No. 25-

# In the Supreme Court of the United States

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Siddhanth Sharma

Petitioner

v.

Alan Hirsch, et. al

Respondent

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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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## APPENDIX

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*pro se*

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**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 23-2164**

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SIDDHANTH SHARMA,

Plaintiff – Appellant,

v.

ALAN HIRSCH, Chairman of NCBOE, in his official capacity; KAREN BRINSON BELL, in his official capacity; JEFF CARMON, in his official capacity; SIOBHAN MILLEN, in his official capacity; STACY EGGERS, IV, in his official capacity; KEVIN LEWIS, in his official capacity; STATE OF NORTH CAROLINA,

Defendants – Appellees.

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Appeal from the United States District Court for the Eastern District of North Carolina at Raleigh. Richard E. Myers, II, Chief District Judge. (5:23–cv–00506–M–BM)

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Argued: September 25, 2024 Decided: November 14, 2024
Amended: November 20, 2024

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Before WILKINSON, RICHARDSON, and RUSHING, Circuit Judges.

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Affirmed in part; vacated and remanded in part by published opinion. Judge Wilkinson wrote the opinion in which Judge Richardson and Judge Rushing joined.

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**ARGUED:** Madelyn Strohm, Peyton Mitchell, WAKE FOREST UNIVERSITY SCHOOL OF LAW, Winston-Salem, North Carolina, for Appellant. Nicholas Scott Brod, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees. **ON BRIEF:** John J. Korzen, Maxwell J. Anthony, C. Isaac Hopkin, Luul Y.

Lampkins, Appellate Advocacy Clinic, WAKE FOREST UNIVERSITY SCHOOL OF LAW, Winston-Salem, North Carolina, for Appellant. Joshua H. Stein, Attorney General, Terence Steed, Special Deputy Attorney General, Mary Carla Babb, Special Deputy Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

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WILKINSON, Circuit Judge:

The plaintiff here lodges a challenge to the felony-disclosure requirement for a candidate running for federal office in North Carolina. This state law requires that candidates check a box indicating if they have any felony convictions and then submit a short supplemental form with basic information regarding such convictions and the restoration of citizenship rights. The district court upheld the statute. Because the felony-disclosure requirement falls within the Constitution's broad grant of authority to the states to regulate elections, we now affirm. We remand appellant's challenge to a separate address-disclosure requirement to the district court with directions to dismiss that claim as moot.

I.

Siddhanth Sharma ("Sharma") is a twenty-seven-year-old convicted felon who currently resides in Wake County, North Carolina. In September 2023, Sharma announced his candidacy for North Carolina's Thirteenth Congressional District seat in the State's 2024 Republican primary election. Sharma's full citizenship rights had been restored on September 3, 2023, and he registered to vote on September 5. J.A. 233.

Prospective candidates seeking the nomination of a political party in a primary election must submit a notice of candidacy. *See* N.C. Gen. Stat. § 163-106(a); J.A. 91-92. Among other inquiries, the notice form asks, "Have you ever been convicted of a felony?" *Id.* § 163-106(e). Candidates who check "yes" must submit a supplemental form which requires them to list "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.* Failure to fully complete the forms results in the "individual's name [] not appear[ing] on the ballot," and the voiding of all votes cast for that individual. *Id.*

On September 14, 2023, without having submitted his notice of candidacy, Sharma filed suit against members of the North Carolina State Board of Elections ("the State" or "the Board"). He challenged the felony-disclosure requirement as violative of the Qualifications Clause of the U.S. Constitution and challenged both the felony-disclosure requirement and an additional address-disclosure requirement as violative of the First Amendment. He also sought an injunction requiring the State to adopt a notice-of-candidacy form without a felony-disclosure requirement, and another injunction requiring the State to remove all voters' addresses from the voter-search database. J.A. 16-17, 52. The State moved to dismiss his claims for lack of standing and failure to state a claim upon which relief can be granted. J.A. 119.

The district court granted the motion to dismiss. While acknowledging that Sharma had not yet filed his notice-of-candidacy form, the court nonetheless found standing to challenge the felony-disclosure requirement because Sharma alleged a sufficient pre-enforcement injury connected to a constitutional interest. *Sharma v. Hirsch*, No. 23-CV-00506-M, 2023 WL 7406791, at *9 (E.D.N.C. Oct. 30, 2023). However, the district court concluded that felony disclosure did not constitute an additional qualification because it did not render any candidate "ineligible for ballot position." *Id.* at *10 (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 835 (1995)).

Likewise, the district court held that the felony-disclosure requirement did not violate the First Amendment. Firstly, applying "exacting scrutiny," the district court held that felony disclosure served a substantial interest in promoting an informed electorate. Secondly, the court found that the requirement posed only a modest burden, and thus the State had significant leeway in light of its legitimate regulatory interests. *Id.* at *11 (citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010)).

With regard to the address-disclosure requirement, the district court found that Sharma lacked standing because his injury was insufficiently particularized. Rather, the chilling effect he claimed to experience was "common to all members of the public." *Id.* at *13 n.5 (quoting *Griffin v. Dep't of Lab. Fed. Credit Union*, 912 F.3d 649, 655 (4th Cir. 2019)).

Sharma appealed the district court's dismissal of his challenges on November 2, 2023. J.A. 259. He subsequently submitted his notice of candidacy, correctly noting his felony history, on December 7, 2023, shortly before the December 15 filing deadline. J.A. 22, 260-264. He appeared on the ballot on March 5, 2024, and ultimately lost the primary election.

## II.

We must, as an initial matter, set forth the federalist structure by which the Constitution empowers regulation of elections. Article I's Elections Clause provides that

> [t]he 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.

U.S. CONST. art I, § 4, cl. 1. Under this scheme, the states "have a major role to play in structuring and monitoring the election process, including primaries." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572 (2000); *see also Moore v. Harper*, 600 U.S. 1, 10 (2023) ("The Clause imposes on state legislatures the duty to prescribe rules governing federal elections." (internal quotation marks omitted)). The Supreme Court has defined permissible state election laws broadly as "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *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, [encompassing] . . . notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Id.*

While state discretion has the potential to lead to nonuniform practices in the methods of selecting federal officers, such flexibility is an intended feature of the Elections Clause, not a flaw. Indeed, in the years preceding ratification of the Constitution, states traditionally held near absolute authority over the selection of delegates to nationally relevant political bodies. For example, the colonies and states customarily selected delegations to the First and Second Continental Congresses, the Congress under the Articles of Confederation, and the Constitutional Convention. *See, e.g.*, JACK N. RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS 30-31 (1979); ARTICLES OF CONFEDERATION OF 1781, art. V,

para. 3 ("Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states."); New York Assembly Resolution on the Appointment of Delegates to the Constitutional Convention (Feb. 26, 1787), in 4 THE PAPERS OF ALEXANDER HAMILTON 101-02 (Harold C. Syrett ed. 1962).

The Constitution thus reflected this American ethos of state influence over the selection of national representatives. While the states would cede much of their sovereignty to the federal government, they gained certain rights, including the "broad power" to prescribe the "Times, Places, and Manner" of holding federal elections. *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986)). This was a federalist compromise: the Constitution provided basic qualifications which the states could not discard or alter, but otherwise afforded states significant latitude to implement voter qualifications, ensure that elections ran smoothly, that candidates met their constitutional requirements, and that voters were properly informed. *See Storer v. Brown*, 415 U.S. 724, 730 (1974) (discussing states' "comprehensive" election codes and that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes").

This compromise did not serve to appease all concerns over the loss of state sovereignty, but it was an acknowledgement that state governments were well equipped to respond to the needs of their electorates. No uniform system of elections would suit both Rhode Island and Virginia equally. For the Founders or Congress to attempt to delve into every minutia of federal elections would be folly. State governments operated closer to the

ground and could devise electoral regulations responsive to the different geographic and demographic character of their populaces. *See generally* AKHIL REED AMAR, THE LAW OF THE LAND 165-280 (2015) (highlighting how these differences impacted constitutional interpretation and lawmaking).

While states are afforded great berth in devising proper electoral processes, they are not without limit in this field. States must yield to other constitutional provisions that protect the rights of voters and candidates. Beyond their inability to create new qualifications for officeholding, states cannot discriminate against candidates or voters on the basis of race, nor can they attempt to dissuade or compel political affiliation with specific groups. *See, e.g.*, *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008); *Clingman*, 544 U.S. at 586-87. Regulation of elections within the states proceeds, for example, subject to the First, Fourteenth, and Fifteenth Amendments. State authority, while broad, is not absolute.

When states do not otherwise violate constitutional rights and requirements, only Congress may supersede their discretionary authority. Perhaps the chief congressionally imposed limit on the states is the Voting Rights Act, but this statute is not at issue today. Congress in this case has been silent. "The [Elections] Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections" insofar as "Congress declines to preempt state legislative choices." *Foster v. Love*, 522 U.S. 67, 69 (1997); *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9 (2013).

And even then, Congress's authority cannot be considered apart from its historical purpose. The Elections Clause's "grant of congressional power was the Framers' insurance

against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." *Inter Tribal Council of Ariz.*, 570 U.S. at 8; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n* ("*AIRC*"), 576 U.S. 787, 815 (2015). As Alexander Hamilton put it, Congress should possess the basic power to "regulate, *in the last resort*, the election of its own members." FEDERALIST NO. 59 (1788) (C. Rossiter ed. 1961) (emphasis added); *see also* 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 437 (Merrill Jensen et al. eds., 1976) ("Sir, let it be remembered that this power can only operate in a case of necessity, after the factious or listless disposition of a particular state has rendered an interference essential to the salvation of the general government." (quoting Pennsylvania Ratification Convention Debates (Nov. 30, 1788) (statement of Jasper Yeates))).

The nuanced balance of congressional and state authority over electoral procedures provides no green light for federal courts to devise preferences of their own. Indeed, a "dominant purpose of the Elections Clause" was to create a possible pathway for *congressional* preemption and not to otherwise "restrict the ways States enact legislation." *AIRC*, 576 U.S. at 814-15. We cannot strain the intent and meaning of state election laws to find constitutional violations where there are none. As the constitutional text highlights, the proper venue for debates over discretionary state election policies remains with Congress, more so than with the federal courts. *See* U.S. CONST. art. I, § 4, cl. 1; *see also Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1258 (2024) (Thomas, J., concurring in part) ("The Framers' considered choice of a nonjudicial remedy is highly relevant context to the interpretation of the Elections Clause.").

## III.

### A.

The above analysis of state electoral authority provides the context for addressing the central question in this appeal: does a requirement for the public disclosure of candidates' felony histories, which will not appear on the ballot, constitute an impermissible qualification for office.[1] For the following reasons, we must answer that question in the negative.

The federal Constitution provides an exclusive list of the qualifications for congressional office. "No Person shall be a Representative who shall not have attained to

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[1] The issue here is one that is "capable of repetition, yet evading review." *S. Pac. Term. Co. v. ICC*, 219 U.S. 498, 515 (1911).

"Election-related disputes qualify as 'capable of repetition' when 'there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during future election cycles.'" *Lux v. Judd*, 651 F.3d 396, 401 (4th Cir. 2011) (quoting *N.C. Right to Life Comm. Fund for Indep. Political Expenditures v. Leake*, 524 F.3d 427, 435 (4th Cir. 2008)). And the Supreme Court has repeatedly instructed that the exception is especially appropriate when mootness would have otherwise been the result of a completed election cycle. *See Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 735 (2008).

