IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:23-cv-00878-TDS-JEP

DEMOCRACY NORTH CAROLINA; NORTH CAROLINA BLACK ALLIANCE; LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA,

Plaintiffs,

v.

FRANCIS X. DE LUCA, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; et al.,

Defendants,

and

PHILIP E. BERGER, in his official capacity as PRESIDENT *PRO TEMPORE* OF THE NORTH CAROLINA SENATE; et al.,

Intervenor Defendants.

PLAINTIFFS' PRETRIAL BRIEF

RETRIEVED FROM DEMOCRACYDOCKET.COM

Plaintiffs Democracy North Carolina ("Democracy NC"), North Carolina Black Alliance ("NCBA"), and the League of Women Voters of North Carolina (the "League") submit the following Trial Brief outlining their legal claims, pertinent authority, and anticipated evidence in support.

BACKGROUND

Plaintiffs filed this action on October 17, 2023, seeking a declaratory judgment that Section 10(a) of Senate Bill 747 ("SB 747") is unconstitutional under the First, Fourteenth, and Twenty-Sixth Amendments and a permanent injunction barring its enforcement. The challenged provision drastically changed the same-day registration process for North Carolinians, from a system with multiple safeguards to protect the fundamental right to vote that also advanced legitimate state interests, to one that targets youth voters and their preferred method of voting with new pitfalls, and which guarantees eligible voters will have their ballots rejected through no fault of their own.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Plaintiffs have two causes of action for trial:

- Count Two (All Defendants) – Undue Burden on the Fundamental Right To Vote in Violation of the First and Fourteenth Amendments to the Constitution of the United States and 42 U.S.C. § 1983; and
- Count Three (All Defendants) – Intentional Discrimination in Violation of the Twenty Sixth Amendment to the Constitution of the United States and 42 U.S.C. § 1983.

Dkt. 1, ¶¶ 107-18.

On May 22, 2025, Plaintiffs voluntarily dismissed Count One, a procedural due process claim, after this Court entered a Consent Order in related matters requiring a limited notice-and-cure process for future same-day registration under SB 747. Dkt. 133. Counts Two and Three survived summary judgment and an additional post-discovery mootness challenge on July 21, 2025 (Dkt. 149).

ARGUMENT

I. PLAINTIFFS HAVE STANDING TO BRING SUIT

To establish Article III standing, a plaintiff must show (1) "that she has suffered or likely will suffer an injury in fact" that (2) "likely was caused or will be caused by the defendant," and (3) "likely would be redressed by the requested judicial relief." *FDA v. All. For Hippocratic Medicine*, 602 U.S. 367, 380 (2024) ("*Alliance*").

An organization establishes injury-in-fact when (1) "an action perceptibly impairs an organization's ability to carry out its mission" and (2) "consequently drains the organization's resources." *Republican Nat'l Comm. v. N.C. State Bd. of Elections*, 120 F.4th 390, 395–96 (4th Cir. 2024) (cleaned up). Under this standard, "voter engagement" organizations who "counsel[] interested voters and volunteers on election participation" have regularly been deemed to have suffered injuries from voting policies. *See id.* at 396–97. *See also* Dkt. 149 at 4 (explaining that the "Fourth Circuit has clarified that organizations with related missions who suffer similar harm possess standing even after the Supreme Court's decision in [*Alliance*]").

Plaintiffs are 501(c)(3) non-partisan organizations who engage, educate, and mobilize North Carolina voters to participate effectively in their democracy. Each has

RETRIEVED FROM DEMOCRACYDOCKET.COM

programs designed to address youth and student voting issues specifically and spends significant time and resources to reach youth and student voters. Testimony from Plaintiffs' principals and field organizers will describe each group's robust voter engagement programming and show how Plaintiffs were forced to shift resources away from their core voter engagement and turnout activities to address the foreseeable (and foreseen) harms of the new SDR system, which targets youth voters and rejects eligible voters' ballots due to circumstances outside of their control. Relief from this Court would eliminate the risk of haphazard disenfranchisement for SDR users, redressing the injuries Plaintiffs have suffered because of SB 747. Such evidence demonstrates organizational standing.

