

**Case No. 26-1328**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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SUSAN JANE HOGARTH,

*Plaintiff-Appellant,*

v.

SAM HAYES, in his official capacity as Executive Director of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as a Member of the North Carolina State Board of Elections; STACY EGGERS, IV, in his official capacity as Secretary of the North Carolina State Board of Elections; SIOBHAN O'DUFFY MILLEN, in her official capacity as a Member of the North Carolina State Board of Elections; DANIELLE BRINTON, in her official capacity as Investigator for the North Carolina State Board of Elections; OLIVIA MCCALL, in her official capacity as Director of the Wake County Board of Elections; KEITH WEATHERLY, in his official capacity as Chair of the Wake County Board of Elections; ANGELA HAWKINS, in her official capacity as a Member of the North Carolina State Board of Elections; GREG FLYNN, in his official capacity as a Member of the Wake County Board of Elections; GERRY COHEN, in his official capacity as Secretary of the Wake County Board of Elections; LORRIN FREEMAN, in her official capacity as Wake County District Attorney; FRANCIS X. DE LUCA, in his official capacity as Chair of the North Carolina State Board of Elections; STEVEN LONG, in his official capacity as a Member of the Wake County Board of Elections; DONNA WILLIAMS, in her official capacity as a Member of the Wake County Board of Elections

*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Eastern District of North Carolina, No. 5:24-cv-00481  
Hon. Louise W. Flanagan

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**Joint Appendix**

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

NO. 5:24-CV-481-FL

SUSAN JANE HOGARTH, )

Plaintiff, )

v. )

SAM HAYES, in her official capacity as )

Executive Director of the North Carolina )

State Board of Elections; FRANCIS X. DE )

LUCA, 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, )

ROBERT RUCHO, and SIOBHAN )

O'DUFFY MILLEN, in their official )

capacities as Members of the North )

Carolina State Board of Elections; )

DANIELLE BRINTON, in her official )

capacity as Investigator for the North )

Carolina State Board of Elections; OLIVIA )

MCCALL, in her official capacity as )

Director of the Wake County Board of )

Elections; ERICA PORTER, in her official )

capacity as Chair of the Wake County )

Board of Elections; ANGELA HAWKINS, )

in her official capacity as Secretary of the )

Wake County Board of Elections; GREG )

FLYNN, GERRY COHEN, and KEITH )

WEATHERLY, in their official capacities )

as Members of the Wake County Board of )

Elections; LORRIN FREEMAN, in her )

official capacity as Wake County District )

Attorney, )

Defendants. )

ORDER

This matter is before the court upon the parties' cross-motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (DE 88, 90). The motions have been briefed fully, and in this posture the issues raised are ripe for ruling. For the following reasons, defendants' motion is granted, and plaintiff's is denied.

### STATEMENT OF THE CASE

In complaint filed August 22, 2024, plaintiff seeks declaratory and injunctive relief against five North Carolina election procedure statutes she alleges infringe her First Amendment-protected right to take so-called "ballot selfies." She also seeks fees and costs under 42 U.S.C. § 1988. Plaintiff sued four groups of defendants:

1. Sam Hayes, Francis De Luca, and Jeff Carmon, in their official capacities as executive director, chair, and secretary, respectively, of the North Carolina State Board of Elections; Stacy Eggers IV, Robert Rucho, and Siobhan O'Duffy Millen in their official capacities as members of the North Carolina State Board of Elections; and Danielle Brinton, in her official capacity as investigator for the North Carolina State Board of Elections (collectively, the "State Board");
2. Olivia McCall, Erica Porter, and Angela Hawkins, in their official capacities as director, chair, and secretary, respectively, of the Wake County Board of Elections; and Greg Flynn, Gerry Cohen, and Keith Weatherly, in their official capacities as members of the Wake County Board of Elections (collectively, the "Wake County Board");
3. Lorrin Freeman ("Freeman"), in her official capacity as Wake County District Attorney; and
4. The North Carolina Attorney General, previously Josh Stein, now Jeff Jackson ("Jackson"), in his official capacity.

On November 5, 2024, plaintiff filed an unopposed motion for leave to file a verified supplemental complaint under Federal Rule of Civil Procedure 15(d). This supplemental complaint contained additional allegations about plaintiff's experience in early voting during the 2024 general election. The court granted the motion November 6, 2024, and plaintiff duly filed the supplemental complaint the same day.

On March 28, 2025, the court largely denied the various defendants' motion to dismiss under Rule 12(b)(1). The court granted them insofar as they sought the dismissal of Jackson, but permitted plaintiff's claims against all other defendants to proceed. (See generally Order (DE 74)).

The parties filed the instant motions on July 11, 2025. The parties have filed respective responses and replies to the motions, which are ripe for ruling.

#### STATEMENT OF FACTS

The facts alleged are unchanged from the court's March 28, 2025, ruling on defendants' motions to dismiss, so the court re-produces its summary thereof here.

Plaintiff is a resident and registered voter of Wake County, North Carolina, who has voted in "nearly every" national election since 2014. (Compl. (DE 2) ¶ 9). Plaintiff has taken and shared "ballot selfies," which are voters' photos of their own completed ballots or of themselves in the voting booth, to 1) promote the candidates she votes for; 2) show voters they can vote for third-party candidates; 3) "challenge the narrative that voters can only vote for major party candidates"; 4) encourage potential voters to vote; 5) commemorate her vote; 6) express her pride in participating in the electoral process; and 7) express her disagreement with North Carolina's ban on "ballot selfies." (Id. ¶¶ 30, 50–51). Plaintiff alleges that the five electoral procedure statutes she challenges together operate to ban "ballot selfies." (Id. ¶¶ 31–48).

On March 5, 2024, plaintiff went to her precinct's polling place to vote in a primary election. (Id. ¶¶ 52–53). From the time plaintiff arrived at the polling place to the time she left, no more than three other voters entered the voting enclosure. (Id. ¶ 54). Plaintiff entered the voting booth, voted, then took a photo depicting herself, her ballot, and a voting booth sign prohibiting photography. (Id. ¶¶ 55–58). Taking the photo took approximately 45 seconds. (Id. ¶ 59). Nobody had to wait to access a voting booth while plaintiff voted, no poll worker notified plaintiff that her time had expired or that she was taking too long to exit, and nobody said anything to plaintiff about the photograph. (Id. ¶¶ 61–64). After taking the photograph, plaintiff shared it on the social network formerly known as twitter, along with a criticism of ballot photography laws and an endorsement of her preferred candidates. (Id. ¶¶ 66–70).

Plaintiff received a letter dated March 13, 2024, from defendant Danielle Brinton, informing plaintiff that photographing a completed ballot is unlawful, threatening plaintiff with criminal prosecution, warning plaintiff that she had committed a crime by taking the photograph and by sharing it on social media, and demanding that plaintiff take the photo down from social media. (Id. ¶¶ 72–83). The letter warned plaintiff four times that photographing a completed ballot is unlawful. (Id. ¶ 81).

The North Carolina State Board of Elections warns voters on its website and in press releases that “ballot selfies” are illegal, and it investigates reports thereof. (Id. ¶¶ 85–90). Between March, 2016, and March, 2024, the State Board investigated at least 50 reports of photography of completed ballots, and it refers individuals who have taken such photos to district attorneys for prosecution. (Id. ¶¶ 91, 97). Similarly, the Wake County Board warns voters that photography of completed ballots is illegal, and reported a violation of those laws to the State Board on November 8, 2022. (Id. ¶¶ 98–99, 101).

Plaintiff has not taken down her “ballot selfie,” and does not intend to. (Id. ¶¶ 105–06). Plaintiff intends to vote in future elections in Wake County, and to take “ballot selfies” for social media. (Id. ¶¶ 107, 111–13). Plaintiff stood as a candidate for state senate in the November 2024, general election. (Id. ¶ 116).

On October 25, 2024, plaintiff went to an early polling place in Wake County to vote. (Suppl. Compl. (DE 65) ¶ 5). When she arrived, four voters waited in line ahead of her. (Id. ¶ 6). When plaintiff entered the voting enclosure, “the majority” of the more than 50 voting booths were available. (Id. ¶ 7). Plaintiff filled out her ballot, which took approximately two minutes. (Id. ¶¶ 9–10). While in the voting booth, plaintiff took more “ballot selfies,” which included her voted ballot, herself with a “no photos” sign posted next to the voting booth, and herself holding up her voted ballot. (Id. ¶ 11). This photography took less than one minute. (Id. ¶ 12). As plaintiff took her last photograph, a poll worker approached plaintiff and ordered her to delete her photographs. (Id. ¶ 14). Plaintiff advised the poll worker that a court had ordered she could take her “ballot selfies,” which the poll worker confirmed with the State and/or Wake County Boards. (Id. ¶¶ 15–20). Nobody had to wait to vote while plaintiff took her “ballot selfies,” and no election official told plaintiff her time had expired, that plaintiff was disrupting the polling place, that plaintiff was intimidating other voters, or that plaintiff was violating the privacy of other voters. (Id. ¶¶ 22–26). Plaintiff alleges that without this court’s order permitting plaintiff to take “ballot selfies” when she voted in the 2024 general election, officials would have prevented plaintiff from doing so. (Id. ¶ 27).

## COURT'S DISCUSSION

### A. Standard of Review

“After the pleadings are closed[,] . . . a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). In reviewing a motion for judgment on the pleadings, the court “appl[ies] the same standard as a 12(b)(6) motion to dismiss.” Mayfield v. Nat’l Ass’n for Stock Car Auto Racing, Inc., 674 F.3d 369, 375 (4th Cir. 2012).

To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). “Factual allegations must be enough to raise a right to relief above the speculative level.” Twombly, 550 U.S. at 555. In evaluating whether a claim is stated, “[the] court accepts all well-pled facts as true and construes these facts in the light most favorable to the plaintiff,” but does not consider “legal conclusions, elements of a cause of action, . . . bare assertions devoid of further factual enhancement[,] . . . unwarranted inferences, unreasonable conclusions, or arguments.” Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255 (4th Cir. 2009).<sup>1</sup>

### B. Analysis

Resolution of the instant motions hinges on three questions: 1) whether plaintiff lodges a facial or as-applied challenge; 2) which standard of review applies to her claims in light of the answer to the first question; and 3) whether the defendants’ asserted interests satisfy the applicable standard of review. The court concludes that plaintiff lodges an as-applied challenge notwithstanding her arguments to the contrary, that nonpublic forum analysis is therefore

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<sup>1</sup> Throughout this order, internal quotation marks and citations are omitted unless otherwise specified.

applicable, and that defendants' interests are sufficient to sustain the statutes under that relatively lenient standard of review.

1. Five Challenged Statutes

Plaintiff, as described in the court's March 28 order, challenges five North Carolina voting statutes. The court re-produces its discussion thereof here.

The first statute is N.C. Gen. Stat. § 163-166.3(c). This short provision states that:

(c) Photographing Voted Ballot Prohibited. – No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law.

Id.

The second statute is N.C. Gen. Stat. § 163-273(a)(1). This similarly brief statute states:

(a) Any person who shall, in connection with any primray or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful:

(1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.

Id.

The third statute is N.C. Gen. Stat. § 163-165.1(e). This statute states that:

(e) Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemanor.

Id.

The fourth statute is N.C. Gen. Stat. § 163-274(b)(1), which states:

(b) Class 1 Misdemeanor. – Any person who, in connection with any primary or election in this State, violates any provision of this subsection, is guilty of a Class 1 misdemeanor. It shall be unlawful to do any of the following:

(1) For any person who has access to an official voted ballot or record to knowingly disclose in violation of [N.C. Gen. Stat. §] 163-165.1(e) how an individual has voted that ballot.

Id.

Plaintiff refers to these four provisions together as the “ballot photography provisions.”

(Compl. ¶ 141). The court does likewise for the sake of convenience.

The final statute, N.C. Gen. Stat. § 163-166.3(b), which plaintiff labels the “voting enclosure provision,” (Compl. ¶¶ 170–84), provides in relevant part that:

(b) Photographing Voters Prohibited. – No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required.

Id.

## 2. Facial or As-Applied Challenge

The court first confronts whether plaintiff advances a facial or as-applied challenge to the statutes. The answer to this question determines the applicable standard of review for reasons discussed below. The court concludes that plaintiff makes an as-applied challenge to the five statutes.

When a plaintiff makes a facial challenge to a statute, a court must assess the constitutionality of the challenged law without regard to its impact on the plaintiff. Educational Media Co. at Va. Tech., Inc. v. Insley, 731 F.3d 291, 298 n.5 (4th Cir. 2013). In contrast, an as-applied challenge is based on the “application of a statute to a specific person.” Id. If a facial challenge succeeds, a statute cannot be enforced against anyone, whereas a successful as-applied

challenge renders a statute unenforceable only against the plaintiff, leaving it in place against anybody else. See Fisher v. King, 232 F.3d 391, 395 n.4 (4th Cir. 2000).

Plaintiff here makes an as-applied challenge to the five statutes. As defendants observe, plaintiff's pleadings and briefing throughout this case consistently express that she challenges the application of the challenged statutes to her own conduct of taking photographs inside voting booths. (See Compl. (DE 2) ¶¶ 1–2, 26, 109, 161–64, 166; Pl's Supp. Br. (DE 91) 13, 17).

Plaintiff's prayer for relief largely confirms this reading. It asks the court to provide declaratory and injunctive relief specifically for "ballot selfies" and those plaintiff took. (Compl. ¶¶ B–E, G–H). The exception here is paragraph F of the prayer for relief, which asks the court to "preliminarily and permanently enjoin the defendants from enforcing the [statutes] against anyone who takes or shares their own ballot selfie." (Id. ¶ F (emphasis added)). This portion of the prayer for relief clearly requests facial relief. However, the Supreme Court of the United States recently limited significantly the federal courts' authority to issue injunctive remedies, which bars this relief, at least as currently pleaded.

In Trump v. CASA, Inc., 145 S. Ct. 2540 (2025), the Supreme Court held that federal courts may not issue injunctive relief in favor of, or against, anybody not a party to the suit. See id. at 2551–52. "Neither declaratory nor injunctive relief . . . can directly interfere with enforcement of contested statutes or ordinances except with respect to the particular federal plaintiffs." Id. at 2552. Susan Jane Hogarth is the sole plaintiff to this suit, and so paragraph F of plaintiff's prayer for relief requests an injunction squarely barred by CASA. And shorn of paragraph F, the prayer for relief and the rest of the complaint present as-applied challenges.

Plaintiff resists this conclusion by citing to John Doe No. 1 v. Reed, 561 U.S. 186 (2010), for the proposition that a challenge can simultaneously be both facial and as-applied, in effect a

third category between the two. But Reed held no such thing. It instead acknowledged that it was difficult to determine whether the complaint there was properly characterized as mounting a facial or as-applied attack, before determining that it presented the former. See id. at 194.

In sum, plaintiff presents an as-applied challenge to the five statutes.

### 3. Applicable Standard of Review

Having concluded that plaintiff makes as-applied challenges, the court next concludes that nonpublic forum analysis is the appropriate standard of review.

As noted, a court considering an as-applied challenge, as here, assesses only the facts of the particular plaintiff's case and the application of the statute to her. Plaintiff's allegations all concern the taking of "ballot selfies" during in-person voting on specific dates, inside a voting booth. (See Compl. ¶¶ 1, 53–60; Suppl. Compl. (DE 65) ¶¶ 5–11). The Supreme Court has squarely held that polling places during election periods are "nonpublic forums." Minn. Voters Alliance v. Mansky, 585 U.S. 1, 12 (2018). Though plaintiff presents arguments about the constitutionality of the statutes if applied to "ballot selfies" taken outside of a voting booth, under her as-applied challenge the court may assess only her particular conduct, which consisted of taking "ballot selfies" within a physical voting booth at a polling place. The Mansky nonpublic forum analysis therefore applies.

Elsewhere in her briefing, plaintiff cites several cases in which courts applied more demanding standards of review than the nonpublic forum analysis. These cases do not alter the court's conclusion. First, one decision in fact applied nonpublic forum analysis to the election rule at issue that was most analogous to those here, in that it prohibited photographing a ballot within the voting booth. See Coal. for Good Governance v. Kemp, 558 F. Supp. 3d 1370, 1386 (N.D. Ga. 2021). Another predated Mansky, and analyzed a statute that was not limited to voting booths.

See Ind. Civil Liberties Union Found., Inc. v. Ind. Sec’y of State, 229 F. Supp. 3d 817, 820 (S.D. Ind. 2017). A third, likewise, predated Mansky and discussed a statute that applied even outside voting booths. See Rideout v. Gardner, 123 F. Supp. 3d 218, 221 (D.N.H. 2015). These cases are unpersuasive, except the portion of Kemp just noted, because they arose in postures unlike plaintiff’s cabined as-applied challenge here.

Nonpublic forum analysis is a relatively lenient standard of review for First Amendment challenges. The government, “no less than a private owner of property, retains the power to preserve the property under its control for the use to which it is lawfully dedicated.” Mansky, 585 U.S. at 12. Accordingly, the government is permitted to “impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude . . . forms of political advocacy.” Id. The government may “reserve [a nonpublic] forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” Id. The former inquiry requires that the government assert both reasonable means and ends. See White Coat Waste Project v. Greater Richmond Transit Co., 35 F.4th 179, 198 (4th Cir. 2022).

#### 4. Application of Nonpublic Forum Analysis

As noted, a government restriction on speech applied to a nonpublic forum will be sustained if it is reasonable and does not discriminate based on viewpoint. Id.

All five statutes satisfy both these criteria.

First, the five provisions do not, by their plain text, discriminate based on viewpoint. None draws any distinction based on the party or candidate marked on a ballot, or even if a ballot is intentionally spoiled as a protest gesture. See Burdick v. Takushi, 504 U.S. 428, 438, 441 (1992) (noting that some voters pursue such gestures). Plaintiff does not attempt to argue otherwise.

The court therefore assesses whether defendants advance interests that are reasonable ends, and whether the statutes are reasonable means to achieve them. See White Coat Waste Project, 35 F.4th at 198.

Defendants assert several interests: 1) ensuring orderly elections; 2) limiting disruption at the polls; and 3) preventing vote-buying schemes and coerced voting. (Defs' Br. Supp. (DE 89) 10). The Supreme Court has recognized that the last rationale in particular is "compelling" enough to satisfy strict scrutiny, when applicable, when that doctrine's narrow tailoring requirement is also met. See Burson v. Freeman, 504 U.S. 191, 199–200 (1992). The court therefore focuses on that interest, which is therefore certainly a reasonable end.

Plaintiff attempts to undermine this interest by attacking the means chosen to advance it, by arguing that it is unconnected to reserving voting booths for their intended purposes, so removing it from nonpublic forum doctrine, and by relying upon The News & Observer Pub. Co. v. Raleigh-Durham Airport Auth., 597 F.3d 570 (4th Cir. 2010). Neither argument carries the day.

First, banning photographs of completed ballots and persons in a voting booth to prevent vote-buying and coercion is connected to maintaining the "right to vote freely ... [and] protecting voters from confusion and undue influence." Freeman, 504 U.S. at 199 (emphases added); see also Mansky, 585 U.S. at 15. This prohibition prevents the use of the voted ballot or a person in a voting booth as proof of compliance in a vote-buying scheme, and protects voters from compulsion to disclose photographs of their ballot or themselves to ensure submission to a would-be vote intimidator's demands. The intended purpose of a voting booth is to serve as "an island of calm in which voter can peacefully contemplate their choices[.]" Mansky, 585 U.S. at 15, not a place in which a person votes in a manner procured by purchase, impelled by threats, or otherwise

influenced by others engaging in such conduct. Defendants' interests in preventing bribed and forced votes are connected to maintaining the integrity of the voting booth.

Second, News & Observer does not compel a different result. There, the court ruled against an airport's ban on newspaper racks in a terminal, even under nonpublic forum analysis. See News & Observer, 597 F.3d at 578. That case noted, however, that a defendant need not "adduce[] specific factual evidence that its interests were advanced by the" challenged statutes, or that the "expressive activity banned did interfere with the forum's intended use," and that a defendant is "entitled to advance its interests by arguments based on appeals to common sense and logic." Id. at 578–79. Under that standard, the court rejected two asserted interests as lacking any logically based connection to the ban, a third on the basis of a factually specific point controlled by a prior case about newspaper racks, and the fourth partially for this reason and also for not sweeping in other conduct that could work against that interest. See id. at 579–81.

The logic controlling the third interest just noted in News & Observer plainly is not applicable here. Meanwhile, defendants have not permitted other conduct that would work against its asserted interest in deterring vote-buying and coercion. The challenged statutes may permit other types of photography inside voting booths, but photographs that do not depict voted ballots or a voter in a voting booth would be of little interest to a would-be vote purchaser or intimidator.

Defendants assert sound arguments on "common sense and logic" that this interest is reasonable. News & Observer, 597 F.3d at 579. Common sense and logic support the proposition that photographs of voted ballots or voters, taken within voting booths, create opportunities for abuse through vote-buying and coercion, because the briber or intimidator could demand a photograph to ensure compliance with the bribe or threat, or the practice could instill fear in others that such a demand could be made.

Plaintiff faults defendants for failing to support their arguments with concrete examples of vote-buying or intimidation schemes foiled by the challenged statutes. But the very absence of such schemes, by “common sense and logic,” supports the notion that the statutes promote defendants’ interest in preventing such schemes. And in any case, defendants are not required to “adduce[] specific factual evidence that its interests were advanced by the [statutes] or that the expressive activity banned did interfere with the forum’s intended use.” Id. at 578. Plaintiff cites Washington Post v. McManus, 944 F.3d 506, 521–22 (4th Cir. 2019) to the contrary, but that case involved a tailoring analysis under a different standard of review. See id.

Finally, plaintiff argues that the ban is not capable of “reasoned application” under Mansky because it leaves election officials with discretion to permit “ballot selfies” in some circumstances. This argument fails. The statute at issue in Mansky prohibited all “political” apparel near voting places. The Court held that the statute could not stand because it vested election officials with unlimited discretion to determine whether any given article of apparel was “political,” even after noting that restrictions need not be “perfect[ly] [clear] and precise[.]” See Mansky, 585 U.S. at 16–17, 21. Indeed, statutes need not “eliminat[e] all discretion,” such discretion need merely be guided “by objective, workable standards.” White Coat Waste Project, 35 F.4th at 199.

The statutes here are a far cry from the entirely standardless term “political” in Mansky. The terms “voted ballots” § 163-165.1(e), and “to be seen” § 163-273(a)(1), are objective and readily understood. Likewise, stating “[n]o person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure,” without permission from election officials is a workable standard. N.C. Gen. Stat. § 163-166.3(b).

Further, North Carolina election officials are given much clearer instructions than their Minnesota counterparts in Mansky. North Carolina officials are instructed to maintain “peace and


good order,” to prevent attempts to “obstruct, intimidate, or interfere” with voters, and to prevent “riots, violence, tumult, or disorder.” N.C. Gen. Stat. § 163-48. The provisions here would be more in line with the vague commands in Mansky if, for example, “photography” or “ballot” lacked objectively ascertainable meanings, and the statutes permitted election officials to decide what those words meant on an ad hoc basis. Cf. Mansky, 585 U.S. at 17.

In sum, defendants’ interest in preserving the integrity and order of polling places is so strong it can satisfy strict scrutiny, so it is certainly strong enough to qualify as reasonable under nonpublic forum analysis. And the statutes are reasonable means to achieve that end, because they limit minimal expressive activity relative to defendants’ interest just noted, defendants need not produce empirical evidence as plaintiff argues, and the statutes are capable of reasoned application. For these reasons, plaintiff’s as-applied challenge to the five statutes does not succeed.

### CONCLUSION

For the foregoing reasons, defendants’ motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) (DE 88) is GRANTED. Plaintiff’s motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) (DE 90) is DENIED. The clerk is DIRECTED to close this case.

SO ORDERED, this the 9th day of March, 2026.

  
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LOUISE W. FLANAGAN  
United States District Judge

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

SUSAN JANE HOGARTH )  
Plaintiff )

v. )

**JUDGMENT**  
**Case No: 5:24-CV-481-FL**

SAM HAYES, in her official capacity as )  
Executive Director of the North Carolina )  
State Board of Elections; FRANCIS X. DE )  
LUCA, 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, )  
ROBERT RUCHO, and SIOBHAN )  
O'DUFFY MILLEN, in their official )  
capacities as Members of the North )  
Carolina State Board of Elections; )  
DANIELLE BRINTON, in her official )  
capacity as Investigator for the North )  
Carolina State Board of Elections; OLIVIA )  
MCCALL, in her official capacity as )  
Director of the Wake County Board of )  
Elections; ERICA PORTER, in her official )  
capacity as Chair of the Wake County )  
Board of Elections; ANGELA HAWKINS, )  
in her official capacity as Secretary of the )  
Wake County Board of Elections; GREG )  
FLYNN, GERRY COHEN, and KEITH )  
WEATHERLY, in their official capacities )  
as Members of the Wake County Board of )  
Elections; LORRIN FREEMAN, in her )  
official capacity as Wake County District )  
Attorney )  
Defendants )

**Decision by Court.**

This action came before the Honorable Louise W. Flanagan, United States District Judge, for consideration of the parties' cross motions for judgment on the pleadings.

**IT IS ORDERED, ADJUDGED AND DECREED** in accordance with the court's order entered March 9, 2026, and for the reasons set forth more specifically therein, it is ordered that defendants' motion for judgment on the pleadings is GRANTED.

**This Judgment Filed and Entered on March 9, 2026, and Copies To:**

Jeffrey Daniel Zeman / Daniel Zahn, James Dedman, IV, Eric Spengler (via CM/ECF Notice of Electronic Notification)

Mary Lucasse / Mary Woodell Scruggs (via CM/ECF Notice of Electronic Notification)

March 9, 2026

PETER A. MOORE, JR., CLERK

/s/ Sandra K. Collins  
(By) Sandra K. Collins, Deputy Clerk

APPEAL,CLOSED,MEDIATION

**U.S. District Court  
EASTERN DISTRICT OF NORTH CAROLINA (Western Division)  
CIVIL DOCKET FOR CASE #: 5:24-cv-00481-FL**

Hogarth v. Bell et al  
Assigned to: District Judge Louise Wood Flanagan  
Case in other court: USCA, 26-01328  
Cause: 28:1983 Civil Rights

Date Filed: 08/22/2024  
Date Terminated: 03/09/2026  
Jury Demand: Defendant  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction: Federal Question

**Plaintiff****Susan Jane Hogarth**

represented by **Jeffrey Daniel Zeman**  
Foundation for Individual Rights and  
Expression  
510 Walnut Street  
Suite 900  
Philadelphia, PA 19106  
215-717-3473  
Email: [jeff.zeman@thefire.org](mailto:jeff.zeman@thefire.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Daniel A. Zahn**  
Foundation for Individual Rights and  
Expression  
700 Pennsylvania Ave. SE  
Ste. 340  
Washington, DC 20003  
215-717-3473  
Email: [daniel.zahn@thefire.org](mailto:daniel.zahn@thefire.org)  
**ATTORNEY TO BE NOTICED**

**James M. Dedman , IV**  
Gallivan, White & Boyd, P.A.  
6805 Carnegie Blvd., Suite 200  
Charlotte, NC 28211  
704-227-1944  
Fax: 864-271-7502  
Email: [jdedman@gwblawfirm.com](mailto:jdedman@gwblawfirm.com)  
**ATTORNEY TO BE NOTICED**

**Eric Straub Spengler**  
Spengler & Agans PLLC  
352 N Caswell Rd.  
Charlotte, NC 28204  
704-910-5469  
Fax: 704-730-7861  
Email: [eric@s-a.law](mailto:eric@s-a.law)  
**ATTORNEY TO BE NOTICED**

V.

**Defendant**

**Karen Brinson Bell**  
*in her official capacity as Executive  
Director of the North Carolina State  
Board of Elections*

represented by **Mary L. Lucasse**  
NCDOJ-Special Litigation Div  
PO Box 629  
Raleigh, NC 27602  
919-716-6962  
Email: [mlucasse@ncdoj.gov](mailto:mlucasse@ncdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Mary Woodell Scruggs**  
North Carolina Department of Justice  
North Carolina  
P.O. Box 629  
Raleigh, NC 27602  
919-716-6806  
Email: [mscruggs@ncdoj.gov](mailto:mscruggs@ncdoj.gov)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Jeff Carmon**  
*in his official capacity as Secretary of the  
North Carolina State Board of Elections*

represented by **Mary L. Lucasse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Mary Woodell Scruggs**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Stacy Eggers IV**  
*in their official capacities as Members of  
the North Carolina State Board of  
Elections*

represented by **Mary L. Lucasse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Mary Woodell Scruggs**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Siobhan O'Duffy Millen**  
*in their official capacities as Members of  
the North Carolina State Board of  
Elections*

represented by **Mary L. Lucasse**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Mary Woodell Scruggs**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Danielle Brinton**  
*in her official capacity as Investigator for  
the North Carolina State Board of  
Elections*

represented by **Danielle Brinton**  
PRO SE

**Defendant**

**Olivia McCall**  
*in her official capacity as Director of the  
Wake County Board of Elections*

represented by **Allison Pope Cooper**  
Wake County Attorney's Office  
Post Office Box 550  
Raleigh, NC 27602  
919-856-5511  
Email: [allison.cooper@wakegov.com](mailto:allison.cooper@wakegov.com)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Roger A. Askew**  
Wake County Attorney's Office

Post Office Box 550  
Raleigh, NC 27602  
919-856-5500  
Fax: 919-856-5504  
Email: [Roger.askew@wake.gov](mailto:Roger.askew@wake.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Erica Porter**  
*in her official capacity as Chair of the  
Wake County Board of Elections*

represented by **Allison Pope Cooper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Roger A. Askew**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Angela Hawkins**  
*in her official capacity as Secretary of the  
Wake County Board of Elections*

represented by **Allison Pope Cooper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Roger A. Askew**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Greg Flynn**  
*in their official capacities as Members of  
the Wake County Board of Elections*

represented by **Allison Pope Cooper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Roger A. Askew**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Gerry Cohen**  
*in their official capacities as Members of  
the Wake County Board of Elections*

represented by **Allison Pope Cooper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Roger A. Askew**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Keith Weatherly**  
*in their official capacities as Members of  
the Wake County Board of Elections*

represented by **Allison Pope Cooper**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Roger A. Askew**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Defendant****Lorin Freeman***in her official capacity as Wake County  
District Attorney*represented by **Elizabeth Curran O'Brien**NC Department of Justice  
Post Office Box 629  
Raleigh, NC 27602-0629  
919-716-0091Email: [eobrien@ncdoj.gov](mailto:eobrien@ncdoj.gov)**LEAD ATTORNEY****ATTORNEY TO BE NOTICED****Defendant****Francis X De Luca***in his official capacity as Chair of the  
North Carolina State Board of Elections*represented by **Mary Woodell Scruggs**

(See above for address)

**LEAD ATTORNEY****ATTORNEY TO BE NOTICED****mary lucasse****LEAD ATTORNEY****ATTORNEY TO BE NOTICED****Defendant****Robert Rucho***in their official capacities as Members of  
the North Carolina State Board of  
Elections*represented by **Mary Woodell Scruggs**

(See above for address)

**LEAD ATTORNEY****ATTORNEY TO BE NOTICED****mary lucasse**

(See above for address)

**LEAD ATTORNEY****ATTORNEY TO BE NOTICED**

Date Filed	#	Docket Text
08/22/2024	<u>1</u>	<b>SEE CORRECTED COMPLAINT at DE 2</b> against All Defendants (Filing fee \$ 405 receipt number ANCEDC-7742207.), filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Exhibit Exhibit A – State Board Letter) (Spengler, Eric) Modified on 8/23/2024 to show that a corrected complaint was filed at <u>2</u> . (Rudd, D.) (Entered: 08/22/2024)
08/22/2024	<u>2</u>	<b>CORRECTED COMPLAINT</b> against All Defendants ( Filing fee \$ 405 receipt number ANCEDC-7742207.), filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Exhibit A – State Board Letter, # <u>2</u> Proposed Summons Brinson Bell Summons, # <u>3</u> Proposed Summons Brinton Summons, # <u>4</u> Proposed Summons Carmon Summons, # <u>5</u> Proposed Summons Cohen Summons, # <u>6</u> Proposed Summons Eggers Summons, # <u>7</u> Proposed Summons Flynn Summons, # <u>8</u> Proposed Summons Freeman Summons, # <u>9</u> Proposed Summons Hawkins Summons, # <u>10</u> Proposed Summons Hirsch Summons, # <u>11</u> Proposed Summons Lewis Summons, # <u>12</u> Proposed Summons McCall Summons, # <u>13</u> Proposed Summons Millen Summons, # <u>14</u> Proposed Summons Porter Summons, # <u>15</u> Proposed Summons Stein Summons, # <u>16</u> Proposed Summons Weatherly Summons) (Spengler, Eric) Modified on 8/23/2024 to show that this is a corrected complaint. (Rudd, D.) (Entered: 08/22/2024)
08/22/2024	<u>3</u>	Notice of Appearance filed by James M. Dedman, IV on behalf of Susan Jane Hogarth. (Dedman, James) (Entered: 08/22/2024)
08/22/2024	<u>4</u>	Notice of Special Appearance for non-district by Jeffrey Daniel Zeman on behalf of Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 08/22/2024)
08/22/2024	<u>5</u>	Notice of Appearance filed by Eric Straub Spengler on behalf of Susan Jane Hogarth. (Spengler, Eric) (Entered: 08/22/2024)
08/23/2024		NOTICE OF DEFICIENCY – Failure to File Financial Disclosure Statement as to Susan Jane Hogarth. Pursuant to 7.1 of the Federal Rules of Civil Procedure and Local Civil Rule 7.3, all parties shall file a financial disclosure statement. A negative

		statement is required if a party has no disclosures to make. The disclosure statement must be on a form provided by the clerk. This form is available at the clerk's office and on the court's website. (Rudd, D.) (Entered: 08/23/2024)
08/23/2024		NOTICE OF DEFICIENCY regarding <u>2</u> Complaint. Counsel failed to file a JS44 Civil Cover Sheet as required by the Court. Counsel should file a Cover Sheet using the event "Notice-Other" as soon as possible. (Rudd, D.) (Entered: 08/23/2024)
08/23/2024	<u>6</u>	Summons Issued as to Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Gerry Cohen, Stacy Eggers IV, Greg Flynn, Lorrin Freeman, Angela Hawkins, Alan Hirsch, Kevin N. Lewis, Olivia McCall, Siobhan O'Duffy Millen, Erica Porter, Josh Stein, Keith Weatherly. (*NOTICE: Counsel shall print the attached summons and serve with other case opening documents in accordance with Fed.R.Civ.P. 4.*) (Rudd, D.) (Entered: 08/23/2024)
08/23/2024	<u>7</u>	Financial Disclosure Statement by Susan Jane Hogarth (Zeman, Jeffrey) (Entered: 08/23/2024)
08/23/2024	<u>8</u>	Notice filed by Susan Jane Hogarth <i>Civil Cover Sheet</i> . (Zeman, Jeffrey) (Entered: 08/23/2024)
08/27/2024	<u>9</u>	MOTION for Preliminary Injunction filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order) (Zeman, Jeffrey) (Entered: 08/27/2024)
08/27/2024	<u>10</u>	**CORRECTED AND REFILED AT <u>11</u> ** Memorandum in Support regarding <u>9</u> MOTION for Preliminary Injunction filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Affidavit Steinbaugh Declaration, # <u>2</u> Exhibit Exhibit A, # <u>3</u> Exhibit Exhibit B, # <u>4</u> Exhibit Exhibit C, # <u>5</u> Exhibit Exhibit D, # <u>6</u> Exhibit Exhibit E, # <u>7</u> Exhibit Exhibit F, # <u>8</u> Exhibit Exhibit G, # <u>9</u> Exhibit Exhibit H, # <u>10</u> Exhibit Exhibit I, # <u>11</u> Exhibit Exhibit J, # <u>12</u> Exhibit Exhibit K, # <u>13</u> Exhibit Exhibit L, # <u>14</u> Exhibit Exhibit M, # <u>15</u> Exhibit Exhibit N, # <u>16</u> Exhibit Exhibit O, # <u>17</u> Exhibit Exhibit P, # <u>18</u> Exhibit Exhibit Q, # <u>19</u> Exhibit Exhibit R) (Zeman, Jeffrey) Modified on 8/27/2024 (Collins, S). (Entered: 08/27/2024)
08/27/2024		NOTICE OF DEFICIENCY regarding <u>10</u> Memorandum in Support. Counsel did not properly identify exhibits pursuant to Section V.E. of the CM/ECF Policies and Procedures Manual (i.e., "Exhibit A" is not a sufficient description). Additionally, when filing a document with more than five exhibits, the first attached exhibit must be an index of all of the subsequent attached documents. Counsel is directed to refile. (Collins, S) (Entered: 08/27/2024)
08/27/2024	<u>11</u>	Memorandum in Support regarding <u>9</u> MOTION for Preliminary Injunction filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Exhibit Index of Exhibits, # <u>2</u> Affidavit Declaration of Adam Steinbaugh in Support of Motion for Preliminary Injunction, # <u>3</u> Exhibit Exhibit A- March 13, 2023 Letter from State Board to Hogarth, # <u>4</u> Exhibit Exhibit B- March 22, 2024 Public Records Request from Ortner to State Board, # <u>5</u> Exhibit Exhibit C- July 11, 2024 Public Records Reports from State Board to Ortner, # <u>6</u> Exhibit Exhibit D - October 19, 2018 State Board Press Release, # <u>7</u> Exhibit Exhibit E - February 25, 2020 State Board Press Release, # <u>8</u> Exhibit Exhibit F - October 2, 2020 State Board Press Release, # <u>9</u> Exhibit Exhibit G- October 18, 2022 State Board Press Release, # <u>10</u> Exhibit Exhibit H- State Board Webpage Phone Usage at Polls, # <u>11</u> Exhibit Exhibit I - State Board Webpage Frequently Asked Questions, # <u>12</u> Exhibit Exhibit J - State Board Webpage Elections Reference Guide for North Carolina Law Enforcement, # <u>13</u> Exhibit Exhibit K- October 27, 2020 State Board Tweet, # <u>14</u> Exhibit Exhibit L- May 12, 2022 State Board Tweet, # <u>15</u> Exhibit Exhibit M - State Board Referred Cases Reports 20152023, # <u>16</u> Exhibit Exhibit N - 20152022 State Board Referred Cases Report, # <u>17</u> Exhibit Exhibit O - State Board Complaints and Referred Cases Report 20202022, # <u>18</u> Exhibit Exhibit P - County Board Webpage Upcoming Election Information, # <u>19</u> Exhibit Exhibit Q- County Board Webpage Frequently Asked Questions, # <u>20</u> Exhibit Exhibit R - County Board Webpage Cellphone, Video, Photography, Texting Laws) (Zeman, Jeffrey) (Entered: 08/27/2024)
08/27/2024		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>9</u> MOTION for Preliminary Injunction. (Collins, S) (Entered: 08/27/2024)

08/27/2024	<u>12</u>	MOTION to Expedite <i>Consideration of Preliminary Injunction Motion</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order re Motion to Expedite Consideration of PI Motion) (Zeman, Jeffrey) (Entered: 08/27/2024)
08/27/2024	<u>13</u>	Memorandum in Support regarding <u>12</u> MOTION to Expedite <i>Consideration of Preliminary Injunction Motion</i> filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 08/27/2024)
08/27/2024		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>12</u> MOTION to Expedite <i>Consideration of Preliminary Injunction Motion</i> . (Collins, S) (Entered: 08/27/2024)
08/27/2024	<u>14</u>	AMENDED DOCUMENT by Susan Jane Hogarth. Amendment to <u>11</u> Memorandum in Support,,,,,, <i>Exhibit C (Corrected)– July 11, 2024 Public Records Reports from State Board to Ortner</i> (Zeman, Jeffrey) (Entered: 08/27/2024)
08/29/2024	<u>15</u>	Notice of Appearance filed by Mary Carla Babb on behalf of Karen Brinson Bell, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>16</u>	Financial Disclosure Statement by Karen Brinson Bell (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>17</u>	Financial Disclosure Statement by Jeff Carmon (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>18</u>	Financial Disclosure Statement by Stacy Eggers IV (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>19</u>	Financial Disclosure Statement by Alan Hirsch (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>20</u>	Financial Disclosure Statement by Kevin N. Lewis (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>21</u>	Financial Disclosure Statement by Siobhan O'Duffy Millen (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>22</u>	Financial Disclosure Statement by Josh Stein (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>23</u>	Notice of Appearance filed by Elizabeth Curran O'Brien on behalf of Lorrin Freeman. (O'Brien, Elizabeth) (Entered: 08/29/2024)
08/29/2024	<u>24</u>	Notice of Appearance filed by Mary Carla Babb on behalf of Danielle Brinton. (Babb, Mary) (Entered: 08/29/2024)
08/29/2024	<u>25</u>	Financial Disclosure Statement by Danielle Brinton (Babb, Mary) (Entered: 08/29/2024)
08/30/2024	<u>26</u>	SUMMONS Returned Executed by Susan Jane Hogarth. All Defendants. (Attachments: # <u>1</u> Affidavit Certificate of Service Hirsch, # <u>2</u> Affidavit Certificate of Service Carmon, # <u>3</u> Affidavit Certificate of Service Eggers, # <u>4</u> Affidavit Certificate of Service Lewis, # <u>5</u> Affidavit Certificate of Service Millen, # <u>6</u> Affidavit Certificate of Service Brinton, # <u>7</u> Affidavit Certificate of Service McCall, # <u>8</u> Affidavit Certificate of Service Porter, # <u>9</u> Affidavit Certificate of Service Hawkins, # <u>10</u> Affidavit Certificate of Service Flynn, # <u>11</u> Affidavit Certificate of Service Cohen, # <u>12</u> Affidavit Certificate of Service Weatherly, # <u>13</u> Affidavit Certificate of Service Freeman, # <u>14</u> Affidavit Certificate of Service Stein) (Zeman, Jeffrey) (Entered: 08/30/2024)
08/30/2024	<u>27</u>	RESPONSE in Opposition regarding <u>12</u> MOTION to Expedite <i>Consideration of Preliminary Injunction Motion</i> filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Babb, Mary) (Entered: 08/30/2024)
08/30/2024	<u>28</u>	Notice of Special Appearance for non–district by Daniel Ortner on behalf of Susan Jane Hogarth. (Ortner, Daniel) (Entered: 08/30/2024)
08/31/2024	<u>29</u>	REPLY to Response to Motion regarding <u>12</u> MOTION to Expedite <i>Consideration of Preliminary Injunction Motion</i> filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 08/31/2024)

