IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS, ET AL., Plaintiffs, v. NORTH CAROLINA STATE BOARD OF ELECTIONS, ET AL., Defendants.	Case No. 1:26-cv-00965-TDS-JGM

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS BY REPUBLICAN NATIONAL COMMITTEE AND NORTH CAROLINA REPUBLICAN PARTY

Pursuant to Fed. R. Civ. P. 24 and LR 7.2, the Republican National Committee ("RNC") and the North Carolina Republican Party ("NCGOP") (collectively the "Proposed Intervenor Committees") respectfully submit this Memorandum in Support of their Motion to Intervene ("Motion").

I. Introduction and Statement of the Nature of the Matter Before the Court.

This lawsuit is the current iteration of a years-long dispute, initiated by Proposed Intervenor Committees, over how mail-in absentee ballots are treated if a voter does not follow certain North Carolina statutory ballot security requirements in the absentee-by-mail voting process. In 2024 and 2025, Proposed Intervenor Committees, the North Carolina State Board of

Elections ("NCSBE"), and Plaintiff NCARA litigated many of these same issues, ultimately resulting in a Consent Judgment being entered resolving the litigation on December 3, 2025. *See Wasserberg et al. v. North Carolina State Board of Elections, et al.*, Case No. 5:24-cv-00578-M-RN (EDNC Dec. 4, 2025) (the "Consent Judgment"). A true and accurate copy of the Consent Judgment is attached as **Exhibit A**.

After the Consent Judgment, the NCSBE entered a Declaratory Ruling, on February 2, 2026 ("2026 Declaratory Ruling"), noting that its previous position on unsealed container envelopes was incorrect, and delaying implementation until after the March 2026 primary election. *See generally* D.E. 5-5 at p.8 ("Therefore, the State Board has determined that the Sealed Ballot Envelope Guidance in Numbered Memo 2021-03 is not correct in that it requires acceptance of an absentee ballot that is not sealed in the ballot envelope without any further action being taken."). The 2026 Declaratory Ruling directed NCSBE staff to begin developing administrative rules to implement the procedures described therein, and noted that "the State Board has ordered that the current Sealed Ballot Envelope Guidance and Switched Ballot Guidance in Numbered Memo 2021-03 shall remain in effect until the memo is revised or replaced after the canvass of the March 2026 primary, such that the correct guidance will at that time be applied prospectively." (D.E. 5-5

p.11). The NCSBE thereafter updated Numbered Memo 2021-03, pertaining to absentee ballot container return envelope deficiencies, on September 4, 2026. (D.E. 5-2). This lawsuit challenges aspects of the amendments to Numbered Memo 2021-03.

On September 22, 2026, Plaintiffs North Carolina Alliance for Retired Americans ("NCARA"), North Carolina Asian Americans Together, Down Home North Carolina, Vaeme Afokpa, and Raquel Nelson (collectively "Plaintiffs") filed this lawsuit against the North Carolina State Board of Elections and its respective individual members (collectively the "NCSBE"), the Durham County Board of Elections and its respective individual members (collectively the "DCBE") and the Guilford County Board of Elections and its respective individual members (collectively the "GCBE") over the amended Numbered Memo 2021-03. Each cause of action in the Complaint challenges the ability of the NCSBE to enforce North Carolina statutory law requirements that, in order to be counted, absentee ballots be returned to the boards of election in sealed container envelopes. *See* N.C. Gen. Stat. §§ 163-230.1(d), 163-231(a)(3), 163-231(b). Counts II, III, and IV also challenge the ability of the NCSBE to verify whether the signature on a voter's mail-in absentee ballot application contains the name of a voter who was not assigned to the application number on the container-return envelope.

Proposed Intervenor Committees should be allowed to intervene. Given that this lawsuit is a part of a long-running dispute over how unsealed container return envelopes are treated, and Proposed Intervenor Committees both initiated and participated in this dispute at all steps of the process, Proposed Intervenor Committees have a clear interest in the subject matter and outcome of the dispute in this action. Additionally, any decision made in this action will impact the guidance and advocacy by Proposed Intervenor Committees to its potential absentee-by-mail voters and members at large. The other Defendants cannot adequately represent Proposed Intervenor Committees' interests, as until recently Proposed Intervenor Committees were adverse to the NCSBE in this very dispute, and it is unclear what interest, if any, the GCBOE and the DCBOE have in defending the interpretation of election law advanced by the Proposed Intervenor Committees for the past several years. Finally, given that the Motion to Intervene is being filed at the outset of this case, no parties will be prejudiced by intervention, and Proposed Intervenor Committees are prepared to follow all time deadlines set by the Court.

