

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 24CV027757-910

ROBERT F. KENNEDY, JR.,

Plaintiff,

v.

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

Defendants.

COMPLAINT
Emergency Relief Requested

NOW COMES Plaintiff Robert F. Kennedy, Jr. ("Kennedy"), by and through undersigned counsel and, pursuant to Rule 7 of the North Carolina Rules of Civil Procedure file this Verified Complaint seeking a Declaratory Judgment, Temporary Restraining Order, and Permanent Injunction compelling the North Carolina State Board of Elections ("NCSBE") and its members, Alan Hirsch, Jeff Carmon, Siobhan Millen, Stacy Eggers IV, and Kevin Lewis in their respective official capacities, and the NCSBE's Executive Director Karen Brinson Bell (collectively "Defendants") to fulfill their duties set forth in N.C. Gen. Stat. § 163-113 *et seq.* and remove Kennedy from the state's ballots, as he requested. In support, Kennedy allege as follows:

INTRODUCTION

1. Robert F. Kennedy, Jr. timely complied with all requirements set forth under state law in order to remove his name from North Carolina's general election ballot. This statutory compliance notwithstanding, NCSBE, in a 3-2 vote, declined to remove Kennedy from the ballot. In reaching this conclusion, NCSBE ignored controlling statutes and instead elected to insert their own indeterminate, subjective "practicality" standard in denying his request. NCSBE cited no legal authority for its action, nor did it even feign an attempt to define what this test might entail.

2. At its core, NCSBE's "practicality" test appears rooted in the cost of printing new ballots without Kennedy on them, but NCSBE concedes it was aware of at least Kennedy's desire to remove himself from the ballot since August 23, 2024. Nevertheless, NCSBE directed its County Boards of Election to continue printing ballots with Kennedy on them. Thus, to the extent NCSBE claims it is "impractical" to remove him from the ballot, it is an issue of NCSBE's own making.

3. Not only is NCSBE's refusal to recognize Kennedy's statutory rights untethered from any legal justification or precedent, but it is a stark departure from NCSBE's own position in defending its approval of a minor political party in North Carolina called We The People Party of North Carolina ("We The People"). Namely, that if one follows the plain language of the controlling statutes, then there is no further test or inquiry NCSBE or the court may impose. That principle is just as true today as it was when NCSBE made that argument to this court a mere two weeks ago.

4. The facts here mirror that which this court previously found persuasive: the statutory procedures and requirements to remove Kennedy from the ballot were followed, just as they were when he and We The People were seeking to have his name added to the ballot. The only fact that has changed in the intervening period is NCSBE's position on whether it may

superimpose their own subjective test atop the statute's plain language. This Court should reject that invitation. The operative question—and the only question—is whether or not Kennedy's withdrawal complied with North Carolina law. It did.

5. Defendants and this Court previously recognized Kennedy's rights to be on the statewide ballot for the November 5, 2024 election due to compliance with the applicable state statutes. Now, despite Kennedy once again following what those statutes require, Defendants are ignoring his clearly established rights. Kennedy respectfully requests that the Court declare that NCSBE's refusal to remove him from the general election ballot is a violation of North Carolina law, including N.C. Const. art. I § 14 and N.C. Gen. Stat. § 163-113.

6. By refusing to acknowledge Kennedy's statutory rights and entitlements, Defendants have irreparably harmed him. Even worse, by forcing Kennedy to remain on the ballot against his will, Defendants are compelling speech in violation of N.C. Const. art. I § 14.

7. With November election looming and ballot deadlines fast-approaching, Kennedy has no choice but to turn to this Court for immediate relief. In the words of Defendant Hirsch, when it comes to resolving this issue, "time is of the essence."¹

PARTIES

8. Robert Francis Kennedy, Jr. was a nominee and candidate for President of the United States in North Carolina. Kennedy is a resident of New York. On August 23, 2024 Kennedy announced that he was suspending his campaign.

9. The North Carolina State Board of Elections is the state agency tasked with "general supervision over primaries and elections of the state." *See* N.C. Gen. Stat. § 163-22.

