

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

NO. _____

NORTH CAROLINA REPUBLICAN
PARTY and REPUBLICAN NATIONAL
COMMITTEE,

24CV026820-910

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; ALAN HIRSCH, in his
official capacity as Chair of the North
Carolina State Board of Elections; JEFF
CARMON III, in his official capacity as
Secretary of the North Carolina State
Board of Elections; STACY EGGERS IV,
in his official capacity as Member of the
North Carolina State Board of Elections;
KEVIN N. LEWIS, in his official capacity
as Member of the North Carolina State
Board of Elections; SIOBHAN O'DUFFY
MILLEN, in her official capacity as
Member of the North Carolina State
Board of Elections; and KAREN
BRINSON BELL, in her official capacity
as Executive Director of the North
Carolina State Board of Elections,

Defendant.

COMPLAINT

NOW COME Plaintiffs North Carolina Republican Party ("NCGOP") and the Republican National Committee ("RNC") (collectively "Plaintiffs") and, pursuant to North Carolina's Uniform Declaratory Judgment Act (N.C. Gen. Stat. § 1-253 *et seq.*) and Rule 57 of the North Carolina Rules of Civil Procedure, file this Complaint for

Declaratory Judgment and for violation of the North Carolina Public Records Act against Defendants North Carolina State Board of Elections (“NCSBE”), its members Alan Hirsch, Jeff Carmon III, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE’s Executive Director Karen Brinson Bell (collectively “Defendants”). Plaintiffs seek a declaratory judgment that Defendants must conduct individually specific voter registration list maintenance efforts for people who have self-identified as non-citizens after their receipt of jury summonses, as required by Section 44 of North Carolina Session Law 2023-140, formerly S747 (“Section 44”). Plaintiffs also seek an order directing Defendants to comply with their obligations under North Carolina’s Public Records Act and produce documents that Plaintiffs have properly requested under the Act concerning Defendants’ compliance (or lack thereof) with Section 44.

Introduction

1. Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy. Voter fraud drives honest citizens out of the democratic process and breeds distrust of our government. “Voters who fear their legitimate votes will be outweighed by fraudulent ones will feel disenfranchised.” *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006).

2. North Carolina hosts some of the most closely competitive elections in the country. Whether at the local,¹ county,² or state-wide level,³ there are numerous examples in recent years where our election results have turned on only a handful of votes.

3. In order to facilitate its citizens' participation in the election process, North Carolina law strives to make it easy to vote. Given its efforts to make it easy to vote, North Carolina (and federal) law contain safeguards to make sure that it is hard to cheat. This occurs both in the context of ensuring that only those who may lawfully cast a ballot do so, as well as ensuring that the manner in which the voter casts her or his ballot actually reflect the voter's intent.

4. These safeguards range from laws allowing only United States citizens to vote, laws requiring elections officials to conduct regular voter list maintenance to remove from the voter rolls dead voters and voters who have moved out of the county, laws requiring voter registrant identification information being provided to elections officials prior to registration of the voter, and laws requiring elections officials to receive and review data regarding whether specific voters have self-identified as unqualified to vote and, if so, to remove those voters from the voter list.

¹ See 2023 Mayor Race, Town of Mount Olive (15 vote difference); Cary Town Council, District D race (60 vote difference); High Point City Council, Ward 04 (18 vote difference) (available at https://er.ncsbe.gov/?election_dt=11/07/2023&county_id=0&office=CCL&contest=0).

² See 2022 District Attorney District 08 race (79 vote difference out of 76,685 cast); Superior Court Judge, District 26B Seat 1 race (77 vote difference out of 51,907 votes cast) (available at https://er.ncsbe.gov/?election_dt=11/08/2022&county_id=0&office=JUD&contest=0).

³ 2020 NC Supreme Court, Chief Justice race (401 vote difference out of 5,391,501 cast) (available at https://er.ncsbe.gov/?election_dt=11/03/2020&county_id=0&office=JUD&contest=0).

5. Safeguards related to non-citizen voting are particularly salient during this election cycle given the unprecedented millions of people who have illegally immigrated into the United States – apparently relocating, in many cases, to North Carolina.

6. On February 27, 2024, North Carolina’s Office of State Budget and Management reported that approximately 325,000 “unauthorized” immigrants were residing in the state.⁴ This is out of a total of 501,000 foreign-born non-citizens in North Carolina. *Id.*

7. Because these foreign-born individuals have not been naturalized, they are not qualified to vote.

8. Additionally, the NCSBE recently admitted that it failed to comply with the requirement in the federal Help America Vote Act that it collect identification information – driver’s license or social security numbers – from people seeking to register to vote **prior to** processing their voter registration applications.