Plaintiffs will also demonstrate third-party standing. *See generally Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199, 215 (4th Cir. 2020). The trial record will show that eligible voters have been and will be disenfranchised by SB 747, but that it is impossible to predetermine *which* voters will suffer that fate, and do so on a timeline in which voters can bring an action on their own behalf. Plaintiffs will offer evidence demonstrating their close relationships with these voters through their civic engagement work.

RETRIEVED FROM DEMOCRACYDOCKET.COM

II. THE LEGISLATURE ENACTED SB 747 WITH DISCRIMINATORY INTENT IN VIOLATION OF THE TWENTY-SIXTH AMENDMENT

A. Courts apply the *Arlington Heights* factors in assessing Twenty-Sixth Amendment claims

Most courts addressing Twenty-Sixth Amendment claims have applied the Fifteenth Amendment's "intentional discrimination" framework as articulated by the Supreme Court in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977). *See, e.g.*, *League of Women Voters of Fla., Inc. v. Detzner*, 314 F. Supp. 3d 1205, 1221

(N.D. Fla. 2018); *One Wis. Inst., Inc. v. Thomsen*, 198 F. Supp. 3d 896, 926 (W.D. Wis. 2016). That standard should apply here.

In applying the *Arlington Heights* standard to Twenty-Sixth Amendment claims, courts consistently focus on the Amendment's plain language, which neatly tracks that of the Fifteenth Amendment. In *Detzner*, for example, plaintiffs lodged a Twenty-Sixth Amendment challenge against an Opinion from the Florida Secretary of State that barred students from voting early on college campuses. 314 F. Supp. 3d at 1210–11. The court applied *Arlington Heights* and granted the injunction, explaining that "the [Twenty-Sixth] Amendment's text is patterned on the Fifteenth Amendment … suggest[ing] that *Arlington Heights* provides the appropriate framework[.]'" *Id.* at 1221.

Likewise, the *Thomsen* plaintiffs alleged that a Wisconsin law requiring voters to present a photo ID violated their Twenty-Sixth Amendment rights, because it intentionally discriminated against them on the basis of age. 198 F. Supp. 3d at 902, 917, 925. The district court held that *Arlington Heights* was the applicable standard, reasoning that the Twenty-Sixth Amendment's text is patterned on the Fifteenth Amendment's, and that it was "difficult to believe that the [amendment] contributes no added protection to that already offered by the Fourteenth Amendment [through the *Anderson-Burdick* framework], particularly if a significant burden were found to have been intentionally imposed solely or with marked disproportion on the exercise of the franchise by the benefactors of that amendment." *Id.* at 926 (citing *Lee v. Va. State Bd. of Elec.*, 188 F. Supp. 3d 577, 609–10 (E.D. Va. May 19, 2016), and *Walgren v. Bd. of Selectmen of Town of Amherst*, 519 F.2d

RETRIEVED FROM DEMOCRACYDOCKET.COM

1364, 1367 (1st Cir. 1975), respectively). On appeal, the Seventh Circuit agreed with this standard. *See Luft v. Evers*, 963 F.3d 665, 673 (7th Cir. 2020).

While the Fourth Circuit in *Lee* expressed uncertainty concerning the availability of and proper standard for Twenty-Sixth Amendment claims, 843 F.3d 592, 607 (4th Cir. 2016), the court nonetheless applied the Fifteenth Amendment standard. *Id.* ("[I]f the Twenty-Sixth Amendment functions like the Fifteenth Amendment, the plaintiffs would also need to demonstrate an intent to discriminate on the basis of age."). Other circuits to have recently addressed a Twenty-Sixth Amendment claim have endorsed the application of Fifteenth Amendment jurisprudence, even where the claim was ultimately not successful. *See Tully v. Okeson*, 78 F.4th 377, 382 (7th Cir. 2023) (finding the Supreme Court's Fifteenth Amendment jurisprudence "a good starting place for our analysis"); *Texas Democratic Party v. Abbott*, 978 F.3d 168, 183–84 (5th Cir. 2020) (noting that the Twenty-Sixth Amendment's "language and structure . . . mirror that of the Fifteenth, Nineteenth, and Twenty-Fourth Amendments [and] each of those amendments has been interpreted to provide an individual right to be free from the denial or abridgement of the right to vote based on the classification described in the Amendment.").