¹ Defendants' decision to prohibit Kennedy from removing himself from the ballot is memorialized in the recorded NCSBE meeting held on August 29, 2024, which is publicly available. *See* https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-08-29/State%20Board%20of%20Elections%20Meeting-20240829.mp4 [last accessed 08.29.34]

NCSBE is tasked with ensuring that elections in North Carolina comply with all relevant state and federal laws and, in NCSBE's own words, "ensur[ing] that elections are conducted lawfully and fairly."²

10. Karen Brinson Bell is the Executive Director of NCSBE and the state's "Chief Election Official" as defined by N.C. Gen. Stat. § 163-82.2. In this capacity, Ms. Brinson Bell oversees elections in all one hundred counties in North Carolina and administering all elections occurring therein. *See* N.C. Gen. Stat. § 163-27(d). Ms. Brinson Bell is sued in her official capacity.

11. Alan Hirsch is the Chair of NCSBE. He resides in Chapel Hill, North Carolina. Mr. Hirsch is sued in his official capacity.

12. Jeff Carmon is the Secretary of NCSBE. He resides in Snow Hill, North Carolina. Mr. Carmon is sued in his official capacity.

13. Stacy Eggers, IV is a member of NCSBE. He resides in Boone, North Carolina. Mr. Eggers, IV is sued in his official capacity.

14. Kevin N. Lewis is a member of NCSBE. He resides in Rocky Mount, North Carolina. Mr. Lewis is sued in his official capacity.

15. Siobhan O'Duffy Millen is a member of NCSBE. She resides in Raleigh, North Carolina. Ms. Millen is sued in her official capacity.

JURISDICTION AND VENUE

16. This Court has jurisdiction over the claims asserted herein pursuant to N.C. Gen. Stat. §§ 7A-245; 1-253 *et seq.*; § 163-22(l); and Article 4 of Chapter 150B. Additionally, this Court has original jurisdiction over Plaintiff's request for a mandatory injunction

² <https://www.ncsbe.gov/about>

17. This Court has personal jurisdiction over NCSBE as it is a state agency of North Carolina.

18. This Court has personal jurisdiction over Executive Director Karen Brinson Bell, Chair Alan Hirsch, Secretary Jeff Carmon, Stacy Eggers IV, Kevin Lewis, and Siobhan O’Duffy Millen as each is sued in their official capacities as appointed officials in North Carolina. Each is a citizen of North Carolina and each resides in the state.

19. Venue is proper in this court pursuant to N.C. Gen. Stat. §§ 1-77, 1-82, and 163-22(I).

FACTUAL ALLEGATIONS

I. Robert F. Kennedy, Jr. is Placed on the Ballot

20. On July 16, 2024, Defendants voted to approve We The People as a valid political party in North Carolina pursuant to N.C. Gen. Stat. § 163-96.

21. This recognition was not without controversy. In fact, in the midst of voting to approve We The People’s status as a political party in North Carolina, Defendant Hirsch expressly invited suit from third parties who sought to challenge the board’s own determination, even referring to We The People as a “subterfuge” for Kennedy to get his name on the ballot.³

22. Based on these comments and NCSBE’s ultimate vote it was clear from the beginning that certain members did not wish for Kennedy to be on the ballot. However, a majority of Defendants felt as though We The People’s compliance with North Carolina law foreclosed any other outcome.

³ The NCSBE July 16, 2024 meeting is publicly available at: https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/State%20Board%20of%20Elections%20Meeting-20240716.mp4 [last accessed 08.30.24].

23. Defendant Hirsch’s invitation to sue was heard by the North Carolina Democratic Party who subsequently filed a belated complaint against Defendants, seeking an immediate invalidation of We The People’s status as a recognized political party and Kennedy’s removal from the ballot. *See North Carolina Democratic Party v. Hirsch, et al.*, 24CVS023631-910 (Wake Sup. Ct. July 25, 2024).