9. As a result, there may be significant numbers of non-citizens who have registered to vote in North Carolina, whether intentionally or due to the NCSBE’s failure to require the HAVA identification information prior to processing their applications.

10. And yet, the NCSBE has expressed no desire to investigate whether those registrants are lawfully registered to vote.

⁴ Available at <https://www.osbm.nc.gov/blog/2024/02/27/ncs-foreign-born-population-increased-eightfold-1990#:~:text=An%20estimated%2042%25%20of%20the,or%2065%25%20to%20be%20unauthorized.>

11. There exist few ways to identify and prevent non-citizens from voting once they have filled out the voter registration paperwork. Neither documentary proof of citizenship nor a citizenship verification check by the state is required to register to vote.

12. Consequently, in circumstances where elections officials have access to information allowing them to verify if specific individuals have unlawfully registered to vote – whether intentionally or not – elections officials should promptly act on such information in order to prevent fraudulent votes from being cast and affecting the outcome of our elections.

13. This lawsuit concerns a common-sense safeguard against non-citizen voting, enacted by the General Assembly to go into effect on July 1, 2024, but which the NCSBE is refusing to enforce in time for the November 5, 2024 election. All North Carolina citizens are generally required to serve on juries.⁵ It has long been a tenet of North Carolina law, however, that non-citizens are not subject to being summoned for jury duty. As such, if a non-citizen receives a jury summons, she or he may assert lack of citizenship as a basis for refusing to serve on a jury.

14. The basis for a request for being excused from jury service is made under penalty of perjury.

15. Of course, if that person is not a citizen of the United States, that person also should not be on North Carolina’s registered voter list and is not allowed to vote

⁵ Master lists of prospective jurors are prepared by jury commissions by using the “list of registered voters and persons with drivers license records” pursuant to N.C. Gen. Stat. § 9-2(b).

in our elections. *See* N.C. Const. art. VI sec. 1 (qualifications for who may vote); N.C. Gen. Stat. § 163-82.4(e)(1) (requiring voter registration forms to ask if the applicant is “a citizen of the United States of America” and, if the person check’s “no”, “do not submit this form.”).

16. Prior to this year, however, the NCSBE was not required to incorporate juror-excuse information, when people self-identify as non-citizens, into its efforts to ensure that only lawfully registered voters were on its voter list. Fortunately, commonsense spurred the General Assembly to require the NCSBE to do so.

17. Section 44 of North Carolina Session Law 2023-140 requires county Clerks of Superior Court to use forms to track the reasons people give when seeking to be excused from jury service. And, when a person indicates that she or he cannot serve on a jury because she or he is not a citizen, the Clerks of Superior Court are required to forward that information to the NCSBE. This is so that the NCSBE and respective county board of elections can go through the process of potentially removing that person from the list of registered voters, as non-citizens may not vote in North Carolina. *See* N.C. Gen. Stat. § 163-55.

18. Section 44 went into effect on July 1, 2024. Plaintiffs have sought assurances from the NCSBE that it would enforce Section 44 prior to the 2024 election and copies of public records associated with the NCSBE’s enforcement (or lack thereof) of Section 44. *See* **Exhibit A** – July 10, 2024 correspondence from John Branch to NCSBE Executive Director Bell (the “July 10, 2024 Correspondence”).

Defendants have never responded to the July 10, 2024 Correspondence, nor have they produced any of the requested documents.

19. One of the common-sense safeguards against non-citizen voting provided by North Carolina law is requiring elections officials to conduct due diligence into the registration of voters who have self-identified as a non-citizen in response to a jury summons.

20. Section 44 went into effect on July 1, 2024 – more than four months before the November election. Defendants’ failure to respond to the July 10, 2024 Correspondence or take the mandatory actions prescribed in Section 44 harms Plaintiffs and undermines the core purpose of the common-sense safeguards against non-citizen voting provided by North Carolina law.

21. The NCSBE cannot ignore the requirements of Section 44 during this election cycle, and the Court should order Defendants to immediately implement Section 44.

PARTIES AND JURISDICTION

22. Plaintiff NCGOP, founded in 1867 is a political party as defined in Article 9 of Chapter 163 of the North Carolina General Statutes, and is the state political organization of the Republican Party. The NCGOP’s headquarters are in Wake County, North Carolina.

23. A significant part of the NCGOP's mission is organizing and registering lawful voters and encouraging voters to support Republican candidates at all levels of government.