RETRIEVED FROM DEMOCRACYDOCKET.COM

Finally, these approaches are consistent with the history of the Twenty-Sixth Amendment. The Twenty-Sixth Amendment is the result of a clear Congressional intent to enfranchise and protect youth voters beyond what the Constitution already provided prior to its ratification. The amendment was prompted by the Supreme Court's decision in *Oregon v. Mitchell*, 400 U.S. 112 (1971), which invalidated Congress's attempt to lower the voting age in state and local elections to eighteen. *Id.* at 117–18 (Black, J., announcing

the judgment of the Court). Congress was concerned that state efforts to comply with that decision by establishing federal-only systems for young voters would "forc[e] young voters to undertake special burdens—obtaining absentee ballots, or traveling to one centralized location in each city, for example—in order to exercise their right to vote," which "might well serve to dissuade them from participating in the election." S. Rep. No. 92-26 at 14 (1971). Congress considered that result to be constitutionally suspect even under then-current law. *See id.* ("[S]uch segregation might even amount to a denial of their 14th Amendment right to equal protection of the laws in the exercise of the franchise."). But to remove all doubt, Congress proposed the Twenty-Sixth Amendment, not only to effectuate the lowering of the voting age, but also to prevent "special burdens" from being levied on young voters. *Id.*; *see also Worden v. Mercer County Bd. Of Elections*, 294 A.2d 233, 237 (N.J. 1972) (noting the legislative history of Twenty-Sixth Amendment supports a "purpose not only of extending the voting right to young voters but also of encouraging their participation by the elimination of all unnecessary burdens and barriers").

RETRIEVED FROM DEMOCRACYDOCKET.COM

To achieve this, Congress used the structure of the other voting amendments to the Constitution. "The authors of the Twenty-Sixth Amendment consciously modeled it after the Fifteenth and Nineteenth Amendments, such that the texts of these three amendments are almost identical." Eric S. Fish, Note, *The Twenty-Sixth Amendment Enforcement Power*, 121 YALE L.J. 1168, 1175 (2012); *see also* S. Rep. No. 92-26 at 2 (1971) ("This section embodies the language and formulation of the 19th amendment, which enfranchised women, and that of the 15th amendment, which forbade racial discrimination at the polls.").

Accordingly, this Court should apply Fifteenth Amendment standards—namely, the *Arlington Heights* framework—in evaluating Plaintiffs' Twenty-Sixth Amendment claim.

B. Evidence under the *Arlington Heights* framework will show that the Legislature enacted the same-day registration provision of SB 747 with an unlawful intent to discriminate against youth voters

The *Arlington Heights* standard calls for a "sensitive inquiry into [ ] circumstantial and direct evidence of intent" to determine whether "invidious discriminatory purpose" motivated the challenged legislation. 429 U.S. at 266. A plaintiff alleging discriminatory intent "need not establish that the challenged policy rested solely on discriminatory purposes, or even that a particular purpose was the dominant or primary one." *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 883 (4th Cir. 2023) (internal citations omitted).

"The impact of the official action—whether it bears more heavily on one age-group than another, may provide an important starting point." *Detzner*, 314 F. Supp. 3d at 1222 (citing *Arlington Heights*, 429 U.S. at 266). An invidious purpose may also be discerned from (1) the historical background of the challenged decision; (2) the specific sequence of events leading up to the decision; (3) departures from the normal procedural sequence; (4) substantive departures, where the factors usually considered important strongly favor a decision contrary to the one reached; and (5) legislative or administrative history. *Arlington Heights*, 429 U.S. at 266–68. Significantly, targeting a protected class, even if to "preserve legislative power in a partisan manner[,] can also be impermissibly discriminatory." *Veasey*, 830 F.3d at 241; *accord N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 226 (4th Cir. 2016) ("When a legislature dominated by one party has dismantled barriers

RETRIEVED FROM DEMOCRACYDOCKET.COM

to African American access to the franchise, even if done to gain votes, 'politics as usual' does not allow a legislature dominated by the other party to re-erect those barriers").