II. Statement of the Facts.

The RNC is the national committee of the Republican Party, as defined by 52 U.S.C. § 30101(14), and is a political party as defined in Article 9 of

Chapter 163 of the North Carolina General Statutes. The RNC 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, including but not limited to the North Carolina 2026 election cycle.

The 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-level political organization of the Republican Party. A significant part of the NCGOP's mission is to support Republican candidates running in North Carolina elections, including the 2026 election cycle.

The original version of Numbered Memo 2021-03 was issued by then NCSBE Executive Director Karen Brinson Bell on June 11, 2021. *Wasserberg et al. v. NCSBE*, Case No. 5:24-CV-00578-M, D.E. 65 at ¶1 (Dec. 4, 2025). Proposed Intervenor Committees disagreed with the Numbered Memo, and on May 20, 2024 submitted a Request for Declaratory Ruling under N.C. Gen. Stat. § 150B-4, seeking a ruling that Proposed Intervenor Committees' interpretation of absentee ballot return envelope statutes was correct. *Wasserberg*, D.E. 65 at ¶¶2-3. On August 2, 2024, the NCSBE issued a

Declaratory Ruling (the "2024 Declaratory Ruling") affirming the analysis in Numbered Memo 2021-03. *Wasserberg*, D.E. 65 at ¶4.

On September 3, 2024, Proposed Intervenor Committees, along with individual plaintiff Virginia Wasserberg, filed a lawsuit against the NCSBE, its members, and Executive Director Bell, challenging the 2024 Declaratory Ruling. *Wasserberg*, D.E. 65 at ¶¶5-6. On September 24, 2024, NCARA moved to intervene, which was allowed by the Court on October 16, 2024. *Wasserberg*, D.E. 65 at ¶¶8, 10.

On October 9, 2024, the NCSBE defendants removed the lawsuit to Federal Court, where it remained until the NCSBE defendants, Proposed Intervenor Committees (as plaintiffs), and Ms. Wasserberg entered into a Consent Judgment resolving the lawsuit on December 4, 2025. *Wasserberg*, D.E. 65 at ¶¶9, 11-15. Relevant to this case, the Consent Judgment provided that:

- The NCSBE would reconsider the previously-submitted request for declaratory ruling as if submitted anew and would grant the request for a declaratory judgment;
- The NCSBE was not obligated to alter its interpretation of the statutes at issue in the litigation; and

- If the Plaintiffs disagreed with the NCSBE's new declaratory ruling, one of more of the Plaintiffs could challenge it by filing a new legal proceeding.

Wasserberg, D.E. 65 at ¶¶15-16. The Court, thereafter, dismissed the lawsuit without prejudice.

After the Consent Judgment was entered, the NCSBE issued a Declaratory Ruling on February 2, 2026 (the "2026 Declaratory Ruling"), supplanting the 2024 Declaratory Ruling. (D.E. 5-5). The 2026 Declaratory Ruling, by its language, did not apply to the 2026 March primary election, but clearly indicated that it would apply to the 2026 General Election. *Id.* at 12.

III. Statement of the Questions Presented.

1. Do the Proposed Intervenor Committees meet Fed. R. Civ. P. 24's requirements for intervention as a matter of right?
2. Do the Proposed Intervenor Committees meet Fed. R. Civ. P. 24's requirements for permissive intervention?

IV. Argument.

The Court should grant Proposed Intervenor Committees' Motion and allow them to intervene as defendants to defend the updated Numbered Memo 2021-03. Proposed Intervenor Committees are entitled to intervention as of right under Federal Rule of Civil Procedure 24(a) or, in the alternative, because Proposed Intervenor Committees meet the requirements for permissive

intervention under Rule 24(b). The Court should also allow Proposed Intervenor Committees to appear at any hearings necessary to defend the updated Numbered Memo 2021-03 that may be scheduled before the Court can rule on the instant Motion.

A. Proposed Intervenor Committees Are Entitled to Intervene as of Right.

Under Fed. R. Civ. P. 24(a), a "court must permit anyone to intervene" who, "claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2); *Berger v. N.C. State Conf. of the NAACP*, 142 S. Ct. 2191, 2200–01 (2022); *Teague v. Bakker*, 931 F.2d 259, 260-61 (4th Cir. 1991). "[L]iberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (citations and internal quotation marks omitted).

