

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF NORTH CAROLINA  
 WESTERN DIVISION  
 Case No. 5:24-cv-00420-BO-BM

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| JOHNNY THOMAS ORTIZ, II, et al.                    | ) |                                |
|  | ) |                                |
| Plaintiffs,  | ) |                                |
|  | ) |                                |
| v.   | ) | <b>DEFENDANTS’ RESPONSE TO</b> |
|  | ) | <b>PLAINTIFFS’ MOTION FOR</b>  |
| NORTH CAROLINA STATE BOARD OF<br>ELECTIONS, et al. | ) | <b>PRELIMINARY INJUNCTION</b>  |
|  | ) |                                |
| Defendants.  | ) |                                |
|  | ) |                                |

Defendants hereby respond to Plaintiffs’ Motion for Preliminary Injunction. [D.E. 8, 9].

**INTRODUCTION**

This suit arises out of the North Carolina State Board of Elections’ decision not to certify the Justice for All Party (“JFA”) for inclusion on the ballot during the November 2024 election cycle. State law requires parties seeking certification to file with the State Board petitions signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor.” N.C.G.S. § 163-96. After undertaking an investigation, the State Board was unable to conclude that JFA had established the party’s compliance with this state-law requirement. For that reason, the State Board denied certification. This decision was lawful—and indeed was the only one permissible under state law, given JFA’s failure to substantiate the requisite number of signatures. This Court should reject each of Plaintiffs’ arguments to the contrary.

## **STATEMENT OF THE FACTS**

Plaintiffs are not the proposed political party or the candidate it seeks to nominate for President. [D.E. 1]. Plaintiffs are three voters who signed JFA’s petition who assert injuries based upon their desire to see JFA recognized in North Carolina and Dr. Cornell West on the ballot. [D.E. 1, ¶¶ 2, 7-9]. The State Board is the state agency tasked with administering elections, enforcing election laws, and investigating the administration of election laws, frauds, and irregularities in elections in North Carolina. *See* N.C.G.S. § 163-22. In 2024, three parties sought certification from the State Board of Election: the Constitution Party of North Carolina (“Constitution Party”), We The People Party (“WTP”), and the Justice For All Party of North Carolina (“JFA”). *See* Declaration of Paul Cox, ¶ 3 (“Cox Decl.”). The State Board voted to certify two of these parties (WTP and the Constitution Party) and deny the third (JFA).

### **I. New Party Certification Process Under North Carolina Law.**

The new party certification process is governed by N.C.G.S. § 163-96. For new party certification, subsection (a)(2) of that statute requires the new party to file with the State Board petitions “signed by registered and qualified voters in this State equal in number to one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor.” Based on the 2020 gubernatorial race, for this election cycle that number is 13,865. [Cox Decl., ¶ 4]. The petition must also be signed by at least 200 voters from three different congressional districts, and it must be filed with the State Board by June 1, 2024. N.C.G.S. § 163-96(a)(2). Once the State Board receives this information from the parties, it “shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State chair of the proposed new political party.” *Id.*

There are several other requirements found outside subsection (a)(2). Specifically, subsection (b) requires that the signature petition sheets contain certain information about the party, including specific language in the heading that identifies the name of the party, the county in which the signatures are being collected, the purpose of the petition being the formation of a new political party, and the name of the state chair for the party and their address and telephone number. *Id.*, § 163-96(b). Additionally, “the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.” *Id.*

To ascertain compliance with these requirements, an applicant party’s petitions must first be submitted to the county boards in the county in which the signatures were obtained. *Id.*, § 163-96(c). The county boards must verify that each signer is qualified and registered to vote in that county. *Id.* Because the statute also requires the county boards to “to examine and verify *the signatures*” and to certify that “*the signatures* on the petition have been checked against the registration records,” *id.* (emphasis added), the State Board interprets this statute to require county boards to compare each signature on the petition to the signature in the official registration records of the corresponding registered voter and determine that there is a reasonable resemblance between the signatures, before validating that signature. [Cox Decl., ¶ 6]. If the signer does not match a qualified and registered voter in that county, their signature cannot be counted toward the total, even if that voter is qualified to vote but is registered elsewhere in the state. N.C.G.S. § 163-96(c). The county boards then send the verified petition sheets back to the party with a certification stating the signatures have been checked against the registration records and indicating the number verified as qualified and registered to vote. *Id.*

This process at the county level does not determine whether the total number of verified signatures has been met, whether sufficient signatures from three different congressional districts

have been validated, or whether the purpose and intent of the party was properly explained to those who signed. Those determinations are made by the State Board. [Cox Decl. ¶ 7].

As a practical matter, the process starts with a new political party filing a petition request with the State Board. *Id.*, ¶ 8. The State Board provides a standardized signature sheet to ensure that the party fills in the required information in the header and the signers are prompted to include their required information. *Id.* The party completes the signature sheet header information and starts gathering signatures. *Id.* The party must submit all signature sheets by May 17, but parties may submit signature sheets on a rolling basis as they are completed, and we encourage them to do so to avoid delays in the review of their petitions. *Id.* The county boards are then able to conduct their signature comparison and verification of registration on a rolling basis so that verified signatures are returned to the party to later be submitted to the State Board. *Id.*

When a county board verifies petition sheets, it also inputs that number of verified signatures into a statewide database. *Id.*, ¶ 9. Drawing from that database, the State Board maintains a website that shows the current status of all petition drives for contests and matters within the jurisdiction of the State Board, including new political party petitions. *Id.* The numbers contained on that site indicate only how many times a county board has confirmed that a person who signed the petition sheet's signature matches their signature in the registration records and is qualified and registered to vote in that county. *Id.* It does not indicate whether the party has met the other requirements of N.C.G.S. § 163-96, nor does it include a list of signers of the petition. *Id.*

Upon receipt of verified signature sheets from the county boards, the new party files those with the State Board so that the agency can conduct its final review, ideally on a rolling basis. *Id.*, ¶ 10. State Board staff then reviews and audits the signature sheets and certifications of county

boards to ensure that signature matching and verification of registration was properly conducted at the county level, and to confirm the requisite number of validated signatures were submitted. *Id.* If any discrepancies are found, staff contact the county board to resolve the issue and, if necessary, obtain updated verifications. *Id.* During this process, if county board staff, State Board staff, or a member of the public raise concerns about whether a new party petition has complied with the law, State Board staff review those concerns in order to adequately inform the State Board in advance of when it makes a final determination.<sup>1</sup> *Id.*

