

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV _____-910

NORTH CAROLINA DEMOCRATIC
PARTY,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; ALAN HIRSCH, in his
official capacity as Chair and member of the
North Carolina State Board of Elections;
JEFF CARMON, in his official capacity as
Secretary and member of the North Carolina
State Board of Elections; STACY “FOUR”
EGGERS IV, in his official capacity as
member of the North Carolina State Board of
Elections; KEVIN N. LEWIS, in his official
capacity as member of the North Carolina
State Board of Elections; SIOBHAN
O’DUFFY MILLEN, in her official capacity
as member of the North Carolina State Board
of Elections; KAREN BRINSON BELL, in
her official capacity as Executive Director of
the North Carolina State Board of Elections;
WE THE PEOPLE PARTY OF NORTH
CAROLINA,

Defendants.

**VERIFIED COMPLAINT AND
PETITION FOR JUDICIAL REVIEW**

The North Carolina Democratic Party (“NCDP”) files this Verified Complaint and Petition for Judicial Review against the North Carolina State Board of Elections and its members and executive director in their official capacities (collectively, the “Board”) and the We The People Party of North Carolina (“WTP Party”).

INTRODUCTION

1. North Carolina law establishes different ballot-access requirements for unaffiliated candidates and political parties. One difference is the number of signatures required to get on the

ballot: unaffiliated candidates must gather signatures from 1.5% of the voters in the last gubernatorial election, but new parties need only collect from 0.25%. These signature requirements are different because the “attempt to form a new political party and the act of seeking office as an unaffiliated candidate ‘are entirely different’ endeavors.” *Buscemi v. Bell*, 964 F.3d 252, 265 (4th Cir. 2020) (quoting *Storer v. Brown*, 415 U.S. 724, 745 (1974)).

2. Robert F. Kennedy Jr. has announced many times that he is running as an independent candidate for President of the United States. In November 2023, Kennedy registered in North Carolina as an unaffiliated candidate and thus had to gather signatures from 83,188 registered voters (1.5%). But in January 2024, the Kennedy campaign decided that it would be easier to form a new political party—the WTP Party—with the “sole purpose” of placing Kennedy’s name on the ballot. Through this maneuver, the Kennedy campaign purported to reduce its signature requirement from 83,188 (1.5%) to 13,865 (0.25%).

3. On July 16, 2024, the Board voted 4-1 to recognize the WTP Party. Board Chair Hirsch found that the WTP Party was a “subterfuge”—a candidate campaign committee masquerading as a political party—but voted “reluctantly” in favor of recognition because “ultimately a court would have to decide” whether North Carolina law permits that maneuver. Hirsch explained that he was “not sure the Board should be the one that is standing in the way if someone wants to challenge that in court” and opined that the challenger would “have a good case.”

4. The NCDP files this lawsuit so that a court can decide that important, recurring question. The Board’s decision here collapses the distinction between candidates and parties, permitting campaign committees such as the Kennedy campaign to circumvent not only ballot-access rules but also the limits on campaign contributions and expenditures.

5. The Court should declare that North Carolina does not permit candidate campaigns to use the new-party recognition process to evade the requirements applicable to unaffiliated candidates. Accordingly, the Court should reverse the Board’s decision recognizing the WTP Party and enjoin the Board from placing the WTP Party on the November 2024 ballot.

PARTIES, JURISDICTION, AND VENUE

6. Plaintiff North Carolina Democratic Party is a recognized political party in North Carolina. The NCDP brings this action on its own behalf and on behalf of its members who are registered voters in North Carolina and intend to vote in the November 2024 general election and later elections.

7. The NCDP has an interest in competing fairly against other political parties and unaffiliated candidates in North Carolina. Allowing unaffiliated candidates to masquerade as political parties, as Kennedy and the WTP Party seek to do here, in violation of North Carolina law harms the electoral prospects of the NCDP and its candidates. In addition, the unlawful inclusion of the WTP Party on the ballot will require the NCDP to divert and expend additional resources to oppose WTP candidates who could not qualify for the ballot absent circumvention of North Carolina law—funds and resources that it would otherwise deploy elsewhere.

8. Defendant North Carolina State Board of Elections is an agency responsible for the regulation and administration of elections in North Carolina. It has “general supervision over the primaries and elections in the State.” N.C. Gen. Stat. § 163-22(a).

9. Defendant Alan Hirsch is the Chair and a member of the Board. Mr. Hirsch is sued in his official capacity.

10. Defendant Jeff Carmon is the Secretary and a member of the Board. Mr. Carmon is sued in his official capacity.

11. Defendant Stacy “Four” Eggers IV is a member of the Board. Mr. Eggers is sued in his official capacity.

12. Defendant Kevin N. Lewis is a member of the Board. Mr. Lewis is sued in his official capacity.

13. Defendant Siobhan O’Duffy Millen is a member of the Board. Ms. Millen is sued in her official capacity.

14. Defendant Karen Brinson Bell is the Executive Director of the Board. Ms. Brinson Bell is sued in her official capacity.

