendix 2: G.S. § 163-22(d)]**

NCSBE takes seriously its uniquely independent position to address allegations of fraud in the state through responsible, data-driven investigations. In 2015, this agency created a formal Investigations Division — one of a few of its kind in the nation — to review allegations related to elections and refer them to prosecutors when warranted by evidence.

State and federal elected officials, journalists and everyday citizens have requested information regarding cases of fraud or investigations following the 2016 elections. **[Appendix 3: Congressional Letter]**

Rather than providing information on a one-off basis, NCSBE staff prepared this report, which is intended to provide an overview of audits, findings and investigations related to the 2016 general election in North Carolina, while offering context necessary to avoid misinterpretation. Where possible, this report also provides numbers of voters who investigators are reviewing or who investigators have concluded were not eligible to participate.

Irregularities occur in small percentages in nearly every election, and North Carolina is not immune to this. Administrative error and misunderstanding should be distinguished from systemic manipulation or intentional fraud. However, NCSBE understands that whether an irregularity is administrative, unintentional or intentional, the end result is an ineligible vote that dilutes votes lawfully cast by eligible voters. ***Even assuming all ineligible ballots identified in this report were cast for the prevailing candidate, no races -- statewide or local -- would have had a different outcome than the one already certified by the state.***

SUMMARY

Nearly 4.8 million N.C. voters participated in the 2016 general election, the largest number in state history. It is important to recognize that suspected cases of ineligible voters casting ballots and/or committing fraud represent a tiny fraction of that number.

The following data points summarize the results of post-election audits from the 2016 general election:

- **441 open cases of voting by suspected active felons.** The State Constitution disqualifies current felons from voting until their sentence is completed, including probation or parole. Investigators were able to rule out more than 100 voters initially flagged as ineligible through the audit, further supporting the need for investigative review of data audits. These new processes are being implemented to ensure those serving felony sentences do not remain on the voter rolls and that all registrants are checked against the current felons' database at the time of registration. New processes fill gaps in the list maintenance process outlined in G.S. § 163-82.14(c).
- **41 non-citizens with legal status (green card, etc.) cast ballots.** The State Constitution only permits U.S. citizens to register and to vote. The audit pairing state and federal databases identified an additional 34 voters who provided documents showing they *are* U.S. citizens. Investigators continue to review 61 additional records.
- **24 substantiated cases of double-voting initiated through tips and data audits.** An initial audit identified a few dozen additional voter records that remain under review, though administrative errors by poll workers can lead to voter history being assigned to the wrong people; this may lead to false positives in audits that can only be detected by more detailed review.
- **Two cases of voter impersonation referred to prosecutors.** NCSBE is conducting additional review using death data and double-voting audits to identify whether additional cases should be investigated. Of the two cases referred, one involves voting by mail, and the other involves voting in person. Both involve family members voting in the place of a recently deceased loved one, forgery of the deceased voter's signature, and subsequent admissions to investigators. **[Appendix 4: Admission Letters]**
- **Irregularities affecting absentee by-mail voting in Bladen County.** The State Board voted unanimously late last year to refer an investigation into suspected criminal activity to federal prosecutors.
- **No evidence of ballot stuffing or equipment tampering.** NCSBE was among the first states to partner with the U.S. Department of Homeland Security in an effort last year to prevent cyber hacking. A separate audit of voting systems logs presented no evidence of administrative fraud, including in Durham County (where an investigation in the March primary was referred to local prosecutors).

[Appendix 5: Breakdown of Voting Irregularities by Type, Party Affiliation of Voters]

All numbers above are subject to change based on ultimate investigative findings.

A provisional ballot audit resulted in 428 ballots of eligible voters being counted that would not otherwise have counted. The audit was performed to ensure uniformity and compliance with election laws among the 100 county boards of election. **[Appendix 1: Audit Descriptions]**

FELONS

Under G.S. § 163-275(5), it is a Class I felony "for any person convicted of a crime which excludes the person from the right of suffrage, to vote . . . without having been restored to the right of citizenship."

NCSBE initiates investigations into possible cases of felons voting through a system of data audits followed by investigator review, referrals from county boards of elections and tips from the public.

In late January 2017, NCSBE sent letters to suspected felon voters identified through data audits, notifying recipients that they may have illegally voted and that their registrations would be canceled in 30 days unless they objected in writing and presented evidence that they are not active felons. *See* G.S. §§ 163-82.14(c)(3) and 163-82.14(c) **[Appendix 6: Sample Letter to Suspected Felon Voters]**

Some suspected felons provided information showing they were not active felons (they had completed their sentences, been convicted of a misdemeanor or received a deferred prosecution, for example), and were eligible to vote. Others told investigators that they did not know they had lost their voting rights upon conviction.

Currently, 441 files of suspected felon voters remain open after an initial screening and contacts or attempted contacts with the voters.

Investigators have begun referring investigation reports regarding felons to local prosecutors. To date, 16 substantiated cases from the 2016 general election have been referred to district attorneys. The remaining 425 are expected to be referred when investigations are complete. Under state law, felon voting is a strict liability offense, and thus a felon may be convicted of a crime even if he or she does not know that voting while serving an active sentence is wrongful.

Updated voter lists help prevent individuals from unintentional violations. An individual may, for instance, legally register to vote before becoming a felon and then appear at the polls while on probation. Such a person may not understand they are ineligible. NCSBE has reexamined its registration and list maintenance processes and is taking significant steps to discourage unlawful participation by current felons. NCSBE's efforts include:

- **Working with public safety officials and the court system to ensure that convicted felons are expressly notified that they lose their voting rights upon conviction,** and regain them only after completing their sentence, including probation and parole. Certain suspects claimed they were never informed of the restriction. An initial review of associated plea agreements and contact with probation personnel indicate there is room to improve education around voting rights. **[Appendix 7: Letter to DPS/AOC on Felons]**
- **Increasing data-sharing between local election officials to ensure a felon removed in one county does not re-register in another county, unless his or her sentence is complete.** Though the past system followed the requirements of G.S. § 163-82.14(c), a gap in the legacy voting data system may have allowed some active felons to register or to re-register without being detected. **Additional felons who did not vote in the general election were recently removed from the voter rolls, closing that gap.** These removals followed the notice sent to felons by mail and waiting period required under state law. Fixing the gap and educating affected voters will reduce the opportunity for unintentional violations. It also will improve the likelihood of successful prosecutions against willful offenders.
- **Updating elections software to check felon status at the time of registration.** The improved system is being coded and will roll out statewide this summer, substantially improving the maintenance efforts through current technologies and new data-sharing relationships.
- **Adding checkboxes to voter forms to ensure participants are aware of voter qualifications**, including the restriction on current felons. **[Appendix 8: New Voter Forms]**
- **Educating the public about voting requirements** through NCSBE website, outreach events, news releases, social media and other means.

NON-CITIZENS

The N.C. Constitution allows only U.S.-born and naturalized citizens to register and vote. It is unlawful for a non-citizen to register or vote in a state or federal election.

A separate post-election audit and post-audit investigation using state and federal databases identified non-U.S. citizens suspected of casting ballots in the general election. Upon receipt of a letter from NCSBE, 41 of these individuals acknowledged they were not U.S. citizens. **[Appendix 9: Sample Letter to Possible Non-U.S. Citizen Voters].** The investigation into these cases, including interviewing voters, is ongoing.

All cases involve documented non-citizens who were admitted into the country lawfully. All individuals subject to this audit were matched to the Department of Homeland Security's database using information obtained from the N.C. Division of Motor Vehicles (DMV).

United States District Court
Eastern District of North Carolina
Western Division

EXHIBIT 14

No. 5:22-CV-00059-BO

Siddhanth Sharma Vs. Buffaloe	PROPOSED ORDER TRO/PRELIMINARY INJUNCTION FRCP 65

ORDER

Pursuant to FRCP 65 Petitioner's Motion for Emergency TRO/Preliminary Injunction [D.E 42] is HEREBY GRANTED. Defendants are to REFRAIN from imposing qualifications, as it pertains to U.S. House of Representatives, that candidates be a 1.) Registered Voter 2.) Affiliated with a political party for 90 days 3.) Not be a felon. NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 *et seq,* 275, Article VI Section 2 Clause 3 and Article VI Section 8 of the NC Constitution is UNCONSTITUTIONAL as it pertains to running for U.S. House of Representatives. Defendants are hereby ORDERED to HOLD A SPECIAL ELECTION for Plaintiff in District __.

DURATION OF THE TEMPORARY RESTRAINING ORDER

Pursuant to FRCP 65(b)(2) This Temporary Restraining Order SHALL expire within 14 days from the signing on _ February/March _____ unless within such time, for good cause shown, the Order is extended, or unless, the defendant consents that it should be extended for a longer period of time.

ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION

Pursuant to FRCP 65(b) Defendant(s) SHALL appear before this Court (306 E Main St #1, Elizabeth City, NC 27909) on the _ Day of February/March, 2023 at _:__ o' clock _M to show cause, if any, why this Court should not enter a TRO/Preliminary Injunction pending final resolution of Case No. 5:22-CV-00059-BO.

SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE

Defendant[s] shall file with this Court and serve on Petitioner any pleadings, affidavits, motions and/or legal memoranda no later than five (5) business days prior to the HEARING on Plaintiff's request for this EMERGENCY TRO/PRELIMINARY INJUNCTION

CORRESPONDENCE AND NOTICE TO PLAINTIFF

It is hereby further ordered, that for the purposes of this Order, ALL correspondence and pleadings with Plaintiff SHALL be addressed to: Siddhanth Sharma, 8508 Micollet Ct, NC, 27613. Petitioner's Phone number is 919-880-3394; his e-mail is siddhanthsharma1996@yahoo.com

JURISDICTION

This Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this _ day of _____, 2023.

_____

TERRANCE BOYLE

United States District Judge

United States District Court
Eastern District of North Carolina
Western Division

No. 5:22-CV-00059-BO

Siddhanth Sharma Vs. Buffaloe	PROPOSED ORDER TRO/PRELIMINARY INJUNCTION FRCP 65

ORDER

Pursuant to FRCP 65 Petitioner's Motion for Emergency TRO/Preliminary Injunction [D.E 42] is HEREBY GRANTED. Defendants are to REFRAIN from imposing qualifications, as it pertains to U.S. House of Representatives, that candidates be a 1.) Registered Voter 2.) Affiliated with a political party for 90 days 3.) Not be a felon. NCGS 13-1, NCGS. 163-55, 82.1(c)(2), 82.4, 96, 106(a), 106(a), 106(b), 106(e), 106.1, 106.2, 106.5(b), 127.3 *et seq,* 275, Article VI Section 2 Clause 3 and Article VI Section 8 of the NC Constitution is UNCONSTITUTIONAL as it pertains to running for U.S. House of Representatives. Defendants are hereby ORDERED to HOLD A SPECIAL ELECTION for Plaintiff in District __.

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SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE

Defendant[s] shall file with this Court and serve on Petitioner any pleadings, affidavits, motions and/or legal memoranda no later than five (5) business days prior to the HEARING on Plaintiff's request for this EMERGENCY TRO/PRELIMINARY INJUNCTION

CORRESPONDENCE AND NOTICE TO PLAINTIFF

It is hereby further ordered, that for the purposes of this Order, ALL correspondence and pleadings with Plaintiff SHALL be addressed to: Siddhanth Sharma, 8508 Micollet Ct, NC, 27613. Petitioner's Phone number is 919-880-3394; his e-mail is siddhanthsharma1996@yahoo.com

JURISDICTION

This Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this _ day of _____, 2023.

_____

TERRANCE BOYLE

United States District Judge

AFFIDAVIT

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

I wanted to run for U.S. House of Representatives for the 2022 midterms. The 118th congress that I intended to serve in has already begun since 3 January 2023. I am already suffering irreparable harm and will continue until judgment is rendered in this case.

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 prevent me from running for U.S. House of Representatives due to my status as a Felon.

Due to NCGS 13-1, NCGS 163-275 the NC State Board of Elections(Defendants) has arrested people before in the "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

I just got out of prison and am not trying to go back via the process of me trying to be a Registered Voter. I have been denied to be a Registered Voter once, thus, trying again would be futile and I would probably get penalized. As the phrase goes: "I may be able to fool them once but not twice." This is why I am filing this lawsuit.

Sign: Rasheld Glarmx

Date: 2-9-23

AFFIDAVIT

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

I wanted to run for U.S. House of Representatives for the 2022 midterms. The 118th congress that I intended to serve in has already begun since 3 January 2023. I am already suffering irreparable harm and will continue until judgment is rendered in this case.

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 prevent me from running for U.S. House of Representatives due to my status as a Felon.

Due to NCGS 13-1, NCGS 163-275 the NC State Board of Elections(Defendants) has arrested people before in the "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

I just got out of prison and am not trying to go back via the process of me trying to be a Registered Voter. I have been denied to be a Registered Voter once, thus, trying again would be futile and I would probably get penalized. As the phrase goes: "I may be able to fool them once but not twice." This is why I am filing this lawsuit.

Sign: Siddharth Sharma

Date: 2-9-23

EXHIBIT 16

Siddhanth Sharma Vs. Buffaloe	PROPOSED ORDER PRE-TRIAL CONFERENCE/HEARING/ORAL ARGUMENTS FRCP 7(b), 16 Local Rule 7.1(j)

ORDER

Pursuant to FRCP 7(b), 16 and Local Rule 7.1(j) Petitioner's Motion for Pre-Trial Conference/Hearing/Oral Arguments [D.E 42] is HEREBY GRANTED. This Court, after giving Defendants time to respond [D.E._____] and after reviewing the Pleadings thinks it best to dispense the matter via Oral Arguments.

SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE

Defendant shall file with this Court and serve on Petitioner any pleadings, affidavits, motions and/or legal memoranda no later than five (5) business days prior to the HEARING on Plaintiff's request for PRE-TRIAL CONFERENCE/HEARING/ORAL ARGUMENTS.

CORRESPONDENCE AND NOTICE TO PLAINTIFF

It is hereby further ordered, that for the purposes of this Order, ALL correspondence and pleadings with Plaintiff SHALL be addressed to: Siddhanth Sharma, 8508 Micollet Ct, NC, 27613. Petitioner's Phone number is 919-880-3394; his e-mail is siddhanthsharma1996@yahoo.com

JURISDICTION

This Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this _ day of _____, 2023.

_____

TERRANCE BOYLE

United States District Judge

Siddhanth Sharma Vs. Buffaloe	PROPOSED ORDER PRE-TRIAL CONFERENCE/HEARING/ORAL ARGUMENTS FRCP 7(b), 16 Local Rule 7.1(j)

ORDER

Pursuant to FRCP 7(b), 16 and Local Rule 7.1(j) Petitioner's Motion for Pre-Trial Conference/Hearing/Oral Arguments [D.E 42] is HEREBY GRANTED. This Court, after giving Defendants time to respond [D.E._____] and after reviewing the Pleadings thinks it best to dispense the matter via Oral Arguments.

SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE

Defendant shall file with this Court and serve on Petitioner any pleadings, affidavits, motions and/or legal memoranda no later than five (5) business days prior to the HEARING on Plaintiff's request for PRE-TRIAL CONFERENCE/HEARING/ORAL ARGUMENTS.

CORRESPONDENCE AND NOTICE TO PLAINTIFF

It is hereby further ordered, that for the purposes of this Order, ALL correspondence and pleadings with Plaintiff SHALL be addressed to: Siddhanth Sharma, 8508 Micollet Ct, NC, 27613. Petitioner's Phone number is 919-880-3394; his e-mail is siddhanthsharma1996@yahoo.com

JURISDICTION

This Court retains jurisdiction of this matter for all purposes.

IT IS SO ORDERED, this _ day of _____, 2023.

_____

TERRANCE BOYLE

United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:22-cv-59-BO

SIDDHANTH SHARMA, Plaintiff, v. DAMON CIRCOSTA, et al., Defendants.	**STATE BOARD DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR RECONSIDERATION [D.E. 42]**

NOW COME Defendants, Damon Circosta, Stella Anderson, Jeff Carmon, Stacy Eggers, IV, Tommy Tucker, Karen Brinson Bell, and the North Carolina State Board of Elections ("Defendants" or "State Board"), through counsel, to provide this response to Plaintiff's Motion for Reconsideration, Expedition, Pretrial Conference/Hearing/Oral Argument, Counterclaim, Preliminary Injunction/TRO, Exceed Word Count. [D.E. 42].

Nature of the Case

On February 7, 2022, Plaintiff filed a Complaint alleging that several of the North Carolina State Board of Elections' candidate filing requirements for the 2022 mid-term federal elections were unconstitutional under the U.S. Constitution's First and Fourteenth Amendments; Qualifications Clause for members of the U.S. House of Representatives contained in Article I, Section 2, Clause 2; and Supremacy Clause in Article VI, Section 2. [D.E. 1]. According to Plaintiff, the invalid requirements being enforced by the State Board are as follows: 1) that candidates be registered to vote; 2) that they be affiliated with a political party for at least ninety days in order to run in that party's primary; and 3) that they not be serving a felon conviction. [D.E. 1]. Plaintiff alleged these requirements prevented him from accessing the ballot for North

Carolina's 2022 primary election and requested declaratory and injunctive relief to place his name on the ballot.

Following dismissal for lack of subject matter jurisdiction [D.E. 38], Plaintiff now brings this motion for reconsideration. In this motion, Plaintiff expands upon the claims and relief requested in his pleadings. [D.E. 42, pp. 58-59]. Specifically Plaintiff requests (1) that the Court reconsider its May 16, 2022 Order dismissing the case; (2) that the Court order Defendants to hold a special election; (3) oral argument; (4) exceed the word count; (5) preliminary injunction / temporary restraining order; (6) that the Court accept new claims not plead in order to declare as unconstitutional additional North Carolina statutes and provisions of the North Carolina Constitution, namely N.C.G.S. §§ 13-1, 163-275, 163-55, 163-82.1, 163-106.1, 163-106.1(e), 163-106.5(b), 163-127.3, and Article VI, Section 2, Clause 3, and Article VI, Section 8 of the North Carolina Constitution; and (6) schedule a pretrial conference or hearing. *Id.*

Plaintiff's motion for reconsideration primarily relies upon a Rule 60(b)(2) argument that he can now present newly found evidence that he attempted to register to vote and was denied. [D.E. 42, pp. 4-5, 13, and 57 ("What is new is that Petitioner HAS been denied being a Registered Voter on account of Petitioner being a felon; Petitioner believes [this] is what the Court didn't understand …")]. Plaintiff also argues throughout his motion that the existence of N.C.G.S. § 163-275, certain subsections of which criminalize registering or voting as a current felon, is new evidence he was unable to present. [D.E. 42, pp. 1, 8-11, 13-21, 28-29, 36, 57]. Both of these arguments are not new evidence and both demonstrate a misunderstanding of the Court's reasoning. Plaintiff's ability to register as a voter is not relevant to this Court's reasoning on why Plaintiff lacked an injury. Rather, it was the undisputed fact that Plaintiff never attempted to file a Notice of Candidacy that proved dispositive.

As a result, the Court should deny Plaintiffs' Motion for Reconsideration on multiple grounds. First, Plaintiff has failed to meet the standard necessary for reconsideration because he has not proffered new evidence, and even if it was new evidence, it fails to address the grounds on which the Court found that Plaintiff failed to establish an injury for standing purposes. Second, the Court cannot grant the relief requested by Plaintiff – a special election designed to unseat the current officeholder – because once seated the United States Constitution expressly vests Congress alone with the authority to remove one of its members. Third, as Plaintiff has been released from incarceration, he is currently eligible to register to vote, such that even his "new" alleged injury is now moot.

Statement of Facts & Procedural History

On March 22, 2022, the State Board filed a Motion to Dismiss based upon lack of personal jurisdiction, insufficient service of process, lack of subject matter jurisdiction, and failure to state a claim. [D.E. 30, 31]. With respect to subject matter jurisdiction, the State Board argued that Plaintiff failed to assert an injury sufficient to establish standing and his claims were not yet ripe because he never actually attempted to file a notice of candidacy form with the State Board. *Id.*

On April 15, 2022, Plaintiff filed a "Reply in Support of Plaintiff's Motion for Declaratory Relief" in which he argued, inter alia, that he had made sufficient allegations to meet subject matter jurisdiction. [D.E. 34]. Included within that response, Plaintiff argued that he suffered an injury because his attempt to register as a voter was denied on January 6, 2022. *Id.*, p. 6. In support of this injury, Plaintiff attached as Exhibit 3 to that filing a January 6, 2022 letter from the Wake County Board of Elections notifying him that he was scheduled to be removed from the registered voter rolls due to felony conviction. *Id.* (citing D.E. 34-3).

On May 16, 2022, this Court issued an order denying several pending motions as well as granting several others, including Defendants' motion to dismiss. [D.E. 38]. To the extent any

additional facts or procedural history are relevant to this motion, Defendants incorporate the Court's statement of Background from the May 16, 2022 Order. *Id.*, pp. 2-4.

In the Discussion section of the Court's May 16, 2022 Order, it outlined the grounds on which it dismissed Plaintiff's Complaint. *Id.*, pp. 6-11. First, the Court reasoned that Plaintiff failed to allege an injury sufficient to demonstrate standing. *Id.*, pp. 6-9. Specifically, the Court noted that any requirements placed upon candidates beyond those contained in the United States Constitution, Article I, Section 2, Clause 2, or in Section 3 of the Fourteenth Amendment, are unenforceable. *Id.* at 6-7 (citing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 800-01 (1995)). The Court then noted that it was undisputed that Plaintiff never attempted to file a notice of candidacy for the 2022 elections, never asserted that he plans to file a notice of candidacy, and instead asserts it would be futile. *Id.*, p. 8. Finally, the Court found that "[w]ithout having filed a notice of candidacy, allegations of a possible future injury are too remote to be cognizable as of the date of this order." *Id.*, p. 9.