24. NCGOP's efforts include training on and advocacy for both lawfully registering voters and election security and voter integrity efforts to help ensure that only lawful votes are cast and counted. NCGOP expends significant time and resources fighting for these election security and voting integrity efforts, which are intended to ensure that the votes and voices of both its members, candidates, and the party are not silenced or diluted.

25. These efforts include conducting training of volunteers on election security and voter integrity issues, seeking thousands of volunteers to serve as election observers, seeking hundreds of attorney volunteers for election security and voter integrity issues, forming and administering a state-wide voter integrity hotline during early voting and election day, providing volunteers in all one hundred counties, and investigating reports of voter fraud and disenfranchisement.

26. The NCGOP spends tremendous time and effort advocating for its members in all levels of state government, working to make sure they are heard both at the ballot box and beyond.

27. Recent rises in non-citizens and other unqualified persons voting or seeking to vote in elections has forced the NCGOP to divert its efforts and funds in order to hold elections officials accountable to what both federal and state laws require.

28. Plaintiff RNC is the national committee of the Republican Party as defined by 52 U.S.C. § 30101(14). It manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels (including

in North Carolina), coordinates fundraising and election strategy, develops and promotes the national Republican platform, and communicates the Republican Party's positions and messages to voters.

29. The RNC is a political party as defined in Article 9 of Chapter 163.

30. The RNC makes considerable expenditures in North Carolina both directly and through its support of the NCGOP to organize and register lawful voters in North Carolina, elect Republican candidates running up and down the ballot in North Carolina elections, including by educating its voters and election observers on the applicable laws governing the voting process.

31. The RNC assists the NCGOP and its county party chairs in conducting voter registration and election security and voter integrity efforts, including throughout the 2024 election cycle, and intends to continue its assistance through the end of the 2024 election.

32. Plaintiffs have organizational standing to bring this action. NCSBE's actions and inaction directly impact Plaintiffs' core organizational missions of election security and providing services aimed at promoting Republican voter engagement and electing Republican candidates for office. NCSBE's violations of Section 44 and refusal to provide the requested public records associated related to Section 44 have forced Plaintiffs to divert significantly more of their resources into combatting election fraud in North Carolina. Plaintiffs' organizational and voter outreach efforts have been and will continue to be significantly stymied due to NCSBE's ongoing failures to enforce Section 44. As a result, Plaintiffs will have no

choice but to expend increased amounts of time and money, beyond what they would have already spent, in order to combat this unwarranted interference with their central activities.

33. For example, because of NCSBE's refusal to enforce Section 44 and to provide the requested public records associated with Section 44, Plaintiffs are committing and will need to continue to commit added time and resources into monitoring North Carolina's voter rolls and voter activity, and responding to instances of potential voter fraud in upcoming elections, tasks Section 44 requires the NCSBE to undertake.

34. Additionally, NCGOP has associational standing because its members have standing in their own right to challenge NCSBE's actions here. NCGOP represents millions of registered Republican voters across the state of North Carolina, including at least one registered Republican voter in every one of the state's one hundred counties, which is a matter of public record. NCGOP's members are harmed by inaccurate voter rolls due to the NCSBE's failure to enforce Section 44 prior to the November 5, 2024 election. These NCGOP members' votes are undoubtedly diluted as a result of ineligible voters participating in elections due to NCSBE's refusal to enforce Section 44 prior to the election. Additionally, these members' rights to participate in a fair and secure electoral process, free from voter fraud, will be significantly hindered. Ensuring such freedom and security in all elections throughout North Carolina is germane to the NCGOP's organizational mission.

35. Further, the RNC and NCGOP are harmed in their ability to compete in the electoral process. If the relief it is requesting is not granted, it will make the competitive environment worse for Plaintiffs and more difficult for their candidates (and voters) to win in the upcoming election. Plaintiffs should not be forced to compete in an illegally structured voting environment, in which people claiming non-citizenship are not investigated and potentially removed from voter rolls in accordance with the law. As described above, elections in North Carolina are often very competitive, and the allowance of even a relatively smaller number of illegal votes can turn even a statewide election.

36. Defendant North Carolina State Board of Elections is the agency created by the North Carolina General Assembly and which is responsible for the administration of the election laws of the State of North Carolina. N.C. Gen. Stat. § 163-22.

37. Defendant Alan Hirsch is the Chair of the North Carolina State Board of Elections. Mr. Hirsch is sued in his official capacity.

38. Defendant Siobhan Millen is a Member of the North Carolina State Board of Elections. Ms. Millen is sued in her official capacity.

39. Defendant Jeff Carmon III is a Member of the North Carolina State Board of Elections. Mr. Carmon is sued in his official capacity.

40. Defendant Stacy Eggers IV is a Member of the North Carolina State Board of Elections. Mr. Eggers is sued in his official capacity.