In determining whether a party has met all requirements under subsection (b) of section 163-96, the State Board examines whether the petition sheets contain all required information and whether signature gatherers explained the purpose and intent of the party to the voters. *Id.*, ¶ 11. While the petition sheets speak for themselves, as a practical matter, compliance with the purpose-and-intent requirement is generally substantiated through documents or statements submitted by the parties themselves because, as the organization that collected the signatures, they possess the information to demonstrate compliance. *Id.* Such documents have included training materials the parties provided to their signature gatherers, including instructions or scripts that would explain the purpose and intent of the parties. *Id.*

## **II. 2024 New Party Certification Process.**

Concerns were raised for each of the three parties seeking certification before the 2024 general election. [Cox Decl., ¶ 12]. For the Constitution Party, a concern was discovered during a State Board meeting about whether the correct address for the party chair appeared on the petition

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<sup>1</sup> To the extent any concerns touch on potential criminal violations, such as fraudulent signature submissions, State Board staff investigate those allegations. *See* N.C.G.S. §§ 163-22(d), 163-221. Once completed, State Board staff then prepare their findings and report them to the State Board. [Cox Decl., ¶ 10]. Any findings of criminal violations are reported to the State Bureau of Investigation for further investigation and prosecution. N.C.G.S. § 163-22(d).

sheets. *Id.* For both WTP and JFA, an advocacy group named Clear Choice Action and the North Carolina Democratic Party raised concerns about whether those parties met the statutory requirements to form a new party, including a question raised by Clear Choice Action about whether the WTP petition sheets included the correct address for the party chair. *Id.* The communications received by the State Board were shared with the parties seeking to be certified, and the parties had the opportunity to respond. *Id.* All such objections and responses were posted on the State Board’s meeting webpage for the June 26, 2024 meeting, so that all parties were aware of the questions raised and responses given. *See* June 26, 2024 State Board Meeting Page, [https://dl.ncsbe.gov/index.html?prefix=State\\_Board\\_Meeting\\_Docs/2024-06-26/New%20Party%20Petitions/Objections/](https://dl.ncsbe.gov/index.html?prefix=State_Board_Meeting_Docs/2024-06-26/New%20Party%20Petitions/Objections/), last visited July 25, 2024.<sup>2</sup>

During or soon after the county board verification process, but prior to concerns raised by outside parties, a county board director independently reported potentially fraudulent signatures within a petition sheet submitted in support of JFA. [Cox Decl., ¶ 14]. Three additional counties raised concerns with mismatched birthdates and signatures that could potentially indicate fraudulent signatures included as part of the JFA petition. *Id.* These reports led to criminal investigations into the JFA petition process by the investigations division at the State Board and remain ongoing. *Id.*

Prior to the June 26, 2024 State Board meeting, the Chair submitted requests to each of the three pending new parties to submit additional information regarding how the purpose and intent

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<sup>2</sup> This Court may take judicial notice of the State Board’s policies, records, meetings, and meeting materials as they are official government records that are publicly available on the State Board website. *Fauconier v. Clarke*, 652 F. App’x. 217, 220 (4th Cir. 2016); *Philips v. Pitt Cnty. Mem. Hosp.*, 572 F.3d 176, 180 (4th Cir.2009) (courts “may properly take judicial notice of matters of public record”); *Hall v. Virginia*, 385 F.3d 421, 424 & n.3 (4th Cir. 2004); *see also* Fed. R. Evid. 201.

of each party was communicated to petition signers, and the party chairs were asked to address the Board at the meeting. *Id.*, ¶ 17.

**a. The Constitution Party of North Carolina.**

The Constitution Party began its petition efforts and started submitting petition sheets to county boards in January of 2021. On June 26, 2024, the State Board met to review certification of the Constitution Party. *See* June 26, 2024 State Board Meeting, 22:30-1:16:45, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-06-26/State%20Board%20of%20Elections%20Meeting-20240626%20000-1.mp4](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-06-26/State%20Board%20of%20Elections%20Meeting-20240626%20000-1.mp4), last visited July 26, 2024. Among other issues, the State Board had a concern about whether the correct address for the party chair appeared on the petition sheets, and in order to gain additional time to consider the issue, a motion to certify the party at that time failed. *Id.*, 22:30-1:16:45; 3:14:12-3:18:13.

On July 9, 2024, the State Board concluded that the requirement of having the party chair's address on the signature pages was not sufficiently weighty to justify denial of certification. As a result, the State Board unanimously certified the Constitution Party as a political party in North Carolina. *See* July 9, 2024 State Board Meeting, 13:14-26:30, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-09/State%20Board%20of%20Elections%20Meeting-20240709%201730-1.mp4](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-09/State%20Board%20of%20Elections%20Meeting-20240709%201730-1.mp4), last visited July 26, 2024.

**b. We The People Party.**

WTP began its petition process in January of 2024, with most of its signature sheets submitted to county boards at the end of April and beginning of May. [Cox Decl., ¶ 19]. In total, WTP submitted 24,509 signatures, 5,940 of which could not be verified, and 18,569 of which were verified at initial review by the county boards. *Id.* Upon State Board staff's review, however, the

total number of validated petition signatures received by the State Board was 18,309, or 4,444 over the minimum requirement. *Id.*

On June 26, 2024, the State Board met to review certification of WTP. The State Board reviewed documents and heard from the WTP chair and its vice chair on the subjects of how signatures were gathered, the training signature gatherers underwent, the instructions for those signature gatherers for how to describe the party's intent and purpose that was explained to voter's signing the petitions, the party's bylaws that showed the party's stated purpose, and that all petition sheets were gathered by the party itself or agents under its control. *See* June 26, 2024 State Board Meeting, 2:21:15-3:12:20. As part of its review, the State Board raised whether it was appropriate for a party's purpose to be focused upon a single candidate or whether that single candidate was required to seek access to the ballot via N.C.G.S. § 163-122, which governs petitions by unaffiliated candidates. *Id.*, 2:54:30-2:56:12. The State Board also considered affidavits from registered voters who signed the WTP petitions. *Id.*, 2:34:25-2:36:36. These voters claimed in their affidavits that they were not properly informed of the party's intent and purpose and now wished to withdraw their signatures. *Id.* A motion to certify the party at that time failed, but rather than deny certification, the State Board's consideration of the petition remained pending, to allow additional time to seek further information from WTP and for staff to conduct further inquiry into whether the purpose and intent of the party was communicated to voters who signed the petition. *Id.*, 3:12:18-3:14:09; 3:28:20-3:28:52.