At trial, Plaintiffs will present sufficient evidence under the *Arlington Heights* factors to support a finding of discrimination on the basis of age.

1. SB 747 has a disparate impact on young voters and is certain to invalidate eligible voters' ballots

The evidence at trial will show that SB 747—and its rejection of eligible voters' ballots—bears more heavily on young voters than other age groups.

Testimony from Plaintiffs' Expert, Kevin Quinn, will demonstrate this disparate impact. Dr. Quinn's analysis shows that young voters under the age of 26 overwhelmingly rely on same-day registration, more than any other age group. PX180 (Quinn Report)[1] ¶¶ 67-70, 84-87, 147. Young voters make up between 30 and 40% of same-day registrants in a given election, yet use early voting at lower rates than the voter population overall while also only making up 12 to 14% of total registered voters. *Id.* ¶ 68-70, 85-89. Historical elections data from 2010 to 2025 show young voters were disproportionately more likely to rely on a second verification mailer to save their registration than any other age group, with 44% of such voters (approximately 20,000 individuals) verified on a second mailer. PX182 (Quinn Supp. Report)[2] ¶ 44. And young voters make up about 41.9% of those who

RETRIEVED FROM DEMOCRACYDOCKET.COM

[1] Attached as Exhibit A. Pursuant to the parties' agreement, expert reports will be received into evidence when the corresponding expert testifies. *See* Dkt. 147-1 (Joint Defendants' Objections) at 19 n.2.

[2] Attached as Exhibit B. This report supplements Section VII of the original report, as described therein.

failed mail verification initially but later re-registered and successfully verified at the same address, suggesting that their initial verification failure was erroneous. *Id*. ¶ 29.

Dr. Quinn's analysis also shows a strong association between college addresses and the need for a second mailer to verify registration. Registrants at high-density addresses who received a second mailer (and thus had already failed the first) were approximately four times more likely to reside at a college address than other registrants at high-density addresses overall. *Id.* ¶ 41.

This is consistent with evidence from election administrators and Plaintiffs themselves, which will demonstrate that students residing in college dormitories and other campus housing have trouble with mail verification because of their varied and complicated mailing address conventions. This evidence will show even counties that go above and beyond legal requirements to address those challenges—something few counties have the funding, capacity, and expertise to effectuate—still see failed verifications and few cures.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Dr. Quinn will also testify that the notice-and-cure process used during the 2024 elections did not eliminate, or even mitigate, the disparate impact on young voters. Rather, the 2024 elections were a case study for the harm to young voters under the new regime. Youth voters accounted for nearly 40% (541/1379) of same-day registrants who failed mail verification and were not judged to have an erroneous address in the 2024 General Election. PX180 (Quinn Report) ¶ 132. Only 14% (76/541) of those voters were able to cure their ballots, the lowest rate for any age group and well under the 30% cure rate for voters 66

and older. *Id.* Young voters also made up 50% (86/172) of registrants flagged as having mailing address errors after a failed mailing. *Id*. ¶¶ 133, 138.

By establishing the importance of the second mailer for young voters and the ineffectiveness of the notice-and-cure process for this age group, Dr. Quinn's testimony will show that SB 747's elimination of that second mailer will have a disparate impact on young voters. PX180 (Quinn Report) ¶ 157.