Second, the Court found that even if there was a sufficient injury alleged, the matter is not yet ripe because, at that time, Plaintiff could still file a notice of candidacy for the general election. *Id.*, pp. 9-11. Specifically, the Court found that Plaintiff's claims with respect to the 2022 general election were not yet ripe as because he still had the opportunity to file as a candidate up to the date of the order and nothing currently prevents him from doing so. *Id.*, p. 10. Accordingly, the Court dismissed the matter without prejudice. *Id.*, p. 11.

On May 16, 2022, Plaintiff filed a Motion for a Counter Claim and Temporary Restraining Order. [D.E. 40]. The Court denied this motion on May 17, 2022 citing the May 16, 2022 Order and noting that Plaintiff had failed to cure the jurisdictional deficiency that he had not suffered an injury because he never attempted to file as a candidate. [D.E. 41].

Nine months later on February 9, 2023, Plaintiff filed the instant motion for reconsideration, entitled "Motion for Reconsideration, Expedition, Pretrial Conference/Hearing/Oral Argument, Counterclaim, Preliminary Injunction/TRO, Exceed Word Count." [D.E. 42].

Legal Argument

Legal Standard

A motion for reconsideration filed nine months after the final judgment has issued falls under Rule 60. Fed. R. Civ. P. 60(b). Specifically, Rule 60(b) states:

> … the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
>
> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
>
> (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b).

"Under Rule 60(b)(2), relief from judgment is provided only with respect to newly discovered evidence pertinent to one's claim." *Gravelle v. Kaba Ilco Corp.*, No. 5:13-CV-642-FL, 2018 U.S. Dist. LEXIS 32481, at *9 (E.D.N.C. Feb. 28, 2018) (citing *Schultz v. Butcher*, 24 F.3d 626, 631 (4th Cir.1994) (quoting *Anderson v. Cryovac, Inc.*, 862 F.2d 910, 924 n.10 (1st Cir.1988) ("Rule 60(b)(2) is aimed at correcting an erroneous judgment stemming from the unobtainability of evidence.")).

I. PLAINTIFF FAILS TO RAISE SUFFICIENT ARGUMENTS TO JUSTIFY RECONSIDERATION OF THE FINAL JUDGMENT.

Plaintiff's primary argument in support of reconsideration arises under Rule 60(b)(2) and his allegation that being denied registration to vote and the existence of a statute criminalizing registering to vote by felons constitutes newly discovered evidence. Neither are newly discovered evidence, or even new arguments, and even if they were, they fail to address the grounds on which this Court found that Plaintiff lacks an injury sufficient to establish standing. Additionally, due to the intervening time between the final judgment and this motion, there are new arguments that support a finding of lack of subject matter jurisdiction.

First, Plaintiff incorrectly argues that he can demonstrate an injury now that he could not when the case was previously adjudicated because he only recently located the letter notifying him that his voter registration form was denied. [D.E. 42, pp. 1-3, 8-11] He claims he only recently discovered this proof of denial, and this serves to explain the timing of the current motion as the absolute earliest time it could be filed based on this new evidence of an injury. *Id.* However, this is not new evidence or facts. The newly discovered denial letter Plaintiff attaches as Exhibit 1 to the instant motion is the same letter he submitted to the Court in April of 2022 from the Wake County Board of Elections. [D.E. 42, p. 3; *Compare* D.E. 34-3 with D.E. 42-3]. Therefore, he has not raised new evidence or facts that were not available to him or presented to the Court when the matter was previously considered and dismissed by the Court.

Second, and perhaps more importantly, the Court's decision finding no injury was based on Plaintiff's failure to file a Notice of Candidacy form, not whether or not he was denied the ability to register as a voter. [D.E. 38, pp. 8-9]. Thus, the denial of registration was previously before the Court, had no bearing on that decision, and Plaintiff's reliance on it in the current motion fails to justify reconsideration of the Court's May 16, 2022 ruling.

Next, Plaintiff also argues that he was under the threat of arrest if he attempted to register to vote. [D.E. 42, pp. 8-9]. In support of this argument, Plaintiff repeatedly cites generally to N.C.G.S. § 163-275 throughout his filing. *Id.*, pp. 1, 8-11, 13-21, 28-29, 36, 57. Presumably, Plaintiff is focused on the subsections related to registering to vote and voting as a felon, which he claims prevented him from being a candidate for office. *Id.* Specifically, subsection 163-275(1) makes it a felony for a felon to register to vote until his rights have been restored, and section 163-275(5) makes it a felony for a felon to vote before his rights have been restored. N.C.G.S. § 163-275(1) and (5).

Each citation to section 163-275 in Plaintiff's filing is one variation or another of the same argument that he must register to vote in order to be a candidate for the United States House of Representatives. Again, Plaintiff fails to recognize that the Court's May 16, 2022 Order reiterated that the only qualifications placed on candidates for the U.S. House of Representatives are those that arise from the United States Constitution. [D.E. 38, pp. 6-8]. Thus, Plaintiff again fails to address the grounds on which the Court dismissed his claims. He did not, and has not, attempted to file a Notice of Candidacy. *Id.*, 8-11. Unless and until he does so, and the State Board rejects that application, he has no injury to support standing. His ability to register and vote prior to his release from custody is not the basis on which the Court made its May 16, 2022 ruling.

II. INTERVENING EVENTS FURTHER SUPPORT THAT THE COURT LACKS SUBJECT MATTER JURISDICTION.

Finally, two related intervening events, the start of the 118th Congress and Plaintiffs' release from prison, both of which occurred after the Court's May 16, 2022 Order, have changed the circumstances of this case such that new grounds exist to find a lack of subject matter jurisdiction.

First, in the intervening period since the final judgment and Plaintiff's motion for reconsideration, the U.S. House of Representatives has seated the winner of the 2022 election for which Plaintiff claims he wanted to run.[1] As a result of the U.S. House of Representatives asserting its authority to seat a candidate-elect, this Court lacks jurisdiction to grant the relief requested in Plaintiffs' motion. *See In Re Whittacre*, 228 N.C. App. 58, 59-60, 743 S.E.2d 68, 69-70 (N.C. App. 2013) ("As the United States Supreme Court has observed, [Art. I, sec. 5] grants each house of Congress 'the power to judge of [sic] the elections, returns, and qualifications of its own members,' and the house's exercise of that power includes the power 'to render a judgment which is beyond the authority of any other tribunal to review.'" (quoting *Barry v. United States*, 279 U.S. 597, 613-14, 49 S. Ct. 452, 455 (1929)); *see also Morgan v. United States*, 801 F.2d 445, 447, 255 U.S. App. D.C. 231 (D.C. Cir. 1986) (holding under Article I, section 5, that court "lack[ed] jurisdiction to proceed" with respect to challenge to congressional election when House of Representatives had already seated individual).

Plaintiff's requested relief would have this Court order a new election that would necessarily create the potential to unseat the current office holder. [D.E. 42, pp. 2, 24, 33, 35, 39, 43, 44, 48, 53, 56, 58]. Only the U.S. House of Representatives has the authority to remove one of its members from office. *See* United States Constitution, Article I, Section 5. Therefore, the relief requested Plaintiff seeks is impossible for this Court to grant.

Second, in the intervening period since the final judgment and this new motion for reconsideration, Plaintiff was released from incarceration, thus eliminating any injury that

[1] *See* "Members of the U.S. Congress | Congress.gov | Library of Congress," webpage that lists the current Members of the North Carolina delegation to United States House of Representatives for the 118th Congress, https://www.congress.gov/members?q=%7B%22member-state%22%3A%22North+Carolina%22%2C%22congress%22%3A118%2C%22chamber%22%3A%22House%22%7D, last visited February 28, 2022.

Plaintiff claims from being unable to register to vote, such that his claims are moot. [D.E. 42, p. 3 ("Petitioner was released prison on 7 December 2022.")]. Currently, based upon a permanent injunction issued by the North Carolina Superior Court of Wake County in the matter of *Community Success Initiative, et al. v. Moore, et al.*, once Plaintiff was released from custody, he became eligible to register and vote. *Community Success Initiative, et al. v. Moore, et al.*, 19 CVS 15941, Superior Court of Wake County, Final Judgment and Order, March 28, 2022. The trial court's ruling holds that even those who remain under community supervision, including probation, parole, or post-release supervision, and who have not yet completed that term of supervision, are eligible to register and vote. *Id.*, pp. 64-65 ("For the avoidance of doubt, under this injunction, if a person otherwise eligible to vote is not in jail or prison for a felony conviction, they may lawfully register and vote in North Carolina.").

It must be noted that the Final Judgment and Order of the trial court in *Community Success Initiative, et al. v. Moore, et al.* has been appealed and was heard for oral argument before the North Carolina Supreme Court on February 2, 2023. As of the date of this filing, no opinion has issued. Nonetheless, given that current North Carolina law allows Plaintiff to register to vote, this perceived burden to his ability to become a candidate for office no longer exists, such that all arguments based on his inability to register or the threat of criminal prosecution under N.C.G.S. § 163-275(1) for attempting to register to vote are moot.

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Conclusion

For the reasons above, the State Board Defendants respectfully request that Plaintiff's motion for reconsideration of this Court's May 16, 2022 Order be denied.

This the 2nd day of March, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Terence Steed
Terence Steed
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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served on pro se Plaintiff in this action via email on this date, and by U.S. Mail, postage prepaid, on March 2, 2023 as follows:

Siddhanth Sharma
8508 Micollet Court
Raleigh, NC 27603
sidforoffice@gmail.com

This the 2nd day of March, 2023.

JOSHUA H. STEIN
Attorney General

/s/ Terence Steed
Terence Steed
Special Deputy Attorney General

United States District Court
Eastern District of North Carolina
Western Division

No. 5:22-CV-00059-BO

Siddhanth Sharma Vs. Circosta, et al	Motion for Response to [D.E. 44] FRCP 8(b) 16, 65(a)(2) Local Rule 7.1(g), (j), 7.2(f)(2)(c), (f)(3)(c)

Petitioner requests this Court, pursuant to Local Rule 7.1(g), to Respond to [D.E. 44].

This Court *must* note that Defendants do not dispute that NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 106.5(a) 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 violate the 1st, 14th amendments, 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.

This Court *must* note that specifically on pg 8 of [D.E. 44] *Defendants themselves* rejected Mark Harris' election to the 9th district in the 2018 midterms, not the U.S. House of Representatives, and held a Special Election in 2019[1] to which Dan Bishop won. *See* NCGS 163-182.13. Therefore it would seem that Defendants have the power to accept and reject the outcomes of Federal Officeholders.

Petitioner requests this Court to order Defendants to hold a Special Election in District 13 of NC

In the interests of justice and fundamental fairness Petitioner requests this Court, pursuant to FRCP 16 and Local Rule 7.1(j) for a Pre-Trial Conference/Hearing for [D.E. 42, 44, 45]. If Justice so requires and this Court deems appropriate, a trial on the merits can be consolidated

[1] https://en.wikipedia.org/wiki/2019_North_Carolina%27s_9th_congressional_district_special_election

with the hearing for Preliminary Injunction request that Petitioner requested in [D.E. 42 p. 26-56] pursuant to FRCP 65(a)(2).

Petitioner shows the Court the following:

FACTS/HISTORY

- Petitioner has cured the Jurisdictional Deficiency as the Court stated on pg. 2 of [D.E. 41]
- This Court did not find Defendants argument persuasive as said on pg. 9 of [D.E. 38]
- Defendants *can* hold a special election as they did in 2019 for NC's 9th Congressional District. *See* NCGS , 163-3, 163-182.13 163-287 [Exh 3, 4, 5]
- Defendants do not dispute that NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 106.5(a) 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 violate the 1st , 14th amendments, 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.
- Since Petitioner ran as a Republican there would be no conflict if he were to run in District 13 which is held by incumbent Wiley Nickel who is a Democrat. Now if Petitioner ran as a Democrat: *that* would cause potential problems as that would require to re-host a primary, then a general election, etc.

DEFENDANTS ARE INCORRECT ABOUT THE POSTURE OF PETITIONER'S NEW STANDING

This Court must note that Defendants keep referring to the Court's Order [D.E. 38] but forget that this Court was not presented with the *new* facts, which would alter the judgment. Defendants on pgs. 6-7 of [D.E. 44] forget the fact that Petitioner never presented to the Court until [D.E. 42] that NCGS 13-1, NCGS 163-275, NCGS. 163-55, 82.1, 106.1, 106(e), 106.5(a) 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 violate the 1st , 14th amendments, 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. Therefore the reason the Court made its ruling the way it did was because it was not presented with these new facts, specifically NCGS 163-275. Pursuant to FRCP 8(b) Defendants have not made a specific denial as to the NCGS 163-275 claim and other NC Statutes, therefore, Defendants admit this fact.

Due to Petitioner's status as a felon these statutes would induce Petitioner to be committing a class I Felony under NC Law – specifically NCGS 163-275, therefore the "Credible Threat of Enforcement" standard that the Court mentioned on pg. 9 of [D.E. 38] has been satisfied. For the reasons set forth in [D.E. 42 p. 1-24] Petitioner has regained and established standing in every aspect. Defendants would contend that Petitioner still file a Candidacy Form, yet on the contrary this Court did not find Defendants arguments persuasive on pg 9 of [D.E. 38], yet still held that Petitioner did not demonstrate a credible threat of enforcement; Petitioner has done so now specifically with NCGS 163-275. *See also* [D.E. 42 p. 1-24].

Petitioner "re-finding" his Denial of Being a Registered Voter is inconsequential and is merely a "small fraction of the main point" as the *statutes* in question criminalize the *right* for Petitioner to be a Registered Voter: this in sequence adds additional qualifications to run for U.S. House of Representatives to which Petitioner is being denied due to his status as a felon.

DEFENDANTS *CAN* HOLD A SPECIAL ELECTION

Defendants are incorrect on pgs. 8-9 of [D.E. 44] as they most certainly *can* hold a Special Election as they did in 2019 for District 9, to which Dan Bishop won. *See* NCGS 163-182.13. Not only did Defendants hold a Special Election, but they *refused*[2] [Exh 1]to seat Mark Harris instead of the U.S. House of Representatives disqualifying Mark Harris[3] [Exh 2]. Therefore it would appear that Defendants *do* have the power to seat and unseat candidates for U.S House of Representatives. Here in Petitioner's case he just had a lawsuit going on so he could be placed on the ballot: it is only fair that Petitioner be given the *fair opportunity* to run for U.S. House of Representatives for the election term that he sought – the 2022 midterms.

Since Petitioner ran as a Republican there would be no conflict if he were to run in District 13 which is held by incumbent Wiley Nickel who is a Democrat. Now if Petitioner ran as a Democrat: *that* would cause potential problems as that would require to re-host a primary, then a general election, etc. None of those problems are here, thus, it would be a Special Election against Petitioner and Wiley Nickel.

Regarding Defendants' *CSI* v. *Moore*, 19CVS15941 statement on pg. 9 of [D.E. 44], Petitioner was in prison when he filed this lawsuit and wasn't released until a month after the

[2] https://en.wikipedia.org/wiki/2019_North_Carolina%27s_9th_congressional_district_special_election
[3] It should be noted that Mark Harris *chose* not to re-run due to health concerns. *See* https://en.wikipedia.org/wiki/Mark_Harris_(North_Carolina_politician)

2022 midterms therefore the benefits of *CSI* wouldn't apply to Petitioner in any scenario. Petitioner's claim does not become moot simply because he may or may not be allowed to vote, for if that were the case then a Special Election would *still* need to be held since Petitioner filed this law suit in February of 2022.

The obligations of this court under the Constitution are clear: Where a citizens' right to vote and/or to be represented—or both—are being impermissibly violated, it is the obligation of the United States District Court to act upon proper application of an aggrieved party. "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." Gomillion, 364 U.S. at 347 (emphasis added). *See* Rossito-Canty et al v. Cuomo, 1:15-cv-00568-JBW-RML [D.E. 13 p. 19].

"[T]he courts have a role" where "a group has . . . not [been] allowed to play the game," i.e., to engage in the democratic process. David A. Strauss, Is Carolene Products Obsolete?, 2010 U. Ill. L. Rev. 1251, 1257–58 (2010). Then, "the self-correcting properties of democratic politics will be nullified, and only the courts can make the democratic process work as it should." Id. See, e.g., Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan., 347 U.S. 483, 493 (1954) (noting that education is "perhaps the most important function of state and local governments" but declaring school segregation unconstitutional), supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan., 349 U.S. 294 (1955); Loving v. Virginia, 388 U.S. 1, 7 (1967) (highlighting that "marriage is a social relation subject to the State's police power" but holding Virginia's antiinterracial marriage statutes unconstitutional (emphasis added)); Avery v. Midland Cnty., Tex., 20 Case 1:15-cv-00568-JBW-RML Document 13 Filed 02/17/15 Page 20 of 42 PageID #: 390 U.S. 474, 476 (1968) (emphasizing that although the "forms and functions of

local government and the relationships among the various units are matters of state concern . . . a State's political subdivisions must comply with the Fourteenth Amendment"); Romer v. Evans, 517 U.S. 620, 623 (1996). *See* Rossito-Canty et al v. Cuomo, 1:15-cv-00568-JBW-RML [D.E. 13 p. 19]

Defendants *can* hold a Special Election. *See* NCGS 163-3, 182.13, 287

RELIEF/CONCLUSION

WHEREFORE,

Petitioner requests this Court to order Defendants to hold a Special Election in District 13 of NC

In the interests of justice Petitioner requests this Court, pursuant to FRCP 16 and Local Rule 7.1(j) for a Pre-Trial Conference/Hearing for [D.E. 42, 44, 45]. If Justice so requires and this Court deems appropriate, a trial on the merits can be consolidated with the hearing for Preliminary Injunction request that Petitioner requested in [D.E. 42 p. 26-56] pursuant to FRCP 65(a)(2).

/Sign/ Siddhanth Sharma

Siddhanth Sharma *Pro Se*

/Date/ 3-6-23

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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.

Petitioner certifies, pursuant to Local Rule 7.2(f), that this Motion is **in compliance** with the Word-Count Limit and is 1543 words and is **Less** than 10 Pages.

Petitioner certifies that this Motion has been filed with the Clerk of Court, Mr. Peter A Moore, Jr., United States Courthouse, 310 New Bern Avenue, Raleigh, NC 27601/PO Box 25670, Raleigh, NC 27611, via hand delivery and/or first class mail/e-mail.

Petitioner also certifies that a copy has been sent to ALL PARTIES via mail/hand delivery/email as follows:

Terence Steed
NC Department of Justice - Public Safety Section
P. O. Box 629
Raleigh, NC 27602
919-716-6567
Fax: 919-716-6761
Email: tsteed@ncdoj.gov

Sign: Siddhanth Sharma

Siddhanth Sharma *Pro Se*

Date: 3-6-23

CASE LAW/ AUTHORITIES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

ROSIE ROSSITO-CANTY, DIANA SEPULVEDA, MATTHEW J. MARI, ERIK PISTEK, LAWRENCE GILDER, DAVID PASCARELLA, MICHAEL REILLY, and for all similarly situated voters of the Eleventh Congressional District in the State of New York,

Plaintiffs,

– against –

ANDREW M. CUOMO, in his official capacity as Governor of the State of New York,

Defendant.

MEMORANDUM & ORDER

15-CV-0568

Parties

Rosie Rossito-Canty,
Diana Sepulveda,
Matthew J. Mari,
Erik Pistek,
Lawrence Gilder,
Michael Reilly,
and for all similarly situated voters
of the Eleventh Congressional
District in the State of New York

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JACK B. WEINSTEIN, Senior United States District Judge

Table of Contents

I. Introduction

On January 5, 2015, the seat in the United States House of Representatives for New York's Eleventh Congressional District became vacant. The district includes all of Staten Island and parts of southern Brooklyn. It is sixty-six square miles in size and has a population of some seven hundred and twenty-five thousand. *See generally* New York's Eleventh Congressional District, Ballotpedia, http://ballotpedia.org/New_York%27s_11th_Congressional_District; *infra* Part III.F.

The power and responsibility to set the date for a special election to fill the vacancy is that of the Governor of the State of New York. Even though the vacancy has now continued for forty-two days, the Governor has not exercised that power or fulfilled that responsibility.

Under New York law, the special election must be held between seventy and eighty days from the date of the Governor's announcement setting the date. Were the Governor to act today, the election would be held, at the earliest, one hundred and twelve days after the vacancy occurred. During that period, residents of the Eleventh Congressional District would remain unrepresented in the House of Representatives.

At a preliminary hearing on a petition by voters from the district to compel the Governor to make an immediate decision, the Governor's counsel, in response to questions from the court, did not provide a date. His justification for the failure to designate a time for the special election was: "[T]he governor's office is actively working on this considering all the factors." Hr'g Tr. 33:20–21, Feb 13, 2015. His position was that the Governor has discretion to delay the special election until the next general election in November of this year.

The right to representation in government is the central pillar of democracy in this country. Unjustified delay in filling a vacancy cannot be countenanced.

Unless the Governor announces the date for a special election on or before noon on Friday, February 20, 2015, or justifies a further delay at a hearing to be conducted by this court at that time and date, this court will fix the date for a special election as promptly as the law will allow.

Exercising that power of a federal judge under Article III of the United States Constitution would cause this court great regret in view of its respect for the sovereign State of New York and its government. Prompt action by the Governor would permit maintaining the normal relationship of comity between federal and state officials.

II. Losses from an Unfilled Seat in House of Representatives

The Constitution presumes that, "absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process." *FCC v. Bench Commc'ns, Inc.*, 508 U.S. 307, 314 (1993) (internal quotation marks and citation omitted). Voters maintain control and the ballot box is a means to approve or disapprove policies of elected officials. *See, e.g.*, *Bond v. Atkinson*, 728 F.3d 690, 694 (7th Cir. 2013) ("How domestic-relations matters compare with the many other subjects clamoring for law-enforcement attention is for the people to decide through elections and appointments.").