15. Defendant We The People Party of North Carolina is a political committee organized by the Kennedy campaign to get Kennedy on the North Carolina presidential ballot while avoiding the signature requirement established by the North Carolina General Assembly for statewide office. The WTP Party was recognized by the Board as a new political party under N.C. Gen. Stat. § 163-96 for the first time at the July 16, 2024, Board meeting.

16. This Court has subject-matter jurisdiction under N.C. Gen. Stat. § 163-22(*l*) because this is a petition for judicial review of a Board decision. Section 163-22(*l*) provides:

Notwithstanding any other provision of the law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.

See also Act to Provide That Appeals from the State Board of Elections Be Heard in the Superior Court of Wake County, 1981 N.C. Sess. Laws 825 (adding section 163-22(*l*)).

17. Alternatively, this Court has subject-matter jurisdiction under Article 4 of Chapter 150B of the General Statutes, because this is a petition for judicial review of a final decision in a contested case.

18. This Court also has jurisdiction to issue a writ of mandamus or a mandatory injunction in accordance with its general original jurisdiction. *See Lloyd v. Babb*, 296 N.C. 416, 251 S.E. 2d 843 (1979).

19. This Court likewise has jurisdiction over this action as a declaratory judgment action under Article 26 of Chapter 1 of the General Statutes. *See also* N.C. R. Civ P. 57.

20. Venue is proper in this Court under N.C. Gen. Stat. §§ 1-77, 1-82, and 163-22(l).

FACTUAL ALLEGATIONS

I. Statutory Background: North Carolina Law Imposes Different Filing Deadline and Signature Requirements on New Political Parties and Unaffiliated Candidates

21. North Carolina law provides that the presidential ballot in this state will include the candidates “nominated by any political party recognized in this State under G.S. 163-96” and any “candidate for President of the United States who has qualified to have his or her name printed on the general election ballot as an unaffiliated candidate under G.S. 163-122.” N.C. Gen. Stat. § 163-209(a).

22. Section 163-96 provides that a political party includes a group of voters which, in the last election, either (a) won 2% of the presidential or gubernatorial vote in North Carolina or (b) nominated a presidential candidate in 70% of the states.

23. Section 163-96 also defines a process for forming **new political parties**. To be recognized as a new party, a group of voters must file with the Board “petitions for the formulation of a new political party which are 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,” including “at least 200 registered voters from each of three congressional districts in North Carolina.” N.C. Gen. Stat. § 163-96(a)(2).

24. In 2024, this 0.25% requirement amounted to **13,865** signatures.

25. These new-party petitions are due by “12:00 noon on the first day of June.” N.C. Gen. Stat. § 163-96(a)(2).

26. This year, June 1 was a Saturday, so the deadline was **June 3, 2024**.

27. Petitions to form a new political party must include the name of the new party and information about its chairperson. N.C. Gen. Stat. § 163-96(b). In addition, “the organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.” *Id.*

28. Once these petitions are submitted, the Board “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.” N.C. Gen. Stat. § 163-96(a)(2).

29. If the Board recognizes a new political party, then in “the first general election following the date on which a new political party qualifies under the provisions of N.C.G.S. 163-96, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots.” N.C. Gen. Stat. § 163-98. This “new political party” may “select its candidates by party convention,” without the need to conduct a primary. *Id.*

30. **Unaffiliated candidates** are subject to different requirements. To appear on the presidential ballot, unaffiliated candidates must submit petitions “signed by qualified voters of the State equal in number to one and a half percent (1.5%) of the total number of voters who voted in the most recent general election for Governor,” including signatures from “at least 200 registered voters from each of three congressional districts in North Carolina.” N.C. Gen. Stat. § 163-122(a)(1).

31. In 2024, this 1.5% requirement amounted to **83,188** signatures.

32. These unaffiliated-candidate petitions are due to the Board by “12:00 noon on the day of the primary election,” N.C. Gen. Stat. § 163-122(a)(1), which is held on “the Tuesday after the first Monday in March,” *id.* § 163-213.2.

33. This year, that deadline was **March 5, 2024**.

34. *North Carolina law thus imposes different filing deadline and signature requirements on new political parties and unaffiliated candidates.* An unaffiliated candidate must collect more signatures (1.5% rather than 0.25% of the total number of voters who voted in the most recent general election for Governor) and submit them earlier (by March rather than June). But to compare these requirements is “to compare apples to oranges,” because, as the Fourth Circuit and U.S. Supreme Court have recognized, a “new political party ‘contemplates a statewide, ongoing organization with distinctive political character,’ whereas an unaffiliated candidate merely seeks election for one office.” *Buscemi*, 964 F.3d at 265 (quoting *Storer*, 415 U.S. at 745).

35. Compared with unaffiliated candidates, “a new political party must satisfy additional requirements to attain and retain such recognition,” including the duty to “‘inform the signers of the general purpose and intent of the new party.’” *Id.* (quoting N.C. Gen. Stat. § 163-96(b)).