Plaintiffs' Expert, Jacob Grumbach, will testify that SB 747 is consistent with a broader trend of legislation seeking to reduce turnout among young Americans. PX176 (Grumbach Report)[3] ¶ 3. Young people have notably higher rates of residential mobility than other age groups, which translates into a disproportionate likelihood of experiencing barriers to voting, including issues related to mail. *Id*. ¶¶ 3, 36, 42. These shared circumstances contribute to young voters' distinct political identity and priorities, many of which are unique or uniquely important to their generation. *Id*. ¶¶ 15-21. Dr. Grumbach's testimony will also show that "young voters [are] a political community with shared experiences and distinct preferences[,]" and are treated as such by political actors. PX179 (Grumbach Rebuttal Report)[4] ¶¶ 2-5. These common life experiences provide the means—and generational political polarization provides the motive—for political actors to seek to reduce youth turnout. PX176 (Grumbach Report) ¶¶ 57-59. And restricting SDR furthers that goal by reducing turnout among younger Americans. *Id*. ¶ 3.

RETRIEVED FROM DEMOCRACYDOCKET.COM

[3] Attached as Exhibit D.

[4] Attached as Exhibit E.

Dr. Grumbach will also explain, relying on studies of voter turnout and behavior, that voting in a past election increases one's likelihood of voting in the future and that this is especially impactful when a voter has not yet formed consistent habits around voting. *Id.* ¶¶ 52-54. Increasing administrative burdens in the voting process, especially where those burdens result in retroactive disqualification of a voter's ballot, has enduring effects on that voter's willingness to participate in the electoral process in the future. *Id.* ¶ 55. By increasing barriers to voting and targeting an age group that has not become habitual voters, SB 747 doubly obstructs youth voters by impeding their present participation and depressing such participation in the future. *Id.* ¶¶ 52-56.

Finally, the analysis of Dr. Paul White, Defendants' quantitative expert, will not dispute these findings, rather it supports Plaintiffs' affirmative case. Dr. White analyzes "relative denial rates across age groups" to conclude that "the second mailing had no significant effect on the denial rates of younger registrants," PX184 (Quinn Rebuttal Report)[5] ¶ 33, 47. But his analysis misses the forest for the trees because it only measures registration outcomes of those voters who have already failed the first attempt at mail verification, while ignoring any analysis concerning which cohorts fail the first mailer and thus needs a second mailer at all. If second-mailer denial rates are the same across age groups, but a larger fraction of youth registrants rely on the second mailer for verification (as is the case here), then removing the possibility of verification on a second mailer will disproportionately negatively impact youth registrants. *Id.* ¶ 33. Indeed, Dr. White's

RETRIEVED FROM DEMOCRACYDOCKET.COM

[5] Attached as Exhibit C.

analysis, when properly interpreted, shows that young voters made up over 40% of same-day registrants who were verified on a second mailer and that young voters were more than five times more likely to rely on the second mailer for verification than older voters—points consistent with Dr. Quinn's findings—and also shows that eliminating the possibility of verification on the second mailer has a disproportionately negative impact on youth registrants. *Id.* ¶¶ 50-53. Testimony at trial will also show technical and methodological flaws in Dr. White's analysis that undermine his findings.

2. Legislative process, sequence of events, and historical context evince an intent to crack down on youth voting

SB 747's disparate harm to young voters is no accident. Evidence of the events leading up to SB 747's enactment will show that these changes to SDR were intended to impede young voters from voting. Testimony from those involved in the bill's development and passage, including its main sponsors in the Senate (Senator Warren Daniel) and House (Representative Grey Mills), will show that SB 747's change to SDR was delivered in response to a monthslong influence campaign by election integrity activists, Jim Womack and Cleta Mitchell, who publicly espoused anti-student rhetoric[6] and sought a corresponding legislative crackdown on youth voting.

RETRIEVED FROM DEMOCRACYDOCKET.COM

[6] While much of the animus from NCEIT representatives focuses on the voting patterns and conduct of students, such evidence bears directly on the issue of age discrimination. *See Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 757 (M.D. Tenn. 2015) (noting "plaintiffs can certainly make a case that students are disproportionately younger than the average voter population and that abridging the rights of students can be a proxy for abridgement of rights on the basis of age").