It is unusual that a plaintiff comes before our court having already established repetition, but Sharma has done so. He brought nearly identical claims in a case about the 2022 Republican primary election for the same seat in the U.S. House of Representatives. *See Sharma v. Circosta*, No. 22-CV-59, 2023 WL 3437808, at *1 (E.D.N.C. May 11, 2023), *aff'd in part, appeal dismissed in part*, No. 23-1535, 2024 WL 771697 (4th Cir. Feb. 26, 2024) (per curiam). Where repeated conduct is before the court in the present, the prospect of future repetition becomes all the more likely. And now, Sharma has publicly declared his intent to run again in the next congressional election. Siddhanth Sharma, X (formerly TWITTER) (Mar. 6, 2024), https://perma.cc/UT37-CBW3 ("I bet you will not see 14 candidates on the ballot next time, but you WILL see me."). At that time, he will face the same felony-disclosure requirement and the same dilemma of fully litigating this challenge before the December notice-of-candidacy filing period ends.

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." U.S. CONST. art. I, § 2, cl. 2. And, since *Powell v. McCormack*, the Supreme Court has continually affirmed the "Framers' understanding that the qualifications for members of Congress had been fixed in the Constitution." 395 U.S. 486, 541 (1969); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 796-97 (1995); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 623-628 (1833) ("It would seem but fair reasoning upon the plainest principles of interpretation, that when the [C]onstitution established certain qualifications, as necessary for office, it meant to exclude all others, as prerequisites.").

States have no authority under the Elections Clause to pass qualifications masquerading as time, place, and manner regulations. *See Thornton*, 514 U.S. at 832-33; STORY, *supra*, § 624. However, the Framers were concerned primarily with the categorical exclusion of certain citizens from officeholding, including religious qualifications and district residency qualifications. STORY, *supra*, §§ 623, 628. The Qualifications Clause was not designed to restrict states from passing reasonable procedural measures that individuals must complete to formalize their candidacy.

Today, courts read the Qualifications Clause with a slightly broader lens to cover two types of government regulations: (1) laws that exclude or effectively exclude a candidate from the ballot, *see, e.g.*, *Thornton*, 514 U.S. at 831, and (2) laws that publicly disadvantage certain political viewpoints on the face of the ballot, *see, e.g.*, *Cook v. Gralike*, 531 U.S. 510, 524-25 (2001).

Even under this more capacious framework, the felony-disclosure requirement is not a disqualification at all. If prospective candidates possess a felony history, they may still appear on the federal ballot, regardless of whether their full citizenship rights have been restored. *See* J.A. 127 & n.4. In this respect, the felony-disclosure requirement could not be more different than the term-limit requirement held unconstitutional in *United States v. Thornton*. There, Arkansas had amended its constitution to preclude any individual who had previously served two or more terms in the U.S. Senate from appearing on the ballot for that same position. *Thornton*, 514 U.S. at 784. While the Supreme Court acknowledged the possibility that a former senator or two-term incumbent could still be reelected with write-in ballots, it held that precedents supporting "manner" regulations did not enable states to completely eliminate all avenues to "ballot access." *Id.* at 835. To comply with the Arkansas Constitution necessarily meant, in *Thornton*'s view, exclusion from the ballot. However, Sharma's compliance with the felony-disclosure requirement—a simple checkbox and half-page form—enabled him to appear on the ballot.

Likewise, the felony-disclosure requirement did not derogatorily brand Sharma for his political viewpoints. The Court in *Cook v. Gralike* held that Missouri exceeded its power under the Elections Clause when it required that ballots include candidates' positions and congressional voting histories on proposed term limits. 531 U.S. at 514-15. "Adverse [ballot] labels handicap candidates 'at the most crucial stage in the election process—the instant before the vote is cast,'" and thus seek to impermissibly "dictate electoral outcomes." *Id.* at 525-26 (first quoting *Anderson v. Martin*, 375 U.S. 399, 402 (1964); then quoting *Thornton*, 514 US. at 833-34).

North Carolina's felony-disclosure requirement in no way disadvantages political viewpoints. The disclosure is the mere repetition of a simple fact contained in the public record. *See State v. Sharma*, No. COA19-591, 2020 WL 7350699, at *1, 5 (N.C. Ct. App. Dec. 15, 2020). Unlike the disclosure in *Cook*, the felony disclosure does not reveal anything about Sharma's personal philosophy or opinions on public policy. And significantly, the felony disclosure does not appear on the ballot. To view it, voters must solicit the completed notice-of-candidacy form, which does not appear to be downloadable from the State's website. Thus Sharma cannot claim that North Carolina seeks to influence voters at the "instant before the vote is cast." *Cook*, 531 U.S. at 525 (quoting *Martin*, 375 U.S. at 402).

Being no form of unconstitutional qualification, the felony-disclosure requirement is a proper exercise of North Carolina's "time, place, and manner" regulatory power. *Thornton* and *Cook* explicitly permit "manner" regulations that "encompass[] matters like 'notices, registration, . . . protection of voters, [and] prevention of fraud and corrupt practices." *Cook*, 531 U.S. at 523-24 (quoting *Smiley*, 285 U.S. at 366); *see Thornton*, 514 U.S. at 834-35. Disclosing past histories of lawbreaking in a prospective lawmaker falls within the ambit of permissible safeguards necessary to "ensur[e] that elections are 'fair and honest,' and 'that some sort of order, rather than chaos is to accompany the democratic process.'" *Cook*, 531 U.S. at 524 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

B.

Sharma also claims that North Carolina's felony-disclosure requirement is a form of compelled speech violative of the First Amendment. Under *Anderson/Burdick*, determining the appropriate standard of review requires that we examine the "character and magnitude" of the burden on Sharma's First Amendment rights:

> [W]hen those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions.

*Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (first quoting *Norman v. Reed,* 502 U.S. 279, 289 (1992); then quoting *Anderson*, 460 U.S. at 788); *accord Fusaro v. Cogan*, 930 F.3d 241, 256-58 (4th Cir. 2019).

The felony-disclosure requirement imposes only the lightest burden on Sharma's rights. Why? Because the speech this disclosure compels is relatively innocuous. The disclosure does not cover candidates' personal beliefs, policy preferences, or political affiliations. Sharma remains free to speak as he pleases and on any topic he selects. If the felony-disclosure requirement compromised political expression, Sharma would be right in insisting that we apply "exacting scrutiny," *see Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607-08 (2021); however, no such issue is at play here. As discussed above, N.C. Gen. Stat. § 163-106(e) only requires disclosure of a simple historical fact illustrative of nonpolitical activity. A fact already available to the public to boot.

Thus we ask only whether the felony disclosure requirement is sufficiently justified by "the State's important regulatory interests." *Burdick*, 504 U.S. at 434. Our precedent is clear that "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will." *Anderson*, 460 U.S. at 796; *Tashjian*, 479 U.S. at 220; *Wash. State Grange*, 552 U.S. at 458 ("The State's asserted interest in providing voters with relevant information about the candidates on the ballot is easily sufficient to sustain I–872."). Here, the state is making already available public information more accessible to voters upon inquiry—an element beneficial to maintaining an educated electorate.

Informing and educating voters with relevant information about the candidates is thus a recognized state interest, and the felony disclosure may be viewed as a reasonable assist to that endeavor. The state is using the requirement to emphasize in a modest and restrained manner that lawmaking and lawbreaking are, to put it gently, in tension. North Carolina is not passing judgment on whether the electorate should ultimately vote for Sharma or indeed for any candidate with a comparable history. The felony-disclosure requirement simply allows voters to reach their own conclusions on a distinction that is, at its core, the very essence of the rule of law. We therefore hold that the felony-disclosure requirement survives *Anderson/Burdick* balancing.

## IV.

We need not reach the merits of Sharma's challenge to the address-disclosure requirement as we lack jurisdiction over this claim. Our court may raise jurisdictional

questions *sua sponte* at "any stage of proceedings." *United States v. Springer*, 715 F.3d 535, 540 (4th Cir. 2013); *see also North Carolina v. Rice*, 404 U.S. 244, 246 (1971). Here, we lack jurisdiction because the issue is now moot.

Upon registering to vote, Sharma, like all other North Carolina voters, disclosed the address of his personal residence. *See* N.C. Gen. Stat. § 163-82.7(c)-(f) (detailing the State's address verification process). Once a voter is registered, their verified address is stored in the State's publicly accessible voter-search database. Thus any individual with internet access can currently locate a registered voter's address.

Our jurisdiction under Article III is limited to "live" cases and controversies. *Powell*, 395 U.S. at 496; *accord Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003). Even assuming a litigant establishes standing at the outset of litigation, the "case is moot if, at any point prior to the case's disposition, one of the elements essential to standing, like injury-in-fact, no longer obtains." *Am. Fed'n of Gov't Emps. v. Off. of Special Couns.*, 1 F.4th 180, 187 (4th Cir. 2021). If a plaintiff does not retain such a "'personal stake in the outcome of the lawsuit' throughout the entire litigation," this court lacks jurisdiction to hear the case. *United States v. Payne*, 54 F.4th 748, 751 (2022) (quoting *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-61 (2016)).

Because the 2024 primary election cycle has already concluded, Sharma lacks a "concrete interest" in this Court's disposition on his address-disclosure requirement. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012)). While Sharma claims that the address-disclosure requirement has a chilling effect on those running for office, he did indeed submit his notice

of candidacy, run for office, and appear on the ballot. And on March 5, 2024, Sharma lost the Republican primary election. Enjoining the state from publishing his address now will not negate any past compelled speech or chilling effects, nor change the results of the election. The deed has been done. Sharma "can no longer benefit from the relief he seeks." *Payne*, 54 F.4th at 752.

The issue is also not "capable of repetition." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (requiring "a reasonable expectation that the same complaining party will be subject to the same action again" (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998))). Future candidates will not be compelled to reveal their address. The Board conceded at oral argument that North Carolina will not and cannot mandate that candidates for federal office be registered voters because such a requirement would constitute an unconstitutional additional qualification on officeholding. Thus any candidate who objects to providing his address may simply cancel his voter registration or avoid registering altogether. If a candidate still voluntarily enters or remains within the voter-search database, he cannot reasonably claim that such speech was compelled, given that he had a reasonable and easily accessible alternative. Any potential "chilling effect" will be "self-inflicted," and thereby untraceable to the Board's requirements. *See Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 418 (2013).

V.

Over the past five years, North Carolina has been flooded with dozens of challenges to the State's electoral regulations. We understand that many of these challenges are reasonably grounded in the law, and their gravity should not be understated. At the same time, the constant pull to the courtroom leaves state election officials frequently operating in a provisional state, never knowing if and when their procedures will be overturned.

This state of affairs is not conducive to the most efficient administration of elections. "[R]unning a statewide election is a complicated endeavor. Lawmakers [] must make a host of difficult decisions about how best to structure and conduct the election." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring in denial of application to vacate stay). Often, a board of elections must either choose to forego policies that serve significant governmental interests in preserving electoral integrity, or risk enforcing potentially unconstitutional measures that could throw a shadow over an entire federal election. Neither option is desirable. "When an election is close at hand, the rules of the road should be clear and settled." *Id.* And some modicum of stability assists candidates in knowing when and where they will run, and voters in knowing who would represent them. These lines of communication are important to representative government, and their value is among those things that courts may keep in mind. Both the stability of state electoral procedures and the place of state governments in the Article I elections scheme are under challenge in these sorts of cases, but here again the courts may, under law, take account of both.

We affirm the district court's holding that North Carolina's felony-disclosure requirement is constitutional. We vacate the judgment on the address-disclosure challenge and remand that claim to the district court with instructions to dismiss it as moot.

*AFFIRMED IN PART; VACATED AND REMANDED IN PART*

**PUBLISHED**

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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**No. 23-2164**

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SIDDHANTH SHARMA,

Plaintiff – Appellant,

v.

ALAN HIRSCH, Chairman of NCBOE, in his official capacity; KAREN BRINSON BELL, in his official capacity; JEFF CARMON, in his official capacity; SIOBHAN MILLEN, in his official capacity; STACY EGGERS, IV, in his official capacity; KEVIN LEWIS, in his official capacity; STATE OF NORTH CAROLINA,

Defendants – Appellees.

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Argued: September 25, 2024 Decided: November 14, 2024

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Before WILKINSON, RICHARDSON, and RUSHING, Circuit Judges.