36. As the Board itself recognizes, a new party’s obligation to “tell voters ‘of the general purpose and intent of the party’ before voters sign the party’s petition” is a material limitation on the party’s ability to gather signatures. Brief of Defendant-Appellee (NCSBE) at 39, 2020 WL 416066, at *39, *Buscemi v. Bell*, 964 F.3d 252 (4th Cir. 2020) (No. 19-2355) (quoting N.C. Gen. Stat. § 163-96(b)). “Unaffiliated candidates face no such requirement” and “can collect signatures from a larger pool of voters as a result.” *Id.*

37. The “additional burdens on new political parties help explain why new political parties have an initial signature requirement lower than the signature requirement for an unaffiliated candidate.” *Buscemi*, 964 F.3d at 265.

II. Kennedy Seeks the Democratic Nomination for President

38. In April 2023, Kennedy “declare[d] that he would challenge President Biden for the Democratic nomination in a long-shot bid for the White House.” Trip Gabriel, *Robert F. Kennedy Jr. Makes His White House Run Official*, N.Y. Times (Apr. 19, 2023), <https://www.nytimes.com/2023/04/19/us/politics/robert-kennedy-presidential-run.html>.

39. Kennedy filed a Statement of Candidacy that month with the Federal Election Commission listing his party affiliation as “Democratic Party.” Robert F Kennedy, FEC Form 2: Statement of Candidacy (Apr. 5, 2023), archived at <https://perma.cc/T3BZ-RGT5>.

III. Kennedy Registers as an Unaffiliated Candidate for President

40. In October 2023, Kennedy abandoned his effort to win the Democratic nomination and “declared [him]self an independent candidate for President of the United States of America.” Robert F. Kennedy, Jr., *Today, I Declared Myself an Independent Candidate for President*, Substack (Oct. 9, 2023), archived at <https://perma.cc/L542-VGT4>. In a speech across from Independence Hall, Kennedy “declare[d] [his] own independence. Independence from the Democratic Party and independence from all parties.” *Id.*

41. On November 1, 2023, Kennedy registered in North Carolina to run for President as an unaffiliated candidate. *See* Robert Kennedy for President – UNA (filed Nov. 1, 2023), <https://vt.ncsbe.gov/PetLkup/> (click “Petition” and choose “ROBERT KENNEDY FOR PRESIDENT – UNA” from the dropdown). The Kennedy Campaign thus had to gather signatures from 1.5% of the voters in the last gubernatorial election, or 83,188 signatures. *See id.*

IV. The Kennedy Campaign Seeks to Form the WTP Party to Secure Ballot Access for Kennedy

42. In January 2024, the Kennedy campaign announced that it was forming the WTP Party as “the most direct path to ballot access.” Press Release, Team Kennedy, Kennedy Campaign Forms ‘We the People’ Political Parties in Six States (Jan. 16, 2024), archived at https://web.archive.org/web/20240116233827/https://www.kennedy24.com/kennedy_campaign_we_the_people_political_parties.

43. The Kennedy campaign expressed its view that North Carolina “offer[s] independent presidential candidates two methods of achieving ballot access — as an individual candidate or as the nominee of a new party” and explained that it had chosen to create a new party because it “requires fewer signatures.” *Id.* The result would be the same either way: “Once a new party achieves ballot access in this way, they can nominate the candidate of their choosing, in this case, Robert F. Kennedy, Jr.” *Id.*

44. On January 10, 2024, Kennedy campaign staff member Ceara Foley registered the WTP Party with the Board as a new party seeking recognition under N.C. Gen. Stat. § 163-96.

45. The sole purpose of the WTP Party was to secure ballot access for Kennedy.

46. The WTP Party provided instructions to petitioners explaining that the purpose of the WTP Party was to place Kennedy’s name on the North Carolina ballot:

INSTRUCTIONS FOR PETITIONERS

NEW NORTH CAROLINA “WE THE PEOPLE” PARTY PETITION

Purpose: To start a new party “We The People” in North Carolina.
This will allow us to place Robert F. Kennedy, Jr.’s name on the NC ballot for the 2024 Presidential election.
To do so, we need to collect 21,000 signatures by May 1st or 1435 a week collectively across NC.

WTP Party, Instructions for Petitioners at 3, Produced in Response to Subpoena from Board to We the People (Exhibit A),

https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/We%20The%20People/We%20the%20People%20NC%20Petitioner%20Instructions%2011824.pdf, archived at <https://perma.cc/PVK6-EFXH>.

47. The WTP Party also provided sample scripts to use when collecting signatures. The first sample script requests signatures to get Kennedy on the ballot as an independent presidential candidate:

Sample Signature Collecting Scripts:

#1 “ Excuse me miss/sir/folks, sorry to bother/interrupt. Are you registered to vote in North Carolina? We are creating a new independent 3rd party called We The People to put Robert F Kennedy Jr on the ballot in November. He is running as an independent for the office of president. Are you familiar with him? We require about 13,700 signatures in NC to get him on the ballot. Would you be willing to sign to allow us a real choice this November?”