09/03/2024		Case Selected for Mediation – A printable list of certified mediators for the Eastern District of North Carolina and the Selection of Mediator form are available on the court's Website, <a href="http://www.nced.uscourts.gov/attorney/mediators.aspx">http://www.nced.uscourts.gov/attorney/mediators.aspx</a> . Please serve this list on all parties. (Collins, S) (Entered: 09/03/2024)
09/04/2024	<u>30</u>	Notice of Appearance filed by Terence Steed on behalf of Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Steed, Terence) (Entered: 09/04/2024)
09/11/2024		<b>TEXT ORDER – In this case where plaintiff seeks injunctive relief on expedited basis, the court sets Federal Rule of Civil Procedure 16(a) scheduling conference by telephone for Friday, September 13, 2024, at 10 am. Signed by District Judge Louise Wood Flanagan on 9/11/2024. Counsel will receive an email from the case manager with dial-in instructions to attend this hearing.</b> (Collins, S) (Entered: 09/11/2024)
09/11/2024		NOTICE of Hearing: Telephonic Rule 16(a) Scheduling Conference set for 9/13/2024 at 10:00 AM before District Judge Louise Wood Flanagan. (Collins, S) (Entered: 09/11/2024)
09/11/2024	<u>32</u>	Notice of Appearance filed by Roger A. Askew on behalf of Olivia McCall. (Askew, Roger) (Entered: 09/11/2024)
09/11/2024	<u>33</u>	Notice of Appearance filed by Roger A. Askew on behalf of Gerry Cohen, Greg Flynn, Erica Porter, Keith Weatherly. (Askew, Roger) (Entered: 09/11/2024)
09/11/2024	<u>34</u>	Notice of Appearance filed by Allison Pope Cooper on behalf of Olivia McCall. (Cooper, Allison) (Entered: 09/11/2024)
09/11/2024	<u>35</u>	Notice of Appearance filed by Allison Pope Cooper on behalf of Gerry Cohen, Greg Flynn, Erica Porter, Keith Weatherly. (Cooper, Allison) (Entered: 09/11/2024)
09/12/2024	<u>36</u>	Notice of Appearance filed by Roger A. Askew on behalf of Angela Hawkins. (Askew, Roger) (Entered: 09/12/2024)
09/12/2024	<u>37</u>	Notice of Appearance filed by Allison Pope Cooper on behalf of Angela Hawkins. (Cooper, Allison) (Entered: 09/12/2024)
09/13/2024	<u>38</u>	Minute Entry for proceedings held before District Judge Louise Wood Flanagan: Telephonic Rule 16(a) Scheduling Conference held on 9/13/2024 – Counsel present for all parties – Court finds cause to extend answer deadlines for all defendants to 10/18/24 – Hearing set on Motion for Preliminary Injunction <u>9</u> for 10/7/24 at 1:30 pm – Deadlines set for briefing for Motion for Preliminary Injunction DE <u>9</u> – Responses due by 9/17/24 and reply if needed is due 9/24/24 – Oral order allowing motion to expedite <u>12</u> – Written order to follow. (Court Reporter Tracy McGurk) (Collins, S) (Entered: 09/13/2024)
09/13/2024	<u>39</u>	<b>ORDER regarding <u>38</u> Scheduling Conference. Signed by District Judge Louise Wood Flanagan on 9/13/2024.</b> (McNally, Kimberly) (Entered: 09/13/2024)
09/13/2024		Set Hearing as to <u>9</u> MOTION for Preliminary Injunction . Motion Hearing set for 10/7/2024 at 1:30 PM in New Bern – Courtroom before District Judge Louise Wood Flanagan. (McNally, Kimberly) (Entered: 09/13/2024)
09/17/2024	<u>40</u>	RESPONSE to Motion regarding <u>9</u> MOTION for Preliminary Injunction filed by Gerry Cohen, Greg Flynn, Angela Hawkins, Olivia McCall, Erica Porter, Keith Weatherly. (Askew, Roger) (Entered: 09/17/2024)
09/17/2024	<u>41</u>	RESPONSE in Opposition regarding <u>9</u> MOTION for Preliminary Injunction filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Attachments: # <u>1</u> Exhibit A. Declaration of Adam Steele) (Babb, Mary) (Entered: 09/17/2024)
09/17/2024	<u>42</u>	RESPONSE in Opposition regarding <u>9</u> MOTION for Preliminary Injunction filed by Lorrin Freeman. (Attachments: # <u>1</u> Exhibit Exhibit A – Declaration of Lorrin Freeman) (O'Brien, Elizabeth) (Entered: 09/17/2024)
09/24/2024	<u>43</u>	REPLY to Response to Motion regarding <u>9</u> MOTION for Preliminary Injunction filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Exhibit Exhibit A – Hogarth Voting

		Record, # <u>2</u> Exhibit Exhibit B – Hogarth Sample Ballot) (Zeman, Jeffrey) (Entered: 09/24/2024)
09/25/2024	<u>44</u>	Notice of Special Appearance for non–district by James Michael Diaz on behalf of Susan Jane Hogarth. (Diaz, James) (Entered: 09/25/2024)
10/02/2024	<u>45</u>	Motion for Attorney James M. Diaz to Appear via Video Teleconference filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Proposed Order) (Zeman, Jeffrey) Modified on 10/2/2024 (Collins, S). (Entered: 10/02/2024)
10/02/2024		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>45</u> Request for Courtroom Technology Exception <i>for Attorney James M. Diaz to Appear via Video Teleconference</i> . (Collins, S) (Entered: 10/02/2024)
10/02/2024	<u>46</u>	<b>ORDER denying <u>45</u> Motion for Attorney James M. Diaz to Appear via Video Teleconference. Signed by District Judge Louise Wood Flanagan on 10/2/2024.</b> (Collins, S) (Entered: 10/02/2024)
10/07/2024	<u>47</u>	Minute Entry for proceedings held before District Judge Louise Wood Flanagan: Motion Hearing held on 10/7/2024 regarding <u>9</u> MOTION for Preliminary Injunction: Counsel present for all parties. Court hears arguments. Limited injunction agreed to by Lorrin Freeman, in her official capacity as Wake County District Attorney. Proposed consent order memorializing terms due 10/11/24, together with the parties' proposed scheduling order presenting suggested briefing framework for presentation of any defendants request for dismissal on standing grounds. (Court Reporter Tracy McGurk) (Collins, S) (Entered: 10/07/2024)
10/11/2024	<u>48</u>	Proposed Order <i>re Consent Scheduling Order</i> filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Steed, Terence) (Entered: 10/11/2024)
10/11/2024	<u>49</u>	MOTION for Extension of Time to File <i>Proposed Consent Decree</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order Granting Plaintiff's Motion for Extension of Time) (Ortner, Daniel) (Entered: 10/11/2024)
10/15/2024	<u>50</u>	<b>CONSENT SCHEDULING ORDER: Motions due by 10/18/2024. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 10/15/2024.</b> (Collins, S) (Entered: 10/15/2024)
10/15/2024	<u>51</u>	<b>ORDER granting <u>49</u> MOTION for Extension of Time to File Proposed Consent Decree. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 10/15/2024.</b> (Collins, S) (Entered: 10/15/2024)
10/15/2024	<u>52</u>	OFFICIAL TRANSCRIPT of Motion Hearing held on 10/7/2024, before Judge Louise Wood Flanagan. Court Reporter/Transcriber Tracy McGurk, Telephone number 419–392–6626. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Please review Attorney obligations regarding the redaction of electronic transcripts of court proceedings available on the court's <a href="#">website</a> Redaction Request due 11/8/2024. Redacted Transcript Deadline set for 11/18/2024. Release of Transcript Restriction set for 1/16/2025. (McGurk, T.) (Entered: 10/15/2024)
10/15/2024		NOTICE of Filing of Official Transcript <u>52</u> Transcript,,,. The parties have seven calendar days from the filing of the transcript to file a Notice of Intent to Request Redaction. The parties must also serve a copy on the court reporter or transcriber. After filing the Notice of Intent to Request Redaction, a party must submit to the court reporter or transcriber, within 21 calendar days of the filing of the transcript, a written statement indicating where the personal data identifiers to be redacted appear in the transcript. (McGurk, T.) (Entered: 10/15/2024)
10/18/2024	<u>53</u>	MOTION to Dismiss for Lack of Jurisdiction ( <i>Fed.R.Civ.P. 12(b)(1)</i> ) <i>in lieu of Answer</i> filed by Gerry Cohen, Greg Flynn, Angela Hawkins, Olivia McCall, Erica Porter, Keith Weatherly. (Askew, Roger) (Entered: 10/18/2024)

10/18/2024	<u>54</u>	Memorandum in Support regarding <u>53</u> MOTION to Dismiss for Lack of Jurisdiction ( <i>Fed.R.Civ.P. 12(b)(1)</i> ) in lieu of Answer by Gerry Cohen, Greg Flynn, Angela Hawkins, Olivia McCall, Erica Porter, Keith Weatherly. (Askew, Roger) (Entered: 10/18/2024)
10/18/2024	<u>55</u>	MOTION to Dismiss for Lack of Jurisdiction filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Josh Stein. (Steed, Terence) (Entered: 10/18/2024)
10/18/2024	<u>56</u>	Memorandum in Support regarding <u>55</u> MOTION to Dismiss for Lack of Jurisdiction filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein. (Steed, Terence) (Entered: 10/18/2024)
10/18/2024	<u>57</u>	STATUS REPORT <i>Joint Status Report on Partial Preliminary Injunction Consent Order</i> by Susan Jane Hogarth (Zeman, Jeffrey) (Entered: 10/18/2024)
10/18/2024	<u>58</u>	MOTION to Dismiss for Lack of Jurisdiction filed by Lorrin Freeman. (O'Brien, Elizabeth) (Entered: 10/18/2024)
10/18/2024	<u>59</u>	Memorandum in Support regarding <u>58</u> MOTION to Dismiss for Lack of Jurisdiction filed by Lorrin Freeman. (O'Brien, Elizabeth) (Entered: 10/18/2024)
10/21/2024	<u>60</u>	<b>ORDER granting in part and denying in part <u>9</u> Motion for Preliminary Injunction. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 10/21/2024.</b> (Carter, Alexis) (Entered: 10/21/2024)
10/25/2024	<u>61</u>	MOTION to Amend/Correct <u>60</u> Order on Motion for Preliminary Injunction, <i>Motion to Correct or Clarify</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order Proposed Order on Motion to Correct or Clarify) (Zeman, Jeffrey) (Entered: 10/25/2024)
10/25/2024		<b>TEXT ORDER – In address of plaintiff's motion to correct or clarify recent order DE <u>61</u> , the clerk's summary on the docket does not control the scope of any ruling; rather the order at issue is the ruling and in this instance the clerk added verbiage not a part of the court's order in error. In accordance with that prior ruling DE <u>60</u> , plaintiff is allowed to take and share her ballot "selfie" without fear of prosecution by or through defendant Lorrin Freeman. The motion is ALLOWED. Signed by District Judge Louise Wood Flanagan on 10/25/2024.</b> (Collins, S) (Entered: 10/25/2024)
11/05/2024	<u>62</u>	MOTION for Leave to File <i>Verified Supplemental Complaint (Unopposed)</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Exhibit A – Proposed Verified Supplemental Complaint, # <u>2</u> Text of Proposed Order) (Zeman, Jeffrey) (Entered: 11/05/2024)
11/05/2024	<u>63</u>	Memorandum in Support regarding <u>62</u> MOTION for Leave to File <i>Verified Supplemental Complaint (Unopposed)</i> filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 11/05/2024)
11/06/2024		NOTICE OF DEFICIENCY regarding <u>62</u> Motion for Leave to File. Counsel has failed to provide the red-lined version of the proposed amended complaint pursuant to Local Rule 15.1(a)(ii) and Judge Flanagan's Practice Preferences and Procedures. Counsel is directed to refile. (Collins, S) (Entered: 11/06/2024)
11/06/2024		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>62</u> MOTION for Leave to File <i>Verified Supplemental Complaint (Unopposed)</i> . (Collins, S) (Entered: 11/06/2024)
11/06/2024	<u>64</u>	<b>ORDER granting <u>62</u> MOTION for Leave to File Verified Supplemental Complaint (Unopposed). Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 11/6/2024.</b> (Collins, S) (Entered: 11/06/2024)
11/06/2024	<u>65</u>	AMENDED COMPLAINT <i>Verified Supplemental Complaint (Pursuant to Court Order, ECF No. 64)</i> against All Defendants, filed by Susan Jane Hogarth. (Zeman, Jeffrey) Modified on 11/6/2024 (Collins, S). (Entered: 11/06/2024)

11/22/2024	<u>66</u>	RESPONSE in Opposition regarding <u>53</u> MOTION to Dismiss for Lack of Jurisdiction ( <i>Fed.R.Civ.P. 12(b)(1)</i> ) in lieu of Answer, <u>58</u> MOTION to Dismiss for Lack of Jurisdiction , <u>55</u> MOTION to Dismiss for Lack of Jurisdiction <i>Consolidated Response</i> filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 11/22/2024)
12/03/2024		<b>TEXT ORDER regarding Supplement to Complaint DE <u>65</u> . Defendants shall have 14 days from date of entry of this order to file any further brief in support of pending Rule 12(b)(1) motions DE <u>53</u> , <u>55</u> , <u>58</u> in address of new allegations made. Should additional argument(s) be offered, plaintiffs shall have 14 days from date of service within which to make any response. Thereafter the court will take up and decide motions pending. Signed by District Judge Louise Wood Flanagan on 12/3/2024.</b> (Collins, S) (Entered: 12/03/2024)
12/12/2024	<u>67</u>	REPLY to Response to Motion regarding <u>55</u> MOTION to Dismiss for Lack of Jurisdiction filed by Josh Stein, Karen Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O'Duffy Millen, Danielle Brinton. (Steed, Terence) (Entered: 12/12/2024)
12/13/2024	<u>68</u>	REPLY to Response to Motion regarding <u>58</u> MOTION to Dismiss for Lack of Jurisdiction filed by Lorrin Freeman. (O'Brien, Elizabeth) (Entered: 12/13/2024)
12/17/2024	<u>69</u>	Supplemental Memorandum in Support regarding <u>53</u> MOTION to Dismiss for Lack of Jurisdiction ( <i>Fed.R.Civ.P. 12(b)(1)</i> ) in lieu of Answer Supplemental filed by Erica Porter, Angela Hawkins, Greg Flynn, Gerry Cohen, Keith Weatherly, Olivia McCall. (Askew, Roger) Modified on 12/26/2024 to revise docket text. (Collins, S). (Entered: 12/17/2024)
12/20/2024	<u>70</u>	MOTION to Withdraw as Attorney by <i>James M. Diaz</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order) (Zeman, Jeffrey) (Entered: 12/20/2024)
12/20/2024	<u>71</u>	RESPONSE regarding <u>69</u> Memorandum in Support, filed by Susan Jane Hogarth. (Zeman, Jeffrey) Modified on 12/26/2024 to link to motion DE53. (Collins, S). (Entered: 12/20/2024)
12/26/2024	<u>72</u>	<b>ORDER granting <u>70</u> Motion to Withdraw as Attorney. Attorney James Michael Diaz terminated. Signed by District Judge Louise Wood Flanagan on 12/26/2024.</b> (Collins, S) (Entered: 12/26/2024)
12/26/2024		Motions Submitted to District Judge Louise Wood Flanagan regarding <u>53</u> MOTION to Dismiss for Lack of Jurisdiction ( <i>Fed.R.Civ.P. 12(b)(1)</i> ) in lieu of Answer, <u>58</u> MOTION to Dismiss for Lack of Jurisdiction , <u>55</u> MOTION to Dismiss for Lack of Jurisdiction . (Collins, S) (Entered: 12/26/2024)
02/24/2025	<u>73</u>	Notice filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Josh Stein <i>Withdraw of Government Counsel</i> . (Steed, Terence) (Entered: 02/24/2025)
03/28/2025	<u>74</u>	<b>ORDER denying <u>53</u> Motion to Dismiss for Lack of Jurisdiction; granting in part <u>55</u> Motion to Dismiss for Lack of Jurisdiction; denying <u>58</u> Motion to Dismiss for Lack of Jurisdiction. Jeff Jackson is hereby DISMISSED from this action pursuant to the Eleventh Amendment. Pursuant to the courts October 15, 2024, order, remaining defendants shall have 14 days from the date of this order to file an answer or motions to dismiss based on any other defenses listed in Rule 12(b). Signed by District Judge Louise Wood Flanagan on 3/28/2025.</b> (Collins, S) (Entered: 03/28/2025)
04/02/2025	<u>75</u>	MOTION to Withdraw as Attorney by <i>Daniel M. Ortner</i> filed by Susan Jane Hogarth. (Attachments: # <u>1</u> Text of Proposed Order) (Zeman, Jeffrey) (Entered: 04/02/2025)
04/02/2025	<u>76</u>	<b>ORDER granting <u>75</u> Motion to Withdraw as Attorney. Attorney Daniel Ortner terminated. Signed by District Judge Louise Wood Flanagan on 4/2/2025.</b> (Collins, S) (Entered: 04/02/2025)
04/10/2025	<u>77</u>	ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, with Jury Demand , ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, , ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, with Jury Demand by Gerry Cohen, Greg Flynn, Angela Hawkins, Olivia McCall, Erica Porter, Keith Weatherly. (Cooper, Allison) (Entered: 04/10/2025)

04/11/2025	<u>78</u>	ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, , ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, , ANSWER to <u>1</u> Complaint, <u>65</u> Amended Complaint, <u>2</u> Complaint,,, by Lorrin Freeman. (O'Brien, Elizabeth) (Entered: 04/11/2025)
04/11/2025	<u>79</u>	ANSWER to <u>65</u> Amended Complaint, <u>2</u> Complaint,,, , ANSWER to <u>65</u> Amended Complaint, <u>2</u> Complaint,,, by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen. (Steed, Terence) (Entered: 04/11/2025)
04/14/2025	<u>80</u>	<b>INITIAL ORDER REGARDING PLANNING AND SCHEDULING – Joint Report and Plan due by <u>5/19/25</u>. Counsel should read attached order in its entirety for critical information and deadlines. Signed by District Judge Louise Wood Flanagan on 4/14/25.</b> (Collins, S) (Entered: 04/14/2025)
05/12/2025	<u>81</u>	Notice of Appearance filed by Mary L. Lucasse on behalf of Karen Brinson Bell, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen. (Lucasse, Mary) (Entered: 05/12/2025)
05/15/2025	<u>82</u>	Notice of Special Appearance for non–district by Daniel Zahn on behalf of Susan Jane Hogarth. (Zahn, Daniel) (Entered: 05/15/2025)
05/15/2025	<u>83</u>	Consent MOTION for Extension of Time to File <i>Rule 26(f) Report and Plan</i> filed by Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen. (Attachments: # <u>1</u> Text of Proposed Order) (Steed, Terence) (Entered: 05/15/2025)
05/16/2025		Motion Submitted to District Judge Louise Wood Flanagan regarding <u>83</u> Consent MOTION for Extension of Time to File <i>Rule 26(f) Report and Plan</i> . (Collins, S) (Entered: 05/16/2025)
05/16/2025	<u>84</u>	<b>ORDER granting <u>83</u> Consent MOTION for Extension of Time to File Rule 26(f) Report and Plan. Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 5/16/2025.</b> (Collins, S) (Entered: 05/16/2025)
06/09/2025	<u>85</u>	Rule 26(f) Report (joint) filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 06/09/2025)
06/23/2025	<u>86</u>	<b>CASE MANAGEMENT ORDER: Discovery in this case may be governed by a protective order. The parties shall have until July 11, 2025, to file motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) (the "Rule 12(c) motions"). Counsel is reminded to read the order in its entirety for critical deadlines and information. Signed by District Judge Louise Wood Flanagan on 6/23/2025.</b> (Collins, S) (Entered: 06/23/2025)
06/24/2025	<u>87</u>	Notice of Appearance filed by Ryan Charles Grover on behalf of Karen Brinson Bell, Danielle Brinton, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Siobhan O'Duffy Millen, Robert Rucho. (Grover, Ryan) (Entered: 06/24/2025)
07/11/2025	<u>88</u>	MOTION for Judgment on the Pleadings filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen. (Grover, Ryan) (Entered: 07/11/2025)
07/11/2025	<u>89</u>	Memorandum in Support regarding <u>88</u> MOTION for Judgment on the Pleadings filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen. (Grover, Ryan) (Entered: 07/11/2025)
07/11/2025	<u>90</u>	MOTION for Judgment on the Pleadings filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 07/11/2025)
07/11/2025	<u>91</u>	Memorandum in Support regarding <u>90</u> MOTION for Judgment on the Pleadings filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 07/11/2025)
08/01/2025	<u>92</u>	RESPONSE in Opposition regarding <u>90</u> MOTION for Judgment on the Pleadings filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Robert Rucho. (Attachments: # <u>1</u> Exhibit – 11/27/23 Oral Ruling Transcript) (Grover, Ryan) Modified on 8/4/2025 to

		label exhibit.(Collins, S). (Entered: 08/01/2025)
08/01/2025	<u>93</u>	RESPONSE in Opposition regarding <u>88</u> MOTION for Judgment on the Pleadings filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 08/01/2025)
08/15/2025	<u>94</u>	REPLY to Response to Motion regarding <u>90</u> MOTION for Judgment on the Pleadings filed by Susan Jane Hogarth. (Zeman, Jeffrey) (Entered: 08/15/2025)
08/15/2025	<u>95</u>	REPLY to Response to Motion regarding <u>88</u> MOTION for Judgment on the Pleadings filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Alan Hirsch, Kevin N. Lewis, Siobhan O'Duffy Millen, Robert Rucho. (Grover, Ryan) (Entered: 08/15/2025)
08/18/2025		Motions Submitted to District Judge Louise Wood Flanagan regarding <u>88</u> MOTION for Judgment on the Pleadings, <u>90</u> MOTION for Judgment on the Pleadings. (Collins, S) (Entered: 08/18/2025)
10/03/2025	<u>96</u>	Notice filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Siobhan O'Duffy Millen <i>Withdraw of Government Counsel</i> . (Steed, Terence) (Entered: 10/03/2025)
01/02/2026	<u>97</u>	Notice of Appearance filed by Mary Woodell Scruggs on behalf of Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Siobhan O'Duffy Millen, Robert Rucho. (Scruggs, Mary) (Entered: 01/02/2026)
02/05/2026	<u>98</u>	Notice filed by Karen Brinson Bell, Jeff Carmon, Francis X De Luca, Stacy Eggers IV, Siobhan O'Duffy Millen, Robert Rucho <i>Withdraw of Government Counsel</i> . (Lucasse, Mary) (Entered: 02/05/2026)
03/09/2026	<u>99</u>	<b>ORDER granting <u>88</u> Motion for Judgment on the Pleadings; denying <u>90</u> Motion for Judgment on the Pleadings. The clerk is DIRECTED to close this case. Signed by District Judge Louise Wood Flanagan on 3/9/2026.</b> (Collins, S) (Entered: 03/09/2026)
03/09/2026	<u>100</u>	<b>JUDGMENT – Signed by District Judge Louise Wood Flanagan on 3/9/2026.</b> (Collins, S) (Entered: 03/09/2026)
03/20/2026	<u>101</u>	Notice of Appeal filed by Susan Jane Hogarth as to <u>100</u> Judgment, <u>99</u> Order on Motion for Judgment on the Pleadings,,,. Filing fee, receipt number ANCEDC-8537932. (Zeman, Jeffrey) (Entered: 03/20/2026)
03/23/2026	<u>102</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals regarding <u>101</u> Notice of Appeal. (Foell, S.) (Entered: 03/23/2026)
03/23/2026	<u>103</u>	US Court of Appeals Case Number 26-1328 (Paige Ballard, Case Manager) as to <u>101</u> Notice of Appeal filed by Susan Jane Hogarth. (Foell, S.) (Entered: 03/23/2026)

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Hogarth, Susan J.

(b) County of Residence of First Listed Plaintiff Raleigh (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) James M. Dedman IV GALLIVAN WHITE & BOYD P.A. 6805 Carnegie Blvd. Ste. 200

DEFENDANTS

Brinson Bell, Karen; Hirsch, Alan; Carmon, Jeff; Eggers, Stacy IV; Lewis, Kevin N.; O'Duffy Millen, Siobhan; Brinton

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. § 1983. Brief description of cause: Violation of First Amendment right to freedom of speech

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE Aug 22, 2024 SIGNATURE OF ATTORNEY OF RECORD /s/ James M. Dedman IV

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING FEE

JS 44 Reverse (Rev. 03/24)

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
Original Proceedings. (1) Cases which originate in the United States district courts.  
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related cases, if any. If there are related cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

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

SUSAN JANE HOGARTH,

*Plaintiff,*

v.

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;

DANIELLE BRINTON, in her official capacity as Investigator for the North Carolina State Board of Elections;

OLIVIA MCCALL, in her official capacity as Director of the Wake County Board of Elections;

ERICA PORTER, in her official capacity as Chair of the Wake County Board of Elections;

ANGELA HAWKINS, in her official capacity as Secretary of the Wake County Board of Elections;

Case No.: 5:24-cv-481

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

GREG FLYNN, GERRY COHEN, and  
KEITH WEATHERLY, in their official  
capacities as Members of the Wake  
County Board of Elections;

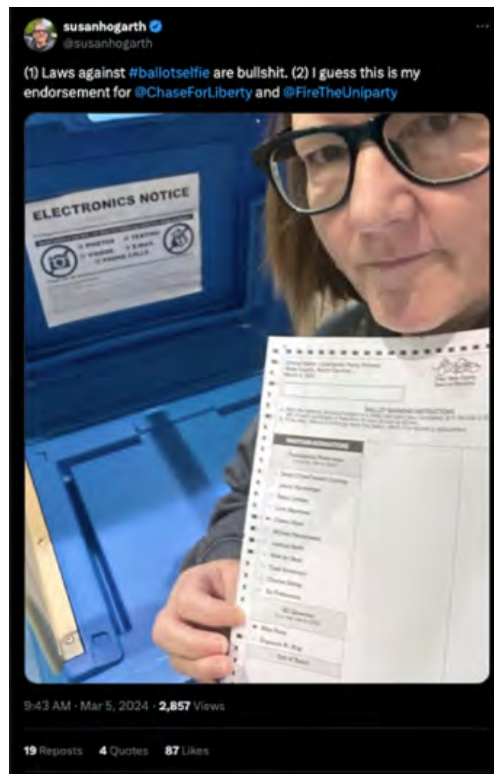
LORRIN FREEMAN, in her official  
capacity as Wake County District  
Attorney; and

JOSH STEIN, in his official capacity as  
North Carolina Attorney General;

*Defendants.*

## INTRODUCTION

1. A picture is worth a thousand words. That's why Susan Hogarth took a photo with her March 2024 North Carolina primary ballot and shared her "ballot selfie" on social media to show her thousands of followers her pride in voting for her chosen candidates.



2. But North Carolina makes taking and sharing this picture a crime.

3. North Carolina's state and county boards of elections regularly warn the public that ballot selfies are illegal and investigate voters who do nothing more than take and share these pictures, even when they know voters share ballot selfies to do nothing more than express "voting pride."

4. In fact, one week after the 2024 primary election, the North Carolina State Board of Elections sent Hogarth a letter threatening criminal prosecution for taking and sharing her ballot selfie.

5. In all, five provisions of North Carolina law criminalize ballot selfies, even though the photos are a "ubiquitous" way for voters to express their "voting pride." *Rideout v. Gardner*, 838 F.3d 65, 73 (1st Cir. 2016).

6. Four of these five provisions outlaw taking or sharing photographs that contain an image of a completed ballot. These content-based speech restrictions are presumptively unconstitutional under the First Amendment. *See Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). As applied to ballot selfies, the provisions cannot survive strict scrutiny to overcome this presumption because they are not "narrowly tailored to further a compelling government interest." *Id.* at 172.

7. And North Carolina goes even further, with a fifth provision prohibiting photographs of voters—including voters' selves—in the room where voting takes place without permission from an election official. Because this provision is also a content-based speech restriction and lacks "objective, workable standards" to guide

officials' discretion, it likewise violates the First Amendment as applied to ballot selfies. *See Minn. Voters All. v. Mansky*, 585 U.S. 1, 21 (2018).

8. Hogarth brings this lawsuit to protect her and all North Carolina voters' First Amendment right to express their political beliefs through taking and sharing a ballot selfie.

### **THE PARTIES**

#### ***Plaintiff***

9. Susan Jane Hogarth is a resident and registered voter of Wake County, North Carolina. In the last ten years, she has voted in nearly every national election. She has taken and shared ballot selfies and intends to do so again. She takes and shares ballot selfies to, among other reasons, promote her preferred candidates, challenge the narrative that voters can only vote for major party candidates, express her pride in participating in the electoral process, and express her disagreement with North Carolina's ban on ballot selfies.

10. On March 5, 2024, Hogarth took a ballot selfie in the voting booth, which she then shared on social media. A week later the State Board threatened Hogarth with a "Class 1 Misdemeanor" prosecution and demanded that she take down the photo.

#### ***Defendants***

11. The North Carolina State Board of Elections supervises the State's primary and general elections. State Board members are required to "distribute to the electorate such materials explanatory of primary and election laws and

procedures as the State Board shall deem necessary,” N.C. Gen. Stat. § 163-22(b); advise county election boards on how to conduct elections and “compel observance of the requirements of the election laws by county boards of elections and other election officers,” N.C. Gen. Stat. § 163-22(c); investigate violations of election laws, N.C. Gen. Stat. §§ 163-22(d), 163-273, 163-274, 163-278; and report violations of election laws for prosecution, N.C. Gen. Stat. §§ 163-22(d), 163-278. The State Board enforces the State’s ban on ballot selfies by issuing press releases telling voters that photographing a completed ballot is illegal, investigating voters who take and share ballot selfies, and referring these voters to county prosecutors—even when they know voters take and share the photos to do no more than express their “voting pride.”

12. Defendant Karen Brinson Bell is the Executive Director of the North Carolina State Board of Elections. She is North Carolina’s chief elections official and responsible for staffing, administration, and execution of State Board decisions and orders. N.C. Gen. Stat. §§ 163-82.2, 163-27(c). Brinson Bell warned voters in press releases coinciding with the March 2020 and November 2020 elections that taking ballot selfies with a completed ballot is illegal.

13. Defendant Alan Hirsch is the Chair of the North Carolina State Board of Elections. The Chair of the State Board is responsible for investigating violations of North Carolina election law and has the power to issue subpoenas, summon witnesses, and compel the production of evidence on behalf of the State Board. N.C. Gen. Stat. §§ 163-20(c), 163-23.

14. Defendants Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, and Siobhan O'Duffy Millen are members of the North Carolina State Board of Elections. Defendant Carmon is the Secretary of the State Board. Each is responsible for investigating violations of North Carolina election law and has the power to issue subpoenas, summon witnesses, and compel the production of evidence in the Chair's absence. N.C. Gen. Stat. §§ 163-20(c), 163-23.

15. Defendant Danielle Brinton is a State Board investigator. Investigator Brinton wrote the March 13, 2024 letter to Hogarth demanding Hogarth take down the social media post containing her March 5, 2024 ballot selfie or face criminal prosecution.

16. The Wake County Board of Elections, through its members, issues instructions to guide elections officers and voters; appoints all elections officers including chief judge, judges, and assistants; investigates violations of election laws; and reports violations to the State Board. N.C. Gen. Stat. § 163-33. It also appoints a director and may delegate responsibilities to its director. N.C. Gen. Stat. § 163-35.

17. Defendant Olivia McCall is the Director of the County Board. The County Board appointed McCall as Director in 2023. She has authority to establish election precincts and voting locations, appoint precinct officials including chief judge, judges, and assistants, investigate violations of North Carolina election law, and report violations to the State Board.

18. Defendant Erica Porter is the Chair of the County Board. She is responsible for investigating violations of North Carolina election law and reporting violations to the State Board.

19. Defendants Angela Hawkins, Greg Flynn, Gerry Cohen, and Keith Weatherly are members of the County Board. Defendant Hawkins is the Secretary of the County Board. County Board members enforce the State's ban on ballot selfies by appointing chief judges of precincts, investigating violations of North Carolina election law and reporting violations to the State Board.

20. Lorrin Freeman is the Wake County District Attorney. She is responsible for "prosecut[ing] in a timely manner in the name of the State all criminal actions and infractions requiring prosecution in the superior and district courts of the district attorney's prosecutorial district." N.C. Gen. Stat. § 7A-61. The Wake County District Attorney has legal authority and responsibility to "initiate prosecution and prosecute any violations of" North Carolina's election laws, including the laws prohibiting ballot selfies. N.C. Gen. Stat. § 163-278.

21. Josh Stein is the North Carolina Attorney General. Under North Carolina statute, the Attorney General has legal authority to prosecute ballot selfie cases upon district attorney request. N.C. Gen. Stat. § 114-11.6.

22. At all relevant times, all Defendants were acting under color of state law.

23. All Defendants are sued in their official capacity only.

### JURISDICTION

24. This action arises under the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988 for violations of Plaintiff Hogarth's First Amendment rights.

25. Accordingly, this Court has subject-matter jurisdiction under 28 U.S.C. § 1331 (federal question jurisdiction) and § 1343 (civil rights jurisdiction).

26. Hogarth seeks declaratory and injunctive relief against the Defendants' enforcement of North Carolina statutes that, as applied, outlaw ballot selfies. Hogarth also asks the Court to declare that Investigator Brinton's March 13, 2024 letter violated the First Amendment and to enjoin the State Board Defendants from taking any action against Hogarth related to her March 5, 2024 ballot selfie.

27. This Court has authority under the Declaratory Judgment Act, 28 U.S.C. § 2201(a), to decide this dispute and award relief because it presents an actual case or controversy within the Court's jurisdiction.

### VENUE

28. Venue is proper in the Eastern District of North Carolina, Western Division, under 28 U.S.C. § 1391(b)(1) because each of the Defendants perform their official duties in Raleigh, North Carolina. In addition, on information and belief, at least one of the Defendants resides in this District and all Defendants reside in North Carolina.

29. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to Hogarth's claims occurred within this District.

## FACTUAL ALLEGATIONS

### **Five Provisions of North Carolina Law Ban Ballot Selfies.**

30. Since the proliferation of cell phone cameras, “ballot selfies”— voters’ photos of their own completed ballots or of themselves in the voting booth—have become a popular form of political speech.

31. Now legal in 31 states, ballot selfies “have taken on a special communicative value: they both express support for a candidate and communicate that the voter has in fact given his or her vote to that candidate.” *Rideout*, 838 F.3d at 75.

32. Nevertheless, five provisions of North Carolina law prohibit taking or sharing ballot selfies.

33. Four of the five provisions ban taking or sharing a photograph of a completed ballot (the “Ballot Photography Provisions”).

34. First, N.C. Gen. Stat. § 163-166.3(c) prohibits photographing a completed ballot.

35. N.C. Gen. Stat. § 163-166.3(c) states: “Photographing Voted Ballot Prohibited. – No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law.”

36. Second, N.C. Gen. Stat. § 163-273(a)(1) makes it a Class 2 misdemeanor with possible jail time for a voter to show their own ballot to anyone else.

37. N.C. Gen. Stat. § 163-273(a)(1) states: “Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this section to be unlawful, shall be guilty of a Class 2 misdemeanor. It

shall be unlawful: (1) For a voter, except as otherwise provided in this Chapter, to allow his ballot to be seen by any person.”

38. Third, N.C. Gen. Stat. § 163-165.1(e) makes it a Class 1 misdemeanor with possible jail time for anyone with access to an electronic record of a completed ballot to disclose the contents of the ballot.

39. N.C. Gen. Stat. § 163-165.1(e) states:

Voted ballots and paper and electronic records of individual voted ballots shall be treated as confidential, and no person other than elections officials performing their duties may have access to voted ballots or paper or electronic records of individual voted ballots except by court order or order of the appropriate board of elections as part of the resolution of an election protest or investigation of an alleged election irregularity or violation. Voted ballots and paper and electronic records of individual voted ballots shall not be disclosed to members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise. Any person who has access to an official voted ballot or record and knowingly discloses in violation of this section how an individual has voted that ballot is guilty of a Class 1 misdemeanor.

40. Fourth, N.C. Gen. Stat. §163-274(b)(1) specifies that disclosing how an individual voted, as described in § 163-165.1(e) is a Class 1 misdemeanor.

41. N.C. Gen. Stat. § 163-274(b)(1) states, in relevant part: “Any person who, in connection with any primary or election in this State, violates any provision of this subsection is guilty of a Class 1 misdemeanor. It shall be unlawful to do any of the following: (1) For any person who has access to an official voted ballot or record to knowingly disclose in violation of G.S. 163-165.1(e) how an individual has voted that ballot.”

42. The Ballot Photography Provisions prohibit voters from taking or sharing photos of completed ballots anywhere, anytime—whether they voted in-person or absentee.

43. The Ballot Photography Provisions include no exceptions for voters' photos of their own ballots.

44. A fifth statutory provision, N.C. Gen. Stat. § 163-166.3(b), prohibits photographing voters in the voting enclosure without permission from both the voter and an election official—unless the voter is a political candidate (the “Voting Enclosure Provision”).

45. N.C. Gen. Stat. § 163-166.3(b) states: “Photographing Voters Prohibited. – No person shall photograph, videotape, or otherwise record the image of any voter within the voting enclosure, except with the permission of both the voter and the chief judge of the precinct. If the voter is a candidate, only the permission of the voter is required.”

46. The “voting enclosure” is broadly defined as the room within the polling place where voting takes place. N.C. Gen. Stat. § 163-165(9).

47. County boards appoint the “chief judge of the precinct,” who can deny permission to take a photo of a voter for any reason.

48. The Voting Enclosure Provision makes no exceptions for ballot selfies—voters' photos of themselves in the voting enclosure.

### **Hogarth Takes a Ballot Selfie and Shares It on Social Media.**

49. Plaintiff Susan Hogarth, like many Americans, expresses her pride in voting and who she voted for by taking ballots selfies and sharing them on social media.

50. Hogarth has taken and shared ballot selfies in past elections.

51. Hogarth takes and shares ballot selfies to:

- (a) Promote the candidates she typically votes for;
- (b) Show voters they can vote for third-party candidates;
- (c) Challenge the narrative that voters can only vote for major party candidates;
- (d) Encourage potential voters to vote;
- (e) Commemorate her vote for herself and for posterity;
- (f) Express her personal pride in participating in the electoral process; and
- (g) Express her disagreement with North Carolina's ban on ballot selfies.

52. Hogarth's assigned precinct for primary and general elections is Precinct 18-04, in Raleigh, North Carolina.

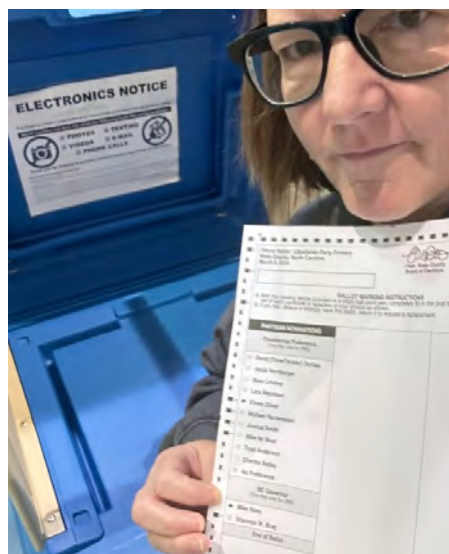
53. On March 5, 2024, Hogarth went to Yates Mill Elementary School, her precinct's polling place, to vote in the North Carolina primary election.

54. From the time Hogarth arrived at her polling place until the time she left, no more than three other voters entered the voting enclosure.

55. Hogarth received a paper ballot and entered a voting booth, a section of a table separated from other voters by a privacy screen.

56. Hogarth then cast her votes for president and governor by filling the ovals next to the names of her preferred candidates.

57. Using her cell phone camera, Hogarth then took a photograph of herself in the voting booth, holding up her ballot to show who she voted for:



58. Hogarth's ballot selfie also captured a sign in the voting booth prohibiting photography.

59. Taking the photo took approximately 45 seconds.

60. Hogarth then submitted her ballot and left the polling place.

61. No one had to wait to access a voting booth while Hogarth voted.

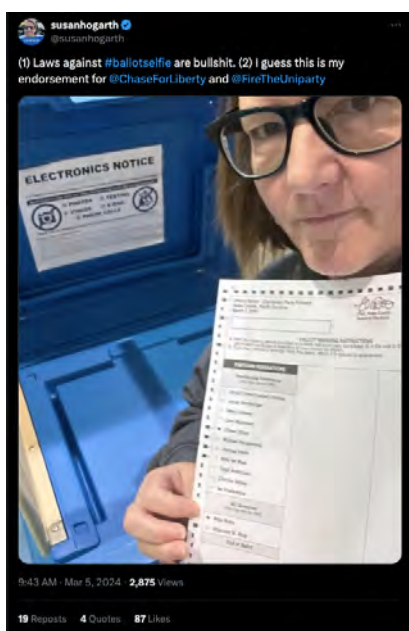
62. No poll worker notified Hogarth that her time in the booth had expired.

63. No poll worker notified Hogarth that she was taking too long to exit the voting booth.

64. No one at the polling place that day said anything to Hogarth about taking a photograph of her completed ballot or of herself in the voting enclosure.

65. Susan asked no one at the polling place for permission to take her ballot selfie.

66. Minutes after Hogarth left the polling place, she shared her ballot selfie by posting it on X (the social network formerly known as Twitter):



67. In her post, Hogarth wrote above her ballot selfie: “(1) Laws against #ballotselfie are bullshit. (2) I guess this is my endorsement for @ChaseForLiberty and @FireTheUniparty.”

68. Hogarth’s post identified the candidates she voted for by their usernames on X.

69. “@ChaseForLiberty” is Chase Oliver, the 2024 Libertarian Party presidential candidate.

70. “@FireTheUniparty” is Mike Ross, the 2024 North Carolina Libertarian Party gubernatorial candidate.

71. To date, Hogarth’s ballot selfie post has been viewed 2,896 times, 87 X users have “liked” the post, and 23 X users have either reposted or quoted the post.

**The State Board Demands Hogarth Remove Her Ballot Selfie, Threatening Criminal Prosecution.**

72. Two weeks later, Hogarth received a letter dated March 13, 2024 from State Board Investigator Danielle Brinton. A true and accurate copy of the State Board’s Letter is attached as Exhibit A.