24. On Monday, August 12, 2024 this court rebuffed the North Carolina Democratic Party’s efforts and in doing so, allowed Kennedy to remain on the statewide ballot for the November 5, 2024 election. *See N.C. Dem. Party*, Order at ¶¶ 6, 18-23 (incorporating NCSBE’s arguments regarding statutory compliance by reference and holding that the plain language of an unambiguous statute precludes any extrastatutory inquiries).

25. Critically, in that hearing NCSBE took the position that, so long as one complies with the plain language of the relevant statutes, then there is no room for any further inquiry, let alone a subjective one. *See id.* at ¶ 6; *see also N.C. Dem. Party*, NCSBE Resp. in Opp. to Pltffs. Emergency Mtn. for Prelim. Inj., at pp. 14-15 (arguing that when an operative statute is clear, the court cannot “read into [it] an additional requirement” that is not there).

26. In warning of the dangers of what such a limitless test could entail, NCSBE invoked imagery of future boards and courts who based their decisions not on statutory requirements, but on the political whims of the time. *Id.* at p. 3, 14-15 (arguing that adding an undefined test which is not found in the plain language of the statute is contrary to principles of statutory construction).

27. In NCSBE’s view at the time, if a statutory directive is clear and a party complies with what it requires, then Defendants must recognize the right established as a result of that compliance.

28. This court wholeheartedly agreed. *See N.C. Dem. Party*, Order, at ¶¶ 27-28 (finding that adding a non-statutory, subjective test which inherently implicated We The People and Kennedy’s constitutional rights was at odds with the doctrines of constitutional avoidance and statutory interpretation).

II. *Kennedy Suspends His Presidential Campaign and Immediately Seeks to Have His Name Removed from the North Carolina Ballot*

29. On Friday, August 23, 2024, Kennedy suspended his presidential campaign .

30. Kennedy then sought to remove his name from the ballot in North Carolina but Defendants refused to honor that request. *See State Board Determines it is Too Late to Remove We The People Nominee for President from the Ballot*, NCSBE (Aug. 29, 2024), <https://www.ncsbe.gov/news/press-releases/2024/08/29/state-board-determines-it-too-late-remove-we-people-nominee-president-ballot>.

III. *Just as it Does for a Political Party Seeking Official Recognition, North Carolina Law Provides a Clear Path to Remove Kennedy from the Ballots.*

31. North Carolina General Statute § 163-113 provides a “Nominee’s *right* to withdraw as a candidate.” (emphasis added).

32. To exercise this right, § 113 sets a clear procedure by which a political party’s nominee may remove themselves as a candidate, stating:

“A person who has been declared the nominee of a political party for a specified office under the provisions of G.S. 163-182.15 or G.S. 163-110, shall not be permitted to resign as a candidate *unless, prior to* the first day on which military and overseas absentee ballots are transmitted to voters under Article 21A of this Chapter, that [the] person submits to the board of elections which certified the nomination a written request that person be permitted to withdraw.”

N.C. Gen. Stat. § 163-113 (emphasis added).

33. Basic canons of statutory interpretation indicate that, by inserting a conditional clause such as the one emphasized above, the General Assembly intended for compliance with the

contemplated timeline to trigger the right contemplated by the Section, namely, a person’s right to withdraw themselves as a candidate. *See C Investments 2, LLC v. Auger*, 383 N.C. 1, 15, 881 S.E.2d. 270, 281 (2022) (“Where the language of a statute is clear and unambiguous, there is no room for judicial construction and the courts must construe the statute using its plain meaning.”) (citation omitted).

34. N.C. Gen. Stat. § 163-258.9(a) sets the conditional deadline contemplated by § 113.

35. As per N.C. Gen. Stat. § 163-258.9 *et seq.*, for the November 5, 2024 election cycle, County Boards of Election begin mailing absentee ballots to military and overseas personnel by September 6, 2024.

36. Notably, federal law mandates that such ballots must be mailed by September 21, 2024 at the latest. *See* 52 U.S.C. § 20302(a)(8)(A).