Id. at 1.

48. The WTP Party’s instructions for petition circulators are just as clear. These instructions urge the circulator to tell the voter that the “sole purpose of this petition” is “to place the name of Robert F. Kennedy Jr. on the 2024 general election ballot”:

5. You may NOT misrepresent the purpose of this petition.

The sole purpose of this petition to qualify a new political party in North Carolina – “We The People” Party – to place the name of Robert F. Kennedy Jr. on the 2024 general election ballot as a candidate for the office of President of the United States. You cannot collect a signature by telling a voter the petition is to “Save America” or “Help the Poor.”


BE HONEST WITH THE VOTERS.

WTP Party, Circulator Instructions, Produced in Response to Subpoena from the Board to We the People (Exhibit B),

https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/2024-07-16/New%20Party%20Petitions/Subpoena%20Responses/We%20The%20People/We%20ThePeople%2011524.pdf, archived at <https://perma.cc/EV36-EUPM>.

49. At the same time, the Kennedy campaign—the entity paying Ms. Foley’s salary—was announcing on its website that the WTP Party was “the new party that RFK Jr. is using solely for the purpose of satisfying ballot access regulations”:

NORTH CAROLINA: ON THE BALLOT

	Total Signatures Required 13,757	Start Date Anytime	End Date 05/31/2024	STATE PAGE
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North Carolina is collecting signatures for party ballot access. **We the People** - the new party that RFK Jr. is using solely for the purpose of satisfying ballot access regulations. [Click here to register](#) or [volunteer](#) to help get Bobby on the ballot in North Carolina or get in touch at northcarolina@teamkennedy.com

Team Kennedy, Ballot Access HQ (May 28, 2024) (Exhibit C), archived at <https://web.archive.org/web/20240528152655/https://www.kennedy24.com/ballot-access> (click on North Carolina).

V. The Board Recognizes the WTP Party Despite Its “Subterfuge”

50. The WTP Party submitted 24,509 signatures by the June 1, 2024, deadline for new party recognition.

51. On June 5, 2024, the NCDP submitted a letter to the Board objecting to the WTP Party’s petition. The NCDP explained that “the Kennedy Campaign is attempting to skirt North Carolina ballot access rules by pretending to form a political party that is in fact no more than a candidate campaign committee—organized by and under the direction of a single candidate ‘solely for the purpose of satisfying ballot access regulations’—thereby placing Kennedy on the ballot with just one-sixth of the signatures required by state law for independent candidates like him, and with three additional months to submit those signatures.” Letter from NCDP to the Board re WTP Party at 7 (June 5, 2024), archived at <https://perma.cc/A8TV-RYK2>.

52. On June 26, 2024, the Board met to consider the sufficiency of three petitions to be recognized as a new political party: from the WTP Party, the Constitution Party of North Carolina, and the Justice For All Party of NC (“JFA Party”). The Board voted 3-2 to deny all three petitions while it investigated the circumstances surrounding the three parties’ collection efforts. *See, e.g.*, June 26, 2024 Board Meeting Tr. at 156:22–157:5 (Exhibit D) (denying WTP Party recognition “for now”).¹

53. On July 9, 2024, the Board voted 5-0 to recognize the Constitution Party of North Carolina under N.C. Gen. Stat. § 163-96. *See* Press Release, NCSBE, State Board Recognizes Constitution Party as Official NC Political Party (July 9, 2024), archived at <https://perma.cc/86JA-GVKM>.

54. Less than a month later, on July 16, 2024, the Board voted 4-1 to recognize the WTP Party and 3-2 to deny recognition to the JFA Party.

55. Board member Millen voted to deny recognition to both the WTP and JFA Parties. Millen explained that N.C. Gen. Stat. § 163-96 obligates and empowers the Board to determine whether “the petition is one for the creation of a new political party” and whether the new party’s organizers and petition circulators “inform[ed] the signers of the general purpose and intent of the new party.” July 16, 2024 Board Meeting Tr. at 16:24–17:8 (Exhibit E).² “The purpose and intent of a new party cannot merely be to place a particular candidate on the ballot because that is the subject matter of G. S. 163-122.” *Id.* at 17:9–12. The overall statutory structure “makes it clear

¹ Undersigned counsel engaged a court reporter to create a transcript of the public recording of the June 26, 2024, meeting. *See* https://dl.ncsbe.gov/?prefix=State_Board_Meeting_Docs/2024-06-26/.

² As with the June 26, 2024 meeting, undersigned counsel engaged a court reporter to create a transcript of the public recording of the July 16, 2024 meeting. *See* https://dl.ncsbe.gov/?prefix=State_Board_Meeting_Docs/2024-07-16/.

that a political party is intended to be more than a transitory entity designed to be a vehicle for a single candidate.” *Id.* at 17:12–17.

