

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

JOHNNY THOMAS ORTIZ II; JIMMIE  
GREGORY ROGERS JR.; and WELDON  
MURPHY,

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,

Defendants.

Civil Action No.: 5:24-cv-420

**MEMORANDUM OF SPEAKER TIMOTHY MOORE, IN HIS OFFICIAL CAPACITY  
AS SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES;  
REPRESENTATIVE DESTIN HALL, IN HIS OFFICIAL CAPACITY AS CHAIRMAN  
OF THE COMMITTEE ON RULES, CALENDAR, AND OPERATIONS OF THE  
HOUSE; AND REPRESENTATIVE GREY MILLS, IN HIS OFFICIAL CAPACITY AS  
CHAIRMAN OF THE COMMITTEE ON ELECTION LAW AND CAMPAIGN  
FINANCE REFORM, IN SUPPORT OF THEIR UNOPPOSED MOTION FOR LEAVE  
TO PARTICIPATE AS *AMICI CURIAE***

Speaker Timothy Moore, in his official capacity as Speaker of the North Carolina House of Representatives; Representative Destin Hall, in his official capacity as Chairman of the Committee on Rules, Calendar, and Operations of the House, and Representative Grey Mills, in his official capacity as Chairman of the Committee on Election Law and Campaign Finance Reform (collectively, “the Legislators”), move this Court for leave to file the attached memorandum as *amici curiae* in support of Plaintiffs Johnny Thomas Ortiz II, Jimmie Gregory Rogers Jr., and Weldon Murphy in their Motion for Preliminary Injunction.

The North Carolina House of Representatives has a strong interest in this case. It is an important state interest to ensure that citizens of North Carolina can fully exercise their First and Fourteenth Amendment rights to cast their votes effectively, to speak and associate for political purposes, and to grow and develop their political party in accordance with democratic tradition. *See Van Allen v. Cuomo*, 621 F.3d 244, 249 (2d Cir. 2010) (holding that “the state has a legitimate interest in encouraging new voter registration”); *Democratic Party of Haw. v. Nago*, 982 F. Supp. 2d 1166, 1180 (D. Haw. 2013) (holding that Hawaii open primary statute was supported by “important and legitimate State rights such as . . . encouraging voter participation by removing barriers to vote”), *aff’d*, 833 F.3d 1119 (9th Cir. 2016); *see also California Democratic Party v. Jones*, 530 U.S. 567, 586 (2000) (Kennedy, J., concurring) (“Encouraging citizens to vote is a legitimate, indeed essential, state objective; for the constitutional order must be preserved by a strong, participatory democratic process.”). These interests are implicated in this case, as the dispute concerns the ability of a new political party to access the ballot box, and correlatively, the right of citizens to vote for their preferred candidates. Because the state of North Carolina has an interest, Speaker Moore shares that interest. *See Berger v. North Carolina State Conf. of the NAACP*, 597 U.S. 179, 191 (2022) (recognizing that North Carolina’s legislative leaders are duly

authorized representatives of the State for the purposes of defending the State’s interest in the interpretation of its laws and that “federal courts should rarely question that a State’s interests will be practically impaired or impeded if its duly authorized representatives are excluded from participating in federal litigation challenging state law.”).

Because several North Carolina statutes are implicated in this case, including N.C. GEN. STAT. §§ 163-96 and 163-98, which govern procedures for qualifying new political parties and placing candidates on the ballot, the Legislators also have an interest in the proper interpretation of these statutes insofar as they are relevant to the analysis of Plaintiffs’ constitutional claim.

Furthermore, the Legislators’ proposed memorandum as *amici curiae* will assist the Court in deciding Plaintiffs’ preliminary injunction motion. In applying the *Anderson v. Celebrezze*, 460 U.S. 780 (1983) test, in which courts ask at the first step whether the challenged state practice imposes “reasonable, nondiscriminatory restrictions,” or instead imposes “severe” restrictions, *id.*, the Legislators’ brief explains how the North Carolina State Board of Elections enforces the law discriminatorily. The brief shows that the State Board has no state interest in denying ballot access on the basis of an investigation into petition fraud, given that the North Carolina legislature has not given the State Board this authority. Additionally, the brief explains why the State Board’s means of advancing this alleged interest—a survey—is not narrowly drawn, as it is conducted with a small, non-representative, non-random sample.

The Complaint and plaintiffs’ Motion for Preliminary Injunction in this action were filed on July 22, 2024. Thus, this litigation is in the very early stages, and the Legislators acted immediately upon learning of the pendency of this action. Where, as here, the Legislators can provide helpful guidance to the Court, and their motion to participate as *amici curiae* is timely and

will not cause delay, the Legislators urge the Court, in its discretion, to grant the motion, which is unopposed by the parties. *See Tafas v. Dudas*, 511 F. Supp. 2d 652, 659 (E.D. Va. 2007).

For the reasons set forth above, the Legislators respectfully request that the Court grant their motion to participate as *amicus curiae*.

Dated: July 26, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on July 26, 2024, I caused a true and correct copy of the foregoing to be served electronically via the Court's CM/ECF system on all counsel registered to receive such notices.

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