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**ARGUED:** Madelyn Strohm, Peyton Mitchell, WAKE FOREST UNIVERSITY SCHOOL OF LAW, Winston-Salem, North Carolina, for Appellant. Nicholas Scott Brod, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees. **ON BRIEF:** John J. Korzen, Maxwell J. Anthony, C. Isaac Hopkin, Luul Y. Lampkins, Appellate Advocacy Clinic, WAKE FOREST UNIVERSITY SCHOOL OF

LAW, Winston-Salem, North Carolina, for Appellant. Joshua H. Stein, Attorney General, Terence Steed, Special Deputy Attorney General, Mary Carla Babb, Special Deputy Attorney General, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellees.

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WILKINSON, Circuit Judge:

The plaintiff here lodges a challenge to the felony-disclosure requirement for a candidate running for federal office in North Carolina. This state law requires that candidates check a box indicating if they have any felony convictions and then submit a short supplemental form with basic information regarding such convictions and the restoration of citizenship rights. The district court upheld the statute. Because the felony-disclosure requirement falls within the Constitution's broad grant of authority to the states to regulate elections, we now affirm. We remand appellant's challenge to a separate address-disclosure requirement to the district court with directions to dismiss that claim as moot.

I.

Siddhanth Sharma ("Sharma") is a twenty-seven-year-old convicted felon who currently resides in Wake County, North Carolina. In September 2023, Sharma announced his candidacy for North Carolina's Thirteenth Congressional District seat in the State's 2024 Republican primary election. Sharma's full citizenship rights had been restored on September 3, 2023, and he registered to vote on September 5. J.A. 233.

Prospective candidates seeking the nomination of a political party in a primary election must submit a notice of candidacy. *See* N.C. Gen. Stat. § 163-106(a); J.A. 91-92. Among other inquiries, the notice form asks, "Have you ever been convicted of a felony?" *Id.* § 163-106(e). Candidates who check "yes" must submit a supplemental form which requires them to list "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.* Failure to fully complete the forms results in the "individual's name [] not appear[ing] on the ballot," and the voiding of all votes cast for that individual. *Id.*

On September 14, 2023, without having submitted his notice of candidacy, Sharma filed suit against members of the North Carolina State Board of Elections ("the State" or "the Board"). He challenged the felony-disclosure requirement as violative of the Qualifications Clause of the U.S. Constitution and challenged both the felony-disclosure requirement and an additional address-disclosure requirement as violative of the First Amendment. He also sought an injunction requiring the State to adopt a notice-of-candidacy form without a felony-disclosure requirement, and another injunction requiring the State to remove all voters' addresses from the voter-search database. J.A. 16-17, 52. The State moved to dismiss his claims for lack of standing and failure to state a claim upon which relief can be granted. J.A. 119.

The district court granted the motion to dismiss. While acknowledging that Sharma had not yet filed his notice-of-candidacy form, the court nonetheless found standing to challenge the felony-disclosure requirement because Sharma alleged a sufficient pre-enforcement injury connected to a constitutional interest. *Sharma v. Hirsch*, No. 23-CV-00506-M, 2023 WL 7406791, at *9 (E.D.N.C. Oct. 30, 2023). However, the district court concluded that felony disclosure did not constitute an additional qualification because it did not render any candidate "ineligible for ballot position." *Id.* at *10 (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 835 (1995)).

Likewise, the district court held that the felony-disclosure requirement did not violate the First Amendment. Firstly, applying "exacting scrutiny," the district court held that felony disclosure served a substantial interest in promoting an informed electorate. Secondly, the court found that the requirement posed only a modest burden, and thus the State had significant leeway in light of its legitimate regulatory interests. *Id.* at *11 (citing *John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010)).

With regard to the address-disclosure requirement, the district court found that Sharma lacked standing because his injury was insufficiently particularized. Rather, the chilling effect he claimed to experience was "common to all members of the public." *Id.* at *13 n.5 (quoting *Griffin v. Dep't of Lab. Fed. Credit Union*, 912 F.3d 649, 655 (4th Cir. 2019)).

Sharma appealed the district court's dismissal of his challenges on November 2, 2023. J.A. 259. He subsequently submitted his notice of candidacy, correctly noting his felony history, on December 7, 2023, shortly before the December 15 filing deadline. J.A. 22, 260-264. He appeared on the ballot on March 5, 2024, and ultimately lost the primary election.

## II.

We must, as an initial matter, set forth the federalist structure by which the Constitution empowers regulation of elections. Article I's Elections Clause provides that

> [t]he 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.

U.S. CONST. art I, § 4, cl. 1. Under this scheme, the states "have a major role to play in structuring and monitoring the election process, including primaries." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 572 (2000); *see also Moore v. Harper*, 600 U.S. 1, 10 (2023) ("The Clause imposes on state legislatures the duty to prescribe rules governing federal elections." (internal quotation marks omitted)). The Supreme Court has defined permissible state election laws broadly as "the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved." *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, [encompassing] . . . notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns." *Id.*

While state discretion has the potential to lead to nonuniform practices in the methods of selecting federal officers, such flexibility is an intended feature of the Elections Clause, not a flaw. Indeed, in the years preceding ratification of the Constitution, states traditionally held near absolute authority over the selection of delegates to nationally relevant political bodies. For example, the colonies and states customarily selected delegations to the First and Second Continental Congresses, the Congress under the Articles of Confederation, and the Constitutional Convention. *See, e.g.*, JACK N. RAKOVE, THE BEGINNINGS OF NATIONAL POLITICS: AN INTERPRETIVE HISTORY OF THE CONTINENTAL CONGRESS 30-31 (1979); ARTICLES OF CONFEDERATION OF 1781, art. V,

para. 3 ("Each state shall maintain its own delegates in a meeting of the states, and while they act as members of the committee of the states."); New York Assembly Resolution on the Appointment of Delegates to the Constitutional Convention (Feb. 26, 1787), in 4 THE PAPERS OF ALEXANDER HAMILTON 101-02 (Harold C. Syrett ed. 1962).

The Constitution thus reflected this American ethos of state influence over the selection of national representatives. While the states would cede much of their sovereignty to the federal government, they gained certain rights, including the "broad power" to prescribe the "Times, Places, and Manner" of holding federal elections. *Clingman v. Beaver*, 544 U.S. 581, 586 (2005) (quoting *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986)). This was a federalist compromise: the Constitution provided basic qualifications which the states could not discard or alter, but otherwise afforded states significant latitude to implement voter qualifications, ensure that elections ran smoothly, that candidates met their constitutional requirements, and that voters were properly informed. *See Storer v. Brown*, 415 U.S. 724, 730 (1974) (discussing states' "comprehensive" election codes and that "there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes").

This compromise did not serve to appease all concerns over the loss of state sovereignty, but it was an acknowledgement that state governments were well equipped to respond to the needs of their electorates. No uniform system of elections would suit both Rhode Island and Virginia equally. For the Founders or Congress to attempt to delve into every minutia of federal elections would be folly. State governments operated closer to the

ground and could devise electoral regulations responsive to the different geographic and demographic character of their populaces. *See generally* AKHIL REED AMAR, THE LAW OF THE LAND 165-280 (2015) (highlighting how these differences impacted constitutional interpretation and lawmaking).

While states are afforded great berth in devising proper electoral processes, they are not without limit in this field. States must yield to other constitutional provisions that protect the rights of voters and candidates. Beyond their inability to create new qualifications for officeholding, states cannot discriminate against candidates or voters on the basis of race, nor can they attempt to dissuade or compel political affiliation with specific groups. *See, e.g.*, *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442 (2008); *Clingman*, 544 U.S. at 586-87. Regulation of elections within the states proceeds, for example, subject to the First, Fourteenth, and Fifteenth Amendments. State authority, while broad, is not absolute.

When states do not otherwise violate constitutional rights and requirements, only Congress may supersede their discretionary authority. Perhaps the chief congressionally imposed limit on the states is the Voting Rights Act, but this statute is not at issue today. Congress in this case has been silent. "The [Elections] Clause is a default provision; it invests the States with responsibility for the mechanics of congressional elections" insofar as "Congress declines to preempt state legislative choices." *Foster v. Love*, 522 U.S. 67, 69 (1997); *see also Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8-9 (2013).

And even then, Congress's authority cannot be considered apart from its historical purpose. The Elections Clause's "grant of congressional power was the Framer's insurance

against the possibility that a State would refuse to provide for the election of representatives to the Federal Congress." *Inter Tribal Council of Ariz.*, 570 U.S. at 8; *see also Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n* ("*AIRC*"), 576 U.S. 787, 815 (2015). As Alexander Hamilton put it, Congress should possess the basic power to "regulate, *in the last resort*, the election of its own members." FEDERALIST NO. 59 (1788) (C. Rossiter ed. 1961) (emphasis added); *see also* 2 THE DOCUMENTARY HISTORY OF THE RATIFICATION OF THE CONSTITUTION 437 (Merrill Jensen et al. eds., 1976) ("Sir, let it be remembered that this power can only operate in a case of necessity, after the factious or listless disposition of a particular state has rendered an interference essential to the salvation of the general government." (quoting Pennsylvania Ratification Convention Debates (Nov. 30, 1788) (statement of Jasper Yeates))).

The nuanced balance of congressional and state authority over electoral procedures provides no green light for federal courts to devise preferences of their own. Indeed, a "dominant purpose of the Elections Clause" was to create a possible pathway for *congressional* preemption and not to otherwise "restrict the ways States enact legislation." *AIRC*, 576 U.S. at 814-15. We cannot strain the intent and meaning of state election laws to find constitutional violations where there are none. As the constitutional text highlights, the proper venue for debates over discretionary state election policies remains with Congress, more so than with the federal courts. *See* U.S. CONST. art. I, § 4, cl. 1; *see also Alexander v. S.C. State Conf. of the NAACP*, 144 S. Ct. 1221, 1258 (2024) (Thomas, J., concurring in part) ("The Framers' considered choice of a nonjudicial remedy is highly relevant context to the interpretation of the Elections Clause.").

III.

A.

The above analysis of state electoral authority provides the context for addressing the central question in this appeal: does a requirement for the public disclosure of candidates' felony histories, which will not appear on the ballot, constitute an impermissible qualification for office.[1] For the following reasons, we must answer that question in the negative.

The federal Constitution provides an exclusive list of the qualifications for congressional office. "No Person shall be a Representative who shall not have attained to

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[1] The issue here is one that is "capable of repetition, yet evading review." *S. Pac. Term. Co. v. ICC*, 219 U.S. 498, 515 (1911).

"Election-related disputes qualify as 'capable of repetition' when 'there is a reasonable expectation that the challenged provisions will be applied against the plaintiffs again during future election cycles.'" *Lux v. Judd*, 651 F.3d 396, 401 (4th Cir. 2011) (quoting *N.C. Right to Life Comm. Fund for Indep. Political Expenditures v. Leake*, 524 F.3d 427, 435 (4th Cir. 2008)). And the Supreme Court has repeatedly instructed that the exception is especially appropriate when mootness would have otherwise been the result of a completed election cycle. *See Storer v. Brown*, 415 U.S. 724, 737 n.8 (1974); *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007); *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 735 (2008).

It is unusual that a plaintiff comes before our court having already established repetition, but Sharma has done so. He brought nearly identical claims in a case about the 2022 Republican primary election for the same seat in the U.S. House of Representatives. *See Sharma v. Circosta*, No. 22-CV-59, 2023 WL 3437808, at *1 (E.D.N.C. May 11, 2023), *aff'd in part, appeal dismissed in part*, No. 23-1535, 2024 WL 771697 (4th Cir. Feb. 26, 2024) (per curiam). Where repeated conduct is before the court in the present, the prospect of future repetition becomes all the more likely. And now, Sharma has publicly declared his intent to run again in the next congressional election. Siddhanth Sharma, X (formerly TWITTER) (Mar. 6, 2024), https://perma.cc/UT37-CBW3 ("I bet you will not see 14 candidates on the ballot next time, but you WILL see me."). At that time, he will face the same felony-disclosure requirement and the same dilemma of fully litigating this challenge before the December notice-of-candidacy filing period ends.

