

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:23-cv-00861-TDS-JEP

VOTO LATINO, THE WATAUGA  
COUNTY VOTING RIGHTS TASK  
FORCE, DOWN HOME NORTH  
CAROLINA, SOPHIE JAE MEAD, and  
CHRISTINA BARROW,

Plaintiffs,

vs.

ALAN HIRSCH, in his official capacity  
as Chair of the State Board of Elections,  
JEFF CARMON, in his official capacity  
as Secretary of the State Board of  
Elections, STACY EGGERS IV, in his  
official capacity as Member of the State  
Board of Elections, KEVIN N. LEWIS, in  
his official capacity as Member of the  
State Board of Elections, SIOBHAN  
O'DUFFY MILLEN, in her official  
capacity as Member of the State Board of  
Elections, KAREN BRINSON BELL, in  
her official capacity as Executive Director  
of the State Board of Elections, DAWN Y.  
BAXTON, in her official capacity as  
Chair of the Durham County Board of  
Elections, DAVID K. BOONE, in his  
official capacity as Secretary of the  
Durham County Board of Elections, DR.  
JAMES P. WEAVER, in his official  
capacity as Member of the Durham  
County Board of Elections, PAMELA A.  
OXENDINE, in her official capacity as  
Member of the Durham County Board of  
Elections, DONALD H. BESKIND, in his  
official capacity as Member of the  
Durham County Board of Elections,  
MICHAEL BEHRENT, in his official

**RESPONSE OF DEFENDANTS  
MICHAEL BEHRENT,  
ERIC ELLER,  
LETA COUNCILL,  
MATT WALPOLE, AND  
ELAINE ROTHENBERG  
TO PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION [Doc. #44]**

capacity as Chair of the Watauga County Board of Elections, ERIC ELLER, in his official capacity as Member of the Watauga County Board of Elections, MATT WALPOLE, in his official capacity as Member of the Watauga County Board of Elections, LETA COUNCILL, in her official capacity as Member of the Watauga County Board of Elections, and ELAINE ROTHENBERG, in her official capacity as Member of the Watauga County Board of Elections,

Defendants.

NOW COME defendants MICHAEL BEHRENT, ERIC ELLER, MATT WALPOLE, LETA COUNCILL, and ELAINE ROTHENBERG, each sued solely in their respective official capacity as the Chair or Member of the Watauga County Board of Elections (hereinafter referred to collectively as “The Watauga County Board of Elections Defendants”), by and through their undersigned counsel, and hereby respond to the Plaintiff’s *Motion for Preliminary Injunction* [Doc. #44].

In Plaintiff’s *Motion for Preliminary Injunction*, Plaintiffs

specifically seek an order enjoining enforcement of the portion of § 163–82.6B(d) (the “Undeliverable Mail Provision”) which provides: “Notwithstanding any other provision of this Chapter, if the Postal Service returns the first notice required under G.S. 163-92.7(c) as undeliverable before the close of business on the business day before canvass, the county board shall not register the applicant and shall retrieve the applicant’s ballot and remove that ballot’s votes from the official count.

[Doc. #44, p.1].

The Watauga County Board of Elections Defendants hereby advise the Court and the other parties to this action that they do not take a position as to the Plaintiff’s *Motion*

*for Preliminary Injunction.* The Watauga County Board of Elections Defendants are obligated to faithfully administer the election laws of the State of North Carolina, whatever they may be -- a responsibility that they have and will continue to faithfully perform -- and will continue to follow the instructions and directives of the North Carolina State Board of Elections, as required by N.C. Gen. Stat. 163-22 and as otherwise directed by law. Of course, the Watauga County Board of Elections Defendants will likewise faithfully comply with the Orders and rulings of this Honorable Court and those issued by other courts of competent jurisdiction.

Respectfully submitted, this the 13th day of December, 2023.

/s/ BRADLEY O. WOOD

Bradley O. Wood

N.C. State Bar No.: 22392

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*Counsel for Defendants Michael Behrent,*

*Eric Eller, Leta Council, Matt Walpole, and*

*Elaine Rothenberg*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 13, 2023, I electronically filed the **RESPONSE OF DEFENDANTS MICHAEL BEHRENT, ERIC ELLER, LETA COUNCILL, MATT WALPOLE, AND ELAINE ROTHENBERG TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION [Doc. #44]** with the Clerk of Court using the CM/ECF system, which will send notification of said filing to all Counsel of record.

/s/ BRADLEY O. WOOD

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