"'No right is more precious in a free country than that of having a voice in the election of those who make the laws.'" *Clingman v. Beaver*, 544 U.S. 581, 599 (2005) (O'Connor, J., concurring) (quoting *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964)). *Cf. Weiss v. Feigenbaum*, 558 F.Supp. 265, 276 (E.D.N.Y. 1982) ("The right to vote remains, at bottom, a federally protected right." (quoting *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978))). The federal protections of the right to vote also include those against interference from the states. A primary concern of the Framers was that the states would compromise the national electoral process:

> If the State legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation, which might issue in a dissolution of the Union, if the leaders of a few of the most important States should have entered into a previous conspiracy to prevent an election.

Alexander Hamilton, *Federalist No. 59* (1788).

This concern was balanced against the recognition that the states' involvement ensured a truly representative national body: "Whilst a few representatives, therefore, from each State, may bring with them a due knowledge of their own State, every representative will have much information to acquire concerning all the other States." Publius, *Federalist No. 56* (1788).

A. Categories of Critical Losses

There are three categories of critical losses when a seat in our nation's legislature body is unfilled: *first*, the loss to persons and institutions in the district who forfeit their power to help decide both the nation's policies at large, and those national decisions that impact the particular needs and views of the district; *second*, the loss to those in the district of a vital, powerful, individual channel to and from the government's bureaucracy and its benefits—the Congressperson and his or her staff acting as an ombudsperson for those in the district; and, *third*, the loss to the nation as a whole which gives up the input from a unique group of people represented by an individual with the opportunity to contribute meaningfully to national debates and policy and whose views should be available to temper those of colleagues.

1. Denial of Participation in Policymaking

The first category—participation in national policymaking and committee legislative decisions that impact one's life—is critical in our large, heterogeneous society. For example, during the current debate on the proposal for an extended war against terrorism in which young men and women of the district will risk death, the district's residents need to be heard through

their representative in the House of Representatives. *See, e.g.*, Obama Asks Congress to Back Fight Against Islamic State, But is Vague on Limits, L.A. Times, Feb. 11, 2015, http://www.latimes.com (last visited Feb. 16, 2015). To those who seek a Representative's recommendation to one of the nation's military academies, a delay in the election process beyond the spring may cut off a career.

There is a fundamental and inalienable right of representation under our system of government—a right that denied was a large factor in starting our revolution of 1776. *See infra* Part IV. A brooding sense of estrangement from our government pervades much of our nation. To cut off representation in the House of Representatives will increase the sense of disaffection and alienation that can seriously weaken the fabric of society.

2. Loss of Ombudsperson

The second category—the ombudsperson, the door to access our national bureaucracy, the individual's friend and guide in the complex channels of national government—is a critical aspect of the work of each member of the House of Representatives. *Cf.* Walter Gellhorn, *Ombudsmen and Others: Citizens' Protectors in Nine Countries* (1967); *The Compact Oxford Dictionary* 1209:784 (2d ed. 2002) ("Ombudsperson: an official appointed to investigate complaints by individuals against maladministration by public authorities"). A citizen abroad turns to his or her Congressperson for help with the State Department in obtaining the nation's protections. At home, frustrated by the lack of an appropriate response with respect to a welfare payment, aid to small business in sending its products abroad, tax collections, or other matters, the resident turns for help to the Representative from the district and his or her staff in local and Washington, D.C. offices.

That aspect of the national legislator's work was little understood when our nation was

founded. It is now critical in the successful operation of the government. Without assistance to citizens in threading their way through the labyrinth of our nation's bureaucracy, the dissatisfaction of the electorate would threaten the viability of our huge, modern democracy. *See, e.g.*, Morris P. Fiorina, *The Case of the Vanishing Marginals: The Bureaucracy Did It*, 71 Am. Pol. Sci. Rev. 177, 179–80 (1977) ("Members of the U.S. Congress . . . hold an almost unique position vis-à-vis the bureaucracy: [C]ongress[people] possess the power to expedite bureaucratic activity. This capability flows directly from congressional control over what bureaucrats value most—higher budgets and new program authorizations. In a very real sense congress[people] are monopoly suppliers of bureaucratic 'unsticking' services. . . . The congress[person] is a source of succor.").

3. Adverse Effect on National Debates

The third category of loss—lack of input into national debates from all elements of our society—increases the risk of unsound national public policy and legislation. Given the diverse nature of the needs and views of the many segments of our sociologically, economically and geographically divided nation, representation from separate districts is essential.

It was foundational in the Madisonian view that the new government be a republic with a representational legislature, so necessary in a country as diverse and large as ours. *See, e.g.*, Richard Labunski, *James Madison and the Struggle for the Bill of Rights* 87 (2006) ("[Madison] argued . . . at the [Virginia ratifying] convention and most convincingly in *Federalist 10*, that a geographically large nation could be governed as a republic and not a monarchy, and that the liberty of the people would be preserved in a government if freely chosen by them."). *See generally* Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (1996).

The Eleventh District of New York is unique. It is a mixed suburban-urban area, sometimes represented by Republicans, located in the City of New York, which is overwhelmingly represented by Democrats. It has a special voice which should not be silenced on critical issues of taxes, welfare payments, social security, health benefits, war and peace and the myriad of protections and controls of our federal government.

III. Facts

A. Resignation of Representative Grimm

On January 2, 2015, Congressman Michael Gerard Grimm of the Eleventh Congressional District of New York tendered his resignation, effective January 5, 2015. Compl. ¶¶ 14–15, ECF No. 1 ("Compl."). In his resignation letter, he wrote:

> It has been an honor and a privilege to serve the hardworking families of Staten Island and Brooklyn, and I am sincerely grateful for the love and support that I have received from so many . . . . I have seen first-hand how extraordinary the people of this District are—their values, their love of community, and their care for each other in the best and worst of times—it is humbling.

Agata Decl. Ex. A, ECF No. 9 ("Agata Decl.").

B. Loss of Voting Representation

The Clerk of the House of Representatives has since taken over the Washington, D.C. office and the district offices of the former representative of the Eleventh Congressional District of New York. Current Vacancies, Office of the Clerk, U.S. House of Representatives, http://clerk.house.gov/member_info/vacancies_pr.aspx?pr=district&vid=91 (last visited February 16, 2015). Announcing the "limited scope of the vacant congressional office," the Clerk clarified: "[T]he congressional district does not [currently] have voting representation." *Id.* Without a Representative in charge, these officers are neutered. *See supra* Part II. Residents of the Eleventh Congressional District are seriously deprived. In some instances, their well-being

may be endangered by lack of an elected Representative. *Id.*

C. Governor's Response

On January 9, 2015, the Governor's office received Representative Grimm's letter of resignation. Agata Decl. ¶ 2. Promptly, legal counsel to the Governor reviewed relevant federal and state law provisions regarding such vacancies. *Id.* at ¶ 3. They determined that, while the Governor was required to issue a writ or proclamation of a special election to fill the vacancy, the timing at which he chose to do so was "discretionary." *Id.*

One month later, on February 2, the Governor told a reporter who asked about timing of an upcoming special election that his office was "looking at it now." Pl. Aff. Reply 3, ECF No. 12. When pressed on the timeframe of the special election, he said: "We don't have one." *Id.*

D. Instant Lawsuit

On February 5, eight plaintiffs, six Staten Islanders and two Brooklyn residents, all voters in the Eleventh Congressional District, commenced this action. Compl. ¶¶ 4–12. Suing Andrew M. Cuomo, the Governor of New York, they requested the issuance of an injunction directing him to forthwith call a special election to fill the vacant congressional seat left by Grimm. *Id.* at ¶¶ 38, 44, 47, 51.

The following day, on February 6, the court issued an order, directing defendant to:

> [S]how cause before this Court on . . . Friday, February 13, 2015 . . . why an order should not be issued commanding Defendant ANDREW M. CUOMO, in his official capacity as Governor of the State of New York, to issue a Proclamation of Election, forthwith, for the Eleventh Congressional District in the State of New York, wherein a date for said election is fixed not less than 70 nor more than 80 days from the issuance of said Proclamation, as provided by *Article 1, § 2, Clause 4 of the United States Constitution*, and *New York Public Officers Law § 42(3)*, and for such other and further relief as the Court deems just, proper, and equitable.

Order to Show Cause, Feb. 6, 2015, ECF No. 6.

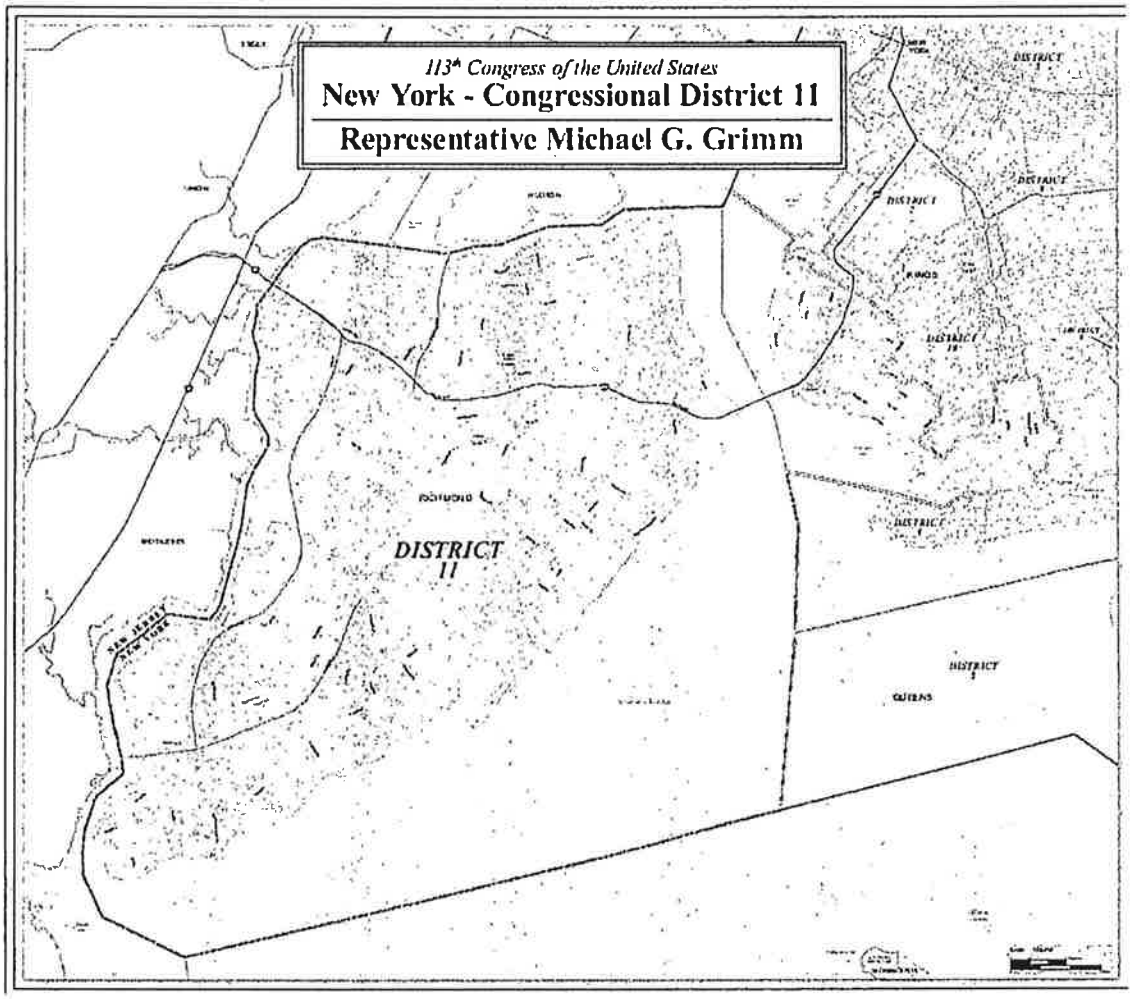
One week later, on February 12, the Governor's office informed the court that it "intends to comply with the law with respect to proclaiming a special election for the Congressional seat vacated by Representative Grimm," but that "in determining the timing of such a proclamation, there are many important, and in some cases competing logistical and other practical factors that must be considered." Agata Decl. ¶ 4. The declaration noted that the office "has been actively considering these factors in order to determine an appropriate date on which to proclaim a special election for this Congressional seat." *Id.*

On February 13, the order to show cause hearing was conducted. Hr'g Tr., Feb. 13, 2015. Defense counsel contended that the Governor would ultimately issue a proclamation for a special election; they denied that this court could decide timing. *Id.* at 21:21–22:2. Plaintiffs argued that they were suffering irreparable harm when residents' opportunities to be heard on important federal issues before the House of Representatives such as authorization of the Keystone XL pipeline, and President Obama's recent announcement that, with consent of Congress, he plans to prosecute a war against the Islamic State of Iraq and Levant. *Id.* at 19:6–13.

E. Status of Upcoming Special Election Intended to Fill the Vacant House Seat

To date, the Governor has not issued a writ or proclamation calling for a special election to fill the vacant house seat in the Eleventh Congressional District. *See infra* (map depicting the prominence of the Eleventh Congressional District).

F. Map of Eleventh Congressional District



U.S. Census, http://www2.census.gov/geo/maps (last visited Feb. 16, 2015).

IV. The Historical Basis of the Right to Representation

A. Declaration of Independence

The right of citizens to elect their representatives in government is fundamental.

In the pre-Revolutionary era, writs of election were issued by the British monarchy to call elections. The withholding of this writ, and thus the denial of representation, was one of the main complaints of the colonists. Zachary D. Clopton & Steven E. Art, *The Meaning of the Seventeenth Amendment and A Century of State Defiance*, 107 Nw. U. L. Rev. 1181, 1202–04

(2013). In the *Declaration of Independence*, Thomas Jefferson called this practice one of King George III's cardinal sins and declared that it justified rebellion:

> He has dissolved representative houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.
>
> *He has refused for a long time*, after such dissolutions, *to cause others to be elected*; whereby the legislative powers, incapable of annihilation, have returned to the people at large for their exercise; the state remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

Declaration of Independence ¶¶ 6,7 (U.S. 1776) (emphasis added).

B. United States Constitution

1. Original Draft

The original United States Constitution chiefly addressed the process governing how representatives were elected. Little in the text suggested that the right to voting and representation were fundamental. *See generally* U.S. Const.; Burt Neuborne, *Madison's Music: On Reading the First Amendment* 42–43 (2015).

The primary provisions that concern the electoral process are as follows:

- Art. I, § 2 cl. 1: The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

- Art I, § 2 cl. 4: When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

- Art I, § 4 cl. 1: The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.

- Art I, § 5 cl. 1: Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business . . . .

The Elections Clause in Article I, section 2 of the Constitution, obliges state legislatures to promulgate regulations for congressional elections, including elections to fill vacancies. *See* U.S. Const. art. 1, § 2 cl. 4. This power and obligation is limited only by Congress's authority to make or alter election regulations. *See id.* at art. 1, § 4 cl. 1. Through the writ of election, the state executive calls the election to fill the vacancy and sets its time, place, and manner, subject to procedural parameters set by state law. *See* Alexander Hamilton, *Federalist No. 59* (1788).

It was only with the introduction of the Reconstruction Amendments following the Civil War that the right to vote itself, and by extension the right to representation, became an unambiguous constitutional right.

2. Reconstruction Amendments

a. Fourteenth Amendment

The Fourteenth Amendment, ratified in 1868, represented the first mention of a right to vote. After slavery was abolished, Congress was concerned that the former slaves would be denied their right to participate in civil society. It passed the Fourteenth Amendment, which mandates strict penalties to the states if this right is violated:

> Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. *But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the*

whole number of male citizens twenty-one years of age in such State.

U.S. Const. amend. XIV, § 2 (emphasis added).

b. Fifteenth Amendment

Concerned that the Fourteenth Amendment did not clearly explicate how it protected the franchise of former slaves, Congress passed the Fifteenth Amendment, ratified in 1870. U.S. Const. amend. XV § 1. This amendment made the right of former slaves to vote unequivocal:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Id.

C. Treatment of the Reconstruction Amendments by the Courts

In the years following the introduction of the Reconstruction Amendments, courts initially narrowed the scope with respect to voting. In *United States v. Reese*, the Supreme Court held that the Fifteenth Amendment does not guarantee a right to vote; it merely protects against discrimination when exercising that right. 92 U.S. 214 (1875). Chief Justice Waite wrote:

> *The Fifteenth Amendment does not confer the right of suffrage upon any one.* It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption, this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race, &c., as it was on account of age, property, or education. Now it is not. If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guaranty against this discrimination: now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section

> of the amendment, Congress may enforce by "appropriate legislation."

Id. at 217–18 (emphasis added).

This decision was in line with jurisprudence of the time, which gave states broad powers when it came to defining how citizens exercised their voting rights. *See, e.g.*, *Minor v. Happersett*, 88 U.S. 162, 178 (1874) (holding that women do not have the right to vote as citizens of the United States because the "Constitution . . . does not confer a right of suffrage upon any one, and the constitution and laws of the several States which commit that important trust to men alone are not necessarily void"). This loophole led to states imposing poll taxes and literacy tests, along with the infamous "grandfather clause" as means to restrict the vote while not running afoul of the Fourteenth and Fifteenth Amendments.

These restrictions remained in large part through the pre-World War II era. The Supreme Court rarely intervened to protect voting rights. *See, e.g.*, *Giles v. Harris*, 189 U.S. 475, 487–88 (1903) (holding that the Court could not issue an injunction placing an African-American man on the voter registration rolls regardless of the constitutionality of the state's electoral system); *Breedlove v. Suttles*, 302 U.S. 227, 283–84 (1937) (holding poll taxes constitutional under the Fourteenth and Fifteenth Amendments); *Colegrove v. Green* 328 U.S. 549, 556 (1946) (finding issues of district apportionment to be a non-justiciable political question); *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 53–54 (1959) (ruling literacy tests for voting to be facially permissible under the Fourteenth and Fifteenth Amendments). *But c.f. Ex parte Yarbrough* ("The Ku-Klux Cases"), 110 U.S. 651, 665–67 (1884) (holding that the Fourteenth and Fifteenth Amendments give Congress the power to enact legislation protecting the exercise of the right to vote); *Guinn v. U.S.*, 238 U.S. 347, 365

(1915) (deeming "grandfather clauses" to be impermissible under the Fifteenth Amendment); *Nixon v. Herndon*, 273 U.S. 536, 540–41 (1927) (finding unconstitutional under Fourteenth Amendment state statute barring participation of African-American voters in primary elections); *United States v. Classic*, 313 U.S. 299, 314–16 (1941) (holding that Constitution confers a right for citizens to choose their representative, cast their ballots, and have them counted).

D. Modern Constitutional Expansion of the Right to Vote

In the twentieth century, a number of amendments to the Constitution radically expanded the right to vote and increased protections against the denial of that right:

- Amendment XIX, effective 1920, provided women with the right to vote.
- Amendment XXIV, effective 1964, provided that failure to pay a poll or other tax could not be the reason for denying the right to vote.
- Amendment XXVI, effective 1971, guaranteed those eighteen years of age or older the right to vote.

Beginning in the 1960s, the Supreme Court began seriously to enforce the right to vote and the right to representation. *See, e.g.*, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (African-American voters had claim that city districting scheme violated Fourteenth and Fifteenth Amendments); *Gray v. Sanders*, 372 U.S. 368, 379–81 (1962) (primary voting system which gave more weight to rural votes than urban ones unconstitutional under Fourteenth Amendment, guaranteeing "one person one vote"); *Baker v. Carr*, 369 U.S. 186 (1962) (state statute effecting an apportionment that deprived plaintiffs of equal protection violated Fourteenth Amendment); *Reynolds v. Sims*, 377 U.S. 533 (1964) (legislative apportionment scheme giving more weight to rural districts unconstitutional); *State of South Carolina v. Katzenbach*, 383 U.S. 301, 327–328 (1966) (Voting Rights Act of 1965 constitutional exercise of Congress' power under the Fifteenth Amendment); *Katzenbach v. Morgan*, 384 U.S. 641, 658 (1966) (banning literacy tests

for voting constitutional); *Harman v. Forssenius*, 380 U.S. 528 (1965) (state scheme whereby voters had to either pay a poll tax or file a certificate of residency in order to be eligible to vote in federal elections deemed unconstitutional); *Harper v. Virginia State Bd. of Elecs.*, 383 U.S. 663, 683 (1966) (holding poll taxes in state elections unconstitutional under Fourteenth Amendment). *See generally Selma* (Paramount Pictures 2014); Taylor Branch, *Parting the Waters: America in the King Years 1954–63* (1998); *The Autobiography of Martin Luther King, Jr.* (Clayborne Carson ed., 2001).

"As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system." *Reynolds*, 377 U.S. at 562.

E. Recent Supreme Court Cases Affirm the Right to Vote and the Right to Representation

More recent decisions by the Supreme Court have affirmed the right to vote and the right to representation, even while relaxing some of the strictures of the Voting Rights Act. *See, e.g., Shelby County, Alabama v. Holder*, 133 S. Ct. 2612, 2619, 2631 (2013) (noting the validity of the Voting Rights Act while holding unconstitutional an aspect of the federal oversight provision); *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 197–98, 211 (2009) (explaining the importance of the right to vote while allowing a municipal utility district to apply for an opt-out of the federal oversight provision of the Voting Rights Act); *Bartlett v. Strickland*, 556 U.S. 1, 25–26 (2009) (holding that the Voting Rights Act requires minorities to make up more than fifty percent of a voting district in order for there to be a mandated "majority-minority" district); *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 441–42

(2006) (ruling redistricting plan that fractured a minority opportunity district violated Voting Rights Act).