Following the June 26, 2024, meeting, the State Board Chair issued administrative subpoenas to WTP, pursuant to N.C.G.S. § 163-23, seeking additional documents regarding the aspiring party's stated purpose and intent, training and instructions, and other documents demonstrating compliance with the governing statutes. [Cox Decl., ¶ 21]. WTP responded by July



8, 2024, with documents. *Id.* Similar subpoenas were sent to the Robert F. Kennedy, Jr. campaign and to a petition firm hired by WTP, and the petition firm responded. *Id.* The State Board also directed staff to attempt to contact and interview 26 voters who completed affidavits, submitted by Clear Choice Action as part of its communications to the State Board, seeking to withdraw their names from the WTP petition. *Id.* Staff were able to contact and interview 9 people, and summaries of the responses to interview questions were made available on the meeting webpage for the July 16, 2024, State Board meeting. *See* Summary Calls Statement created by State Board Staff and posted on the July 16, 2024 State Board meeting website, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf), last visited July 25, 2024.

On July 16, 2024, the State Board met again to take up the certification of WTP. *See* July 16, 2024 State Board Meeting, 11:25-30:15. Prior to the meeting, the State Board received information from staff regarding the interviews that were conducted and the additional documentation provided by WTP in its responses to the subpoenas. *Id.*, 11:35-11:51; *see also* State Board Meeting Page Documents, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf), and [https://dl.ncsbe.gov/index.html?prefix=State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/We%20The%20People/](https://dl.ncsbe.gov/index.html?prefix=State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/We%20The%20People/), last visited July 26, 2024. The additional documentation from WTP indicated that the party provided training and instructions to their signatures gatherers, consistent with their bylaws, to inform voters of the party's intent and purpose when they were asked to sign the petitions. *Id.* The primary question

discussed by the State Board was whether a party whose purpose is centered upon gaining access to the ballot for a single candidate is barred from utilizing the new party petition process because an alternative process exists for unaffiliated candidates. *Id.*, 12:10-29:24. State Board Member Millen provided a legal explanation to support the reasoning that an individual candidate must go through the more onerous process of seeking access to the ballot as an unaffiliated candidate, which also applied to JFA. *Id.* However, the four other members disagreed with this position, ultimately finding that state law does not expressly mandate that single candidate parties must use the unaffiliated candidate process or expressly prohibit a party's purpose from being centered on a single candidate. *Id.* As a result, the State Board voted to certify WTP as a political party in North Carolina. *Id.*, 29:24-30:15.

**c. The Justice for All Party of NC.**

JFA began its petition process in January of 2024 and most of its signature sheets were submitted to county boards at the end of April and beginning of May. [Cox Decl., ¶ 24]. In total, JFA submitted 30,719 signatures, 13,357 of which could not be verified, and 17,362 of which were verified at initial review by the county boards. *Id.* Upon State Board staff's review, however, the total number of validated petition signatures received by the State Board was 17,141, or 3,276 over the minimum requirement. *Id.*

As stated above, the State Board had received reports from county boards that petition sheets submitted by JFA contained fraudulent signatures and, based on that information, State Board staff began a criminal investigation into this issue. *Id.*, ¶ 2. JFA's chair was informed by State Board staff of the existence of this investigation before the June 26, 2024, State Board meeting. *Id.*

On June 26, 2024, the State Board met to consider certification of JFA. The State Board reviewed documents submitted by JFA and heard from the JFA chair. *See* June 26, 2024 State Board Meeting, 1:24:09-2:12:45. He confirmed how signatures were gathered by the party, its volunteers, and its agents, the training signature gatherers underwent, and the instructions for those signature gatherers received regarding for how to describe the party's intent and purpose to voter's signing the petitions. *Id.* Unlike the other two parties seeking certification who could speak to all signatures gathered on their behalf, the JFA chair candidly admitted to the State Board that JFA could only verify that approximately 4,000 of the 30,719 signatures submitted in support of the JFA party actually came from JFA party or its agents. *Id.*, 1:51:12-1:53:48. While some of the remainder may have come from JFA volunteers, the chair could not verify how much or how many of the remaining 26,000 signatures were possibly collected by unrelated third parties, including an organization known as Party Over People. *Id.* The chair also admitted that he had very little knowledge about Party Over People collecting signatures on behalf of JFA, JFA had no coordination or control over this organization, which acted independently of JFA and whose practices were not reviewed or approved by JFA, and that was an oversight by JFA. *Id.*, 1:27:35-1:34:00;1:40:40-1:41:55.

Similar to the WTP, the State Board also raised whether the issue of whether JFA was simply a vehicle for a single candidate to access the ballot, instead of accessing the ballot via N.C.G.S. § 163-122, which governs petitions by unaffiliated candidates. *Id.*, 1:35:30-1:36:10. Additionally, the Board considered a video being circulated online by a journalist from the Washington Post, and brought to the attention of the State Board by Clear Choice Action, which depicted a signature gatherer effort for JFA. *Id.*, 1:25:23-1:27:15. The video was played during the meeting and was made available as part of the meeting materials in advance of the meeting. *Id.* It

depicted a signature gatherer at a republican candidate's political rally in North Carolina seeking signatures for JFA and instructing voters that the purpose of the party was to take votes away from President Biden. *Id.* The JFA chair stated that this was not the party's purpose or intent. *Id.* A motion to certify the party at that time failed; but rather than deny certification, the State Board's consideration of the petition remained pending, to seek additional information from JFA, and for staff to conduct further inquiry into whether the purpose and intent of the party was communicated to voters who signed the petition. *Id.*, 2:07:50-2:09:10.