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." U.S. CONST. art. I, § 2, cl. 2. And, since *Powell v. McCormack*, the Supreme Court has continually affirmed the "Framers' understanding that the qualifications for members of Congress had been fixed in the Constitution." 395 U.S. 486, 541 (1969); *see also U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 796-97 (1995); JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 623-628 (1833) ("It would seem but fair reasoning upon the plainest principles of interpretation, that when the [C]onstitution established certain qualifications, as necessary for office, it meant to exclude all others, as prerequisites.").

States have no authority under the Elections Clause to pass qualifications masquerading as time, place, and manner regulations. *See Thornton*, 514 U.S. at 832-33; STORY, *supra*, § 624. However, the Framers were concerned primarily with the categorical exclusion of certain citizens from officeholding, including religious qualifications and district residency qualifications. STORY, *supra*, §§ 623, 628. The Qualifications Clause was not designed to restrict states from passing reasonable procedural measures that individuals must complete to formalize their candidacy.

Today, courts read the Qualifications Clause with a slightly broader lens to cover two types of government regulations: (1) laws that exclude or effectively exclude a candidate from the ballot, *see, e.g.*, *Thornton*, 514 U.S. at 831, and (2) laws that publicly disadvantage certain political viewpoints on the face of the ballot, *see, e.g.*, *Cook v. Gralike*, 531 U.S. 510, 524-25 (2001).

Even under this more capacious framework, the felony-disclosure requirement is not a disqualification at all. If prospective candidates possess a felony history, they may still appear on the federal ballot, regardless of whether their full citizenship rights have been restored. *See* J.A. 127 & n.4. In this respect, the felony-disclosure requirement could not be more different than the term-limit requirement held unconstitutional in *United States v. Thornton*. There, Arkansas had amended its constitution to preclude any individual who had previously served two or more terms in the U.S. Senate from appearing on the ballot for that same position. *Thornton*, 514 U.S. at 784. While the Supreme Court acknowledged the possibility that a former senator or two-term incumbent could still be reelected with write-in ballots, it held that precedents supporting "manner" regulations did not enable states to completely eliminate all avenues to "ballot access." *Id.* at 835. To comply with the Arkansas Constitution necessarily meant, in *Thornton*'s view, exclusion from the ballot. However, Sharma's compliance with the felony-disclosure requirement—a simple checkbox and half-page form—enabled him to appear on the ballot.

Likewise, the felony-disclosure requirement did not derogatorily brand Sharma for his political viewpoints. The Court in *Cook v. Gralike* held that Missouri exceeded its power under the Elections Clause when it required that ballots include candidates' positions and congressional voting histories on proposed term limits. 531 U.S. at 514-15. "Adverse [ballot] labels handicap candidates 'at the most crucial stage in the election process—the instant before the vote is cast,'" and thus seek to impermissibly "dictate electoral outcomes." *Id.* at 525-26 (first quoting *Anderson v. Martin*, 375 U.S. 399, 402 (1964); then quoting *Thornton*, 514 US. at 833-34).

North Carolina's felony-disclosure requirement in no way disadvantages political viewpoints. The disclosure is the mere repetition of a simple fact contained in the public record. *See State v. Sharma*, No. COA19-591, 2020 WL 7350699, at *1, 5 (N.C. Ct. App. Dec. 15, 2020). Unlike the disclosure in *Cook*, the felony disclosure does not reveal anything about Sharma's personal philosophy or opinions on public policy. And significantly, the felony disclosure does not appear on the ballot. To view it, voters must solicit the completed notice-of-candidacy form, which does not appear to be downloadable from the State's website. Thus Sharma cannot claim that North Carolina seeks to influence voters at the "instant before the vote is cast." *Cook*, 531 U.S. at 525 (quoting *Martin*, 375 U.S. at 402).

Being no form of unconstitutional qualification, the felony-disclosure requirement is a proper exercise of North Carolina's "time, place, and manner" regulatory power. *Thornton* and *Cook* explicitly permit "manner" regulations that "encompass[] matters like 'notices, registration, . . . protection of voters, [and] prevention of fraud and corrupt practices." *Cook*, 531 U.S. at 523-24 (quoting *Smiley*, 285 U.S. at 366); *see Thornton*, 514 U.S. at 834-35. Disclosing past histories of lawbreaking in a prospective lawmaker falls within the ambit of permissible safeguards necessary to "ensur[e] that elections are 'fair and honest,' and 'that some sort of order, rather than chaos is to accompany the democratic process.'" *Cook*, 531 U.S. at 524 (quoting *Storer v. Brown*, 415 U.S. 724, 730 (1974)).

B.

Sharma also claims that North Carolina's felony-disclosure requirement is a form of compelled speech violative of the First Amendment. Under *Anderson/Burdick*, determining the appropriate standard of review requires that we examine the "character and magnitude" of the burden on Sharma's First Amendment rights:

> [W]hen those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions.

*Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (first quoting *Norman v. Reed,* 502 U.S. 279, 289 (1992); then quoting *Anderson*, 460 U.S. at 788); *accord Fusaro v. Cogan*, 930 F.3d 241, 256-58 (4th Cir. 2019).

The felony-disclosure requirement imposes only the lightest burden on Sharma's rights. Why? Because the speech this disclosure compels is relatively innocuous. The disclosure does not cover candidates' personal beliefs, policy preferences, or political affiliations. Sharma remains free to speak as he pleases and on any topic he selects. If the felony-disclosure requirement compromised political expression, Sharma would be right in insisting that we apply "exacting scrutiny," *see Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607-08 (2021); however, no such issue is at play here. As discussed above, N.C. Gen. Stat. § 163-106(e) only requires disclosure of a simple historical fact illustrative of nonpolitical activity. A fact already available to the public to boot.

Thus we ask only whether the felony disclosure requirement is sufficiently justified by "the State's important regulatory interests." *Burdick*, 504 U.S. at 434. Our precedent is clear that "[t]here can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will." *Anderson*, 460 U.S. at 796; *Tashjian*, 479 U.S. at 220; *Wash. State Grange*, 552 U.S. at 458 ("The State's asserted interest in providing voters with relevant information about the candidates on the ballot is easily sufficient to sustain I–872."). Here, the state is making already available public information more accessible to voters upon inquiry—an element beneficial to maintaining an educated electorate.

Informing and educating voters with relevant information about the candidates is thus a recognized state interest, and the felony disclosure may be viewed as a reasonable assist to that endeavor. The state is using the requirement to emphasize in a modest and restrained manner that lawmaking and lawbreaking are, to put it gently, in tension. North Carolina is not passing judgment on whether the electorate should ultimately vote for Sharma or indeed for any candidate with a comparable history. The felony-disclosure requirement simply allows voters to reach their own conclusions on a distinction that is, at its core, the very essence of the rule of law. We therefore hold that the felony-disclosure requirement survives *Anderson/Burdick* balancing.

## IV.

We need not reach the merits of Sharma's challenge to the address-disclosure requirement as we lack jurisdiction over this claim. Our court may raise jurisdictional

questions *sua sponte* at "any stage of proceedings." *United States v. Springer*, 715 F.3d 535, 540 (4th Cir. 2013); *see also North Carolina v. Rice*, 404 U.S. 244, 246 (1971). Here, we lack jurisdiction because the issue is now moot.

Upon registering to vote, Sharma, like all other North Carolina voters, disclosed the address of his personal residence. *See* N.C. Gen. Stat. § 163-82.7(c)-(f) (detailing the State's address verification process). Once a voter is registered, their verified address is stored in the State's publicly accessible voter-search database. Thus any individual with internet access can currently locate a registered voter's address.

Our jurisdiction under Article III is limited to "live" cases and controversies. *Powell*, 395 U.S. at 496; *accord Mellen v. Bunting*, 327 F.3d 355, 363 (4th Cir. 2003). Even assuming a litigant establishes standing at the outset of litigation, the "case is moot if, at any point prior to the case's disposition, one of the elements essential to standing, like injury-in-fact, no longer obtains." *Am. Fed'n of Gov't Emps. v. Off. of Special Couns.*, 1 F.4th 180, 187 (4th Cir. 2021). If a plaintiff does not retain such a "'personal stake in the outcome of the lawsuit' throughout the entire litigation," this court lacks jurisdiction to hear the case. *United States v. Payne*, 54 F.4th 748, 751 (2022) (quoting *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 160-61 (2016)).

Because the 2024 primary election cycle has already concluded, Sharma lacks a "concrete interest" in this Court's disposition on his address-disclosure requirement. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quoting *Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012)). While Sharma claims that the address-disclosure requirement has a chilling effect on those running for office, he did indeed submit his notice

of candidacy, run for office, and appear on the ballot. And on March 5, 2024, Sharma lost the Republican primary election. Enjoining the state from publishing his address now will not negate any past compelled speech or chilling effects, nor change the results of the election. The deed has been done. Sharma "can no longer benefit from the relief he seeks." *Payne*, 54 F.4th at 752.

The issue is also not "capable of repetition." *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 462 (2007) (requiring "a reasonable expectation that the same complaining party will be subject to the same action again" (quoting *Spencer v. Kemna*, 523 U.S. 1, 17 (1998))). Future candidates will not be compelled to reveal their address. The Board conceded at oral argument that North Carolina will not and cannot mandate that candidates for federal office be registered voters because such a requirement would constitute an unconstitutional additional qualification on officeholding. Thus any candidate who objects to providing his address may simply cancel his voter registration or avoid registering altogether. If a candidate still voluntarily enters or remains within the voter-search database, he cannot reasonably claim that such speech was compelled, given that he had a reasonable and easily accessible alternative. Any potential "chilling effect" will be "self-inflicted," and thereby untraceable to the Board's requirements. *See Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 418 (2013).

V.

Over the past five years, North Carolina has been flooded with dozens of challenges to the State's electoral regulations. We understand that many of these challenges are reasonably grounded in the law, and their gravity should not be understated. At the same time, the constant pull to the courtroom leaves state election officials frequently operating in a provisional state, never knowing if and when their procedures will be overturned.

This state of affairs is not conducive to the most efficient administration of elections. "[R]unning a statewide election is a complicated endeavor. Lawmakers [] must make a host of difficult decisions about how best to structure and conduct the election." *Democratic Nat'l Comm. v. Wis. State Legislature*, 141 S. Ct. 28, 31 (2020) (mem.) (Kavanaugh, J., concurring in denial of application to vacate stay). Often, a board of elections must either choose to forego policies that serve significant governmental interests in preserving electoral integrity, or risk enforcing potentially unconstitutional measures that could throw a shadow over an entire federal election. Neither option is desirable. "When an election is close at hand, the rules of the road should be clear and settled." *Id.* And some modicum of stability assists candidates in knowing when and where they will run, and voters in knowing who would represent them. These lines of communication are important to representative government, and their value is among those things that courts may keep in mind. Both the stability of state electoral procedures and the place of state governments in the Article I elections scheme are under challenge in these sorts of cases, but here again the courts may, under law, take account of both.

We affirm the district court's holding that North Carolina's felony-disclosure requirement is constitutional. We vacate the judgment on the address-disclosure challenge and remand that claim to the district court with instructions to dismiss it as moot.

*AFFIRMED IN PART; VACATED AND REMANDED IN PART*

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:23-CV-00506-M

SIDDANTH SHARMA,

Plaintiff,

v.

ALAN HIRSCH, et al.,

Defendants.