The U.S. Court of Appeals for the Fourth Circuit set the following requirements for a party seeking to intervene under Fed. R. Civ. P. 24(a):

> (1) the application to intervene must be timely; (2) the applicant must have an interest in the subject matter of the underlying action; (3) the denial of the motion to intervene would impair or

> impede the applicant's ability to protect its interest; and (4) the applicant's interest is not adequately represented by the existing parties to the litigation.

Houston Gen. Ins. Co. v. Moore, 193 F.3d 838, 839 (4th Cir. 1999). Proposed Intervenor Committees satisfy each of the requirements.

1. The Motion to Intervene is timely.

In assessing the timeliness of a motion to intervene in a civil action, the Court assesses "three factors: first, how far the underlying suit has progressed; second, the prejudice any resulting delay might cause the other parties; and third," if the movant was tardy in filing its motion, the movant's justification for such delay. *Alt v. U.S. E.P.A.*, 758 F.3d 588, 591 (4th Cir. 2014).

Here, Plaintiffs filed their Complaint on September 22, 2026 [Doc. 1]. No named defendants have filed responsive pleadings, and Defendants' responses to the Complaint are due October 22, 2026. Additionally, Defendants have until October 9, 2026, to file their responses to Plaintiffs' Motion for Preliminary Injunction. [Doc. 34]. Proposed Intervenor Committees expeditiously sought intervention before the response deadlines, and allowing intervention during the pleading stage of litigation would not cause any delay. Therefore, the Motion is timely. *See e.g.*, *Carcano v. McCrory*, 315 F.R.D. 176, 178 (M.D.N.C. 2016) (granting motion to intervene when the motion was filed before the case progressed past the pleadings stage); *League of Women Voters*

of N.C. v. North Carolina, No. 1:13CV660, 2014 WL 12770081, at *2 (M.D.N.C. Jan. 27, 2014) (concluding that a motion to intervene was timely because it was filed before the scheduling order's deadline for amendments to pleadings). As such, intervention should be allowed.

2. Proposed Intervenor Committees have significant protectible interests in the subject matter of this lawsuit.

Proposed Intervenor Committees have a clear, significant, protectible interest in the subject matter of this litigation. They are the national and state-level political committees of one of the two major political parties in the United States, with millions of members in North Carolina. Plaintiffs are seeking a Court Order requiring the NCSBE and county boards of election to change how they are handling certain mail-in absentee ballots; indeed, according to the allegations in Plaintiffs' Complaint, the changes they are seeking could impact "thousands of qualified North Carolinian [*sic*] voters[,]" presumably both Republican and Democrat, in regard to both the sealing and the signature requirements. (Complaint ¶77). Proposed Intervenor Committees are currently training thousands of volunteers to serve as observers for, among other things, county board of elections' absentee ballot meetings. (Declaration of Branch Quirk, **Exhibit B**, ¶¶4-5). How this litigation is decided will necessarily affect not only how the Proposed Intervenor Committees train its volunteers, but also their strategic decisions

on how they will deploy their limited resources (both people and money) before and after the election.[1] As such, Proposed Intervenor Committees' voters and candidates could be affected by the outcome of this lawsuit, any decision made in this action will impact Proposed Intervenor Committees' guidance and advocacy to the Republican Party's candidates, potential absentee by mail voters, and members at large. Accordingly, they have a significant protectible interest in its subject matter.

Additionally, Proposed Intervenor Committees have long had a direct, protectible interest in the specific subject matter of this litigation, as well as a desire to participate in it until the end. As described above, it was Proposed Intervenor Committees that initiated legal process in 2024 to protect their view of how North Carolina absentee ballot law should be interpreted (including the sealing requirement at issue here), and to change the NCSBE's formerly mistaken interpretation of North Carolina absentee ballot law. For the same reasons, Proposed Intervenor Committees have a direct, protectible interest in the outcome of the signature verification requirement in the Numbered Memo.

[1] For example, if the Court allows Plaintiffs' requested Preliminary Injunction on the signature verification program, and there are close statewide races such as the 2024 Griffin – Riggs or the 2020 Newby – Beasley races, the Proposed Intervenor Committees will likely have to determine whether to assist with its candidates performing due diligence on whether there are enough wrong-signature issues to impact the outcome of the election and thus form the basis for a successful election protest.

Plaintiffs filed this 2026 lawsuit to dispute the implementation of those changes for the 2026 General Election, and Proposed Intervenor Committees' direct interest in the outcome of the dispute over North Carolina absentee ballot law remains. As such, intervention should be allowed.