73. The single-page letter warns Hogarth four times that photographing a completed ballot is illegal.

74. The letter also threatens Hogarth with criminal prosecution for taking and sharing her ballot selfie.

75. Investigator Brinton advises that someone forwarded Hogarth’s March 5, 2024 ballot selfie to the State Board.

76. Investigator Brinton next warns Hogarth that she committed a crime by photographing her completed ballot in violation of N.C. Gen. Stat. § 163-166.3(c).

77. Investigator Brinton then quotes N.C. Gen. Stat. § 163-166.3(c) in its entirety.

78. Investigator Brinton also warns Hogarth that sharing her ballot selfie on X violated the law.

79. Investigator Brinton then threatens Hogarth with criminal consequences.

80. Investigator Brinton calls Hogarth's ballot selfie a "violation[] of election laws" that she has a duty to investigate.

81. She then warns, for the fourth time, that "photographing a voted ballot is prohibited by law," adding that it is "punishable as a Class 1 Misdemeanor." Ex. A.

82. North Carolina's Class 1 misdemeanors are criminal offenses punishable by fines, probation, and/or jail time. N.C. Gen. Stat. § 15A-1340.23.

83. Investigator Brinton closes her letter by demanding Hogarth take down her March 5, 2024 ballot selfie X post.

**The State Board Warns Voters That Photographing Their Ballots Is Illegal, Investigates Reports of Ballot Selfies, and Refers Ballot Selfies to District Attorneys for Prosecution.**

84. The State Board knows taking and sharing ballot selfies is expressive activity.

85. As State Board Executive Director Brinson Bell said ahead of the March 2020 primary election: "We understand wanting to photograph yourself voting, especially with the popularity of selfies . . . However, there are legal ways to display your voting pride, such as wearing your 'I Voted' sticker or taking a picture outside of the precinct."

86. The State Board repeatedly warns voters that taking ballot selfies is illegal.

87. The State Board warns voters in press releases at election time that taking ballot selfies is illegal.

88. The State Board warns voters on its website that taking ballot selfies is illegal.

89. The State Board warns voters on social media that taking ballot selfies is illegal.

90. The State Board investigates reports of ballot selfies.

91. Between March 2016 and March 2024, the State Board investigated at least 50 reports of voters photographing completed ballots from primary and general elections.

92. The State Board has investigated ballot selfies taken in voting enclosures.

93. The State Board has investigated ballot selfies taken outside voting enclosures.

94. The State Board has investigated ballot selfies taken with absentee ballots.

95. The State Board has investigated ballot selfies based on reports from county election officials, candidates for office, and members of the public, among others.

96. State Board investigators have conducted their own reviews of posts North Carolina voters shared on social media, to identify ballot selfies for investigation.

97. The State Board refers individuals who have taken or shared photos of completed ballots to district attorneys for criminal prosecution.

**The County Board Warns Voters That Ballot Selfies Are Illegal and Reports Election Law Violations to the State Board.**

98. Like the State Board's website, the County Board's website warns voters that photographing a completed ballot is illegal.

99. The County Board's website warns voters that it is illegal to photograph a voter in the voting enclosure without permission from an election official.

100. During election cycles from November 2018 through March 2024, officials from at least eight different North Carolina county boards sent reports of voters photographing completed ballots to the State Board.

101. On November 8, 2022, David Sims, then director of the County Board, reported a Wake County voter's violation of North Carolina's ban on photographing completed ballots to the State Board.

102. Sims reported a photo he had seen on Facebook, of a voter's minor daughter filling out the voter's midterm election ballot.

103. Sims reported the photo as a violation of North Carolina's ban on photographing a completed ballot and not as a violation of any other election law.

104. During the March 2024 primary election cycle, at least two other county boards submitted reports of voters photographing completed ballots to the State Board.

**Hogarth Will Not Take Down Her Ballot Selfie and Will Continue Taking and Sharing Ballot Selfies in the Future.**

105. Hogarth has not taken down her March 5, 2024 X post sharing her ballot selfie from the March 5 primary election.

106. She does not intend to take down her March 5, 2024 X post.

107. Hogarth intends to vote in future elections in Wake County: on November 5, 2024, March 3, 2026, November 3, 2026, and beyond.

108. In past elections, Hogarth has voted early and on other occasions she has voted on election day.

109. Hogarth votes in person when she is able.

110. She will vote absentee if she is unable to appear at the polling place in person.

111. Hogarth intends to take ballot selfies with her completed ballot in future elections despite the State's threatened criminal prosecution.

112. Hogarth intends to take ballot selfies with her completed ballot in future elections, whether she votes in person or via absentee ballot.

113. She also intends to share those photographs on X or other social media platforms.

**Hogarth Will Vote for Herself in the November 5, 2024 Election and Plans to Take and Share a Ballot Selfie That Day.**

114. Hogarth is a member and past Chair of the Libertarian Party of North Carolina.

115. In past elections, Hogarth has actively supported Libertarian Party candidates up and down the ballot by appearing on radio and television as a candidate surrogate, promoting candidates on social media, handing out flyers on election day and, of course, voting for them.

116. On November 5, 2024, Hogarth will appear as the Libertarian Party candidate for State Senate on ballots for North Carolina State Senate District 13.

117. North Carolina State Senate District 13 is in Wake County.

118. Hogarth intends to vote in person on November 5, 2024.

119. Hogarth intends to vote for all the Libertarian Party candidates that will appear on her November 5, 2024 general election ballot.

120. She also intends to vote for herself.

121. After she votes for herself, Hogarth intends to take a photograph of herself in the voting booth, holding her completed ballot so her vote can be seen.

122. Hogarth also intends to photograph herself with the portion of her ballot showing her vote for Libertarian Party presidential candidate Chase Oliver.

123. To commemorate and celebrate the occasion, she plans to share her ballot selfie with family and friends, and on social media.

### **INJURIES TO PLAINTIFF**

124. North Carolina's ban and Defendants' policies implementing it and their active enforcement of it forces Hogarth to choose to either take and share ballot selfies under the threat of criminal prosecution or to self-censor by forgoing expressing herself as such.

125. North Carolina's five statutory provisions banning ballot selfies deprive Hogarth and other voters of their constitutional right to express their core political beliefs through taking and sharing ballot selfies.

126. The four Ballot Photography Provisions chill the First Amendment-protected expression of a reasonable person of ordinary firmness by prohibiting voters from taking and sharing a ballot selfie—a photo of themselves with their completed ballot—because criminal penalties deter a reasonable person of ordinary firmness.

127. The Voting Enclosure Provision chills the First Amendment-protected expression of a reasonable person of ordinary firmness by prohibiting voters from taking pictures of themselves in the voting enclosure without permission from an election official.

128. Each of these five statutory provisions place Hogarth and other voters in immediate risk of criminal prosecution when they engage in First Amendment-protected expression by taking and sharing ballot selfies.

129. The State Board Defendants' March 13, 2024 letter threatening Hogarth with criminal prosecution for taking a ballot selfie further burdens Hogarth's First Amendment-protected expression.

130. The State Board Defendants' March 13, 2024 letter threatening Hogarth with criminal prosecution further burdens Hogarth's First Amendment-protected expression by demanding she remove her March 5, 2024 ballot selfie from X.

131. Absent prospective injunctive relief, Hogarth faces an ongoing and credible threat of prosecution for her March 5, 2024 ballot selfie.

132. Hogarth also faces a credible threat of prosecution if she takes and shares a ballot selfie during the upcoming November 2024 election and subsequent elections, as she plans to do.

133. The State Board's March 13, 2024 letter to Hogarth threatening criminal prosecution, the State Board's and County Board's consistent warnings to voters that it is illegal to take ballot selfies, and the State Board's and County Board's

investigations into and referrals for prosecution of past incidents of ballot selfies make this threat of prosecution highly credible.

134. Hogarth seeks declaratory and injunctive relief because she plans to continue to take and share ballot selfies to promote the lesser-known candidates she typically votes for, show voters they can vote for third-party candidates, challenge the narrative that voters can only vote for major party candidates, encourage potential voters to vote, commemorate her vote for herself and posterity, express her personal pride in participating in the electoral process, and express her disagreement with North Carolina's ban on ballot selfies.

### **CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

#### **FIRST CAUSE OF ACTION**

#### **The Ballot Photography Provisions Violate the First Amendment (As-Applied Challenge Against All Defendants)**

135. Hogarth re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

136. The First Amendment provides “Congress shall make no law . . . abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I.

137. “The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 339 (2010).

138. Ballot selfies have become a popular way for voters to express their support for their preferred candidates. As the First Circuit explained, ballot selfies “both express support for a candidate and communicate that the voter has in fact given his or her vote to that candidate.” It is therefore no surprise that they “have taken on a special communicative value.” *Rideout*, 838 F.3d at 75.

139. The First Amendment protects the “creation of information” just “as much . . . as its dissemination.” *PETA v. N.C. Farm Bureau Fed’n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023).

140. The First Amendment therefore protects both taking and sharing ballot selfies.

141. The four Ballot Photography Provisions, N.C. Gen. Stat. §§ 163-166.3(c), 163-273(a)(1), 163-165.1(e), and 163-274(b)(1), burden Hogarth’s exercise of her First Amendment freedoms by prohibiting or criminalizing her protected expression.

142. The State Board warned in its March 13, 2024 letter that Hogarth committed a Class 1 Misdemeanor by taking and sharing her ballot selfie.

143. The Ballot Photography Provisions make no exception for a voter taking or sharing a picture of their own completed ballot.

144. The Ballot Photography Provisions make it illegal for voters to even take and share ballot selfies of absentee ballots taken in the comfort of their own homes.

145. The Ballot Photography Provisions “single[] out specific subject matter for differential treatment.” *Barr v. Am. Ass’n of Political Consultants, Inc.*, 591 U.S.

610, 619 (2020). Specifically, they outlaw taking or sharing a photograph only if it contains an image of a completed ballot.

146. The Ballot Photography Provisions are therefore content-based restrictions on speech, targeting “the topic discussed or the idea or message expressed” and are “presumptively unconstitutional.” *Reed*, 576 U.S. at 163.

147. Content-based speech restrictions are subject to strict scrutiny. *Id.* at 163–64.

148. Defendants cannot meet their burden to prove the Ballot Photography Provisions are narrowly tailored to further a compelling government interest.

149. The State Board has claimed the Ballot Photography Provisions further an interest in preventing vote-buying schemes.

150. To survive strict scrutiny, North Carolina must demonstrate that its concerns are “real, not merely conjectural, and that [its laws] alleviate these harms in a direct and material way.” *Ross v. Early*, 746 F.3d 546, 556 (4th Cir. 2014) (cleaned up).

151. The Ballot Photography Provisions are not narrowly tailored to the prevention of vote buying because they curtail more protected speech than is necessary to accomplish that goal.

152. The Ballot Photography Provisions make it illegal for voters to take and share ballot selfies that have no connection to vote buying.

153. The Ballot Photography Provisions prohibit ballot selfies that logically cannot have a connection to vote buying. Hogarth, for example, intends to photograph

her completed ballot showing that she voted for herself for State Senate in November 2024. It is irrational to suggest that she could be bribed to vote for herself.

154. The State Board treats taking a ballot selfie as a distinct offense regardless of whether there is any connection to vote-buying schemes.

155. The State thus impermissibly bans “large quantities of political expression” based on “[t]he mere possibility [of] . . . misconduct” *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 304 (4th Cir. 2008).

156. In doing so, the Ballot Photography Provisions curtail more speech than necessary.

157. The Ballot Photography Provisions are not narrowly tailored to the prevention of vote buying because there are less restrictive means North Carolina could use to prevent vote-buying schemes.

158. Instead of banning ballot selfies, North Carolina could enforce existing criminal laws against buying or selling votes as a less speech-restrictive means of achieving its professed goal.

159. This is the “normal method of deterring unlawful conduct” rather than punishing “speech by a law-abiding possessor of information.” *Bartnicki v. Vopper*, 532 U.S. 514, 529–30 (2001).

160. Both state and federal laws already ban vote buying and selling. *See* N.C. Gen. Stat. § 163-275(2); 18 U.S.C § 597.

161. Hogarth plans to take a ballot selfie depicting herself in the voting booth holding her completed ballot for the general election on November 5, 2024, and in every future election she votes in.

162. Hogarth also plans to share those ballot selfies on social media.

163. As applied to ballot selfies, the Ballot Photography Provisions objectively chill the constitutionally protected speech of a “person of ordinary firmness.” *Cooksey v. Futrell*, 721 F.3d 226, 236–37 (4th Cir. 2013).

164. As a direct and proximate cause of the Ballot Photography Provisions, Hogarth has suffered and continues to suffer irreparable injury, including the burdening of her First Amendment-protected right to take and share ballot selfies on social media free from government interference. *See N.C. Right to Life, Inc.*, 168 F.3d at 710; *Rideout*, 838 F.3d at 75.

165. The deprivation of constitutional rights is an irreparable injury per se. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

166. Hogarth is entitled to a declaration under 28 U.S.C. § 2201 that the Ballot Photography Provisions violate the First Amendment as applied to ballot selfies.

167. Hogarth is entitled to injunctive relief under 42 U.S.C. § 1983 preventing the Defendants from enforcing the Ballot Photography Provisions as applied to ballot selfies. *See PETA*, 60 F.4th at 838 (invalidating recording ban as applied to all newsgathering activities).

168. Hogarth has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her First Amendment rights.

169. Without declaratory and injunctive relief against the Ballot Photography Provisions, Defendants' actions and enforcement authority to suppress Hogarth's First Amendment expressive rights will continue, and Hogarth will suffer per se irreparable harm, indefinitely.

**SECOND CAUSE OF ACTION**  
**The Voting Enclosure Provision Violates the First Amendment**  
**(As-Applied Challenge Against All Defendants)**

170. Hogarth re-alleges and re-incorporates the preceding paragraphs as though fully set forth herein.

171. The First Amendment protects the taking and sharing of ballot selfies. *See supra* ¶¶ 135–39.

172. The Voting Enclosure Provision requires voters to receive permission from the chief judge of a precinct to take a photograph of themselves in the voting enclosure, unless they are a political candidate.

173. The Voting Enclosure Provision makes no exception for ballot selfies.

174. Any restriction on protected speech in a limited or “non-public” forum like a polling place must be both reasonable and viewpoint neutral. *Mansky*, 585 U.S. at 19.

175. The Voting Enclosure Provision is not a reasonable regulation on speech in a non-public forum because it provides no “objective, workable standards” to guide

the chief judge in deciding whether to give a voter permission to take a selfie and to ensure “reasoned application.” *Id.* at 22.

176. The Constitution does not permit government officials to exercise this kind of “arbitrary discretion” to suppress speech. *Id.*

177. The Voting Enclosure Provision is also unreasonable because it makes an arbitrary and irrational distinction between candidates and any other voter wanting to take a ballot selfie which does not further the “purpose of the forum.” *Id.* at 13; see also *Multimedia Pub. Co. of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir. 1993).

178. There is no legitimate reason why Hogarth needed consent from the chief judge of the precinct to take a ballot selfie on March 5, 2024, but will not need that consent in November 2024 just because she will now be a candidate. See *The News & Observer Publ’g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 577 (4th Cir. 2010) (holding government must have a valid justification for impairing speech in a nonpublic forum).

179. Hogarth plans to take and share ballot selfies of herself in the voting enclosure holding her completed ballot on November 5, 2024, and in every future election she votes in.

180. Hogarth will be a candidate on November 5, 2024, but she plans to take ballot selfies in future elections in which she will not be a candidate and will therefore be required to first seek permission from the chief judge of her precinct, who can grant or deny that permission for any reason.

181. As applied to ballot selfies, the Voting Enclosure Provision objectively chills the constitutionally protected speech of a “person of ordinary firmness.” *Cooksey*, 721 F.3d at 237.

182. As a direct and proximate result of the Voting Enclosure Provision, Hogarth has suffered and continues to suffer irreparable injury, including being deprived of her constitutional right to take and share expressive images on social media, which continues so long as Defendants have the legal authority to enforce the Voting Enclosure Provision.

183. The denial of constitutional rights is an irreparable injury per se. *Elrod*, 427 U.S. at 373.

184. Hogarth is entitled to a declaration under 28 U.S.C. § 2201 that N.C. Gen. Stat. § 163-166.3(b) violates the First Amendment.

185. Hogarth is entitled to injunctive relief under 42 U.S.C. § 1983 preventing the Defendants from enforcing the Voting Enclosure Provision, as applied to ballot selfies. *See PETA*, 60 F.4th at 838 (invalidating recording ban as applied to all newsgathering activities).

186. Hogarth has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her First Amendment rights.

187. Without declaratory and injunctive relief against the Voting Enclosure Provision, Defendants’ actions and enforcement authority to suppress Hogarth’s First

Amendment expressive rights will continue, and Hogarth will suffer per se irreparable harm indefinitely.

**THIRD CAUSE OF ACTION**  
**The State Board's March 13, 2024 Demand Letter**  
**Violates the First Amendment**  
**(As-Applied Challenge Against State Board Defendants, Wake County**  
**District Attorney, and North Carolina Attorney General)**

188. Hogarth re-alleges and re-incorporates the preceding paragraphs as though fully set forth herein.

189. The First Amendment protects the taking and sharing of ballot selfies. *See supra* ¶¶ 135–39.

190. When Hogarth voted in North Carolina's primary election on March 5, 2024, she took a photograph of herself in the voting booth with her completed ballot.

191. Hogarth then shared her ballot selfie on X to promote the candidates she voted for, show voters they can vote for third-party candidates, challenge the narrative that voters can only vote for major party candidates, encourage potential voters to vote, commemorate her vote for herself and posterity, express her personal pride in participating in the electoral process, and express her disagreement with North Carolina's ban on ballot selfies.

192. One week later, State Board Investigator Brinton sent Hogarth a letter threatening her with criminal prosecution for both taking and sharing her March 5, 2024 ballot selfie.

193. Investigator Brinton warned Hogarth that taking a ballot selfie is a Class 1 misdemeanor.

194. Investigator Brinton demanded Hogarth take down the ballot selfie post she shared on X on March 5, 2024, or potentially face criminal prosecution for having taken a ballot selfie.

195. The State Board Defendants' threat to criminally prosecute Hogarth for taking a ballot selfie impermissibly regulates protected expression based on content.

196. The State Board Defendants' threat to prosecute Hogarth for sharing a ballot selfie impermissibly regulates protected expression based on content.

197. Prohibiting voters from taking and sharing photographs of their completed ballots cannot survive strict scrutiny because it is not narrowly tailored to preventing vote-buying schemes. Instead, it prohibits expression that is not used in vote-buying schemes despite the existence of less speech-restrictive alternatives. *See supra* ¶¶ 154–67.

198. The State Board Defendants had and have no reason to believe Hogarth shared her ballot selfie to facilitate vote buying.

199. By threatening Hogarth for taking and sharing a ballot selfie and demanding that she remove her post, the State Board Defendants violate Hogarth's First Amendment rights and attempt to chill her constitutionally protected expression.

200. Hogarth intends to take and share ballot selfies on social media during future elections and reasonably expects the State Board to demand she take down her future ballot-selfie posts or face prosecution.

201. Hogarth is entitled to a declaration under 28 U.S.C. § 2201 that the State Board's March 13, 2024 letter demanding Hogarth remove her March 5, 2024 ballot selfie post violates the First Amendment.

202. Hogarth is entitled to injunctive relief under 42 U.S.C. § 1983 preventing the State Board Defendants, the Wake County District Attorney, and the North Carolina Attorney General from taking further action against Hogarth as threatened by their March 13, 2024 letter demanding Hogarth take down her March 5, 2024 ballot selfie post.

203. Hogarth has no adequate legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to her First Amendment rights.

204. Without declaratory and injunctive relief preventing the State Board Defendants from taking further action against Hogarth based on her March 5, 2024 ballot selfie, the State Board Defendants' actions and enforcement authority to suppress Hogarth's First Amendment expressive rights will continue and Hogarth will suffer per se irreparable harm, indefinitely.

### **PRAYER FOR RELIEF**

Hogarth respectfully requests this Court enter judgment against Defendants and provide the following relief:

- A. Declare ballot selfies are protected expression under the First Amendment to the U.S. Constitution;

- B. Declare Hogarth's taking and sharing of her March 5, 2024 ballot selfie was and is protected expression under the First Amendment to the U.S. Constitution;
- C. Declare the Ballot Photography Provisions, N.C. Gen. Stat. §§ 163-166.3(c), 163-273(a)(1), 163-165.1(e) and 163-274(b)(1), are content-based speech restrictions that violate the First Amendment as applied to ballot selfies;
- D. Declare the Voting Enclosure Provision, N.C. Gen. Stat. § 163-166.3(b), is an unreasonable restriction on speech that violates the First Amendment as applied to ballot selfies;
- E. Declare the State Board's March 13, 2024 letter demanding Hogarth remove her March 5, 2024 ballot selfie from X violates the First Amendment;
- F. Preliminarily and permanently enjoin the Defendants from enforcing the Ballot Photography Provisions and the Voting Enclosure Provision against anyone who takes or shares their own ballot selfie;
- G. Preliminarily and permanently enjoin the Defendants from enforcing the Ballot Photography Provisions and the Voting Enclosure Provision against Hogarth for taking or sharing her past ballot selfies, including her March 5, 2024 ballot selfie;
- H. Preliminarily and permanently enjoin the Defendants from enforcing the Ballot Photography Provisions and the Voting Enclosure Provision

against Hogarth for taking and sharing her own ballot selfies in the future;

- I. Award reasonable attorneys' fees and costs under 42 U.S.C. § 1988 and any other applicable law; and,
- J. Award all other relief as this Court deems just and proper.

Respectfully Submitted,

Dated: August 22, 2024

/s/ James M. Dedman IV

JAMES M. DEDMAN IV

(NC Bar # 37415)

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\*Special Appearance pursuant to Local  
Rule 83.1(e) Forthcoming

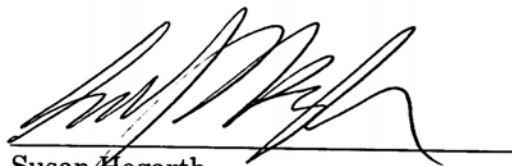
*Attorneys for Plaintiff Susan Hogarth*

**VERIFICATION OF SUSAN HOGARTH**

Pursuant to 28 U.S.C. § 1746, I, SUSAN HOGARTH, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.
2. I have read the foregoing Verified Complaint for Declaratory and Injunctive Relief.
3. I have personal knowledge of the factual allegations in paragraphs 1,4, 9, 10, 49–81, 83, 105–123, 134, 161, 162, 179, 180, 190–194, and 200 of the Verified Complaint and know them to be true.
4. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on August 20, 2024

  
Susan Hogarth

*Hogarth v. Brinson Bell, et al.*

Case No.

**Exhibit A to  
Verified Complaint for  
Declaratory and  
Injunctive Relief**



# NORTH CAROLINA

## STATE BOARD OF ELECTIONS

March 13, 2024

Susan Jane Hogarth  
[REDACTED]

NCSBE Incident Report: 2024-IR-029

*Dear Ms. Hogarth,*

The North Carolina State Board of Elections (NCSBE) Investigations Unit was notified of a possible “photographing a voted ballot” in violation of NCGS §§ 163-166.3(c).

NCGS §§ 163-166.3(c) states the following: “Photographing Voted Ballot Prohibited. – No person shall photograph, videotape, or otherwise record the image of a voted official ballot for any purpose not otherwise permitted under law.”

The NCSBE was forwarded information that you took a photograph of your voted ballot and posted it to “X” in violation of NCGS 163-166.3(c). The NCSBE has a duty to investigate violations of election laws in North Carolina. As stated above, photographing a voted ballot is prohibited by law and is punishable as a Class 1 Misdemeanor.

The purpose of this letter is to explain the law and request that you take the post down.

If you have any questions concerning this matter, please contact Investigator Danielle Brinton at [Danielle.Brinton@ncsbe.gov](mailto:Danielle.Brinton@ncsbe.gov) or (984)233-9076.

Sincerely,

Investigator Danielle Brinton  
North Carolina State Board of Elections  
PO Box 27255  
Raleigh, NC 27611

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

SUSAN JANE HOGARTH,

*Plaintiff,*

v.

KAREN BRINSON BELL, et al.,

*Defendants.*

Case No.: 5:24-cv-00481-LF

Hon. Louise W. Flanagan

**FIRST VERIFIED SUPPLEMENTAL  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

Pursuant to Federal Rule of Civil Procedure 15(d), Plaintiff Susan Jane Hogarth brings this supplemental complaint against the State Board Defendants (Karen Brinson Bell, Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, and Danielle Brinton), the County Board Defendants (Olivia McCall, Erica Porter, Angela Hawkins, Greg Flynn, Gerry Cohen, and Keith Weatherly), Wake County District Attorney Lorrin Freeman, and North Carolina Attorney General Josh Stein (collectively, “Defendants”). With leave of the Court (ECF No. 64), Hogarth sets out events related to, but occurring after the filing of, her Verified Complaint. (ECF No. 1.)

Pursuant to Fed. R. Civ. P. 10(c), Hogarth’s Verified Complaint (ECF No. 1) is hereby referred to, adopted, and incorporated by reference in its entirety. This Verified Supplemental Complaint does not supersede Hogarth’s Verified Complaint. It adds no new parties or claims, and the post-complaint events set out herein occurred in Wake County, North Carolina, within this District.

### SUPPLEMENTAL FACTUAL ALLEGATIONS

1. On August 22, 2024, Plaintiff Susan Hogarth filed her Verified Complaint for Injunctive and Declaratory Relief against the Defendants. (ECF No. 1.)

2. On August 27, 2024, Hogarth filed a motion for preliminary injunction against the Defendants, asking the Court to enjoin them from enforcing five North Carolina statutory provisions prohibiting voters from taking or sharing “ballot selfies.” (ECF No. 11.)

3. On October 21, 2024, the Court issued an order prohibiting District Attorney Freeman from prosecuting Hogarth while this case is pending for certain violations of the North Carolina statutory provisions prohibiting taking and sharing ballot selfies. (ECF No. 60.)

4. On October 25, 2024, the Court issued an order confirming its October 21, 2024 Order meant Hogarth “is allowed to take and share her ballot ‘selfie’ without fear of prosecution by or through defendant Lorrin Freeman.”

5. On October 26, 2024, Hogarth went to the Herbert C. Young Community Center, an early voting polling place in Wake County, North Carolina, to vote in the North Carolina general election.

6. When Hogarth arrived at the polling place, approximately four voters waited in line in front of her.

7. When Hogarth entered the voting enclosure, the majority of the more than 50 voting booths were available.

8. Hogarth received a paper ballot and entered a voting booth, a small table separated from other voters by a privacy screen.

9. Hogarth then cast her votes for U.S. president, North Carolina governor, and others by filling the ovals next to her preferred choices.

10. Hogarth took approximately two minutes to complete her ballot.

11. After completing her ballot, while still in the voting booth, Hogarth used her cell phone camera to take ballot selfies, including pictures of:

- a. Both sides of her voted ballot;
- b. Herself with a “no photos” sign posted to the voting booth; and
- c. Herself in the voting booth, holding up her voted ballot.

12. It took Hogarth less than one minute to take the photographs.

13. While Hogarth took the photographs, a Wake County Board of Elections official stood approximately 10 feet away.

14. While Hogarth was taking her final ballot selfie, the elections official approached Hogarth and commanded, “you cannot take a picture of your ballot, you need to delete that, please.”

15. Hogarth advised the elections official that a court had ordered she could take ballot selfies without fear of prosecution.

16. The elections official then asked Hogarth to wait while the official asked the chief judge of the polling place about Hogarth’s assertion. Hogarth acquiesced.

17. The elections official then walked away and out of sight.

18. The public, in-person confrontation by an elections official made Hogarth uncomfortable and anxious.

19. The elections official returned approximately two and a half minutes later, and told Hogarth, "I checked with our chief judge, she called the Board of Elections, and you're good."

20. On information and belief, by "the Board of Elections," the elections official meant the Wake County Board of Elections and/or the North Carolina State Board of Elections.

21. Hogarth thanked the elections official, submitted her ballot, and left the voting enclosure.

22. No one had to wait to enter a voting booth while Hogarth was present in the voting enclosure.

23. No elections official at the polling place notified Hogarth that her time in the booth had expired.

24. Hogarth did not disrupt the polling place and no elections official at the polling place told Hogarth otherwise.

25. Hogarth did not intimidate any other voters and no elections official at the polling place told Hogarth otherwise.

26. Hogarth did not invade any other voter's privacy, and no elections official at the polling place told Hogarth otherwise.

27. On information and belief, without the Court's Order allowing Hogarth to take and share ballot selfies without fear of prosecution, Wake County elections

officials would not have allowed Hogarth to take a ballot selfie or leave the polling place with her ballot selfies when she voted on October 26, 2024.

28. Election officials accosting a voter in a voting booth and instructing them to cease taking and to delete ballot selfies would chill a person of ordinary firmness from engaging in the protected expression of taking and sharing ballot selfies.

THEREFORE, Plaintiff Hogarth respectfully requests this Court enter judgment against Defendants in the form of the relief prayed for in her Verified Complaint for Declaratory and Injunctive Relief. (ECF No. 1, ¶¶ A–J.)

Dated: November 6, 2024

Respectfully Submitted,

/s/ James M. Dedman IV  
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\*\*Special Appearance Pursuant to  
Local Rule 83.1(e)

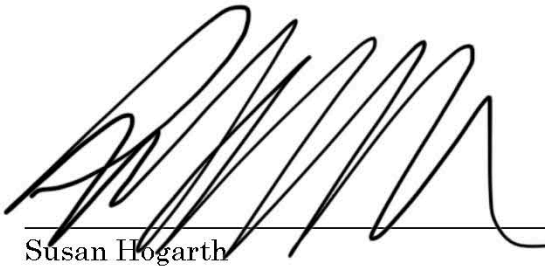
*Attorneys for Plaintiff*

**VERIFICATION OF SUSAN HOGARTH**

Pursuant to 28 U.S.C. § 1746, I, SUSAN HOGARTH, declare as follows:

1. I am a Plaintiff in the present case and a citizen of the United States of America.
2. I have read the foregoing Verified Supplemental Complaint.
3. I have personal knowledge of the factual allegations in paragraphs 5–26 of the Verified Supplemental Complaint and know them to be true.
4. I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on November 5, 2024



Susan Hogarth

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
5:24-CV-481

SUSAN JANE HOGARTH, )  
)  
Plaintiff, )  
)  
v. )  
)  
KAREN BRINSON BELL, in her )  
official capacity as Executive Director of )  
the North Carolina State Board of )  
Elections; et al., )  
)  
Defendants. )

**DEFENDANTS MCCALL AND WAKE COUNTY  
BOARD OF ELECTIONS’ ANSWER TO PLAINTIFF’S VERIFIED COMPLAINT AND  
VERIFIED SUPPLEMENTAL PLEADING**

NOW COME the defendants Olivia McCall, in her official capacity as Director of the Wake County Board of Elections (“WCBOE”) (hereinafter “Defendant Director McCall”); Erica Porter, in her official capacity as Chair of the WCBOE (hereinafter “Defendant Chair Porter”); Angela Hawkins, in her official capacity as Secretary of the WCBOE (hereinafter “Defendant Secretary Hawkins”); and Greg Flynn, Gerry Cohen and Keith Weatherly (hereinafter “Defendant Member Flynn” “Defendant Member Cohen” and “Defendant Member Weatherly”), in their official capacities as Members of the WCBOE, (hereinafter collectively referred to as “WCBOE Defendants” or “Defendants”), by and through counsel, and answer the allegations of Plaintiff’s Verified Complaint [DE 1 & 2] as well as Plaintiff’s First Verified Supplemental Complaint [DE 65] as follows:

### **FIRST DEFENSE**

For and as an affirmative defense, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Plaintiff's complaint fails to state claims against these answering defendants upon which relief may be granted.

### **SECOND DEFENSE**

For and as a second defense, these answering defendants deny that they are proper parties to this action in that the any relief sought could only be obtained from some other party. These defendants have no authority to promulgate statutory, administrative or regulatory remedies and act under a state supervised county administered scheme under which these defendants have limited authority. Moreover, the statutes under scrutiny herein were obviously enacted by the General Assembly of North Carolina.

### **THIRD DEFENSE**

For and as a further affirmative defense, the WCBOE Defendants answer the specific allegations of Plaintiff's complaint as follows (sub-headings contained in the Complaint are included as they appear for reference only and are not admitted as true for any purpose).

### **ANSWER TO VERIFIED COMPLAINT [DE 1 & DE 2]**

These WCBOE Defendants answer the specific allegations of the Complaint as follows [subtitles contained in the Complaint are included as they appear for reference only and are not admitted as true for any purpose]:

### **INTRODUCTION**

1. The allegations contained in paragraph 1 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

2. The allegations contained in paragraph 2 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

3. The allegations contained in paragraph 3 of Plaintiff's Complaint are denied as to the WCBOE Defendants. The remaining allegations in this paragraph state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

4. The allegations contained in paragraph 4 of Plaintiff's Complaint reference a letter authored by the North Carolina State Board of Elections that upon information and belief is the same letter attached as Exhibit A to the Complaint which is the best evidence of its contents. Further, the allegations in this paragraph state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

5. The allegations contained in paragraph 5 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

6. The allegations contained in paragraph 6 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

7. The allegations contained in paragraph 7 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

8. The allegations contained in paragraph 8 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

### **THE PARTIES**

9. The allegation contained in paragraph 9 of Plaintiff's Complaint with respect to Plaintiff's residency is admitted, upon information and belief. Defendants are without sufficient knowledge to admit or deny Plaintiff's remaining allegations, and as such, these allegations are denied.

10. The allegations contained in paragraph 10 of Plaintiff's Complaint are admitted upon information and belief.

11. The allegations contained in paragraph 11 of Plaintiff's Complaint state legal conclusions to which no response is required. Defendants are without sufficient knowledge to admit or deny Plaintiff's remaining allegations as to the State Board's knowledge of the reasons why voters take selfies. To the extent that these allegations require a response, such allegations are denied.

12. The allegations contained in paragraph 12 of Plaintiff's Complaint are admitted as to the position held by Defendant Karen Brinson Bell. All remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

13. The allegations contained in paragraph 13 of Plaintiff's Complaint are admitted as to the position held by Defendant Hirsch. All remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

14. The allegations contained in paragraph 14 of Plaintiff's Complaint are admitted as to the membership of the North Carolina State Board of Elections. All remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

15. The allegations contained in paragraph 15 of Plaintiff's Complaint are admitted upon information and belief as to the position held by Defendant Brinton. The remaining allegations contained in paragraph 15 of Plaintiff's Complaint reference a letter that upon information and belief is the same letter attached as Exhibit A to the Complaint which is the best evidence of its contents.

16. The allegations contained in paragraph 16 of Plaintiff's Complaint recite excerpts without context from N.C. Gen. Stat. §§ 163-33 and 163-35, which are the best evidence of their contents and contain contentions of law.

17. The allegations contained in paragraph 17 of Plaintiff's Complaint are admitted as to the position held by Defendant McCall and her appointment as Director of the WCBOE in 2023. All remaining allegations are denied.

18. The allegations contained in paragraph 18 of Plaintiff's Complaint are admitted as to the position held by Defendant Porter on the WCBOE. All remaining allegations are denied.

19. The allegations contained in paragraph 19 of Plaintiff's Complaint are admitted as to the positions held by Defendants Hawkins, Flynn, Cohen and Weatherly on the WCBOE. All remaining allegations are denied.

20. The allegations contained in paragraph 20 of Plaintiff's Complaint are admitted as to the position held by Defendant Freeman. All remaining allegations in this paragraph state legal

conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

21. The allegations contained in paragraph 21 of Plaintiff's Complaint are admitted as to the position held by Defendant Stein as of the date of the Complaint, but it is denied that Defendant Stein still holds this position following his January 1, 2025 transfer of office to governorship. All remaining allegations in this paragraph state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

22. The allegations contained in paragraph 22 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

23. The allegations contained in paragraph 23 of Plaintiff's Complaint are admitted upon information and belief.

### **JURISDICTION**

24. The allegations contained in paragraph 24 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

25. The allegations contained in paragraph 25 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

26. The allegations contained in paragraph 26 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

27. The allegations contained in paragraph 27 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

### VENUE

28. The allegations contained in paragraph 28 of Plaintiff's Complaint state legal conclusions to which no response is required. Defendants are without sufficient knowledge to admit or deny Plaintiff's remaining allegations as to defendants' residencies. To the extent that these allegations require a response, such allegations are denied.

29. The allegations contained in paragraph 29 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

### FACTUAL ALLEGATIONS

#### **"Five Provisions of North Carolina Law Ban Ballot Selfies."**

30. The allegations contained in paragraph 30 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

31. The allegations contained in paragraph 31 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

32. The allegations contained in paragraph 32 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

33. The allegations contained in paragraph 33 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

34. The allegations contained in paragraph 34 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

35. The allegations contained in paragraph 35 of Plaintiff's Complaint recite portions of the N.C. General Statutes which is the best evidence of its content and for which no response is required.

36. The allegations contained in paragraph 36 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

37. The allegations contained in paragraph 37 of Plaintiff's Complaint recite portions of the N.C. General Statutes which is the best evidence of its content and for which no response is required.

38. The allegations contained in paragraph 38 of Plaintiff's Complaint recite portions of the N.C. General Statutes which is the best evidence of its content and for which no response is required.

39. The allegations contained in paragraph 39 of Plaintiff's Complaint recite portions of the N.C. General Statutes which is the best evidence of its content and for which no response is required.

40. The allegations contained in paragraph 40 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

41. The allegations contained in paragraph 41 of Plaintiff's Complaint recite portions of the N.C. General Statutes which is the best evidence of its content and for which no response is required.

42. The allegations contained in paragraph 42 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

43. The allegations contained in paragraph 43 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

44. The allegations contained in paragraph 44 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

45. The allegations contained in paragraph 45 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

46. The allegations contained in paragraph 46 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

47. The allegations contained in paragraph 47 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

48. The allegations contained in paragraph 48 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent that these allegations require a response, such allegations are denied.

**“Hogarth Takes a Ballot Selfie and Shares It on Social Media.”**

49. The allegations contained in paragraph 49 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

50. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 50 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

51. The allegations contained in paragraph 51 of Plaintiff's Complaint, including its subparts, state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

52. The allegations contained in paragraph 52 of Plaintiff's Complaint are admitted upon information and belief.

53. The allegations contained in paragraph 53 of Plaintiff's Complaint are admitted upon information and belief.

54. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 54 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

55. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 55 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

56. The allegations contained in paragraph 56 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

57. The allegations contained in paragraph 57 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent that these allegations require a response, such allegations are denied.

58. The allegations contained in paragraph 58 of Plaintiff's Complaint are admitted.

59. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 59 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

60. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 60 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

61. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 61 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

62. The allegations contained in paragraph 62 of Plaintiff's Complaint are admitted upon information and belief.

63. The allegations contained in paragraph 63 of Plaintiff's Complaint are admitted upon information and belief.

64. The allegations contained in paragraph 64 of Plaintiff's Complaint are admitted upon information and belief.

65. The allegations contained in paragraph 65 of Plaintiff's Complaint are admitted upon information and belief.

66. The allegations contained in paragraph 66 of Plaintiff's Complaint are admitted upon information and belief.

67. The allegations contained in paragraph 67 of Plaintiff's Complaint are admitted upon information and belief.

68. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 68 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

69. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 69 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

70. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 70 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

71. Defendants are without sufficient knowledge to admit or deny the allegations contained in paragraph 71 of Plaintiff's Complaint. To the extent that these allegations require a response, such allegations are denied.

**“The State Board Demands Hogarth Remove Her Ballot Selfie, Threatening Criminal Prosecution.”**

72. The allegations contained in paragraph 72 of Plaintiff's Complaint reference a letter

authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which is the best evidence of its contents. Defendants are without sufficient knowledge to admit or deny the allegations contained in this paragraph as to Plaintiff's receipt of such letter, and as such, these allegations are denied.

73. The allegations contained in paragraph 73 of Plaintiff's Complaint reference a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

74. The allegations contained in paragraph 74 of Plaintiff's Complaint reference a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

75. The allegations contained in paragraph 75 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

76. The allegations contained in paragraph 76 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

77. The allegations contained in paragraph 77 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

78. The allegations contained in paragraph 78 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

79. The allegations contained in paragraph 79 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

80. The allegations contained in paragraph 80 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

81. The allegations contained in paragraph 81 of Plaintiff's Complaint reference statements made in a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which, if authentic, is the best evidence of its contents.

82. The allegations contained in paragraph 82 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

83. The allegations contained in paragraph 83 of Plaintiff's Complaint reference a letter authored by the North Carolina State Board of Elections attached as Exhibit A to the Complaint which is the best evidence of its contents.

**“The State Bored Warns Voters That Photographing Their Ballots is Illegal, Investigates Reports of Ballot Selfies, and Refers Ballot Selfies to District Attorneys for Prosecution.”**

84. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 84 as to the State Board's knowledge that ballot selfies are expressive activity. To the extent that these allegations require a response, such allegations are denied.

85. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 85. To the extent that these allegations require a response, such allegations are denied.

86. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 86. To the extent that these allegations require a response, such allegations are denied.

87. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 87. To the extent that these allegations require a response, such allegations are denied.

88. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 88. To the extent that these allegations require a response, such allegations are denied.

89. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 89. To the extent that these allegations require a response, such allegations are denied.

90. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 90. To the extent that these allegations require a response, such allegations are denied.

91. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 91. To the extent that these allegations require a response, such allegations are denied.

92. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 92. To the extent that these allegations require a response, such allegations are denied.

93. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 93. To the extent that these allegations require a response, such allegations are denied.

94. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 94. To the extent that these allegations require a response, such allegations are denied.

95. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 95. To the extent that these allegations require a response, such allegations are denied.

96. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 96. To the extent that these allegations require a response, such allegations are denied.

97. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 97. To the extent that these allegations require a response, such allegations are denied.

**“The County Board Warns Voters That Ballot Selfies Are Illegal and Reports Election Law Violations to the State Board.”**

98. The allegations contained in paragraph 98 of Plaintiff's Complaint are denied as the County does not provide a warning on its website related to ballot photography; the County's website merely references and recites applicable NC general statutes and administrative code.

99. The allegations contained in paragraph 99 of Plaintiff's Complaint are denied as the County does not provide a warning on its website stating it is illegal to photograph a voter in the voting enclosure without permission from an elected official; the County's website merely references and recites applicable NC general statutes and administrative code.

100. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 100 as to what other county board of elections have reported. To the extent that these allegations require a response, such allegations are denied.