ORDER

This matter comes before the court on Plaintiff's Motion for a Preliminary Injunction [DE 4], Plaintiff's Motion to Consolidate and Expedite the Complaint and Request for an Injunction [DE 5], Plaintiff's Motion for Leave to File a Reply Brief and Exceed the Word Count [DE 25], Defendant's Motion to Dismiss [DE 28], Defendant's (unopposed) Motion to Consolidate Rulings on the Motion for Preliminary Injunction and Motion to Dismiss [DE 33], and Plaintiff's "Emergency Motion" for a hearing on the Motion for Injunction [DE 38]. For the reasons that follow, the Motion for a Preliminary Injunction is denied, the Motion to Consolidate and Expedite is denied as moot, the Motion for Leave is denied as moot, the Motion to Dismiss is granted, the Motion to Consolidate Rulings is denied as moot, and the Emergency Motion is denied.

## I. Background and Procedural History

Plaintiff resides in Wake County, North Carolina. DE 1 at 13. He has announced his candidacy to run for the United States House of Representatives[1] in North Carolina's Thirteenth Congressional District for the upcoming "2024 Midterms." *Id.* at 9. But, according to the

[1] For the sake of brevity, the court will use the term "Congress" for subsequent references to the office Plaintiff seeks.

Complaint, several unconstitutional impediments will prevent Plaintiff from gaining access to the ballot for that election. *See id.* at 2-3.

These alleged impediments principally flow from the fact that Plaintiff possesses a felony history and, until recently, was serving an active prison sentence and/or on parole. *Id.* at 15, 18. In North Carolina, felons cannot register to vote unless their rights have been restored. *See id.* at 9, 15, 23. Only by registering to vote may an individual formally affiliate with a political party. *Id.* at 23. And, critically, in order to run for Congress as either a Democrat or Republican, North Carolina law requires that one must have been affiliated with that political party for 90 days prior to the candidacy filing period, which commences on December 4, 2023. *Id.* Accordingly, Plaintiff contends that North Carolina law imposes three additional (and unconstitutional) qualifications for those seeking a seat in Congress: (1) candidates must not be felons whose rights have not been restored; (2) candidates must be registered to vote; and (3) candidates must have been affiliated with their chosen political party for 90 days prior to the candidacy filing period. *See id.* at 2.

Plaintiff asserts that he "had all [his] rights restored" on September 3, 2023. *Id.* at 9. But apparently, after attempting to register to vote, he was "[d]enied . . . on account of him being an 'Active Felon.'" *Id.* As a result, Plaintiff contends that he will not have been affiliated with the Republican Party for 90 days by December 5, 2023. *See id.* at 23. This lack of affiliation will reportedly prevent his access to the ballot as a candidate. *See id.* at 24 (averring that "90 day requirement denies Ballot-Access").

Plaintiff alleges additional constitutional violations that arise through operation of the North Carolina elections code. For one, the candidacy form requires potential candidates to attest to their felony history, and allegedly "criminally penalize[es] those who refuse to attest and subsequently den[ies] ballot-access." *Id.* at 9. A candidate's answer to this question is not per se

disqualifying, but Plaintiff asserts that answering the question serves "no legitimate state interest," and the questions functions an "an indirect additional qualification." *Id.* at 32.

Furthermore, a filing fee of $1740 is imposed on all candidates. *Id.* at 36. Plaintiff argues he cannot pay this fee "due to indigency." *Id.* at 15, 36. As a result, Plaintiff argues that the fee operates as an "additional qualification[]" to run for Congress. *Id.* at 36.

Finally, by registering to vote (a prerequisite to running for Congress), Plaintiff's address is made a public record "online for the world to see." *Id.* at 40. This publication reportedly violates Plaintiff's right to privacy. *See id.* Plaintiff suggests that posting the address of voters online also has a "chilling effect" on would-be candidates for public office. *Id.* at 41.

Plaintiff initiated this action by filing the Complaint on September 14, 2023. *Id.* at 46. As relief, he seeks a declaration that fourteen state laws and two sections of North Carolina's Constitution violate the United States Constitution. *See id.* at 45. He also requests injunctive relief, namely that the court order Defendants "to adopt a new filing form" for congressional candidates that does not include any of the "qualifications" Plaintiff contends are unconstitutional. *Id.* Lastly, Plaintiff requests removal of all registered voters' addresses from North Carolina's voter database. *Id.*

The same day Plaintiff filed the Complaint, he also filed the Motion for Injunction. DE 4. The Motion for Injunction largely mirrors the Complaint, but adds that Plaintiff's claims satisfy the standard for preliminary injunctive relief. *Id.* at 5, 29-32. The Motion for Injunction also requests relief identical to the Complaint. *See id.* at 33.

Also on September 14, Plaintiff filed the Motion to Consolidate and Expedite. DE 5. That motion requests that the court "consolidate the hearing on Plaintiff's Motion for Preliminary Injunction with the trial on the merits of Plaintiff's Verified Complaint." *Id.* at 2 (internal citations

omitted). Plaintiff requests that such consolidation occur on an expedited basis, because otherwise "Plaintiff is off the ballot and cannot campaign," which would cause him "irreparable harm." *Id.*

Plaintiff next filed the Motion for Leave, on October 2, 2023. DE 25. The Motion for Leave requests that the court permit Plaintiff to "file a Reply Brief" and "Exceed the Word Count," after "Opposing Counsel fil[es] the Response [to the Motion for Injunction]." Plaintiff does not need leave of court to file a reply brief. *See* Local Civil Rule 7.1(g)(1). Moreover, Plaintiff requested leave to exceed the word count in his reply before Defendants filed a response to the Motion for Injunction. At the time he filed the Motion for Leave, then, Plaintiff could not have reasonably considered whether exceeding the word count would be necessary or appropriate. Accordingly, the court will deny as moot the Motion for Leave.

Three days later, Defendants filed the Motion to Dismiss (and supporting memorandum). DE 28; DE 29. Defendants first argue that the State should be dismissed from this action. *Id.* at 8. Plaintiff's claims arise under 28 U.S.C. § 1983, and Defendants aver that a State is not "a person" within the meaning of that statute. *Id.*

Next, Defendants concede that "the no-active-felon candidate qualification" and "the registered-voter requirement" are not constitutionally enforceable. DE 29 at 7 n.4. However, Defendants contend that these issues are now moot, since Plaintiff had his rights restored on September 3, 2023 and "became an active registered voter affiliated with the Republican party on September 5." *Id.* at 9-10. For that same reason, Defendants argue the 90-day party affiliation requirement is moot as to Plaintiff, because December 4, the first day of the candidacy filing period, is exactly 90 days after September 5. *See id.*

Defendants also assert that Plaintiff failed to sufficiently allege an injury stemming from the no active felon, active voter, and party affiliation requirements, in that his "allegations are

purely speculative," and he "has not filed a notice of candidacy with the State Board, much less had a notice of candidacy rejected by the Board." *Id.* at 12. Because the candidacy filing period has not yet commenced, Defendants likewise contend that the aforementioned issues are not ripe, since Plaintiff "has not actually filed a notice of candidacy, [and] no agency action has occurred, much less an adverse agency action that could give rise to injury." *Id.* at 14.

As for the question on the candidacy form requiring candidates to disclose their felony history, Defendants make several arguments. First, they argue that Plaintiff lacks standing. *Id.* at 12. Next, they contend the issue is not ripe. *Id.* at 14. Lastly, they describe the question as a "constitutional time, place, and manner restriction" and "constitutional ballot-access restriction," not an additional qualification. *Id.* at 24-27. According to Defendants, the state's interest in having an informed electorate warrants the question. *See id.*

Defendants next reject the notion that the filing fee operates as an additional qualification for candidates. *Id.* at 27. They point out that North Carolina law offers "a reasonable alternative." *Id.* at 28. In that regard, Plaintiff, in lieu of paying the filing fee, can "gather signatures from only five percent of registered voters" in his district and then notice his candidacy without paying the fee. *Id.* at 29.

Defendants also argue that publication of Plaintiff's address does not violate any Fourth Amendment right to privacy. *Id.* at 30. Per Defendants, one's address "is considered public record by virtue of" North Carolina law. *Id.* As for any chilling effect, Defendants observe that publication of Plaintiff's address on the State's voter database has apparently not dampened his zeal to run for Congress. *Id.*

Defendants also responded to the Motion for Injunction on October 5. DE 31. Defendants incorporate their arguments from the Motion to Dismiss into their response to the Motion for

Injunction. *Id.* at 3. In light of those arguments, Defendants contend that Plaintiff is unlikely to succeed on the merits of his claims, warranting denial of the motion. *See id.* Defendants also assert that the other considerations for preliminary injunctive relief weigh in favor of denying the motion. *Id.* at 4-7.

Several days later, on October 10, Defendants filed the Motion to Consolidate Rulings. DE 33; DE 34. Defendants note that Rule 65(a)(2) of the Federal Rules of Civil Procedure permits the court to "advance the ***trial*** on the merits and consolidate it with the ***hearing*** [on a preliminary injunction]." Fed. R. Civ. P. 65(a)(2) (emphases added). Defendants do not want the court to consolidate a trial with any hearing. DE 34 at 4. They only seek consolidation of the court's "consideration." *Id.* Defendants do not identify a Rule that authorizes their request. *See id.* Nonetheless, the court possesses inherent authority to manage its docket, including by consolidating rulings on matters that involve substantial similarity of factual and legal issues. *See Dietz v. Bouldin*, 579 U.S. 40, 47 (2016). The Motion for Injunction and Motion to Dismiss fit that rubric, so the court will consolidate its rulings, and deny as moot the Motion to Consolidate Rulings.

The last filing presently before the court is Plaintiff's "Emergency Motion" for a hearing on the Motion for Injunction, filed October 20. DE 38. In that Motion, Plaintiff notes that "the Court initiated Discovery," and, per that schedule, "there is no way a trial on the merit could begin before [December 4]." *Id.* at 1. According to Plaintiff, the court "has a complete open schedule" for several upcoming weeks, and a hearing is warranted to protect Plaintiff from "suffer[ing] irreparable harm." *Id.* at 1-2.

## II. Legal Principles

a. Pleadings and Motions to Dismiss

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). This Rule does not require "detailed factual allegations," *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), but the allegations must cross the threshold "between possibility and plausibility of entitlement to relief," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007) (internal brackets and quotation marks omitted). Put another way, although the *Iqbal* Court made clear that "Rule 8 marks a notable and generous departure from the hypertechnical, code-pleading regime of a prior era, [the Rule] does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Iqbal*, 556 U.S. at 678–79.

When considering a Rule 12(b)(6) motion to dismiss, the court must accept as true all of the well-pleaded factual allegations contained within the pleading and must draw all reasonable inferences in the plaintiff's favor. *Hall v. DIRECTV, LLC*, 846 F.3d 757, 765 (4th Cir. 2017). In that regard, "[a] motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N. Carolina v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992). Further, when faced with a Rule 12(b)(6) motion to dismiss, the court typically limits its review to "the allegations of the complaint itself." *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 165–66 (4th Cir. 2016). Beyond those allegations, the court may also consider "documents incorporated into the complaint by reference, and matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007).

A complaint must also be dismissed for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Defendants may contest subject matter jurisdiction by motion, but courts also

"have an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). "The plaintiff has the burden of proving that subject matter jurisdiction exists." *Evans v. B.F. Perkins Co., a Div. of Standex Int'l Corp.*, 166 F.3d 642, 647 (4th Cir. 1999). When considering a challenge to subject matter jurisdiction, "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. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991).

b. Justiciability

Intertwined with subject matter jurisdiction are considerations of justiciability. In that regard, federal courts may only decide "Cases" or "Controversies." U.S. CONST. art. III, § 2. "Standing to sue is a doctrine rooted in the traditional understanding of a case or controversy." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing entails three requirements: (1) the plaintiff must have suffered an "injury in fact" (i.e., one that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical"); (2) the plaintiff's injury must be traceable to the challenged conduct of the defendant(s); and it must be "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992).