F. Authority of United States District Court

The obligations of this court under the Constitution are clear: Where a citizens' right to vote and/or to be represented—or both—are being impermissibly violated, it is the obligation of the United States District Court to act upon proper application of an aggrieved party. "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. *But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right.*" *Gomillion*, 364 U.S. at 347 (emphasis added).

V. The Delicate Relationship Between the Federal Judiciary and Other Branches of Government

A. "Properly Limited" Role of the Federal Court

In line with the *Federalist Papers*, the role of federal courts in our democratic society is "properly limited." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2667 (2013). "The architects of our constitutional form of government . . . assure[d] that courts exercising the 'judicial power of the United States' would not trench upon the authority committed to the other branches of government." *Orr v. Orr*, 440 U.S. 268, 290 (1979). *See also Nat'l Mut. Ins. Co. of Dist. of Col. v. Tidewater Transfer Co.*, 337 U.S. 582, 591 (1949) (same).

Where an election is fair, the proper role of a federal court is to accept an election's outcome, *see Oden v. Brittain*, 396 U.S.1210, 1211 (1969), not to engage in litigating issues resolved by voters. The court's power does not extend to "amorphous, general supervision of the operations of government." *Richardson*, 418 U.S. at 192 (Powell, J., concurring). Eschewing such a role has "permitted the peaceful coexistence of the countermajoritarian implications of

judicial review and the democratic principles upon which our Federal Government in the final analysis rests." *Id. See also United States v. Butler*, 297 U.S. 1, 79 (Stone, J. dissenting) ("The only check upon our own exercise of power is our own sense of self-restraint.").

Public policy supports the exercise of restraint by federal courts when faced with cases involving the democratic process. "We should be ever mindful of the contradictions that would arise if a democracy were to permit general oversight of the elected branches of government by a nonrepresentative, and in large measure insulated, judicial branch." *Richardson*, 418 U.S. at 188 (Powell, J. concurring). "[B]ecause of [our] insulation from majoritarian pressure and the resultant threat to the workings of the democratic process, [we have] been expressly confined to the exercise of the traditional judicial function of case adjudication." Martin H. Redish, *Federal Judicial Independence: Constitutional and Political Perspectives*, 46 Mercer L. Rev. 697, 707–08 (1995).

B. Proper Instances of Court Interference in Democratic Process

"[T]he courts have a role" where "a group has . . . not [been] allowed to play the game," *i.e.*, to engage in the democratic process. David A. Strauss, *Is Carolene Products Obsolete?*, 2010 U. Ill. L. Rev. 1251, 1257–58 (2010). Then, "the self-correcting properties of democratic politics will be nullified, and only the courts can make the democratic process work as it should." *Id. See, e.g., Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 493 (1954) (noting that education is "perhaps the most important function of state and local governments" but declaring school segregation unconstitutional), *supplemented sub nom. Brown v. Bd. of Educ. of Topeka, Kan.*, 349 U.S. 294 (1955); *Loving v. Virginia*, 388 U.S. 1, 7 (1967) (highlighting that "marriage is a social relation subject to the *State's* police power" but holding Virginia's anti-interracial marriage statutes unconstitutional (emphasis added)); *Avery v. Midland Cnty., Tex.*,

390 U.S. 474, 476 (1968) (emphasizing that although the "forms and functions of local government and the relationships among the various units are matters of state concern . . . a State's political subdivisions must comply with the Fourteenth Amendment"); *Romer v. Evans*, 517 U.S. 620, 623 (1996) (finding that Colorado voter's amendment prohibiting "all legislative, executive or judicial action at any level of state or local government designed to protect" gay, lesbian or bisexual persons unconstitutional); *Strawser, et al. v. Strange*, No. 14-424 (S.D. Ala. Feb. 12, 2015), ECF No. 55 (ruling Alabama law banning same-sex marriage unconstitutional and granting preliminary injunction compelling probate judge to issue marriage licenses to same sex couples).

VI. Right of Constituents in Congressional Districts to Have Vacant Congressional Seats Filled

On its own motion, the court conducted a fifty-state survey to determine the type of discretion, if any, states provided to state officials regarding the calling of special elections when faced with a vacant congressional seat in the House of Representatives. The table below demonstrates that, while there is no uniformity among the states with respect to the time for a special election, in general, the time to call a special election is specified and short.

A. Table of State Laws Calling on Special Elections When Elected Offices Left Vacant

State	Statute	When Proclamation Issues After Vacancy	Special Election Timeframe	No Writ/Special Election required if vacancy occurs . . .
Alabama	Ala. Code §§ 17-5-1, 17-5-2, 17-5-3	not specified	not specified	undetermined
Alaska	Alaska Stat. § 15.40.142	60–90 days	60–90 days after vacancy	60 days before general election

Arizona	Ariz. Rev. Stat. § 16-222 B	3 days	130–150 days after vacancy	180 days or less prior to general election
Arkansas	Ark. Code Ann. § 7-8-104	not specified	not specified	undetermined
California	Cal. Elec. Code §§ 10700, 10703	14 days	126–180 days after vacancy	after close of nomination period in final term
Colorado	Colo. Rev. Stat. § 1-12-202	not specified	not specified	90 days prior to general election
Connecticut	Conn. Gen. Stat. § 9-212	10 days	at least 60 days after proclamation	63 days prior to general election
Delaware	Del. Code Ann. Elec. §§ 7302, 7303	minimum 60 days before day chosen for special election	any day up to day of general election	undetermined
Florida	Fla. Stat. § 100.111	not specified	not specified	undetermined
Georgia	Ga. Code Ann. § 21-2-543	10 days	at least 30 days after proclamation	undetermined
Hawaii	Haw. Rev. Stat. § 17-2	not specified	at least 60 days after proclamation	undetermined
Idaho	N/A	not specified	not specified	undetermined
Illinois	10 Ill. Comp. Stat. 5/25-7	5 days	at least 115 days after proclamation	less than 180 days before next general election
Indiana	Ind. Code §§ 3-10-8-1, 3-13-3-2	not specified	not specified	74 days prior to general election
Iowa	Iowa Code § 69.14	5 days	at least 40 days after proclamation	undetermined

Kansas	Kan. Stat. Ann. §§ 25-3501, 25-3502, 25-3503	5 days	45–60 days after proclamation	30–90 days before primary or general election Vacancy occurs less than 30 days before primary
Kentucky	Ky. Rev. Stat. Ann. § 118.720	not specified	not specified	undetermined
Louisiana	La. Rev. Stat. Ann. § 18:1279	not specified	not specified	undetermined
Maine	Me. Rev. Stat. 21-A § 392	not specified	"as soon as reasonably possible" if Congress is in session, otherwise before the session	undetermined
Maryland	Md. Code Ann., Elec. Law § 8-710	10 days	at least 72 days after proclamation	at least 60 days before regular/primary election
Massachusetts	Mass. Gen. Laws ch. 54, § 140	"immediately"	145–160 days after vacancy	after February 1 of even numbered year
Michigan	Mich. Comp. Laws §§ 168.145, 168.633	not specified	not specified	at least 30 days before general election
Minnesota	Minn. Stat. § 204D.29	3 days if vacancy occurs at least 189 days before state primary	if 155–188 days before state primary, then day of state primary; otherwise not specified	154 days or fewer before election day
Mississippi	Miss. Code Ann. § 23-15-853	60 days	60 days after proclamation	undetermined

Missouri	Mo. Rev. Stat. § 115.125	not specified	approx. 70 days after proclamation	undetermined
Montana	Mont. Code Ann. § 13-25-203	"immediately"	85-100 days after vacancy	150 days or less before primary, or between the primary and general elections
Nebraska	Neb. Rev. St. § 32-564	not specified	90 days after vacancy	on or after August 1 of an even numbered year and prior to the general election
Nevada	Nev. Rev. Stat. § 304.230	7 days	180 days after proclamation	undetermined
New Hampshire	N.H. Rev. Stat. Ann. §§ 661:6, 661:11	"as soon as practicable"	not specified	undetermined
New Jersey	N.J. Stat. Ann. § 19:3-27	not specified	not specified	within 180 days of expiration of term
New Mexico	N. M. Stat. Ann.§ 1-15-18.1	10 days	84-91 days after vacancy	after primary election and before general election
New York	*See infra* Part VII	*See infra* Part VII	*See infra* Part VII	*See infra* Part VII
North Carolina	N.C. Gen. Stat. § 163-13	not specified	not specified	undetermined
North Dakota	N/A	not specified	not specified	undetermined
Ohio	Ohio Rev. Code Ann. §§ 3501.03, 3521.03	not specified	10 days or more after proclamation	undetermined
Oklahoma	Okl. Stat. tit 26 § 12-101	30 days	not specified	in an even numbered year if the term expires the following year
Oregon	Or. Rev. Stat. § 188.120	not specified	not specified	undetermined
Pennsylvania	25 Pa. Cons. Stat. § 2777	10 days	60 days or more after proclamation	undetermined

Rhode Island	R.I. Gen. Laws §17-4-8	"immediately"	not specified	between April 1 and October 1 in any even numbered year. Governor may call the special election for the same day as general election
South Carolina	S.C. Code Ann. § 7-13-190	no proclamation necessary; special election automatically held	approximately 126 days after vacancy	vacancy occurs 14 days after filing period closes and the office is uncontested
South Dakota	S.D. Codified Laws § 12-11-1	10 days	80–90 days after vacancy	180 days before general election
Tennessee	Tenn. Code Ann. § 2-16-101	10 days	100–107 days	undetermined
Texas	Tex. Elec. Code Ann. §§ 201.051, 203.004, 204.021	"as soon as practicable"	at least 36 days after proclamation	undetermined
Utah	Utah Code. Ann. § 20A-1-502	not specified	not specified	undetermined
Vermont	Vt. Stat. Ann. 17 § 2621	not specified	up to approximately 90 days from vacancy	within 180 days of the general election
Virginia	Va. Code Ann. §§ 24.2-209, 24.2-682	"may immediately issue"	not specified	55 days prior to primary election
Washington	Wash. Rev. Code § 29A.28.041	10 days	at least 140 days after proclamation	less than 240 days before general election
West Virginia	W. Va. Code § 3-10-4	5 days	84–120 days after vacancy	84 days prior to general election

Wisconsin	Wis. Stat. § 8.50	not specified	not specified	between the second Tuesday in April and the second Tuesday in May or after August 1 in general election year
Wyoming	Wyo. Stat. Ann. § 22-18-105	5 days	55 days after vacancy	within 180 days of general election

B. Pertinent Case Law

Jurisprudence dating back to at least 1969 indicates that vacant congressional seats must be filled by an election.

1. *Valenti v. Rockefeller* (U.S. 1969)

In *Valenti v. Rockefeller*, the Supreme Court summarily affirmed a decision by a three-judge district court, sustaining the authority of the Governor of New York to fill a vacancy in the United States Senate by appointment until the next regularly scheduled senatorial election, where only sixty days remained until the next scheduled primary. *Valenti v. Rockefeller*, 393 U.S. 405, 405 (1969).

Plaintiffs had argued that the operation of state law under the facts of the case infringed on the principle of popular election of senators and the "vacancy provision" of the Seventeenth Amendment to the United States Constitution. *Valenti v. Rockefeller*, 292 F. Supp. 851, 853 (W.D.N.Y. 1968). The district court held that the New York statutory provision at issue "d[id] not exceed the discretion conferred on the states by the Seventeenth Amendment with respect to the timing of vacancy elections and the procedures to be used in selecting candidates for such elections," and that "[s]ubstantial state interests [we]re furthered by the decisions of the New York Legislature that Senate vacancy elections be held only in conjunction with regular congressional elections." *Id.* at 853–54.

2. *Jackson v. Ogilvie* (7th Cir. 1970)

The Court of Appeals for the Seventh Circuit held that plaintiffs, registered voters in an Illinois congressional district, stated a facially justiciable claim when they alleged that the Governor of Illinois, by refusing to call a special election to fill a vacancy that arose upon the death of plaintiffs' congressional representative, denied plaintiffs their constitutional right to representation under Article I, section 2, clause 4 of the United States Constitution. *Jackson v. Ogilvie*, 426 F. 2d 1333, 1335–36 (7th Cir. 1970).

The facts of the case are worth noting. The representative died on August 13, 1969. *Id.* at 1334. If the Governor had called the election the following day, state law mandated that the earliest possible date of election would be January 23, 1970 (162 days later). *Id.* at 1335, 3377. At most, the successor could have served some eleven months. *Id.* The court ruled that the Governor was required to issue the writ. *Id.* at 1337.

The court determined that a mandatory injunction would be appropriate because the governor "had the duty, *at the time of the death of [the congressman]*, to issue a writ of election to fill the vacancy," and that duty "continued, notwithstanding the fact that delay may eventually render the calling of a special election of so little use that the duty will no longer be enforceable." *Id.* at 1337 (emphasis added).

3. *Rodriguez v. Popular Democratic Party* (U.S. 1982)

Relying in part on *Valenti*, discussed *supra*, the Supreme Court upheld Puerto Rico statutes that had been interpreted to permit an interim vacancy in the Puerto Rico House of Representatives to be filled by the political party of the legislator who had vacated the seat. *Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 14 (1982). The appointee could serve until the term of his predecessor expired. *Id.* at 3, n.2. The plaintiffs had argued that: (1) they

possessed a federal constitutional right to elect their representatives; and (2) legislative vacancies therefore must be filled by special election. *Id.* at 6. The Court recognized that, when a state or the Commonwealth of Puerto Rico provides for election of state officials, all citizens within the relevant jurisdiction have an equal right to participate in the election. *Id.* at 2. But the Court concluded that although Puerto Rico's "choice to fill legislative vacancies by appointment rather than by a full-scale special election may have some effect on the right of its citizens to elect the members of the Puerto Rico Legislature . . . the effect is minimal, and like that in *Valenti*, it does not fall disproportionately on any discrete group of voters, candidates, or political parties." *Id.* at 12.

4. *Mason v. Casey* (E.D. Pa. 1991)

In *Mason v. Casey*, the district court dismissed claims by two registered voters challenging the constitutionality, as applied, of a state statute providing that a special election to fill a congressional vacancy could not be held until at least sixty days after issuance of the writ. *Mason v. Casey*, No. 91-5728, 1991 WL 185243, at *2 (E.D. Pa. Sept. 18, 1991). The statute mandated that the writ must be issued within ten days of the vacancy. *Id.* at *1.

Application of this statutory time period meant that the special election to fill a vacancy in the plaintiff's district, which arose on September 11, 1991, could not be held until *after* the next general election on November 5, 1991. *Id.* at *2. Plaintiffs claimed that the state's failure to hold the special election on the date of the general election would result in a deprivation of their fundamental right to vote and be represented. *Id.* The court rejected the contentions, stating that although "it [wa]s undeniable that a delay [per the state statute] will mean a longer period of time in which voters from the Second Congressional District remain unrepresented . . .[;] the issue is whether the delay is unconstitutional, and I find that it is not." *Id.* at *2.

5. *American Civil Liberties Union v. Taft* (6th Cir. 2004)

On July 24, 2002, a Congressman was expelled from the Ohio House, leaving a vacant seat. *Am. Civil Liberties Union v. Taft*, 385 F.3d 641, 644 (6th Cir. 2004). The Governor of Ohio, after consulting with local elected officials, decided not to call a special election, ostensibly because of (1) the cost; (2) the difficulty presented by redistricting that was to take effect for the regularly scheduled election in November 2002; (3) the relatively short length of time an elected replacement could be expected to serve in light of Congress's scheduled adjournment on October 3, 2002; and (4) and the uninterrupted continuation of constituent services by the Clerk of the House. *Id.* Five months remained before the next Congress would convene.

The Court of Appeals for the Sixth Circuit held that the Governor violated the Constitution when he refused to issue a writ. *Id.* It noted there may be instances where the time remaining in the congressional term is truly *de minimis*, thereby excusing the executive from issuing the writ, but that the time involved in the instant case was not *de minimis*. *Id.* at 649. The opinion stated:

> Like the Seventh Circuit [in *Ogilvie*], we conclude that Article I, section 2, clause 4 is mandatory, requiring the state's executive to issue a writ to fill a vacancy in the House. . . . By deciding not to call a special election at all, *the Ohio governor had violated the Constitution, which imposes a mandatory duty on a state's chief executive to call a special election to fill a congressional vacancy.*

Id. at 649–50 (emphasis added).

6. *Judge v. Quinn* (7th Cir. 2010)

After then-Senator Barack Obama resigned from his Senate seat to assume the presidency, the Governor of Illinois appointed Senator Burris to temporarily fill the vacancy. He did not issue a writ of election. Illinois law required that the election must occur on November 2,

2010, two years later.

Plaintiffs sought a preliminary injunction, alleging that the Seventeenth Amendment required the Governor issue a writ of special election. The Court of Appeals for the Seventh Circuit initially held that, although plaintiffs had a strong likelihood of establishing the merits of their claim, plaintiffs failed to show irreparable injury that would merit the grant of a preliminary injunction. *Judge v. Quinn*, 624 F.3d 352, 355 (7th Cir. 2010) (summarizing previous holding).

Subsequently, the district court granted plaintiffs a permanent injunction; the Seventh Circuit upheld the ruling, stating "the balance of hardships favors the plaintiffs, who—along with the rest of the citizens of Illinois—will see their Seventeenth Amendment rights vindicated in a special election." *Judge v. Quinn*, 624 F.3d 352, 362 (7th Cir. 2010).

7. *Fox v. Paterson* (W.D.N.Y. 2010)

Both plaintiffs and defendant rely on this case. The court held that a delay of some months in holding a special election to fill a vacancy in a legislative district—in order for the State to comply with the Help America Vote Act ("HAVA")—did not deny any fundamental rights of the electors within that district, including the right to vote and elect their congressional representative. *Fox v. Paterson*, 715 F. Supp. 2d 431, 441–42 (W.D.N.Y. 2010).

The court based its decision in part on the governor's justifications for the delay: (1) serious concerns over the rollout of new electronic voting machines in several counties within the district in compliance with HAVA; and (2) the possible disenfranchisement of overseas military voters who would not be able to participate on too short a notice. *Id.* at 440. These explanations, the court reasoned, appeared to address legitimate concerns. *Id.* at 441. The court noted that, in some instances, the amount of time that passed from the existence of the vacancy to the issuance of the proclamation *could* amount to a *de facto* refusal to call a special election.

Id. at 442.

VII. Statutory Analysis

In *Fox*, the court properly interpreted the Governor's duty under the United States Constitution to issue a writ of election when presented with a vacant House seat. *Id.* at 436. But, it did not find it necessary to consider the interplay between the New York State Constitution and the section of the State's Public Officers Law that sets out specific provisions regarding the manner in which vacancies in elected office shall be filled, N.Y. Pub. Off. Law § 42(3) (McKinney 2011).

When both the State statute and State constitution are read in concert, the following is apparent: Special elections in New York to fill vacant congressional seats must be conducted in "the shortest space of time reasonably possible." *Roher v. Dinkins*, 32 N.Y.2d 180, 188 (1973) (citing *People ex rel. Weller v. Townsend*, 102 N.Y. 430 (1886); *Mitchell v. Boyle,* 219 N.Y. 242 (1916); *MacAdams v. Cohen*, 236 App. Div. 361 (1932), *aff'd* 260 N.Y. 559 (1932)); *cf. Skelos v. Paterson*, 13 N.Y.3d 141, 150 (2009) (same).

A. The United States Constitution

Article I of the United States Constitution provides in relevant part:

> **Section 2 – The House**
>
> . . .
>
> When vacancies happen in the Representation from any State, the Executive Authority thereof *shall issue Writs of Election* to fill such Vacancies.
>
> . . .
>
> **Section 4 – Elections, Meetings**
>
> *The Times, Places and Manner of holding Elections for* Senators and *Representatives, shall be prescribed in each State by the Legislature thereof*; but the Congress may at any time by Law make or alter such Regulations, except as to the Place of Chusing Senators.
>
> . . .

U.S. Const. art. 1, §§ 2, 4 (emphasis added).

These clauses, read together, make it incumbent upon each "State" to issue a writ of election when faced with a vacant seat in the House of Representatives, and to "prescribe" the timing of such an election. *Id.*; *see also supra* Part IV.B.1 (discussing clauses); Part VI.B (expounding upon case law holding that, when a vacant seat occurs in the House of Representatives or the Senate, issuing a writ of election is not optional).

B. New York State Constitution

The vacancy of elective office provision is contained in Article XIII, section 3, of the New York State Constitution. It does not explicitly provide a time period within which a writ of election must issue after the vacancy of elected office occurs:

> The legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

N.Y. Const. art. XIII, § 3.

The New York Court of Appeals has read an urgency requirement into the above provision: "It is axiomatic that under our State Constitution that when a vacancy in elective office occurs, the vacancy must be filled by election in *the shortest space of time* reasonably possible." *Roher v. Dinkins*, 32 N.Y.2d 180, 188 (1973) (emphasis added) (internal citations omitted); *cf. Skelos v. Paterson*, 13 N.Y.3d 141, 150 (2009) (emphasis added) (same); *Mitchell v. Boyle*, 219 N.Y. 242, 248 (1916) ("The vacancy . . . is to be filled by election, *as soon as may be, after it occurs*. The Constitution, however, when it provides for an election, means an election of which adequate notice may be given to the voters. Any other election would be little better than a political mockery." (emphasis added)); *Wing v. Ryan*, 6 N.Y.S.2d 825, 829 (App.

Div.), *aff'd*, 278 N.Y. 710 (1938) ("It is a fundamental principle of our form of government that a vacancy in an elective office should be filled by election *as soon as practicable after the vacancy occurs*." (emphasis added)); *MacAdams v. Cohen*, 236 App. Div. 361, 363 (1932), *aff'd* 260 N.Y. 559 (1932) ("The policy of the State appears to be, from a long line of enactments, beginning with the first edition of the Revised Statutes of New York, that a vacancy in an elective office must be *promptly filled* by an election." (emphasis added and citation omitted)).