Following the June 26, 2024 meeting, the State Board Chair issued subpoenas to JFA, pursuant to N.C.G.S. § 163-23, seeking additional documents regarding the aspiring party's stated purpose and intent, training and instructions, and other documents demonstrating compliance with the governing statute. [Cox Decl., ¶ 27]. JFA responded by July 8, 2024, with documents. *Id.* The State Board Chair also issued subpoenas to People Over Party, the third-party organization that collected signature petition sheets on behalf of JFA, seeking documents showing the names of signature gatherers, petition sheets, and documents demonstrating how the purpose and intent of the JFA party was explained to voters. *Id.* Specifically, these subpoenas were sent to Paul Hamrick, counsel for People Over Party, as well as three of his associates. *Id.* Earlier in the process, Mr. Hamrick had spoken with State Board staff in connection with staff's investigation into potentially fraudulent signatures, after which time he provided a training document, which was considered by the Board. *Id.* In addition to referring to this previous submission, he objected to the subpoena. *See* July 4 Letter from Paul Hamrick included with the July 16, 2024 State Board meeting materials, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/Hamrick/Paul%20Hamrick%20Response.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/Hamrick/Paul%20Hamrick%20Response.pdf), last visited July 25, 2024. Mr. Hamrick separately responded on behalf of two of the

associates who received subpoenas, referring to his response and a response on behalf of them. [Cox Decl., ¶ 27]. The State Board Chair sent a similar subpoena to the Cornel West campaign, and that campaign responded. *Id.* The State Board also directed staff to attempt to contact and interview 66 voters who signed affidavits, submitted by Clear Choice Action, seeking to withdraw their signatures from the petition. *Id.* Through those contacts, staff reached 10 voters and summaries of the responses to interview questions were made available on the meeting webpage for the July 16, 2024, State Board meeting. *See* Summary Calls Statement compiled by State Board staff, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20Statements.pdf), last visited July 25, 2024.

On July 9, 2024, the State Board directed staff to generate a list of 250 randomly selected voters from JFA's petition sheets to contact via telephone to determine whether and how the purpose and intent of the JFA party was explained to them prior to their signing the petition. [Cox Decl., ¶ 29]. On July 10 and 11, State Board staff attempted to contact these 250 voters from the randomized list, and 49 were reached. *Id.* Descriptions of these signers' responses to interview questions were made available on the meeting webpage for the July 16, 2024, State Board meeting. *See* Summary Calls to JFA Signers at Random, compiled by State Board staff, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20to%20JFA%20Signers%20at%20Random.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20to%20JFA%20Signers%20at%20Random.pdf), last visited July 25, 2024.

On July 16, 2024, the State Board met and took up the certification of JFA. The Board considered the additional documentation provided by JFA and others in the responses to the subpoenas, and the refusal of the third party organizations to respond to subpoenas. *See* July 16,

2024 State Board Meeting, 30:15-45:15. The State Board also received an update from staff regarding the interviews conducted and the signers contacted from the randomly generated list. These interviews indicated that 28 out of 49 voters either did not have the purpose and intent of the JFA properly explained to them or did not sign the petition at all. *Id.*, 30:20-32:35; 36:35-36:55.

Faced with this evidence indicating that JFA had not demonstrate that it met all requirements under the statute beyond the 4,000 it submitted itself, and JFA's inability to demonstrate it controlled the collection of the vast majority of the signatures submitted on its behalf, including whether those signature gatherers informed voters of the purpose of the party, the State Board concluded that the JFA party had not sufficiently demonstrated compliance with the statutory requirements to support certification. *Id.*, 30:15-45:15. As a result, the State Board voted 3–2 not to certify JFA as a political party in North Carolina. *Id.*, 43:23-45:15.

### **LEGAL STANDARD**

A preliminary injunction constitutes “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief” and may never be awarded “as of right.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 22, 24 (2008). The plaintiff has the burden to prove “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.” *Id.* at 20. A plaintiff must show that success on the merits is likely regardless of whether the balance of hardships weighs in his favor. *The Real Truth About Obama, Inc. v. F.E.C.*, 575 F.3d 342, 346 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010).

The purpose of a preliminary injunction is to preserve the status quo between the parties. *See, e.g., University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). However, in this action

Plaintiffs seek an injunction that goes beyond preserving the status quo, requesting one that imposes affirmative requirements on Defendants. Thus, Plaintiffs must satisfy a higher, “more searching” burden. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013) (citation omitted).

## ARGUMENT

### **I. PLAINTIFFS CANNOT SHOW A LIKELIHOOD OF SUCCESS ON THEIR CLAIMS BECAUSE THEY LACK STANDING.**

This Court lacks subject matter jurisdiction over Plaintiffs’ claims because they fail to establish they suffered or will suffer a “particularized” injury in fact from the alleged violation, meaning an injury affecting them “in a personal and individual way.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 and 560 n.1 (1992); *Baker v. Carr*, 369 U.S. 186, 204 (1962) (providing that plaintiffs must have “a personal stake in the outcome of the controversy” (cleaned up)).

Plaintiffs are individual voters who signed the JFA petition, but who do not show an intent to associate with the party, and although they allege in the Complaint they wish to vote for the “JFA nominee,” none of them included an averment in their Declarations to that effect. [D.E. 1, ¶ 2; D.E. 8-1, ¶ 1; -2, ¶ 1; -3, ¶ 1]. The only entity or individual that has a personal stake in the certification of JFA as a new party is JFA or its presidential candidate, Dr. West. Plaintiffs’ complaint alleges that they want to vote for “JFA’s nominee,” [D.E. 1, ¶ 2], but their declarations fail to substantiate that allegation. Their allegations concerning the party are candidly based on “information and belief” only. [D.E. 1, ¶¶ 25, 28, 29, 37, and 41]. They are unable to show a true association with JPA or its candidate, or that either even supports their suit. These allegations are insufficient to show a personal stake in either of Plaintiffs’ claims.

### **II. THE COURT SHOULD DECLINE TO EXERCISE JURISDICTION.**

#### **A. Defendants Are Entitled to Eleventh Amendment Immunity under *Pennhurst*.**

“[A]t least insofar as injunctive relief is sought, an error of law by state officers acting in their official capacities will not suffice to override the sovereign immunity of the State where the relief effectively is against it. *See Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 107-17, 124-25 (1984). The core teaching of *Pennhurst* is that “federal courts lack[ ] jurisdiction to enjoin . . . state officials on the basis of . . . state law.” *Id.* at 124-25.