3. Proposed Intervenor Committees' interests are not adequately represented in the lawsuit.

Proposed Intervenor Committees' interests also are not adequately represented by the original parties to this action. The NCSBE's purpose is to administer the state's elections pursuant to the laws established by the North Carolina General Assembly. *See* *https://www.ncsbe.gov/about* (last visited Oct 6, 2025). The same is true for the Guilford County Board of Elections and Durham County Board of Elections at the county level. *Id.* The NCSBE and county boards of elections thus (and obviously) cannot adequately represent the interest of any political party, including the Republican Party, which is advocating for its candidates and members. For this same reason, the remaining named defendants, who are sued in their official capacities as members of the NCSBE, Guilford County Board, and Durham County Board cannot adequately represent Proposed Intervenor Committees' interests. Also, as demonstrated by the changed position by the NCSBE on the Numbered Memo (admittedly after litigation initiated by Proposed Intervenor Committees), Defendants' position is demonstrably subject to change. As such,

Proposed Intervenor Committees have different interests and objectives from the Defendants. Even if the Defendants and the Proposed Intervenor Defendants currently seek the same relief, there is no assurance that this will continue to be true through the remainder of the case, since the foundation of their respective interests – administration of election law on the one hand, and advocacy for candidates and members of a political party on the other – are starkly different. The Court should, therefore, grant the Motion and allow Proposed Intervenor Committees to intervene as defendants.

B. Alternatively, the Court Should Allow Proposed Intervenor Committees Permissive Intervention.

If intervention as of right is not available, Proposed Intervenor Committees respectfully request that the Court grant Proposed Intervenor Committees permissive intervention under Rule 24(b). Under Rule 24(b), "[o]n timely motion, the court may permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). "In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). "Thus, where a movant seeks permissive intervention, the movant must satisfy three requirements: (1) the motion must be timely; (2) the claims must have a question of law or fact in common with the main action; and (3) intervention must not result in undue

delay or prejudice to the existing parties." *Democratic Nat'l Comm. v. N. Carolina State Bd. of Elections*, No. 1:23CV862, 2023 WL 12218247, at *2 (M.D.N.C. Nov. 6, 2023).

Proposed Intervenor Committees meet each requirement. First, the Motion is timely for the reasons previously explained. Plaintiffs filed suit on September 22, 2026. [Doc. 1]. No Defendant has answered, and responses to the Complaint are not due until October 22, 2026. Further, Proposed Intervenor Committees filed this Motion before Defendants' October 9, 2026 deadline to respond to Plaintiffs' Motion for Preliminary Injunction. [Doc. 34].

Second, Proposed Intervenor Committees' defense shares common questions of law and fact with the main action. Plaintiffs claim the Sealing Requirement violates the Materiality Provision of the Civil Rights Act, 52 U.S.C. § 10101(a)(2)(B). [Doc. 1 ¶¶ 124–132]. They also claim the Sealing Requirement and the Signature Verification Requirement violate the First and Fourteenth Amendments. [*Id.* ¶¶ 133–173]. Proposed Intervenor Committees' Proposed Answer responds to each claim and denies that the Numbered Memo violates federal law. Proposed Intervenor Committees will argue that the challenged provisions are consistent with North Carolina statutory law, which is the same question the Court must decide. This Court has permitted intervention where a proposed intervenor's defenses "largely overlap" with the

issues already in the case. *Carcano v. McCrory*, 315 F.R.D. 176, 179 (M.D.N.C. 2016) (allowing intervention of Speaker Moore and President Pro Tempore Berger in litigation over House Bill 2). At the very least, Proposed Intervenor Committees' defenses "largely overlap" the issues already in the case.

Third, intervention will not unduly delay the case or prejudice the original parties. The case is two weeks old. Proposed Intervenor Committees have attached their Proposed Answer, as Rule 24(c) requires, so the pleadings will not be held up. They will respond to Plaintiffs' Motion for Preliminary Injunction on the schedule the Court has set for Defendants. They will not seek to extend any current deadline. Nor does requiring Plaintiffs to meet a merits defense of the challenged rules amount to prejudice, as that is the ordinary burden of litigation, not the kind of harm Rule 24(b)(3) guards against.

This Court granted these same Proposed Intervenor Committees permissive intervention in election cases before. In *Democratic National Committee v. North Carolina State Board of Elections*, the Court allowed the RNC and NCGOP to intervene permissively in a challenge to Senate Bill 747. 2023 WL 12218247, at *2. The Court did the same in *Voto Latino v. Hirsch*, by minute entry on November 15, 2023. *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 646 (M.D.N.C. 2024). Those rulings are consistent with the fact that Rule

24 is to be read liberally in favor of intervention. *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986).