101. The allegations contained in paragraph 101 of Plaintiff's Complaint are admitted. As to the report of the then director of the County Board, the correct name was Gary Sims.

102. The allegations contained in paragraph 102 of Plaintiff's Complaint are admitted.

103. The allegations contained in paragraph 103 of Plaintiff's Complaint are denied.

104. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in paragraph 104. To the extent these allegations require a response, such allegations are denied.

**“Hogarth Will Not Take Down Her Ballot Selfie and Will Continue Taking and Sharing Ballot Selfies in the Future.”**

105. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in paragraph 105.

106. The allegations contained in paragraph 106 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

107. The allegations contained in paragraph 107 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

108. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 108. To the extent that these allegations require a response, such allegations are denied.

109. Defendants are without sufficient information to admit or deny Plaintiff's allegations contained in Paragraph 109. To the extent that these allegations require a response, such allegations are denied.

110. The allegations contained in paragraph 110 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

111. The allegations contained in paragraph 111 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

112. The allegations contained in paragraph 112 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

113. The allegations contained in paragraph 113 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

**“Hogarth Will Vote for Herself in the November 5, 2024 Election and Plans to Take and Share a Ballot Selfie That Day.”**

114. Defendants are without sufficient information to admit or deny allegations in paragraph 114. To the extent these allegations require a response, such allegations are denied.

115. Defendants are without sufficient information to admit or deny allegations in paragraph 115. To the extent these allegations require a response, such allegations are denied.

116. The allegations contained in paragraph 116 of Plaintiff's Complaint state are admitted as Hogarth did appear as a Libertarian Party candidate on the November 5, 2024 ballot in NC Senate District 13.

117. The allegations contained in paragraph 117 of Plaintiff's Complaint are admitted.

118. In response to the allegations contained in paragraph 118 of Plaintiff's Complaint, it is denied that Plaintiff intended to vote in person on November 5, 2024.

119. The allegations contained in paragraph 119 of Plaintiff's Complaint state conclusory statements as to Plaintiff's intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

120. The allegations contained in paragraph 120 of Plaintiff's Complaint state conclusory statements as to Plaintiff's intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

121. The allegations contained in paragraph 121 of Plaintiff's Complaint state conclusory statements as to Plaintiff's intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

122. The allegations contained in paragraph 122 of Plaintiff's Complaint state conclusory statements as to Plaintiff's intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

123. The allegations contained in paragraph 123 of Plaintiff's Complaint state conclusory statements as to Plaintiff's intent to which no response is required. To the extent that these allegations require a response, such allegations are denied.

**"INJURIES TO PLAINTIFF"**

124. The allegations contained in paragraph 124 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

125. The allegations contained in paragraph 125 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

126. The allegations contained in paragraph 126 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

127. The allegations contained in paragraph 127 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

128. The allegations contained in paragraph 128 of Plaintiff's Complaint are denied.

129. The allegations contained in paragraph 129 of Plaintiff's Complaint are denied.

130. The allegations contained in paragraph 130 of Plaintiff's Complaint are denied.

131. The allegations contained in paragraph 131 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

132. The allegations contained in paragraph 132 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

133. The allegations contained in paragraph 133 of Plaintiff's Complaint are admitted.

134. The allegations contained in paragraph 134 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

**CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

**FIRST CAUSE OF ACTION**

**The Ballot Photography Provisions Violate the First Amendment  
(As-Applied Challenge Against All Defendants)**

135. Defendants incorporate by reference their responses to paragraphs 1-134 above as if fully set forth herein.

136. The allegations contained in paragraph 136 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

137. The allegations contained in paragraph 137 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

138. The allegations contained in paragraph 138 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

139. The allegations contained in paragraph 139 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

140. The allegations contained in paragraph 140 of Plaintiff's Complaint are denied.

141. The allegations contained in paragraph 141 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

142. The allegations contained in paragraph 142 of Plaintiff's Complaint are admitted upon information and belief.

143. The allegations contained in paragraph 143 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

144. The allegations contained in paragraph 144 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

145. The allegations contained in paragraph 145 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

146. The allegations contained in paragraph 146 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

147. The allegations contained in paragraph 147 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

148. The allegations contained in paragraph 148 of Plaintiff's Complaint are denied.

149. Defendants are without sufficient information to admit or deny allegations in paragraph 149. To the extent these allegations require a response, such allegations are denied.

150. The allegations contained in paragraph 150 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

151. The allegations contained in paragraph 151 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

152. The allegations contained in paragraph 152 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

153. The allegations contained in paragraph 153 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

154. The allegations contained in paragraph 154 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

155. The allegations contained in paragraph 155 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

156. The allegations contained in paragraph 156 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

157. The allegations contained in paragraph 157 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

158. The allegations contained in paragraph 158 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

159. The allegations contained in paragraph 159 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

160. The allegations contained in paragraph 160 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

161. The allegations contained in paragraph 161 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

162. The allegations contained in paragraph 162 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

163. The allegations contained in paragraph 163 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

164. The allegations contained in paragraph 164 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

165. The allegations contained in paragraph 165 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

166. The allegations contained in paragraph 166 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

167. The allegations contained in paragraph 167 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

168. The allegations contained in paragraph 168 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

169. The allegations contained in paragraph 169 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

**SECOND CAUSE OF ACTION**  
**The Voting Enclosure Provision Violates the First Amendment**  
**(As-Applied Challenge Against All Defendants)**

170. Defendants incorporate by reference paragraphs 1-169 as if fully set forth herein.

171. The allegations contained in paragraph 171 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

172. The allegations contained in paragraph 172 of Plaintiff's Complaint are admitted.

173. The allegations contained in paragraph 173 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

174. The allegations contained in paragraph 174 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

175. The allegations contained in paragraph 175 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

176. The allegations contained in paragraph 176 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

177. The allegations contained in paragraph 177 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

178. The allegations contained in paragraph 178 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

179. The allegations contained in paragraph 179 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

180. The allegations contained in paragraph 180 of Plaintiff's Complaint state conclusory statements as to Plaintiff's future plans to which no response is required. To the extent these allegations require a response, such allegations are denied.

181. The allegations contained in paragraph 181 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

182. The allegations contained in paragraph 182 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

183. The allegations contained in paragraph 183 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

184. The allegations contained in paragraph 184 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

185. The allegations contained in paragraph 185 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

186. The allegations contained in paragraph 186 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

187. The allegations contained in paragraph 187 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

**THIRD CAUSE OF ACTION**  
**The State Board's March 13, 2024 Demand Letter**  
**Violate the First Amendment**  
**(As-Applied Challenge Against State Board Defendants, Wake County**  
**District Attorney, and North Carolina Attorney General)**

188. Defendants incorporate by reference paragraphs 1-187 as if fully set forth herein.

189. The allegations contained in paragraph 189 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

190. The allegations contained in paragraph 190 of Plaintiff's Complaint are admitted.

191. The allegation contained in paragraph 191 of Plaintiff's Complaint with respect to Plaintiff sharing her ballot on X is admitted, upon information and belief. Defendants are without sufficient knowledge to admit or deny Plaintiff's remaining allegations as to her reasons for sharing her ballot, and as such, these allegations are denied.

192. The allegations contained in paragraph 192 of Plaintiff's Complaint are admitted upon information and belief.

193. The allegations contained in paragraph 193 of Plaintiff's Complaint are admitted upon information and belief.

194. The allegations contained in paragraph 194 of Plaintiff's Complaint are admitted upon information and belief.

195. The allegations contained in paragraph 195 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

196. The allegations contained in paragraph 196 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

197. The allegations contained in paragraph 197 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

198. The allegations contained in paragraph 198 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

199. The allegations contained in paragraph 199 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

200. The allegations contained in paragraph 200 of Plaintiff's Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.

201. The allegations contained in paragraph 201 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

202. The allegations contained in paragraph 202 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

203. The allegations contained in paragraph 203 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

204. The allegations contained in paragraph 204 of Plaintiff's Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

### **ANSWER TO FIRST VERIFIED SUPPLEMENTAL COMPLAINT [DE 65]**

These WCBOE Defendants answer the specific allegations of the First Verified Supplemental Complaint ("Supplemental Complaint") as follows [subtitles contained in the Supplemental Complaint are included as they appear for reference only and are not admitted as true for any purpose]:

### **SUPPLEMENTAL FACTUAL ALLEGATIONS**

1. The allegations contained in paragraph 1 of Plaintiff's Supplemental Complaint are admitted.
2. The allegations contained in paragraph 2 of Plaintiff's Supplemental Complaint are admitted.
3. The allegations contained in paragraph 3 of Plaintiff's Supplemental Complaint are admitted.
4. The allegations contained in paragraph 4 of Plaintiff's Supplemental Complaint are admitted.

5. The allegations contained in paragraph 5 of Plaintiff's Supplemental Complaint are admitted.

6. The allegations contained in paragraph 6 of Plaintiff's Supplemental Complaint are denied.

7. Defendants are without sufficient information to admit or deny allegations in paragraph 7. To the extent these allegations require a response, such allegations are denied.

8. The allegations contained in paragraph 8 of Plaintiff's Supplemental Complaint are admitted.

9. Defendants are without sufficient information to admit or deny allegations in paragraph 9. To the extent these allegations require a response, such allegations are denied.

10. Defendants are without sufficient information to admit or deny allegations in paragraph 10. To the extent these allegations require a response, such allegations are denied.

11. The allegations contained in paragraph 11 of Plaintiff's Supplemental Complaint, including all subparts, are admitted, upon information and belief.

12. The allegations contained in paragraph 12 of Plaintiff's Supplemental Complaint are denied.

13. Defendants are without sufficient information to admit or deny allegations in paragraph 13 of Plaintiff's Supplemental Complaint. To the extent these allegations require a response, such allegations are denied.

14. Defendants admit that in response to paragraph 14 of Plaintiff's Supplemental Complaint, an elections official informed plaintiff that photos were prohibited and that she needed to delete the photo. All remaining allegations not specifically admitted are denied.

15. The allegations contained in paragraph 15 of Plaintiff's Supplemental Complaint are admitted as to Plaintiff informing an election official after she took ballot selfies that she had a court order allowing her to do so. All remaining allegations not specifically admitted are denied.
16. The allegations contained in paragraph 16 of Plaintiff's Supplemental Complaint are admitted as to an election official consulting with the chief judge at the polling location. All remaining allegations not specifically admitted are denied.
17. The allegations contained in paragraph 17 of Plaintiff's Supplemental Complaint are admitted as to an election official consulting with the chief judge outside of Plaintiff's presence.
18. The allegations contained in paragraph 18 of Plaintiff's Supplemental Complaint are denied.
19. The allegations contained in paragraph 19 of Plaintiff's Supplemental Complaint are denied.
20. The allegations contained in paragraph 20 of Plaintiff's Supplemental Complaint state conclusory statements to which no response is required. To the extent these allegations require a response, such allegations are denied.
21. The allegations contained in paragraph 21 of Plaintiff's Supplemental Complaint are denied.
22. The allegations contained in paragraph 22 of Plaintiff's Supplemental Complaint are denied.
23. The allegations contained in paragraph 23 of Plaintiff's Supplemental Complaint are admitted.

24. The allegations contained in paragraph 24 of Plaintiff's Supplemental Complaint are admitted, upon information and belief, that no election official informed Plaintiff that she disrupted the polling place. The remaining allegations within this paragraph state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.
25. The allegations contained in paragraph 25 of Plaintiff's Supplemental Complaint state conclusory statements and legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.
26. The allegations contained in paragraph 26 of Plaintiff's Supplemental Complaint state conclusory statements and legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.
27. The allegations contained in paragraph 27 of Plaintiff's Supplemental Complaint are denied.
28. The allegations contained in paragraph 28 of Plaintiff's Supplemental Complaint state legal conclusions to which no response is required. To the extent these allegations require a response, such allegations are denied.

#### **PRAYER FOR RELIEF**

WHEREFORE, Defendants, having fully answered the Complaint and Supplemental Complaint of the Plaintiff, pray for the following relief:

1. That Plaintiff's prayer for relief be denied in its entirety and Plaintiff have and recover nothing by way of this Complaint and Supplemental Complaint;
2. That the Court dismiss all claims of the Plaintiff;
3. That all costs of this action, including court costs and reasonable attorney's fees if

by law allowed, be taxed to the Plaintiff;

4. That any issue of insurance coverage or waiver of immunity be tried by the Court sitting without a jury as provided by N.C. Gen. Stat. § 153A-435;

5. For trial by jury on all other issues so triable; and

6. For such other and further relief as the Court deems just and proper.

This the 10<sup>th</sup> day of April, 2025.

WAKE COUNTY ATTORNEY'S OFFICE

/s/ Roger A. Askew

Roger A. Askew, NCSB # 18081  
Senior Deputy County Attorney  
[Roger.Askew@wake.gov](mailto:Roger.Askew@wake.gov)

/s/ Allison P. Cooper

Allison P. Cooper, NCSB # 34160  
Sr. Deputy County Attorney  
[Allison.Cooper@wake.gov](mailto:Allison.Cooper@wake.gov)  
Post Office Box 550  
Raleigh, North Carolina 27602  
Phone: (919) 856-5500  
Fax: (919) 856-5504  
*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 10, 2025, I electronically filed on behalf of the WCBOE Defendants the foregoing ANSWER TO PLAINTIFF'S VERIFIED COMPLAINT AND VERIFIED SUPPLEMENTAL PLEADING with the Clerk of Court using the CM/ECF system, which will send notification and a copy of such filing to all parties and/or their attorneys who have appeared in this action as follows:

Jeffrey Zeman  
[Jeff.zeman@thefire.org](mailto:Jeff.zeman@thefire.org)

James Dedman  
[jdedman@gwblawfirm.com](mailto:jdedman@gwblawfirm.com)

Eric Spengler  
[eric@sablaw.com](mailto:eric@sablaw.com)

Terrence Steed  
[tsteed@ncdoj.gov](mailto:tsteed@ncdoj.gov)

Elizabeth Curran O'Brien  
[eobrien@ncdoj.gov](mailto:eobrien@ncdoj.gov)

This the 10<sup>th</sup> day of April, 2025.

*/s/ Allison P. Cooper*  
Allison P. Cooper, NCSB # 34160  
Senior Deputy County Attorney  
Wake County Attorney's Office  
P.O. Box 500  
Raleigh, NC 27602  
Telephone: 919-856-5500  
E-Mail: [Allison.cooper@wake.gov](mailto:Allison.cooper@wake.gov)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:24-cv-00481-FL**

SUSAN JANE HOGARTH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	<b>ANSWER OF DEFENDANT DA</b>
	)	<b>LORRIN FREEMAN</b>
KAREN BRINSON BELL, et al.	)	
	)	
Defendants.	)	

NOW COMES Defendant District Attorney Lorrin Freeman (Defendant), in her official capacity, and hereby answers Plaintiff’s Complaint [DE 1] and First Verified Supplemental Complaint [DE 65] as follows:

**INTRODUCTION**

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

2. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

3. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

4. Denied that the North Carolina State Board of Elections has authority to threaten criminal prosecution. Defendant lacks sufficient knowledge or information to form

a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

5. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

6. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

7. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

8. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

### **THE PARTIES**

#### **Plaintiff**

9. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

10. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**Defendants**

11. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

12. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

13. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

14. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

15. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

16. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

17. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

18. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

19. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

20. Admitted that Defendant is the Wake County District Attorney. This paragraph includes legal conclusions to which no response is required. Except as expressly admitted, Defendant denies each and every allegation of this paragraph.

21. Admitted that at the time of the filing of the Complaint, Josh Stein was the North Carolina Attorney General. Denied that he currently holds this position. The

remaining allegations contained in this paragraph are legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

22. This paragraph is a legal conclusion. To the extent a response is required, it is denied.

23. Admitted that Plaintiff brought her claim against Defendant in her official capacity only. Except as expressly admitted, Defendant denies each and every allegation of this paragraph.

### **JURISDICTION**

24. It is admitted that Plaintiff purports to bring her action pursuant to the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988. Except as expressly admitted, Defendant denies each and every allegation of this paragraph.

25. This paragraph is a legal conclusion. To the extent a response is required, it is denied.

26. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

27. This paragraph is a legal conclusion. To the extent a response is required, it is denied.

### **VENUE**

28. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the

allegations regarding Plaintiff's residence. To the extent an answer is required, the allegations are denied.

29. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

### **FACTUAL ALLEGATIONS**

#### **Five Provisions of North Carolina Law Ban Ballot Selfies**

30. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

31. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

32. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

33. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

34. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

35. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

36. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

37. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

38. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

39. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

40. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

41. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

42. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

43. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

44. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

45. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

46. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

47. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

48. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

**Hogarth Takes a Ballot Selfie and Shares It on Social Media**

49. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

50. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

51. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

52. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

53. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

54. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

55. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied..

56. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

57. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

58. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

59. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

60. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

61. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

62. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

63. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

64. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

65. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

66. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

67. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

68. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

69. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

70. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

71. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**The State Board Demands Hogarth Remove Her Ballot Selfie, Threatening Criminal Prosecution**

72. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Defendant otherwise lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

73. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

74. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Denied that the State Board of Elections has the authority to threaten criminal prosecution. Except as specifically admitted and denied, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied

75. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

76. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

77. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

78. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as

specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

79. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Denied that the State Board of Elections has the authority to threaten criminal prosecution. Except as specifically admitted and denied, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

80. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

81. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

82. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

83. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as

specifically admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**The State Board Warns Voters That Photographing Their Ballots is Illegal, Investigates Reports of Ballot Selfies, and Refers Ballot Selfies to District Attorneys for Prosecution**

84. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

85. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

86. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

87. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

88. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

89. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

90. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

91. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

92. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

93. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

94. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

95. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

96. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

97. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**The County Board Warns Voters That Ballot Selfies Are Illegal and Reports Election**

**Law Violations to the State Board**

98. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

99. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

100. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

101. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

102. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

103. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

104. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**Hogarth Will Not Take Down Her Ballot Selfie and Will Continue Taking and Sharing**

**Ballot Selfies in the Future**

105. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

106. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

107. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

108. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

109. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

110. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

111. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

112. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

113. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**Hogarth Will Vote for Herself in the November 5, 2024 Election and Plans to Take and Share a Ballot Selfie That Day**

114. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

115. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

116. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

117. Admitted.

118. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

119. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

120. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

121. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

122. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

123. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

#### **INJURIES TO PLAINTIFF**

124. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

125. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

126. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

127. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

128. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

129. This paragraph includes legal conclusions to which no response is required. Denied that Exhibit A threatens criminal prosecution. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

130. This paragraph includes legal conclusions to which no response is required. Denied that Exhibit A threatens criminal prosecution. Defendant lacks sufficient knowledge

or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

131. This paragraph includes legal conclusions to which no response is required. Denied that Plaintiff faces a credible threat of criminal prosecution for her March 5, 2024 ballot selfie. To the extent an answer is required, the allegations are denied.

132. This paragraph includes legal conclusions to which no response is required. Denied that Plaintiff faces a credible threat of criminal prosecution for her taking and sharing a ballot selfie in the November 2024 election. To the extent an answer is required, the allegations are denied.

133. This paragraph includes legal conclusions to which no response is required. Denied that Exhibit A threatens criminal prosecution. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

134. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

## **CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **FIRST CAUSE OF ACTION**

#### **The Ballot Photography Provisions Violate the First Amendment**

##### **(As-Applied Challenge Against All Defendants)**

135. No response is necessary to this paragraph.

136. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

137. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

138. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

139. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

140. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

141. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

142. Admitted that the allegations contained in this paragraph reference Exhibit A to Plaintiff's Complaint, which, if authentic, is the best evidence of its contents. Except as expressly admitted, Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

143. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

144. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

145. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

146. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

147. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

148. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

149. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

150. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

151. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

152. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

153. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

154. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

155. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

156. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

157. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

158. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

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163. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

164. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

165. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

166. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

167. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

168. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

169. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

## **SECOND CAUSE OF ACTION**

### **The Voting Enclosure Provision Violates the First Amendment**

#### **(As-Applied Challenge Against All Defendants)**

170. No response is necessary to this paragraph.

171. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

172. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

173. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

174. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

175. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

176. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

177. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

178. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

179. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

180. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

181. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

182. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

183. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

184. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

185. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

186. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

187. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

**THIRD CAUSE OF ACTION**

**The State Board's March 13, 2024 Demand Letter**

**Violates the First Amendment**

**(As-Applied Challenge Against State Board Defendants, Wake County District Attorney, and North Carolina Attorney General)**

188. No response is necessary to this paragraph.

189. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

190. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

191. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

192. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

193. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

194. Denied that Investigator Brinton possesses authority to prosecute criminal offenses. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

195. This paragraph includes legal conclusions to which no response is required. Denied that the State Board Defendants possess authority to prosecute criminal offenses. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

196. This paragraph includes legal conclusions to which no response is required. Denied that the State Board Defendants possess authority to prosecute criminal offenses. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

197. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

198. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

199. This paragraph includes legal conclusions to which no response is required. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

200. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

201. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

202. Denied that the Wake County District Attorney took any action against Hogarth regarding her March 5, 2024 ballot selfie post. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

203. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

204. This paragraph includes legal conclusions to which no response is required. To the extent an answer is required, the allegations are denied.

**ANSWER TO FIRST VERIFIED SUPPLEMENTAL COMPLAINT [DE 65]**

1. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

2. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

3. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

4. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

5. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

6. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

7. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

8. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

9. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

10. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

11. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

12. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

13. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

14. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

15. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

16. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

17. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

18. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

19. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

20. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

21. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

22. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

23. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

24. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

25. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

26. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

27. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

28. Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph. To the extent an answer is required, the allegations are denied.

**FIRST DEFENSE**

Answer to Complaint

**SECOND DEFENSE**

Plaintiff fails to state a claim upon which relief can be granted.

**THIRD DEFENSE**

The Eleventh Amendment bars Plaintiff's claims.

**FOURTH DEFENSE**

Qualified immunity.

**FIFTH DEFENSE**

Lack of subject matter jurisdiction.

**SIXTH DEFENSE**

Defendant denies she is a proper party to this action.

**SEVENTH DEFENSE**

Prosecutorial Immunity.

**WHEREFORE**, Defendant DA Lorrin Freeman prays that this action be dismissed with prejudice, that Plaintiff recover nothing, that Plaintiff be taxed with the costs of this action, and that these Defendant be granted such other relief as the Court may deem just and proper.

Submitted, this the 11th day of April, 2025.

JEFF JACKSON  
Attorney General

/s/Elizabeth Curran O'Brien  
Special Deputy Attorney General  
N.C. State Bar No. 28885  
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Fax: (919) 716-6755  
*Counsel for Defendant Freeman*

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day electronically filed the foregoing **ANSWER OF DEFENDANT DA LORRIN FREEMAN** using the CM/ECF system, which will send notification of such filing to all the counsel of record for the parties who participate in the CM/ECF system.

This the 11th day of April, 2025.

/s/ Elizabeth Curran O'Brien  
Elizabeth Curran O'Brien  
Special Deputy Attorney General  
N.C. Department of Justice

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DISTRICT
No. 5:24-cv-00481-FL

SUSAN JANE HOGARTH,
Plaintiff,
v.
KAREN BRINSON BELL, in her official
capacity as Executive Director of the North
Carolina State Board of Elections, et al.,
Defendants.
STATE BOARD DEFENDANTS'
ANSWER TO PLAINTIFF'S
VERIFIED COMPLAINT
And
FIRST VERIFIED SUPPLEMENTAL
COMPLAINT

Defendants North Carolina State Board of Elections, Karen Brinson Bell, Alan Hirsch,
Jeff Carmon, Stacy Eggers, IV, Kevin N. Lewis, Siobhan O'Duffy Millen, and Danielle Brinton
(collectively, the "State Board Defendants"), hereby answer Plaintiff's Complaint for
Declaratory and Injunctive Relief [D.E. 1, 2] and First Verified Supplemental Complaint for
Declaratory and Injunctive Relief [D.E. 65] as follows:

INTRODUCTION

- 1. Neither admitted nor denied as this allegation is not directed at State Board Defendants.
2. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.
3. Admitted that State Board Defendants warn the public that taking photographs of their voted ballot is illegal and investigates such incidents regardless of the subjective motivations of the voter. Such communications speaks for themselves and are the best evidence of their content.
4. Admitted to the extent that the letter was sent to Plaintiff, speaks for itself, and is

the best evidence of its content. Denied with respect to the characterization of the letter.

5. Neither admitted nor denied to the extent that North Carolina law speaks for itself and is the best evidence of its content. Neither admitted nor denied with respect to subjective motivation of voters. Neither admitted nor denied to the extent this allegation cites a legal authority, which speaks for itself. Neither admitted nor denied to the extent this is a legal conclusion, to which no response is required. To the extent a response is required, it is denied.

6. Neither admitted nor denied to the extent that North Carolina law speaks for itself and is the best evidence of its content. Neither admitted nor denied as this is a legal conclusion, which speaks for itself. Neither admitted nor denied to the extent this allegation asserts a legal conclusion, to which no response is required. To the extent a response is required, it is denied.

7. Neither admitted nor denied to the extent that North Carolina law speaks for itself and is the best evidence of its content. Neither admitted nor denied to the extent this allegation cites a legal authority, which speaks for itself. Neither admitted nor denied to the extent this allegation asserts a legal conclusion, to which no response is required. To the extent a response is required, it is denied.

8. Neither admitted nor denied to the extent this allegation is not directed at State Board Defendants. Neither admitted nor denied to the extent this allegation cites a legal authority, which speaks for itself.

## **PARTIES**

### **Plaintiff**

9. Neither admitted nor denied to the extent this allegation is not directed at State Board Defendants.

10. Admitted that Plaintiff engaged in an activity that is prohibited under North

Carolina law and that the letter was sent to Plaintiff, which speaks for itself, and is the best evidence of its content. Denied with respect to the characterization of the letter.

### **Defendants**

11. Admitted with respect to the cited statutes relating to the duties of the State Board, all of which speak for themselves and are the best evidence of their contents. Admitted that the State Board issues press releases around elections to warn the public that taking photographs of their voted ballot is illegal and investigates such incidents regardless of the subjective motivations of the voter. Such communications speaks for themselves and are the best evidence of their content.

12. Admitted.

13. Admitted that Mr. Hirsch is the Chair. Admitted to the extent that the duties of the Chair are defined by statutes, which speak for themselves and are the best evidence of their content. Denied to the extent that this implies the Chair is personally responsible for investigating violations.

14. Admitted that these Defendants are members of the State Board. Admitted to the extent that the duties of the members of the State Board are defined by statutes, which speak for themselves and are the best evidence of their content. Denied to the extent that this implies the members are personally responsible for investigating violations.

15. Admitted.

16. Admitted to the extent that the duties of all county boards of elections are defined by statutes, which speak for themselves and are the best evidence of their content.

17. Admitted that Director McCall is the Director of the Wake County Board of Elections. Admitted to the extent that her duties and authority are defined by statutes, which

speak for themselves and are the best evidence of their content.

18. Admitted that Ms. Porter is the Chair. Admitted to the extent that the duties of the Chair are defined by statutes, which speak for themselves and are the best evidence of their content. Denied to the extent that this implies the Chair is personally responsible for investigating violations.

19. Admitted that these Defendants are members of the County Board. Admitted to the extent that the duties of the members are defined by statutes, which speak for themselves and are the best evidence of their content. Denied to the extent that this implies the members are personally responsible for investigating violations.

20. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

21. Neither admitted nor denied as this allegation is not directed at State Board Defendants and the Attorney General has been dismissed from this action.

22. Admitted.

23. Admitted.

### **JURISDICTION**

24. Neither admitted nor denied as this is a legal conclusion to which no response is required.

25. Neither admitted nor denied as this is a legal conclusion to which no response is required.

26. Neither admitted nor denied as this is a legal conclusion to which no response is required.

27. Denied.

**VENUE**

28. Admitted.

29. Admitted.

**FACTUAL ALLEGATIONS****Five Provisions of North Carolina Law Ban Ballot Selfies.**

30. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

31. Neither admitted nor denied as this is a legal conclusion to which no response is required.

32. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

33. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

34. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

35. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

36. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

37. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

38. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

39. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

40. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

41. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

42. Admitted to the extent that North Carolina law cited speaks for itself and is the best evidence of its content.

43. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

44. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

45. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

46. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content. Denied as to the characterization of the law.

47. Admitted to the extent that North Carolina law defines the duties and authorities of county boards and chief judges, speaks for itself, and is the best evidence of those duties and authorities, including that a chief judge is authorized to exercise discretion in the performance of certain duties, but denied to the extent that any exercise of that discretion is permitted by law to be arbitrary.

48. Denied to the extent that “ballot selfies” here is defined as “voters’ photos of themselves in the voting enclosure,” which is permitted under certain circumstances and with

permission.

**Hogarth Takes a Ballot Selfie and Shares It on Social Media.**

49. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

50. Admitted to the extent the State Board is aware of such incidents.

51. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

52. Admitted.

53. Admitted.

54. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

55. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

56. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

57. Admitted.

58. Admitted.

59. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

60. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

61. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

62. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

63. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

64. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

65. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

66. With respect to the timing of the social media post, neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge. Admitted as to the remainder.

67. Admitted.

68. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

69. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

70. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

71. Neither admitted nor denied as this allegation is not directed at State Board Defendants nor is it within the State Board's knowledge.

**The State Board Demands Hogarth Remove Her Ballot Selfie, Threatening Criminal Prosecution.**

72. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter

or its contents.

73. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

74. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

75. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

76. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

77. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

78. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

79. Denied to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

80. Denied to the extent that the State Board sent this letter, which speaks for itself,

and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

81. Denied to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

82. Neither admitted nor denied to the extent that North Carolina law speaks for itself and is the best evidence of its content.

83. Denied to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter or its contents.

**The State Board Warns Voters That Photographing Their Ballots Is Illegal, Investigates Reports of Ballot Selfies, and Refers Ballot Selfies to District Attorneys for Prosecution.**

84. Admitted to the extent that taking photographs and posting those photographs on social media is often considered expressive activity.

85. Admitted to the extent this is a quote from a State Board press release dated February 25, 2020, which is a document that speaks for itself, and is the best evidence of its contents.

86. Admitted that the State Board regularly informs the voting public about election laws, including that taking or sharing of a photograph of a voted ballot is illegal pursuant to North Carolina law.

87. Admitted that the State Board regularly informs the voting public about election laws, including that taking or sharing of a photograph of a voted ballot is illegal pursuant to North Carolina law.

88. Admitted that the State Board regularly informs the voting public about election laws, including that taking or sharing of a photograph of a voted ballot is illegal pursuant to North Carolina law.

89. Admitted that the State Board regularly informs the voting public about election laws, including that taking or sharing of a photograph of a voted ballot is illegal pursuant to North Carolina law.

90. Admitted that the State Board is required by law to investigate elections law violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

91. Denied to the extent that the State Board currently lacks sufficient knowledge regarding the specific number of reports. Admitted that the State Board is required by law to investigate elections law violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

92. Admitted that the State Board is required by law to investigate elections law violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

93. Admitted that the State Board is required by law to investigate elections law violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

94. Admitted that the State Board is required by law to investigate elections law violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

95. Admitted that the State Board is required by law to investigate elections law

violations, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

96. Admitted to the extent that this refers to State Board investigators reviewing social media when a tip or complaint has been received. Otherwise, denied.

97. Admitted that the State Board is required by law to refer elections law violations to district attorneys, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

**The County Board Warns Voters That Ballot Selfies Are Illegal and Reports Election Law Violations to the State Board.**

98. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

99. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

100. Admitted to the extent that it is a common practice for elections officials from around the state to report elections law violations to the State Board, including the taking or sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

101. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

102. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

103. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

104. Admitted to the extent that it is a common practice for elections officials from around the state to report elections law violations to the State Board, including the taking or

sharing of a photograph of a voted ballot which is illegal pursuant to North Carolina law.

**Hogarth Will Not Take Down Her Ballot Selfie and Will Continue Taking and Sharing Ballot Selfies in the Future.**

105. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

106. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

107. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

108. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

109. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

110. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

111. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

112. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

113. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

**Hogarth Will Vote for Herself in the November 5, 2024 Election and Plans to Take and Share a Ballot Selfie That Day.**

114. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

115. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

116. Admitted.

117. Admitted.

118. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

119. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

120. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

121. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

122. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

123. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

#### **INJURIES TO PLAINTIFF**

124. Denied.

125. Denied.

126. Denied.

127. Denied.

128. Denied.

129. Denied.

130. Denied.

131. Neither admitted nor denied with respect to the State Board as this allegation is not directed at the State Board because it has no prosecutorial authority. Denied based on the Declaration of District Attorney Freeman. [D.E. 42-1].

132. Neither admitted nor denied with respect to the State Board as this allegation is not directed at the State Board because it has no prosecutorial authority. Denied based on the Declaration of District Attorney Freeman. [D.E. 42-1].

133. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter. Denied based on the Declaration of District Attorney Freeman. [D.E. 42-1]. Denied that the State Board's actions present a threat of prosecution.

134. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

## **CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF**

### **FIRST CAUSE OF ACTION**

#### **The Ballot Photography Provisions Violate the First Amendment (As-Applied Challenge Against All Defendants)**

135. State Board Defendants repeat each response above as if set forth fully herein.

136. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

137. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

138. As to the first sentence, neither admitted nor denied as this allegation is not

directed at State Board Defendants. As to the second and third sentences, neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

139. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

140. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

141. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

142. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter.

143. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

144. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

145. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied. Admitted with respect to the second sentence to the extent that North Carolina law speaks for itself and is the best evidence of its content.

146. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

147. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

148. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

149. Admitted.

150. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

151. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

152. Denied to the extent that North Carolina law prohibits photographing a voted ballot, otherwise speaks for itself, and is the best evidence of its content.

153. Denied to the extent that North Carolina law prohibits photographing a voted ballot, otherwise speaks for itself, and is the best evidence of its content.

154. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

155. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

156. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

157. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

158. Denied.

159. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

160. Admitted to the extent that North Carolina law speaks for itself and is the best

evidence of its content.

161. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

162. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

163. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

164. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

165. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

166. Denied.

167. Denied.

168. Denied.

169. Denied.

**SECOND CAUSE OF ACTION**  
**The Voting Enclosure Provision Violates the First Amendment**  
**(As-Applied Challenge Against All Defendants)**

170. State Board Defendants repeat each response above as if set forth fully herein.

171. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

172. Admitted to the extent that North Carolina law speaks for itself and is the best evidence of its content.

173. Admitted to the extent that North Carolina law speaks for itself, is the best

evidence of its content, and prohibits the taking and sharing of a photograph of a voted ballot. Denied to the extent that “ballot selfies” here is defined the same as paragraph 48 above as “voters’ photos of themselves in the voting enclosure,” which is permitted under certain circumstances and with permission.

174. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

175. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

176. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

177. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

178. Denied with respect to there being no legitimate reason for these requirements. Neither admitted nor denied to the extent the remainder sets forth a legal conclusion to which no response is required. To the extent a response is required, it is denied.

179. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

180. With respect to Plaintiffs’ future actions or intentions, neither admitted nor denied as this allegation is not directed at State Board Defendants. Admitted to the extent this allegation is intended to refer to the taking of a photograph of a voter as contemplated under N.C.G.S. § 163-166.3(b), and to the extent that North Carolina law speaks for itself and is the best evidence of its content, including that a chief judge is authorized to exercise discretion in the performance of certain duties, but denied to the extent that discretion can be exercised arbitrarily, capriciously,

or in bad faith. Denied to the extent this allegation is intended to refer to taking of a voted ballot as contemplated under N.C.G.S. § 163-166.3(c), as that law does not permit any voter, regardless of permission by the chief judge, to take a photograph of a voted ballot.

181. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

182. Denied.

183. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

184. Denied.

185. Denied.

186. Denied.

187. Denied.

**THIRD CAUSE OF ACTION**  
**The State Board's March 13, 2024 Demand Letter**  
**Violates the First Amendment**  
**(As-Applied Challenge Against State Board Defendants, Wake County**  
**District Attorney, and North Carolina Attorney General**

188. State Board Defendants repeat each response above as if set forth fully herein.

189. Neither admitted nor denied as this is a legal conclusion to which no response is required.

190. Admitted.

191. Neither admitted nor denied as this allegation is not directed at State Board Defendants and not within the knowledge of the State Board.

192. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter.

193. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter.

194. Admitted to the extent that the State Board sent this letter, which speaks for itself, and is the best evidence of its content. Denied with respect to any characterization of the letter.

195. Denied.

196. Denied.

197. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

198. Admitted.

199. Denied.

200. With respect to Plaintiffs' future actions, intentions, or expectations, neither admitted nor denied as this allegation is not directed at State Board Defendants. For the remainder, Denied.

201. Denied.

202. Denied.

203. Denied.

204. Denied.

**FIRST VERIFIED SUPPLEMENTAL COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF  
(filed Nov. 6, 2024)**

**SUPPLEMENTAL FACTUAL ALLEGATIONS**

1. Neither admitted nor denied as this allegation is not directed at State Board Defendants and the record speaks for itself and is the best evidence of its contents.

2. Neither admitted nor denied as this allegation is not directed at State Board

Defendants and the record speaks for itself and is the best evidence of its contents.

3. Neither admitted nor denied as this allegation is not directed at State Board Defendants and the record speaks for itself and is the best evidence of its contents.

4. Neither admitted nor denied as this allegation is not directed at State Board Defendants and the record speaks for itself and is the best evidence of its contents.

5. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

6. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

7. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

8. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

9. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

10. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

11. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

12. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

13. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

14. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

15. Neither admitted nor denied as this allegation is not directed at State Board Defendants and the record speaks for itself and is the best evidence of its contents.

16. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

17. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

18. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

19. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

20. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

21. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

22. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

23. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

24. Neither admitted nor denied as this allegation is not directed at State Board Defendants.

25. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

26. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

27. Neither admitted nor denied as this allegation is not directed at State Board

Defendants.

28. Neither admitted nor denied as this is a legal conclusion to which no response is required. To the extent a response is required, it is denied.

**ANY AND ALL OTHER ALLEGATIONS MADE IN PLAINTIFFS' COMPLAINT, INCLUDING THE RELIEF REQUESTED, EXCEPT AS SPECIFICALLY ADMITTED ABOVE, ARE HEREBY DENIED.**

**FURTHER ANSWERING THE COMPLAINT AND AS FOR ANY DEFENSES THERETO, DEFENDANTS ASSERT THE FOLLOWING:**

**FIRST DEFENSE**

Plaintiffs' fail to state sufficient factual allegations to support the exercise of subject matter jurisdiction by this Court over the State Board Defendants.

**SECOND DEFENSE**

Plaintiffs fail to state a claim upon which relief can be granted against State Board Defendants and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, this failure bars Plaintiffs' claims.

**THIRD DEFENSE**

State Board Defendants reserve the right to assert further defenses against Plaintiffs that may become apparent during the course of litigation and discovery.

WHEREFORE, State Board Defendants request the following:

1. That the Verified Complaint and First Supplemental Verified Complaint be

dismissed;

2. That Plaintiffs have and recover nothing from State Board Defendants;
3. That costs of this action, including a reasonable attorney's fee, be taxed to Plaintiffs; and
4. For such other relief that the Court deems just and proper.

Respectfully submitted this the 11th day of April, 2025.

JEFF JACKSON  
Attorney General

/s/ Terence Steed  
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Special Deputy Attorney General  
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*Counsel for State Board Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:24-cv-481-FL

SUSAN JANE HOGARTH,	)	
	)	
Plaintiff,	)	
v.	)	<b>DEFENDANTS’ MEMORANDUM</b>
	)	<b>OF LAW</b>
SAM HAYES, in his official capacity as	)	<b>IN SUPPORT OF</b>
Executive Director of the North Carolina State	)	<b>MOTION FOR JUDGMENT ON</b>
Board of Elections, et al.,	)	<b>THE PLEADINGS</b>
	)	
Defendants.	)	

Defendants Sam Hayes, State Board Executive Director, the members of the State Board, Danielle Brinton, State Board Investigator (“State Board Defendants”), the Director and members of the Wake County Board of Elections (“County Board Defendants”), and Wake County District Attorney Lorrin Freeman (“DA Freeman”), all named in their official capacities only (collectively “Defendants”), provide this memorandum of law in support of their joint motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c).<sup>1</sup>

**NATURE OF THE CASE**

This Court should grant Defendants’ Rule 12(c) Motion because Plaintiff fails to state a claim upon which relief can be granted. The facts admitted in the pleadings make clear that Defendants are entitled to judgment as a matter of law. Plaintiff challenges five longstanding, reasonable, viewpoint-neutral laws that are necessary to serve North Carolina’s interests in curtailing vote buying and voter intimidation. Four of these provisions restrict people’s ability to

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<sup>1</sup> Pursuant to the Consent Scheduling Order entered by the Court on October 15, 2024, this motion for judgment on the pleadings does not address lack of subject matter jurisdiction under Rule 12(b)(1) as the Court wanted those issues briefed and resolved separately. [D.E. 50, 74]

photograph and share images of a voted ballot. One of the provisions restricts people's ability to take photographs within the voting enclosure. Because these laws regulate conduct within the voting enclosure without favoring any viewpoint, the standard of review is whether these viewpoint-neutral laws are reasonable. Alternatively, the Court could consider whether the provisions in question are justified under the *Anderson-Burdick* balancing test that applies generally to most election regulations. Under either standard, Plaintiff lacks legally sufficient claims because the State's interests are significant and the laws' regulations on speech are limited. Furthermore, even if this Court were to adopt a strict scrutiny analysis, Plaintiff would not have legally sufficient claims because the State's interests are compelling.

Because Plaintiff has failed to state a claim upon which relief can be granted, this Court should determine that Defendants are entitled to Judgment on the Pleadings.