This Court should hold that the individual Defendants here are entitled to Eleventh Amendment immunity as state officers acting in their official capacities alleged to have committed an error of state law. Plaintiffs’ Complaint and Memorandum of Law supporting their PI motion demonstrate they are seeking relief based on the State Board’s alleged failure to follow state law in not certifying JFA, despite the party allegedly having met all the statutory requirements for certification; the actions the Board allegedly took that were beyond its statutory authority; and its alleged misinterpretation of the statutory certification requirements. [*See, e.g.*, D.E. 1, ¶¶ 69, 70; 9, pp. 1, 5, 8-9, 11]. While the claims themselves purport to arise under federal law, the resolution of the question of state law will be dispositive. *Pennhurst* cautions that this Court should not exercise jurisdiction to restrain state officials from acting based on their authority under state law. Thus, any relief the Court might enter against the individual Defendants on this basis would “contravene[ ] the Eleventh Amendment.” *Pennhurst*, 456 U.S. at 106, 117.

Plaintiffs are asking this Court to compel the State Board to recognize JFA and place its candidates on the 2024 general election ballot, under the theory that this is required by state law. This is exactly the type of injunctive relief that runs afoul of *Pennhurst*. Accordingly, Defendants are entitled to sovereign immunity.

**B. This Court Should Decline to Exercise Jurisdiction under the *Burford* Abstention Doctrine.**



The *Burford* abstention doctrine applies to this case because adjudicating the claims would insert the Court into the State’s administrative system of regulating elections and political parties—an administrative system that already has an adequate review mechanism through North Carolina state courts. In accordance with *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943), “when adequate state court review is available, a federal court sitting in equity should abstain from reviewing cases involving difficult questions of state law or a state’s administration of its own regulatory schemes.” *King v. Jefferies*, 402 F. Supp. 2d 624, 635 (M.D.N.C. 2005). When the relief sought is equitable in nature, the district court may dismiss the case under the *Burford* doctrine, rather than issuing a stay of proceedings. *Id.* at 635–36.

Adequate court review is available. North Carolina has enacted a comprehensive statutory scheme where any “aggrieved party” has a “right to appeal the final decision” of the State Board to the Superior Court of Wake County, and to appeal any further adverse decisions as of right to the N.C. Court of Appeals. N.C.G.S. §§ 7A-27(b)(1), 163-22(l). Further review is also available in the North Carolina Supreme Court. *See* N.C.G.S. § 7A-30, -31.

*Burford* next requires courts to assess “whether either: 1) difficult questions of state law exist which affect policy problems of substantial public import; or 2) federal review would disrupt state efforts to establish a coherent policy in an area of public interest.” *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 361 (1989). Here, this is not a difficult question of state law. The statute governing new party certification requires the State Board to make a determination that the potential new party presented sufficient signatures before it certifies it as a new party. *See* N.C.G.S. § 163-96(a)(2).

However, federal review would indeed disrupt an area that “affect[s] policy problems of substantial public import” for election administration in North Carolina. *New Orleans*, 491 U.S.

at 361. The relief Plaintiffs seek demands this Court substitute its judgment for that of the State Board, which is obligated by state statute to determine whether a new party's petitions are sufficient before certification is granted. This would also severely disrupt the State's efforts in establishing a coherent public policy for how to evaluate the sufficiency of petitions. *Id.* Due to Plaintiffs' choice not to seek review in state court, this Court is asked to make determinations where the state courts have not been given a chance to review the state agency's application of state law. *See N.C. Life & Acc. & Health Ins. Guar. Ass'n v. Alcatel*, 876 F. Supp. 748, 753 (E.D.N.C.), *aff'd*, 72 F.3d 127 (4th Cir. 1995).

The Fourth Circuit has routinely applied *Burford* to situations, like this one, where federal claims are actually "state law in federal clothing." *See, e.g., Johnson v. Collins Entm't Co.*, 199 F.3d 710, 721 (4th Cir. 1999); *Browning-Ferris v. Baltimore County*, 774 F.2d 77, 79–80 (4th Cir. 1985); *Caleb Stowe Assocs. v. County of Albemarle*, 724 F.2d 1079, 1080 (4th Cir. 1984). This Court should likewise abstain from review in this case.

### **III. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS.**

#### **A. The State Board did not misinterpret or violate state law.**

As discussed above, this Court should abstain from adjudicating Plaintiffs' claims, as their claims are based upon allegation that the State Board violated state law. In any regard, the State Board followed the law in determining that JFA's petition was insufficient for certification.

North Carolina's new party certification statute requires the State Board to determine whether parties seeking certification sufficiently meet the minimum qualifications required under North Carolina law before it can certify that party. *See* N.C.G.S. § 163-96(a)(2). Moreover, when concerns of fraud were raised during this year's certification period, the Board has a duty to investigate, which it did when those concerns were raised about JFA. *See* N.C.G.S. § 163-22(d).

The statute also specifically dictates that the Board “shall” make its determination “forthwith.” N.C.G.S. § 163-96(a)(2). Beyond that, it is within the Board’s discretion to determine the exact nature of its review, as long as it adhered to the clear statutory mandate that it proceed “forthwith.” which is what the State Board did here. *Id.*

Upon being alerted by the county boards that there were fraudulent signatures, the State Board began a criminal investigation into JFA’s petition. [Cox Decl. ¶ 25]. This information was known to JFA before its chair appeared at the June 26, 2024 State Board meeting. *Id.* JFA was given notice of other evidence considered by the Board in reviewing JFA’s petition, as it was communicated to them and posted to the Board’s meeting website. See Letters from JFA in June 26, 2024 State Board meeting materials,

[https://dl.ncsbe.gov/index.html?prefix=State\\_Board\\_Meeting\\_Docs/2024-06-26/New%20Party%20Petitions/](https://dl.ncsbe.gov/index.html?prefix=State_Board_Meeting_Docs/2024-06-26/New%20Party%20Petitions/), last visited July 25, 2024. JFA had an opportunity to submit documents. *see id.*, and its chair appeared at the Board’s June 26, 2024 meeting, when it met to consider the party’s petition, *id.* (mtg. recording). A motion to certify JFA failed at that time. *Id.* at ; [Cox. Decl. ¶ 26]. However, rather than deny certification, however, JFA’s petition remained pending so the Board could seek more information from JFA, for staff to further investigate, and for the Board to consider questions raised about the party’s purpose. [Cox Decl. ¶ 26].