37. Regarding civilian absentee ballots, N.C. Gen. Stat. § 163-227.10(a) contemplates these ballots being mailed “as quickly as possible” in the event of an action pending in front of NCSBE or the court.

38. Similarly, North Carolina General Statute § 163-22(k), which § 227.10(a) cites, contemplates permissible modifications to absentee ballot mailing deadlines, or, in the words of NCSBE general counsel Paul Cox, “wobble room” so long as the federal mandate is met. *See* NCSBE August 29, 2024 meeting (hereinafter “NCSBE 8.29.24 Meeting”) at 36:00-38:16.

39. No matter which timeline applies, it is without dispute that formal written requests for Kennedy’s removal from the ballot were submitted and were received by Defendants at least two weeks before the earliest applicable deadline.

40. Thus, there was express compliance with the statutory prerequisites necessary to exercise the right to withdraw himself from the ballot.

41. Inexplicably, Defendants refused to recognize this compliance with the relevant statutory procedures. Instead, Defendants took the position that the requested withdrawal would place too much of a burden on NCSBE, statutory compliance notwithstanding.

IV. *Defendants Are Placed on Ample Notice that Kennedy Wished to Be Removed from the Ballot.*

42. Defendant Brinson Bell admits that she began receiving questions from County Boards of Elections regarding the printing and contents of their ballots soon after Kennedy's August 23, 2024 press conference.

43. Even though during that press conference Kennedy expressed he was withdrawing from the race for president, Defendant Brinson Bell told those County Boards of Election to continue printing ballots with Kennedy's name on them. *See* NCSBE 08.29.24 Meeting at 25:23-49.

44. Then, on Monday, August 26, 2024, NCSBE received formal correspondence inquiring regarding the processes and procedures for removing Kennedy from the North Carolina ballots.

45. Despite this inquiry and its logical end result—especially in light of Kennedy's press conference a few days prior—NCSBE again instructed County Boards of Election to continue printing their ballots with Kennedy on them.

46. By Tuesday, August 27, 2024⁴, NCSBE received a letter from Kennedy formally requesting his removal from the ballot.

47. Even still, NCSBE instructed County Boards of Election to continue printing their ballots with Kennedy on them. Defendants' later justification for this directive was that Defendant

⁴ The letter from Kennedy was actually sent on Monday, August 26, 2024, but NCSBE claims it was not forwarded to legal staff until Tuesday, August 27. *See* NCSBE 8.29.24 Meeting at 17:20-18:32.

Brinson Bell needed to receive a request from We The People directly, arguing that only the party could request Kennedy's removal; a novel position for which she cited no law in support.

48. Then, on Wednesday, August 28, 2024, NCSBE received a letter from We The People formally requesting Kennedy's removal from the ballot. *See* NCSBE 8.29.24 Meeting at 18:40-19:02.

49. Even still, NCSBE did not instruct County Boards of Election to cease printing their ballots with Kennedy on them. *See id.* at 26:13-51.

50. On Thursday, August 29, 2024, Defendants finally held an emergency hearing to determine whether they would allow Kennedy to withdraw himself from the state's ballots, an issue Defendants were admittedly on notice of since Kennedy's initial press conference almost a week before.⁵

V. Despite Complying With the Statutes, NCSBE Refuses to Allow Kennedy to Withdraw His Name From the Ballot

51. Defendants' August 29 hearing opened with a telling concession from NCSBE Staff who stated that "normally, a candidate can withdraw their name from a ballot before the deadline [set forth in N.C. Gen. Stat. § 163-258.9(a) and 52 U.S.C. § 20302(a)(8)(A)]." *See* NCSBE 8.29.24 Meeting at 2:00-14.