41. Defendant Kevin Lewis is a Member of the North Carolina State Board of Elections. Mr. Lewis is sued in his official capacity.

42. Defendant Karen Brinson-Bell is the Executive Director of the North Carolina State Board of Elections. Executive Director Bell is sued in her official capacity.

43. Jurisdiction is proper in this Court pursuant to N.C. Gen. Stat. § 1-253 *et seq.*, N.C. Gen. Stat. § 132-1 *et seq.*, and N.C. Gen. Stat. § 7A-245.

44. Venue is proper in this Court under N.C. Gen. Stat. § 163-22(1) and N.C. Gen. Stat. § 1-82.

FACTUAL ALLEGATIONS

I. Only Citizens May Vote in North Carolina Elections.

45. North Carolina and federal law have made it easy to register to vote. Applicants can register online with the NC Department of Motor Vehicles (“NCDMV”), in person at any NCDMV office, download a form from the North Carolina State Board of Elections website and submit via mail, email, or facsimile, or even register when individuals early vote in person. N.C. Gen. Stat. § 163-82.6(a), 163-82.6B.

46. Registration usually involves the submission of voter registration application forms to the NCDMV (who sends them to the NCSBE) or to the NCSBE or appropriate county board of elections.

47. Upon receipt of the voter registration application forms, the NCSBE (if it is the recipient) sends it to the applicable county board of elections for processing.

48. Once it receives the voter registration application forms, county boards of election determine whether the applicant is qualified to vote at the address given in the form. N.C. Gen. Stat. § 163-82.7.

49. In order to vote in elections in North Carolina, an individual must be a United States citizen. *See* N.C. Const. art. VI sec. 1 (listing voter qualifications).

50. Consistent with N.C. Gen. Stat. § 163-82.4(e)(1), North Carolina voter registration forms now require that an applicant certify that he or she is a United States citizen and, if not, inform the applicant that “If you checked “no” in response to this question, do not submit this form. You are not qualified to vote.”

North Carolina Voter Registration Application <i>(Sections in red are required.)</i>		06w
Eligibility You must be a U.S. citizen and old enough to register to submit this form. <i>Required.</i>	1 Are you a citizen of the United States of America? <i>If you checked “no” in response to this question, do not submit this form. You are not qualified to vote.</i> Will you be 18 years of age on or before election day? <i>If you answered “no” to the question above, are you at least 16 years of age and understand that you must be 18 years of age on or before election day to vote?</i> <i>If you checked “no” in response to both of these age questions, do not submit this form. You are not qualified to register or preregister to vote.</i>	☐ Yes ☐ No ☐ Yes ☐ No ☐ Yes ☐ No

(screenshot of top of form; available at: https://s3.amazonaws.com/dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf).

51. If, however, an applicant mistakenly or intentionally states that the applicant is a citizen of the United States of America even though the applicant is not, the voter registration form will be processed as if the applicant is a citizen.

52. North Carolina law provides that fraudulently or falsely completing voter registration forms is a Class I felony. *See generally* N.C. Gen. Stat. § 163-275(1), (4), (6), (7), (13), (14), (18), (19).

53. Because the threat of prosecution for falsely or fraudulently filling out voter registration forms is not, alone, sufficient to prevent election fraud, the North Carolina General Assembly has enacted some safeguards to help ensure that only individuals lawfully qualified to vote are registered, and those who are unlawfully registered to vote are removed from the voter list.

II. Individuals Can Avoid Jury Service in North Carolina By Disclosing that they are not Citizens.

54. All North Carolina citizens are generally subject to jury summons to perform duties as members of a jury in our judicial process. *See* N.C. Gen. Stat. § 9-3(a)(1) (effective July 1, 2024) (stating that one requirement for a person to be included on a master jury list is that the person “[i]s a citizen of the United States” as a requirement for a person to be included on the master jury list).

55. It has long been a tenet of North Carolina law that non-citizens are not subject to summonses for jury duty. *See generally* N.C. Gen. Stat. § 9-3 (effective until July 1, 2024) (“All persons are qualified to serve as jurors and to be included on the master jury list *who are citizens of the State....*” (emphasis added)).

56. As such, if a non-citizen receives a jury summons, she or he may assert lack of citizenship as a basis for refusing to serve on a jury. *See* N.C. Gen. Stat. § 9-6(a1).

III. The General Assembly Enacted a Common-Sense Requirement that the Court System Share Information with the NCSBE About Individuals Who Self-Select as Non-Citizens.

57. The North Carolina General Assembly realized that, through the jury-selection process, local state officials gather information about people who had self-identified as non-citizens (and who would thus be ineligible to vote).