Beginning in January 2023, Jim Womack's North Carolina Election Integrity Team ("NCEIT") communicated with Senator Daniel about NCEIT's issues with SDR and out-of-state college registration and suggested the "Cleta-Mitchell-endorsed" proposal of eliminating SDR entirely. Womack also communicated NCEIT legislative priorities and fed proposed bill text to Representative Mills. These efforts were translated into official action at multiple turns, with Mills sponsoring two other bills that mirrored NCEIT proposals (one of which was later incorporated into SB 747) and Womack applauding another Mills-sponsored effort to change SDR ballots to provisional ballots (an idea prominently espoused by NCEIT). NCEIT's legislative advocacy campaign was sufficiently influential to land Womack and Mitchell a private two-hour presentation on May 24, 2023, with the three Senate election chairs (including Daniel), the main bill drafter (Brent Woodcox), and legal counsel (Josh Yost). The presentation identified SDR as a problem and recommended eliminating it entirely or requiring same-day registrants to vote provisional ballots.

RETRIEVED FROM DEMOCRACYDOCKET.COM

SB 747 was filed in the Senate about a week later and included a provision requiring same-day registrants to vote provisionally, with their ballots to be counted only upon passing mail verification or if they brought in additional proof of residence. Upon the bill's release, NCEIT promptly took credit for it on their web page. NCEIT continued to advocate for the bill until its enactment—and once that happened, NCEIT listed it as one of their legislative successes.

The testimony of the bill sponsors will not rebut this version of the events. Daniel admitted that the change to SDR was designed to be responsive to the "election integrity

groups" and that it was not a "significant aspect" of the bill to him, while Mills knew it was an NCEIT priority and could offer only generic explanations for its inclusion. Neither sponsor studied how SB 747 would impact SDR users or what interest its changes would serve. Tellingly, the sponsors did not focus on the SDR changes in the legislative process, did not consider those changes an important part of the bill, and acknowledged that it was in the bill at the request of third parties outside the legislature. And the goal of expediting election finality, proffered as justification for SB 747 as a whole, was in direct conflict with the change to SDR, which pushed thousands of ballots to the post-election canvass period for review. While some effort will likely be made to pin the origin of the challenged provision on the State Board, testimony from the State Board's representatives will show that the State Board (unlike NCEIT) was not consulted prior to the filing of SB 747, did not request a change to SDR or think it was needed, and only offered a more administratively workable alternative when it became clear that changing SDR was non-negotiable for the proponents of SB 747.

RETRIEVED FROM DEMOCRACYDOCKET.COM

All told, the legislative record will demonstrate that the SDR changes in SB 747 resulted from a desire to curb young voters' participation stemming from the anti-youth animus of NCEIT and were enacted into law via the responsive actions of the bill sponsors. This is sufficient for Plaintiffs to be successful on their discriminatory intent claim. *See Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1008 (11th Cir. 2018) (enjoining policy as racially discriminatory where "those who played a primary role in lobbying for the state action translated their grassroots effort into official action" (cleaned up)); *United States v. Yonkers Bd. of Educ.*, 837 F.2d 1181, 1125 (2d Cir. 1987) (discriminatory intent can be

established where "animus was a significant factor in the position taken by the persons to whose position the official decision-maker [was] knowingly responsive."); *see also Smith v. Clarkton*, 682 F.2d 1055, 1066 (4th Cir. 1982) (finding "ample evidence" defendants acted with discriminatory intent in "direct response" to "racially inspired" public opposition); *Mi Familia Vota v. Fontes*, 129 F.4th 691, 727–28 (9th Cir. 2025) (finding discriminatory intent where the third-party "helped author" the bill, sent legislators materials, "was involved with the [bill's] enactment from start to finish," and both claimed and received credit for the bill).

These actions continue a pattern of attacks on young voters and their preference for early voting and SDR. *See generally McCrory*, 831 F.3d at 235 (striking down legislation that would have decreased the number of days dedicated to early voting, eliminated SDR, and eliminated preregistration for 16- and 17-year-olds); *Anderson v. North Carolina State Bd. of Elections*, No. 14CVS12648, 2014 WL 6771270, at *1 (N.C. Super. Oct. 13, 2014) (striking down an attempt to close an early voting site at Appalachian State University which the court found had "no other intent from [the] board's decision other than to discourage student voting").