52. Despite recognizing this "normal" route a candidate may take, NCSBE staff immediately framed the issue presented—whether Kennedy was entitled to withdraw from the

⁵ During the August 29, 2024 meeting, Defendant Eggers IV raised serious concerns regarding an apparent lack of communication or sharing of information surrounding the requests for removal from the ballot which, upon information and belief, predated the correspondence cited by NCSBE Staff. In the words of Defendant Eggers IV, he was concerned that NCSBE staff was "box[ing] in" the Board Members into a predetermined decision and that he was "disappointed" that County Boards of Election were being told to continue incurring costs of printing ballots with Kennedy on them, despite NCSBE knowing this would be an issue. *See* NCSBE 08.29.24 Meeting at 19:04-20:50.

ballot—as one of “practical” considerations such as cost and time associated with printing new ballots. *Id.* at 2:40-48.

53. In furtherance of their framing of the issue presented, NCSBE staff, including Defendant Brinson Bell, proceeded to describe the request to remove Kennedy as a “significant hurdle” and a “tremendous undertaking,” all while ignoring any discussions of the clear compliance with the necessary process for requesting withdrawal from the ballot. *Id.* at 10:11-18.

54. Notably, none of Defendants’ discussions mentioned the formal, written requests for removal that were submitted prior to the deadlines set by N.C. Gen. Stat. § 163-2598.9(a) as required by N.C. Gen. Stat. § 163-113.

55. During the meeting, Defendant Lewis noted that NCSBE had the statutory authority and “flexibility” to alter the September 6, 2024 deadline for mailing ballots set by § 163-258.9 *et seq.*, so long as the federal mandate was met. Defendant Lewis went on to state that it was “disingenuous” for NCSBE staff to argue otherwise. *See* NCSBE 8.29.24 Meeting at 27:20-29:39.

56. In apparent disregard of Defendant Lewis’ statements or the legal question presented to the board, several Defendants, including Defendant Millen seized the opportunity to lambast Kennedy and his nomination, calling them a “farce” and accusing Kennedy of “capricious behavior.” *Id.* at 33:28-53; 35:14-22.

57. Curiously, those same statements cited to statutory ballot mailing deadlines—deadlines which had not yet passed—as the basis for denying Kennedy’s statutory rights to withdraw from the ballot. The irony of citing to a statutory deadline which had not passed as justification for ignoring Kennedy’s compliance with directly applicable statutory requirements cannot be understated.

58. Defendants’ failure to account for or even discuss Kennedy’s statutory compliance is revealing. In a 3-2 vote along party lines, the three Democratic NCSBE members voted to reject a motion brought by Republican NCSBE member, Defendant Lewis, which would have allowed Kennedy to withdraw his name from the ballot. *Id.* at 39:17-40:11 (closing with Defendant Hirsch stating his personal belief that this was the “fairest outcome under these circumstances.”).

59. After rejecting Defendant Lewis’ motion, the same Democratic NCSBE members, on advice of NCSBE staff, made a motion to find the request to withdraw was “impractical,” a standard which Defendants did not define, NCSBE staff admitted was not defined by the administrative code, and which caused confusion amongst members. This was highlighted by Defendants Lewis and Eggers IV expressing that the “practicality” determination the board was applying appeared to be a “decision that was made for [NCSBE]” due to its own actions in refusing to halt or alter its ballot printing procedures even once Kennedy made his intent on ballot removal clear. *Id.* at 42:35-45:18.

60. Amazingly, Defendants Carmon and Millen blamed Kennedy for not requesting his withdrawal sooner—even though Kennedy himself did not suspend his campaign until August 23, 2024. *Id.* These statements are illustrative of just how illusive Defendants’ “practicality” standard is. Under Defendants’ view, Kennedy, despite complying with the statutory deadline for withdrawing, would have had to request his withdrawal from the ballot even before he decided to withdraw from the race.

61. Ultimately the motion regarding the “impracticality” of the request to withdraw passed on a 3-2 vote, once again along party lines. *Id.* at 41:34-42:25 (citing the “short deadline” and “cost” as the basis for claiming “impracticality” but not mentioning that the withdrawal was statutorily compliant).

62. As the August 29 hearing closed, Defendant Carmon stated that he found it “ironic” that the same Democratic members of NCSBE who opposed Kennedy’s addition to the ballot were now the ones voting to keep him on. Defendant Carmon ended by saying he hoped for an apology from those who criticized those members’ opposition to Kennedy’s recognition in the first place. *Id.* at 46:00-28.