58. As in the case of many other states, when juries are needed in the judicial process, county clerks of court send summonses to citizens for jury service. *See* N.C. Gen. Stat. § 9-5.

59. Citizens are expected, by law, to serve on juries if called. *See* N.C. Gen. Stat. §§ 9-5, 9-6.

60. An excuse from serving on a jury, however, is if an individual who is called to serve is actually not a citizen of the United States. *See* N.C. Gen. Stat. §§ 9-6(a) and (a1), 9-6.2(b).

61. Upon information and belief, the county clerks of court and the NCSBE did not, prior to the enactment of Section 44, share information with each other about people self-identifying as non-citizens in order to be excused from jury duty.

62. The General Assembly realized, however, that this information, where specific individuals are self-identifying as non-citizens, could be used by the NCSBE to conduct due diligence on whether the individuals who self-identified as non-citizens had also sought to register to vote. The General Assembly also realized that the information could be used to require due diligence as to whether those people should be removed from the voter list.

IV. Section 44 Requires the NCSBE and County Boards of Election to Conduct Individualized Due Diligence on Registered Voters Who Appear to Have Self-Identified as Non-Citizens in Responding to a Jury Summons.

63. Session Law 2023-140⁶ became law on October 10, 2023, after both the North Carolina House of Representatives and the North Carolina Senate overrode Governor Cooper’s veto of the underlying bill, S747.

64. While many provisions of Session Law 2023-140 have been challenged in lawsuits, Section 44 has not.

65. Section 44 amended sections of the following statutes to facilitate the sharing of information between the NCSBE and the county clerks of court regarding whether individuals who have received jury summons self-identified as non-citizens in order to avoid jury service: N.C. Gen. Stat. § 9-3 (qualifications of prospective jurors), § 9-6 (Jury service a public duty; excuses to be allowed in exceptional cases; procedure), § 9-6.1 (Requests to be excused), § 9-6.2 (Reports of excusals from jury duty based on disqualification) (new), 163-82.14 (List maintenance). Section 44(a) – (e).

66. Section 44 specifically provided that its requirements would go into effect on July 1, 2024. Section 44(f).

67. Section 44’s amendments to Chapter 9 of the North Carolina General Statutes and N.C. Gen. Stat. § 163-82.14 generally accomplished the following:

⁶ Available at <https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v6.pdf>

a. Section 44(a) amended N.C. Gen. Stat. § 9-3 to clarify that, among other things, a person must be a citizen of the United States to qualify for jury service;

b. Section 44(b) amended N.C. Gen. Stat. § 9-6 to, among other things, add section (a1), which requires the Administrative Office of Courts to develop and furnish a form for the county Clerks of Superior Court to use for applications for excuses from jury duty, including due to lack of United States citizenship, and that, under section (e), the clerk of court must keep a record of excuses separate from the master list in accordance with section 9-6.2;

c. Section 44(c) amended N.C. Gen. Stat. § 9-6.1 to generally provide additional authority for clerks of court in certain circumstances in the jury summons and excuse process;

d. Section 44(d) added a new section to Chapter 9, § 9-6.2, which requires, among other things, that if a prospective juror requests that he or she be excused based on the fact he or she is not a citizen of the United States, the clerks of court shall communicate the information⁷ on individuals who are self-identifying as non-citizens to the NCSBE on a schedule determined by the NCSBE;

⁷ The statute requires that this information includes the person's name, address, date of birth, and other personal information from the master jury list, along with the reasons for the person's disqualification and the date of disqualification. N.C. Gen. Stat. § 9-6.2(b).

e. New section 9-6.2(b) also requires that the NCSBE “shall use this information to conduct list maintenance efforts in accordance with G.S. 163-82.14[;]”

f. Section 44(e) amended N.C. Gen. Stat § 163-82.14 (including adding in a new subsection, (c1)), governing maintenance of the list of registered voters, by, among other things, requiring that:

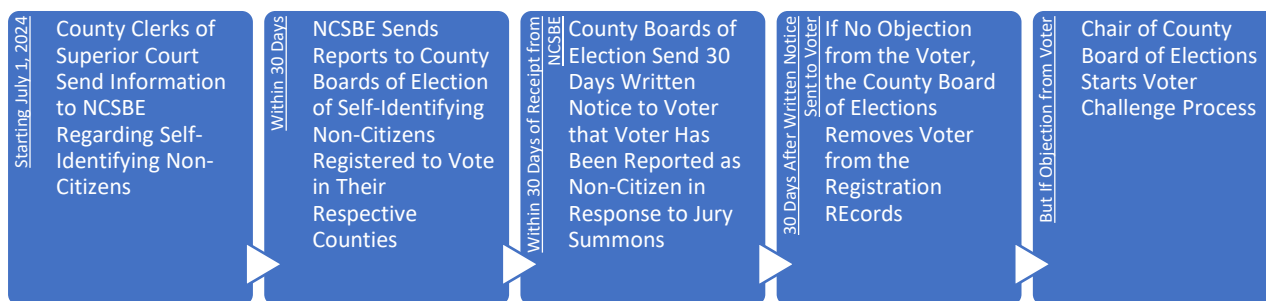
i. The NCSBE “shall” review the voter registration and citizenship status of each person identified in the information that the NCSBE receives from clerks of court pursuant to N.C. Gen. Stat. § 9-6.2(b);

ii. The NCSBE “shall” distribute to each county board of elections a report of any person identified who is registered to vote in that county, within 30 days of the NCSBE’s receipt of information from the respective county’s Clerk of Superior Court;

iii. The county boards of elections “shall”, within 30 days of the respective county board of elections’ receipt of the information from the NCSBE, send 30 days’ written notice to the voter that he or she has been reported as someone who identified him- or herself as a non-citizen to the Clerk of Superior Court in response to a jury summons;

- iv. If the voter makes no objection, the county board of elections “shall” remove his or her name from its registration records and provide written notice of removal to the voter;
- v. If the voter objects to the removal within 30 days of when the notice was sent by the county board of elections, the chair of the county board of elections “shall” enter a challenge to the voter, and a hearing on the voter’s registration status must be held under N.C. Gen. Stat. § 163-85 with the rebuttable presumption that the voter is not a citizen of the United States.

68. Thus, Section 44 contemplates a rolling process, summarized as follows:



69. Accordingly, the process contemplated by Section 44, which contains a number of safeguards to prevent the removal of lawfully qualified voters, can take up to 90 days if the voter does not object to her or his removal and potentially longer if the voter objects to removal.

V. The NCSBE is Refusing to Conduct the Due Diligence Required by Section 44 Before the November 4, 2024 Election.

70. Section 44 went into effect on July 1, 2024.

71. On July 10, 2024, the RNC and NCGOP sent correspondence to the NCSBE, seeking assurances that it was complying with Section 44's requirements in connection with the November 5, 2024 election. *See* Exhibit A.

72. The NCSBE has never substantively responded to any part of the July 10, 2024 correspondence, including but not limited to the concerns raised regarding the NCSBE's compliance with Section 44.

73. Upon information and belief, the NCSBE is refusing to comply with Section 44 and refusing to comply with the process set forth in Section 44 to conduct due diligence on self-identified non-citizens prior to the November 5, 2024 election.

VI. The NCSBE is in Violation of North Carolina's Public Records Act by Failing to Respond to Plaintiffs' Public Records Act Request.

74. On July 10, 2024, Plaintiffs sent correspondence to the NCSBE demanding a narrowly tailored production of public records related to, among other things, the NCSBE's compliance with Section 44. *See* Exhibit A p.8.

75. The request sought the following records:

In addition, we request, under Chapter 132 of the North Carolina General Statutes, as well as N.C. Gen. Stat. §§ 9-6.2(b) and 163-82.14(c1)(3), copies of:

5. Any guidance issued by the NCSBE to the county boards of elections regarding compliance with Section 44;
6. The “schedule as determined by the State Board of Elections” referenced in N.C. Gen. Stat. § 9-6.2(b);
7. Any “information regarding requests to be excused from jury duty on the basis that the person is not a citizen of the United States to the State Board of Elections” referenced in N.C. Gen. Stat. § 9-6.2(b);
8. Any guidance issued by the NCSBE regarding compliance with Section 44’s requirement that the information received thereunder be used for “list maintenance efforts in accordance with G.S. 163-82.14;”
9. “The list of persons requesting to be disqualified from jury duty due to lack of being a citizen of the United States,” as referenced in N.C. Gen. Stat. § 9-6.2(b);
10. Any reports distributed to county boards of elections of persons identified by the process set out in N.C. Gen. Stat. § 9-6.2 who are registered to vote in that county, as referenced in N.C. Gen. Stat. § 163-82.14(c1);
11. Any records retained pursuant to N.C. Gen. Stat. § 163-82.14(c1), see section 163-82.14(c1)(3).