C. New York State Public Officers Law Section 42(3)

1. New York Court of Appeals Insists on Speedy Elections

Defendant argues that the ratification of New York State Public Officers Law abrogated New York Court of Appeals's precedents by imbuing the Governor with almost unlimited "discretion." Hr'g Tr. 21:21–22:2, Feb. 13, 2015. He contends: "*There is nothing in the Constitution or in any statute or in any case that requires*" the Governor to issue the writ of election within a specified period of time from the date an elected office was left vacant. *Id.* at 21:24–22:2 (emphasis added).

This view is too narrow. As plaintiff claims, the statute cannot be "read in a vacuum." Mem. of Law in Support of Pl.'s Order to Show Cause 12, ECF No. 4. The critical statutory provision, in relevant part, reads:

> *[U]pon the occurrence of a vacancy in any elective office* which cannot be filled by appointment for a period extending to or beyond the next general election at which a person may be elected thereto, *the governor may in his or her discretion make proclamation of a special election to fill such office, specifying the district or county in which the election is to be held, and the day thereof, which shall be not less than seventy nor more than eighty days from the date of the proclamation.*

N.Y. Pub. Off. Law § 42(3) (McKinney 2011) (emphasis added). After this provision was adopted, the New York Court of Appeals emphatically reaffirmed its prior holdings:

> *It is true that section 42 (subd. 3) of the Public Officers Law vests discretion in the Governor to call a special election, but as we observed in [1916] "this statutory qualification cannot prevail against the command of the Constitution that a vacancy shall be filled as soon as may be."*

Roher v. Dinkins, 32 N.Y.2d 180, 188 (1973) (emphasis added) (citing to 1916 case, *Mitchell,* 219 N.Y. at 248). *Cf.* N.Y. Op. Atty. Gen. (Inf.) 186, 1978 WL 27591 (the proper way to call attention to the failure of the Governor to issue a special election writ is to commence "a proceeding . . . to obtain a judgment to compel the vacancy [of the elected official] be filled by a special election"). N.Y. Op. Att'y Gen. (Inf.) 171, 1984 WL 186599 (citing *Roher* for the proposition that "[t]he purpose of [provisions including the State constitution and Public Officers Law 42(1)] is to ensure that when a vacancy occurs in an elective office, the vacancy will be filled in the shortest period of time reasonably possible"); 63C Am. Jur. 2d Public Officers and Employees § 146 (2015) (citing *Roher* to state that "[s]ome constitutional provisions limit to as short a term as possible the tenure of an appointee to a vacancy in an elective office.").

2. The Statutory Seventy to Eighty Days Allows Ample Time to Prepare for a Special Election

The implication of the large seventy to eighty day period between announcement of the date for the special election and the actual date of the election provides ample time to prepare. *See* N.Y. Pub. Off. Law § 42(3) (McKinney 2011). The spirit of the statutory scheme is clear: The announcement of the date for the election should occur almost immediately after the vacancy occurs. *See Mitchell,* 219 N.Y. at 248 (explaining that thirty to forty days provides adequate notice to voters); *see also* N.Y. Pub. Off. Sec. 42 Bill Jacket (explaining that amendment to section 42(3) of the State's Public Officers law was intended "to provide county board of elections additional time prior to special elections in order to allow military ballots to be

timely mailed to voters" in compliance to federal law).

VIII. Instant Case

A. Standing

1. Law

The "irreducible constitutional minimum of standing contains three elements": (1) "the plaintiff must have suffered an injury in fact," *i.e.*, "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (2) "there must be a causal connection between the injury and the conduct complained of"; and (3) "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (quotation marks, citations, alterations, and footnotes omitted). A registered voter's allegation that a governor's failure to issue a writ of election and to fix a date for an election to fill a vacant congressional seat is sufficient injury in fact to be considered ripe and to confer Article III standing. *See Judge v. Quinn*, 612 F.3d at 544–45.

2. Application of Law to Facts

Plaintiffs have standing. *First*, they continue to suffer a concrete and particularized injury in fact: the deprivation of a special election for a vacant congressional district. *See supra* Part III.B. For a month, the citizens of New York's Eleventh Congressional District have had no voice in the House of Representatives. *See supra* Part III.E. *Second*, the injury is traceable to defendant: The Governor is the only person who has the authority, pursuant to the New York State Constitution, to call for a special election for the position. *See supra* Part VII.C. *Third*, an injunction directing the Governor to call a special election forthwith will provide necessary redress for the serious injury to plaintiffs. *See supra* Part VI.B (discussing relevant cases). A

special election must take place as soon as possible.

B. Ripeness

1. Law

"To be justiciable, a cause of action must be ripe—it must present a real, substantial controversy, not a mere hypothetical question." *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 687 (2d Cir. 2013) (internal quotation marks and citation omitted). To state a plaintiff's claim is constitutionally unripe is to state the claimed injury, if any, is not "actual or imminent," but instead "conjectural or hypothetical." *Id.* at 688; *see also N.Y. Civil Liberties Union v. Grandeau,* 528 F.3d 122, 130 n.8 (2d Cir. 2008) ("Standing and ripeness are closely related doctrines that overlap most notably in the shared requirement that the plaintiff's injury be imminent rather than conjectural or hypothetical." (internal quotation marks and alterations omitted)); *Ross v. Bank of Am., N.A. (USA)*, 524 F.3d 217, 226 (2d Cir. 2008) (because the ripeness and standing doctrines "overlap," claims that were sufficiently "actual and imminent" to establish Article III standing also were ripe for adjudication, "not merely speculative or hypothetical").

2. Application of Law to Facts

The case is ripe for adjudication. Plaintiffs' injury is real and substantial: They do not have representation in the House of Representatives. Nothing is "speculative" or "hypothetical" about this disenfranchisement.

C. Injunctive Relief

1. Preliminary Injunction

a. Law

Federal Rule of Civil Procedure 65 provides procedures to adjudicate requests for injunctions. Where speed is needed, a preliminary injunction may be sought. Subdivision (a) of Rule 65 reads:

> (1) ***Notice.*** The court may issue a preliminary injunction only on notice to the adverse party.
>
> (2) ***Consolidating the Hearing with the Trial on the Merits.*** Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

The Court of Appeals for the Second Circuit has explained:

> Generally, a party seeking a preliminary injunction must establish (1) irreparable harm and (2) either (a) a likelihood of success on the merits, or (b) sufficiently serious questions going to the merits of its claims to make them fair ground for litigation, plus a balance of the hardships tipping decidedly in favor of the moving party. Additionally, the moving party must show that a preliminary injunction is in the public interest.

Oneida Nation of New York v. Cuomo, 645 F.3d 154, 164 (2d Cir. 2011) (internal quotation marks and citations omitted).

The "'fair ground for litigation'" cannot be used to challenge "'governmental action taken in the public interest pursuant to a statutory or regulatory scheme.'" *Monserrate v. New York State Senate*, 599 F.3d 148, 154 (2d Cir. 2010) (quoting *Plaza Health Labs., Inc. v. Perales*, 878 F.2d 577, 580 (2d Cir.1989)). In such cases, the moving party must establish a likelihood of

success on the merits, *id.*, a "more rigorous" standard. *Metro. Taxicab Bd. of Trade v. City of New York*, 615 F.3d 152, 156 (2d Cir. 2010) (internal quotation marks and citation omitted).

i. Irreparable Harm

In every case where plaintiff seeks an injunction, she must show that there is no adequate remedy at law *and* that irreparable harm will result if the injunction is not granted. This showing is "the single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (internal quotation marks and citations omitted). Irreparable harm may not be premised "only on a possibility." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Rather, the movant must demonstrate injury that is neither remote nor speculative, but actual and imminent, and that cannot be remedied by award of monetary damages. *Shapiro v. Cadman Towers, Inc.*, 51 F.3d 328, 332 (2d Cir. 1995).

ii. Clear or Substantial Likelihood of Success on the Merits

Where the requested injunction is *mandatory* in nature—in other words, where the movant seeks to compel, rather than prohibit, governmental action, a "district court may enter a mandatory preliminary injunction against the government only if it determines that, in addition to demonstrating irreparable harm, the moving party has shown a 'clear' or 'substantial' likelihood of success on the merits." *Mastrovincenzo v. City of N.Y.*, 435 F.3d 78, 89 (2d Cir.2006) (emphasis omitted) (citing *No Spray Coalition, Inc. v. City of New York*, 252 F.3d 148, 150 (2d Cir. 2001)); *Monserrate*, 695 F. Supp. 2d 80 at 89 (S.D.N.Y.), *aff'd*, 599 F.3d 148 (2d Cir. 2010).

iii. Balance of Hardships

"[A] court must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Vill. of*

Gambell, AK, 480 U.S. 531, 542 (1987).

iv. Public Interest

Ensuring "that the public interest would not be disserved by the issuance of a preliminary injunction" requires careful assessment. *Salinger v. Colting*, 607 F.3d 68, 80 (2d Cir. 2010) (quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006)). The focus is the effect of the injunction itself on the public interest apart and separate from the particularized concerns of the parties. *S.E.C. v. Citigroup Global Mkts. Inc.*, 673 F.3d 158, 163 n.1 (2d Cir. 2012) (interpreting *Salinger*, 607 F.3d at 68).

b. Application of Preliminary Injunction Law to Facts

Here, plaintiffs seek an immediate "Writ of Mandamus" to compel defendant to issue a "Writ of Election" to fill the congressional vacancy in the Eleventh Congressional District. Pl. Mem. Law 5. In modern terminology, this is a request for a mandatory preliminary and a mandatory permanent injunction pursuant to Federal Rule of Civil Procedure 65.

At the evidentiary hearing, based upon the sketchy information supplied by both sides, the court was not prepared to issue or to deny a preliminary injunction. *See generally* H'rg Tr., Feb. 13, 2015.

Nevertheless, review of the evidence, the precedents, and relevant statutory provisions, it is determined that plaintiffs have made a *prima facie* case for a preliminary injunction.

First, plaintiffs demonstrate irreparable harm since money damages cannot make them whole. *See supra* Part III. They have lost their ability to participate not only in the making of the nation's policies at large, but in those that affect their daily lives. *See supra* Parts II & III. They are bereft of an advocate to help them navigate the morass of government bureaucracy. *See supra* Part II.

Second, they make a substantial case for a preliminary injunction. *See* Part VII (expounding on requirement under federal and New York State law to issue writ as soon as practicable).

Third, hardship to plaintiff is great and continuing. S*ee* Part III.E. By contrast, defendant has advanced no justification for his failure to issue the writ of special election, much less any hardship preventing him from so doing, or that would result if he did. *See supra* Part III.C.

Fourth, filling the vacancy would benefit, not threaten, the greater public interest. *See supra* Part II. Aside from the cost of the special election, the court is not aware of, and defendant has not yet proffered, any reason that the injunction sought would constitute a threat to the public interest or an undue burden. *See supra* Part III.

2. Permanent Injunction

a. Law

The court may advance the trial on the merits for a permanent injunction to consolidate it with the hearing on the preliminary injunction. *See* Fed. R. Civ. Pr. 65(a)(2) (consolidating hearing on preliminary injunction with trial on the merits).

Consolidation may occur "only after the parties receive clear and unambiguous notice of the court's intent to do so either before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases." *Woe by Woe v. Cuomo*, 801 F.2d 627, 629 (2d Cir. 1986) (internal quotation marks and citation omitted). "The giving of formal notice ensures both that a party may avail himself of every opportunity to present evidence pertinent to his position and that all genuine issues of fact are before the court." *Id.* But "[a] party cannot lay back, acquiesce in the merger of a preliminary hearing with a permanent one, and then protest the procedure for the first time after the case is decided adversely to it." *K-Mart*

Corp. v. Oriental Plaza, Inc., 875 F.2d 907, 914 (1st Cir. 1989).

"The equitable principles and scope of review" for preliminary relief and permanent injunction remain the same. *Sierra Club v. Hennessy*, 695 F.2d 643, 647 (2d Cir. 1982). "Although a showing of 'irreparable harm' is required for the imposition of any injunctive relief, preliminary or permanent, the 'imminent' aspect of the harm is not crucial to granting a permanent injunction." *Rodriguez ex rel. Rodriguez v. DeBuono*, 175 F.3d 227, 235, n.9 (2d Cir. 1999) (per curiam) (internal citation omitted).

"To obtain a permanent injunction, a plaintiff must succeed on the merits and show the absence of an adequate remedy at law and irreparable harm if the relief is not granted." *Roach v. Morse*, 440 F.3d 53, 56 (2d Cir. 2006) (internal quotation marks and citation omitted).

b. Application of Permanent Injunction Law to Facts

The need for speed in the present case warrants consolidation. This opinion constitutes notice to defendant. There has been ample time to prepare for a hearing.

Plaintiff has demonstrated no adequate remedy at law and irreparable harm if relief is not granted. *See supra* Part VIII.C.a–b.

As a practical matter, the effect of a preliminary injunction and a permanent injunction would be the same: defendant would be compelled to fix a date for an election.

IX. Additional Claims

Plaintiffs' claims pursuant to section 1983 of Title 42 of the United States Code, the Fourteenth Amendment, and the First Amendment need not be addressed. They are, in effect, dealt with in the instant decision.

X. Conclusion

A hearing on the petition for a permanent injunction ordering the Governor of the State of New York to fix the date for a special election to choose the Representative of the Eleventh Congressional District of New York to the House of Representatives will be held on February 20, 2015 at 12:00 noon in Courtroom 10B South. Unless the Governor of the State of New York has set a date for the special election on or before that time or justifies a further delay, this court will set the date.

SO ORDERED.

Jack B. Weinstein
Senior United States District Judge

Dated: February 16, 2015
Brooklyn, New York

EXHIBITS

2019 North Carolina's 9th congressional district sp election

A special election was held on September 10, 2019, to fill the vacancy in North Carolina's 9th congressional district in the United States House of Representatives for the remainder of the 116th United States Congress. The seat had been vacant since the opening of the 116th Congress, following the refusal of the North Carolina State Board of Elections to certify the results of the November 2018 election in the district due to allegations of electoral fraud.[1] Because of the allegations, the race received substantial national attention.

In the original election, Mark Harris, a Republican, led Democrat Dan McCready by 905 votes in the unofficial returns for the 2018 North Carolina's 9th congressional district election. However, allegations of fraud in the election prevented its certification.[2] After hearing evidence, including testimony from Harris himself and his own son, the board unanimously voted on February 21 to call a new election.[3][4]

The primary was held on May 14, 2019 and the general election was held on September 10. A total of 10 Republican candidates qualified for the primary.[5] Dan McCready, the Democratic Party nominee in the 2018 election, ran again and faced no primary opposition.[6] Among Republicans, neither Harris nor Robert Pittenger, the incumbent whom Harris defeated in the 2018 primary election, filed to run.[7][8][9]

After winning the Republican primary by a large margin,[10] Dan Bishop narrowly won the general election, garnering 50.7% of the vote to McCready's 48.7%.[11][12]

Background

The 2018 congressional district election ended with Republican Mark Harris leading Democrat Dan McCready by 905 votes, the closest race in the district in over sixty years. While McCready had conceded defeat, the North Carolina Democratic Party alleged that electoral fraud had taken place, and filed affidavits with the North Carolina State Board of Elections alleging that independent contractors working on behalf of Harris had illegally collected absentee ballots (ballot harvesting).[13][14] The North Carolina Board of Elections voted unanimously not to certify the election and later ordered an evidentiary hearing to be held. The board also opened an investigation around the activities of Leslie McCrae Dowless, a campaign operative with felony fraud and perjury convictions, who was hired by the Harris campaign.[15] Incoming Democratic Majority Leader Steny Hoyer announced that the United States House of Representatives would not seat Harris until the fraud investigation had been completed.[16]

After a delay caused by restructuring of the Board of Elections and delayed appointment of members by Republican allies of Harris, the board set hearings to begin on February 18, 2019. On that day the regulator reported that it had found evidence of "a coordinated, unlawful and substantially resourced absentee ballot scheme" that may have involved more than 1,000 ballots or ballot request forms.[17] On February 20, Harris's son, John Harris, a federal prosecutor in North Carolina, testified to the election board that he had repeatedly warned his father not to hire Dowless because Dowless appeared to have previously engaged in illegal tactics to win votes.[18]

On February 21, Harris announced that "the public's confidence in the ninth district seat general election has been undermined to an extent that a new election is warranted." The Board of Elections voted unanimously to call a special election, with a primary if necessary on May 14, to fill the vacancy.[4] This was the first House of Representatives election to require a do-over since 1974.[19][9]

2019 North Carolina's 9th congressional district special election

September 10, 2019

North Carolina's 9th congressional district

Nominee	Dan Bishop	Dan McCready
Party	Republican	Democratic
Popular vote	96,573	92,785
Percentage	50.69%	48.70%

County results
Bishop: 40–50% 50–60%
McCready: 50–60%

U.S. Representative before election	Elected U.S. Representative
Vacant Republican	Dan Bishop Republican

A House of Representatives office remained vacant, awaiting the winner of the disputed election

Leslie McCrae Dowless was indicted and arrested on February 27, 2019. He faced felony charges of obstruction of justice, conspiracy to commit obstruction of justice and two possession of absentee ballots charges.[20] In July 2019, the Wake County district attorney also announced charges against Lisa Britt, Ginger S. Eason, Woody D. Hester, James Singletary, Jessica Dowless and Kelly Hendrix, and additional charges against Leslie McCrae Dowless.[21]

Republican primary

Candidates

Nominee

- Dan Bishop, attorney and state senator[22]

Defeated in primary

- Chris Anglin, attorney and candidate for North Carolina Supreme Court in 2018[23]
- Leigh Brown, realtor, CEO and author [24]
- Kathie Day, realtor[25]
- Gary Dunn, perennial candidate[23]
- Matthew Ridenhour, former Mecklenburg County commissioner[26]
- Stevie Rivenbark, businesswoman[27]
- Stony Rushing, Union County commissioner[28][29]
- Fern Shubert, former state senator and candidate for governor in 2004[30]
- Albert Lee Wiley Jr., perennial candidate[31]

Withdrew

- David Blackwelder, Wake Forest police officer and nominee for Wake County Board of Commissioners District 6 in 2018[32]

Declined

- Dean Arp, state representative[33] (endorsed Dan Bishop)
- Dan Barry, chair of the Union County Republican Party and candidate for North Carolina's 9th congressional district in 2012[34][35] (endorsed Dan Bishop)
- William M. Brawley, former state representative[36] (endorsed Dan Bishop)
- Danny Britt, state senator[37] (endorsed Dan Bishop)
- Andy Dulin, former state representative[38]
- Mark Harris, pastor, nominee for North Carolina's 9th congressional district in 2018, candidate for North Carolina's 9th congressional district in 2016, and candidate for U.S. Senate in 2014[39] (endorsed Stony Rushing)[29]
- Nat Robertson, former mayor of Fayetteville, North Carolina[40]
- Pat McCrory, former Governor of North Carolina[41][42][43]
- Robert Pittenger, former U.S. Representative[7] (endorsed Matthew Ridenhour)
- Kenny Smith, former Charlotte city councilman and nominee for mayor of Charlotte in 2017[34][44] (endorsed Dan Bishop)
- Scott Stone, former state representative[45]
- Tommy Tucker, former state senator[46] (endorsed Dan Bishop)

Endorsements

Dan Bishop

Politicians[47]

- Ted Cruz, U.S. Senator from Texas[48]
- Sue Myrick, former U.S. Representative
- Tom McInnis, State Senator
- Wesley Meredith, State Senator
- Craig Horn, State Representative
- Bob Rucho, State Senator
- Rob Bryan, State Representative
- John Szoka, State Representative
- Paul Bailey, Matthews Mayor
- Richard Vinroot, Former Charlotte Mayor
- Jim Puckett, Mecklenburg County Commissioner
- Bill James, Mecklenburg County Commissioner
- Karen Bentley, Mecklenburg County Commissioner

- Barbara Dement, Matthews Councilwoman
- Dale Dalton, Mint Hill Commissioner
- Richard Newton, Mint Hill Commissioner
- Mike Cochrane, Mint Hill Commissioner

Conservative organizations

- North Carolina Values Coalition, non-partisan, statewide grassroots network of North Carolinians who support and advocate for pro-family positions[49]
- Club for Growth, national network for limited government and economic freedom[50]

Matthew Ridenhour

Politicians

- Ron Paul, former U.S. Representative from Texas[51]
- Rand Paul, U.S. Senator from Kentucky[52]
- Robert Pittenger, former U.S. Representative[53]

- Tariq Bokhari, Charlotte City Councilman[54]

Polling

Poll source	Date(s) administered	Sample size	Margin of error	Chris Anglin	Dan Bishop	Leigh Brown	Kathie Day	Gary Dunn	Matthew Ridenhour	Stevie Rivenbark	Stony Rushing	Fern Shubert	Other	Undecided
Public Policy Polling (https://drive.google.com/file/d/1Yg57c_at8pycldd3E63cK533M4G7S2Xz/view)	April 29–30, 2019	592	± 5.1%	3%	**31%**	6%	5%	1%	9%	2%	17%	4%	–	21%
WPA Intelligence (R) (https://www.politico.com/f/?id=0000016a-9a13-d399-afef-9a93308700 00)[A]	April 29–30, 2019	409	± 4.9%	–	**30%**	5%	–	–	6%	1%	19%	2%	5%	**32%**
Meeting Street Research (R) (https://www.rollcall.com/news/campaigns/nc-gop-9th-redo-primary)[B]	April 22–23, 2019	400	–	–	**36%**	3%	–	–	13%	–	18%	–	–	–
WPA Intelligence (R) (https://www.politico.com/f/?id=0000016a-9a13-d399-afef-9a93308700 00)[A]	~April 9, 2019	–	–	–	**22%**	1%	–	–	6%	2%	**18%**	2%	3%	**46%**

Results

Republican primary results[10]

Party	Candidate	Votes	%
Republican	**Dan Bishop**	**14,405**	**47.68**
Republican	Stony Rushing	5,882	19.47
Republican	Matthew Ridenhour	5,166	17.10
Republican	Leigh Brown	2,672	8.84

	Republican	Stevie Rivenbark Hull	906	3.00
	Republican	Fern Shubert	438	1.45
	Republican	Chris Anglin	382	1.26
	Republican	Kathie Day	193	0.64
	Republican	Gary Dunn	105	0.35
	Republican	Albert Lee Wiley, Jr.	62	0.21
		Total votes	**30,211**	**100**

Democratic primary

Candidates

Declared

- Dan McCready, former U.S. Marine, businessman, and nominee for North Carolina's 9th congressional district in 2018[22]

Endorsements

Dan McCready

Federal politicians

- Cory Booker, U.S. Senator (D-NJ)[55]
- Kirsten Gillibrand, U.S. Senator (D-NY)[55]
- Kamala Harris, U.S. Senator (D-CA)[55]
- Seth Moulton, U.S. Representative (D-MA)[55]
- Adam Schiff, U.S. Representative (D-CA) and Chairman of the United States House Permanent Select Committee on Intelligence[56]
- Eric Swalwell, U.S. Representative (D-CA)[57]
- Elizabeth Warren, U.S. Senator (D-MA)[55]

Statewide, and local politicians

- Dan Blue, State Senate Minority Leader[58]
- Pete Buttigieg, Mayor of South Bend[55]
- Jim Hunt, former Governor of North Carolina[58]
- Jeff Jackson, State Senator[59]
- Vi Lyles, Mayor of Charlotte[58]

Organizations

- League of Conservation Voters[60][61]
- Blue Dog Coalition[58]

Libertarian primary

Candidates

Declared

- Jeff Scott, nominee for North Carolina's 9th congressional district in 2018[62]

Green primary

Candidates

Declared

- Allen Smith, perennial candidate[63]

General election

Dan McCready, the Democratic candidate, ran on a platform of cutting taxes on the middle class, ending gerrymandering, renegotiating trade deals, and reducing military interventions overseas. His platform also supports protecting Social Security and Medicare, overturning *Citizens United*, and granting full federal recognition to the Lumbee Tribe.[64] Republican candidate Dan Bishop is best known for his opposition to LGBT rights, particularly the drafting of North Carolina's "Bathroom Bill".[65][66]

During the early voting period for this election, Hurricane Dorian battered the eastern coast of the United States, necessitating early voting to be halted in several counties on the Outer Banks and elsewhere on the coast until the storm had passed.