Plaintiffs may point to *Democracy North Carolina v. Hirsch*, No. 1:23-CV-878 (M.D.N.C. Dec. 4, 2023), where the Court denied these Committees permissive intervention. *Democracy N. Carolina v. Hirsch*, 345 F.R.D. 147, 149 (M.D.N.C. 2023).

The reasons for that ruling do not apply here. In *Hirsch*, the same statute was already being litigated in two related cases before the same judge, and the Committees had already intervened in both. *Id.* at 150-152. The Committees had existing opportunity to make their arguments there. The legislative leaders who enacted the statute had also intervened to defend it. *Id.* at 150. The parties in *Hirsch* were on a faster schedule than in the related cases, so adding the Committees risked "cumulative arguments" and delay. *Id.* at 152. And the Court found the Committees' motion "largely a carbon-copy" of their motions in the related cases, "not tailored to the specific allegations of this case." *Id.*

None of those facts are present here. No related case challenges the updated Numbered Memo 2021-03. No legislative intervenor or other party has yet sought to appear to defend it. The challenged rules are agency guidance, not a statute the General Assembly enacted. And this Motion rests on facts

unique to this dispute. Proposed Intervenor Committees asked the NCSBE to correct its sealing guidance in 2024. When the NCSBE refused, they sued. That suit ended in a Consent Judgment that required the NCSBE to reconsider their request "as if submitted anew." (Doc. 1-3 at 3). The NCSBE then issued the 2026 Declaratory Ruling, which held its prior sealing guidance "not correct." (*Id.* at 11). The updated Numbered Memo 2021-03 followed. Plaintiffs ask this Court to undo that result. Without intervention, the parties who started and won that dispute would have no voice in it.

Permissive intervention also serves the interests that Rule 24(b) protects. The NCSBE opposed Proposed Intervenor Committees on these exact issues for two years. In the 2024 Lawsuit, it told the court that spoiling ballots not sealed inside two envelopes "would have violated the materiality provision." [Doc. 1 ¶ 131]. Plaintiffs now build Count I on that statement. [*Id.*]. Whatever position the NCSBE takes here, the Court will benefit from hearing the party that has pressed the statutory reading behind the challenged rules from the start. And this makes sense. Plaintiff NCARA was allowed to intervene in the 2024 Lawsuit to oppose Proposed Intervenor Committees. [*Wasserberg*, text order of Oct. 16, 2024]. Proposed Intervenor Committees should have the same chance to be heard now that NCARA seeks to undo the result of that case.

For these reasons, if the Court concludes that Proposed Intervenor Committees may not intervene as of right, it should grant them permissive intervention under Rule 24(b).

C. The Court Should Consider the Motion on an Expedited Basis and Allow the Proposed Intervenor Committees to Submit a Provisional Response to Plaintiffs' Motion for Preliminary Injunction.

In order to be able to protect its interest in the subject matter of the litigation, Proposed Intervenor Committees ask the Court to (1) consider the Motion on an expedited basis, (2) allow Proposed Intervenor Committees to submit a provisional Response in Opposition to Plaintiffs' Motion for Preliminary Injunction on October 9, 2026, consistent with the Court's October 1, 2026 Order [Doc. 34], and (3) consider the Motion at the Court's October 14, 2026 hearing and, if allowed, permit Defendants to argue at the hearing. If expedited consideration is not allowed consistent with the above request, Proposed Intervenor Committees will not be able to continue their advocacy for the interpretation of North Carolina law that they have advanced for the past several years, as described herein, and a decision on its application to the 2026 General Election would be made without their input.

V. Conclusion.

For the foregoing reasons, the Court should grant the Motion and allow Proposed Intervenor Committees' Motion to Intervene. Proposed Intervenor

Committees should be allowed to intervene as defendants, be able to participate in any briefings or hearing that the Court scheduled before it is able to rule on the Motion. Additionally, the Court should consider the Motion on an expedited basis, allow the Proposed Intervenor Committees to submit a provisional opposition to Plaintiffs' Motion for Preliminary Injunction on October 9, 2026, and hear the Motion at the Court's October 14, 2026 hearing.

Respectfully submitted, this, the 6th day of October, 2026.

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send electronic notification of the filing to all counsel of record who have appeared in this action.

This, the 6th day of October, 2026.

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.

/s/ *John E. Branch III*
John E. Branch III

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with L.R. 7.3(d) and contains 6,250 words or less, as determined by the word count feature of the word processing software used to create this document.

This, the 6th day of October, 2026.

BAKER, DONELSON, BEARMAN, CALDWELL & BERKOWITZ, P.C.

/s/ *John E. Branch III*
John E. Branch III