56. Millen cited “six established facts that demonstrate that with respect to both the Justice for All Party and the We the People Party, the purpose and intent here is to place an individual candidate on the ballot”—Cornel West for the JFA Party and Kennedy for the WTP Party—“and not to create a new political party.” *Id.* at 17:24–18:5. Four of those facts are of particular relevance here.

57. First, both Kennedy and West “initially indicated that they were going to proceed with their candidacy using the independent candidate method outlined in G.S. 163-122.” *Id.* at 18:5–11.

58. Second, the scripts used by Kennedy’s “petition circulators indicated that the sole purpose of the party was to secure a place on the ballot for Kennedy as an ‘independent candidate.’” *Id.* at 19:3–7.

59. Third, “both candidates, Kennedy and West, by their actions have demonstrated that their purpose is to get on various ballots by any means necessary with no regard to the particulars of a political party.” *Id.* at 21:1–5. Millen then listed some of the “alternative methods these candidates are using in other states [to get on the ballot] because they speak to the issue of the purpose of the North Carolina putative parties,” showing that they are really “an unaffiliated candidacy which should fall under the 163-122 statute.” *Id.* at 23:18–24:1.

Mr. Kennedy will be on the ballot in Colorado on the Libertarian line. In California he will be on the line of the American Independent Party of California which of course was the George Wallace Party. In Michigan, he’s the nominee of the Natural Law Party which is part of an international movement of parties aligned with transcendental meditation. In South Carolina Mr. Kennedy is running on the ballot line of the Alliance Party of South Carolina. In Florida, Mr. Kennedy is running on the Reform Party line, the old Ross Perot Party. In Delaware, Mr. Kennedy is the nominee of the Independent Party of Delaware. In Texas, Mr. Kennedy is

apparently running as an independent and his team has collected 245,000 signatures to get on the ballot. In Nevada, Mr. Kennedy is also running as an unaffiliated or independent candidate but his candidacy is under fire in that state partly because of the inconsistent fact that he's running on all of these small party labels in other states. This litany leads to the obvious question of how a candidate can be unaffiliated in some states, aligned with preexisting third parties in several states, and starting a new party in other states. Only in states without a preexisting party whose ballot line he believes he can obtain by this method does the We the People Party come into existence and that is the situation for Hawaii, Mississippi, and potentially North Carolina where the so-called party serves as nothing but a special purpose vehicle for Mr. Kennedy's independent candidacy.

Id. at 21:6–22:19.

60. Fourth, “only after [the Board] started raising issues about whether these were authentic political parties, did each of these parties come forward with other candidates for office: a mayor here, a NC House candidate there. But that attempted, post-hoc rationalization is itself evidence of the pre-textual nature of these so-called parties.” *Id.* at 24:1–10.

61. Board Chair Hirsch agreed with Millen that the WTP Party had engaged in subterfuge but indicated that he would vote to recognize the WTP Party anyway:

I agree with Ms. Millen. I think this is a subterfuge. But having said that, just looking at the words of the statute with purpose and intent, I think it's a very, very close call. And I am going to reluctantly vote to recognize We the People. Even though I believe there has been subterfuge. Fundamentally because I think that it is such a close call that ultimately a court would have to decide it. Therefore I'm not sure the Board should be the one that is standing in the way if someone wants to challenge that in court. They are welcome to do so. I think they have a good case but, again, I think it's a very close call.

Id. at 28:18–29:11.

62. Board members Lewis and Eggers found nothing improper with the Kennedy campaign's approach. Lewis expressed his view that the General Assembly provided independent candidates with two options—run as unaffiliated or create a new party—and “enacted a public policy which favors candidates' access to the ballot via a party as opposed to unaffiliated because they've made it more difficult to access the ballot as an unaffiliated candidate.” *Id.* at 25:11–16.

Eggers concurred “because the legislature has expressed a preference that candidates run as party affiliates and not independents.” *Id.* at 27:5–9.

63. The fifth Board member, Carmon, declined to share his views, stating that he did not think the Board “should belabor the point.” *Id.* at 29:16.

64. The Board then voted 4-1 to recognize the WTP Party, with Millen casting the dissenting vote. *Id.* at 30:12–22.

65. Immediately following the July 16, 2024, meeting, the Board issued a press release announcing that it had recognized the WTP Party. The Board stated that the WTP Party “will have candidates on ballots in November, which it chose during its June 2024 nominating convention,” including “Robert F. Kennedy Jr. and Nicole Shanahan for president and vice president of the United States, Jeff Scott of Charlotte for N.C. Senate District 40, and Mark Ortiz of Kannapolis for Rowan County Commissioner, according to a letter from We The People, North Carolina.” Press Release, NCSBE, State Board Recognizes We The People as Official NC Political Party (July 16, 2024), archived at <https://perma.cc/86JA-GVKM>.