Predictions

Source	Ranking	As of
The Cook Political Report[67]	Tossup	September 6, 2019
Inside Elections[68]	Tossup	September 4, 2019
Sabato's Crystal Ball[69]	Tossup	September 5, 2019

Endorsements

Dan Bishop (R)

Federal politicians[47]

- Donald Trump, 45th President of the United States[70]
- Mike Pence, 48th Vice President of the United States[71]
- Ted Cruz, U.S. Senator (R-TX)[48]
- Thom Tillis, U.S. Senator (R-NC)[72]
- Ted Budd, U.S. Representative (R-NC)[73]
- Kevin McCarthy, House Minority Leader[74]
- Mark Meadows, U.S. Representative (R-NC)[75]
- Mark E. Green, U.S. Representative (R-TN)[76]
- David Rouzer, U.S. Representative (R-NC)[77]
- Mark Walker, U.S. Representative (R-NC)[78]
- Sue Myrick, former U.S. Representative (R-NC)

Statewide, and local politicians

- Dan Forest, Lieutenant Governor of North Carolina[79]
- Tom McInnis, State Senator
- Wesley Meredith, State Senator
- D. Craig Horn, State Representative
- Robert A. Rucho, State Senator
- Rob Bryan, State Representative
- John Szoka, State Representative
- Todd Johnson, State Senator[80]
- Dean Arp, State Representative[81]
- Tommy Tucker, State Senator[82]
- Paul Bailey, Matthews Mayor
- Richard Vinroot, former Mayor of Charlotte
- Jim Puckett, Mecklenburg County Commissioner
- Bill James, Mecklenburg County Commissioner
- Karen Bentley, Mecklenburg County Commissioner
- Barbara Dement, Matthews Councilwoman
- Dale Dalton, Mint Hill Commissioner
- Richard Newton, Mint Hill Commissioner
- Mike Cochrane, Mint Hill Commissioner

Individuals

- Kimberly Guilfoyle, television news personality[83]
- Donald Trump Jr., businessman[83]
- Ronna McDaniel, Chair of the RNC[84]
- Kayleigh McEnany, political commentator[85]

Organizations

- North Carolina Values Coalition[49]
- Club for Growth[50]
- National Rifle Association[86]

- North Carolina Right to Life[87]
- U.S. Chamber of Commerce[88]
- National Federation of Independent Business[89]

Dan McCready (D)

Federal politicians

- Alma Adams, U.S. Representative (D-NC)[90]
- Joe Biden, 47th Vice President of the United States, former U.S. Senator (D-DE)[91]
- Julian Castro, former U.S. Secretary of Housing and Urban Development[92]
- Cory Booker, U.S. Senator (D-NJ)[55]
- Cheri Bustos, U.S. Representative (D-IL)[93]
- Sean Casten, U.S. Representative (D-IL)[94]
- Dwight Evans, U.S. Representative (D-PA)[95]
- Kirsten Gillibrand, U.S. Senator (D-NY)[55]
- Deb Haaland, U.S. Representative (D-NM)[96]
- Kamala Harris, U.S. Senator (D-CA)[55]
- Amy Klobuchar, U.S. Senator (D-MN)[97]
- Conor Lamb, U.S. Representative (D-PA)[98]
- Ted Lieu, U.S. Representative (D-CA)[99]
- Seth Moulton, U.S. Representative (D-MA)[55]
- Beto O'Rourke, former U.S. Representative (D-TX)[100]
- Adam Schiff, U.S. Representative (D-CA) and Chairman of the House Intelligence Committee[56]
- Mikie Sherrill, U.S. Representative (D-NJ)[101]
- Abigail Spanberger, U.S. Representative (D-VA)[102]
- Eric Swalwell, U.S. Representative (D-CA)[57]
- Lauren Underwood, U.S. Representative (D-IL)[103]
- Elizabeth Warren, U.S. Senator (D-MA)[55]

Statewide, and local politicians

- Josh Stein, Attorney General of North Carolina[104]
- Steve Bullock, Governor of Montana[105]
- Dan Blue, State Senate Minority Leader[58]
- Pete Buttigieg, Mayor of South Bend, Indiana[55]
- Becky Carney, State Representative
- Cal Cunningham, former State Senator[106]
- Terry Van Duyn, State Senator[107]
- Harvey Gantt, former Mayor of Charlotte
- Ken Goodman, commissioner of the North Carolina Industrial Commission and former State Representative
- Wayne Goodwin, chairman of the North Carolina Democratic Party and former North Carolina Commissioner of Insurance[108]
- Charles Graham, State Representative
- Wesley Harris, State Representative[109]
- Jim Hunt, former Governor of North Carolina[58]
- Jeff Jackson, State Senator[59]
- Vi Lyles, Mayor of Charlotte[58]
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Newspapers & news websites

- *The Charlotte Observer*[133]

Polling

Poll source	Date(s) administered	Sample size	Margin of error	Dan Bishop (R)	Dan McCready (D)	Other	Undecided
Co/Efficient (https://static.wixstatic.com/ugd/335ca2_46bf8209ab7f4edbb49f30a7293dc901.pdf)	September 5–6, 2019	1,175 LV	± 3.9%	45%	48%	–	7%
				44%	44%	5%[a]	7%
GAJ Solutions (R) (https://rrhelections.com/index.php/2019/09/03/rrh-elections-nc-9-poll-bishop-r-leads-mccready-d-46-45/)[C]	August 26–28, 2019	500	± 4.0%	46%	45%	3%[b]	5%
Harper Polling/Clarity Campaign Labs (https://drive.google.com/file/d/1uTVAYZNt-cJcFHoktckadxHd60E_mvmJ/view)[D]	August 26–28, 2019	551 LV	± 4.2%	42%	46%	3%[b]	8%
ALG Research (D) (https://thehill.com/homenews/campaign/454122-contested-nc-house-race-in-dead-heat-internal-poll)[E]	July 15–18, 2019	450 LV	± 4.6%	46%	46%	–	8%
Atlantic Media & Research (R) (https://dailyhaymaker.com/wp-content/uploads/2019/05/NC9-Memo-053119.pdf)[F]	May 20–30, 2019	358 LV	± 5.2%	39%	41%	3%[c]	16.8%
JMC Analytics (https://winwithjmc.com/wp-content/uploads/2019/05/NC-9-Executive-Summary.pdf)	May 21–24, 2019	350 LV	± 5.2%	46%	42%	2%[d]	10%

Hypothetical polling

with Mark Harris

Poll source	Date(s) administered	Sample size	Margin of error	Mark Harris (R)	Dan McCready (D)	Undecided
Atlantic Media & Research (https://dailyhaymaker.com/wp-content/uploads/2019/05/NC9-Memo-053119.pdf)	December 2018	–	–	43%	46%	11%

with generic Republican and Dan McCready

Poll source	Date(s) administered	Sample size	Margin of error	Generic Republican	Dan McCready (D)	Other	Undecided
JMC Analytics (https://winwithjmc.com/wp-content/uploads/2019/05/NC-9-Executive-Summary.pdf)	May 21–24, 2019	350	± 5.2%	52%	41%	2%	2%
DCCC Targeting and Analytics (D) (https://www.politico.com/f/?id=00000169-38b8-dce6-ad69-3fff83b50001)[G]	February 24–25, 2019	518	± 4.3%	46%	50%	–	–

with generic Republican and generic Democrat

Poll source	Date(s) administered	Sample size	Margin of error	Generic Republican	Generic Democrat	Undecided
Atlantic Media & Research (https://dailyhaymaker.com/wp-content/uploads/2019/05/NC9-Memo-053119.pdf)	May 20–30, 2019	358	± 5.2%	**46%**	38%	16%
Atlantic Media & Research (https://dailyhaymaker.com/wp-content/uploads/2019/05/NC9-Memo-053119.pdf)	December 2018	–	–	**45%**	36%	19%

Fundraising

Campaign finance reports as of August 21, 2019			
Candidate (party)	Total receipts	Total disbursements	Cash on hand
Dan McCready (D)	$4,950,881.11	$4,470,374.25	$818,345.51
Dan Bishop (R)	$1,954,334.64	$1,761,558.40	$192,776.24
Source: Federal Election Commission[134]			

Results

North Carolina's 9th congressional district special election, 2019[135]

Party	Candidate	Votes	%	±%
Republican	Dan Bishop	**96,573**	**50.69**	**+1.44**
Democratic	Dan McCready	92,785	48.70	-0.23
Libertarian	Jeff Scott	773	0.41	-1.40
Green	Allen Smith	375	0.20	N/A
	Total votes	**190,506**	**100.00**	N/A
Republican **hold**				

County results

Vote breakdown by county

	Dan Bishop Republican		Dan McCready Democrat		Jeff Scott Libertarian		Allen Smith Green		Total
County	Votes	%	Votes	%	Votes	%	Votes	%	Votes
Anson	2,381	42.67%	3,173	56.86%	15	0.27%	11	0.20%	5,580
Bladen	3,496	59.32%	2,371	40.23%	15	0.25%	11	0.19%	5,893
Cumberland	7,498	49.85%	7,471	49.67%	42	0.28%	31	0.21%	15,042
Mecklenburg	28,862	43.42%	37,193	55.96%	272	0.41%	140	0.21%	66,467
Richmond	4,727	51.96%	4,309	47.37%	39	0.43%	22	0.24%	9,097
Robeson	10,378	49.08%	10,669	50.45%	58	0.27%	41	0.19%	21,146
Scotland	2,816	43.29%	3,655	56.19%	21	0.32%	13	0.20%	6,505
Union	36,415	59.92%	23,944	39.40%	311	0.51%	106	0.17%	60,776

Notes

Partisan clients

A. Poll sponsored by Club for Growth Action
B. Poll sponsored by the Dan Bishop campaign
C. Poll conducted for RedRacingHorses
D. Poll conducted for Inside Elections
E. McCready internal
F. Poll sponsored by an unknown Republican client
G. Poll sponsored by the Democratic Congressional Campaign Committee

Additional candidates

a. Scott (L) with 3% and Smith (G) with 2%
b. Scott (L) with 2% and Smith (G) with 1%
c. Scott (L) with 2% and Smith (G) with 0.8%

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EXHIBIT 2

Mark Harris (North Carolina poli

Mark Harris (born April 24, 1966) is an American pastor and politician from North Carolina. He ran as a Republican to represent North Carolina's 9th congressional district in the United States House of Representatives in the 2016 and 2018 elections. In 2016, he was defeated in a Republican primary by incumbent Robert Pittenger. Harris ran for Congress again in 2018, and this time he defeated Pittenger in the Republican primary.

In the general election against Democratic opponent Dan McCready, initial tallies showed Harris winning the election; however, an election panel refused to certify these results after investigating reports of ballot fraud involving McCrae Dowless, a Republican political operative employed by the Harris campaign. Dowless was later criminally charged in connection with the alleged fraud, but Harris was not. In February 2019, the bipartisan North Carolina Board of Elections dismissed the results of the election and called for a new election to be held. Harris was not a candidate in the new election.

Mark Harris

Harris speaking at the First Baptist Church Indian Trail

Personal details

Born	April 24, 1966 Winston-Salem, North Carolina, U.S.
Political party	Republican
Spouse	Beth Harris
Children	3
Education	Appalachian State University (BA) Southeastern Baptist Theological Seminary (MDiv, DMin)

Early life

Harris was born in Winston-Salem, North Carolina, on April 24, 1966.[1] He attended local schools there before earning his bachelor's degree in political science from Appalachian State University. He earned both a Master of Divinity (M.Div.) and Doctor of Ministry (D.Min.) from Southeastern Baptist Theological Seminary.[2]

Ministry career

Harris is the lead pastor at Trinity Baptist Church in Mooresville, North Carolina.[3] He has served as the senior pastor of the First Baptist Church in Charlotte, North Carolina,[4] and as president of the Baptist State Convention of North Carolina.[5] He served as senior of Augusta, Georgia's Curtis Baptist Church from January 1, 2000 to July 2005.[6]

Political career

Harris ran for the United States Senate in the 2014 election, finishing in third place in the Republican primary behind Thom Tillis and Greg Brannon.[2] He later ran against incumbent congressman Robert Pittenger for the U.S. House in 2016. The election was close; after a recount, Pittenger was certified the winner by 134 votes.[7]

2018 congressional campaign

Harris resigned from the First Baptist Church in 2017[8] and ran again for the U.S. House in 2018.[9] This time, Harris defeated Pittenger in the Republican primary (which featured a higher turnout than the 2016 primary).[10]

After the November 6, 2018 general election, Harris was 905 votes ahead of his Democratic competitor, Dan McCready, after county election boards certified the election; however, the North Carolina Board of Elections voted 9-0 on November 27 to delay the election to investigate fraud allegations.[11][12][13][14] Following an investigation, the Board ordered that a new election be held.[15] Harris was not a candidate in the new election.[16]

Election fraud allegations

Following the November 6, 2018, midterm elections in North Carolina's 9th congressional district, initial tallies put Harris 905 votes ahead of his Democratic competitor, Dan McCready. McCready conceded on the day after the election, but the state Democratic Party filed affidavits with the state's board of voters claiming that Harris had used independent contractors to collect unsealed absentee ballots from voters and alter them before submitting them to the post office.[17][18][13] The North Carolina Board of Elections voted 9-0 on November 27 not to certify the election.[19]

The Board of Elections subsequently opened an investigation which centered around the activities of Leslie McCrae Dowless, who had felony convictions for perjury and fraud. Dowless had been employed by numerous campaigns of Republican candidates to orchestrate "get out the vote" efforts. The accusation is that Dowless, who was hired by the Harris campaign, paid workers to illegally collect absentee ballots from voters.[20] According to *The Washington Post*, Harris directed the hiring of Dowless for his campaign even though Harris received personal warnings in 2016 that Dowless had almost certainly used questionable tactics to deliver absentee votes in rural Bladen county for Todd Johnson, another losing candidate in the District's Republican congressional 2016 primary.[21]

While the allegations of irregularities were being investigated, Harris sought to have himself certified as the winner of the election.[22] In January 2019, Harris filed a petition to have a court certify him as the winner of the election; Harris's petition was rejected that same month.[23][24] That same month, Harris said "no evidence has been supplied that suggests the outcome of the race is in question"; *The News & Observer* disputed Harris's assertion, stating that it was "extremely unlikely" that Harris knew "the extent of evidence that has been submitted to the NC elections board".[25] On February 9, 2019, Harris said that "Democrats and liberal media have spared no expense disparaging" his good name and blamed "a liberal activist" on the Board of Elections for controversy surrounding the election. He described the alleged ballot-harvesting scheme as "unsubstantiated slandering".[22] During the investigation, the North Carolina Republican Party declared, "Mark Harris won the election",[26] calling on the state elections board to certify Harris as the winner.[25] The party also defended Harris, describing him as an "innocent victim".[27]

The outcome of the election remained uncertified while state election officials investigated the alleged fraud.[28][29] In early January, Republican party officials refused to send Democratic Governor Roy Cooper the names of their party's candidates to fill vacancies on the board. Responding to their actions, Cooper said, "If politicians and the people they hire are manipulating the system to steal elections, all of us should pull together to get to the bottom of it and stop it — regardless of whether the candidate who finished ahead in a tainted election is a Republican or a Democrat".[30]

The North Carolina State Board of Elections held hearings from February 18 to February 21, 2019 in an effort to resolve the disputed election results.[31] During those hearings, election officials complained that the Harris campaign had withheld incriminating documents.[22][32] Lisa Britt, the daughter of Dowless's ex-wife, testified that under Dowless's direction, absentee ballots had been unlawfully collected from voters. Britt added that in some cases, Dowless's associates had filled in blank ballot votes to favor Republican candidates and had falsified witness signatures.[33] Bladen County, where Dowless had operated, was the only county in which Harris had prevailed over McCready in the absentee ballot results.[34] Harris's son, who is a federal prosecutor, told the board that he had repeatedly warned his father about Dowless and that Dowless might be involved in illegal activities.[22][34] Harris told the board that Dowless had assured him that his operation was legal.[22]

The New York Times wrote that Harris "appeared to mislead" the board with some of his testimony. Harris later acknowledged that some of his testimony had been inaccurate, blaming his health problems as an explanation for his erroneous testimony.[32][34] He then said that "It's become clear to me the public's confidence in the 9th District seat general election has been undermined to an extent that a new election is warranted." Harris's attorney David Freedman also said "we agree that the actions that occurred in Bladen County likely affected the election."[22]

On February 21, the Board of Elections unanimously voted to order a new election in the congressional race. The Board also ordered new elections in two other contests for local offices.[35] The North Carolina Republican Party, which up until that point had been supporting Harris's prior demand to be certified as the winner of the election, also endorsed the call for the new election.[2] On February 26, 2019, citing ill health, Harris declared that he would not compete in the new election.[36]

Resolution

On February 27, 2019, Dowless was arrested after being indicted by a Wake County grand jury. He was charged with multiple counts related to illegal ballot handling and obstructing justice in the 2016 and 2018 elections.[37][38] An additional four people who worked for him were also charged.[39] In July, additional charges of perjury and solicitation to commit perjury were added in a superseding indictment.[40]

On April 7, 2020, Dowless was indicted on federal charges of Social Security fraud. In the indictment, unsealed on April 21, prosecutors alleged that Dowless claimed disability and retirement benefits in 2017 and 2018, but failed to tell the Social Security Administration about over $132,000 in payments he received for working on the Harris campaign and one other campaign in the 2018 cycle.[41][42]

On July 15, 2020, Wake County District Attorney Lorrin Freeman announced she was closing her office's investigation into Harris and Dowless after her office and multiple state and federal agencies found insufficient evidence to prosecute him.[43] Dowless however, was found to have committed unrelated government fraud and sentenced to six months in prison and fined.[44]

Political positions

Education

In 2014, Harris called for abolishing the U.S. Department of Education.[45]

Federal budget

Harris has stated that he would support a Balanced Budget Amendment and cited concern over what was at the time $19 trillion in debt and $120 trillion in unfunded liabilities.[46]

In 2014, Harris supported reforming Social Security, including reducing the future Social Security payments for those who were currently less than 50 years old.[47]

Religion

Harris has described Islam as "dangerous" and the work of Satan. In 2014, he claimed that Islam was taking over the world, including the United States.[48]

In 2011, Harris said in a sermon at First Baptist Charlotte that there would never be peace between Jews and Muslims unless they convert to Christianity.[48]

During the 2018 campaign, American Bridge 21st Century, a Democratic super PAC that conducts opposition research, brought attention to a 2013 sermon that Harris had given where he questioned whether it was the "healthiest pursuit" for women to prioritize their careers and independence over their biblical "core calling".[49]

Social issues

Harris opposed the Supreme Court's ruling in *Roe v. Wade* which prohibited bans on abortion.[49] He has stated that the Affordable Care Act has made healthcare more costly for businesses.[46]

Harris led supporters of North Carolina Amendment 1, which banned same-sex marriage in North Carolina in 2012.[50][51] The amendment was found to be unconstitutional by a federal court in 2014, and prohibitions on same-sex marriage were found to be unconstitutional by the Supreme Court's *Obergefell v. Hodges* decision in 2015. After the Supreme Court ruling, Harris said, "one of the most devastating blows to the American way of life has been the breakdown of the family unit. A marriage consists of one man and one woman. The Supreme Court, in a 5–4 decision, decided otherwise."[49]

Harris campaigned for the Public Facilities Privacy & Security Act (commonly known as the "bathroom bill") in North Carolina in 2016, which stated that in government buildings, individuals (such as students at state-operated schools) may only use restrooms and changing facilities that

correspond to the sex identified on their birth certificate. The bill sparked a widespread backlash and boycott, including by major U.S. firms. Amid the backlash, Harris adamantly argued against repealing the bill.[49] The bill was eventually repealed and replaced with House Bill 142 on March 30, 2017.[52]

Personal life

Harris and his wife Beth have three children and six grandchildren.[2]

In January 2019, Harris was reported to have falsely set off a fire alarm, allegedly to avoid news media. Harris explained his actions by stating that he was rushing to catch a sports game.[53][54][55]

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§ 163-3. Special elections.