Although "similar to determining whether a party has standing," *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006), ripeness furthers a distinct purpose of "prevent[ing] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements," as well as withholding "judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties," *Abbott Lab'ys v. Gardner*, 387 U.S.

136, 148–49 (1967). Put another way, ripeness ensures that courts only step in "when the action is final and not dependent on future uncertainties." *South Carolina v. United States*, 912 F.3d 720, 730 (4th Cir. 2019) (internal quotation mark omitted). Ripeness involves evaluation of (1) "the fitness of the issues for judicial decision" and (2) "the hardship to the parties of withholding court consideration." *Abbott Labs*, 387 U.S. at 149.

Lastly, the doctrine of mootness "deprives federal courts of subject matter jurisdiction[] when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." *Pashby v. Delia*, 709 F.3d 307, 316 (4th Cir. 2013) (internal quotation marks omitted). Mootness must be considered "throughout the course of litigation." *Catawba Riverkeeper Found. v. N. Carolina Dep't of Transportation*, 843 F.3d 583, 588 (4th Cir. 2016). In that way, federal courts avoid resolving "an issue [that] could not possibly have any practical effect on the outcome of the matter." *Norfolk S. Ry Co. v. City Of Alexandria*, 608 F.3d 150, 161 (4th Cir. 2010); *see also Wyoming v. U.S. Dep't of Interior*, 587 F.3d 1245, 1250 (10th Cir. 2009) (observing that mootness doctrine "holds true even if all the parties . . . still wish [the court] to render an opinion to satisfy their demand for vindication or curiosity about who's in the right and who's in the wrong" because the job of federal courts "is to decide cases that matter in the real world, not those that don't").

c. Preliminary Injunctions

"A preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689 (2008) (internal quotation mark omitted). Accordingly, "[a] plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555

U.S. 7, 20 (2008). Given the extraordinary and drastic nature of preliminary injunctions, "a district court is entitled to deny preliminary injunctive relief on the failure of any single *Winter* factor, without fully evaluating the remaining factors." *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023).

d. Qualifications Clause

"[S]tates may not require U.S. House of Representative candidates to submit to any qualifications that are not listed in Article I, Section 2, Clause 2 or in Section 3 of the Fourteenth Amendment." *Sharma v. Circosta*, No. 5:22-CV-59, 2022 WL 19835738, at *3 (E.D.N.C. May 16, 2022), *motion for relief from judgment denied*, No. 5:22-CV-59-BO, 2023 WL 3437808 (E.D.N.C. May 11, 2023), *cert. denied before judgment*, No. 23-5011, 2023 WL 6379035 (U.S. Oct. 2, 2023). Those qualifications include that members of the House of Representatives must (1) be at least twenty-five years of age, (2) have been a United States citizen for at least seven years, and (3) be an inhabitant of the state they represent. U.S. CONST. art. I, § 2, cl. 2. Additionally, those who have previously sworn an oath to uphold the Constitution must not have subsequently engaged in an insurrection in violation of that oath. U.S. CONST. amend. XIV, § 3. "Allowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers' vision of a uniform National Legislature representing the people of the United States." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995).

However, not every requirement imposed on congressional candidates constitutes a qualification. *See Storer v. Brown*, 415 U.S. 724, 746 n.16 (1974). For example, disclosure requirements do not constitute qualifications because they "do not limit the choices of any particular group of voters." *Plante v. Gonzalez*, 575 F.2d 1119, 1127 (5th Cir. 1978). On the other

hand, compelled disclosures implicate First Amendment concerns, so they must "directly serve substantial governmental interests." *Buckley v. Valeo*, 424 U.S. 1, 68 (1976).

e. North Carolina Candidacy Requirements

North Carolinians seeking a seat in Congress must comply with several (state) statutory provisions. Candidates must "file[] a notice of candidacy." N.C.G.S. § 163-106(a). Candidates must file these notices "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." N.C.G.S. § 163-106.2(a).

Candidacy notices must certify that the candidate is registered to vote. N.C.G.S. § 163-106(a). The notices must also include the candidate's party affiliation; however, "[n]o 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." N.C.G.S. § 163-106.1. And, to affiliate with a party, an individual must register to vote. *See* N.C.G.S. §§ 163-82.4(a)(9) & 82.4(d).

Candidates also must attach a statement to their candidacy notice form. The statement must "answer[] the following question: 'Have you ever been convicted of a felony?'" N.C.G.S. § 163-106(e). If that question yields an affirmative answer, the candidate must also "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.* If a candidate does not answer the question, "the board of elections . . . shall notify the individual of the omission, and the individual shall have 48 hours after notice to complete the statement." *Id.* Failure to complete the statement within 48 hours after receiving notice from the board of elections renders the candidate's "filing [] not complete, [and as a result] the individual's name shall not appear on the ballot as a candidate, and votes for

that individual shall not be counted." *Id.* In addition, knowingly providing false information in response to the question "is a Class I felony." *Id.*

Filing a notice of candidacy requires payment of a fee, equal to "[o]ne percent (1%) of the annual salary of the office sought." N.C.G.S. § 163-107(a). A candidate may, "in lieu of payment of any filing fee required for the office he seeks, file a written petition requesting him to be a candidate for a specified office." N.C.G.S. § 163-107.1(a). This petition must "be signed by five percent (5%) of the registered voters of the election area in which the office will be voted for, [and] who are affiliated with the same political party in whose primary the candidate desires to run." N.C.G.S. § 163-107.1(c). The due date for the petition is the Monday preceding the filing deadline. *See id.*

## III. Analysis

### a. The State as Defendant

The Complaint (and Motion for Injunction) allege various constitutional violations and name the State of North Carolina as a Defendant. *See generally* DE 1; DE 4. Section 1983 makes actionable "the deprivation of any rights, privileges, or immunities secured by the Constitution." 42 U.S.C. § 1983. But "Section 1983 claims must be raised against a 'person.'" *Conley v. Ryan*, 92 F. Supp. 3d 502, 519 (S.D.W. Va. 2015) (citing 42 U.S.C. § 1983). To that point, "Section 1983 . . . does not provide a federal forum for litigants who seek a remedy against a State for alleged deprivations of civil liberties [because t]he Eleventh Amendment bars such suits unless the State has waived its immunity." *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989).

Plaintiff, in responding to the Motion to Dismiss, contends that the State is a proper Defendant because Plaintiff is seeking injunctive relief pursuant to *Ex parte Young*, 209 U.S. 123 (1908). DE 36 at 14. "*Ex parte Young*, however, allows private citizens, in proper cases, to petition

a federal court to enjoin State ***officials*** in their official capacities from engaging in future conduct that would violate the Constitution or a federal statute." *Franks v. Ross*, 313 F.3d 184, 197 (4th Cir. 2002) (emphasis added). *Ex parte Young* does not authorize claims against the state itself or circumvent sovereign immunity. Dismissal of the State of North Carolina as a Defendant from this matter is warranted.

b. The "Active Felon" Prohibition

Plaintiff argues that North Carolina's prohibition on felons whose rights have not been restored from running for Congress represents an unconstitutional qualification in violation of Article I, Section 2, Clause 2 of the United States Constitution. DE 1 at 2. To review, North Carolina law bars felons whose rights have not been restored from voting. *See* N.C. Const. art. VI, § 2(3). Unless a candidate registers to vote, that candidate cannot affiliate with a political party. N.C.G.S. §§ 163-82.4(a)(9) & 82.4(d). Absent party affiliation (for 90 days preceding the candidacy notice filing period), a candidate may not file as a candidate in that party's primary. N.C.G.S. § 163-106.1.

The court finds that this aspect of the Complaint (and Motion for Injunction) is not ripe for judicial resolution. A matter is only ripe "when the action in controversy is final and not dependent on future uncertainties." *Miller*, 462 F.3d at 319. This issue is not final, and it depends on future uncertainties. Plaintiff has not yet filed his candidacy notice, and indeed cannot do so before December 4. *See* N.C.G.S. § 163-106.2(a).

More importantly, the North Carolina Board of Elections has not acted upon any notice of candidacy filed by Plaintiff. Thus, there is no adverse agency action for the court to review. *See, e.g.*, *McNeill v. Lynch*, No. 5:16-CV-832, 2017 WL 2312231, at *3 (E.D.N.C. May 24, 2017) (dismissing claim as unripe where plaintiff alleged he would be denied relief if he went through

state process but had not yet availed himself of said process); *Tammy W. v. Hardy*, 681 F. Supp. 2d 732, 736 (S.D.W. Va. 2010) (finding that, even where agency has stated its intent to terminate benefits, issue was not ripe until termination of benefits occurred); *Sigram Schindler Beteiligungsgesellschaft MBH v. Kappos*, 675 F. Supp. 2d 629, 638 (E.D. Va. 2009) (holding that claim is not ripe when it "is wholly contingent on an event that may never materialize, namely an adverse [agency] decision"). As a result, the issue is not fit "for judicial decision." *Abbott Labs*, 387 U.S. at 149.

The second *Abbott Labs* factor, "the hardship to the parties of withholding court consideration," also supports a finding that the issue is not ripe. *See id.* Evaluating hardship entails considering "the immediacy of the threat and the burden imposed" on the party seeking court intervention. *Charter Fed. Sav. Bank v. Off. of Thrift Supervision*, 976 F.2d 203, 209 (4th Cir. 1992). On this point, the court agrees with Judge Boyle's assessment when considering a similar challenge brought by Plaintiff last year, that "[n]othing currently prevents plaintiff from filing a notice of candidacy in the general election." *Sharma*, 2022 WL 19835738, at *5.

Put another way, the prohibition Plaintiff challenges "does not affect [his] primary conduct." *National Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 810 (2003) (finding no hardship where challenged regulation left party "free to conduct its business as it sees fit"). The provision Plaintiff seeks to invalidate "does not require [him] to do anything or to refrain from doing anything." *Trump v. New York*, 141 S. Ct. 530, 536 (2020) (internal quotation mark omitted). Because Plaintiff remains free to file a candidacy notice, he would suffer no hardship as a result of the court withholding consideration. *See Abbott Labs*, 387 U.S. at 149.

The court further observes that the parties appear to agree that, although Plaintiff is a felon, his rights have been restored. *Compare* DE 1 at 9, 15, 32 (noting restoration of rights on September

3), *with* DE 30 at 4 (declaration indicating that "Plaintiff's rights of citizenship had been restored as of September 3"). Defendants have therefore argued that this issue is moot. DE 29 at 9-11.

The court disagrees, albeit with the caveat that this issue likely will be moot as of December 4. Nevertheless, Plaintiff's status as a felon whose rights have been restored may change between now and then. As such, the potential application of North Carolina's active felon prohibition against Plaintiff "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Texas v. United States*, 523 U.S. 296, 300 (1998) (internal quotation mark omitted). Consequently, ripeness, not mootness, supports the court refraining from premature adjudication of this aspect of the Complaint and the Motion for Injunction.

c. The "Active Voter" Requirement

Largely the same reasoning underlies the court's conclusion that North Carolina's active voter requirement is also not ripe for judicial review. As explained previously, candidacy notices must certify that the candidate is registered to vote. N.C.G.S. § 163-106(a). If a candidacy notice lacks that certification, the Board of Elections will cancel the notice. N.C.G.S. § 163-106.5(b).

Plaintiff has not filed a candidacy notice. He cannot do so until December 4. N.C.G.S. § 163-106.2(a). And the Board of Elections has not acted upon any candidacy notice filed by Plaintiff.

As a result, the issue is not ripe. There is no agency action to review, and any future agency action depends "on future uncertainties." *Miller*, 462 F.3d at 319; *see also Tammy W.*, 681 F. Supp. 2d at 736. In addition, withholding consideration of this issue would result in no immediate hardship to Plaintiff, because the challenged law does not regulate primary conduct. *See National Park Hospital*, 538 U.S. at 810. In that regard, Plaintiff retains the ability to file a candidacy

notice. Taken together, these considerations support the court refraining from premature adjudication of the active voter requirement. *See Abbott Labs*, 387 U.S. at 149.

d. The "Party Affiliation" Requirement

The court similarly concludes that Plaintiff's challenge to the party affiliation requirement is not ripe. To review, candidacy notices must include the candidate's party affiliation; however, "[n]o 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." N.C.G.S. § 163-106.1. But Plaintiff has not filed a candidacy notice, cannot do so until December 4, and has not suffered any adverse agency action.