### **PROCEDURAL HISTORY**

After deliberately violating North Carolina election laws during the 2024 primary election cycle, Plaintiff, Susan Hogarth, filed suit in the United States District Court for the Eastern District of North Carolina on August 20, 2024. [D.E. 2] Plaintiff challenges the constitutionality of five statutes that govern elections in North Carolina, claiming that they violate her First Amendment rights as applied to her desire to take "ballot selfies." *Id.*

Plaintiff moved for a preliminary injunction on August 27, 2024. [D.E. 9, 14] After Defendants filed opposition [D.E. 40, 41, 42], the matter was brought before the Court for a hearing on October 7, 2024. [D.E. 47] In support of her opposition to the motion for preliminary injunction, DA Freeman proactively submitted a declaration affirming she would not prosecute Plaintiff for the conduct described in the complaint [D.E. 42-1], and, at the Court's request during the hearing, agreed to incorporate those assurances into a consent order. [D.E. 52, pp 28-29, 33-34] After the

hearing, the parties could not reach a consensus on the terms, the Court was required to intervene, and entered a limited preliminary injunction that memorialized the non-prosecution consistent with the assurances DA Freeman had already volunteered before the hearing. [D.E. 60] On November 6, 2024, Plaintiff filed a first verified supplemental complaint. [D.E. 65]

On October 18, 2024, all Defendants filed motions to dismiss pursuant to Rule 12(b)(1). [D.E. 53, 54, 55, 56, 58, 59] On March 28, 2025, the Court denied the motions to dismiss with the exception of the Attorney General. [D.E. 74]

All remaining Defendants filed answers to Plaintiff's verified complaint and first verified supplemental complaint on April 10 and 11, 2025. [D.E. 77, 78, 79]

In preparing the Rule 26(f) Joint Report, all parties agreed that the most efficient next step in this action would be for the parties to file cross-motions for judgment on the pleadings based, in part, on the primarily legal nature of the claims and defenses. [D.E. 85]

## STATEMENT OF FACTS

### A. Statutes in Question.

#### 1. Ballot Photography Provisions

Plaintiff challenges five interrelated North Carolina statutes, all of which are designed to protect the privacy of the ballot, prevent voter intimidation, and discourage vote-buying schemes, and all of which have existed for decades or longer. Section 163-273(a)(1), enacted in 1929, makes it a misdemeanor for a voter to allow their own voted ballot to be seen by another person. N.C.G.S. § 163-273(a)(1); 1929 Chap. 164, § 29.<sup>2</sup> Section 163-165.1(e), enacted in 2002, declares voted ballots to be confidential and prohibits access to voted ballots, other than by elections officials

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<sup>2</sup> Available at [https://www.ncleg.gov/Files/Library/sessionlaws/1921-1930/pubs\\_publiclawsresolu1929.pdf](https://www.ncleg.gov/Files/Library/sessionlaws/1921-1930/pubs_publiclawsresolu1929.pdf), last visited July 3, 2025.

performing their duties or by order of a court or board of elections. N.C.G.S. § 163-165.1(e); 2002 N.C. Sess. Law 159, § 55.(o).<sup>3</sup> Section 163-274(b)(1), enacted in 2007, makes it a misdemeanor for any person to knowingly disclose a voted ballot in violation of § 163-165.1(e). N.C.G.S. § 163-274(b)(1); 2007 N.C. Sess. Law 391, § 9.(b).<sup>4</sup> Finally, § 163-166.3(c), also enacted in 2007, prohibits photographing the image of a voted ballot for any purpose not otherwise permitted by law. 2007 N.C. Sess. Law 391 § 23.

## 2. Voting Enclosure Provision

Section 163-166.3(b), enacted in 2007, prohibits photographing a voter within the voting enclosures, except with the permission of the voter and the chief judge of the voting site. N.C.G.S. § 163-166.3(b); 2007 N.C. Sess. Law 391, § 23.3. For candidates specifically, it prohibits them from photographing a voter within the voting enclosures, except with the permission of the voter. *Id.*

### B. Factual Allegations in Plaintiff's Complaint.

Plaintiff is a regular voter in Wake County. [D.E. 2, ¶¶ 9, 114-19] On March 5, 2024, Plaintiff voted in person in the primary election. *Id.*, ¶ 1. After completing her ballot, and while standing within the voting enclosure, Plaintiff took a photograph of herself, her completed ballot, and the sign in the voting booth that informs voters that photographs are prohibited inside the voting enclosure. *Id.*, ¶¶ 1, 55-58. Plaintiff had her cell phone out for approximately 45 seconds to take this photograph. *Id.*, ¶ 59. Plaintiff did not ask for permission to take a photograph in the voting enclosures. *Id.*, ¶ 65. Plaintiff then shared the photograph on social media, voicing her

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<sup>3</sup> Available at <https://www.ncleg.gov/Sessions/2001/Bills/Senate/PDF/S1217v6.pdf>, last visited July 3, 2025.

<sup>4</sup> Available at <https://www.ncleg.gov/Sessions/2007/Bills/House/PDF/H1743v8.pdf>, last visited July 3, 2025.

disagreement with the prohibition on photographing voted ballots, and endorsing candidates for office. *Id.*, ¶ 1. Plaintiff now also claims that a photograph of herself and her voted ballot encourages voting for third-party candidates, challenges the narrative that voters can only vote for major party candidates, encourages voting, commemorates her vote, and expresses her pride in participating. *Id.*, ¶ 51.

On March 13, 2024, State Board investigative staff sent a letter to Plaintiff informing her that the State Board was forwarded information that she took a photograph of her voted ballot and posted it on social media. The State Board described Plaintiff's actions as "a possible violation of N.C.G.S. § 163-166.3(c)," which prohibits photographing a voted ballot. *See* March 13, 2024 State Board Letter attached as Exhibit A to Plaintiff's Complaint [D.E. 2-1, p 2]; *see also* Fed. R. Civ. P. 10(c). The letter also informed Plaintiff of the State Board's duty to investigate violations of election laws in North Carolina and the fact that Plaintiff's alleged actions are prohibited and punishable as a Class I Misdemeanor. *Id.* Finally, the letter expressly stated that "[t]he purpose of this letter is to explain the law and request that you take the post down." *Id.*

In Plaintiff's Supplemental Verified Complaint, Plaintiff details her experience voting in the November 2024 general election. [D.E. 65] She voted early in-person at an early voting site in Wake County on October 26, 2024. *Id.*, ¶ 5. After completing her ballot, while still in the voting booth, Plaintiff used her cell phone camera to take pictures of both sides of her ballot, herself with the no photos sign in the voting booth, and herself holding her voted ballot. *Id.*, ¶ 11. An election official working inside the voting enclosure approached Plaintiff and accurately informed her of the prohibition against taking photos of a voted ballot. *Id.*, ¶ 14. Plaintiff informed the official of the limited injunction from this Court, and after consulting with the Chief Judge of the polling site, the official returned and told Plaintiff, "you're good." *Id.*, ¶¶ 14-16, 19. Plaintiff completed the

voting process normally. *Id.*, ¶ 21. Plaintiff described this experience, being approached by an election official after she purposefully violated a law in front of that official without first informing them that she had a court order allowing her to do so without fear of prosecution, as being accosted and stated it made her uncomfortable and anxious. *Id.*, ¶¶ 18, 28.

Plaintiff does not allege in her pleadings that she has been charged with any election law violations.

### QUESTIONS PRESENTED

1. Are longstanding laws barring voters from taking and sharing photographs of their completed official ballots in the voting enclosure reasonable restrictions on speech?
2. Is requiring a person to receive permission from the chief judge of a voting site to take a photograph within a voting enclosure a reasonable restriction on speech in a non-public forum?

### ARGUMENT

#### Legal Standard

Rule 12(c) of the Federal Rules of Civil Procedure provides that “after the pleadings are closed but early enough not to delay trial, a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). For purposes of Rule 12(c), consideration may be given to the complaint, the answer, exhibits to the pleadings, matters of public record, and exhibits to the motion that are integral to the complaint and authentic. *Massey v. Ojaniit*, 759 F.3d 343, 347-48 (4th Cir. 2014) (citing Fed. R. Civ. P. 10(c); *Philips v. Pitt Cnty. Mem'l Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009)).

The same standard that the Court applies to a rule 12(b)(6) motion applies to a 12(c) motion. *See Massey*, 759 F.3d at 353. To the extent that allegations in the pleading of the non-moving party conflict with the allegations in the pleading of the moving party, the court should

assume the allegations in the non-moving party's pleading to be true. *Deutsche Bank Nat'l Tr. Co. v. Fegely*, 767 F. App'x 582, 583 (4th Cir. 2019). If the Complaint does not allege sufficient facts for the Court to reasonably infer that the statutes in question violate the law, the Court should grant a Motion for Judgment on the Pleadings. *See, e.g., Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

**THE CHALLENGED PROVISIONS ARE CONSTITUTIONAL, AND  
JUDGMENT SHOULD BE ENTERED FOR DEFENDANTS.**

Plaintiff brings three as-applied challenges to the constitutionality of North Carolina election laws and Defendants' conduct enforcing those laws. Plaintiff's Complaint contains three claims for relief, alleging that each of the following violate the First Amendment: 1) N.C.G.S. §§ 163-166(c), -273(a), -165(e), and -274(b)(1), or what Plaintiff calls the "Ballot Photography Provisions"; 2) N.C.G.S. § 163-166.3(b), or what Plaintiff calls the "Voting Enclosure Provision"; and 3) the State Board's March 13, 2024 letter informing Plaintiff that her conduct violated the law and that Plaintiff faced potential criminal charges. Plaintiff seeks declaratory relief that each violates the First Amendment, and injunctive relief prohibiting Defendants from enforcing the Ballot Photography Provisions and the Voting Enclosure Provision. Because the Ballot Photography Provisions and the Voting Enclosure Provision do not violate the First Amendment, all of Plaintiff's claims fail, and the Court should enter judgment on the pleadings in favor of Defendants.

**A. Plaintiff's First Amendment Claim Against the Ballot Photography Provisions is Insufficient as a Matter of Law.**

Though Plaintiff argues that § 163-273(a)(1), § 163-165.1(e), § 163-274(b)(1), and § 163-166.3(c) violate her First Amendment rights as applied to her desire to take and share ballot selfies because they restrict her ability to share political speech in the manner that she wishes, Plaintiff

has failed to state a claim upon which relief can be granted. Under the most appropriate First Amendment test, because the Ballot Photography Provisions regulate speech in a non-public forum, they need only be reasonable and viewpoint neutral. *Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 46 (1983). Alternatively, even if the more restrictive *Anderson-Burdick* test were employed, these laws would still survive scrutiny. The State has several compelling interests, including preventing vote buying and voter intimidation, as well as reducing social coercion which can occur when voters feel pressured by social, familial, religious, or other groups they belong to which seek to require they vote in accordance with the groups' particular political preferences. The State also has a compelling interest in avoiding delays and distraction at polling places, maintaining and protecting the privacy of other voters, and preventing voter intimidation, which outweigh any inconvenience on speech that may occur by prohibiting photos of the voted ballot or in the ballot enclosure.

Because the Ballot Photography Provisions are reasonable under the First Amendment, Plaintiff fails to state a claim upon which relief can be granted as to the ballot photograph provisions. Plaintiff has not pleaded sufficient factual content because the ballot photograph provisions are reasonable restrictions on speech that are necessary to prevent vote-buying and voter intimidation, as well as prevent social coercion, delays, and distractions, and maintain privacy.

**1. The Ballot Photography Provisions permissibly regulate speech in a non-public forum.**

The Ballot Photography Provisions are longstanding lawful regulations that govern conduct that begins at a polling place. It is well-established that a polling place is not a public forum for speech. *See Minnesota Voters Alliance v. Mansky*, 585 U.S. 1, 12 (2018) (a polling place is “government-controlled property set aside for the sole purpose of voting” and therefore

“qualifies as a nonpublic forum”); *Sons of Confederate Veterans v. City of Lexington*, 722 F.3d 224, 230 (4th Cir. 2013); *Marlin v. D.C. Bd. of Elections & Ethics*, 236 F.3d 716, 719 (D.C. Cir. 2001). “The space is a ‘special enclave, subject to greater restriction.’” *Mansky*, 585 U.S. at 12 (quoting *Int’l Soc. for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 680 (1992)). In a nonpublic forum, the government has flexibility to craft rules that limit speech. *Perry Ed. Assn. v. Perry Local Educators’ Assn.*, 460 U. S. 37, 46 (1983).

A nonpublic forum may be reserved “for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker’s view.” *Id.* “Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker’s activities.” *Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U. S. 788, 799-800 (1985). Because the Ballot Photography Provisions operate in a nonpublic forum, they are lawful as long as they are viewpoint neutral and reasonable. *Mansky*, 585 U.S. at 12. The Ballot Photography Provisions satisfy both requirements.

First, the Ballot Photography Provisions are viewpoint-neutral. Their application here does not “discriminate against speech based on the ideas or opinions it conveys.” *Iancu v. Brunetti*, 588 U.S. 388, 393 (2019). The Ballot Photography Provisions do not depend in any way on the viewpoint of Plaintiff’s speech. The laws barring photography of the voted ballot or disclosure of its contents (N.C.G.S. §§ 163-273(a)(1), -165.1(e), -166.3(c), -274(b)(1)) prohibit Plaintiff from photographing her voted ballot regardless of her chosen candidate or what political message she seeks to convey. Similarly, the general restrictions on photography within the polling place (N.C.G.S. § 163-166.3(b)) do not depend on what substantive message may be captured and

conveyed in a photograph of the voting site. The laws apply in the same manner no matter what viewpoint appears on the official voted ballot or in the frame of a picture taken within the voting place.

Second, the laws are reasonable. They reflect the State's longstanding restrictions on photography at polling sites and the public disclosure of voted ballots. These rules reflect the State's focus on ensuring orderly elections by limiting disruption at the polls, which would result from permitting photography in the voting enclosure. These laws also restrict the use of an official completed ballot to its intended purpose—conveying a voter's official candidate selection to election officials. They prevent the use of the image of the official voted ballot to be used as proof of compliance with vote-buying schemes or other forms of vote coercion.

Regarding coercion, prohibiting the photography of a voted ballot protects ballot secrecy for voters who, unlike Plaintiff, would prefer to keep their vote secret. Such voters may face pressure from social, familial, religious, or other groups they belong to which seek to enforce their leaders' preferred political choices through the proof of a voted ballot.

The laws, however, do not prohibit Plaintiff from disseminating information about the candidates she voted for, her political party, her own candidacy, or her pride in and enthusiasm for voting in general—outside the voting place, of course. [See D.E. 11, pp 1, 10] Nor do they prevent her from encouraging others to vote, promoting third-party and down-ballot candidates, challenging the idea that people should only vote for major-party candidates, or commemorating her vote for candidates that she endorsed or supported—again, outside the voting place. *Id.*

Stated differently, aside from photographing and sharing her official voted ballot captured within the voting enclosure, Plaintiff remains free to engage in all the expressive activities she claims are at issue in this lawsuit. See *Silberberg v. Bd. of Elections of N.Y.*, 272 F. Supp. 3d 454,

480 (S.D.N.Y. 2017) (“The no photography policy leaves open ample alternative means by which voters can signal their support for a candidate. Voters can still post to social media (using messages that contain both words and images), attend rallies, donate to campaigns, volunteer, or express their views in a multitude of ways without taking photographs at polling sites.”).

In fact, voters can download personalized sample ballots from the Voter Lookup feature on the State Board’s website.<sup>5</sup> Plaintiff can even print out her sample ballot, mark it as if she had voted it as an official ballot, take a ballot selfie, and post that selfie on social media, effectively engaging in the exact same expressive conduct without any criminal consequences. “[T]he First Amendment does not guarantee the right to employ every conceivable method of communication at all times and in all places.” *Members of City Council v. Taxpayers for Vincent*, 466 U.S. 789, 812 (1984). The challenged provisions merely regulate expressive activity using an official voted ballot in a nonpublic forum, the voting place. They in no way restrict any other ways voters may wish to promote their views and the candidates they support. Voters continue to have a plethora of methods of communication available to them, and the provisions make no attempt to regulate the content of a person’s ballot or speech.

Plaintiff alleges she uploaded her selfie “minutes” after leaving the polling place. [D.E. 2, ¶ 14] But whether Plaintiff uploaded the photograph inside or outside a non-public forum, the legal violation here is a continuous one, beginning in the voting enclosure, a nonpublic forum. *Cf. Silberberg*, 272 F. Supp. 3d at 477 (“[T]he posting of a photograph of a marked ballot to social media requires two steps: the taking of the photograph and the electronic transmission of that

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<sup>5</sup> All sample ballots for the State are available on the State Board’s website, <https://dl.ncsbe.gov/?prefix=data/SampleBallots/2024-11-05/>, last visited June 26, 2025.

photograph. Because the first step must take place in a non-public forum . . . it is appropriate to assess the impact of the statute as a restriction of speech taking place in a non-public forum.”).

Though Plaintiff alleges that the challenged provisions may apply to absentee ballots photographed at home, that issue is irrelevant here. [D.E. 2, ¶ 144] Plaintiff brings an as-applied challenge based on her own past voting experiences, which are limited to voting in person at a polling place during early voting or on election day. [D.E. 2, ¶¶ 107-13] Similarly, she alleges that in future elections she will vote in person if able and intends to take a photograph of her official voted ballot when voting in future elections. *Id.*, ¶¶ 109-10. She also alleges that in past elections she has voted both during early voting and on election day, *id.*, ¶¶ 108-09, and voted in-person in November 2024. [D.E. 65, ¶ 5].

While Plaintiff does note that she may vote by absentee ballot in the future “if she is unable to appear” in person and will also take and share a photograph of her absentee ballot, such allegations are speculative. [D.E. 2, ¶¶ 110, 112] They do not establish standing to challenge the regulations as applied to taking photographs of an official voted absentee ballot at home. *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013) (providing that plaintiffs lack standing when the claimed injury is “premised on a speculative chain of possibilities”).

Thus, the only question here is how the challenged laws apply to Plaintiff who takes ballot photographs at polling places. In that context, the laws permissibly regulate speech in a non-public forum in a reasonable and viewpoint-neutral fashion for the reasons discussed above.

**2. In the alternative, the provisions are permissible regulations of election procedure under *Anderson-Burdick*.**

Alternatively, if the Court reviews the challenged laws as regulations of election procedure under the Supreme Court’s *Anderson-Burdick* balancing framework, established by the U.S.

Supreme Court’s decisions in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), and *Burdick v. Takushi*, 504 U.S. 428, 434, (1992), the laws should still be upheld. These provisions serve important purposes, including preventing and discouraging vote buying and social coercion, avoiding delays and distraction at polling places, maintaining the privacy of other voters, and preventing and discouraging voter intimidation. *See, e.g., Crookston v. Johnson*, 841 F.3d 396, 400 (6th Cir. 2016).

In light of the challenged regulations’ purposes, they may properly be characterized as regulations that “control the mechanics of the electoral process.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 345 (1995). Accordingly, this Court may apply the “ordinary litigation” framework the U.S. Supreme Court applies when evaluating free-speech challenges to election regulations. *Id.*; *Mazo v. New Jersey Sec’y of State*, 54 F.4th 124, 142 (3d Cir. 2022) (“[S]peech that occurs on the ballot or within the voting process will typically trigger application of the *Anderson-Burdick* balancing test.”).

Under the *Anderson-Burdick* framework, to determine whether a state election law unconstitutionally burdens free-speech rights, courts must weigh: (1) the character and magnitude of the asserted injury to those rights, against (2) “the extent to which the regulations advance the state’s interests in ensuring that order, rather than chaos, is to accompany the democratic processes.” *Fusaro v. Howard*, 19 F.4th 357, 368 (4th Cir. 2021); *Buscemi v. Bell*, 964 F.3d 252, 261-62 (4th Cir. 2020). “[W]hen a state election law provision imposes only ‘reasonable, nondiscriminatory restrictions’” on First Amendment rights, “the State’s important regulatory interests are generally sufficient to justify the restrictions.” *See Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 788). The *Anderson-Burdick* test thus reflects the Supreme Court’s recognition that “as a practical matter, there must be a substantial regulation of elections if they

are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes.” *Storer v. Brown*, 415 U.S. 724, 730 (1974) (quoted in *Anderson*, 460 U.S. at 788).

Applying *Anderson-Burdick* here confirms that Plaintiff’s free-speech claim fails as a matter of law. The challenged regulations impose only minimal, reasonable, and non-discriminatory restrictions on Plaintiff’s speech for the reasons already discussed.

Against these modest speech restrictions, the State advances legitimate—indeed, compelling—interests in preventing and discouraging vote buying and social coercion, avoiding delays and distraction at polling places, maintaining the privacy of voters, and protecting against voter intimidation. Photography in a polling place also has the potential to infringe on the rights of other voters, in that it risks exposing others’ ballots; causing delays in the voting process; and causing intimidation or disruption. That Plaintiff claims she was able to take her photograph without disruption does not diminish the state’s interest, prove that all voters can do so without disruption, or establish that other less civic-minded voters will not be disruptive.

The challenged regulations enable fair elections “where everybody would know that they were fair.” Oliver Max Gardner, *Public Papers of Oliver Max Gardner: Governor of North Carolina, 1929-1933*, 77 (Edwin Maurice Gill ed. 1937). By restricting photography in the voting place, the challenged laws make it harder to provide proof of compliance with a vote buying scheme, thus making such schemes less successful and therefore less attractive to would-be schemers. They also protect voters from feeling social pressure to offer proof of how they voted to any social, religious, familial or other group that may seek to enforce strict adherence to the political choices of the groups’ leaders. By curtailing the potential for vote-buying and ensuring that voters feel sufficiently empowered to vote freely, these statutes ensure not only that North

Carolina's elections are free of corruption but also that voters trust that North Carolina's elections are conducted fairly. If the State were to allow for the photographing in voting enclosures and sharing of official voted ballots, it would, at the very least, risk the loss of public confidence in secure elections.

The U.S. Supreme Court has confirmed that many of these interests are indeed compelling, a higher standard than is necessary for *Anderson-Burdick*. The Supreme Court held specifically that states have "a compelling interest in ensuring that an individual's right to vote is not undermined" by fraud, undue influence, or intimidation. *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (citing *Anderson*). The Court did so in upholding a state law prohibiting electioneering within a certain number of feet from a polling place. *Id.* Although the specific law examined in *Burson* concerned a polling place buffer zone, that law was part of a larger reform scheme that also included secret ballots. *Id.* at 206. In fact, the Court in *Burson* detailed the history of voter fraud and intimidation and the states' responses, which included secret ballots and buffer zones. *Id.* at 201-06. According to the Supreme Court, it was in fact these two measures, secret ballots and buffer zones, working together, that "served the States' compelling interest in preventing voter intimidation and election fraud." *Id.*

Plaintiff has attempted to minimize the nature of the State interests implicated by the challenged statutes. She is particularly dismissive of the state's interest in preventing vote buying, pointing out that "since 2015, [the State Board] has referred only four 'vote buying' allegations to prosecutors." [D.E. 11 at 7] But the State's interest in preventing vote buying remains compelling, regardless of the frequency of prosecutions. As the Supreme Court emphasized in *Burson* when rejecting a similar argument, "[t]he fact that these laws have been in effect for a long period of

time . . . makes it difficult for the States to put on witnesses who can testify as to what would happen without them.” *Burson*, 504 U.S. at 208; *see also id.*, at 214-16 (Scalia, J., concurring).

This point also distinguishes at least two of the cases Plaintiff relies upon, *Indiana Civil Liberties Union Found., Inc. v. Indiana Secretary of State*, 229 F. Supp. 3d 817, 828 (S.D. Ind. 2017) (granting summary judgment), and *Rideout v. Gardner*, 123 F. Supp. 3d 218, 229 (D.N.H. 2015), *aff’d*, 838 F.3d 65 (1st Cir. 2016). In both cases, the courts rejected the states’ reliance on the prevention of vote buying as a state interest because the laws at issue were newly enacted and lacked historical context. *See Indiana Civil Liberties*, 229 F. Supp. 3d at 820 (enacted in 2015); *Rideout*, 838 F.3d at 68 (enacted in 2014). The Indiana law targeted ballot selfies exclusively. *See Indiana Civil Liberties*, 229 F. Supp. 3d at 820. Unlike in those cases, the laws challenged here are decades-old prohibitions on photographing and displaying marked ballots and disclosing their content in any manner.

Moreover, here, there is more than enough support for Defendants’ position that the State’s interests, including the prevention of vote-buying and vote-coercion schemes, are compelling. This includes the detailed history in this country of election fraud and intimidation cited by the Supreme Court in *Burson* as providing compelling evidence to support buffer-zone laws. *See* 504 U.S. at 201-06 (describing the historical need for restrictions in and around the voting site based upon the uncomfortable and aggressive electioneering done in the service of political speech that voters were forced to navigate in order to vote). As the Sixth Circuit noted, the connection between election fraud and intimidation and “the prohibition on ballot exposure are not some historical accident; they are ‘common sense.’” *Crookston v. Johnson*, 841 F.3d 396, 400 (6th Cir. 2016) (quoting *Burson*, 504 U.S. at 207).

Also, the State Board has consistently maintained that North Carolina's prohibition on photographing marked ballots is grounded in concerns that "such photographs could be used as proof of a vote for a candidate in a vote-buying scheme."<sup>6</sup> And, while Plaintiff questions the significance of only four referrals for prosecution, these instances confirm that such schemes are still a concern for North Carolina.

In sum, the challenged regulations readily satisfy the *Anderson-Burdick* test. The minimal burden on Plaintiff's speech is strongly outweighed by the State's compelling interests that support these laws. Plaintiff therefore has not alleged sufficient facts to support a reasonable inference that the statutes in question violate her free speech rights.

**3. Even if a higher level of scrutiny applied, the Ballot Photograph Provisions are constitutional.**

Plaintiff alleges that the Ballot Photography Provisions do not survive strict scrutiny. As explained above, strict scrutiny does not apply. However, even if the Court were to apply strict scrutiny, Plaintiff still fails to state a claim upon which relief can be granted. The State's interests are compelling, and the challenged laws are narrowly tailored to protect those interests. *See generally Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 171 (2015) (describing strict scrutiny).

The State interests here are both compelling and well-supported by evidence. For many of the same reasons the Supreme Court upheld polling-place buffer zone under strict scrutiny in *Burson*, the challenged laws survive strict scrutiny review here. *See* 504 U.S. at 199. Moreover, the laws are narrowly tailored to further those governmental interests. They apply only to voted ballots. Voters can take and share other photographs taken in the voting enclosure, so long as the photographs do not include voted ballots, other voters, and they obtain permission. Voters can also

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<sup>6</sup> *See, e.g.,* note 4, *supra*.

take and share photographs of a marked sample ballot. Nothing in the statutes prevents voters from promoting their preferred candidates or expressing pride in voting in any myriad of ways, some of which are indistinguishable from Plaintiff's "ballot selfie."

Plaintiff has argued the challenged laws are not narrowly tailored because they limit the speech of voters who do not take selfies for nefarious purposes, such as vote buying or intimidation, which are criminalized by other laws. She also contends that she was able to take her ballot selfie with no disruptions and that she captured only the image of herself with her ballot.

But this position ignores the fact that if the State opens up new avenues for election fraud by allowing ballot photographs, activities like vote buying and intimidation are more likely to occur. Even if most voters intend to act lawfully, allowing ballot selfies would make it easier for bad actors to exploit the practice. By the same token, it would be impossible for poll workers to distinguish between those taking photographs in furtherance of election fraud and those who are not. Also, requiring poll workers to monitor which voter-photographers are being disruptive in photographing their ballots and which ones are not will be an unnecessary distraction and disruption for poll workers focused on completing the tasks critical to administering elections.

Moreover, Plaintiffs own allegations undermine her claim. Although Plaintiff may have been able to take her ballot selfie without being disruptive in the 2024 primary election (though not in the 2024 general election, based on the allegations in Plaintiff's own amended complaint), not everyone will do the same. "Some voters will require multiple photographs to capture their ballot along with themselves in different poses, or repeated photographs where the original was inadequate due to deficient lighting, disheveled hair, or misplaced accessories. Some voters, unaccustomed to using the camera on their phones, will struggle to activate, and then use, the camera functionality." *Silberberg*, 272 F. Supp. 3d at 480. The risk of intimidation to other voters

or the risk of questions regarding the integrity of the process from other voters in the voting enclosure who do not know why their neighbor is photographing ballots is obvious. The State need not risk these outcomes in the name of narrow tailoring.

For these reasons, Plaintiff has failed to state a claim upon which relief can be granted on Claim I, regardless of the level of scrutiny applied. As such, the Court should enter judgment in favor of Defendants.

**B. Plaintiff's First Amendment Claim Against the Voting Enclosure Provision is Insufficient as a Matter of Law.**

Plaintiff's claim that the Voting Enclosure Provision violates the First Amendment fails as a matter of law. In Claim II, Plaintiff challenges N.C.G.S. § 163-166.3(b), the Voting Enclosure Provision, specifically alleging that the statute's application to ballot selfies is unconstitutional. According to Plaintiff, that provision violates the First Amendment because it makes no explicit exception for ballot selfies. She further argues that it fails to provide "an 'objective, workable standard' to guide the chief judge in deciding whether to give a voter permission to take a selfie." [D.E. 2, ¶¶ 173, 175 (citation omitted)] Like with the Ballot Photography Provisions, this claim fails as a matter of law.

Like the other challenged statutes, Section 163-166.3(b), does not violate the First Amendment. The Voting Enclosure Provision regulates conduct within the voting enclosure, defined as "the room within the voting place that is used for voting." N.C.G.S. § 163-165(9), and thus governs conduct in a nonpublic forum. It exists to protect the rights of other voters, including their right not to be intimidated by being recorded in a nonpublic forum while voting, and it is viewpoint neutral as it remains silent regarding "speech based on . . . ideas or opinions." *Iancu*, 588 U.S. at 393. These are compelling government interests, *Burson*, 504 U.S. at 199, and it is

perfectly reasonable to limit photography of a voter without their permission, or the permission of the chief judge, who has wide statutory authority to regulate voting-enclosure activity to ensure order in the voting place, *see* discussion *infra* and N.C.G.S. § 163-48.<sup>7</sup>

For these same reasons, the Voting Enclosure Provision satisfies the *Anderson-Burdick* test. Again, by preventing photography in the voting enclosure, the statute here provides a nonintrusive method of ensuring order in the democratic process, and it preserves the rights of the millions of other voters who use voting enclosures. Under either test, this provision, like the other laws Plaintiff challenges, is constitutional.

Plaintiff disagrees. She has argued that, even assuming the voting enclosure is a nonpublic forum, the Voting Enclosure Provision is unconstitutionally vague as there is “nothing in its language, or anything else in North Carolina law” that “provides any standards to guide or otherwise limit officials in deciding when or whether to permit or prohibit speech.” [D.E. 11, p 21] To support this argument, Plaintiff relied on *Minnesota Voters All. v. Mansky*, 585 U.S. 1 (2018). But Plaintiff ignores facts that distinguish *Mansky*, most notably the clear guidance that *is* provided to election officials in North Carolina that is *not* provided to those in Minnesota.

In *Mansky*, the law banned all “political” apparel and accessories, allowing election officials to decide what was political, with the State providing guidance to election officials that “rais[ed] more questions than it answered.” *Mansky*, 585 U.S. at 7-8, 18. The Supreme Court held

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<sup>7</sup> That statute reads: “The chief judge and judges of election shall enforce peace and good order in and about the place of registration and voting. They shall especially keep open and unobstructed the place at which voters or persons seeking to register or vote have access to the place of registration and voting. They shall prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting. They shall protect challenger and witnesses against molestation and violence in the performance of their duties, and they may eject from the place of registration or voting any challenger or witness for violation of any provisions of the election laws. They shall prevent riots, violence, tumult, or disorder.”

that, owing to the nonpublic nature of polling places, a state could prohibit certain apparel in that space, but it must draw a “reasonable line,” and must therefore “articulate some sensible basis for distinguishing what may come in from what must stay out.” *Id.* at 16. The Court was clear that these standards need not be perfectly clear or precise. However, by simply banning political apparel and accessories broadly, with what the Court termed “haphazard” supplemental guidance issued by the governing state agency, Minnesota’s ban was a bridge too far. *Id.* at 21-23.

As compared to the authority of the Minnesota election officials in *Mansky*, the authority of chief precinct judges in North Carolina to regulate activity within a polling place is significantly more well defined. These officials are provided with clear direction to guide their decisions generally and as they relate to the Voter Enclosure Provision more specifically. *See, e.g.*, N.C.G.S. § 163-47(a) (providing that the precinct judges at the polling sites are granted broad authority to “conduct [elections] fairly and impartially, and they shall enforce peace and good order in and about the place of registration and voting”); *see id.*, § 163-48 (requiring that they keep voting places “open and unobstructed”; “prevent and stop improper practices and attempts to obstruct, intimidate, or interfere with any person in registering or voting”; and “prevent riots, violence, tumult, or disorder”).

Also, Plaintiff’s contentions do not account for the training and guidance issued by the State Board to the county boards of elections, which further guides the county boards’ training of poll workers, including precinct judges. [D.E. 41-1, Declaration of State Board Associate General Counsel Adam Steele (“Steele Decl.”)], with attached examples of training, Decl. Exs. 1 & 2. Other relevant guidance from the State Board to county boards includes two official directives to

the county boards,<sup>8</sup> Numbered Memo 2022-12, entitled “Maintaining Order at the Polls,” and Numbered Memo 2023-06, entitled “Election Observers.” Although the guidance in Numbered Memo 2023-06 is directed at election observer behavior, much of it is applicable to all voting enclosure activity.

The guidance that both of these Numbered Memos provide is thorough and emphasizes the role of the precinct judge in monitoring voting enclosure activity. The clarity that precinct judges have regarding their authority in North Carolina simply does not compare to the ambiguity surrounding the authority of election officials in *Mansky*.

Plaintiff further argues that the Voting Enclosure Provision is unreasonable because it “lacks a legitimate basis for requiring permission from an election official to take a picture of oneself in a polling place—or for exempting candidates from the restriction.” [D.E. 11, p 23] Plaintiff’s view fails to recognize that taking a picture of oneself can still be disruptive to other voters, can risk violating their privacy, and can impede the voting process generally. *See Burson*, 504 U.S. at 201-06. By way of example, the size of voting enclosures vary (with some sites offering only a handful of voting booths), and depending on the space, taking a picture of oneself could be disruptive and intimidating to some or all voters who are at the various stages of the process, including when they are checking in to vote, receiving their ballot, completing their ballot, or placing their ballot in the tabulator before leaving the voting place. See Numbered Memo 2023-

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<sup>8</sup> “Numbered Memos” have historically been issued by the State Board’s Executive Director since the 1990s to provide guidance on election administration and are publicly available on the State Board’s website, including Numbered Memo 2022-12, <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2022/Numbered%20Memo%202022-12%20Maintaining%20Order%20at%20the%20Polls.pdf>, and Numbered Memo 2023-06, <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-06%20Election%20Observers.pdf>, last visited June 26, 2025.

06, p 5 (“In many voting places, there is so little distance between the rows of voting booths that it is possible to see how a person is filling out their ballot from every location in the . . . area”). Also, as discussed above, Plaintiff’s individual experience in taking her photograph does not necessarily reflect the experience of all would-be voter-photographers.

Finally, there is nothing unreasonable about exempting candidates from the requirement that they seek permission from the chief judge to take photographs of themselves or other voters. It is reasonable to assume that candidates will be more familiar with applicable laws, and have a higher stake than an average voter in maintaining proper decorum. Additionally, the North Carolina General Assembly apparently drew the conclusion that candidates, who of course are much fewer in number than voters writ large, should be relatively freer to capture photographs of their participation in the election as an effort to promote their own candidacy. And still, if a candidate violates any other laws or fails to maintain proper decorum, the chief precinct judge has the authority to intervene. *See* statutes cited *supra*.

Accordingly, the Voting Enclosure Provision is constitutional and does not violate the First Amendment under any applicable standard.

### CONCLUSION

For the foregoing reasons, this Court should grant Defendants’ Motion for Judgment on the Pleadings. The alleged restrictions on Plaintiff’s speech result from viewpoint-neutral laws that apply in a nonpublic forum. The laws are reasonable and are therefore constitutional. Although strict scrutiny does not apply, the State’s interests are indeed compelling and the laws narrowly tailored. Thus, Defendants are entitled to judgement on the pleadings because Plaintiff’s claims fail on the merits.

[Signature Page Follows]

Respectfully submitted this the 11th day of July, 2025.

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

SUSAN HOGARTH,

*Plaintiff,*

v.

SAM HAYES, *et al.*,

*Defendants.*

Case No.: 5:24-cv-00481

Hon. Louise W. Flanagan

**PLAINTIFF'S MEMORANDUM OF  
LAW IN SUPPORT OF MOTION  
FOR JUDGMENT ON THE  
PLEADINGS**

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## INTRODUCTION AND SUMMARY OF THE CASE

“One person, one vote” is the foundation of our republic, yet in North Carolina it is a crime to celebrate democracy with a photograph of yourself and your vote—that is, to take and share a “ballot selfie.” Ballot selfies help voters uniquely show support for political parties, candidates, and the act of voting by depicting for whom they actually voted. Ballot selfies are accordingly core political speech to which the First Amendment “has its fullest and most urgent application,” *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011) (internal citation omitted), which the state censors based on content. There is no justification Defendants can offer to render that violation of voters’ First Amendment rights constitutional. But that did not stop North Carolina and Wake County officials from trying to bar Plaintiff Susan Hogarth from taking and sharing ballot selfies in the 2024 primary and general elections by demanding she delete her photos and threatening her with criminal prosecution.

Four North Carolina statutes ban taking photographs of a voted ballot and criminalize sharing them (the “Ballot Photography Provisions”), while a fifth grants elections officials unbridled discretion to stop voters from photographing themselves in the polling place (the “Voting Enclosure Provision”). These laws (collectively, the “Ballot Selfie Ban”) are content-based restrictions of protected speech that single out ballot selfies for disfavored treatment. The Ballot Photography Provisions are thus “presumptively unconstitutional” and must survive strict scrutiny, *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015), and the Voting Enclosure Provision must pass a “reasonableness” test for public fora “akin to ... intermediate scrutiny.” *White Coat*

*Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 198 (4th Cir. 2022). But the Ballot Selfie Ban fails these tests, and the Court should hold it unconstitutional—just as has virtually every court to consider similar bans in other states.

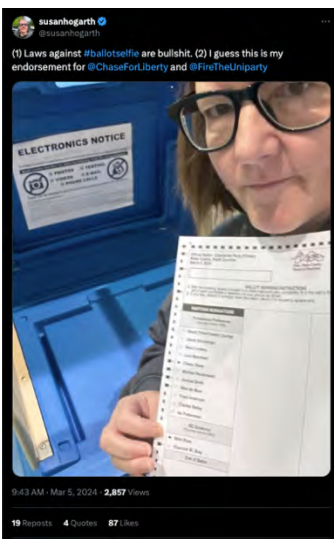
The undisputed facts provide no support for Defendants’ assertions that ballot selfies in North Carolina facilitate “vote buying,” “social coercion,” “delays,” “distraction,” or “voter intimidation,” or that they violate other voters’ privacy. These justifications are, at best, “merely conjectural” and cannot serve as lawful reasons to prohibit protected speech. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994). Defendants therefore cannot show the Ballot Selfie Ban furthers either a compelling interest under strict scrutiny or a “valid interest” under the “reasonableness” test. Nor can Defendants explain why the state could not achieve its ends through less restrictive means by enforcing existing statutes that directly address their asserted harms, a failure that dooms the Ban under any test. This Court should thus hold that the Ban violates the First Amendment and permanently enjoin Defendants from enforcing it against ballot selfies.

## STATEMENT OF FACTS

### A. Susan Hogarth Takes Ballot Selfies to Share Her Political Beliefs.

Susan Hogarth is a resident of and registered voter in Wake County, North Carolina. (Verified Compl. ¶ 9, ECF No. 2.) On March 5, 2024, she went to her polling place to vote in the North Carolina primary election. (*Id.* ¶ 53.) From the time she arrived until she left, no more than three other voters entered the “voting enclosure,” the room where voting takes place. (*Id.* ¶¶ 46, 54, 61.)

After she filled out her ballot, she took about 45 seconds to take a photograph of herself in the voting booth that showed her voted ballot and the “no photos” sign affixed to the booth. (*Id.* ¶¶ 57–59.) Hogarth then exited the polling place and just minutes later posted her ballot selfie to X (the social network formerly known as Twitter) (*Id.* ¶¶ 1, 60–66):



Her post included a caption endorsing the candidates for whom she had voted and protesting that “Laws against #ballotselfie are bullshit.” (*Id.* ¶¶ 66–70.) With that one photo, Hogarth promoted her favored candidates, spread awareness that voters can and do vote for third-party candidates, helped encourage others to vote, expressed her enthusiasm for participating in the electoral process, and voiced disagreement with North Carolina’s statutory Ballot Selfie Ban. (*Id.* ¶ 134.)

Two weeks later, Hogarth received a letter from the North Carolina State Board of Elections threatening prosecution for her ballot selfie. (*Id.* ¶ 72, Ex. A.<sup>1</sup>) In

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<sup>1</sup> Courts may consider exhibits to pleadings for Rule 12(c) motions, the same as with motions under Rule 12(b)(6). *See* Fed. R. Civ. P. 10(c); *Massey v. Ojaniit*, 759 F.3d 343, 353 (4th Cir. 2014).

the letter, State Board Investigator Danielle Brinton informed Hogarth she was investigating Hogarth's ballot selfie as a "violation[] of election laws," and warned her four times that taking and sharing ballot selfies is illegal in North Carolina. (*Id.* ¶¶ 72–73, 80, Ex. A.) Investigator Brinton threatened Hogarth with a "Class 1 Misdemeanor" and demanded she "take the post down." (*Id.* ¶¶ 72, 81, 83, Ex. A.)

Hogarth's March 5, 2024, ballot selfie post remains public, and she does not intend to take it down. (*Id.* ¶ 105–106.) This was not Hogarth's first time taking and sharing a ballot selfie, and it will not be her last. (*Id.* ¶¶ 49–50, 107–13; Verified Suppl. Compl., ¶¶ 5, 8–12, ECF No. 65.) Hogarth intends to vote in future elections, either in person or absentee, and to take and share ballot selfies when she does. (Verified Compl. ¶¶ 107–13.)

#### **B. North Carolina Law Bans Ballot Selfies.**

Five provisions of North Carolina law ban different aspects of taking and sharing ballot selfies. Four provisions ban taking or sharing photographs of a voted ballot (the "Ballot Photography Provisions") with no exception for voters photographing their own ballot. First, N.C. Gen. Stat. § 163-166.3(c) prohibits photographing a voted ballot anywhere, whether in-person or absentee. Second, N.C. Gen. Stat. § 163-273(a)(1) makes it a Class 2 misdemeanor for a voter to show their own voted ballot to anyone else, including photographic copies. Third, N.C. Gen. Stat. § 163-165.1(e) makes it a Class 1 misdemeanor for anyone with access to an electronic record of a voter's voted ballot to disclose how they voted. And fourth, N.C. Gen. Stat. § 163-274(b)(1) specifies, in a list of elections law crimes, that it is a Class 1

misdeemeanor to disclose how a voter voted—even one’s own vote—in violation of § 163-165.1(e).