76. The July 10, 2024 correspondence also contained a narrowly tailored demand for production of public records related to the NCSBE’s list maintenance efforts and HAVA compliance efforts. *See Exhibit A p.6.*

77. The request sought the following records:

Pursuant to Chapter 132 of the North Carolina General Statutes, we also request copies of the following documents:

1. The most recent version of North Carolina's computerized registered voter list;
2. Any separate list of registered voters for whom the NCSBE has not collected driver's license and social security numbers;
3. NCSBE's currently in-effect list maintenance policy; and
4. Documents and correspondence related to NCSBE not requiring voters to fill in the driver's license and social security numbers on their voter registration form.

78. Plaintiffs' requests for public records, described above, are hereinafter referred to in this Complaint as the "Public Records Requests".

79. In response to the requests for public records, the NCSBE opened two public request matters, Request 24-143 (regarding the HAVA-related documents) and Request 24-44 (regarding the Section 44-related documents). True and accurate copies of July 11, 2024 emails from the NCSBE reflecting the opening of those matters are attached hereto to this Complaint as **Exhibit B**.

80. To date, other than the emails opening the two matters, Plaintiffs have received no communication, nor any production of documents, regarding the public records requests from the NCSBE.

81. N.C. Gen. Stat. § 132-1(a) defines a "public record" as:

(a) "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government.

82. The Public Records Act provides that, "[t]he public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people" and "[e]very custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision by any person, and shall, as promptly as possible, furnish copies thereof upon payment of any fees as may be prescribed by law." *Id.* §§ 132-1(b), 132-6(a).

83. Section 44.(d) established that information about persons who have self-reported as noncitizens as an excuse from jury duty is a public record. *See* N.C. Gen. Stat. § 9-6.2(b) ("The list of persons requesting to be disqualified from jury duty due to lack of being a citizen of the United States shall be a public record subject to G.S. 163-82.10(a1).").

84. The Public Records Act also provides that any person denied access to public records "may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying, and the court shall have jurisdiction to issue such orders if the person has complied with G.S. 7A-38.3E." *Id.* § 132-9(a).

85. Additionally, the Act states that, “[i]n any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys’ fees if attributed to those public records.” *Id.* § 132-9(c).

86. The NCSBE is an agency of the North Carolina government.

87. Plaintiffs properly sought production of public records from the NCSBE through their July 10, 2024 correspondence to the NCSBE.

88. The NCSBE has produced no records in response to Plaintiff’s July 10, 2024 correspondence.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment – Violation of Section 44)

89. Plaintiffs hereby incorporate by reference all paragraphs of this Compliant and re-incorporate those paragraphs as if fully set forth herein.

90. Plaintiffs bring this claim for declaratory judgment pursuant to N.C. Gen. Stat. § 1-253 *et seq.* as to the rights, status, or other legal relations between Plaintiffs and Defendants.

91. NCSBE is an agency created by statute that only has the authority expressly provided to it by the North Carolina General Assembly and the Constitution of the State of North Carolina.

92. Section 44 added a requirement to North Carolina law that the county clerks of court share with the NCSBE information by which persons who were summoned for jury service self-identified as non-citizens, for the NCSBE to use in determining whether such people were unlawfully registered to vote.

93. Section 44 took effect on July 1, 2024.

94. Section 44 does not contain an exception allowing the NCSBE to delay implementation until after the November 5, 2024 election.

95. Upon information and belief, the county clerks of court have complied with Section 44 by sending the required information to the NCSBE or are ready, willing, and able to do so upon proper guidance from the NCSBE.

96. Upon information and belief, the NCSBE is refusing to comply with and implement the requirements of Section 44 prior to the November 5, 2024 election.

97. Plaintiffs believe that the NCSBE must comply with and implement Section 44 immediately – and should have done so starting on July 1, 2024 – so that the NCSBE and county boards of election could have sufficient time to ensure that the safeguards contained in Section 44, ensuring that only self-identified non-citizens are removed, are followed.

98. An actual, real, presently existing, concrete and justiciable controversy exists between Plaintiffs and Defendants in regard to, among other things, whether the NCSBE must enforce the provisions of Section 44 prior to the November 2024 election.

99. Further, the NCSBE's actions have harmed and will continue to harm Plaintiffs by improperly restricting statutory rights granted to Plaintiffs by the General Assembly as citizens, voters, participants in the electoral process, and political parties under Chapter 163 of the North Carolina General Statutes.

100. Specifically, Plaintiffs seek a declaratory judgment that:

a. The NCSBE's failure to implement and comply with Section 44 is in violation of Section 44;

b. The NCSBE must comply with the provisions of Section 44, in all respects, in conducting the November 2024 election;

c. In order for Defendants to comply with the requirements of Section 44 prior to the November 5, 2024 election, they must transmit the reports required by N.C. Gen. Stat. § 163-82.14(c1)(b) to the respective county boards of election immediately; and

d. The Defendants, and the county boards of election they supervise, must expedite compliance with Section 44 given Defendants' delayed compliance to date.