The Board Chair issued subpoenas to JFA for more information relevant to the questions surrounding its petition, and JFA responded by July 8, 2024. *Id.*, ¶ 27. Following the State Board’s July 9, 2024 meeting, under a mandate to proceed “forthwith,” Board staff conducted a random sample of voters from JFA’s petition sheets to contact via telephone to determine whether the stated purpose and intent of the JFA party was explained to them prior to their signing the petition. Of the 49 voters ultimately reached by State Board staff, 18 stated that they did not sign any

petition in support of the JFA party and 3 did not recall whether or not they signed. The remaining 28 who recalled signing were interviewed, and 8 of those stated they were not told the purpose and intent of the party. In total, the survey revealed that approximately 28 out of 49 voters were either not properly informed of the purpose and intent of the JFA or never signed the petition. *See* Summary Calls to JFA Signers at Random, compiled by State Board staff,

[https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20to%20JFA%20Signers%20at%20Random.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/SBE%20Inquiry/Summary%20Calls%20to%20JFA%20Signers%20at%20Random.pdf), last visited July 25, 2024; [*see also* Cox Decl., ¶ 29].

At its July 16, 2024 meeting, the Board considered the results of the random sample survey; other evidence that signatures submitted supporting JFA's petition did not meet all requirements under the statute; that the rate of signatures county boards were unable to verify during their initial review was higher for JFA, in comparison to the verification rate for the Constitution Party and WTP; and JFA's inability to demonstrate it controlled the collection of the vast majority of the signatures submitted on its behalf, or whether those signature gatherers were properly trained and instructed to inform voters of the purpose of the party. The State Board concluded that JFA did not sufficiently demonstrate compliance with the statutory requirements to support certification, and, therefore, denied certification, all in compliance with state law. See July 16, 2024 State Board Meeting, July 16, 2024 State Board meeting website, [https://s3.amazonaws.com/dl.ncsbe.gov/State\\_Board\\_Meeting\\_Docs](https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs), last visited July 25, 2024. [*see also* Cox Decl., ¶ 30].

The lack of information about signatures gathered by third parties obviously factored into the State Board's decision to deny certification. That is primarily because these third parties appear to have collected the majority of the signatures submitted in support of JFA's certification. To be

sure, state law does not prohibit third parties from submitting signatures. Nonetheless, the governing statute puts the onus on the party seeking certification to demonstrate compliance with the statutory requirements, including that valid signatures are submitted and that the purpose and intent of the party was properly explained to the individual voters who signed the petition. *See* N.C.G.S. § 163-96(a)(2); [Cox Decl., ¶ 11]. This, JFA was unable to do.

Faced with this inability to demonstrate compliance by JFA, the individual voter-Plaintiffs here present nothing with their PI motion, other than speculation and conjecture, to support their allegations that the State Board's actions were motivated by politics, rather than a desire to follow the law. Advocacy groups of all political persuasions and individual members of the public consistently submit comments, information, and suggestions to the State Board, whether or not those submissions are specifically provided for by statute or administrative rule. Plaintiffs' arguments that the Court should presume that the State Board was politically motivated simply because it received information from CCA implies that any individual or organization with political motivations should be prohibited from communicating with the State Board during the certification process. This is an untenable position. It undercuts state open meetings laws, possibly raises constitutional concerns, and runs contrary to the Board's duty to investigate election law violations. It also ignores the plain reality that an agency tasked with administering elections will always receive the most ardent interest from politically motivated actors. That does not mean that politically motivated actors are incapable of providing useful information. And, because the reality of partisan motivation exists, the State Board understands that all submissions must be reviewed and verified. But unique to the State Board's inquiry about JFA as compared to the parties it ultimately certified, the Board already initiated a criminal investigation based upon county board reports regarding fraudulent signatures, independent of the concerns raised by third parties. [Cox

Dec., ¶¶ 15, 16]. Of the tens of thousands of signatures gathered by the Constitution Party and WTP, not a single one generated a complaint of fraud or displayed indicia of fraud; this stands in stark contrast to the JFA petition effort.

Finally, there is evidence indicating the State Board’s decision was not politically motivated. When the Board members were in the process of voting whether or not to certify JFA, one of the Republican members who voted for certification, Mr. Stacy Eggers, IV, noted that there had been some “ad campaigns . . . targeting [his] ‘Democratic colleagues,’” which he did not believe was an appropriate way “to proceed with discourse,” and that while he strongly disagreed with how he thought those colleagues would vote, he “appreciate[ed] the service of [his] colleagues and their thoughtful consideration of these issues.” July 16, 2024 State Bd. Mtg., 43:49-44:36.

**B. Claim I: First and Fourteenth Amendment.**

In their first claim for relief, Plaintiffs allege that the State Board’s decision not to certify JFA as a new party violated their associational and substantive due process rights guaranteed by the First and Fourteenth Amendments to the United States Constitution. [D.E. 1, ¶¶ 72-76]. Plaintiffs cannot establish a likelihood of success on this claim.

The Constitution leaves it to the states to exercise their “broad power” granted them by the Constitution to regulate their elections in accordance with federal laws and the Constitution. *See Tashjian v. Republican Party*, 479 U.S. 208, 217, (1986); *see* U.S. Const. art. I, § 4, cl. 1. “[A]s a practical matter, 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.” *Storer v. Brown*, 415 U.S. 724, 730 (1974). “All election laws, including perfectly valid ones, ‘inevitably affect[]—at least to some degree—the individual’s right to vote and his right to associate with

others for political ends.” *Sarvis v. Alcorn*, 826 F.3d 708, 716 (4th Cir. 2016) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

Under the well-established *Anderson-Burdick* framework applicable to First Amendment ballot-access claims, to determine whether a state action unconstitutionally burdens the rights guaranteed by the First and Fourteenth Amendments, courts must weigh: (1) the character and magnitude of the asserted injury to those rights, against (2) the State’s interests and justifications for the burden imposed. *Buscemi v. Bell*, 964 F.3d 252, 261-62 (4th Cir. 2020); *see also Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 787-89 (1983). The severity of the burden imposed “dictates the level of justification” required. *Pisano*, 743 F.3d at 933. “Severe” burdens trigger strict scrutiny, requiring the challenged state action to be “narrowly drawn to support a compelling state interest[.]” *Id.* (cleaned up). But, if the burden is only “modest,” then a state’s “important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Id.*

“[A] State has an interest, *if not a duty*, to protect the integrity of its political processes from frivolous or fraudulent candidacies.” *Bullock v. Carter*, 405 U.S. 134, 145 (1972) (emphasis added). States also have an interest in “avoiding confusion, deception, and even frustration of the democratic process at the general election,” and “in ensuring orderly, fair, and efficient procedures for the election of public officials.” *Pisano*, 743 F.3d at 937 (cleaned up).