66. As for the JFA Party, the Board announced that “[m]embers opposed to the party’s recognition cited evidence of fraud in the signature gathering process, as well as the refusal of independent signature gatherers to comply with a subpoena for information from the Board.” *Id.*³

³ On July 22, 2024, three “voters and petition signers who supported JFA’s effort to become a ballot-qualified party in 2024” sued the Board in the Eastern District of North Carolina. Compl. ¶ 2, *Ortiz II v. N. Carolina State Bd. of Elections*, No. 5:24-cv-420-BO (E.D.N.C. filed July 22, 2024), ECF No. 1. These three plaintiffs are requesting that an order be entered “as soon as possible, but no later than August 19, 2024 that: (1) directs NCSBE to certify JFA as a new party entitled to place its candidates on North Carolina’s November 5, 2024 general election ballot pursuant to N.C. GEN. STAT. § 163-96(a)(2); (2) enjoins NCSBE from enforcing the July 1, 2024 deadline prescribed by N.C. GEN. STAT. § 163- 98 against Plaintiffs; and (3) directs NCSBE to take any and all other action necessary to ensure the inclusion of JFA’s candidates, including Dr. West, on North Carolina’s November 5, 2024 general election ballot.” *Id.* at 17–18 (footnote omitted).

VI. The NCDP Challenges the Board's Decision to Recognize the WTP Party

67. The NCDP files this lawsuit to protect the integrity of the North Carolina electoral process. Having failed to win the Democratic nomination or to secure the necessary support as an unaffiliated candidate, the Kennedy campaign should not be permitted to gain access to the North Carolina ballot through underhanded means.

68. The distinction between a “political party” and a “candidate campaign” is fundamental to North Carolina law. This distinction recognizes that the “attempt to form a new political party and the act of seeking office as an unaffiliated candidate ‘are entirely different’ endeavors.” *Buscemi*, 964 F.3d at 265 (quoting *Storer*, 415 U.S. at 745). They are like “apples and oranges.” *Id.*

69. A political party “contemplates a statewide, ongoing organization with distinctive political character.” *Id.* (quoting *Storer*, 415 U.S. at 745). Once recognized, a party is “entitled to have the names of its candidates” printed upon and down the ballot for “national, State, congressional, and local offices,” N.C. Gen. Stat. § 163-98, and, therefore, must have a “general purpose and intent” that can be communicated to voters in order for the party to qualify for the ballot, *id.* § 163-96(b). A candidate campaign committee, by contrast, is “organized by or under the direction of a candidate.” *Id.* § 163-278.38Z(3). The campaign committee thus supports “an individual seeking ballot access for himself whereas the new party is a group of individuals seeking recognition in order to nominate candidates for office.” *Buscemi v. Bell*, No. 7:19-cv-164-BO, 2019 WL 13211246, at *4 (E.D.N.C. Nov. 22, 2019). “The groups are simply not similarly situated.” *Id.*

70. Despite these differences, the Board conflated candidates with parties when recognizing Kennedy's WTP Party. To qualify for the ballot as an unaffiliated candidate for president, the Kennedy campaign had to submit **83,188 signatures by March 5, 2024**. N.C. Gen.

Stat. § 163-122(a)(1). Rather than carry this burden, the Kennedy campaign found what it considered a more “direct” path to the ballot, one that required only **13,865 signatures by June 1, 2024**. N.C. Gen. Stat. § 163-96(a)(2).

71. The Kennedy campaign’s shortcut is not just unfair and contrary to North Carolina ballot-access law; it threatens to undermine the campaign-finance rules established by our General Assembly.

72. For **campaign contributions**, the rule for any “candidate” or “other political committee” is that it may not accept contributions in excess of \$6,400. N.C. Gen. Stat. § 163-278.13(a). In contrast, because they are intended to support many candidates over time, there are no limits for contributions to a political party. *See* N.C. Gen. Stat. § 163-276.13(H).

73. The rules are different for **campaign expenditures** as well. Section 163-278.13B(a) restricts the use of contributions for a “candidate” or a “candidate campaign committee” to nine enumerated purposes, but these restrictions do not apply to a political party. As the Board Campaign Finance Manual states, “there are very few restrictions on how a party committee may spend its money.” NCSBE, Campaign Finance Manual at 83 (Rev. 02.22), archived at <https://perma.cc/D4T3-JZHC>.

74. None of these differences will matter if candidate committees can rebrand as parties. The two-tiered structure the legislature created for ballot access for political parties (per § 163-96) and unaffiliated candidates (per § 163-122) will collapse. No future independent candidates will comply with the signature requirements for ballot access in N.C. Gen. Stat. § 163-22, or with the March primary deadline to submit a petition. They will simply follow the easier path to ballot access by creating a single-candidate, single-election “political party.”