A fifth statutory provision (the “Voting Enclosure Provision”) requires a county election official to give permission before any individual may photograph any voter, including oneself, in the voting enclosure—the room at the polling place where voting occurs. N.C. Gen. Stat. § 163-166.3(b). The statute exempts, however, photographs of a candidate, which require only that the candidate grant permission. *See* N.C. Gen. Stat. § 163-166.3(b).

**C. The State Board Warns the Public Not to Take Ballot Selfies and Investigates Individuals Who Take and Share Ballot Selfies.**

The State Board of Elections regularly publicizes North Carolina’s ballot selfie ban and enforces the law against those who take ballot selfies. It issues public statements warning voters not to take ballot selfies (Verified Compl. ¶¶ 86–89; *see, e.g., Reminder: Photographing a Voted Ballot Is Against the Law*, N.C. State Bd. of Elections (Feb. 25, 2020), <https://perma.cc/9HCN-B8YA><sup>2</sup>), and both its website and the County Board’s underscore that photographing a voted ballot is illegal (Verified Compl. ¶¶ 88–89, 98–99; *see, e.g., Phone Usage at Polls*, N.C. State Bd. of Elections, <https://perma.cc/5ZNV-979V> (last visited June 18, 2025); *Upcoming Election Information*, Wake Cnty. N.C., <https://perma.cc/LKM5-6PH7> (archived August 19, 2024)).

The State Board enforces the Ballot Selfie Ban despite explicitly recognizing the photos are expressive. As former Executive Director Brinson Bell explained in a

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<sup>2</sup> In considering Rule 12(c) motions, courts “may properly take judicial notice of matters of public record.” *Massey*, 759 F.3d at 353. Publicly available information on state government websites is properly subject to judicial notice. *See Hall v. Virginia*, 385 F.3d 421, 424 & n.3 (4th Cir. 2004).

press release before the March 2020 primary: “We understand wanting to photograph yourself voting, especially with the popularity of selfies ... However, there are legal ways to display your voting pride, such as wearing your ‘I Voted’ sticker or taking a picture outside of the precinct.” (Verified Compl. ¶ 85; *Reminder: Photographing a Voted Ballot Is Against the Law, supra.*) But this recognition has not prevented the State Board from investigating and threatening voters with criminal prosecution for posting ballot selfies to express that pride. (Verified Compl. ¶¶ 72–83, 90–97; *Public Data*, NCSBE <https://dl.ncsbe.gov/?prefix=Investigations> (last visited July 10, 2025), <https://perma.cc/E37U-D8CL>.<sup>3</sup>)

The State Board routinely investigates reports of ballot selfies, including reports from the Board of Elections of Wake County, where Hogarth lives and votes. State Board investigators investigate ballot selfies on social media and reports of ballot selfies from individuals and county elections officials. (Verified Compl. ¶¶ 9, 90–97, 100–104, 107; *Public Data, supra.*) The State Board has received and investigated nearly 50 reports of voters photographing voted ballots since March 2016. (Verified Compl. ¶ 91; *Public Data, supra.*) Since 2020, the State Board has referred two “photographing voted ballot” cases for prosecution, most recently in November 2023. (*Public Data, supra.*)

The State Board tells the public that it enforces the ban on ballot selfies because ballot selfies facilitate illegal vote-buying schemes. (*See, e.g., Reminder: Photographing a Voted Ballot Is Against the Law, supra.*) But since 2015, it has

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<sup>3</sup> The “Investigations” page of the State Board website contains download links to documents detailing the history of State Board referrals and investigations.

referred only four “vote buying” allegations to prosecutors, with no indication those referrals involved ballot selfies. (*Public Data, supra.*)

**D. Hogarth Challenges North Carolina’s Ballot Selfie Ban.**

On August 22, 2024, Hogarth filed her Verified Complaint against State Board and County Board officials, the Wake County District Attorney, and the North Carolina Attorney General seeking declaratory and injunctive relief against the Ballot Selfie Ban. (Verified Compl. ¶¶ 11–23, 124–134.) Hogarth brings three declaratory and injunctive relief claims: (1) a challenge to the Ballot Photography Provisions, as applied to ballot selfies, against all Defendants (*id.* ¶¶ 135–69); (2) a challenge to the Voting Enclosure Provision, as applied to ballot selfies, against all Defendants (*id.* ¶¶ 170–187); and (3) an as-applied challenge to the threat of prosecution in the State Board’s March 13, 2024, letter against the State Defendants and District Attorney Freeman (*id.* ¶¶ 188–204, Ex. A).

On August 27, 2024, Hogarth filed a Motion for Preliminary Injunction (Mot. for Prelim. Inj., ECF No. 9), which Defendants opposed (Resps. to Mot. for Prelim. Inj., ECF Nos. 40, 41, 42.) The Court heard oral argument on the motion on October 7, 2024, and District Attorney Freeman agreed to a limited preliminary injunction against her prosecution of Hogarth for taking or sharing ballot selfies while this case is pending (Mot. Hr’g Tr. 33:13–34:9, ECF No. 52), which the Court entered on October 21, 2024 (Order, ECF No. 60<sup>4</sup>). Responding to Defendants’ stated intent to seek dismissal for lack of subject matter jurisdiction and failure to state a claim, the

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<sup>4</sup> The Court clarified the injunction via text-only order on October 25, 2024.

Court ordered bifurcated briefing, commencing with standing. (Mot. Hr’g Tr. 35:15–35:24, 43:8–44:24.) Defendants filed Rule 12(b)(1) motions to dismiss on October 18, 2024, and Plaintiff opposed. (Defs. Mots. to Dismiss, ECF Nos. 53, 55, 58; Pl. Resp. Br., ECF No. 66.)

On October 26, 2024, the day after the Court clarified its limited injunction order, Hogarth voted at an early voting polling place in Wake County. (Verified Suppl. Compl. ¶ 5, ECF No. 65.) Hogarth filled out her ballot then took a ballot selfie with a “no photos” sign in the background. (*Id.* ¶¶ 8–12.) While she took her ballot selfie, a County elections official yelled to Hogarth from across the room, “you cannot take a picture of your ballot, you need to delete that, please.” (*Id.* ¶¶ 13–14.) Hogarth told the elections official that the Court’s Order protected her ability to take ballot selfies without fear of prosecution. (*Id.* ¶ 15.) Hogarth waited while the elections official conferred with the precinct’s chief judge. (*Id.* ¶ 16.) Only after the chief judge received permission from “the Board of Elections” did the elections official allow Hogarth to submit her ballot and leave without deleting her ballot selfie. (*Id.* ¶¶ 16–21.) On November 6, 2024, Hogarth filed a Verified Supplemental Complaint alleging the facts of the elections officials’ efforts to stop her from taking and sharing a ballot selfie when she voted on October 26, 2024. (*Id.*)

On March 28, 2025, holding Hogarth has standing to challenge North Carolina’s Ballot Selfie Ban, the Court denied Defendants’ Rule 12(b)(1) motions to dismiss except as to the North Carolina Attorney General, who is no longer a party to this case. (Order, ECF No. 74.) On April 10 and 11, the remaining Defendants

forwent 12(b)(6) motions and answered Hogarth's Verified Complaints. (Answers, ECF Nos. 77, 78, 79.) Counsel for all parties then met on May 5, 2025, agreed the Court could resolve this case on the pleadings, and stipulated to a briefing schedule for cross motions under Rule 12(c). (Rule 26(f) Report, ECF No. 85.)

## ARGUMENT

The five statutory provisions comprising North Carolina's Ballot Selfie Ban violate the First Amendment on their face as applied to ballot selfies. The parties agree on the facts but not the law. Hogarth thus seeks judgment on the pleadings under Rule 12(c), which the Court evaluates under same standard as motions under Rule 12(b)(6). *See* Fed. R. Civ. P. 12(c); *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Hogarth is entitled to judgment on the pleadings because the undisputed facts demonstrate the Ballot Selfie Ban fails strict scrutiny under the First Amendment and the Voting Enclosure Provision is not a "reasonable" restriction on speech. *See Williamson v. Prime Sports Mktg., LLC*, No. 1:19-CV-593, 2021 WL 201255, at \*4 (M.D.N.C. Jan. 20, 2021).

### **I. Ballot Selfies Are Political Speech That Lies at the Heart of First Amendment Protection.**

The First Amendment limits North Carolina's authority to ban ballot selfies because taking and sharing photos of how you voted is protected political speech that lies at "the heart of the First Amendment's protection." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776–77 (1978) (holding expression regarding ballot referendum "is the type of speech indispensable to decisionmaking in a democracy" and protected). The First Amendment protects the "creation of information," *e.g.*, taking a photo, just

“as much ... as its dissemination,” e.g., sharing a photo. *PETA v. N.C. Farm Bureau Fed’n, Inc.*, 60 F.4th 815, 829 (4th Cir. 2023) (quoting *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 570 (2011)).<sup>5</sup> And First Amendment protections are at their “zenith” as applied to political speech. *Wash. Post v. McManus*, 944 F.3d 506, 513–14 (4th Cir. 2019) (enjoining regulations of speech about candidates and ballot questions) (quoting *Meyer v. Grant*, 486 U.S. 414, 425 (1988)). In sum, the First Amendment “has its fullest and most urgent application” to speech related to “campaign[s] for political office,” *Bennett*, 564 U.S. at 734 (internal citation omitted), like photographs of one’s own exercise of the franchise.

These principles mean ballot selfies are protected speech—as every court that has considered challenges to ballot selfie bans has agreed. See *Rideout v. Gardner*, 838 F.3d 65, 75 (1st Cir. 2016).<sup>6</sup> As the First Circuit explained in *Rideout*, ballot selfies have “special communicative value,” allowing voters to “express support for a candidate and communicate that the voter has in fact given his or her vote to that candidate.” *Id.* at 75–76. Ballot selfies uniquely express for whom or what one

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<sup>5</sup> In *PETA*, the Fourth Circuit invalidated a North Carolina law that criminalized taking undercover slaughterhouse videos to expose animal cruelty because “the right to publish a recording would be largely ineffective, if the antecedent act of *making* the recording is wholly unprotected.” *Id.* at 829, 841 (internal quotation marks omitted).

<sup>6</sup> See also *Coal. for Good Governance v. Kemp*, 558 F. Supp. 3d 1370, 1386 & n.11 (N.D. Ga. 2021) (noting the “right to photograph or videotape is protected by the First Amendment” and holding a ballot selfie ban that “prohibits any photography or recording of any voted ballot in public and nonpublic forums alike” violates the First Amendment); *Silberberg v. Bd. of Elections*, 272 F. Supp. 3d 454, 475 (S.D.N.Y. 2017) (explaining that New York’s ballot selfie ban “prohibit[s] individuals from using the medium of a marked ballot for expressive conduct”); *Ind. C.L. Union Found., Inc. v. Ind. Sec’y of State*, 229 F. Supp. 3d 817, 828 (S.D. Ind. 2017) (holding Indiana’s ballot selfie ban “embodies a content-based restriction on speech that cannot survive strict or intermediate scrutiny”); *Rideout v. Gardner*, 123 F. Supp. 3d 218, 230 (D.N.H. 2015) (noting that New Hampshire’s ban “deprive[d] voters of one of their most powerful means of letting the world know how they voted”), *aff’d*, 838 F.3d 65.

actually voted, embodying the well-known aphorism “a picture is worth a thousand words.” *Id.* at 76. Hogarth’s ballot selfies exemplify that aphorism: With just one photograph, she succinctly communicates multiple campaign-related political messages.

For example, Hogarth’s March 5, 2024, ballot selfie:

- Drew attention to down-ballot or third-party candidates;
- Encouraged potential voters to vote;
- Invited voters to consider voting for a third-party candidate;
- Challenged notions that voters should vote for only major party candidates;
- Expressed her pride in having participated in the electoral process and voted for third-party candidates;
- Commemorated her vote for candidates she endorses and supports; and
- Contested North Carolina’s laws banning ballot selfies.

(Verified Compl. ¶¶ 51, 134.) This is all political speech about candidates, campaigns, and participation in the political process that receives maximum constitutional protection. *McManus*, 944 F.3d at 513–14. Hogarth’s ballot selfies are imbued with “special communicative value” because they “express support for [] candidate[s] and communicate” that she voted for them. *Rideout*, 838 F.3d at 75. The First Amendment thus protects Hogarth’s expression from restrictions on political speech like North Carolina’s Ballot Selfie Ban.

## **II. The Ballot Photography Provisions Fail Strict Scrutiny As Applied to Ballot Selfies.**

### **A. The Ballot Photography Provisions are “presumptively unconstitutional” content-based restrictions.**

The Ballot Photography Provisions are subject to strict scrutiny because they apply only to photos that contain an image of a voted ballot, including ballot selfies. Laws that target a category of speech “because of the topic discussed or the idea or

message expressed,” as these ones do, are “presumptively unconstitutional.” *Reed*, 576 U.S. at 163.

The Ballot Photography Provisions are content based because whether their restrictions apply depends “entirely on the communicative content” of the images they regulate.<sup>7</sup> *Id.* at 164. In *Reed*, the Supreme Court addressed an outdoor sign ordinance which, among other restrictions, limited signs directing people to events to 6 square feet in size, political campaign signs to 16 square feet, and “ideological signs” conveying neither directional nor political messages to 20 square feet. *Id.* at 159–61. Enforcing the ordinance required differentiating signs based on what they said, rendering the law content based and subject to strict scrutiny. *Id.* at 164; *see also Police Dep’t of City of Chi. v. Mosley*, 408 U.S. 92, 95 (1972) (holding picketing ordinance content based because the “operative distinction is the message on a picket sign”); *Regan v. Time, Inc.*, 468 U.S. 641, 648 (1984) (holding statute regulating photos of U.S. currency content based).

Here, the Ballot Photography Provisions single out images of voted ballots for disparate treatment. N.C. Gen. Stat. § 163-166.3(c) prohibits taking a photo only if it is of a “voted ballot.” N.C. Gen. Stat. § 163-273(a)(1) criminalizes allowing “any person” to see the contents of a voted ballot. And N.C. Gen. Stat. §§ 163-165.1(e) and 163-274(b)(1) make it a misdemeanor to possess “electronic records of individual

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<sup>7</sup> The Voting Enclosure Provision is likewise content based. However, because it restricts photography only in the voting enclosure, it is analyzed separately below on the assumption for the sake of argument that it applies in a nonpublic forum where content-based restrictions on speech are permitted so long as they are viewpoint neutral and reasonable in light of the purpose of the forum. *See Minn. Voters All. v. Mansky*, 585 U.S. 1, 13 (2018). The Voting Enclosure Provision is unreasonable and thus unconstitutional as applied to ballot selfies. *See infra* § III.

voted ballots” if they disclose “how an individual has voted.”<sup>8</sup> Criminalizing images of voted ballots but not, for example, unvoted ballots<sup>9</sup> differentiates photos based on content.

That is why every court that has examined whether ballot selfie bans are content based has held that they are.<sup>10</sup> The Southern District of Indiana held the state’s ballot selfie ban was content based because “[a] voter remains free ... to take photographs of anything and everything other than her ballot” and “[n]ot until after her photographs are examined as to their content will the government know whether” the photograph is illegal. *Ind. C.L. Union Found., Inc.*, 229 F. Supp. 3d at 823. The District of New Hampshire similarly held ballot selfie bans are content based because they restrict only “images of marked ballots that are intended to disclose how a voter has voted. Images of unmarked ballots ... may be shared with others without restriction.” *Rideout*, 123 F. Supp. at 229; *see also Coal. for Good Governance*, 558 F. Supp. 3d at 1386 (holding Georgia’s ballot-selfie restrictions content based because they “regulate what type of ballot information a person may record”).<sup>11</sup> Here too, to

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<sup>8</sup> The Ballot Photography Provisions extend far outside the polling place. For instance, they apply to a ballot selfie with an absentee ballot taken in the comfort of one’s own home or shared “far away from the polling place.” *Rideout*, 123 F. Supp. 3d at 230.

<sup>9</sup> Or, to use the Court’s own example, photos of a pen pointing at a candidate on an unvoted ballot. (Mot. Hr’g Tr. 29:21–30:9.)

<sup>10</sup> Because the First Circuit and the District of Colorado both determined the ballot selfie laws they reviewed would have failed at least intermediate scrutiny, they decided to forgo ruling on whether the laws were content based. *Rideout*, 838 F.3d at 72; *Hill v. Williams*, No. 16-CV-02627-CMA, 2016 WL 8667798, at \*9 (D. Colo. Nov. 4, 2016).

<sup>11</sup> The Southern District of New York likewise held that New York’s ban on sharing ballot selfies was content based because it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Silberberg*, 272 F. Supp. 3d at 474. The court ultimately upheld New York’s ballot selfie ban because of the state’s unique history, up to the present, of vote buying and voter intimidation, which is absent in this case. *See infra* § II.B.

know whether Hogarth's or another voter's ballot selfies are illegal, State officials must "examin[e] ... their content." *Ind. C.L. Union Found.*, 229 F. Supp. 3d at 823.

Because the Ballot Photography Provisions are content based, they are subject to strict scrutiny. *See Reed*, 576 U.S. at 173 (applying strict scrutiny to content-based ordinance); *Ind. C.L. Union Found.*, 229 F. Supp. 3d at 824 (applying strict scrutiny to evaluate ballot selfie ban). This is a "stringent standard," *Nat'l Inst. of Fam. & Life Advoc. v. Becerra*, 585 U.S. 755, 766 (2018), that the Fourth Circuit has described as "in practice, [] virtually impossible to satisfy," *McManus*, 944 F.3d at 520, as proves true here for the reasons that follow.

**B. North Carolina does not have a compelling government interest in banning voters from photographing their own ballots.**

The state cannot overcome strict scrutiny because Defendants cannot show the Ballot Photography Provisions are "narrowly tailored to serve [a] compelling state interest" as applied to ballot selfies. *Reed*, 576 U.S. at 163. The Ballot Photography Provisions fail at the threshold because banning photographs of voted ballots does not further a "compelling state interest." *Id.* Defendants profess interest in preventing "vote buying," "social coercion," "delays," "distraction," "voter intimidation," and the violation of other voters' privacy (State Defs.' Resp. to Mot. for Prelim. Inj. at 12–13, ECF No. 41), but they default on their obligation to show "the recited harms are real, not merely conjectural," *Ross v. Early*, 746 F.3d 546, 556 (4th Cir. 2014) (requiring government to show more than "merely conjectural" interests even under intermediate scrutiny).

Defendants must do more than “posit the existence of the disease sought to be cured.” *Turner Broad. Sys.*, 512 U.S. at 664. Instead, the Fourth Circuit requires assertion of a compelling government interest to “meaningfully demonstrate” speech-restrictive regulations are “impelled by the facts on the ground.” *McManus*, 944 F.3d at 521. That means, at minimum, Defendants must show the harms they identify actually exist. *Id.*

But the undisputed facts of this case demonstrate Defendants cannot meet their burden to show a compelling interest in banning ballot selfies. Defendants cannot point to even a single vote-buying prosecution, much less one involving ballot selfies. In defense of the Ban, they cited eight years of public investigative record (*Public Data, supra*) that includes only four stale, never-prosecuted vote-buying *allegations*, with no indication any involved ballot selfies. (State Defs.’ Resp. to Mot. for Prelim. Inj. at 14–15.) Nor have Defendants offered anything to demonstrate their other posited harms exist. (*Id.*) This complete lack of support means that not only do the Ballot Photography Provisions fail to satisfy strict scrutiny, *see Brown v. Ent. Merch. Ass’n*, 564 U.S. 786, 799–800 (2011) (regulation failed strict scrutiny absent evidence of “direct causal link” between speech regulated and the asserted harm), they cannot satisfy even the more forgiving intermediate scrutiny, *see Turner Broad. Sys.*, 512 U.S. at 664 (speech regulation failed intermediate scrutiny absent evidence it would alleviate asserted harms “in a direct and material way”).

This is hardly surprising given that federal courts have repeatedly held ballot selfie bans unconstitutional when states fail to establish a compelling or even

important government interest. In *Rideout*, the First Circuit explained that even though “[d]igital photography, the internet, and social media” had been “ubiquitous for several election cycles,” New Hampshire’s failure to show ballot selfies had “the effect of furthering vote buying or voter intimidation” doomed its ban under either strict or intermediate scrutiny. 838 F.3d at 73.<sup>12</sup> The Southern District of Indiana likewise noted that even though “a large percentage of Americans own and use smartphones to take and share digital images,” the state failed “to produce a single instance of their having been used to facilitate vote buying or voter coercion.” *Ind. C.L. Union Found.*, 229 F. Supp. 3d at 825. And in *Hill v. Williams*, the District of Colorado enjoined the state’s ballot selfie ban because, in part, Colorado’s expert witness conceded “vote buying and voter intimidation largely disappeared during the twentieth century and there is currently no record of extensive vote buying.” No. 16-CV-02627-CMA, 2016 WL 8667798, at \*10 (D. Colo. Nov. 4, 2016).

North Carolina likewise comes to the Court with empty hands. Since *Rideout*, the number of states in which ballot selfies are legal has nearly doubled, to thirty-one.<sup>13</sup> By 2020, fifteen states had either passed laws permitting ballot selfies<sup>14</sup> or had

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<sup>12</sup> The Ballot Photography Provisions here would likewise fail intermediate scrutiny not only for all the reasons they fail strict scrutiny (*see supra* § II.A; *infra* §§ II.B & C) but also because they impermissibly “foreclose an entire ... important and distinct medium of expression.” *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994) (striking down a ban on yard signs and noting laws banning whole mediums of expression pose a “readily apparent” danger to free speech and risk suppressing too much speech “by eliminating a common means of speaking”).

<sup>13</sup> Ballot selfies are legal in Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Rhode Island, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming.

<sup>14</sup> *See* Ala. Code § 17-9-50.1 (2019); Ariz. Rev. Stat. § 16-1018(4) (2018); Cal. Elec. Code § 14291 (2017); Colo. Rev. Stat. § 1-13-712 (2022); Haw. Rev. Stat. § 11-121 (2016); Iowa Code § 49.88 (2021);

their bans struck down in court,<sup>15</sup> leading to tens of millions of citizens voting in states where ballot selfies had been affirmatively legalized by the time of the general election.<sup>16</sup> Yet in challenges to ballot selfie bans across the country, no state has produced even a single real-world example of a ballot selfie used in a vote-buying scheme.

The only decision upholding a ballot selfie ban, *Silberberg v. Board of Elections*, is distinguishable in two key ways. 272 F. Supp. 3d at 471, 481. First, unlike in North Carolina, there was “ample evidence” of (non-ballot selfie) “vote buying and voter intimidation in New York, both historic and contemporary.” *Id.* at 471. Second, even that evidence would fall short of the Fourth Circuit’s requirement that states show speech restrictions are “impelled by the facts on the ground,” *McManus*, 944 F.3d at 521–22, as New York did not provide evidence of any instances of ballot selfies in vote-buying schemes. *Silberberg*, 272 F. Supp. 3d at 471. Here, conversely, Defendants’ failure to show ballot selfies cause their asserted harms renders the state’s interests merely “hypothetical,” not compelling, *McManus*, 944 F.3d at 521–

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Neb. Rev. Stat. § 32-1527 (2016); N.M. Stat. § 1-12-59 (2019); Okla. Stat. tit. 26 § 7-109 (2019); and Utah Code § 20A-3a-504 (2020).

<sup>15</sup> See *supra* n. 2. See also *Rogers v. Madison County Clerk*, No. 2016-SC-3147, 2017 WL 3475008, at \*2 (Ill. Cir. Ct. July 20, 2017) (striking down an Illinois ballot selfie law); *Wisconsin v. Buzzell*, No. 2022-cv-000361 (Wis. Ct. App. Nov. 27, 2023) (dismissing criminal charges and declaring that a law prohibiting ballot selfies was unconstitutional).

<sup>16</sup> The total number of 2020 voters in Alabama, Arizona, California, Colorado, Georgia, Hawaii, Iowa, Illinois, Indiana, Nebraska, New Hampshire, New Mexico, Oklahoma, Utah, and Wisconsin is over 50 million. See Federal Elections Commission, *Federal Elections 2020: Election Results for the U.S. President, the U.S. Senate and the U.S. House of Representatives* at 7. (Oct. 2022) (showing how many people voted in each state in the 2020 presidential election).

22, and its concerns about ballot selfies “merely conjectural.” *Turner Broad. Sys.*, 512 U.S. at 664.

**C. Banning voters from taking and sharing ballot selfies is not narrowly tailored to achieve Defendants’ purported ends.**

Even if the Defendants could show their purported interests are compelling, the Ballot Photography Provisions still fail strict scrutiny because they are not narrowly tailored to further those interests. Content-discriminatory laws must be narrowly tailored because the “government may attempt to suppress speech not only because it disagrees with the message being expressed, but also for mere convenience.” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). The First Amendment does not permit censorship as a “path of least resistance,” so the narrow tailoring requirement “prevents the government from too readily ‘sacrific[ing] speech for efficiency.’” *Id.* (quoting *Riley v. National Fed’n of Blind of N.C., Inc.*, 487 U.S. 781, 795 (1988)). Under strict scrutiny, narrow tailoring requires that “[i]f a less restrictive alternative would serve the Government’s purpose, the legislature must use that alternative,” *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000). North Carolina has not done so here.

The Ballot Photography Provisions fail narrow tailoring because the state could impose less speech-restrictive alternatives to achieve its purported interests in preventing “vote buying,” “social coercion,” “delays,” “distraction,” “voter intimidation,” and the violation of other voters’ privacy. (State Defs.’ Resp. to Mot. for Prelim. Inj. at 12–13.) In fact, North Carolina *already* has statutes at its disposal preventing all of Defendants’ purported interests *without* banning ballot selfies:

- Vote buying or selling is a Class 1 felony in North Carolina, punishable by up to 10 months in prison. N.C. Gen Stat. § 163-275(2). Federal law also punishes buying or selling votes, with up to two years in prison. 18 U.S.C. § 597.
- Coercing or intimidating voters is a Class 2 misdemeanor in North Carolina, N.C. Gen. Stat. § 163-274(a)(7), and chief judges are statutorily required to prevent intimidation at polling places. N.C. Gen. Stat. § 163-48. The federal Voting Rights Act also prohibits intimidating or coercing voters. 52 U.S.C. § 10307(b).
- Delaying an election by remaining in the voting booth longer than allowed, if forewarned, is a Class 2 misdemeanor. N.C. Gen Stat. § 163-273(a)(5).
- Interfering, or attempting to interfere with other voters in the voting enclosure, or when marking their ballots, are Class 2 misdemeanors. N.C. Gen Stat. §§ 163-273(a)(3)–(4).
- Voter privacy in North Carolina is protected by the requirement that elections officials to organize voting enclosures to ensure voters can vote in secret. N.C. Gen Stat. § 163-166.2.

These laws prohibit the conduct Defendants describe *without* encroaching on First Amendment freedoms. *See Rideout*, 838 F.3d at 74 (holding New Hampshire failed to prove “other state and federal laws prohibiting vote corruption are not already adequate to the justifications it has identified”). Defendants therefore cannot meet their burden to prove these existing criminal statutes, or any other, “plausible, less restrictive alternative[s] ... will be ineffective to achieve its goals.” *Id.* at 816; *see also Brooklyn Branch of NAACP v. Kosinski*, 735 F.Supp. 421, 448 (S.D.N.Y. May 30, 2024) (A law “is not the least restrictive means of achieving the state’s goal if the only conduct it legitimately proscribes is already criminalized by other state laws.”) (citing *McCullen*, 573 U.S. at 490–92).

In *Playboy Entertainment Group*, the Supreme Court held a law requiring cable channels to either limit the broadcast hours of adult content or to scramble it was not narrowly tailored because the government failed to show a plausible alternative—blocking it in individual households upon request—would be ineffective. 529 U.S. at 825–26. Likewise, in *Sable Communications of California, Inc. v. FCC*, the Court invalidated a ban on “dial-a-porn” services because the government failed to prove more-limited screening requirements would not prevent inappropriate access. 492 U.S. 115, 129 (1989). Notably, in both cases, the Court required the government to use less restrictive alternatives that did not yet exist in law, whereas here Defendants may rely on the existing statutes above.

Defendants cannot explain, let alone demonstrate, how those direct regulations not implicating speech—the “normal method of deterring unlawful conduct,” *Bartnicki v. Vopper*, 532 U.S. 514, 529 (2001)—are insufficient to achieve the Ballot Photography Provisions’ purported interests. As the Supreme Court has time and again held, criminal laws precisely targeting unlawful conduct are less restrictive alternatives to those that seek to achieve a governmental interest by broadly suppressing protected expression. In striking down an ordinance banning public handbilling in *Schneider v. New Jersey*, the Court explained:

Frauds may be denounced as offenses and punished by law. Trespasses may similarly be forbidden. If it is said that these means are less efficient and convenient than bestowal of power on police authorities to decide what information may be disseminated from house to house, and who may impart the information, the answer is that considerations of this sort do not empower a municipality to abridge freedom of speech[.]

308 U.S. 147, 164 (1939); *see also Bartnicki*, 532 U.S. at 529 (holding government could punish interception of private information but not suppress “speech by a law-abiding possessor of information”); *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 637 (1980) (invalidating ban on charitable solicitation because the government’s “interest in preventing fraud” could be “better served by measures less intrusive,” like “penal laws” that punish fraud directly); *Cantwell v. Connecticut*, 310 U.S. 296, 306 (1940) (holding “penal laws are available to punish” fraudulent conduct in lieu of restrictions on protected speech).

Applying these core principles, courts have held ballot selfie bans insufficiently tailored. For example, Indiana’s ban on taking and sharing pictures of voted ballots was not narrowly tailored because it “dr[ew] into its ambit voters who may choose to take photos for entirely legitimate and legally innocuous reasons,” and the state provided no evidence that laws targeting only ballot selfies used in vote-buying schemes would be “much more difficult to enforce.” *Ind. C.L. Union Found., Inc.*, 229 F. Supp. 3d at 826–27. Likewise, Georgia’s ban, even assuming a compelling interest, restricted more speech than necessary—particularly when compared with an Alabama statute that prohibited ballot photography only in the voting booth and made an allowance for photos of a voter’s own ballot. *Coal. for Good Governance*, 558 F.Supp.3d at 1386; *see also Rogers v. Madison Cnty. Clerk*, No. 2016-SC-3147, 2017 WL 3475008, at \*2 (Ill. Cir. Ct. July 20, 2017) (invalidating Illinois ballot selfie ban as not narrowly tailored).

The Ballot Photography Provisions similarly restrict more speech than necessary by banning ballot selfies—like Hogarth’s—that neither facilitate vote buying, nor delay voting, nor cause any other of the harms Defendants posit. N.C. Gen. Stat. § 163-166.3(c) prohibits photographing a voted ballot anytime, anywhere, for any purpose. Section 163-273(a)(1) bans sharing a ballot selfie with anyone *in perpetuity*, even long after the election ends, and/or the candidates on that ballot no longer hold or seek office. And sections 163-165.1(e) and 163-274(b)(1) bar telling anyone truthful information about how you voted, just because you possess a ballot selfie. All these provisions—individually, and in combination—sweep far broader than necessary to achieve any of the state’s purported interests.

Ultimately, the Ballot Selfie Provisions force innocent voters across North Carolina to “self-censor or risk prosecution,” a choice the Fourth Circuit has held the First Amendment prohibits. *PSINet, Inc. v. Chapman*, 362 F.3d 227, 235 (4th Cir. 2004). Indeed, that is the choice the State Board put to Hogarth in its March 13, 2024, letter telling her to take down her ballot selfie or face prosecution. (Verified Compl. Ex. A.) Yet the State cannot explain how forcing her to remove her photo from the internet more than a week after the election furthers any of its stated interests. Because North Carolina’s Ballot Photography Provisions are not narrowly tailored to further the State’s asserted interests, they cannot satisfy strict scrutiny.

### **III. The Voting Enclosure Provision Is an Unreasonable Restriction on Speech.**

The Voting Enclosure Provision violates the First Amendment as applied to ballot selfies by giving election officials unbridled power to censor political expression.

The parties agree regarding the nature of the voting enclosure (*see* State Resp. at 20; Mot. Hr’g Tr., 21:22–23),<sup>17</sup> where any regulation of speech must be “reasonable in light of the purpose served by the forum.” *Minn. Voters All. v. Mansky*, 585 U.S. 1, 13, 23 (2018) (invalidating standardless ban on “political” apparel as incapable of reasoned application). And singling out photographs of voters for special treatment means the Voting Enclosure Provision is, like the Ballot Photography Provisions, a content-based restriction on speech. (*See supra* § II.A.)<sup>18</sup> The Supreme Court and Fourth Circuit have both made clear content-based restrictions, whether in limited or nonpublic forums, must be reasonable, but the Voting Enclosure Provision is not.

The provision requires anyone who wants to photograph a voter in the voting enclosure, including oneself, to first obtain approval from an elections official, yet provides no standards to guide officials in granting or denying approval or to prevent arbitrary enforcement. N.C. Gen. Stat. § 163-166.3(b). That makes it unreasonable under either of the tests for regulation of protected expression in even nonpublic forums.

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<sup>17</sup> As to characterization of the voting enclosure itself, the parties have referred to it as a “nonpublic forum,” within the framework of the Fourth Circuit’s recognition of the “considerable confusion” that exists over whether a “nonpublic forum” is synonymous or distinct from what the Supreme Court has called a “limited public forum.” *White Coat Waste Project*, 35 F.4th at 196 n.13. Whatever the nomenclature, the parties agree expression takes place in the voting enclosure and that any restrictions on speech therein must be viewpoint neutral and reasonable. (State Resp. at 9, 17 (citing *Mansky*, 585 U.S. at 12).)

However, should this case proceed past the Rule 12(c) stage—though the parties agree it need not (*see* Rule 26(f) Report, ECF No. 85, 2)—and further facts develop in support of it, Hogarth reserves the right to argue both that her polling place is a designated public forum and that the Voting Enclosure Provision is a content-based restriction on speech that fails strict scrutiny. (*See supra* § II).

<sup>18</sup> The Voting Enclosure Provision is content based not only because it regulates based on subject matter (photos in voting enclosures) but also because it treats photos in voting enclosures of candidates differently from those of all other voters.

First, the Voting Enclosure Provision fails the test articulated in *Mansky*, in which the Supreme Court allowed content-based regulations of speech as reasonable only if they contain an “objective, workable standard,” providing “some sensible basis for distinguishing what [speech] may come in from what must stay out.” 585 U.S. at 21, 16. As with the bare descriptor in Minnesota’s ban on “political” apparel in polling places in *Mansky* that imbued officials with subjective, “arbitrary discretion” not “capable of reasoned application,” *id.* at 21, 23, the Voting Enclosure Provision grants election officials total discretion to grant or deny voters permission to photograph themselves. Nothing in the provision’s language—or any other North Carolina law—provides any standards to guide or otherwise limit that authority. In fact, the state fails to provide *any* guidance—let alone a bare descriptor—to limit officials’ discretion to censor voters under the Voting Enclosure Provision.

The Voting Enclosure Provision is also unreasonable under the Fourth Circuit balancing test, which gives “special solicitude” to First Amendment activity, “even in [a] nonpublic forum.” *Multimedia Publ’g Co. of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir. 1993). Both before *Mansky*, *id.*, and after, the Fourth Circuit has required the government to show “more than a rational basis” for speech restrictions even in a nonpublic forum, under a test that is “akin to ... intermediate scrutiny.” *White Coat Waste Project*, 35 F.4th at 198. This requires the “degree and character of the impairment of protected expression involved” to outweigh the “validity of any asserted justification for the impairment.” *News & Observer Publ’g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 577 (4th Cir.

2010) (quoting *Multimedia Publ'g Co. of S.C.*, 991 F.2d at 159). In *News & Observer*, the Fourth Circuit held a total ban on newspaper racks inside airport terminals failed the reasonableness test. *Id.* at 581. The airport authority asserted interests in aesthetics, loss of revenue, avoiding congestion in the terminal, and security, but the ban was unreasonable as it “significantly restricted” expression and the government offered insufficient evidence to show the validity of its asserted justifications. *Id.* at 578–81.

The Voting Enclosure Provision similarly significantly “impair[s] ... protected expression,” *id.* at 577, by empowering elections officials to deny—for any reason, or no reason at all—noncandidate voter requests to take ballot selfies. That unbridled discretion to censor speech easily outweighs Defendants’ claim that banning ballot selfies preserves other voters’ anonymity from incidental photography (State Defs.’ Resp. to Mot. for Prelim. Inj. at 20, 22), because voters can lawfully shoot virtually anything else in the voting enclosure, as the State Board concedes. (*Id.* at 17 (“Voters can take other photographs and share photographs taken in the voting enclosure, as long as the photographs do not include other voters” or other voters’ ballots.)) That poses just a much a risk to anonymity from incidental photography as ballot selfies assertedly do, leaving Defendants’ expressed justification without grounding in either “common sense or logic.” *News & Observer*, 597 F.3d at 579.

Hogarth does not want to take photographs of other voters or their ballots. She asks this Court only to declare unconstitutional and enjoin enforcement of the Voting Enclosure Provision as applied to ballot selfies—photographs of voters’ selves with

their own voted ballots (*see* Verified Compl. 32–33)—because it is an unreasonable restriction on speech that violates the First Amendment.

### CONCLUSION

North Carolina’s Ballot Selfie Ban prohibits and criminalizes political expression of voters photographing themselves participating in our country’s core democratic function. The state cannot justify abridging that First Amendment freedom where it serves no compelling interest and more narrowly tailored alternatives already exist that do not restrict protected speech. For these reasons, this Court should grant Plaintiff’s Motion for Judgment on the Pleadings.

Dated: July 11, 2025.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.2(f)(3), I hereby certify this brief contains 7,400 words, as calculated by Microsoft Word version 16.98, and therefore falls within the L.R. 7.2(f)(3)(A) word limit of 8,400 words for a memorandum filed in support of a motion.

/s/ Jeffrey D. Zeman

JEFFREY D. ZEMAN

FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION

**CERTIFICATE OF SERVICE**

I, Jeffrey D. Zeman, hereby certify that on July 11, 2025, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system.

/s/ Jeffrey D. Zeman  
JEFFREY D. ZEMAN  
FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:24-cv-481-FL

SUSAN JANE HOGARTH,	)	
	)	
Plaintiff,	)	
v.	)	<b>DEFENDANTS' RESPONSE</b>
	)	<b>IN OPPOSITION TO</b>
SAM HAYES, in his official capacity as	)	<b>PLAINTIFF'S</b>
Executive Director of the North Carolina	)	<b>MOTION FOR JUDGMENT ON</b>
State Board of Elections, et al.,	)	<b>THE PLEADINGS</b>
	)	
Defendants.	)	

Defendants Sam Hayes, State Board Executive Director, the members of the State Board, Danielle Brinton, State Board Investigator (“State Board Defendants”), the Director and members of the Wake County Board of Elections (“County Board Defendants”), and Wake County District Attorney Lorrin Freeman (“DA Freeman”), all named in their official capacities only (collectively “Defendants”), provide this response in opposition to Plaintiff’s motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) [D.E. 90]

**NATURE OF THE CASE AND BACKGROUND**

Defendants incorporate by reference the Nature of the Case, Procedural History, and Statement of Facts from their Memorandum in Support of their Motion for Judgment on the Pleadings. [D.E. 89 at 1-6]

**ARGUMENT**

**I. STRICT SCRUTINY DOES NOT APPLY TO THE BALLOT PHOTOGRAPHY PROVISIONS**

Plaintiff’s argument that the Ballot Photography provisions (N.C.G.S. §§ 163-166(c), -273(a), -165(e), and -274(b)(1)) are unconstitutional hinge on the application of strict scrutiny. [Pl.

Mem. Supp. Mot. J. on the Pleadings at 11-22, D.E. 91] However, Plaintiff brings an as-applied challenge to the Ballot Photography Provisions, challenging the application of these viewpoint neutral laws to photographs taken inside the voting place—a nonpublic forum. As a result, regardless of whether the Ballot Photography Provisions are content neutral, the nonpublic forum standard in *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1 (2018) applies instead of strict scrutiny.

First, Plaintiff’s claims are limited to “ballot selfies” inside the voting place because Plaintiff challenges the Ballot Photography Provisions as-applied to her “ballot selfies.” See [D.E. 2 ¶¶ 6, 26, 163, 166, 167; Prayer for Relief ¶ C] An as-applied challenge is “based on a developed factual record and the application of a statute to a specific person.” *Richmond Med Ctr. for Women v. Herring*, 570 F.3d 165, 172 (4th Cir. 2009) (en banc); see also *Educ. Media Co. at Va. Tech. v. Insley*, 731 F.3d 291, 298 (4th Cir. 2013) (same). As the Seventh Circuit has explained, when “confronted with an as-applied challenge, [a court] examine[s] the facts of the cases before [it] exclusively, and not any set of hypothetical facts under which the statute might be unconstitutional.” *Hegwood v. City of Eau Claire*, 676 F.3d 600, 501 (7th Cir. 2011); see also *Surita v. Hyde*, 665 F.3d 860, 875 (7th Cir. 2011) (“An as-applied challenge is one that charges an act is unconstitutional as applied to a plaintiff’s specific activities even though it may be capable of valid application to others.”). Accordingly, the scope of Plaintiff’s allegations define the nature of her challenge and limited nature of the issues before the court.

According to the Verified Complaint, on March 5, 2024, Plaintiff voted in person in the primary election. [D.E. 2 ¶ 1] Then, “[u]sing her cell phone camera, [Plaintiff] then took a photo of herself in the voting booth, holding up her ballot to show who she voted for.” *Id.* ¶ 57. This photograph also included “a sign in the voting booth prohibiting photography.” *Id.* ¶ 58. Likewise,

Plaintiff's Supplemental Verified Complaint explains that she voted early in-person at an early voting site in Wake County on October 26, 2024. [D.E. 65 ¶ 5] Plaintiff entered the voting enclosure, *id.* ¶ 7, and “[a]fter completing her ballot, while still in the voting booth, [Plaintiff] used her cell phone camera to take ballot selfies,” *id.* ¶ 11. The allegations of Plaintiff's Complaint and Supplemental Complaint highlight that Plaintiff's conduct took place in a polling place, a “non public forum” that “at least on Election Day, [is] government-controlled property set aside for the sole purpose of voting.” *Mansky*, 585 U.S. at 12.