SECOND CLAIM FOR RELIEF

(Violation of NC Public Records Act, N.C. Gen. Stat. § 132-9)

101. Plaintiffs hereby incorporate by reference all paragraphs of this Complaint and re-incorporate those paragraphs as if fully set forth herein.

102. Under the North Carolina Public Records Act, "[a]ny person who is denied access to public records for purposes of inspection and examination, or who is

denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure or copying." N.C. Gen. Stat. § 132-9(a).

103. Additionally, the court shall allow a party seeking disclosure of public records who substantially prevails to recover its reasonable attorneys' fees if attributed to those public records." *Id.* § 132-9(c).

104. Plaintiffs' Public Records Requests clearly seek documents made or received in connection with the transaction of public business by an agency of North Carolina government.

105. Specifically, the Public Records Requests sought documents from the NCSBE, which is an agency of North Carolina government.

106. The Public Records Requests also sought documents concerning NCSBE's HAVA compliance efforts and Section 44 compliance efforts, both of which show efforts (or the lack thereof) by the NCSBE to comply with North Carolina and federal law, which comes under the definition of the "transaction of public business" in N.C. Gen. Stat. § 132-1(a).

107. Accordingly, Plaintiffs are entitled to a judgment compelling disclosure of the documents sought in the Public Records Requests.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

1. Enter a Declaratory Judgment that Defendants must immediately comply with the requirements of Section 44 prior to the November 5, 2024 election;
2. Enter a Declaratory Judgment that, in order for Defendants to comply with the requirements of Section 44 prior to the November 5, 2024 election, they must transmit the reports required by N.C. Gen. Stat. § 163-82.14(c1)(b) to the respective county boards of election immediately;
3. Enter a Declaratory Judgment that Defendants, and the county boards of election they supervise, must expedite compliance with Section 44 given Defendants' delayed compliance to date;
4. Set a prompt hearing for the declaratory judgment dispute pursuant to N.C. R Civ. P. 57;
5. Set the public records dispute for immediate hearing pursuant to N.C. Gen. Stat. § 132-9(a);
6. Permit Plaintiffs to take expedited written and deposition discovery regarding Defendants' Section 44 compliance efforts (or lack thereof), the documents sought in the Public Records Requests, and the efforts by Defendants to respond to the Public Records Requests;
7. Enter an Order requiring Defendants to fully respond to the Public Records Requests within five (5) days;

8. Issue a preliminary and permanent injunction ordering Defendants to develop, implement, and enforce practices and policies to ensure compliance with Section 44 and the North Carolina Public Records Act;

9. Issue a preliminary and permanent injunction directing Defendants, under a Court-approved plan including mandatory reporting and monitoring requirements, to take all actions necessary to remedy their violations of Section 44, specifically including expeditiously seeking and processing the information required to be shared with them by the county clerks of court, sharing the reports with the county boards of election, and facilitating the process for determining whether self-identified non-citizens should remain on North Carolina's registered voter list;

10. Issue a preliminary and permanent injunction directing Defendants, under a Court-approved plan including mandatory reporting and monitoring requirements, to take all actions necessary to comply with Section 44 going forward, including seeking and processing the information required to be shared with them by the county clerks of court, sharing the reports with the county boards of election, and facilitating the process for determining whether such people should remain on North Carolina's registered voter list;

11. Enter an Order pursuant to N.C. Gen. Stat. § 132-9, or other applicable law, awarding Plaintiffs their reasonable attorney's fees;

12. Retain jurisdiction over this matter to ensure Defendants comply with any orders issued by this Court;

13. Order a trial by jury on all issues that are triable by jury; and
14. Award such other and further relief in Plaintiffs' favor as the Court deems just and proper.

**BAKER DONELSON BEARMAN,
CALDWELL & BERKOWITZ, PC**

By: /s/ John E. Branch III
John E. Branch III
North Carolina State Bar # 32598
Thomas G. Hooper
North Carolina State Bar # 25571
2235 Gateway Access Point, Suite 220
Raleigh, NC 27607
Ph: (984) 844-7900
jbranch@bakerdonelson.com
thooper@bakerdonelson.com

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Philip J. Strach
Phillip J. Strach
North Carolina State Bar no. 29456
Jordan A. Koonts
North Carolina State Bar no. 59363
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Ph: (919) 329-3800
phil.strach@nelsonmullins.com
jordan.koonts@nelsonmullins.com

Attorneys for Plaintiffs