North Carolina’s statutes defining how to form a new party, namely N.C.G.S. §§ 163-96(a)(2), -96(c), and 163-98, and the State Board’s duties to enforce those provisions, serve these objectives. Plaintiffs do not challenge those statutes, nor would such a challenge succeed, as the Fourth Circuit has already found it to be constitutional. *See generally Pisano*, 743 F.3d at 936-37.

In any regard, the action challenged here, the decision to deny certification to JFA, passes muster under the *Anderson/Burdick* analysis, even if it must be assumed for the sake of argument that the burden imposed was severe. The decision was supported by the state’s interest in ensuring that new party petitions contain a sufficient number of *valid* signatures to show the “modicum of support” our legislature believe is needed to form a new party, as reflected in the statutory threshold. *Buscemi v. Bell*, 964 F.3d 252, 264 (2020); *see* N.C.G.S. § 163-96(a)(2). Contrary to what Plaintiffs contend, as this Court concluded in granting a preliminary injunction in *North Carolina. Green Party v. North Carolina State Bd. of Elections*, 619 F. Supp. 3d 547, 566 (2022), North Carolina has “*compelling* interests[,] in authorizing the Board to properly determine the sufficiency of petitions submitted to it and to authorize the Board to investigate petition fraud. *Green Party*, 619 F. Supp. 3d at 566 (emphasis added) (citing N.C.G.S. §§ 163-22(d), 163-96(a)(2)). Breaking this down further, these compelling interests included the Board’s duty to protect its political processes from frivolous and fraudulent candidacies, to protect individual voters from misuse of their endorsement via signatures on petitions, and to ensure individual voters who signed the petition were properly informed, not deceived, and actually signed the petitions. The Board is also charged with ensuring that the statutory signature threshold, which itself serves to eliminate frivolous and fraudulent candidacies by demonstrating a minimum modicum of support, is met.

Moreover, as explained above, the State Board followed its statutory duties and took “narrowly drawn” measures advancing the above-noted compelling state interests. *Pisano*, 743 F.3d at 933 (cleaned up). With that, the Board performed its statutory duties in conformity with the certification statute’s mandate that it act “forthwith,” N.C.G.S. § 163-96(a)(2), a reflection of



North Carolina's "interest in requiring parties to cement their slate of candidates in plenty of time to ensure accurate ballot printing," *Green Party*, 619 F. Supp. 3d at 566.

The state interests being protected by the statutory requirements are sufficiently weighty to justify any burden placed on JFA, which was only to verify that the petition submitted in support of its certification met the minimum statutory requirements. And the ultimate denial of party certification to JFA was justified by the review conducted by the State Board based on the evidence before it, and in light of its statutory mandate to review petitions "forthwith." N.C.G.S. § 163-96(a)(2). The irregularities and failures to follow the statutory requirements were sufficient in scope to invalidate enough signatures to drop JFA below the required threshold, demonstrating they lacked the modicum of support required in this state to certify a new party.

Plaintiffs provide little analysis in arguing that the State Board's denial of certification to JFA was not justified by a legitimate or compelling interest and was not narrowly drawn. Instead, they can only repeat the claim that the State Board allegedly failed to follow state law and to act within its statutory authority.

Plaintiffs' contentions that the Board violated state law are all premised on misapprehensions regarding the facts and processes underlying the Board's decision, the statutory procedures for new party certification and submission of presidential candidates, and the Board's role in the new-party petition process and its general statutory duty to investigate election-related fraud. They in no way establish the State Board's action was not narrowly drawn.

First, as discussed above, the Board concluded JFA did not comply with state law, the party was not excluded from the certification process, and the State Board did not make its decision based solely upon questions raised by third parties.

Second, Plaintiffs contend that under state law, the county boards are responsible for verifying petition signatures to the exclusion of the State Board, or that petitions for a new statewide political party are *automatically* deemed sufficient where county boards review and approve the required number of signatures initially. But this is contrary to the plain language of N.C.G.S. § 163-96(a)(2), which requires specifically that the Board “determine the sufficiency of petitions.” Moreover, such an interpretation renders null the requirement that the State Board make that determination *after* the county boards have examined and certified the signatures in the petitions that are initially filed with them. *Compare* N.C.G.S. § 163-96(a)(2), *with* § 163-96(c).

By the same token, Plaintiffs’ contentions ignore the duties of the State Board to supervise elections, “compel” county boards to observe election law, and to “investigate when necessary or advisable, the administration of election laws, frauds and irregularities[.]” *Id.* §§ 163-22(a), (c), (d). In fact, in *Green Party*, the Court recognized that North Carolina had authorized the State Board “to properly determine the sufficiency of petitions submitted to it” and “investigate petition fraud.” *Green Party*, 619 F. Supp. 3d at 566. At bottom, Plaintiffs’ interpretation of the State Board’s role in the statewide petition process is completely foreign to North Carolina election law.

Also, the July 1 deadline did not apply to JFA, as the only eligible candidate the party submitted for the general election ballot was one for president. *See* N.C.G.S. §§ 163-98, -171; June 26, 2024 State Bd. Mtg., 3:20:02-:48 (Board Gen. Counsel Cox advising Bd. on the law). Accordingly, Plaintiffs’ attempt to argue that the Board’s certification was not narrowly tailored or timely because it was made after July is unavailing. There is in fact no statutory deadline for newly recognized parties to submit the names of their presidential candidates. *See, e.g.*, N.C.G.S. § 163-209 (silent as to recognized political parties’ candidates, but setting a deadline during the first week of August for unaffiliated candidates). However, for administrative reasons, the State

Board has long requested that all recognized parties to submit the names of their presidential candidates prior to the final ballot preparations, which generally starts in mid-August. [Cox Decl., ¶ 32].

Plaintiffs' attempt to fashion a First Amendment claim based on a misreading of state law does not demonstrate a likelihood of success.

**C. Claim II: Procedural Due Process Claim.**

Plaintiffs allege in their second claim for relief the State Board's decision not to certify JFA violated their right to procedural due process because the Board did not provide JFA with notice or the opportunity "to cure or fully address the validity of the signatures on its petitions or the integrity of its petitioning process." [D.E. 1, ¶¶ 77-80]. Plaintiffs cannot establish a likelihood of success regarding Claim II.