Second, Plaintiff argues that the Ballot Photography Provisions are not content neutral, and therefore they are “presumptively unconstitutional” and subject to strict scrutiny. [D.E. 91 at 11-13] However, strict scrutiny does not apply because, as *Mansky* clarified, “the government has much more flexibility to craft rules limiting speech” in a nonpublic forum, and the government “may reserve such a forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.” *Mansky*, 585 U.S. at 11-12 (internal citation and quotation omitted). For the reasons outlined in Defendants' Memorandum in Support of their Motion for Judgment on the Pleadings, the Ballot Photography Provisions are viewpoint neutral and reasonable. [D.E. 89 at 8-12] And as the Supreme Court further explained, “the government may impose some content-based restrictions on speech in nonpublic forums, including restrictions that exclude political advocates and forms of political advocacy.” *Id.* at 12. Even then those content-based restrictions in nonpublic forums are not subject to strict scrutiny—the question is whether “the State [has drawn] a reasonable line. Although there is no requirement of narrow tailoring in a nonpublic forum, the State must be able to articulate some sensible basis for distinguishing what may come in from what must stay out” of the voting place. *Id.* at 16.

The cases Plaintiff cites in support of applying strict scrutiny do not counsel a different analysis. Nearly all of Plaintiff's cases predate the Supreme Court's 2018 analysis in *Mansky*. See *Rideout v. Gardner*, 123 F. Supp. 3d 218 (D.N.H. 2015), *aff'd* 838 F.3d 65 (1st Cir. 2016); *Ind. C.L. Union Found., Inc. v. Ind. Sec'y of State*, 229 F. Supp. 3d 817 (S.D. Ind. 2017); *Hill v. Williams*, No. 16-CV-02627-CMA, 2016 WL 8667798 (D. Colo. Nov. 4, 2016); *Rogers v. Madison Cty. Clerk*, No. 2016-SC-3147, 2017 WL 3475008 (Ill. Cir. Ct. July 20, 2017). Although the state trial court in *Wisconsin v. Buzzell* applied strict scrutiny, it did not conduct a forum analysis or address *Mansky* at all, instead relying on the pre-*Mansky* district court case *Ind. C.L. Union Found., Inc. v. Ind. Sec'y of State*, 229 F. Supp. 3d 817. See Ex. 1, Nov. 27, 2023 Oral Ruling Tr. at 8:6-16. As a result, these cases do not address whether any of the state statutes at issue satisfied the nonpublic forum standard in *Mansky*. Indeed, in the most recent federal case Plaintiff cites since *Mansky*, the district court analyzed the statutes at issue and applied *Mansky* to the statute that applied to conduct occurring in a nonpublic forum.

In *Coalition for Good Governance v. Kemp*, the plaintiffs sought preliminary injunctive relief on, *inter alia*, two provisions of Georgia law that “proscribe the use of photographic or other electronic monitoring or recording devices (i) to ‘[p]hotograph or record the face of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on such electronic ballot marker’; or (ii) to ‘[p]hotograph or record a voted ballot.’” 558 F. Supp. 3d 1370, 1378 (N.D. Ga. 2021). In assessing the likelihood of success on the plaintiffs’ First Amendment claims, the court explained that “[r]estrictions on speech in nonpublic forums are subjected to a more limited review and are constitutional” as long as they satisfy the *Mansky* standard. *Id.* at 1384.

In evaluating the Georgia law that “proscribe[d] photographing or recording the fact of an electronic ballot marker while a ballot is being voted or while an elector’s votes are displayed on the screen,” the court explained that it “necessarily applie[d] only to polling stations.” *Id.* at 1386. Because polling stations are a nonpublic forum, the court applied *Mansky*. *Id.* Under *Mansky*, the plaintiffs failed to show a likelihood of success on the merits because “the state of Georgia’s proffered interests in protecting the secrecy of the ballot at the polling place and preventing fraud, including vote payment schemes, provide a reasonable basis for the limited restriction on photography and other forms of recording in that specific space.” *Id.*

Although the court found that the second provision, which “prohibit[ed] any photography or recording of any voted ballot in public and nonpublic forums alike,” did not satisfy strict scrutiny, this analysis does not apply to the Ballot Photography Provisions here. *Id.* Notably, in later deciding a motion to dismiss, the court reasoned that dismissal was inappropriate because it could not determine the type of forum where the statute would apply. The court explained that “[d]etermining the type of forum where the rules would apply and selecting the appropriate level of review requires the type of substantive merits inquiry that is not appropriate on a motion to dismiss.” No. 1:21-cv-02010-JPB, 2021 WL 12299010 at \*16 (N.D. Ga. Dec. 9, 2021).

This Court does not face the same dilemma that would lead it to employ different standards. Rather, Plaintiff’s Complaint and Supplemental Complaint make plain the type of forum where the Ballot Photography Provisions apply: Plaintiff photographed her voted official ballot “in the voting booth” [D.E. 2 ¶¶ 57, 58; D.E. 65 ¶ 11], a nonpublic forum, and the forum-based analysis in *Mansky* applies.

That the Ballot Photography Provisions could apply to a different plaintiff outside of a nonpublic forum does not impact this Court’s analysis in this case either. This as-applied challenge

is “based on a developed factual record and the application of a statute to a specific person.” *Richmond Med Ctr.*, 570 F.3d at 172. Plaintiff here challenges the application of the Ballot Photography Provisions to her in-person voting in the voting enclosure. Furthermore, that Plaintiff posted the photograph to social media after leaving the voting booth does not alter the forum analysis. As the district court explained in *Silberberg v. Board of Elections of New York*, 272 F. Supp. 3d 454, 477 (S.D.N.Y. 2017), “the posting of a photograph of a marked ballot to social media requires two steps: the taking of the photograph and the electronic transmission of that photograph. Because the first step must take place in a non-public forum . . . it is appropriate to assess the impact of the statute as a restriction of speech taking place in a non-public forum.”

Plaintiff photographed her voted ballot in a nonpublic forum, and *Mansky* provides the appropriate forum-based standard.

## **II. THE BALLOT PHOTOGRAPHY AND VOTING ENCLOSURE PROVISIONS SATISFY CONSTITUTIONAL REVIEW.**

Plaintiff argues that the Ballot Photography and Voting Enclosure Provisions do not satisfy constitutional review. [D.E. 91 at 11-25] However, in challenging the Ballot Photography Provisions, Plaintiff overlooks the State’s longstanding interests in preventing voter intimidation and election fraud in the form of vote-buying. These interests satisfy the forum-based standard in *Mansky*, as well as any level of constitutional review. Likewise, Plaintiff’s argument that the Voting Enclosure Provision lacks a workable standard ignores the statutory context. When viewed as part of the statutory scheme, the Voting Enclosure Provision has objective, workable standards, and is a reasonable means to the State’s reasonable ends.

**A. North Carolina Has Compelling Interests, and the Ballot Photography Provisions Satisfy Strict Scrutiny.**

Strict scrutiny is not the appropriate standard to evaluate the Ballot Photography Provisions, as discussed above. But even these laws were subject to strict scrutiny, the Ballot Photography Provisions satisfy that standard for the reasons stated in Defendants' Memorandum in Support of Motion for Judgment on the Pleadings. [D.E. 89 at 17-19] Furthermore, Plaintiff's argument discounts states' "compelling interests in preventing voter intimidation and election fraud." *Burson v. Freeman*, 504 U.S. 191, 206 (1992); [D.E. 89 at 14-17] In doing so, Plaintiff argues that North Carolina cannot provide evidence to prove its compelling interests are other than "merely conjectural." [D.E. 91 at 14] But Plaintiff overstates the need for such evidence.

The plurality in *Burson* explained that "because a government has such a compelling interest in securing the right to vote freely and effectively, this Court never has held a State 'to the burden of demonstrating empirically the objective effects on political stability that [are] produced' by the voting regulation in question." 504 U.S. at 208-09 (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986)). Likewise, the plurality reasoned that "[l]egislatures . . . should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively, provided the response is reasonable and does not *significantly impinge* on constitutionally protected rights." *Id.* (quoting *Munro*, 479 U.S. at 195-96). This approach makes sense because, "[e]ven when applying strict scrutiny . . . the government may, in appropriate circumstances, carry its burden by relying 'solely on history, consensus, and 'simple common sense.'" *United States v. Carter*, 669 F.3d 411, 418 (4th Cir. 2012) (quoting *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 628 (1995)). Here, as Defendants explained, the Ballot Photography Provisions are rooted in history, consensus, and common sense, and are narrowly tailored to those compelling interests. [D.E. 89 at 17-19]

**B. The Ballot Photography Provisions and the Voting Enclosure Provision are Reasonable.**

As explained in Section I, *supra*, the *Mansky* standard applies to the Ballot Photography Provisions. And Plaintiff concedes that *Mansky* applies to the Voting Enclosure Provision. Under *Mansky*, both the Ballot Photography Provisions and the Voting Enclosure Provision are constitutional so long as they are viewpoint neutral and reasonable. Plaintiff has not argued that Ballot Photography or Voting Enclosure Provisions are not viewpoint neutral. Accordingly, the only question for the Court is whether they are reasonable.

Under *Mansky*, “the government’s means and ends must both be ‘reasonable.’” *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F. 4th 179, 198 (4th Cir. 2022). Reasonable ends are something other than “compelling interests.” *Id.* (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 808-09 (1985)). In assessing what constitutes reasonable ends, the Fourth Circuit looked to *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974). *See White Coat*, 35 F. 4th at 198.

In *Lehman*, the Supreme Court determined whether a prohibition on “political advertising” on city-owned public transit was constitutional. 418 U.S. at 299. The plurality opinion explained that commercial advertising space on public transit was not a public forum because the advertising space was part of the “commercial venture.” *Id.* at 303. However, “[b]ecause state action exist[ed] . . . the policies and practices governing access to the transit system’s advertising space must not [have] be[en] arbitrary, capricious, or invidious.” *Id.* The plurality concluded there was no First or Fourteenth Amendment violation because the city advanced “reasonable legislative objectives” designed to “minimize chances of abuse, the appearance of favoritism, and the risk of imposing upon a captive audience.” *Id.* at 304.

The State likewise has reasonable legislative objectives here. As explained in Section II.A, *supra*, the State has compelling interests in preventing voter intimidation and election fraud through a vote-buying scheme. For the same reasons, those interests are “reasonable legislative objectives.” *See* [D.E. 89 at 14-17] The state also has reasonable legislative objectives in eliminating delays and distraction at polling places, and maintaining and protecting the privacy of other voters. §

The statutes at issue here pursue those objectives. The Ballot Photography Provisions work to protect voter privacy and prevent voter intimidation and vote-buying by maintaining the secrecy of the voted ballot in limiting its disclosure, including self-disclosure (N.C.G.S. § 163-273(a)(1), disclosure by a third party (N.C.G.S. § 163-165.1(e); N.C.G.S. § 163-274(b)(1)), or disclosure by photograph (N.C.G.S. § 163-166.3(c)). The Voting Enclosure Provision likewise protects these interests by prohibiting an unconsented image of a voter being taken within the voting enclosure. Accordingly, the State has pursued “reasonable ends.”

Under *Mansky*, “nonpublic-forum speech restrictions must be capable of reasoned application.” *White Coat*, 35 F.4th at 199 (quoting *Mansky*, 585 U.S. at 23). “This does not require eliminating all discretion but merely that any discretion must be guided by ‘objective, workable standards.’” *Id.* at 199 (quoting *Mansky*, 585 U.S. at 4).

The Ballot Photography Provisions have “objective, workable standards.” For example, N.C.G.S. § 163-165.1(e) limits access to voted ballots and records of individual voted ballots to “elections official performing their duties” absent certain court or administrative orders. The statute further prohibits disclosure to “members of the public in such a way as to disclose how a particular voter voted, unless a court orders otherwise.” The remaining Ballot Photography Provisions are “capable of reasoned application”: whether a voter “allow[s] his ballot to be seen

by any person,” N.C.G.S. § 163-273(a)(1); whether someone “who has access to an official voted ballot or record to knowingly disclose[s] . . . how an individual has voted that ballot,” *id.* § 163-274(b)(1); or whether a photograph contains an image of a voted ballot, *id.* § 163-166.3(c), are “objective, workable standards” that clearly define proscribed conduct.

In arguing that the Voting Enclosure Provision is unreasonable, Plaintiff contends that the statute is not capable of reasoned application. Not so. Both the Ballot Photography Provisions and the Voting Enclosure Provision, when viewed together, provide “objective, workable standards” that are “capable of reasoned application.” For example, N.C.G.S. § 163-166.3(c), restricts the photograph of the image of a voted ballot. In Plaintiff’s challenge to the Voting Enclosure Provision as applied to ballot selfies, N.C.G.S. § 163-166.3(c) provides a clear standard: the voter must give their permission, and the photograph must not contain the image of a voted official ballot. This is not unfettered discretion. These are clear, objective standards that allow for reasoned application.

Notably, although the Fourth Circuit has equated *Mansky*’s reasonableness standard as “akin to some kind of so-called intermediate scrutiny,” *White Coat*, 35 F. 4th at 198, the reasonableness standard is different than the intermediate scrutiny other courts have applied to restrictions on ballot photography. For example, the district court’s application of intermediate scrutiny in *Indiana Civil Liberties Union Foundation* required Indiana’s statute to be “narrowly tailored to serve significant government interests,” 229 F. Supp. 3d at 827 (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)), and the court found that the statute did not serve compelling interests and lacked narrow tailoring, *id.* at 827-28. The First Circuit in *Rideout* likewise demanded that the statute be narrowly tailored. 838 F.3d at 71-72 (quoting *Ward*, 491 U.S. at 798). So too the district court in *Hill*. 2016 WL 8667798, at \*9. But as the Fourth Circuit

explained, under *Mansky*, “there is no ‘requirement that the restriction be narrowly tailored or that the Government’s interest be compelling.’” *White Coat*, 35 F. 4th at 198 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 808-09 (1985)). In other words, while the reasonableness standard may be similar to some kind of intermediate scrutiny, it does not employ the same requirements.

Plaintiff’s reliance on a pre-*Mansky* case, *News & Observer Publishing Co. v. Raleigh Durham Airport Authority*, 597 F.3d 570, 577 (4th Cir. 2010), does not warrant a different conclusion. For starters, *White Coat* outlines the “capable of reasoned application” standard that *Mansky* prescribes here. But even assuming the balancing test outlined in *News & Observer* applies, the Ballot Photography and Voting Enclosure Provisions satisfy it. The “degree and character of the impairment of the protected expression” here is minimal when “discounted by any mitigating alternatives that remain.” *News & Observer*, 597 F.3d at 577. While Plaintiff would be unable to take a photo of her voted ballot in the ballot enclosure, many alternatives remain for her chosen speech. She remains free to post to social media, attend rallies, donate to campaigns, and volunteer. She can even use a sample ballot to convey the same messages she seeks to convey with a voted ballot. [D.E. 89 at 10-11]

Furthermore, the asserted justifications here are valid. *News & Observer*, 597 F.3d at 577. States have well-established interests in “protecting voters from confusion and undue influence,” *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality op.), and “in preserving the integrity of its election process,” *id.* (quoting *Eu v. San Francisco Cty. Democratic Central Comm.*, 489 U.S. 214, 228-29 (1989)). These asserted interests outweigh the minimal impact on Plaintiff’s expression. Accordingly, even if the test in *News & Observer* applies, the Ballot Photography and Voting Enclosure Provisions satisfy that test.

## CONCLUSION

For the foregoing reasons, Plaintiff's motion for judgment on the pleadings should be denied.

Respectfully submitted this the 1st day of August, 2025.

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

SUSAN JANE HOGARTH,

*Plaintiff,*

v.

SAM HAYES, et al.,

*Defendants.*

Case No.: 5:24-cv-00481-LF

Hon. Louise W. Flanagan

**PLAINTIFF'S MEMORANDUM IN  
OPPOSITION TO DEFENDANTS'  
MOTION FOR JUDGMENT ON THE  
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## INTRODUCTION AND SUMMARY OF THE CASE

No act is more central to a citizen's role in American democracy than voting. America's promise since the founding is that the people, not an omnipotent king, choose our leaders and the direction of our Nation by casting a ballot. North Carolina, however, remains one of a dwindling number of states which threatens its citizens with jail time if they share a picture of themselves performing their civic duty. To justify criminalizing political speech about democratic participation, one would expect North Carolina to come armed with fact-based, substantiated justifications. Indeed, Supreme Court precedent requires it. Yet Defendants cite *nothing*: not a single instance of ballot selfies causing any of their asserted harms in North Carolina (or anywhere else). The First Amendment does not permit this draconian censorship.

Four North Carolina statutes operate to ban taking photographs of voted ballots and criminalize sharing them (the "Ballot Photography Provisions"), while a fifth grants elections officials unbridled discretion to stop voters from photographing themselves in any polling place (the "Voting Enclosure Provision"). These laws, referred to collectively as the "Ballot Selfie Ban," are content-based restrictions of protected speech, which trigger—and fail—the rigorous constitutional scrutiny such laws must survive.

Content-based speech restrictions that target speech for disfavored treatment based on subject, like the Ballot Photography Provisions, are "presumptively unconstitutional," and the government must overcome strict scrutiny by showing the law is "narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015); see *Rideout v. Gardner*, 123 F. Supp. 3d 218, 229 (D.N.H.

2015) (applying strict scrutiny to, and invalidating, New Hampshire’s ballot selfie law), *aff’d* 838 F.3d 65 (1st Cir. 2016). But the undisputed facts show the asserted interests in banning ballot selfies—stated as preventing election fraud, voter intimidation, and vote buying, avoiding delays and distraction, and protecting privacy—are nothing more than “merely conjectural” concerns, *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994), because Defendants provide only unsubstantiated worry that ballot selfies *might* cause those harms. That is not enough to survive intermediate let alone strict scrutiny. *See Rideout v. Gardner*, 838 F.3d 65, 72 (1st Cir. 2016).

To defend a content-discriminatory law, the government must also prove it has used the least restrictive means of achieving a compelling state interest. Here again, Defendants cannot explain why North Carolina’s existing statutes against, *e.g.*, vote buying and election fraud are insufficient to guard against the perils cited. That again dooms the Ballot Photography Provisions. *See, e.g., Rideout*, 838 F.3d at 74 (holding New Hampshire failed to prove “other state and federal laws prohibiting vote corruption are not already adequate to the justifications it has identified”).

The Voting Enclosure Provision, meanwhile, fails the Supreme Court’s test for speech regulations in a nonpublic forum because North Carolina law gives elections officials no guidance to limit their discretion to prohibit ballot selfies. Enforcement is left entirely to the whims, prejudices, and mood of each election official. The Supreme Court has made clear that such polling place speech restrictions which give officials such subjective, “arbitrary discretion” do not pass constitutional muster. *Minn. Voters*

*All. v. Mansky*, 585 U.S. 1, 21 (2018). The law also fails the Fourth Circuit reasonableness test because the Defendants have not shown their purported need to prohibit polling place ballot selfies outweighs a total ban on a type of core political speech. See *News & Observer Publ'g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 581 (4th Cir. 2010) (striking down ban on airport newspaper racks because the government offered insufficient evidence to justify a “significant restriction” on expression).

Under *Reed*, *Mansky*, and *News & Observer*, every provision of the Ballot Selfie Ban fails the First Amendment’s strict tests for restrictions on political speech. This Court should follow the First Circuit in *Rideout* and the bevy of other courts invalidating ballot selfie bans on First Amendment grounds and permanently enjoin North Carolina’s Ballot Selfie Ban.

### STATEMENT OF FACTS

Plaintiff Hogarth’s brief in support of her motion for judgment on the pleadings sets forth the full factual background of this case. (ECF No. 91, Pl.’s Mem. Supp. Mot. J. Pleadings, 2–9.) In the interest of brevity, Hogarth will not repeat it here and incorporates that section by reference. Critically, as described in the parties’ Rule 26(f) Report, the operative facts in this case are undisputed. (See ECF No. 85 at 2.) Here, Hogarth sets forth a limited recitation to contextualize this opposition brief:

Susan Hogarth is a resident of and registered voter in Wake County, North Carolina. (Verified Compl. ¶ 9.) On March 5, 2024, she went to her polling place to vote in the North Carolina primary election. (*Id.* ¶ 53.) From the time she arrived until she left, no more than three other voters entered the “voting enclosure,” the room where voting takes place. (*Id.* ¶¶ 46, 54, 61.)

After she filled out her ballot, she took about 45 seconds to take a photograph of herself in the voting booth that showed her voted ballot and the “no photos” sign affixed to the booth. (*Id.* ¶¶ 57–59.) Hogarth then exited the polling place and minutes later posted her ballot selfie to X (formerly known as Twitter). (*Id.* ¶¶ 1, 60–66.) Her post included a caption endorsing the candidates for whom she had voted and protesting that “Laws against #ballotselfie are bullshit.” (*Id.* ¶¶ 66–70.) Two weeks later, Hogarth received a letter from the North Carolina State Board of Elections threatening prosecution for her ballot selfie. (*Id.* ¶ 72, Ex. A.<sup>1</sup>) Hogarth’s March 5, 2024, ballot selfie post remains public, and she does not intend to take it down. (*Id.* ¶¶ 105–106.) Hogarth intends to vote in future elections, either in person or absentee, and to take and share ballot selfies when she does. (*Id.* ¶¶ 107–13.)

Five provisions of North Carolina law ban different aspects of taking and sharing ballot selfies. The four Ballot Photography Provisions ban and criminalize taking or sharing photographs of a voted ballot with no exception for voters photographing their own ballot. *See* N.C. Gen. Stat. §§ 163-166.3(c), 163-273(a)(1), 163-165.1(e), 163-274(b)(1). The Voting Enclosure Provision requires voters to obtain permission from a county elections official before photographing any voter, including oneself, in the voting enclosure—the room at the polling place where voting occurs. *See* N.C. Gen. Stat. § 163-166.3(b).

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<sup>1</sup> Courts may consider exhibits to pleadings for Rule 12(c) motions, the same as with motions under Rule 12(b)(6). *See* Fed. R. Civ. P. 10(c); *Massey v. Ojaniit*, 759 F.3d 343, 353 (4th Cir. 2014).

On August 22, 2024, Hogarth filed her Verified Complaint seeking declaratory and injunctive relief against the Ballot Selfie Ban. (Verified Compl. ¶¶ 11–23, 124–134, ECF No. 2.) Defendants filed Rule 12(b)(1) motions to dismiss on October 18, 2024, and Plaintiff opposed. (Defs.’ Mots. to Dismiss, ECF Nos. 53, 55, 58; Pl. Resp. Br., ECF No. 66.) On November 6, 2024, after the Court ordered Hogarth not be prosecuted for taking or sharing ballot selfies during this case, Hogarth filed a Verified Supplemental Complaint describing County officials attempt to stop her from taking ballot selfies in the 2024 general election. (ECF No. 65.) On March 28, 2025, holding Hogarth has standing to challenge North Carolina’s Ballot Selfie Ban, the Court denied Defendants’ Rule 12(b)(1) motions to dismiss except as to the North Carolina Attorney General, who is no longer a party to this case. (Order, ECF No. 74.) On April 10 and 11, the remaining Defendants answered Hogarth’s Verified Complaints. (Answers, ECF Nos. 77, 78, 79.) Agreeing the Court could resolve this case on the pleadings, the parties then stipulated to a briefing schedule for cross motions under Rule 12(c), which the Court ordered on June 23, 2025. (Rule 26(f) Report, ECF No. 85; Case Management Order, ECF No. 86.)<sup>2</sup>

## ARGUMENT

The Court should deny Defendants judgment on the pleadings under Rule 12(c) because North Carolina’s Ballot Selfie Ban violates the First Amendment on its face as applied to ballot selfies. Under the applicable standard, which is the same as that

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<sup>2</sup> When the parties filed their cross motions on July 11, 2025, the Defendants all filed as one. (Defs.’ Mot. J. Pleadings, ECF No. 88.)

for motions under Rule 12(b)(6), *see Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999), Hogarth, not the Defendants, is entitled to judgment on the pleadings (See Pl.’s Mot. J. on the Pleadings Mem. ECF No. 91) because the undisputed facts show the Ballot Selfie Ban cannot survive any level of judicial scrutiny that might properly apply. *See Williamson v. Prime Sports Mktg., LLC*, No. 1:19-CV-593, 2021 WL 201255, at \*4 (M.D.N.C. Jan. 20, 2021).

The Ballot Photography Provisions, which ban taking and sharing ballot selfies anywhere based on their content, must survive—not the nonpublic forum or *Anderson Burdick* tests as Defendants propose—but strict scrutiny. But Defendants’ failure to demonstrate the Provisions are “narrowly tailored to serve [a] compelling state interest” means they do not. *Reed*, 576 U.S. at 163. And whether the Voting Enclosure Provision benefits poll workers as Defendants claim, doing so through a grant of unbridled discretion to censor ballot selfies is not a “reasonable” restriction on speech. *See Mansky*, 585 U.S. at 21; *News & Observer*, 597 F.3d at 581. Accordingly, Defendants are not entitled to judgment on the pleadings.

**I. The Ballot Photography Provisions Fail Any First Amendment Test As Applied to Ballot Selfies.**

The Ballot Photography Provisions facially violate the First Amendment as applied to ballot selfies by effectuating a ban on political speech that Defendants cannot justify under any properly or arguably applicable standard of review the Court might apply. The Provisions fail strict and intermediate scrutiny because Defendants cannot show the laws as applied to ballot selfies “will *in fact* alleviate” the State’s asserted interests “in a direct and material way,” or that they are narrowly tailored.

*Turner Broad. Sys.*, 512 U.S. at 662, 664 (emphasis added). The nonpublic forum and *Anderson-Burdick* frameworks to which Defendants turn because of this do not apply—and even if they did, the same inability to show banning ballot selfies furthers the State’s interests means the Ballot Photography Provisions flunk both tests. The Defendants’ effort to avoid these conclusions by attempting to use standing principles to subdivide Hogarth’s constitutional challenge between polling-place and absentee-ballot selfies similarly fails—the Ballot Photography Provisions apply no matter where voters take or share photos of their own voted ballots and they violate the First Amendment in all such uses.

**A. The Ballot Photography Provisions do not survive strict or intermediate scrutiny.**

The Ballot Photography Provisions violate the First Amendment as applied to ballot selfies because they cannot survive strict or even intermediate scrutiny. The Ballot Photography Provisions’ reach regulates speech far from voting enclosure based on content, meaning standard First Amendment tests apply and not, as Defendants urge, nonpublic forum analysis or the *Anderson-Burdick* test. That means strict scrutiny applies to the Ballot Photography Provisions, because they are content based. *See Reed*, 576 U.S. at 164, 173. And Defendants’ failure to show that ballot selfies cause any of the harms they allege, or that a total ban on ballot selfies is narrowly tailored to alleviate those harms, means the Provisions violate voters’ free speech rights under either level of First Amendment scrutiny.

**1. Defendants cannot avoid standard First Amendment review because the Ballot Photography Provisions ban “pure speech” everywhere, based on its content.**

The Court should reject Defendants’ attempt to avoid standard First Amendment review—*i.e.*, strict or intermediate scrutiny—because the Ballot Photography Provisions regulate ballot selfies no matter where voters create or disseminate that speech. Neither the nonpublic forum test nor the *Anderson-Burdick* test that Defendants advance (ECF No. 89 at 8–17) has any application, as the Ballot Photography Provisions do not merely regulate voting enclosure or election mechanics. *See Mansky*, 585 U.S. at 16 (applying nonpublic forum analysis to ban on “political” attire inside polling place); *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 344–46 (1995) (holding *Anderson-Burdick* test applies only to elections mechanics). Rather, they reach far beyond that.

As both a general and threshold matter, ballot selfies—no matter where voters take them—are almost always shared “far away from the polling place,” so bans on ballot photography are not “merely a restriction on speech in a nonpublic forum.” *Rideout*, 123 F. Supp. 3d at 230. That alone triggers standard First Amendment review. Further, voters can fill out absentee ballots in a park, at their kitchen table, or in any number of areas “far away from the polling place.” *Id.* Defendants’ reliance on the one case that allowed a selfie ban to stand<sup>3</sup>—for the proposition that the Court

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<sup>3</sup> As Hogarth explained in support of her own motion, the history of election fraud that supported New York’s ballot selfie ban surviving in *Silberberg v. Board of Elections of New York*, 272 F. Supp. 3d 454 (S.D.N.Y. 2017), where all others failed, is simply not present in North Carolina. (*See* ECF No. 91 at 15–18.)

should evaluate speech created inside but shared outside the polling place under nonpublic forum analysis (*see* ECF No. 89 at 11–12 (citing *Silberberg*, 272 F. Supp. 3d at 477))—is therefore unavailing, especially here in the Fourth Circuit, where the creation of speech, even on private property, is protected from content-based regulations by strict scrutiny. *See PETA v. N.C. Farm Bureau Fed’n, Inc.*, 60 F.4th 815, 829–30 (4th Cir. 2023). Nonpublic forum analysis is thus irrelevant here. *Cf. Women’s Health Link, Inc. v. Ft. Wayne Pub. Transp. Corp.*, 826 F.3d 947, 951 (7th Cir. 2016) (“Indeed it is rather difficult to see what work ‘forum analysis’ in general does.”) (Posner, J.).

The *Anderson-Burdick* test Defendants invoke (*see* ECF No. 89 at 12–17) is likewise inapposite, as it does not apply to challenged election-related laws in a wide range of circumstances, including those here. It does not, for example, apply to direct regulations of “pure” speech rather than of “the mechanics of the electoral process” like filing deadlines, voter eligibility, ballot access, or the ability to vote by mail. *McIntyre*, 514 U.S. at 344–46. It also does not apply to regulations that impose “severe” burdens on protected speech. *McLaughlin v. N.C. Bd. of Elections*, 65 F.3d 1215, 1221 n.6 (4th Cir. 1995). Nor does it apply to speech regulations that are not “content neutral.” *Kendall v. Balcerzak*, 650 F.3d 515, 525 (4th Cir. 2011). Defendants ignore these controlling tests, and the Ballot Photography Provisions fail all of them.

First, like *McIntyre*’s ban on anonymous leafletting, the Ballot Photography Provisions regulate “pure speech,” not election “mechanics.” *McIntyre*, 514 U.S. at 344–45. Second, the Ballot Photography Provisions severely burden ballot selfies by

enacting a *total* ban,<sup>4</sup> which is even more intrusive than the regulation the Fourth Circuit invalidated in *McLaughlin* as too “severe” because it made ballot access “extremely difficult.” 65 F.3d at 1220–21 (applying strict scrutiny). And as already shown (*see* ECF No. 91 at 11–14; *see also infra* § I.A.1), the Ballot Photography Provisions are content-based. *See Kendall*, 650 F.3d at 525. There is a reason no court reviewing ballot selfie bans has applied *Anderson-Burdick* (*see* ECF No. 89 at 10 n.6. (listing cases)): standard First Amendment analysis for restrictions of “pure speech” applies.

The Court should, in conducting that standard analysis, apply strict scrutiny because the Ballot Photography Provisions regulate speech based “entirely on [its] communicative content.” *Reed*, 576 U.S. at 164, 173. Like the content-based ordinance in *Reed* that set different rules for signs depending on whether they had “directional,” “political,” or “ideological” messages, *id.* at 159–61,<sup>5</sup> Defendants concede the Ballot Photography Provisions “bar[] photography of the voted ballot or disclosure of its contents” and “photographing and displaying *marked ballots* and disclosing their

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<sup>4</sup> Defendants’ proposed substitute, photographing a sample ballot (ECF No. 89 at 11), merely amounts to “say something else” because it cannot show how Hogarth actually voted. *See City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994) (holding the ability to pass handbills does not deprive homeowners of the First Amendment right to put up yard signs and noting laws banning whole mediums of expression pose a “readily apparent” danger to free speech); *cf. Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 556 (1975) (holding freedom of speech “in appropriate places” cannot be limited “on the plea it may be exercised in some other place” [citation omitted]).

<sup>5</sup> *See also, e.g., Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972) (holding picketing ordinance content based because the “operative distinction is the message on a picket sign”); *Regan v. Time, Inc.*, 468 U.S. 641, 648 (1984) (holding statute regulating photos of U.S. currency content based).

content.” (ECF No. 89 at 9, 16 (emphases added.) The Provisions do not, conversely, ban voters from taking or sharing photos, for example, of a pen pointing at a candidate on an unvoted ballot (Mot. Hr’g Tr. 29:21–30:9, ECF No. 52) or, as Defendants offer, photos of voted sample ballots. (See ECF No. 89 at 11.) The Ballot Photography Provisions are thus content-based and, consequently, “presumptively unconstitutional.” *Reed*, 576 U.S. at 163.

Even if, as Defendants summarily contend, the Ballot Photography Provisions did not regulate voters’ speech based on content (see ECF No. 89 at 11), intermediate scrutiny would still apply. *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). Regulations that burden speech, even facially content-neutral ones like *McCullen*’s abortion-clinic buffer zones, must still survive heightened First Amendment scrutiny to ensure the government has not “too readily forgone options that could serve its interests just as well, without substantially burdening” speech. *Id.* at 490. And no matter which level of scrutiny the Court applies, the Ballot Photography Provisions are unconstitutional.

**2. The Ballot Photography Provisions fail both strict and intermediate scrutiny because Defendants cannot show a compelling or even significant governmental interest.**

The Ballot Photography Provisions cannot overcome the first prong of standard First Amendment scrutiny because Defendants merely assert interests in a ballot selfie ban without substantiating them. Under strict scrutiny, Defendants must show the Ballot Photography Provisions are “narrowly tailored to serve [a] compelling state interest.” *Reed*, 576 U.S. at 163. Intermediate scrutiny still requires they be narrowly tailored to serve a “significant” governmental interest. *McCullen*, 573 U.S. at 486. Either way, the Defendants’ failure to show that their “recited harms are real, not

merely conjectural,” and that the Ballot Photography provisions “will in fact alleviate” those harms “in a direct and material way,” *Turner Broad. Sys.*, 512 U.S. at 664, means the Provisions fail to satisfy the “governmental interest” requirement. *Cf. Rideout*, 838 F.3d at 72 (declining to resolve whether ballot selfie ban was subject to strict scrutiny because the ban failed even intermediate scrutiny).

In *Turner*, the FCC argued that, if it could not force cable television providers to carry local broadcast stations, those stations would fail. 512 U.S. at 666. The Supreme Court held that, even though that interest was “important in the abstract,” and even *assuming* cable operators would drop local stations without a must-carry rule, the government’s failure to demonstrate that that would harm local stations meant the rule could not overcome even intermediate scrutiny. *Id.* at 664–66. Here, Defendants argue that operation of the Ballot Photography Provisions to ban ballot selfies targets vote buying, voter intimidation, social coercion, privacy invasion, and delays and distraction at polling places. (ECF No. 89 at 1, 8, 14–16.) But they offer no showing that any of their asserted harms have ever occurred in North Carolina, let alone that ballot selfies are their cause.<sup>6</sup>

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<sup>6</sup> Defendants do circularly argue they need not show how ballot selfies’ affect their stated interest because the “longstanding” ban deprives them of historical data (ECF No. 89 at 15–16), but *Turner* precludes that argument. In *Turner*, the Court held that, even where “complete empirical support may be unavailable,” the government must still show its interests are not “merely conjectural” but arise from “reasonable inferences based on substantial evidence.” *Turner Broad. Sys.*, 512 U.S. at 664–65. As Hogarth described in support of her own motion, ballot selfies have been allowed elsewhere for years, and Defendants still come to the Court without even anecdotal extra-jurisdictional proof. (See ECF No. 91 at 16–17.)

At most, Defendants cite only the State Board's referral of four vote-buying allegations *without* alleging ballot selfies were involved. (ECF No. 89 at 17.) They offer nothing at all in support of their other asserted interests. The same types of failures doomed nearly every other ballot selfie ban, and the same outcome should follow here. (See ECF 11 at 9 n.2 (listing cases).) Meanwhile, the *only* case to uphold a ballot selfie ban relied on "ample evidence" of "vote buying and voter intimidation in New York, both historic and contemporary," *Silberberg*, 272 F. Supp. 3d at 471, whereas Defendants show nothing of the sort here. The Ballot Photography Provisions therefore fail even intermediate scrutiny.

That Defendants cannot meet even that lesser burden also means the Provisions do not survive strict scrutiny. See *Rideout*, 838 F.3d at 72. In *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011), the Court held a ban on violent video games failed strict scrutiny because the government could not show they *caused* aggression in children more than anything else, even if correlation existed. *Id.* at 799–02. As in *Brown*, Defendants fail to draw a "direct causal link" between ballot selfies and any of their asserted harms, as they must under strict scrutiny. *Id.*

Faced with inability to show their asserted interests are "actual problem[s] in need of solving" in North Carolina, see *id.* at 799, Defendants turn to the historical analysis in *Burson v. Freeman*, 504 U.S. 191 (1992) (ECF No. 89 at 16). But that case does not establish or even suggest ballot selfies cause voter fraud, or any other harm. *Burson* is "obviously distinguishable" because its "discussion ... of the long history of regulating polling places" made clear "the interest at stake ... centered on the

protection of physical election spaces,” *Rideout*, 838 F.3d at 73, while here, as noted, the Ballot Photography Provisions have a far greater reach. (*See supra* § I.A.1.)

Nor may Defendants’ claim a ballot selfie ban is “common sense” based on dicta from *Crookston v. Johnson* (ECF No. 89 at 16), which stayed a preliminary injunction the district court had entered on constitutional grounds against enforcement of Michigan’s ballot selfie law. 841 F.3d 396, 400 (6th Cir. 2016). Neither the Sixth Circuit nor the lower court ever reached the merits. *See* 841 F.3d at 401; *Crookston v. Johnson*, 854 F.3d 852 (6th Cir. 2016). Rather, Michigan later voluntarily abandoned its ban on photographs of voted ballots.<sup>7</sup> Ultimately, all Defendants have done here is name their asserted interests, without any support, which cannot suffice under either strict or intermediate scrutiny.

**3. The Ballot Photography Provisions are not narrowly tailored under strict or intermediate scrutiny.**

The Ballot Photography Provisions also fail both strict and intermediate scrutiny because Defendants cannot show they are narrowly tailored. (*See* ECF No. 91 at 18–22.) At either level of review, any claim that allowing voters to photograph their own ballots would make it “easier for bad actors to exploit the practice,” or harder for poll workers to identify those using photography to disrupt elections or engage in fraud (ECF No. 89 at 19), run directly counter to how narrow tailoring exists *precisely* to “prevent[] the government from too readily ‘sacrific[ing] speech for

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<sup>7</sup> *Michigan secretary of state settles ‘ballot selfie’ case*, Michigan Department of State (May 8, 2019) <https://www.michigan.gov/sos/resources/news/2019/05/08/michigan-secretary-of-state-settles-ballot-selfie-case>.

efficiency” in this way. *McCullen*, 573 U.S. at 486. And Defendants effectively concede they cannot satisfy strict scrutiny, because it requires “the government to prove that no ‘less restrictive alternative’ would serve its purpose,” *Cent. Radio Co. Inc. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016) (quoting *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 813 (2000)), and they make no showing toward that end, let alone attempt to factually support it.

The Ballot Photography provisions also fail strict scrutiny’s narrow tailoring requirement because they are both overinclusive and underinclusive in pursuing Defendants’ asserted interests. *See id.* They are fatally overinclusive because they “unnecessarily circumscrib[e] protected expression,” *id.*, sacrificing voters’ political speech *everywhere* in the name of lessening elections officials’ burdens *at polling places*. And the fact that the Ballot Photography Provisions “apply only to voted ballots” does not, as Defendants argue, narrow their scope (ECF No. 89 at 17–18) but rather prove Hogarth’s case: voted ballots are precisely what she wants to share images of, and the Provisions ban that everywhere for any reason.

The Ballot Photography Provisions are also fatally underinclusive because they “leav[e] appreciable damage to [the government’s] interest unprohibited,” *Cent. Radio*, 811 F.3d at 633 (internal citations omitted), by permitting voters, by Defendants’ own admission, to “take and share other photographs taken in the voting enclosure, so long as the photographs do not include voted ballots, other voters, and they obtain permission.” (ECF No. 89 at 17.) Just like the sign ordinance in *Reed*, the Ballot Photography Provisions are “hopelessly underinclusive” in banning

photographs of voted ballots in the name of protecting privacy and preventing disruption at the polling place while “allowing unlimited numbers of other types” of photographs “that create the same problem.” 576 U.S. at 171–72. The Provisions’ over- and under-inclusiveness “undermine[] the likelihood of a genuine [governmental] interest” by laying bare that the regulations “far exceed[] what is necessary” to achieve the state’s asserted interest. *FCC v. League of Women Voters of California*, 468 U.S. 364, 395–96 (1984).

Even under the more forgiving intermediate scrutiny standard, which requires the government to still consider “less intrusive” and “more targeted” means than broad speech bans, *McCullen*, 573 U.S. at 492–93 (applying intermediate scrutiny); see *Rideout*, 838 F.3d 65 (same), the Ballot Photography Provisions are unconstitutional. Defendants do not even claim, much less establish, that existing laws that directly criminalize vote buying and alleviate any of their other asserted harms are inadequate. (See ECF No. 89.) As Hogarth showed in her own Motion for Judgment on the Pleadings, North Carolina has a variety of statutes available *right now* that prevent vote buying, voter intimidation, social coercion, privacy invasion, and delays and distraction at polling places—all *without* banning ballot selfies. (See ECF No. 91 at 18, 19 (describing statutes).)

**B. The Ballot Photography Provisions would fail even the Fourth Circuit nonpublic forum and *Anderson-Burdick* tests.**

There is no basis for the Court to depart from applying strict or intermediate First Amendment scrutiny to the Ballot Photography Provisions, but even if it did, they would be unconstitutional under the alternate tests Defendants advocate. The

same lack of support for the proffered interests in banning ballot selfies, or for how the statutes advance them, means the Provisions fail both the Fourth Circuit's nonpublic forum reasonableness test and the *Anderson-Burdick* standard.

Regarding the former, the Fourth Circuit requires content-based restrictions like the Ballot Photography provisions to satisfy a reasonableness test "akin to ... intermediate scrutiny" when regulating speech in a nonpublic forum. *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 198 (4th Cir. 2022). And the Ballot Photography Provisions fail for all the same reasons identified above under intermediate scrutiny. (*See supra* §§ I.A.2–3.)

For example, in *News & Observer*, the Fourth Circuit held a total ban on newspaper racks inside airport terminals failed the reasonableness test because the airport authority failed to support its asserted interests in aesthetics, loss of revenue, avoiding congestion, and security in the terminal. 597 F.3d at 578–81. Similarly, Defendants here not only fail to support their asserted interests in banning ballot selfies everywhere (*see supra* § I.A.2), but their argument that voters can lawfully shoot virtually anything else in the voting enclosure (ECF No. 89 at 17) concedes that their justifications for protecting the enclosures by banning ballot selfies are ungrounded in "common sense or logic." *News & Observer*, 597 F.3d at 579. And Defendants' claimed interest in preventing vote buying is not one aimed at reserving the voting enclosure "for its intended purposes," so it cannot justify content-based speech restrictions in a nonpublic forum. *Perry Educ. Ass'n. v. Perry Local Educators' Ass'n.*, 460 U. S. 37, 46 (1983).