Special elections shall be called as permitted by law and conducted in accordance with G.S. 163-287. (2013-381, s. 10.2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.13. New elections.

(a) When State Board May Order New Election. - The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. - The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. - Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. - The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot. - All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

(1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.

(2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. - If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply.

(g) Primary Required for a New Election. - For any new congressional general election ordered under subsection (a) of this section, a primary for that election shall be conducted. The State Board shall determine when the primary shall be held, and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the primary. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a); 2016-125, 4th Ex. Sess., s. 5(j); 2017-6, ss. 2, 3, 7(j); 2018-146, ss. 1, 3.1(a), (b).)

§ 163-287. Special elections; procedure for calling.

(a) Any county, municipality, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the governing body of the county, municipality, or special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the local board of elections. The resolution shall call on the local board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. In setting the date, counties, municipalities, and special districts are encouraged to set a date that will result in the highest possible voter turnout. However, the special election may be held only as follows:

(1) At the same time as any other State or county general election.

(2) At the same time as the primary election in any even-numbered year.

(3) At the same time as any other election requiring all the precincts in the county to be open.

(4) At the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.

(b) Legal notice of the special election shall be published no less than 45 days prior to the special election. The local board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This subsection shall not apply to bond elections.

(c) The last sentence of subsection (a) of this section shall not apply to any special election related to the public health or safety, including a vacancy in the office of sheriff or a bond referendum for financing of health and sanitation systems, if the governing body adopts a resolution stating the need for the special election at a time different from any other State, county, or municipal general election or the primary in any even-numbered year.

(d) The last sentence of subsection (a) of this section shall not apply to municipal incorporation or recall elections pursuant to local act of the General Assembly.

(e) The last sentence of subsection (a) of this section shall not apply to municipal elections to fill vacancies in office pursuant to local act of the General Assembly where more than six months remain in the term of office, and if less than six months remain in the office, the governing board may fill the vacancy for the remainder of the unexpired term notwithstanding any provision of a local act of the General Assembly.

(f) This section shall not impact the authority of the courts or the State Board to order a new election at a time set by the courts or State Board under this Chapter. (1971, c. 835, s. 1; 1973, c. 793, s. 86; 1993 (Reg. Sess., 1994), c. 762, s. 65; 2011-31, s. 7; 2013-381, s. 10.1; 2014-111, s. 17.5(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

STATUTES/RULES

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NATIONAL ARCHIVES

The Constitution of the United States: A Transcription

Print This Page

Note: The following text is a transcription of the Constitution as it was inscribed by Jacob Shallus on parchment (the document on display in the Rotunda at the National Archives Museum.) ***The spelling and punctuation reflect the original.***

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2.

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3.

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of

the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4.

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5.

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6.

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

Section. 4.

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

Article. V.

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Article. VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

Article the eighth... In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article the ninth... In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article the tenth... Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article the eleventh... The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article the twelfth... The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

ATTEST,

Frederick Augustus Muhlenberg, Speaker of the House of Representatives
John Adams, Vice-President of the United States, and President of the Senate
John Beckley, Clerk of the House of Representatives.
Sam. A Otis Secretary of the Senate

Amendments 11-27

The U.S. Bill of Rights

Note: The following text is a transcription of the first ten amendments to the Constitution in their original form. These amendments were ratified December 15, 1791, and form what is known as the "Bill of Rights."

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

them, before the fourth day of March next following, then the Vice-President shall act as President, as in case of the death or other constitutional disability of the President. --]* The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States. *Superseded by section 3 of the 20th amendment.

AMENDMENT XIII

Passed by Congress January 31, 1865. Ratified December 6, 1865.

Note: A portion of Article IV, section 2, of the Constitution was superseded by the 13th amendment.

Section 1.

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.

Congress shall have power to enforce this article by appropriate legislation.

AMENDMENT XIV

Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article I, section 2, of the Constitution was modified by section 2 of the 14th amendment.

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age,* and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

**Changed by section 1 of the 26th amendment.*

AMENDMENT XV

Passed by Congress February 26, 1869. Ratified February 3, 1870.

authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect. (2003-403, s.1.)

ARTICLE VI
SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. Who may vote.

Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. Qualifications of voter.

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(4) Photo identification for voting in person. Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions. (2018-128, s. 1.)

Sec. 3. Registration; Voting in Person.

(1) Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

(2) Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions. (2018-128, s. 2.)

Sec. 4. Qualification for registration.

Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. Elections by people and General Assembly.

All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. Eligibility to elective office.

Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. Oath.

Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, _____, do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as _____, so help me God."

Sec. 8. Disqualifications for office.

The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. Dual office holding.

(1) Prohibitions. It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Apr. 22, 1993, eff. Dec. 1, 1993; Apr. 29, 2002, eff. Dec. 1, 2002; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 59. New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) *Grounds for New Trial.* The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows:

(A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court; or

(B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court.

(2) *Further Action After a Nonjury Trial.* After a nonjury trial, the court may, on motion for a new trial, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new ones, and direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Feb. 28, 1966, eff. July 1, 1966; Apr. 27, 1995, eff. Dec. 1, 1995; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009.)

Rule 60. Relief from a Judgment or Order

(a) CORRECTIONS BASED ON CLERICAL MISTAKES; OVERSIGHTS AND OMISSIONS. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so

on motion or on its own, with or without notice. But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court's leave.

(b) GROUNDS FOR RELIEF FROM A FINAL JUDGMENT, ORDER, OR PROCEEDING. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

(c) TIMING AND EFFECT OF THE MOTION.

(1) *Timing.* A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding.

(2) *Effect on Finality.* The motion does not affect the judgment's finality or suspend its operation.

(d) OTHER POWERS TO GRANT RELIEF. This rule does not limit a court's power to:

(1) entertain an independent action to relieve a party from a judgment, order, or proceeding;

(2) grant relief under 28 U.S.C. §1655 to a defendant who was not personally notified of the action; or

(3) set aside a judgment for fraud on the court.

(e) BILLS AND WRITS ABOLISHED. The following are abolished: bills of review, bills in the nature of bills of review, and writs of coram nobis, coram vobis, and audita querela.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Dec. 29, 1948, eff. Oct. 20, 1949; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 61. Harmless Error

Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the court or a party—is ground for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order. At every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights.

(As amended Apr. 30, 2007, eff. Dec. 1, 2007.)

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) AUTOMATIC STAY. Except as provided in Rule 62(c) and (d), execution on a judgment and proceedings to enforce it are stayed for 30 days after its entry, unless the court orders otherwise.

(b) STAY BY BOND OR OTHER SECURITY. At any time after judgment is entered, a party may obtain a stay by providing a bond

Chapter 13.

Citizenship Restored.

§ 13-1. Restoration of citizenship.

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate, of a probationer, or of a parolee by the agency of the State having jurisdiction of that person or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.

(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon. (1971, c. 902; 1973, c. 251; c. 1262, s. 10; 1977, c. 813, s. 1; 1991, c. 274, s. 1; 2011-145, s. 19.1(h); 2012-83, s. 18; 2013-410, s. 2.)

§ 163-3. Special elections.

Special elections shall be called as permitted by law and conducted in accordance with G.S. 163-287. (2013-381, s. 10.2; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-55. Qualifications to vote; exclusion from electoral franchise.

(a) Residence Period for State Elections. – Every person born in the United States, and every person who has been naturalized, and who shall have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election, shall, if otherwise qualified as prescribed in this Chapter, be qualified to vote in the precinct in which the person resides. Removal from one precinct to another in this State shall not operate to deprive any person of the right to vote in the precinct from which the person has removed until 30 days after the person's removal.

Except as provided in this Chapter, the following classes of persons shall not be allowed to vote in this State:

(1) Persons under 18 years of age.

(2) Any person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

(b) Precincts. – For purposes of qualification to vote in an election, a person's residence in a precinct shall be determined in accordance with G.S. 163-57. Qualification to vote in referenda shall be treated the same as qualification for elections to fill offices.

(c) Elections. – For purposes of the 30-day residence requirement to vote in an election in subsection (a) of this section, the term "election" means the day of the primary, second primary, general election, special election, or referendum. (19th amendt. U.S. Const.; amendt. State Const., 1920; 1901, c. 89, ss. 14, 15; Rev., ss. 4315, 4316; C.S., ss. 5936, 5937; Ex. Sess. 1920, c. 18, s. 1; 1933, c. 165, s. 4; 1945, c. 758, s. 7; 1955, c. 871, s. 2; 1967, c. 775, s. 1; 1971, c. 1231, s. 1; 1973, c. 793, s. 18; 2005-2, s. 2; 2008-150, s. 5(a); 2009-541, s. 5; 2013-381, s. 49.1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Article 7A.

Registration of Voters.

§ 163-82.1. General principles of voter registration.

(a) Prerequisite to Voting. – No person shall be permitted to vote who has not been registered under the provisions of this Article or registered as previously provided by law.

(b) County Board's Duty to Register. – A county board of elections shall register, in accordance with this Article, every person qualified to vote in that county who makes an application in accordance with this Article.

(c) Permanent Registration. – Every person registered to vote by a county board of elections in accordance with this Article shall remain registered until:

(1) The registrant requests in writing to the county board of elections to be removed from the list of registered voters; or

(2) The registrant becomes disqualified through death, conviction of a felony, or removal out of the county; or

(3) The county board of elections determines, through the procedure outlined in G.S. 163-82.14, that it can no longer confirm where the voter resides. (1953, c. 843; 1955, c. 800; 1963, c. 303, s. 1; 1965, c. 1116, s. 1; 1967, c. 775, s. 1; 1973, c. 793, s. 25; 1975, c. 395; 1981, c. 39, s. 1; c. 87, s. 1; c. 308, s. 1; 1985, c. 211, ss. 1, 2; 1993 (Reg. Sess., 1994), c. 762, s. 2; 2009-541, s. 7(a); 2013-381, s. 12.1(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-82.4. Contents of application form.

(a) Information Requested of Applicant. – The form required by G.S. 163-82.3(a) shall request the applicant's:

(1) Name,
(2) Date of birth,
(3) Residence address,
(4) County of residence,
(5) Date of application,
(6) Gender,
(7) Race,
(8) Ethnicity,
(9) Political party affiliation, if any, in accordance with subsection (d) of this section,
(10) Telephone number (to assist the county board of elections in contacting the voter if needed in processing the application),
(11) Drivers license number or, if the applicant does not have a drivers license number, the last four digits of the applicant's social security number,

and any other information the State Board finds is necessary to enable officials of the county where the person resides to satisfactorily process the application. The form shall require the applicant to state whether currently registered to vote anywhere, and at what address, so that any prior registration can be cancelled. The portions of the form concerning race and ethnicity shall include as a choice any category shown by the most recent decennial federal census to compose at least one percent (1%) of the total population of North Carolina. The county board shall make a diligent effort to complete for the registration records any information requested on the form that the applicant does not complete, but no application shall be denied because an applicant does not state race, ethnicity, gender, or telephone number. The application shall conspicuously state that provision of the applicant's telephone number is optional. If the county board maintains voter records on computer, the free list provided under this subsection shall include telephone numbers if the county board enters the telephone number into its computer records of voters.

(b) No Drivers License or Social Security Number Issued. – The State Board shall assign a unique identifier number to an applicant for voter registration if the applicant has not been issued either a current and valid drivers license or a social security number. That unique identifier number shall serve to identify that applicant for voter registration purposes.

(c) Notice of Requirements, Attestation, Notice of Penalty, and Notice of Confidentiality. – The form required by G.S. 163-82.3(a) shall contain, in uniform type, the following:

(1) A statement that specifies each eligibility requirement (including citizenship) and an attestation that the applicant meets each such requirement, with a requirement for the signature of the applicant, under penalty of a Class I felony under G.S. 163-275(13).
(2) A statement that, if the applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes.
(3) A statement that, if the applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

(d) Party Affiliation or Unaffiliated Status. – The application form described in G.S. 163-82.3(a) shall provide a place for the applicant to state a preference to be affiliated with one of the political parties in G.S. 163-96, or a preference to be an "unaffiliated" voter. Every person who applies to register shall state his preference. If the applicant fails to declare a preference for a party or for unaffiliated status, that person shall be listed as "unaffiliated", except

that if the person is already registered to vote in the county and that person's registration already contains a party affiliation, the county board shall not change the registrant's status to "unaffiliated" unless the registrant clearly indicates a desire in accordance with G.S. 163-82.17 for such a change. An unaffiliated registrant shall not be eligible to vote in any political party primary, except as provided in G.S. 163-119, but may vote in any other primary or general election. The application form shall so state.

(e) Citizenship and Age Questions. – Voter registration application forms shall include all of the following:

(1) The following question and statement:

a. "Are you a citizen of the United States of America?" and boxes for the applicant to check to indicate whether the applicant is or is not a citizen of the United States.

b. "If you checked "no' in response to this question, do not submit this form."

(2) The following question and statement:

a. "Will you be 18 years of age on or before election day?" and boxes for the applicant to check to indicate whether the applicant will be 18 years of age or older on election day.

b. "If you checked "no' in response to this question, do not submit this form."

(f) Correcting Registration Forms. – If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M. on the day before the county canvass as set in G.S. 163-182.5(b). If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M. on the day before the county canvass, the board shall count any portion of the provisional official ballot that the voter is eligible to vote. (1901, c. 89, s. 12; Rev., s. 4319; C.S., s. 5940; Ex. Sess. 1920, c. 93; 1933, c. 165, s. 5; 1951, c. 984, s. 1; 1953, c. 843; 1955, c. 800; c. 871, s. 2; 1957, c. 784, s. 2; 1963, c. 303, s. 1; 1967, c. 775, s. 1; 1971, c. 1166, s. 6; 1973, c. 793, s. 27; c. 1223, s. 3; 1975, c. 234, s. 2; 1979, c. 135, s. 1; c. 539, ss. 1-3; c. 797, ss. 1, 2; 1981, c. 222; c. 308, s. 2; 1991 (Reg. Sess., 1992), c. 1044, s. 18(a); 1993, c. 74, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 2; 1999-424, s. 7(c), (d); 1999-453, s. 8(a); 2003-226, s. 9; 2004-127, s. 4; 2005-428, s. 15; 2007-391, s. 20; 2008-187, s. 33(a); 2009-541, s. 9(a); 2013-381, s. 12.1(c); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

SUBCHAPTER IV. POLITICAL PARTIES.

Article 9.

Political Parties.

§ 163-96. "Political party" defined; creation of new party.

(a) Definition. – A political party within the meaning of the election laws of this State shall be one of the following:

(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.

(2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of three congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chair of the proposed new political party.

(3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. To be effective, the group must file their documentation with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith verify the documentation filed with it and shall immediately communicate its determination to the State chair of the proposed new political party.

(b) Petitions for New Political Party. – Petitions for the creation of a new political party shall contain on the heading of each page of the petition in bold print or all in capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN ____ COUNTY HEREBY PETITION FOR THE FORMATION OF A NEW POLITICAL PARTY TO BE NAMED ____ AND WHOSE STATE CHAIRMAN IS _____, RESIDING AT _____ AND WHO CAN BE REACHED BY TELEPHONE AT ____."

All printing required to appear on the heading of the petition shall be in type no smaller than 10 point or in all capital letters, double spaced typewriter size. In addition to the form of the petition, the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.

The petitions must specify the name selected for the proposed political party. The State Board of Elections shall reject petitions for the formation of a new party if the name chosen contains any word that appears in the name of any existing political party recognized in this State or if, in the State Board's opinion, the name is so similar to that of an existing political party recognized in this State as to confuse or mislead the voters at an election.

The petitions must state the name and address of the State chairman of the proposed new political party.

(c) Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained, and it shall be the chairman's duty:

(1) To examine the signatures on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in his county.

(2) To attach to the petition his signed certificate

a. Stating that the signatures on the petition have been checked against the registration records and

b. Indicating the number found qualified and registered to vote in his county.

(3) To return each petition, together with the certificate required by the preceding subdivision, to the person who presented it to him for checking.

The group of petitioners shall submit the petitions to the chairman of the county board of elections in the county in which the signatures were obtained no later than 5:00 P.M. on the fifteenth day preceding the date the petitions are due to be filed with the State Board of Elections as provided in subsection [subdivision] (a)(2) of this section. Provided the petitions are timely submitted, the chairman of the county board of elections shall proceed to examine and verify the signatures under the provisions of this subsection. Verification shall be completed within two weeks from the date such petitions are presented. (1901, c. 89, s. 85; Rev., s. 4292; 1915, c. 101, s. 31; 1917, c. 218; C.S., ss. 5913, 6052; 1933, c. 165, ss. 1, 17; 1949, c. 671, ss. 1, 2; 1967, c. 775, s. 1; 1975, c. 179; 1979, c. 411, s. 3; 1981, c. 219, ss. 1-3; 1983, c. 576, ss. 1-3; 1997-456, s. 27; 1999-424, s. 5(a); 2004-127, s. 14; 2006-234, s. 1; 2017-6, s. 3; 2017-214, s. 1; 2018-146, s. 3.1(a), (b).)

§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing.

(a) Notice and Pledge. – No one shall be voted for in a primary election without having filed a notice of candidacy with the appropriate board of elections, State or county, as required by this section and G.S. 163-106.1, 163-106.2, 163-106.3, 163-106.5, and 163-106.6. To this end every candidate for selection as the nominee of a political party shall file with and place in the possession of the board of elections specified in G.S. 163-106.2, a notice and pledge in the following form:

Date _____

I hereby file notice as a candidate for nomination as _____ in the _____ party primary election to be held on _____, _____ I affiliate with the _____ party, (and I certify that I am now registered on the registration records of the precinct in which I reside as an affiliate of the _____ party.)

I pledge that if I am defeated in the primary, I will not run for the same office as a write-in candidate in the next general election.

Signed_____

(Name of Candidate)

Witness:

_____

_____

(Title of witness)

Each candidate shall sign the notice of candidacy in the presence of the chairman or secretary of the board of elections, State or county, with which the candidate files. In the alternative, a candidate may have the candidate's signature on the notice of candidacy acknowledged and certified to by an officer authorized to take acknowledgments and administer oaths, in which case the candidate may mail or deliver by commercial courier service the candidate's notice of candidacy to the appropriate board of elections.

(b) [Name of Candidate. –] In signing the notice of candidacy the candidate shall use only that candidate's legal name and may use any nickname by which he is commonly known. A candidate may also, in lieu of that candidate's legal first name and legal middle initial or middle name (if any) sign a nickname, provided that the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way that candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

(c) [Agent's Signature Invalid. –] A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

(d) [Forms Provided by State Board. –] Prior to the date on which candidates may commence filing, the State Board of Elections shall print and furnish, at State expense, to each county board of elections a sufficient number of the notice of candidacy forms prescribed by this subsection for use by candidates required to file with county boards of elections.

(e) Except for candidates to the office of sheriff as provided in subsection (f) of this section, at the same time the candidate files notice of candidacy under this section and G.S. 163-106.1, 163-106.2, 163-106.3, 163-106,5, and 163-106.6, the candidate shall file with the same office a statement answering the following question: "Have you ever been convicted of a felony?" The State Board of Elections shall adapt the notice of candidacy form to include the statement required by this subsection. The form shall make clear that a felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require a candidate who answers "yes" to the question to provide the name of the offense, the date of conviction, the date of the restoration

of citizenship rights, and the county and state of conviction. The form shall require the candidate to swear or affirm that the statements on the form are true, correct, and complete to the best of the candidate's knowledge or belief. The form shall be available as a public record in the office of the board of elections where the candidate files notice of candidacy and shall contain an explanation that a prior felony conviction does not preclude holding elective office if the candidate's rights of citizenship have been restored. This subsection shall also apply to individuals who become candidates for election by the people under G.S. 163-114, 163-122, 163-123, 163-98, 115C-37, 130A-50, Article 24 of this Chapter, or any other statute or local act. Those individuals shall complete the question at the time the documents are filed initiating their candidacy. The State Board of Elections shall adapt those documents to include the statement required by this subsection. If an individual does not complete the statement required by this subsection, the board of elections accepting the filing shall notify the individual of the omission, and the individual shall have 48 hours after notice to complete the statement. If the individual does not complete the statement at the time of filing or within 48 hours after the notice, the individual's filing is not complete, the individual's name shall not appear on the ballot as a candidate, and votes for that individual shall not be counted. It is a Class I felony to complete the form knowing that information as to felony conviction or restoration of citizenship is untrue. This subsection shall not apply to candidates required by G.S. 138A-22(f) to file Statements of Economic Interest.

(f) Every candidate to the office of sheriff, at the time of filing the notice of candidacy, shall file a valid disclosure statement prepared in accordance with G.S. 17E-20 verifying that the candidate has no prior felony convictions or expungements of felony convictions. If a candidate does not file such valid disclosure statement required by this subsection, that candidate's filing is not complete, the candidate's name shall not appear on the ballot as a candidate, and votes for that candidate shall not be counted in accordance with Section 2 of Article VII of the North Carolina Constitution. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b); 2021-107, s. 2.)

§ 163-106.1. Eligibility to file.