Procedural due process, as guaranteed by the Fourteenth Amendment, "prevents mistaken or unjust deprivation[.]" *Snider Int'l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 145 (4th Cir. 2014). In an elections case, such claims should be analyzed under the *Anderson/Burdick* framework, not the traditional framework provided for in *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). *See Latino v. Hirsch*, 2024 U.S. Dist. LEXIS 11180, at \*48-53 (2024). Accordingly, for the reasons stated above in Part II-A-2, Plaintiffs cannot establish the likelihood of success on the merits of their procedural due process claim.

To support their claim, Plaintiffs rely upon the PI order in *Green Party*, arguing the State Board "attempted to prejudice the Green Party in a similar manner that it is currently harming JFA." [D.E. 9, p. 10]

The facts in *Green Party* are distinguishable, and the PI order in that case provides no support for Plaintiffs' due process claim, or either claim for that matter. There, the Green Party brought

suit before the State Board made a final decision on its certification and while the Board's investigation into fraud with the party's petition signatures was ongoing. After a sufficient review was completed, and it was determined that the Green Party complied with the statutory certification requirements by "timely submitt[ing] more than the required number of valid signatures," the Board granted certification. *Green Party*, 619 F. Supp. 3d at 556. However, the Board did not have precedent or independent authority to waive the already-passed July 1 candidate-filing deadline in N.C.G.S. § 163-98, which would have allowed the Green Party's candidates, neither of which were presidential candidates, access to North Carolina's 2022 general election ballot. *Id.* at 560.

The Court in *Green Party* enjoined the deadline and ordered the State Board to include the Green Party's candidates on the 2022 general election ballot. *Id.* at 569-70. In reaching that decision, the Court found that North Carolina had compelling interests "in authorizing the Board to properly determine the sufficiency of petitions submitted to it and to authorize the Board to investigate petition fraud," but those interests became less compelling once the party was certified. *Id.* at 566. Furthermore, according to the Court, "[p]ost-certification, North Carolina h[ad] an interest in requiring parties to cement their slate of candidates in plenty of time to ensure accurate ballot printing," but even assuming this interest was compelling, "the more than one month buffer between the July 1 deadline and the mid-August ballot printing deadline [was] likely not narrowly[] drawn" to justify that interest. *Id.* In light of these and other considerations, the Court concluded the application of the July 1 deadline "severely burdens ballot access" and is "not narrowly tailored to North Carolina's interests, especially because the strongest of those interests weaken post-certification." *Id.* at 567.

In *Green Party*, the State Board lacked the authority to waive a state law that severely burdened the exercise of constitutional rights, under the circumstances where the party-Plaintiff in

that case timely met the statutory requirements for certification and thus had an unassailable right to ballot access. In contrast, the Court here is examining the State Board's actual certification decision, by which the Board followed state laws, not challenged by Plaintiffs as unconstitutional, and denied certification to a party it determined failed to demonstrate compliance with the statutory requirements for certification. Moreover, the challenged decision in this case, unlike the lack of statutory authority examined in *Green Party*, was buttressed by what the Court in that case referred to as the "strongest" state interests it examined, the State's interests "in authorizing the Board to properly determine the sufficiency of petitions submitted to it and to authorize the Board to investigate petition fraud," at a time when they were at their most compelling. *Id.* at 567. Also, unlike with the Green Party, it is irrelevant in assessing JFA's right to ballot access that the State Board's certification decision was not made until after the July 1 deadline, because that deadline does not apply to JFA. Also, in reliance on the ruling in *Green Party*, the State Board has already acknowledged that it cannot enforce the deadline against the two parties it did certify post-July 1, the Constitution Party and WTP, both of whom submitted both presidential and nonpresidential candidates. Either way, the facts here are distinguishable from *Green Party* because JFA is being denied access to the November 2024 general election ballot based upon the Board's determine that it failed to comply with state law requirements for certification, not because of the timing of the State Board's decision. If anything, the order in *Green Party* supports defendants' position that the State Board's actions are supported by compelling interests and narrowly drawn, such that the PI motion in this case should be denied.

The remainder of Plaintiffs' contentions are based upon the same speculation regarding the State Board's motives, unsupported and contradicted by the record evidence; a misunderstanding of the statutory process and requirements; and misapprehensions about the process underlying and

circumstances surrounding the Board's decision that they provide to support their First Amendment claim. [See D.E. 1, p. 11]. As indicated above, these contentions fail to demonstrate a likelihood of success on their procedural due process claim.

#### **IV. THE EQUITIES TO THE PARTIES AND THE PUBLIC INTEREST WEIGH AGAINST AN INJUNCTION.**

To obtain a preliminary injunction, plaintiffs must make a clear showing that they will likely be irreparably harmed absent such relief, that “the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20. An averment that plaintiffs' harm might simply outweigh the defendant's is insufficient to tip the balance of equities in plaintiffs' favor. *Real Truth About Obama, Inc. v. F.E.C.*, 575 F.3d 342, 347 (4<sup>th</sup> Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010). The Court must give “particular regard” to the “public consequences” of any relief granted. *Id.*

In cases involving challenges to governmental action, courts typically consider the balance of the equities and the public interest factors together. *Taliaferro v. N.C. State Bd. of Elections*, No. 5:20-CV-411-BO, 2020 WL 5709252, at \*3 (E.D.N.C. Sept. 24, 2020). Courts must “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Int'l Refugee Assistance Project v. Trump*, 857 F.3d 554, 602 (4<sup>th</sup> Cir. 2017).

“Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (citation omitted). Moreover, the State Board, as the state agency charged with enforcement of North Carolina's election laws, represents the public interest in this case, for the laws being enforced undoubtedly reflect the public's interest. *See Jackson v. Leake*, 476 F. Supp. 2d 515, 530 (E.D.N.C. 2006).

The public interest strongly favors the State Board investigating evidence of fraud in

relation to elections and requiring that statutory requirements are met before taking any decision. In this case, the State Board was also tasked with determining whether individual voters were not properly informed about the cause they were supporting. Faced with such concerns, the party seeking certification, JFA, was unable to demonstrate it could meet those statutory requirements. Requiring the State Board to ignore such concerns is not in the public interest.

### **CONCLUSION**

For the foregoing reasons, Plaintiffs' motion for a preliminary injunction should be denied.

Respectfully submitted this the 26<sup>th</sup> day of July, 2024.

### **NORTH CAROLINA DEPARTMENT OF JUSTICE**

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