75. Indeed, less than a month after the Kennedy Campaign announced its plans to circumvent North Carolina’s ballot-access requirements by starting a new political party, independent candidate Cornel West and his campaign followed suit by seeking to form the “Justice for All Party” in North Carolina and other states where “it is easier to gain access to the ballot [as] a party as opposed to an independent.” @CornelWest, X (Jan. 31, 2024 12:43 PM), <https://x.com/CornelWest/status/1752749471622979858> (Video at 0:18: “We’re calling for the Justice for All Party to be used to gain access to the ballot in those states where it’s easier to gain access to the ballot [as a] party as opposed to an independent. I’ll be an independent in other states.”), archived at <https://perma.cc/U84Y-VJT3>.

76. If the Board’s decision stands, North Carolina can expect a flood of candidates masquerading as political parties to follow this strategy in 2026 and beyond.

77. Not only that, but any candidate seeking to avoid the contribution and expenditure limits the General Assembly has imposed on individual candidates could simply form a political party in their own image and escape those requirements. For example, any candidate for office will find it powerfully attractive to create a new political party that can accept unlimited campaign contributions (not just checks for \$6,400 at a time) to a party that exists only to get that single candidate elected.

78. The reading the Board adopted—which enabled the WTP Party’s “subterfuge”—is inconsistent with North Carolina law and the intent of the General Assembly in enacting Chapter 163.

79. This Court should either direct the Board to reverse the effects of its decision and not to place the WTP Party’s candidates on the 2024 general election ballot, or promptly clarify

the law and remand for the Board to reconsider its decision in light of a correct understanding of North Carolina law.

FIRST CAUSE OF ACTION
Violation of N.C. Gen. Stat. § 163-96
(Against the Board)

80. The NCDP incorporates all previous paragraphs as if fully set forth here.

81. The Board’s decision to recognize the WTP Party as a new political party abdicated the Board’s duty to “determine the sufficiency of petitions” in accordance with North Carolina law submitted to it under N.C. Gen. Stat. § 163-96(a)(2).

82. It is necessary, but not sufficient, to petition for recognition as a new political party to obtain the requisite number of signatures set forth in § 163-96(a)(2).

83. Additional requirements for “Petitions for New Political Party” are set forth in § 163-96(b), including the requirement that the “organizers and petition circulators shall inform the signers of the general purpose and intent of the new party.”

84. The WTP Party informed the signers of its petition that the “sole purpose of this petition” was to “place the name of Robert F. Kennedy Jr. on the 2024 general election ballot.”

85. This is not a permissible purpose for a political party under North Carolina law. As Board member Milled explained, “The purpose and intent of a new party cannot merely be to place a particular candidate on the ballot because that is the subject matter of G. S. 163-122.”

86. While Board Chair Hirsch found that the WTP Party was a “subterfuge,” the Board nevertheless abdicated its statutory responsibility and erroneously permitted a candidate campaign to circumvent the requirements for access to the North Carolina ballot by masquerading as a political party. That was reversible error.

87. If the Board’s decision is not reversed, the Board’s approach will empower any candidate for office in North Carolina to circumvent not only the requirements for access to the

North Carolina ballot, but also most limits on campaign contributions and expenditures, by posing as a political party.

88. This Court can review the Board’s violation of § 163-96 under N.C. Gen. Stat. § 163-22(*I*), which provides: “Notwithstanding any other provision of law, in order to obtain judicial review of any decision of the State Board of Elections rendered in the performance of its duties or in the exercise of its powers under this Chapter, the person seeking review must file his petition in the Superior Court of Wake County.”

SECOND CAUSE OF ACTION
Violation of the N.C. Administrative Procedure Act, N.C. Gen. Stat. § 150B *et seq.*
(Against the Board)

89. The NCDP incorporates all previous paragraphs as if fully set forth here.

90. Section 150B-43 of the N.C. Administrative Procedure Act provides that “[a]ny party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision under this Article, unless adequate procedure for judicial review is provided by another statute.”

91. The Board’s recognition of the WTP Party was a final decision in a contested case because it was an agency proceeding that determined the rights of the WTP Party.

92. To the extent that review is unavailable under N.C. Gen. Stat. § 163-22(*I*), the Board’s decision to recognize the WTP Party is reviewable under the Administrative Procedure Act.

93. Given the fast-approaching deadline to print ballots, it would be futile for the NCDP to attempt to exhaust any administrative remedies that may be available, as no such remedies could provide relief in time to affect whether Kennedy will be included on the ballot in the 2024 general election as the WTP Party’s nominee for President of the United States.

94. A court reviewing a final decision of an agency under the Administrative Procedure Act may “reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the findings, inferences, conclusions, or decisions are: (1) In violation of constitutional provisions; (2) In excess of the statutory authority or jurisdiction of the agency or administrative law judge; (3) Made upon unlawful procedure; (4) Affected by other error of law; (5) Unsupported by substantial evidence . . . ; or (6) Arbitrary, capricious, or an abuse of discretion.” N.C. Gen Stat. § 150B-51(b).

95. The NCDP is aggrieved by the Board’s decision to recognize the WTP Party as a political party under N.C. Gen. Stat. § 163-96(a)(2), because that recognition requires the NCDP to divert and expend additional resources to oppose WTP candidates who could not qualify for the ballot absent circumvention of North Carolina law, particularly in the 2024 general election for President of the United States.