Accordingly, the party affiliation issue is not ripe. The Board of Elections has not acted, and any future action depends "on future uncertainties," *Miller*, 462 F.3d at 319, as well as "contingent future events that may not occur as anticipated, or [] may not occur at all," *Texas*, 523 U.S. at 300; *see also Tammy W.*, 681 F. Supp. 2d at 736. Further, withholding consideration of this issue would result in no immediate hardship to Plaintiff because the challenged law does not regulate his primary conduct. *See National Park Hospital*, 538 U.S. at 810. Plaintiff remains free to file a candidacy notice. *See Trump*, 141 S. Ct. at 536. The foregoing considerations warrant the court's avoidance of premature adjudication of the party affiliation requirement. *See Abbott Labs*, 387 U.S. at 149.

On this particular issue, the court notes some factual dispute in the record. Plaintiff alleges that, notwithstanding the restoration of his rights on September 3, his voter registration was denied by letter dated September 11. DE 1 at 9; DE 1-1 at 7. Defendants respond that Plaintiff became an active registered voter on September 5. DE 29 at 10. Defendants add that a clerical error resulted in Plaintiff receiving the letter on September 11 that stated his voter registration had been

canceled. *Id.*; *see also* DE 30 at 4; DE 1-1 at 15. Defendants further certify that Plaintiff's voter registration, and affiliation with the Republican party, was effective as of September 5. DE 30 at 3-4.

This dispute is important because it bears on whether Plaintiff will be able to satisfy the 90-day party affiliation requirement when the candidacy filing period begins on December 4. The court has considered all the evidence on Plaintiff's voter registration and party affiliation status, as it is authorized to do, *see Richmond, Fredericksburg & Potomac*, 945 F.2d at 768, and concludes that Plaintiff's voter registration, and party affiliation, were effective as of September 5. As a result, the court notes that the party affiliation issue may well be moot by December 4, at which point Plaintiff will have been affiliated with his party of choice for exactly 90 days. But for now, considerations of ripeness, not mootness, militate in favor of the court refraining from premature adjudication of this aspect of the Complaint and the Motion for Injunction.

e. The "Felony History" Disclosure

Plaintiff's challenge to the felony history question on the candidacy notice form stands on different doctrinal footing than the prior three issues because his potential noncompliance would subject him to criminal prosecution. *See* N.C.G.S. § 163-106(e). "When an individual is subject to [threatened enforcement of a law], an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014). Here, if Plaintiff provides false information in response to the felony history question, he commits a Class I felony. *See* N.C.G.S. § 163-106(e).

The court will consider standing and ripeness in tandem for this issue, because "in practice there is an obvious overlap between th[ose] doctrines." *Miller*, 462 F.3d at 319 (citing ERWIN CHEMERINSKY, FEDERAL JURISDICTION § 2.4 (4th ed. 2003)). To establish standing, Plaintiff must

allege an (1) injury in fact that is (2) traceable to Defendants' challenged conduct and (3) redressable by a favorable decision. *See Lujan*, 504 U.S. at 560–61. He has done so.

In this context, an injury in fact requires allegations of "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [where] there exists a credible threat of prosecution thereunder." *Babbitt v. United Farm Workers Nat. Union*, 442 U.S. 289, 298 (1979). Because Plaintiff proceeds pro se, his allegations are liberally construed. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Plaintiff has alleged an intention to engage in conduct affected with a constitutional interest but proscribed by statute. *See Babbitt*, 442 U.S. at 298. The Complaint explains his concern that if he "doesn't sign the form, attesting to a felony conviction, he commits a Class I Felony and then won't be on the ballot." DE 1 at 32. In addition, Plaintiff asserts that the statute in question will "force[ him] to sign that he has, in his lifetime, been convicted of a felony and if not he will not be on the ballot." *Id.* He further states that what "is clear is that if [he] checkmarks that he has not been convicted of a felony he commits an I Class felony." *Id.* at 33; *see also* DE 4 at 27-29; DE 36 at 27-28. Although Plaintiff does not explicitly state that he intends not to answer the question truthfully, or at all, his allegations demonstrate his belief that he should not be forced to answer the question truthfully. Liberally construed, those allegations sufficiently set forth an intention to engage in conduct affected with a constitutional interest but proscribed by statute. *See Erickson*, 551 U.S. at 94.

Furthermore, Plaintiff's noncompliance with N.C.G.S. § 163-106(e) raises a credible threat of prosecution thereunder. *See Babbitt*, 442 U.S. at 298. North Carolina law requires the Board of Elections to inspect the notice to ensure it complies with all statutory requirements. *See* N.C.G.S. §§ 163-106(e) & 163-106.5(b). As Plaintiff alleges, "[t]here is no reason to believe the

State/Defendants will not enforce its own laws." DE 1 at 33-34; *see also Holder v. Humanitarian L. Project*, 561 U.S. 1, 16 (2010) (finding credible threat of enforcement where government declined to disavow prosecution of conduct). Defendants here have not suggested they would decline to prosecute Plaintiff should he not truthfully answer the felony history question, nor would the court find persuasive any contention that "the state will not enforce its own laws." *Sharma*, 2022 WL 19835738, at *4. As a result, Plaintiff has sufficiently alleged an injury in fact.

Defendants failed to raise any argument that Plaintiff's injury is not traceable to their conduct or redressable. *See* DE 29 at 9-11 (contending only that Plaintiff failed to allege an injury). Even so, standing implicates subject matter jurisdiction, so the court must independently evaluate the latter two elements of standing. *See Arbaugh*, 546 U.S. at 514. Those elements are met here.

Plaintiff's injury is the threat of criminal prosecution resulting from his failure to answer truthfully a question he does not believe the State can compel him to answer. That injury may only occur by virtue of the Board of Elections reviewing Plaintiff's notice of candidacy and referring him for prosecution. His injury is therefore traceable to Defendants' conduct.

Plaintiff's injury is also redressable by a favorable opinion. He requests a new candidacy notice form that does not include the felony history question. DE 1 at 45. That relief, or other injunctive relief, would ensure avoidance of prosecution. His injury is therefore redressable.

Turning from standing to ripeness, this particular issue is ripe for judicial determination because it presents a purely legal question. *See Abbott Labs*, 387 U.S. at 149. Moreover, Plaintiff would suffer hardship from the court withholding its consideration. *See id.* Deferring judicial review until the candidacy filing period has commenced would put Plaintiff in the position of exposing himself to criminal liability; however, such exposure is not a prerequisite to challenging a law that imposes criminal sanctions. *See Susan B. Anthony List*, 573 U.S. at 158.

To be sure, when the candidacy filing period begins, Plaintiff could instead choose to answer the question truthfully. With that in mind, resolution of this issue arguably "depend[s] on future uncertainties." *South Carolina*, 912 F.3d at 730. But the court has to weigh that future uncertainty against the allegations in the Complaint, which plausibly allege that Plaintiff intends not to answer the felony history question truthfully, or at all. *See* DE 1 at 32-33. On balance, this issue is justiciable.

Having concluded that no doctrine of justiciability weighs against the court reaching the merits of this claim, the court must next determine whether the challenged question represents a "qualification" within the meaning of Article II, Section 2, Clause 2. If the question constitutes a qualification, it will not pass constitutional muster. *See Term Limits*, 514 U.S. at 783.

Plaintiff contends the question operates as "an indirect additional qualification." DE 1 at 32. That contention lacks merit. As the Supreme Court explained in *Term Limits*, a particular requirement does not constitute a qualification unless its operation would "render[] a class of potential candidates ineligible for ballot position." *Term Limits*, 514 U.S. at 835. An affirmative or negative answer to the question in N.C.G.S. § 163-106(e), so long as it is truthful, would not render any candidate ineligible for ballot position.

Put another way, the felony history question does not "limit the choices of any particular group of voters." *Plante*, 575 F.2d at 1127. Voters may vote for a candidate who answers "yes." They may vote for a candidate who answers "no." The question "no more establishes an additional requirement for [Congress] than the requirement that the candidate win the primary to secure a place on the general ballot." *Storer*, 415 U.S. at 746 n.16.

As *Storer* demonstrates, creative litigants can rebrand almost any procedural requirement to running for office as a "qualification." But reading that term so broadly would nullify a state's

authority to prescribe the "Times, Places and Manner of holding Elections." U.S. CONST. art. I, § 4, cl. 1. Such a broad reading is improper. Accordingly, the court finds that the felony history question represents a disclosure requirement, not a qualification.

Even if not a qualification, a compelled disclosure in the electoral context still implicates First Amendment concerns. As a result, disclosure of the information must "directly serve substantial governmental interests." *Buckley*, 424 U.S. at 68. Those interests must be considered in the context of "the burden that [the disclosure requirement] place[s] on individual rights." *Id.*; *see also John Doe No. 1 v. Reed*, 561 U.S. 186, 196 (2010) (explaining that First Amendment challenges to disclosure requirements in electoral context involve review under "exacting scrutiny," which requires "substantial relation" between requirement and "sufficiently important" government interest); *Buckley*, 424 U.S. at 65 (noting that "[t]his type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure").

Requiring congressional candidates to attest to their felony history directly serves the State's substantial interest in fostering an informed electorate. "In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation." *Buckley*, 424 U.S. at 14–15. As the Fourth Circuit has recognized, electoral disclosure laws "actually promote speech by making more information available to the public and thereby bolstering the marketplace of ideas." *Master Printers of Am. v. Donovan*, 751 F.2d 700, 710 (4th Cir. 1984) (internal quotation mark omitted); *see also Washington Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019) (observing that "disclosure obligations are ordinarily less detrimental

to our commitments to free speech because they do not *necessarily* censor speech") (italics in original). Constituents should and do expect commitment to the rule of law from their representatives. A disclosure designed to probe the strength of that commitment, and consequently inform the electorate of the same, directly serves that State interest.

Moreover, the felony history disclosure requirement imposes only a modest burden, if any, on candidates. *See Buckley*, 424 U.S. at 68. One's felony history is a matter of public record. *See* N.C.G.S. § 132-1(a). Therefore, unlike the vast majority of First Amendment challenges to electoral disclosure laws, N.C.G.S. § 163-106(e) does not require candidates to disclose any private or previously non-public information. *See, e.g.*, *Buckley*, 424 U.S. at 64; N*ational Ass'n of Mfrs. v. Taylor*, 582 F.3d 1, 20 (D.C. Cir. 2009); *Plante*, 575 F.2d at 1130. This characteristic of the law weighs heavily in favor of finding that it does not impose any serious burden on candidates.

Plaintiff's primary grievance with the compelled disclosure appears to stem from a desire to conceal his felony record from the voting public. *See* DE 1 at 32 (asserting that State has no interest in "finding about people's *past* affairs") (italics in original), 32 (likening question to "as[ing] 'Are you White?' or 'Are you Black?' etc."), 34 (stating that "[i]f [he] lived in Virginia or Florida he wouldn't be having this problem"); DE 36 at 28 (positing that disclosing his felony record "would actually confuse voters and allow them to vote on prejudice"); 28 (hypothesizing that disclosure "would unfairly influence the voters to believe Plaintiff would commit crimes in the future or that Plaintiff is of bad character"). This grievance is unpersuasive, both because Plaintiff's felony record is already public record, and because concealment would undermine "the ability of the citizenry to make informed choices among candidates for office." *Buckley*, 424 U.S. at 14–15.