No person shall be permitted to file as a candidate in a party primary unless that person has been affiliated with that party for at least 90 days as of the date of that person filing such notice of candidacy. A person registered as "unaffiliated" shall be ineligible to file as a candidate in a party primary election. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-106.2. Time for filing notice of candidacy.

(a) Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board no earlier than 12:00 noon on the first Monday in December and no later than 12:00 noon on the third Friday in December preceding the primary:

Governor
Lieutenant Governor
All State executive officers
Justices of the Supreme Court
Judges of the Court of Appeals
Judges of the superior court
Judges of the district court
United States Senators
Members of the House of Representatives of the United States
District attorneys

(b) Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the first Monday in December and no later than 12:00 noon on the third Friday in December preceding the primary:

State Senators
Members of the State House of Representatives
All county offices. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2016-125, 4th Ex. Sess., s. 21(a); 2017-3, s. 5; 2017-6, s. 3; 2018-21, s. 2; 2018-146, s. 3.1(a), (b).)

§ 163-106.5. Certificate of registration to vote in county and party affiliation; cancellation of candidacy; residency requirements for judges.

(a) Candidates required to file their notice of candidacy with the State Board of Elections under G.S. 163-106.2 shall file along with their notice a certificate signed by the chairman of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, if the candidacy is for superior court judge and the county contains more than one superior court district, stating the superior court district of which the person is a resident, stating the party with which the person is affiliated, and that the person has not changed his affiliation from another party or from unaffiliated within three months prior to the filing deadline under G.S. 163-106.2. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline the State Board of Elections shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections shall prescribe the form for such certificate, and distribute it to each county board of elections no later than the last Monday in December of each odd-numbered year.

(b) When any candidate files a notice of candidacy with a board of elections under G.S. 163-106.2 or under G.S. 163-291(2), the board of elections shall, immediately upon receipt of the notice of candidacy, inspect the registration records of the county, and cancel the notice of candidacy of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any candidate whose notice of candidacy has been cancelled under this section by mail or by having the notice served on him by the sheriff, and to any other candidate filing for the same office. A candidate who has been adversely affected by a cancellation or another candidate for the same office affected by a substantiation under this section may request a hearing on the cancellation. If the candidate requests a hearing, the hearing shall be conducted in accordance with Article 11B of this Chapter.

(c) No person may file a notice of candidacy for superior court judge, unless that person is, at the time of filing the notice of candidacy, a resident of the judicial district as it will exist at the time the person would take office if elected. No person may be nominated as a superior court judge under G.S. 163-114, unless that person is, at the time of nomination, a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Section 9(1) of Article IV of the North Carolina Constitution, which requires regular superior court judges to reside in the district for which elected. (1915, c. 101, ss. 6, 15; 1917, c. 218; C.S., ss. 6022, 6035; 1921, c. 217; 1923, c. 111, s. 13; C.S., s. 6055(a); 1927, c. 260, s. 19; 1929, c. 26, s. 1; 1933, c. 165, s. 12; 1937, c. 364; 1947, c. 505, s. 7; 1949, c. 672, s. 4; c. 932; 1951, c. 1009, s. 3; 1955, c. 755; c. 871, s. 1; 1959, c. 1203, s. 4; 1965, c. 262; 1967, c. 775, s. 1; c. 1063, s. 2; 1969, c. 44, s. 83; c. 1190, s. 56; 1971, cc. 189, 675, 798; 1973, c. 47, s. 2; c. 793, s. 36; c. 862; 1975, c. 844, s. 2; 1977, c. 265, ss. 4, 5; c. 408, s. 2; c. 661, ss. 2, 3; 1979, c. 24; c. 411, s. 5; 1981, c. 32, ss. 1, 2; 1983, c. 330, s. 1; 1985, c. 472, s. 2; c. 558, s. 1; c. 759, s. 6; 1985 (Reg. Sess., 1986), c. 957, s. 1; 1987, c. 509, s. 13; c. 738, s. 124; 1987 (Reg. Sess., 1988), c. 1028, s. 1; 1993 (Reg. Sess., 1994), c. 762, s. 31; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 8; 1999-456, s. 59; 2001-403, s. 3; 2001-466, s. 5.1(a); 2002-158, ss. 8, 9; 2002-159, s. 55(a); 2006-155, s. 2; 2007-369, s. 1; 2009-47, s. 1; 2013-381, s. 21.1; 2014-111, s. 1(a); 2017-3, s. 5; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Article 11.

Nomination by Petition.

§ 163-122. Unaffiliated candidates nominated by petition.

(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have the voter's name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting the voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the State equal in number to one and a half percent (1.5%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of three congressional districts in North Carolina. The petitions shall be divided into sections based on the county in which the signatures were obtained. Provided the petitions are timely filed, the State Board of Elections shall require the filed petition be verified no later than 15 business days after canvass of the primary in one of the following ways:

a. The Executive Director shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the designated county and shall attach to the petition a signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in each county.

b. The chair shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the chair's county and shall attach to the petition the chair's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in the chair's county. The chair shall return the petition and certificate to the State Board.

The State Board shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the State Board.

(2) Except as provided in this subsection, if the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. For district offices other than General Assembly seats, petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the district equal in number to one and a half percent (1.5%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. For General Assembly seats in which the district lies in more than one county, petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the district equal

in number to four percent (4%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

(3) If the office is a county office or a single county legislative district, file written petitions with the chair or director of the county board of elections supporting the voter's candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the chair or director of the county board of elections. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.

(4) If the office is a partisan municipal office, file written petitions with the chair or director of the county board of elections in the county wherein the municipality is located supporting the voter's candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.

(5) If the office is a superior court judge or a district court judge, regardless of whether the district lies entirely in one county or in more than one county, file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the district equal in number to two percent (2%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

Upon compliance with the provisions of subdivisions (1), (2), (3), (4), or (5) of this subsection, the board of elections with which the petitions have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter.

(b) An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have that individual's name placed on the general election ballot as an unaffiliated candidate for the same office in that year.

(c) Form of Petition. – Petitions requesting an unaffiliated candidate to be placed on the general election ballot shall contain on the heading of each page of the petition in bold print or in all capital letters the words: "THE UNDERSIGNED REGISTERED VOTERS IN _____ COUNTY HEREBY PETITION ON BEHALF OF _____ AS AN UNAFFILIATED CANDIDATE FOR THE OFFICE OF _____ IN THE NEXT GENERAL ELECTION. THE UNDERSIGNED HEREBY PETITION THAT SUBJECT CANDIDATE BE PLACED ON THE APPROPRIATE BALLOT UPON COMPLIANCE WITH THE PROVISIONS CONTAINED IN G.S. 163-122."

(d) When any person files a petition with a board of elections under this section, the board of elections shall, immediately upon receipt of the petition, inspect the registration records of the county and cancel the petition of any person who does not meet the constitutional or statutory qualifications for the office, including residency.

The board shall give notice of cancellation to any person whose petition has been cancelled under this subsection by mail or by having the notice served on that person by the sheriff and to any other candidate filing for the same office. A person whose petition has been cancelled or another candidate for the same office affected by a substantiation under this subsection may request a hearing on the issue of constitutional or statutory qualifications for the office. If the person requests a hearing, the hearing shall be conducted in accordance with Article 11B of this Chapter.

(e) Any candidate seeking to have that candidate's name printed on the general election ballot under this section shall pay a filing fee equal to that provided for candidates for the office in G.S. 163-107 or comply with the alternative available to candidates for the office in G.S. 163-107.1. (1929, c. 164, s. 6; 1931, c. 223; 1935, c. 236; 1967, c. 775, s. 1; 1973, c. 793, s. 50; 1977, c. 408, s. 3; 1979, c. 23, ss. 1, 3; c. 534, s. 2; 1981, c. 637; 1991, c. 297, s. 1; 1995, c. 243, s. 1; 1996, 2nd Ex. Sess., c. 9, s. 14; 1999-424, s. 5(b); 2002-159, s. 21(b); 2004-127, s. 8(a); 2006-155, s. 3; 2006-234, ss. 4, 5; 2007-391, s. 8(a); 2007-484, s. 21; 2008-187, s. 33(a); 2017-3, s. 10; 2017-6, s. 3; 2017-214, s. 2(a); 2018-146, s. 3.1(a), (b).)

Article 11B.

Challenge to Candidacy.

§ 163-127.1. Definitions.

As used in this Article, the following terms mean:

(1) Board. – State Board of Elections.

(2) Candidate. – A person having filed a notice of candidacy under the appropriate statute for any elective office in this State.

(3) Challenger. – Any qualified voter registered in the same district as the office for which the candidate has filed or petitioned.

(4) Office. – The elected office for which the candidate has filed or petitioned. (2006-155, s. 1; 2006-259, s. 48(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.2. When and how a challenge to a candidate may be made.

(a) When. – A challenge to a candidate may be filed under this Article with the board of elections receiving the notice of the candidacy or petition no later than 10 business days after the close of the filing period for notice of candidacy or petition.

(b) How. – The challenge must be made in a verified affidavit by a challenger, based on reasonable suspicion or belief of the facts stated. Grounds for filing a challenge are that the candidate does not meet the constitutional or statutory qualifications for the office, including residency.

(c) If Defect Discovered After Deadline, Protest Available. – If a challenger discovers one or more grounds for challenging a candidate after the deadline in subsection (a) of this section, the grounds may be the basis for a protest under G.S. 163-182.9. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.3. Panel to conduct the hearing on a challenge.

Upon filing of a challenge, a panel shall hear the challenge, as follows:

(1) Single county. – If the district for the office subject to the challenge covers territory in all or part of only one county, the panel shall be the county board of elections of that county.

(2) Multicounty but less than entire State. – If the district for the office subject to the challenge contains territory in more than one county but is less than the entire State, the State Board shall appoint a panel within two business days after the challenge is filed. The panel shall consist of at least one member of the county board of elections in each county in the district of the office. The panel shall have an odd number of members, no fewer than three and no more than five. In appointing members to the panel, the State Board shall appoint members from each county in proportion to the relative total number of registered voters of the counties in the district for the office. If the district for the office subject to the challenge covers more than five counties, the panel shall consist of five members with at least one member from the county receiving the notice of candidacy or petition and at least one member from the county of residency of the challenger. The State Board shall, to the extent possible, appoint members affiliated with different political parties in proportion to the representation of those parties on the county boards of elections in the district for the office. The State Board shall designate a chair for the panel. A meeting of the State Board

to appoint a panel under this subdivision shall be treated as an emergency meeting for purposes of G.S. 143-318.12.

(3) Entire State. – If the district for the office subject to the challenge consists of the entire State, the panel shall be the State Board. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.4. Conduct of hearing by panel.

(a) The panel conducting a hearing under this Article shall do all of the following:

(1) Within five business days after the challenge is filed, designate and announce the time of the hearing and the facility where the hearing will be held. The hearing shall be held at a location in the district reasonably convenient to the public, and shall preferably be held in the county receiving the notice of the candidacy or petition. If the district for the office covers only part of a county, the hearing shall be at a location in the county convenient to residents of the district, but need not be in the district.

(2) Allow for depositions prior to the hearing, if requested by the challenger or candidate before the time of the hearing is designated and announced.

(3) Issue subpoenas for witnesses or documents, or both, upon request of the parties or upon its own motion.

(4) Render a written decision within 20 business days after the challenge is filed and serve that written decision on the parties.

(b) Notice of Hearing. – The panel shall give notice of the hearing to the challenger, to the candidate, other candidates filing or petitioning to be elected to the same office, to the county chair of each political party in every county in the district for the office, and to those persons who have requested to be notified. Each person given notice shall also be given a copy of the challenge or a summary of its allegations.

Failure to comply with the notice requirements in this subsection shall not delay the holding of a hearing nor invalidate the results if the individuals required by this section to be notified have been notified.

(c) Conduct of Hearing. – The hearing under this Article shall be conducted as follows:

(1) The panel may allow evidence to be presented at the hearing in the form of affidavits supporting documents, or it may examine witnesses. The chair or any two members of the panel may subpoena witnesses or documents. The parties shall be allowed to issue subpoenas for witnesses or documents, or both, including a subpoena of the candidate. Each witness must be placed under oath before testifying. The State Board shall provide the wording of the oath to the panel.

(2) The panel may receive evidence at the hearing from any person with information concerning the subject of the challenge, and such presentation of evidence shall be subject to Chapter 8C of the General Statutes. The challenger shall be permitted to present evidence at the hearing, but the challenger shall not be required to testify unless subpoenaed by a party. The panel may allow evidence to be presented by a person who is present.

(3) The hearing shall be recorded by a reporter or by mechanical means, and the full record of the hearing shall be preserved by the panel until directed otherwise by the State Board.

(d) Findings of Fact and Conclusions of Law by Panel. – The panel shall make a written decision on each challenge by separately stating findings of facts, conclusions of law, and an order.

(e) Rules by State Board. – The State Board shall adopt rules providing for adequate notice to parties, scheduling of hearings, and the timing of deliberations and issuance of decisions. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.5. Burden of proof.

(a) The burden of proof shall be upon the candidate, who must show by a preponderance of the evidence of the record as a whole that he or she is qualified to be a candidate for the office.

(b) If the challenge is based upon a question of residency, the candidate must show all of the following:

(1) An actual abandonment of the first domicile, coupled with an intent not to return to the first domicile.

(2) The acquisition of a new domicile by actual residence at another place.

(3) The intent of making the newer domicile a permanent domicile. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-127.6. Appeals.

(a) Appeals from Single or Multicounty Panel. – The decision of a panel created under G.S. 163-127.3(1) or G.S. 163-127.3(2) may be appealed as of right to the State Board by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel serves the written decision on the parties. The written appeal must be delivered or deposited in the mail to the State Board by the end of the second business day after the written decision was filed by the panel. The State Board shall prescribe forms for filing appeals from a panel's decision in a challenge. The State Board shall base its appellate decision on the whole record of the hearing conducted by the panel and render its opinion on an expedited basis. From the final order or decision by the State Board under this subsection, appeal as of right lies directly to the Court of Appeals. Appeal shall be filed no later than two business days after the State Board files its final order or decision in its office.

(b) Appeals from Statewide Panel. – The decision of a panel created under G.S. 163-127.3(3) may be appealed as of right to the Court of Appeals by any of the following:

(1) The challenger.

(2) A candidate adversely affected by the panel's decision.

Appeal must be taken within two business days after the panel files the written decision. The written appeal must be delivered or deposited in the mail to the Court of Appeals by the end of the second business day after the written decision was filed by the panel. (2006-155, s. 1; 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

§ 163-182.13. New elections.

(a) When State Board May Order New Election. – The State Board of Elections may order a new election, upon agreement of at least four of its members, in the case of any one or more of the following:

(1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.

(2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.

(3) Other irregularities affected a sufficient number of votes to change the outcome of the election.

(4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) State Board to Set Procedures. – The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) Eligibility to Vote in New Election. – Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate rules to effect the provisions of this subsection.

(d) Jurisdiction in Which New Election Held. – The new election shall be held in the entire jurisdiction in which the original election was held.

(e) Which Candidates to Be on Official Ballot. – All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

(1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.

(2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least four members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) Tie Votes. – If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply.

(g) Primary Required for a New Election. – For any new congressional general election ordered under subsection (a) of this section, a primary for that election shall be conducted. The State Board shall determine when the primary shall be held, and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the primary. (2001-398, s. 3; 2003-278, s. 8(a); 2008-150, s. 2(a); 2016-125, 4th Ex. Sess., s. 5(j); 2017-6, ss. 2, 3, 7(j); 2018-146, ss. 1, 3.1(a), (b).)

§ 163-275. Certain acts declared felonies.

Any person who shall, in connection with any primary, general or special election held in this State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class I felony. It shall be unlawful:

(1) For any person fraudulently to cause that person's name to be placed upon the registration books of more than one election precinct or fraudulently to cause or procure that person's name or that of any other person to be placed upon the registration books in any precinct when registration in that precinct does not qualify the person to vote legally therein, or to impersonate falsely another registered voter for the purpose of voting in the stead of the other voter.

(2) For any person to give or promise or request or accept at any time, before or after any such primary or election, any money, property or other thing of value whatsoever in return for the vote of any elector.

(3) For any person who is an election officer, a member of an election board or other officer charged with any duty with respect to any primary or election, knowingly to make any false or fraudulent entry on any election book or any false or fraudulent returns, or knowingly to make or cause to be made any false statement on any ballot, or to do any fraudulent act or knowingly and fraudulently omit to do any act or make any report legally required of that person.

(4) For any person knowingly to swear falsely with respect to any matter pertaining to any primary or election.

(5) For any person convicted of a crime which excludes the person from the right of suffrage, to vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law.

(6) For any person to take corruptly the oath prescribed for voters.

(7) For any person with intent to commit a fraud to register or vote at more than one precinct or more than one time, or to induce another to do so, in the same primary or election, or to vote illegally at any primary or election.

(8) For any chief judge or any clerk or copyist to make any entry or copy with intent to commit a fraud.

(9) For any election official or other officer or person to make, certify, deliver or transmit any false returns of any primary or election, or to make any erasure, alteration, or conceal or destroy any election ballot, book, record, return or process with intent to commit a fraud.

(10) For any person to assault any chief judge, judge of election or other election officer while in the discharge of duties in the registration of voters or in conducting any primary or election.

(11) For any person, by threats, menaces or in any other manner, to intimidate or attempt to intimidate any chief judge, judge of election or other election officer in the discharge of duties in the registration of voters or in conducting any primary or election.

(12) For any chief judge, judge of election, member of a board of elections, assistant, marker, or other election official, directly or indirectly, to seek, receive or accept money or the promise of money, the promise of office, or other reward or compensation from a candidate in any primary or election or from any source other than such compensation as may be provided by law for that person's services.

(13) For any person falsely to make or present any certificate or other paper to qualify any person fraudulently as a voter, or to attempt thereby to secure to

any person the privilege of voting, including declarations made under this Chapter, G.S. 130A-93.1(c), and G.S. 161-10(a)(8).

(14) For any officer to register voters and any other individual to knowingly and willfully receive, complete, or sign an application to register from any voter contrary to the provisions of G.S. 163-82.4.

(15) Reserved for future codification purposes.

(16) For any person falsely to make the certificate provided by G.S. 163-229(b)(2).

(17) For any person, directly or indirectly, to misrepresent the law to the public through mass mailing or any other means of communication where the intent and the effect is to intimidate or discourage potential voters from exercising their lawful right to vote.

(18) For any person, knowing that a person is not a citizen of the United States, to instruct or coerce that person to register to vote or to vote.

(19) To counterfeit, sell, lend to, or knowingly permit the use of, by one not entitled thereto, a form of photo identification provided in G.S. 163-166.16 for the purposes of voting. (1901, c. 89, s. 13; Rev., s. 3401; 1913, c. 164, s. 2; C.S., s. 4186; 1931, c. 348, s. 10; 1943, c. 543; 1965, c. 899; 1967, c. 775, s. 1; 1979, c. 539, s. 4; 1979, 2nd Sess., c. 1316, ss. 27, 28; 1981, cc. 63, 179; 1985, c. 562, s. 5; 1987, c. 565, s. 14; c. 583, s. 7; 1989, c. 770, s. 38; 1991, c. 727, s. 1; 1993, c. 553, s. 68; 1993 (Reg. Sess., 1994), c. 762, s. 58(d)-(g); 1999-424, s. 7(i); 2007-391, s. 17(a); 2013-381, s. 3.4; 2014-111, s. 15(c); 2015-264, s. 26; 2017-6, s. 3; 2018-144, s. 3.2(c), (d); 2018-146, s. 3.1(a), (b).)

§ 163-287. Special elections; procedure for calling.

(a) Any county, municipality, or any special district shall have authority to call special elections as permitted by law. Prior to calling a special election, the governing body of the county, municipality, or special district shall adopt a resolution specifying the details of the election, and forthwith deliver the resolution to the local board of elections. The resolution shall call on the local board of elections to conduct the election described in the resolution and shall state the date on which the special election is to be conducted. In setting the date, counties, municipalities, and special districts are encouraged to set a date that will result in the highest possible voter turnout. However, the special election may be held only as follows:

(1) At the same time as any other State or county general election.

(2) At the same time as the primary election in any even-numbered year.

(3) At the same time as any other election requiring all the precincts in the county to be open.

(4) At the same time as a municipal general election, if the special election is within the jurisdiction of the municipality only.

(b) Legal notice of the special election shall be published no less than 45 days prior to the special election. The local board of elections shall be responsible for publishing the legal notice. The notice shall state the date and time of the special election, the issue to be submitted to the voters, and the precincts in which the election will be held. This subsection shall not apply to bond elections.

(c) The last sentence of subsection (a) of this section shall not apply to any special election related to the public health or safety, including a vacancy in the office of sheriff or a bond referendum for financing of health and sanitation systems, if the governing body adopts a resolution stating the need for the special election at a time different from any other State, county, or municipal general election or the primary in any even-numbered year.

(d) The last sentence of subsection (a) of this section shall not apply to municipal incorporation or recall elections pursuant to local act of the General Assembly.

(e) The last sentence of subsection (a) of this section shall not apply to municipal elections to fill vacancies in office pursuant to local act of the General Assembly where more than six months remain in the term of office, and if less than six months remain in the office, the governing board may fill the vacancy for the remainder of the unexpired term notwithstanding any provision of a local act of the General Assembly.

(f) This section shall not impact the authority of the courts or the State Board to order a new election at a time set by the courts or State Board under this Chapter. (1971, c. 835, s. 1; 1973, c. 793, s. 86; 1993 (Reg. Sess., 1994), c. 762, s. 65; 2011-31, s. 7; 2013-381, s. 10.1; 2014-111, s. 17.5(a); 2017-6, s. 3; 2018-146, s. 3.1(a), (b).)

Additional material from this filing is available in the Clerk's Office.