The Ballot Photography Provisions likewise fail under *Anderson-Burdick*, which requires the Court to weigh “the character and magnitude” of the burden on the plaintiff’s rights against the extent to which the government’s interest in ensuring “order, rather than chaos” in administering elections makes it “necessary to burden the plaintiff’s rights.” *McLaughlin*, 65 F.3d at 1220–21. Here, on one side of the scale, “the character and magnitude” of the regulation on ballot selfies is severe: a total ban. On the other, ... *nothing*. As discussed in Section I.A.2, *supra*, Defendants cite no support for the proposition that a voter photographing her own voted ballot causes any of the Defendants’ asserted harms, let alone produces “chaos” at the polling place as *Anderson-Burdick* requires. *McLaughlin*, 65 F.3d at 1221. For these reasons, the Ballot Photography Provisions are unconstitutional even under nonpublic forum or *Anderson-Burdick* analyses.

**C. Defendants cannot avoid standard First Amendment scrutiny by trying to remove absentee ballots from the analysis of Hogarth’s challenge to the Ballot Photography Provisions.**

The Court should also reject Defendants’ attempt to have nonpublic forum analysis apply through a gambit based on standing doctrine, by isolating application of the Ballot Photography Provisions to absentee ballots. (ECF No. 89 at 12.) That effort fails out of the gate because Defendants do not explain, nor can they, how a plaintiff with standing to challenge generally applicable statutes, as this Court held Hogarth has for the Ballot Photography Provisions (Order, ECF No. 74), could be prevented from challenging all aspects of their application. The Provisions apply anywhere a voter takes or shares a ballot selfie, not just in voting enclosures—which Defendants do not dispute—and there is no legal or logical basis for separating out

selfies of absentee ballots. Standard First Amendment analyses for speech-restrictive laws therefore apply, *see Rideout*, 838 F.3d at 72–73 (applying intermediate scrutiny to ballot selfie ban that extended beyond polling places), which, as shown, should mean strict scrutiny, or at a minimum, intermediate scrutiny, either of which the Ballot Photography Provisions fail. (*See, supra*, § I.A.)

The Defendants’ “creative” standing analysis cannot support its own weight in any event, for both procedural/jurisprudential reasons, and substantive ones. As to the first of those, the law of the case doctrine provides that, “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *United States v. Aramony*, 166 F.3d 655, 661 (4th Cir. 1999) (quoting *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988)). This Court, as alluded to immediately above, previously denied Defendants’ motions to dismiss for standing. (Order, ECF No. 74.) In doing so, it necessarily rejected the State’s argument that Hogarth “should also not be permitted to rely upon what might happen with absentee voting when she voted in-person.” (State Mot. Dismiss. Mem., ECF No. 67, 7.) Defendants cite no changes in fact or law that should alter that prior ruling, which therefore must stand to bar this repackaged argument. *See Aramony*, 166 F.3d at 661.

Substantively, Hogarth has standing to bring standard First Amendment challenges to the Ballot Photography Provisions, as the Court correctly held, and that remains so even zooming in on absentee ballot selfies. Sharing ballot selfies—even just absentee ballot selfies—is equally (if not more) likely to occur away from a voting

enclosure than in it (*see, supra*, § I.A.1), and that sharing element should by itself bar subdividing Hogarth's challenge based on forum concepts. Moreover, Hogarth can take absentee ballot selfies in the future, and establishing standing as to absentee ballot selfies alone does not require her to plead a specific future timeline for doing so but only, as she has, that she may do so. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 583 (2023).

In *303 Creative*, the Supreme Court held a plaintiff who had never created a wedding website, but “envision[ed]” doing so in the future, had standing to bring a First Amendment challenge to a law prohibiting her denial of expressive goods and services to some customers based her religious beliefs. *Id.* at 579. Hogarth easily clears that low bar, as her intent to take and share absentee ballot selfies is not “speculative” (ECF No. 89 at 12 (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398 (2013))), especially given she has voted absentee before,<sup>8</sup> may do so again whenever she chooses,<sup>9</sup> and will take ballot selfies each time she votes. (Verified Compl. ¶¶ 107–13.) That is a far cry from *Clapper's* “speculative chain” of *five* intervening events outside the parties' control, *see* 568 U.S. at 410, and more certain even than in *303*

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<sup>8</sup> *See* ECF No. 43, [Ex. A](#) (voting record for Susan Jane Hogarth accessed from the North Carolina Board of Election's voter search website showing she voted absentee in 2004). Voters' records are public, showing whether voters voted absentee or not. The Court may therefore take judicial notice of Hogarth's voter record. *See Goldfarb v. Mayor and City Council of Baltimore*, 791 F.3d 500, 508 (4th Cir. 2015). (“[A] court may properly take judicial notice of ‘matters of public record’[.]” (citations omitted)).

<sup>9</sup> North Carolina permits voters to vote absentee without an excuse, *see* N.C. Gen. Stat. § 163-226, so Hogarth may choose to vote absentee without any intervening reason. She cannot—and need not—know in advance when an unexpected event may prevent her from voting in person.

*Creative*, where the plaintiff’s speech first required clients to seek her services. *See* 600 U.S. at 582–83. Defendants accordingly cannot avoid standard First Amendment scrutiny with arguments sounding in Hogarth’s standing.

## **II. The Voting Enclosure Provision Violates the First Amendment As Applied to Ballot Selfies.**

The Voting Enclosure Provision is an unconstitutional restriction on speech in a nonpublic forum as applied to ballot selfies,<sup>10</sup> because it is not “reasonable” under either Supreme Court or Fourth Circuit precedent. *See, e.g., Mansky*, 585 U.S. at 16; *News & Observer*, 597 F.3d at 577. The Provision is unreasonable because it gives elections officials unbridled discretion to deny or permit voters to photograph themselves in the voting enclosure. *See Mansky*, 585 U.S. at 21. In *Mansky*, the Court invalidated a ban on “political” apparel in polling places as unreasonable because elections officials could define “political” any way they wanted and thereby prohibit apparel for “virtually” any reason. *Id.* at 21–22. Here, nothing in North Carolina law or any state guidance prevents officials from prohibiting, for literally any reason, voters from photographing themselves in voting enclosures.

There is, in particular, no foundation for Defendants’ assurance that “officials are provided with clear direction to guide their decisions” enforcing the Voter Enclosure Provision. (ECF No. 89 at 21.) That supposed guidance rests solely on statutes that describe unrelated duties of elections officials (*id.*) and training documents that

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<sup>10</sup> As explained in support of Hogarth’s own motion, the parties agree that expression takes place in voting enclosures—whether they are a “nonpublic” or “limited public” forum—and that any restrictions on speech therefore must be viewpoint neutral and reasonable. (*See* ECF No. 91 at 23 n.17.)

in no way limit elections officials' discretion to permit or deny ballot selfies.<sup>11</sup> (*Id.*; ECF No. 41-1 at 18, 94.) That is a far cry from providing “objective, workable standards” to limit discretion as *Mansky* requires. 585 U.S. at 21. For that reason alone, the Voting Enclosure Provision is unreasonable in violation of the First Amendment.

And that is so without even considering the Fourth Circuit's more stringent reasonableness test for nonpublic forums, which Defendants ignore and, as Hogarth described in support of her own motion, the Voting Enclosure Provision fails. (See ECF No. 91 at 24–25.) That test, which is “akin to ... intermediate scrutiny,” *White Coat Waste Project*, 35 F.4th at 198, weighs the “degree and character of the impairment of protected expression involved” against the “validity of any asserted justification for the impairment.” *News & Observer*, 597 F.3d at 577. Here, the intrusion on speech arising from elections officials' unbridled discretion easily outweighs Defendants' claim that singling out ballot selfies prevents disruption or protects privacy (ECF No. 89 at 22) because, as Defendants concede, “[v]oters can take and share other photographs taken in the voting enclosure.” (ECF No. 89 at 17.) Defendants' justifications therefore defy “common sense or logic,” rendering the Voting Enclosure

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<sup>11</sup> Outside of merely reciting the text of the Ballot Photography Provision, the only mention of photographing voters in any of this “guidance” Defendants offer is a suggestion that elections officials *may* stop election observers from photographing voters if it comes off as intimidating. (ECF No. 89 at 22 n.8.) But that in no way prevents officials from stopping elections observers—let alone voters—from taking photos for any reason the election official wishes, or even no reason at all.

Provision an unreasonable restriction on speech in a nonpublic forum under the Fourth Circuit test. *News & Observer*, 597 F.3d at 579.

Nor may Defendants avoid invalidation by resorting to the *Anderson-Burdick* test (ECF No. 89 at 20) because, like the Ballot Photography Provisions, the Voting Enclosure Provision is a content-based ban on pure speech outside *Anderson-Burdick*'s limited scope. (*See supra* § I.A.1.) Photos of oneself do not involve the elections “mechanics” that *Anderson-Burdick* encompasses, such as filing deadlines, voter eligibility, ballot access, or the ability to vote by mail. *McIntyre*, 514 U.S. at 344–46. The Provision also enacts a total ban on ballot selfies at the whim of elections officials, thereby imposing a “severe’ burden” on speech, *McLaughlin*, 65 F.3d at 1220, and it does so based on content—each of which additionally renders *Anderson-Burdick* inapplicable. *Kendall*, 650 F.3d at 524.

Even if the *Anderson-Burdick* test did apply, the Voting Enclosure Provision still fails for the same reason the Ballot Photography Provisions do (*see supra* § I.B): Defendants provide no factual support for the proposition that a voter photographing herself causes any of the Defendants’ asserted harms, let alone “chaos” at the polling place, as *Anderson-Burdick* requires. *McLaughlin*, 65 F.3d at 1221. Once again, “the character and magnitude” of the regulation, *id.*, is a severe total ban at elections’ officials’ whim, while the other side of the scale is empty. (*See supra* § I.B.) So even under Defendants’ preferred tests, the Voting Enclosure Provision is an unreasonable and therefore unconstitutional restriction on political speech.

## CONCLUSION

For the foregoing reasons, Hogarth asks the Court to deny the Defendants' motion for judgment on the pleadings.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.2(f)(3), I hereby certify this brief contains 6,489 words, as calculated by Microsoft Word version 16.98, and therefore falls within the L.R. 7.2(f)(3)(A) word limit of 8,400 words for a memorandum filed in opposition to a motion.

/s/ Jeffrey D. Zeman

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 1, 2025, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Jeffrey D. Zeman  
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RIGHTS AND EXPRESSION

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

SUSAN JANE HOGARTH,

*Plaintiff,*

v.

SAM HAYES, et al.,

*Defendants.*

Case No.: 5:24-cv-00481-LF

Hon. Louise W. Flanagan

**PLAINTIFF'S REPLY IN SUPPORT  
OF MOTION FOR JUDGMENT ON  
THE PLEADINGS**

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## INTRODUCTION

After two Rule 12(c) filings and full preliminary injunction and Rule 12(b)(1) briefing, it finally becomes clear why the constitutional defense of North Carolina's Ballot Selfie Ban has seemed so off-track: Defendants miscomprehend Plaintiff Susan Hogarth to have mounted only an "as-applied challenge ... based on ... application of a statute to a specific person." (ECF No. 92 at 5–6 (cite and internal quotation omitted; ellipses added)). While the Complaint has as-applied claims, it *also* brings and seeks relief insofar as the challenged laws are facially unconstitutional as applied broadly to an entire type of expression, *i.e.*, ballot selfies. (Verified Compl. ¶¶ F & H, ECF No. 2 (respectively seeking injunctions against enforcement of the ban "against *anyone* who takes or shares their ballot selfie" and "against Hogarth" (emphasis added))). This type of facial as-applied challenge is well-grounded in American law. *See, e.g., John Doe No. 1 v. Reed*, 561 U.S. 186, 194 (2010). By working from the mistaken premise that Hogarth's claims are strictly as-applied to her past selfies, Defendants ignore her facial as-applied challenge seeking to protect all North Carolinians' First Amendment rights and thus fail to mount a proper constitutional defense to it.

This appears to be what led Defendants to lean so heavily on trying to squeeze a defense into a somewhat less demanding nonpublic analysis. But to survive Hogarth's facial as-applied claims, the Ballot Photography Provisions must withstand strict scrutiny as they single out a type of expression for disfavored treatment statewide, *Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015), and they cannot. And no matter what level of scrutiny this Court applies to any provision of

the Ban—strict, intermediate, or even nonpublic forum analysis—the laws fail, facially and as-applied, because all forms of scrutiny require government interests in burdening speech to be real, yet Defendants come to the Court empty-handed. This Court should thus hold the Ballot Selfie Ban unconstitutional and grant Hogarth judgment on the pleadings.

## ARGUMENT

### I. **The Ballot Photography Provisions Must Survive Strict Scrutiny and Fail Any Level of First Amendment Review.**

#### A. **Defendants Cannot Avoid Strict Scrutiny by Misconstruing Hogarth’s Facial As-Applied Challenge.**

The effort to cram this entire lawsuit into nonpublic forum analysis mistakenly presumes Hogarth challenges the Ballot Photography Provisions only as applied to her and her past selfies in voting enclosures. (ECF No. 92 at 2 (citing ECF No. 2 ¶¶ 6, 26, 163, 166, 167, C).) But she also facially challenges them pre-enforcement as they apply to *all* North Carolina voters and *all* ballot selfies, whether in or outside voting enclosures. (See ECF No. 2 ¶¶ A–J.) When facial as-applied claims, like Hogarth’s, “reach beyond the [plaintiff’s] particular circumstances,” the Court treats them as “a facial challenge to the extent of that reach.” *John Doe*, 561 U.S. at 194.

*Doe* provides a useful example. There, a ballot-referendum-petition sponsor and some of the petition’s signers sought to enjoin Washington state’s public records act, as applied to ballot referendum petitions. *Id.* at 193. Construing the challenge’s scope, the Supreme Court explained how facial as-applied challenges work:

The claim is “as applied” in the sense that it does not seek to strike the PRA in all its applications, but only to the extent it covers referendum petitions. The claim is “facial” in that it is not limited to plaintiffs’

particular case, but challenges application of the law more broadly to all referendum petitions.

*Id.* at 194. The Court accordingly reviewed the challenged statute “with respect to referendum petitions in general.” *Id.* at 202. Hogarth, too, challenges the Ballot Photography Provisions’ constitutionality with respect to ballot selfies in general, and Defendants’ failure to understand that infects nearly every argument they make.

Principally, mistaking Hogarth’s facial as-applied challenge for one strictly “as applied” to her past ballot selfies leads Defendants to argue the Ballot Photography Provisions need survive merely the standard for speech regulations for government-controlled property. (ECF No. 92 at 2–3 (citing *Minn. Voters All. v. Mansky*, 585 U.S. 1 (2018)).) In *Mansky*, the Supreme Court applied the nonpublic forum test because the speech restriction at issue applied “only in a specific location: the interior of a polling place.” 585 U.S. at 11. But nonpublic forum analysis does not control here, to Ballot Photography Provisions that—as Defendants concede—apply outside government property, including to photos of absentee ballots completed elsewhere. (State Board Answer ¶¶ 42, 93–94, 144, ECF No. 79.)

The Defendants’ misunderstanding also fuels their mistaken argument that *Mansky* requires a different outcome from ballot selfie cases that predate it. (See ECF No. 92 at 4.) Nonpublic forum analysis long predated *Mansky*,<sup>1</sup> and ballot selfie bans

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<sup>1</sup> See, e.g., *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U. S. 37, 46 (1983) (holding content-based restrictions in nonpublic forums must be reasonable and view-point neutral); *Multimedia Pub. Co. of S.C. v. Greenville-Spartanburg Airport Dist.*, 991 F.2d 154, 159 (4th Cir. 1993) (same and explaining reasonableness test).

—before and after *Mansky*—have faced (and lost under) that standard.<sup>2</sup> Further, courts reviewing ballot selfie bans, both before *and after Mansky*, have invalidated the laws using standard First Amendment scrutiny, because the bans reached beyond government property.<sup>3</sup> Hogarth likewise challenges the Ballot Photography Provisions as they apply not just to her past selfies in the voting enclosure but to everyone, everywhere. (See ECF No. 2 ¶¶ A–J.) Standard First Amendment review accordingly applies, and that means strict scrutiny because the Provisions are content based, as previously explained. (See ECF No. 91 at 11–14.)

Defendants’ confusion regarding Hogarth’s claims also led them to rest their “as applied” argument on cases inapplicable to facial as-applied challenges. (ECF No. 92 at 2.) *Educational Media Co. at Virginia Tech v. Insley*, for example, examines only a personal as-applied claim—invalidating the challenged regulation “as applied to

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<sup>2</sup> In *Rogers v. Madison County Clerk*, for instance, the court invalidated a ballot selfie ban that applied only to polling places under both intermediate scrutiny and as an unreasonable regulation of a nonpublic forum. See No. 2016-SC-3147, 2017 WL 3475008, at \*1–2 (Ill. Cir. Ct. July 20, 2017). And in the post-*Mansky Coalition for Good Governance v. Kemp* the court analyzed one provision applicable to only polling places (a ban on photographing electronic voting screens) under nonpublic forum analysis, while enjoining a provision that applied everywhere (a general ban on voted-ballot photography) under strict scrutiny. See 558 F. Supp. 3d 1370, 1386 (N.D. Ga. 2021). Defendants’ retort that the *Kemp* court later declined to determine forum type (ECF No. 92 at 5) says nothing because the court had before it only a Rule 12 motion on which it did not need to reach the issue in refusing to dismiss. *Coal. for Good Governance v. Kemp*, No. 1:21-CV-02070-JPB, 2021 WL 12299010 (N.D. Ga. Dec. 9, 2021). The important point remains that the court held strict scrutiny applied when it did reach the issue, such as when necessary to find likely success on the merits to grant a preliminary injunction. *Kemp*, 558 F. Supp. 3d at 1386.

<sup>3</sup> See *Rideout v. Gardner*, 838 F.3d 65, 75 (1st Cir. 2016) (applying intermediate scrutiny); *Ind. C.L. Union Found., Inc. v. Ind. Sec’y of State*, 229 F. Supp. 3d 817, 828 (S.D. Ind. 2017) (applying strict scrutiny); *State v. Buzzell*, No. 2022-cv-000361 (Wis. Ct. App. Nov. 27, 2023) (applying strict scrutiny).

the College Newspapers” that sued, as the court had already resolved their separate facial claim. 731 F.3d 291, 296, 302 (4th Cir. 2013). *Richmond Medical Center for Women v. Herring*, similarly, addressed a facial challenge to a partial-birth abortion ban while declining to address the plaintiff’s as-applied challenge. 570 F.3d 165, 172, 180 (4th Cir. 2009). And the Seventh Circuit cases Defendants cite addressed strictly as-applied claims for damages, which Hogarth does not seek. *See Hegwood v. City of Eau Claire*, 676 F.3d 600, 604 (7th Cir. 2012) (deciding case only as applied to the plaintiff’s activity and expressly not reaching facial claim); First Am. Compl. 1001–03, *Hegwood*, No. 09-cv-350 (W.D. Wis. Aug. 3, 2009), 2009 WL 5075804; *Surita v. Hyde*, 665 F.3d 860 (7th Cir. 2011) (deciding only whether qualified immunity shielded defendants from damages for past actions against plaintiff). (*See generally* ECF No. 92 at 2 (citing above cases)). Defendants’ authority thus lacks relevance to Hogarth’s challenge to the Ballot Photography Provisions on their face, as applied to all ballot selfies, and efforts to limit the Court’s review to nonpublic fora is ultimately a fatal foundational error.

**B. The Ballot Photography Provisions Violate the First Amendment No Matter the Test Applied.**

Defendants cannot justify the Ballot Photography Provisions under any level of scrutiny given the failure to substantiate the asserted interests in the restrictions. As Hogarth explained (*see* ECF No. 91 at 11–18), Defendants’ inability to prove their “recited harms are real, not merely conjectural,” means the Provisions fail the governmental interest requirement of either strict or intermediate scrutiny. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 664 (1994) (broadcast requirement failed intermediate

scrutiny without significant governmental interest); *see also Rideout*, 838 F.3d at 72 (declining to resolve whether strict scrutiny applied to ballot-selfie ban where it failed even intermediate scrutiny because state failed to support its asserted interests).

Defendants still fail to support their assertion that the Ballot Photography Provisions further North Carolina's "interests in preventing voter intimidation and election fraud," arguing instead that Hogarth "overstates the need for such evidence." (ECF No. 92 at 6–7.) But the requirement to substantiate asserted governmental interests is bedrock law. *See Turner*, 512 U.S. at 664. Even the Second Amendment case Defendants cite to claim they can carry their burden with "history" or "common sense" (ECF No. 92 at 7) ultimately held the government cannot justify restricting rights "with unsupported intuitions." *United States v. Carter*, 669 F.3d 411, 418 (4th Cir. 2012) (holding "common sense" insufficient under intermediate scrutiny to justify banning drug users from possessing firearms). Rather, "tangible evidence" is required. *Id.*; *see also Wash. Post v. McManus*, 944 F.3d 506, 521–22 (4th Cir. 2019) (requiring states show speech restrictions are "impelled by the facts on the ground"). Defendants attempt to avoid that by relying on the historical analysis from *Burson v. Freeman*, 504 U.S. 191, 200 (1992) (ECF No. 92 at 7), but that fails because, as explained (ECF No. 93 at 13–14), *Burson* examined only the need for polling place restrictions, not restrictions everywhere. The failure to provide anything more than "unsupported intuitions" dooms the Ballot Photography Provisions, like other ballot selfie bans. *See, e.g., Rideout*, 838 F.3d at 73 (distinguishing *Burson* and noting New Hampshire's lack of tangible evidence to support its ban); *Ind. C.L. Union Found.*,

229 F. Supp. 3d 817, 824–25 (holding asserted interests failed strict scrutiny’s “compelling interest” prong when unsubstantiated).

It also renders the Provisions unreasonable in a nonpublic forum because, even there, unsubstantiated interests cannot justify a total content-based ban on speech. For example, a total ban on newspaper racks inside airport terminals failed the Fourth Circuit’s nonpublic forum test because the airport failed to support its asserted interests. *News & Observer Publ’g Co. v. Raleigh-Durham Airport Auth.*, 597 F.3d 570, 581 (4th Cir. 2010). (See ECF No. 93 at 16–17.) Defendants try to avoid this binding Fourth Circuit precedent by arguing “*Mansky* prescribes” the only standard now (ECF No. 92 at 8–11)—but the Fourth Circuit test survived *Mansky*, as indicated by its application both before and after *Mansky*. See *Multimedia*, 991 F.2d at 162 (before); *White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 198 (4th Cir. 2022) (after). *Mansky* may provide another test for speech restrictions in nonpublic fora (that they must be capable of reasoned application), see 585 U.S. at 23, but it is in addition to, not instead of the Fourth Circuit’s “reasonably necessary” test.

That much is clear from how *White Coat*, although analogizing to *Mansky* to invalidate a similar ban on “political” speech, clarified that the Fourth Circuit’s “akin to ... intermediate scrutiny” test still applies. 35 F.4th at 198–99 (citing *Multimedia*, 991 F.2d at 159).<sup>4</sup> And just this year, this Court applied the Fourth Circuit’s test—

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<sup>4</sup> Defendants’ reliance on *White Coat*’s citation of *Lehman v. City of Shaker Heights*, 418 U.S. 298 (1974) (ECF 92 at 8), is misplaced because *White Coat* merely noted the *Lehman* Court held public bus systems could constitutionally regulate “some class of politically charged advertisements” in a nonpublic forum, 35 F.4th at 198, but the

not *Mansky*—to hold that banning a ride-share driver from airport grounds for saying “ass” in a parking lot was not “reasonably necessary” to preserve the forum’s purpose. *Glover v. RDU Airport Auth.*, No. 5:23-CV-00704-M, 2025 WL 89093, at \*2 (E.D.N.C. Jan. 14, 2025). Because the Ballot Photography Provisions fail the Fourth Circuit’s test—and every other more stringent First Amendment standard—due to failure to support the State’s asserted interests,<sup>5</sup> the Provisions are unconstitutional.

## II. The Voting Enclosure Provision Violates the First Amendment Because It Is Not “Reasonable.”

The Voting Enclosure Provision as applied to ballot selfies is an “unreasonable” speech restriction in a nonpublic forum under the Supreme Court and Fourth Circuit tests, because Defendants neither establish the required limiting guidance nor offer sufficient proof their interests in enforcing it outweigh the burden on political speech. *See Mansky*, 585 U.S. at 16; *News & Observer*, 597 F.3d at 577. It is “incapable of reasoned application” under *Mansky* because North Carolina gives elections officials no guidance regarding when to grant or deny voters permission to photograph themselves in voting enclosures, *see Mansky*, 585 U.S. at 21, but rather leaves discretion entirely to “the chief judge of the precinct” to decide whether to allow a particular selfie. N.C. Gen. Stat. § 163-166.3(b). The supposedly “clear standard” Defendants assert requires “the voter [to] give their permission, and the photograph must not

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“political” nature of speech in that sense is irrelevant here—and in any case, the Fourth Circuit held banning all political ads was unreasonable. *Id.* at 198, 203.

<sup>5</sup> Defendants also still do not explain, let alone establish, the inadequacy of state laws directly addressing their asserted harms, so the Ballot Photography Provisions fail strict or intermediate scrutiny for lack of tailoring, too. (*See* ECF Nos. 91 at 18–22 (citing statutes that prevent all of Defendants’ harms without banning ballot selfies).)

contain the image of a voted official ballot.” (ECF No. 92 at 10.) But nothing requires officials to grant a voter who meets those conditions permission to photograph themselves, with or without a voted ballot. The “standard” (*Id.* at 10) thus allows election officials to grant or deny permission for any ballot selfie based on no more than the official’s whim or mood—precisely what *Mansky* cautioned against. 585 U.S. at 22 (warning of “unfair or inconsistent enforcement” of speech bans).

For example, earlier this year, the Seventh Circuit held unreasonable University of Wisconsin-Madison’s policy of prohibiting “off-topic” comments on its social media accounts because, as here, the University tasked officials with enforcing an “indeterminate prohibition’ ... through sheer discretion without ‘objective, workable standards.’” *Krasno v. Mnookin*, No. 22-3170, 2025 WL 2180825, at \*12–13 (7th Cir. Aug. 1, 2025) (citing *Mansky*, 585 U.S. at 21). Likewise here. Election officials enforce the Voting Enclosure Provision through their “sheer discretion,” lacking any “objective, workable standards.” *Id.*

Defendants also fail to rebut Hogarth’s arguments that the Voting Enclosure Provision flunks the Fourth Circuit’s reasonableness test. The ban’s “degree and character” is far from “minimal” (ECF No. 92 at 11 (citing *News & Observer*, 597 F.3d at 577)), where the law bans an entire medium of expression: ballot selfies, which have unique communicative properties. (ECF No. 91 at 10–11.) The Supreme Court has been clear that freedom of speech, even on government property, cannot be limited “on the plea that it may be exercised in some other place,” *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 556 (1975) (quotation marks omitted), or in some other

way. *See City of Ladue v. Gilleo*, 512 U.S. 43, 56, 57 n.16 (1994) (that speaker can use “another medium ... to carry the same messages” does not alter government’s First Amendment duty to independently justify speech restrictions). Finally, as elsewhere, Defendants advance their asserted justifications for the Voting Enclosure Provision’s validity without substantiation (ECF No. 92 at 11), which cannot meet their burden. *See News & Observer*, 597 F.3d at 577.

### CONCLUSION

For the reasons above and previously stated, the Court should grant Hogarth judgment on the pleadings and issue a permanent injunction against enforcement of the Ballot Selfie Ban.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.2(f)(3), I hereby certify this brief contains 2,773 words, as calculated by Microsoft Word version 16.99.2, and therefore falls within the L.R. 7.2(f)(3)(A) word limit of 2,800 words for a reply memorandum.

/s/ Jeffrey D. Zeman  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2025, a true and correct copy of the foregoing document was transmitted via using the CM/ECF system, which automatically sends notice and a copy of the filing to all counsel of record.

/s/ Jeffrey D. Zeman  
Jeffrey D. Zeman  
FOUNDATION FOR INDIVIDUAL  
RIGHTS AND EXPRESSION

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
Civil Action No. 5:24-cv-481-FL

SUSAN JANE HOGARTH,	)	
	)	
Plaintiff,	)	
v.	)	<b>DEFENDANTS’ REPLY</b>
	)	<b>IN SUPPORT OF</b>
SAM HAYES, in his official capacity as	)	<b>DEFENDANTS’</b>
Executive Director of the North Carolina	)	<b>MOTION FOR JUDGMENT ON</b>
State Board of Elections, et al.,	)	<b>THE PLEADINGS</b>
	)	
Defendants.	)	

Defendants Sam Hayes, State Board Executive Director, the members of the State Board, Danielle Brinton, State Board Investigator (“State Board Defendants”), the Director and members of the Wake County Board of Elections (“County Board Defendants”), and Wake County District Attorney Lorrin Freeman (“DA Freeman”), all named in their official capacities only (collectively “Defendants”), provide this reply in support of their motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). [D.E. 88.]

**ARGUMENT**

In her Memorandum in Opposition to Defendants’ Motion for Judgment on the Pleadings [D.E. 93] (“Plaintiff’s Opposition”), Plaintiff argues that the Ballot Photography Provisions and the Voting Enclosure Provision violate the First Amendment. But in doing so, Plaintiff broadens the scope of her Complaint and Supplemental Complaint beyond their allegations, improperly limits the *Anderson/Burdick* balancing test, and misapplies the reasonableness standard of *Minnesota Voters Alliance v. Mansky*, 585 U.S. 1 (2018).

**I. PLAINTIFF’S AS-APPLIED CHALLENGE TO THE BALLOT PHOTOGRAPHY PROVISIONS IS LIMITED TO BALLOT SELFIES IN THE VOTING ENCLOSURE.**

In an effort to overcome the deficiencies in her pleadings, Plaintiff attempts to broaden the scope of her Complaint in two ways. First, Plaintiff appears to invoke a facial challenge to the Ballot Photography Provisions. [D.E. 93 at 6.] Additionally, Plaintiff tries to broaden her challenge outside of photographs in the voting enclosure and invokes absentee balloting. [D.E. 93 at 18-21.] Because both of these positions are inconsistent with the allegations of Plaintiff’s Complaint, the Court should not entertain those extraneous arguments and instead grant Defendants’ Motion for Judgment on the Pleadings.

First, Plaintiff’s Opposition claims that “[t]he Ballot Photography Provisions facially violate the First Amendment as applied to ballot selfies.” [D.E. 93 at 6.] But a facial challenge and an as-applied challenge are not the same. *See White Coat Waste Project v. Greater Richmond Transit Co.*, 35 F.4th 179, 204 (4th Cir. 2025) (“An as-applied challenge is one which depends on the identity or circumstances of the plaintiff. A facial challenge can be decided without regard to its impact on the plaintiff asserting the facial challenge.” (cleaned up)). And Plaintiff’s invocation of a facial challenge to the Ballot Photography Provisions is inconsistent with her pleadings and briefing, which have consistently articulated that Plaintiff has asserted an as-applied challenge to the Ballot Photography Provisions. *See* [D.E. 2 ¶¶ 6, 26, 163, 166-67; D.E. 91 at 7, 11, 14.] To the extent that Plaintiff attempts to make a facial challenge to the Ballot Photography Provisions, Plaintiff has not asserted such a claim in her Complaint or Supplemental Complaint, and Plaintiff is bound by the allegations in her pleadings. *See Southern Walk at Broadlands Homeowner’s Ass’n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 184-85 (4th Cir. 2013) (“It is well-established that parties cannot amend their complaints through briefing or oral advocacy.”).

Second, Plaintiff attempts to take her challenge outside the confines of the voting enclosure. Plaintiff argues that “voters can fill out absentee ballots in a park, at their kitchen table, or in any number of areas ‘far away from the polling place.’” [D.E. 93 at 8 (quoting *Rideout v. Gardner*, 123 F. Supp. 3d 218, 230 (D.N.H. 2015).] And in arguing that Plaintiff has standing to challenge absentee ballots, Plaintiff asks “how a plaintiff with standing to challenge generally applicable statutes . . . could be prevented from challenging all aspects of their application.” [*Id.* at 18.] Because “[t]he [Ballot Photography] Provisions apply anywhere a voter takes or shares a ballot selfie,” Plaintiff argues that “there is no legal or logical basis for separating out selfies of absentee ballot.” [*Id.* at 18-19.] But Plaintiff ignores her own allegations and conduct, which serve to limit her claims about ballot selfies to those taken in the voting enclosure.

Defendants explained in their Response in Opposition to Plaintiff’s Motion for Judgment on the Pleadings (“Defendants’ Opposition”) that Plaintiff brings an as-applied challenge to the Ballot Photography Provisions, which limits Plaintiff’s challenge to the circumstances of her case. [D.E. 92 at 2-3.] Accordingly, Plaintiff’s Complaint and Supplemental Complaint, which clearly identify Plaintiff’s conduct as taking place in the voting enclosure, limit her challenge to ballot selfies in the voting enclosure. [*Id.*] Plaintiff’s last-ditch effort to invoke a 20-year old absentee vote does not change this analysis. Plaintiff’s Complaint and Supplemental Complaint shape the scope of her as-applied challenge, and Plaintiff makes no allegation that she photographed her voted ballot in 2004. Accordingly, Defendants are entitled to judgment on the pleadings.

## **II. *ANDERSON/BURDICK* REVIEW IS NOT LIMITED TO ELECTION MECHANICS.**

In arguing that the Ballot Photography Provisions are subject to strict scrutiny, Plaintiff rejects both the nonpublic forum standard articulated in *Mansky* and the *Anderson/Burdick* balancing test. [D.E. 93 at 8.] But Plaintiff also mistakenly limits *Anderson/Burdick* to “election

mechanics.” [D.E. 93 at 8.] *Anderson/Burdick* is not so limited, and if the Court declines to apply the *Mansky* standard, the Ballot Photography Provisions should be analyzed under the *Anderson/Burdick* balancing test.

The Fourth Circuit has applied the *Anderson/Burdick* balancing test where necessary to balance First Amendment interests with statutes that are part of a complex electoral scheme. In *Fusaro v. Cogan*, 930 F. 3d 241, 244 (4th Cir. 2019), the Fourth Circuit was faced with a First Amendment challenge to a Maryland statute that limited disclosure of Maryland’s list of registered voters to in-state voters and for purposes related to the electoral process. The plaintiff challenged the statute, contending that it violated the Free Speech Clause of the First Amendment by favoring some political speakers over others, and violated the First Amendment because it restricted speech based on content and was unconstitutionally vague. *Id.* at 247. The court considered that the restrictions implicated First Amendment interests because the list was “closely tied to political speech,” the statute imposed “content- and speaker-based conditions on access to and use of the List,” and “suspect conditions may be subject to First Amendment scrutiny.” *Id.* at 250. In assessing what level of scrutiny to apply to the statute, the court recognized the tension between access to government records, which “is ordinarily not subject to any First Amendment constraints,” and the “content- and speaker-based restrictions . . . [that] implicate[d] the concern at the heart of the Free Speech Clause.” *Id.* at 256.

The Fourth Circuit reasoned that “[a] key consideration” was “the context” of the statute. *Id.* at 257. The release of government information was “fundamentally a policy question,” but “[e]qually important” was the statute’s place in a “‘complex[] election code[]’ enacted by the Maryland legislature to regulate federal and state elections, including all the practical and logistical details thereof.” *Id.* Considering these interests, the Fourth Circuit explained the rationale behind

the *Anderson/Burdick* balancing test. *Id.* at 257-58. The court concluded that “[a]lthough the *Anderson-Burdick* test has generally been applied to claims concerning ballot access, its careful balancing of the very interests implicated by [the plaintiff’s] claim le[d [the court] to ‘borrow’ that standard” to the disclosure rule. *Id.* at 258. Specifically, the plaintiff’s challenges “oblige[d] [the court] to resolve the tension between the deference that the courts owe to legislatures in areas meriting careful regulation and the need to protect ‘fundamental’ First Amendment rights.” *Id.* Resolving that tension “is the precise balancing required by the *Anderson-Burdick* analysis.” *Id.*

That balancing of First Amendment rights with areas meriting careful regulation is what the Ballot Photography Provisions call for. The Ballot Photography Provisions are part of North Carolina’s complex election code to which the courts owe the legislature deference, even if those restrictions implicate First Amendment concerns. Given these competing interests, the *Anderson/Burdick* balancing test is an appropriate standard to determine whether the Ballot Photography Provisions are constitutional.

Plaintiff argues that the Ballot Photography Provisions do not satisfy the *Anderson/Burdick* balancing test, contending that the burden is severe compared to the government’s interests. [D.E. 93 at 18.] But in doing so, Plaintiff repeatedly diminishes the State’s legitimate, compelling interests. The Supreme Court has acknowledged that a State has “a compelling interest in ensuring that an individual’s right to vote is not undermined” by fraud, undue influence, or intimidation. *Burson v. Freeman*, 504 U.S. 191, 199 (1992). And Plaintiff cannot argue that there is no evidence of the State’s concerns; even Plaintiff acknowledges that the State has referred four investigations of vote-buying schemes for prosecution since 2015. *See* North Carolina State Board of Elections, 2015- 22 Referred Cases, <https://s3.amazonaws.com/dl.ncsbe.gov/Investigations/NCSBE%20Referred%20Cases%202015-2022.pdf> (last visited August 12, 2025). Accordingly, for the reasons

outlined in Defendant's Memorandum in Support of their Motion for Judgment on the Pleadings, the Ballot Photography Provisions satisfy the *Anderson/Burdick* balancing test. [D.E. 89 at 12-17.]

The Parties appear to agree that the *Mansky* standard governs Plaintiff's challenge to the Voting Enclosure Provision [D.E. 91 at 22-26; D.E. 89 at 19-23.] Nonetheless, Plaintiff argues that the Voting Enclosure Provision is beyond the scope of *Anderson/Burdick* and would not survive its balancing test. [D.E. 93 at 23.] However, if the Court decides not to apply the *Mansky* standard, for the same reasons that the Ballot Photography Provisions would fall within the scope of and satisfy the *Anderson/Burdick* balancing test, so too would the Voting Enclosure Provision.

### **III. THE BALLOT PHOTOGRAPHY PROVISIONS AND THE VOTING ENCLSOURE PROVISION ARE REASONABLE.**

In arguing that the Ballot Photography Provisions are subject to strict scrutiny, Plaintiff rejects the nonpublic forum standard articulated in *Mansky*. [D.E. 93 at 8.] Defendants' Memorandum in Support of their Motion for Judgment on the Pleadings and Defendants' Opposition outline why the nonpublic forum analysis set forth in *Mansky* applies to this case [D.E. 89 at 8-10; D.E. 92 at 1-6], and Defendants do not repeat those arguments here. But Plaintiff also argues that the Ballot Photography Provisions and the Voting Enclosure Provision are not reasonable. Despite Plaintiff's attempts to narrow the scope of reasonableness review, the Ballot Photography and Voting Enclosure Provisions satisfy the *Mansky* standard.

First, Plaintiff argues that the Ballot Photography Provisions are not reasonable under *News & Observer Publishing Co. v. Raleigh-Durham Airport Authority*, 597 F.3d 570 (4th Cir. 2010). Specifically, Plaintiff argues that North Carolina's interests are unsupported, and that the prohibition on ballot selfies is not connected to any of the State's asserted interests. [D.E. 93 at 17.] Although the court in *News & Observer* considered the evidence supporting the State's asserted interests balanced against prohibited conduct, neither *Mansky* nor *White Coat* articulated

any such burden. And the Supreme Court in *Mansky* acknowledged the historical background surrounding regulation of polling places, 585 U.S. at 13-14, and reasoned that “[c]asting a vote is a weighty civic act,” which meant that “[t]he State may reasonably decide that the interior of the voting place should reflect that distinction.” *Id.* at 15. In any event, as explained in Section II, *supra*, the State has compelling interests, and has referred four vote-buying schemes for prosecution within the last ten years. Furthermore, prohibiting photographs of a voted ballot inside a polling place, while allowing other types of photographs, ensures voter secrecy and limits vote buying while allowing for other forms of expression. As explained in Defendants’ Opposition, the Ballot Photography Provisions satisfy *News & Observer* because the “degree and character of the impairment of the protected expression” is minimal when “discounted by any mitigating alternatives that remain.” 597 F.3d at 577.

Second, Plaintiff argues that the Voting Enclosure Provision does not survive *Mansky* because it lacks an objective, workable standard. [D.E. 93 at 22.] However, as explained in Defendants’ Memorandum in Support of their Motion for Judgment on the Pleadings and Defendants’ Opposition, the Voting Enclosure Provision has clear, objective standards that allow for reasoned application. [D.E. 89 at 21-22; D.E. 92 at 10.]

Accordingly, the Ballot Photography and Voting Enclosure Provisions are reasonable.

### CONCLUSION

For the foregoing reasons, for the reasons in Defendant’s memorandum in support of their motion for judgment on the pleadings, and for the reasons in Defendants’ Opposition, Defendants’ motion for judgment on the pleadings should be granted.

Respectfully submitted this the \_\_\_ day of August, 2025.

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

SUSAN JANE HOGARTH,

*Plaintiff,*

v.

SAM HAYES, et al.,

*Defendants.*

Case No.: 5:24-cv-00481

Hon. Louise W. Flanagan

**PLAINTIFF'S  
NOTICE OF APPEAL**

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PLEASE TAKE NOTICE that Plaintiff Susan Hogarth appeals to the United States Court of Appeals for the Fourth Circuit from the March 9, 2026, judgment of this Court granting Defendants' motion for judgment on the pleadings. (ECF No. 100.) In appealing from the judgment, Plaintiff also appeals from all orders and findings of fact and law ancillary to the judgment, including but not limited to the Court's March 9, 2026, order granting Defendants' motion for judgment on pleadings and denying Plaintiff's motion for judgment on the pleadings. (ECF No. 99.)

Dated: March 20, 2026

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**CERTIFICATE OF SERVICE**

I, Jeffrey D. Zeman, hereby certify that on March 20, 2026, I submitted the foregoing to the Clerk of the Court via the District Court's CM/ECF system.

/s/ Jeffrey D. Zeman  
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