In sum, the compelled disclosure of a candidate's felony history is a constitutional ballot-access measure that directly serves North Carolina's substantial interest in fostering an informed electorate.

f. The Filing Fee

Plaintiff also challenges the $1740 filing fee, which he alleges he cannot pay. DE 1 at 15. Defendants respond that a reasonable alternative is available to Plaintiff. DE 27 at 29. Specifically, North Carolina law permits a candidate, "in lieu of payment of any filing fee required for the office he seeks, [to] file a written petition requesting him to be a candidate for a specified office." N.C.G.S. § 163-107.1(a). This petition must "be signed by five percent (5%) of the registered voters of the election area in which the office will be voted for, [and] who are affiliated with the same political party in whose primary the candidate desires to run." N.C.G.S. § 163-107.1(c).

Plaintiff makes two arguments in response to the alternative path to the ballot, albeit in different filings. First, in his response to the Motion to Dismiss, he argues that obtaining signatures from 5% of registered republicans in the Thirteenth Congressional District is too onerous. DE 36 at 30. Then, in his Emergency Motion, Plaintiff contends that the congressional "maps are still changing," so he cannot reasonably attempt to procure signatures until that process is finalized. DE 38 at 2.[2]

Plaintiff's first argument is conclusory. The Supreme Court has observed that "[a] procedure inviting or permitting every citizen to present himself to the voters on the ballot without some means of measuring the seriousness of the candidate's desire and motivation would make rational voter choices more difficult because of the size of the ballot and hence would tend to

[2] Given its pertinence to this issue, the court will consider this latter contention in its analysis.

impede the electoral process." *Lubin v. Panish*, 415 U.S. 709, 715 (1974). As a result, states may enact reasonable measures to limit ballot access to only serious candidates, including filing fees. *See id.* at 718-19 (stating that states must provide "alternative means" so as to avoid excluding "candidates solely on the basis of [their in]ability to pay a fixed fee"). Federal courts have regularly upheld similar[3] signature-collection ballot restrictions to that prescribed by North Carolina law. *See, e.g.*, *American Party of Texas v. White*, 415 U.S. 767, 789 (1974) ("Demanding signatures equal in number to 3% or 5% of the vote in the last election is not invalid on its face"); *Jenness v. Fortson*, 403 U.S. 431, 442 (1971) (upholding law requiring signatures of 5% of all registered voters); *Cartwright v. Barnes*, 304 F.3d 1138, 1144 (11th Cir. 2002) (same); *Swanson v. Worley*, 490 F.3d 894, 903 (11th Cir. 2007) (finding 3% signature requirement to be "reasonable, nondiscriminatory restriction").

Plaintiff argues that the 5% signature requirement is too onerous because he "would have to get at least 6,000 signatures . . . [and in the] 2022 midterms some candidates only received less than 1,000 votes." DE 36 at 30. "This comparison is unavailing because it essentially asks [the court] to compare apples to oranges." *Buscemi v. Bell*, 964 F.3d 252, 265 (4th Cir. 2020) (rejecting challenge to North Carolina's signature requirement for unaffiliated candidates). Midterm elections are not general elections, and signatures are not votes.

Plaintiff's second argument, that the congressional maps are in flux, is now moot. North Carolina's congressional map passed the State House and Senate on October 25, 2023, and became immediately effective. *See Senate Bill 757 / SL 2023-145*, NORTH CAROLINA GENERAL

[3] These cases are not identical, because they involve signature-collection ballot restrictions for independent or unaffiliated candidates to appear on general election ballots. Even so, they are sufficiently similar to support a finding that North Carolina's law passes constitutional muster. Arguably, the restriction on Plaintiff is less onerous than that imposed on unaffiliated candidates, since he already shares a party affiliation with the individuals whose signatures he must procure.

ASSEMBLY, available at https://www.ncleg.gov/BillLookUp/2023/S757, (last visited October 27, 2023).[4] Accordingly, the court finds that North Carolina law provides Plaintiff with an alternative ballot access measure to the filing fee, and that this alternative is reasonably available to him. His argument that the filing fee is unconstitutional therefore fails to state a claim upon which relief may be granted.

g. Candidate and/or Voter Address Disclosure

Lastly, Plaintiff contends that his Fourth Amendment right to privacy was violated when Defendants publicly listed his address after he registered to vote. DE 1 at 40-41. This contention is meritless.

As an initial matter, the Fourth Amendment right to privacy, which Plaintiff cites, safeguards citizens from "unreasonable searches and seizures." U.S. CONST. amend. IV. It has no bearing on Plaintiff's allegation that, after registering to vote, Defendants made his address available "online for the world to see." DE 1 at 40.

Even if the court liberally construed the Complaint to instead raise a Fourteenth Amendment right to privacy claim, Plaintiff would fare no better. This constitutional right to privacy has long been recognized. *Meyer v. Nebraska*, 262 U.S. 390, 403 (1923). It in part serves "the individual interest in avoiding disclosure of personal matters." *Whalen v. Roe*, 429 U.S. 589, 599 (1977).

However, this "right to privacy protects only information with respect to which the individual has a reasonable expectation of privacy." *Walls v. City of Petersburg*, 895 F.2d 188, 193 (4th Cir. 1990). Its boundaries, therefore, necessarily exclude "information [] freely available in public records." *Id.* Plaintiff's address is a public record. *See* N.C.G.S. § 132-1(a).

[4] The court takes judicial notice of this fact. *See Tellabs, Inc.*, 551 U.S. at 322.

Therefore, no constitutional right to privacy extends to "an individual's address." *Cunningham v. U.S. Veterans Affs.*, No. 7:08-CV-00485, 2008 WL 3926452, at *2 (W.D. Va. Aug. 26, 2008). Ultimately, "[t]he question is not whether [Plaintiff] regard[s the] information . . . as private, . . . but whether the Constitution protects such information." *Adams v. Drew*, 906 F. Supp. 1050, 1057 (E.D. Va. 1995). It does not. *See DM v. Louisa Cnty. Dep't of Hum. Servs.*, 194 F. Supp. 3d 504, 508–09 (W.D. Va. 2016) (finding no right to privacy in "personal contact information," such as one's address). Plaintiff fails to state a right to privacy claim upon which relief may be granted.[5]

h. Preliminary Injunctive Relief

The foregoing analysis demonstrates that Plaintiff is not entitled to any relief: three of his claims are not ripe, and the other two fail to state a claim upon which relief may be granted. As a result, Plaintiff has not "establish[ed] that he is likely to succeed on the merits." *Winter*, 555 U.S. at 20. This "court is entitled to deny preliminary injunctive relief on the failure of any single *Winter* factor, without fully evaluating the remaining factors." *Vitkus v. Blinken*, 79 F.4th 352, 361 (4th Cir. 2023). Even so, the court will consider the remaining *Winter* factors.

As for the second factor, "irreparable harm is inseparably linked to the likelihood of success on the merits." *WV Ass'n of Club Owners & Fraternal Servs., Inc. v. Musgrave*, 553 F.3d 292, 298 (4th Cir. 2009) (internal quotation marks omitted). A plaintiff not likely to succeed on the merits is not likely to suffer irreparable harm, and, to justify a preliminary injunction, a plaintiff "must make a clear showing of irreparable harm." *Scotts Co. v. United Indus. Corp.*, 315 F.3d 264, 283 (4th Cir. 2002) (internal quotation marks omitted). Plaintiff has failed to do so here.

[5] To the extent Plaintiff has alleged that the publication of voters' addresses has a chilling effect that disincentivizes political candidates from running for office, he lacks standing to bring such a claim. *See Griffin v. Dep't of Lab. Fed. Credit Union*, 912 F.3d 649, 655 (4th Cir. 2019) (holding that injury must not be "common to all members of the public").

Next, the balance of equities supports withholding injunctive relief. As previously noted, the candidacy filing period does not commence until December 4. Plaintiff currently remains free to campaign and file a notice of candidacy. At present, no factual or legal encumbrance prevents Plaintiff from pursuing his political aspirations. On the other hand, enjoining North Carolina (through its public officials) from enforcing its election code would constitute "a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers); *see also L. v. Gast*, 641 F. Supp. 3d 580, 604 (S.D. Iowa 2022) (concluding that "[e]njoining [state election] law would create an irreparable injury to the State [] because it could no longer be able to enforce this duly enacted law"), *appeal dismissed sub nom. Rachel Raak L. v. Gast*, No. 22-3479, 2023 WL 3704920 (8th Cir. Jan. 6, 2023). Such injury is unwarranted in light of the court's finding that Plaintiff is not likely to succeed on the merits or suffer irreparable injury.

Lastly, the public interest weighs in favor of Defendants. "[I]t is in the public interest to uphold the will of the people, as expressed by acts of the state legislature, when such acts appear harmonious with the Constitution." *Pavek v. Donald J. Trump for President, Inc.*, 967 F.3d 905, 909 (8th Cir. 2020). The public has an interest in the orderly administration of elections. In the absence of some showing of constitutional transgression, the court will not disregard that interest or disrupt that orderly administration.

i. Hearing

"Rule 65 does not expressly require an evidentiary hearing and oral argument." *North Carolina Green Party v. N. Carolina State Bd. of Elections*, 619 F. Supp. 3d 547, 563 (E.D.N.C. 2022), *dismissed*, No. 22-1830, 2022 WL 18586807 (4th Cir. Aug. 30, 2022). "[A]n evidentiary hearing is not an indispensable requirement," but it may be desirable "where issues of fact are

disputed." *Aoude v. Mobil Oil Corp.*, 862 F.2d 890, 893 (1st Cir. 1988). Ultimately, in the absence of any requirement, the court retains discretion to hear a motion. *See* Local Civil Rule 7.1(j).

This dispute involves purely questions of law. In fact, the parties have "agree[d] that no discovery is necessary and, therefore, are not proposing a discovery plan." DE 40 at 1. The parties have had ample time to make written submissions, and all relevant "evidence [is] already in the [] court's possession." *Syntex Ophthalmics, Inc. v. Tsuetaki*, 701 F.2d 677, 682 (7th Cir. 1983). Convening a hearing for the parties to restate arguments they have already made in their briefs would be a poor use of judicial resources and would not aid in the court's decisional process.

## IV. Conclusion

Plaintiff's "no active felon," "active voter," and "party affiliation" claims are not ripe. His felony disclosure and right to privacy claims fail as a matter of law. He also has not shown any irreparable injury, and the balance of equities and public interest support denying injunctive relief. For those reasons, the Motion to Dismiss [DE 28] is GRANTED and the Motion for Injunction [DE 4] is DENIED. Further, the Motion to Consolidate and Expedite [DE 5] is accordingly DENIED AS MOOT, the Motion for Leave [DE 25] is DENIED AS MOOT, the Motion to Consolidate Rulings [DE 33] is DENIED AS MOOT, and the Emergency Motion [DE 38] is DENIED. The Complaint [DE 1] is DISMISSED WITHOUT PREJUDICE as to the "no active felon," "active voter," and "party affiliation" claims and DISMISSED WITH PREJUDICE as to the felony disclosure and right to privacy claims.

SO ORDERED this 29th day of October, 2023.

Richard E Myers II

RICHARD E. MYERS II
CHIEF UNITED STATES DISTRICT JUDGE

FILED: December 16, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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No. 23-2164
(5:23-cv-00506-M-BM)

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SIDDHANTH SHARMA

Plaintiff - Appellant

v.

ALAN HIRSCH, Chairman of NCBOE, in his official capacity; KAREN BRINSON BELL, in his official capacity; JEFF CARMON, in his official capacity; SIOBHAN MILLEN, in his official capacity; STACY EGGERS, IV, in his official capacity; KEVIN LEWIS, in his official capacity; STATE OF NORTH CAROLINA

Defendants - Appellees

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O R D E R

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The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Wilkinson, Judge Richardson, and Judge Rushing.

For the Court

/s/ Nwamaka Anowi, Clerk

Additional material from this filing is available in the Clerk's Office.