63. Defendant Carmon’s parting comments illustrate that, for the majority of NCSBE members, this vote on Kennedy and We The People’s requests was never about statutory compliance, rather, it was about sending a message and superimposing a subjective test with a foregone conclusion in place of the plain language of the statute. Simply put, Defendants’ “test” was the means to a predetermined end.

FIRST CLAIM FOR RELIEF
(Violation of N.C. Const. art. I § 14)

64. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

65. Article I § 14 of the North Carolina Constitution provides that “Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.”

66. The North Carolina Supreme Court has recognized that it looks to the United States Supreme Court for guidance on interpretation and application of the Section 14 and the right to free speech. *See State v. Petersilie*, 334 N.C. 169, 184 (1993) (“In this case, for the purpose of applying our State Constitution’s Free Speech Clause we adopt the United State Supreme Court’s First Amendment jurisprudence.”).

67. Further, the United States Supreme Court has repeatedly held that mandating speech a person would not otherwise make necessarily affects speech and is thus a content-based

regulation subject to strict scrutiny. *See, e.g., Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 795, 782, 108 S.Ct. 2667, 2677 (1988).

68. Similarly, candidate-eligibility requirements implicate the First Amendment. *Anderson v. Celebrezze*, 460 U.S. 780, 786 (1983).

69. Defendants' refusal to allow Kennedy to withdraw from the ballot despite his express requests and statutory compliance pursuant thereto is a content-based regulation to which strict scrutiny applies.

70. Defendants cannot point to any legitimate interest, let alone a compelling interest to justify ignoring the clear statutory withdrawal procedures here.

71. To the extent Defendants point to any burden or expense allegedly incurred in printing ballots as an interest in keeping Kennedy on the ballot, it is far from compelling, rather, it is an issue of Defendants' own making. They chose to continue printing ballots with Kennedy's name on them despite knowing he wished for it to be removed.

72. By forcing Kennedy to remain on the ballot against his will, Defendants are mandating speech Kennedy would not otherwise make, which is the antithesis of both state and federal free speech jurisprudence.

73. Just as this Court recognized in its Order *N.C. Dem. Party* where taking Kennedy off the ballot would impinge on First Amendment privileges, so too does forcing him to remain on the ballot, especially when he has clearly expressed his intent to be removed and taken all necessary steps to do so. *See N.C. Dem. Party*, Order at ¶¶ 26-28.

74. Tellingly, Defendants cannot point to a single statute Kennedy failed to comply with in requesting his removal from the ballot. Rather, Defendants would have this Court ignore that glaring error and inject a subjective, undefined test, unmoored from any cognizable standard

or definition, the result of which would be government action strongarming Kennedy into making speech he would not otherwise make.

75. Kennedy respectfully ask this Court to reject that invitation, reaffirm his foundational rights to free speech, and avoid Defendants' application of North Carolina law which naturally raises serious constitutional questions.

SECOND CLAIM FOR RELIEF
(Declaratory Judgment – Violation of N.C. Gen. Stat. § 163-113)

76. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

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

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

79. North Carolina General Statute § 163-113 provides the exact conditions upon which a candidate may exercise their right to withdraw from an election.

80. Section 163-113 does not contain any exception or condition upon which NCSBE may deny that withdrawal if those conditions are met.

81. Similarly, Section 163-113 does not contain any test, inquiry, or discretion for NCSBE to insert a question of whether or not such withdrawal is “practical,” so long as the statutory conditions themselves are met.

82. To the extent Defendants can cite to any basis for such a test, they point to 08 NCAC 06B.0104, but that regulation deals with replacing nominees on ballots and what occurs if that replacement cannot be made prior to applicable statutory deadlines. The same is true of the statutory provision that regulation is promulgated under. *See* N.C. Gen. Stat. § 163-165.3(c)

83. Unlike Section 165.3(c), the statutory conditions found in Section 113 work directly in tandem with the absentee ballot mailing deadlines provided in 52 U.S.C. § 20302 *et seq.*, N.C. Gen. Stat. § 163-258.9(a), and § 163-22(k), contemplating that a nominee has a right to withdraw from an election so long as those statutory deadlines had not passed. N.C. Gen. Stat. §163-113.