96. The Board’s decision to recognize the WTP Party as a new political party despite its explicit statement that the “sole purpose of this petition” was to “place the name of Robert F. Kennedy Jr. on the 2024 general election ballot” violated the Board’s statutory authority to “determine the sufficiency of petitions” submitted to it, N.C. Gen. Stat § 163-96, because a candidate campaign, like the WTP Party, cannot be recognized as a political party under North Carolina law.

THIRD CAUSE OF ACTION
Declaratory Judgment Under N.C. Gen. Stat. § 1-254
(Against the Board and the WTP Party)

97. The NCDP incorporates all previous paragraphs as if fully set forth here.

98. The North Carolina Declaratory Judgment Act states: “Any person . . . whose rights, status or other legal relations are affected by a statute, . . . may have determined any question of

construction or validity arising under the . . . statute, . . . and obtain a declaration of rights, status, or other legal relations thereunder.” N.C. Gen. Stat. § 1-254.

99. Parties may seek declaratory relief under the Declaratory Judgment Act “whether or not further relief is or could be claimed.” *Id.* § 1-253.

100. Declarations under the Declaratory Judgment Act “may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.” *Id.*

101. The NCDP is a “person interested” and therefore entitled to a declaration under the Declaratory Judgment Act because its rights are directly and adversely affected by the Board’s decision to permit an unaffiliated candidate to masquerade as a political party in violation of North Carolina law. That decision harms the electoral prospects of the NCDP and its candidates. In addition, the unlawful inclusion of the WTP Party on the ballot will require the NCDP to divert and expend additional resources to oppose WTP candidates who could not qualify for the ballot absent circumvention of North Carolina law—funds and resources that it would otherwise deploy elsewhere.

102. There is an actual and existing controversy between the NCDP, on the one hand, and the Board and the WTP Party, on the other hand, over the Board’s recognition of the WTP Party as a new political party. The Board’s decision to recognize the WTP Party in violation of North Carolina law means that Kennedy will be placed on the ballot for President of the United States without following the procedure—or obtaining the 83,188 signatures required—for an unaffiliated candidate to be listed on the ballot under N.C. Gen. Stat. § 163-122, directly harming the rights of the NCDP and its candidates, to compete in fair elections under North Carolina law.

103. The NCDP is therefore entitled to a declaratory judgment that the Board's recognition of the WTP Party as a new political party violated the Board's responsibilities and North Carolina law and is therefore void and of no effect.

FOURTH CAUSE OF ACTION
Petition for Writ of Mandamus
(Against the Board)

104. The NCDP incorporates all previous paragraphs as if fully set forth here.

105. As an alternative the relief sought in Counts I through III, the NCDP petitions this Court for the issuance of a writ of mandamus directed to the Board.

106. The Board has a clear legal duty to "determine the sufficiency of petitions filed" with it before recognizing a new political party. N.C. Gen. Stat. § 163-96(a)(2).

107. The Board violated that duty when it recognized the WTP Party as a new political party and permitted an unaffiliated candidate to masquerade as a political party in violation of North Carolina law.

108. The NCDP has a clear legal right to relief to redress the Board's violation of its express statutory duty.

109. To the extent that the claims in Counts I through IV do not provide complete relief, the NCDP has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, the NCDP respectfully requests that the Court:

1. enter judgment for the NCDP and against Defendants;
2. reverse the decision of the Board to recognize the WTP Party as a new political party;
3. declare, under North Carolina Rule of Civil Procedure 57 and N.C. Gen. Stat. § 1-253 *et seq.*, that the Board's recognition of the WTP Party as a new political party failed to comply with the Board's responsibilities or North Carolina law under N.C. Gen. Stat. § 163-96 and is therefore void and of no effect;

4. issue a temporary restraining order and preliminary injunction under North Carolina Rule of Civil Procedure 65 to restrain the Board from printing any ballot for the 2024 general election that includes any candidate of the WTP Party, during this litigation, and requiring the Board to instruct all county boards of election to do the same;
5. award the NCDP costs, expenses, and fees, including reasonable attorney's fees, pursuant to applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20, and 1-263; and
6. award the NCDP any other relief that the Court deems proper.

Dated: July 25, 2024

Respectfully submitted,



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Attorneys for Plaintiff

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV _____-910

NORTH CAROLINA DEMOCRATIC
PARTY,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS *et al.*,

Defendants.

VERIFICATION

I, North Carolina Democratic Party Chair Anderson Clayton, have read the factual allegations in the Verified Complaint and Petition for Judicial Review in this matter and declare based on personal knowledge that those allegations are true, except for the allegations stated on information and belief or are a matter of public record, in which case I believe those allegations to be true.

I declare under penalty of perjury under the laws of North Carolina that the foregoing is true and correct. Executed on July 25, 2024.



Anderson Clayton
Chair, North Carolina Democratic Party