RETRIEVED FROM DEMOCRACYDOCKET.COM

C. Defendants will be unable to carry their burden to show that SB 747 would have been enacted without anti-youth animus as a motivating factor

Finally, Defendants will not be able to prove that SB 747's change to SDR would have been enacted without anti-youth animus as a motivating factor.

As noted above, *supra* Section II.B.2, the evidence will show that the legislators made this change at the behest of NCEIT and without any alternative justification for

advancing this restriction on youth voting. Although Defendants may argue that the SDR change would have been enacted due to SB 747's general goals of promoting voter confidence and expediting the finality in elections, the evidence will not bear that explanation out. And as Dr. Grumbach will testify, SB 747 imposes a barrier on voting, especially for young voters, without any clear corresponding improvement in election security.

III. SB 747 CREATES AN UNDUE BURDEN ON THE FUNDAMENTAL RIGHT TO VOTE IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS

The *Anderson-Burdick* framework provides for a sliding scale of scrutiny on burdens on the fundamental right to vote. If a law imposes a severe burden on that right, strict scrutiny applies. *See Fusaro v. Cogan*, 930 F.3d 241, 257–58 (4th Cir. 2019). "[E]ven rational restrictions on the right to vote are invidious if they are unrelated to voter qualifications." *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 189 (2008) (Stevens, J., controlling op.). If the burden is determined to be less than severe, courts balance "the character and magnitude of the burdens imposed against the extent to which the regulations advance the state's interests." *Fusaro*, 930 F.3d at 257–58 (citation omitted); *see also Libertarian Party of Virginia v. Alcorn*, 826 F.3d 708, 716 (4th Cir. 2016); *Voto Latino v. Hirsch*, 712 F. Supp. 3d 637, 664 (M.D.N.C. 2024) ("*Anderson—Burdick* balancing operates on a sliding scale: the greater the burden imposed, the more important a state's justification must be"). Notably, any burden on the constitutional right to vote—"[h]owever slight [it] may appear"—"must be justified by relevant and legitimate state interests 'sufficiently weighty to justify the limitation.'" *Crawford*, 553 U.S. at 191

RETRIEVED FROM DEMOCRACYDOCKET.COM

(Stevens, J., controlling op.) (quoting *Norman v. Reed*, 502 U.S. 279, 288-89 (1992)). The court must "not only determine the legitimacy and strength of each of those interests, [but] also must consider the extent to which those interests make it *necessary* to burden the plaintiff's rights." *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983) (emphasis added). This is "a fact-intensive inquiry." *Daunt v. Benson*, 999 F.3d 299, 313 (6th Cir. 2021).

When an undue burden on the right to vote is shown under this fact-dependent inquiry, relief must be shaped to remedy the specific undue burden shown. *See, e.g.*, *Graveline v. Benson*, 992 F.3d 524, 546–47 (6th Cir. 2021) (affirming trial court's remedy which "addresses the combined effect of the statutory scheme but still accounts for the uncontested evidence [] set forth to defend the necessity of the [challenged election procedure]"); *Green Party of Ga. v. Kemp*, 171 F. Supp. 3d 1340, 1373–74 (N.D. Ga. 2016) (describing the process for "crafting [a] remedy" that "balance[s] several concerns" including "compl[ying] with the United States Constitution" and the State's asserted interests); *see also McCrory*, 831 F.3d at 239 (explaining that "once a plaintiff has established the violation of a constitutional or statutory right in the civil rights area, . . . court[s] ha[ve] broad and flexible equitable powers to fashion a remedy that will fully correct past wrongs" (alterations in original) (quoting *Smith v. Town of Clarkton*, 682 F.2d 1055, 1068 (4th Cir. 1982))).