84. Kennedy complied with N.C. Gen. Stat. § 163-113 when formal written requests were sent to Defendants withdrawing Kennedy from the ballot well in advance of the deadlines contemplated by the aforementioned statutes.

85. As a result, Kennedy is entitled, as a matter of right, to remove his name from the ballot.

86. An actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiff and Defendants as to whether Kennedy can satisfy the statutory prerequisites for having his name removed from the ballots but then have that right ignored by Defendants based upon their subjective determination and mostly manufactured basis for claiming doing so would be “impractical.”

87. Additionally, to the extent the Court finds that practicality is a consideration factored into a request for removal from a ballot, then an actual, real, presently existing, concrete, and justiciable controversy exists between Plaintiff and Defendants as to what cognizable, justiciable standards such an inquiry entails.

88. Defendants’ actions have irreparably harmed and will continue to harm Kennedy by forcing him to remain on the ballot against his will.

89. Specifically, Kennedy seek a declaratory judgment that:

- a. Defendants’ failure to remove him from the ballot is in violation of N.C. Gen. Stat. § 163-113 and N.C. Const. art. I § 14;

- b. Defendants must comply with Kennedy's request for withdrawal from the ballot and take all necessary steps prior to absentee ballots being mailed by County Boards of Election; and
- c. Defendants must expedite their compliance with these requirements and remove Kennedy from the ballot immediately as to avoid any conflicts with or violations of related deadlines.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray that the Court:

- 1. Enter immediate and injunctive relief in the form of a temporary restraining order followed by a preliminary and permanent injunction requiring Defendants to cease printing all ballots with Kennedy's name on them and requiring Defendants to remove Kennedy's name from any already printed statewide general election ballot;
- 2. Enter a Declaratory Judgment that there was full compliance with the statutory requirements for withdrawing Plaintiff's name from the November 5, 2024 general election;
- 3. Enter a Declaratory Judgment that Defendants must immediately remove Kennedy from the statewide ballots and that NCSBE must take all necessary steps to immediately begin and ensure that removal prior to September 21, 2024 as per 52 U.S.C. § 20302(a)(8)(A), and that all corrected absentee ballots must be sent out "as quickly as possible" under N.C. Gen. Stat. § 163-227.10(a);
- 4. Direct Defendants, under a court approved plan, to take all steps necessary to ensure corrected and accurate ballots are printed and mailed prior to the deadlines required by all applicable statutes;

5. Enter an Order pursuant to all applicable laws, awarding Plaintiff his reasonable attorney's fees;
6. Retain jurisdiction over this matter to ensure Defendants comply with any orders issued by this Court; and
7. Award such other and further relief in Plaintiff's favor as deemed just and proper.

This, the 30th day of August, 2024.

SIRI & GLIMSTAD LLP

Aaron Siri, Esq.*
Elizabeth A. Brehm, Esq.*
Alycia Perkins, Esq.*
745 Fifth Ave, Suite 500
New York, NY 10151
Tel: (888) 747-4529
Fax: (646) 417-5967
aaron@sirillp.com
ebrehm@sirillp.com
aperkins@sirillp.com

Attorneys for Plaintiff

**Pro Hac Vice Motion forthcoming*

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach
Phillip J. Strach
North Carolina State Bar no. 29456
Jordan A. Koonts
North Carolina State Bar no. 59363
J. Matthew Gorga
North Carolina State Bar no. 56793
Aaron T. Harding
North Carolina State Bar no. 60909
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Ph: (919) 329-3800
phil.strach@nelsonmullins.com
jordan.koonts@nelsonmullins.com
matt.gorga@nelsonmullins.com
aaron.harding@nelsonmullins.com

Attorneys for Plaintiff