RETRIEVED FROM DEMOCRACYDOCKET.COM

A. SB 747 places a severe burden on the fundamental right to vote

"The right to vote is fundamental." *Voto Latino*, 712 F. Supp. 3d at 665. At trial, Plaintiffs will establish that SB 747 severely burdens that fundamental right, requiring application of strict scrutiny.

SB 747 severely burdens the right to vote by creating significant risk that eligible, bona fide voters who follow all applicable rules and affirmatively prove their address when registering will nonetheless be disenfranchised through no fault of their own. Dr. Quinn will testify that, historically, tens of thousands of registrants have relied on the second mailer for verification. By removing the second mailer, SB 747 will disenfranchise many voters who would have been conclusively established as eligible voters under the old regime. Dr. Quinn will also explain that thousands more voters failed both mailers and then re-registered successfully at the same address or else voted provisionally at the same address, suggesting many verification failures, too, were erroneous. *See supra* Section II.B.1.

RETRIEVED FROM DEMOCRACYDOCKET.COM

Additional evidence will illustrate some of the issues that can lead to erroneous mail verification failures, such as election official or postal service errors, and confirm that SB 747 can and will lead to disenfranchisement of eligible voters. *See supra* Section II.B.1. Legislators, the State Board, and Plaintiffs will all agree at trial that SB 747 could disenfranchise eligible voters through errors outside of their control.

Furthermore, the evidence will show that these types of no-fault "exclusions" continue to happen despite the notice-and-cure process. *See supra* Section II.B.1. County board testimony will show that voter phone numbers may not always be transferred

properly and that many voters do not provide phone numbers or email addresses, leaving the cure process insufficient to fix SB 747's erroneous disenfranchisements. And as with young voters, SB 747's disenfranchisement of eligible voters will have lasting consequences for those voters' future political participation. *See id*.

Nor can the burdens imposed by SB 747 be constitutionally saved by virtue of voting opportunities available elsewhere in North Carolina's election code. As a threshold matter, a state does not have constitutional *carte blanche* to target methods of voting used by disfavored classes of voters. "[I]t is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status." *Celebrezze*, 406 U.S. at 793. That SB 747 disproportionately burdens youth votes (an "identifiable political group") makes its burdens "especially difficult" to justify. *Id.*

The election code as a whole does not render SB 747 constitutional for an additional reason. SB 747 creates a scheme where same-day registrants, unlike other voters, cannot be assured that their ballots will count—even after they have complied with every step required of a North Carolina voter, including by proving their residence in a way not required of other in-person voters. Same-day registrants must nonetheless wait and hope the new system does not arbitrarily disqualify their vote. This distinguishes the burden of SB 747 from more typical burdens, which are weighed against "the opportunities provided by a State's entire system of voting when assessing the burden imposed by a challenged provision." *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 671 (2021). While a voting burden "cannot be evaluated without also taking into account the other available

RETRIEVED FROM DEMOCRACYDOCKET.COM

means" of voting, *id.*, SB 747 is peculiar in that it imposes its most onerous burden at precisely the moment when a voter has *no* available alternative for voting. The threat of disenfranchisement comes entirely after a voter has already cast their ballot, which self-evidently prevents them from using an alternative voting method.

By introducing this additional eligibility requirement that can only be satisfied after the voter has left the voting booth, SB 747's SDR scheme introduces an element of random chance into whether a specific class of voters—same-day registrants—will have their ballots counted. The Constitution cannot countenance, let alone require, that a class of voters win at the roulette wheel before their ballots will count. The single verification mailing that is SB 747's primary (and, given the evidence concerning the inefficacy of the notice-and-cure process, nearly exclusive) safeguard against erroneous disenfranchisement cannot bear the weight that SB 747 places on it, regardless of what opportunities may be available elsewhere in the election code. After all, "post-election ballot disqualification for individuals erroneously identified as [ineligible] constitutes a substantial burden on the right to vote." *Griffin v. N.C. State Bd. of Elections*, 781 F. Supp. 3d 411, 449 (E.D.N.C. 2025). *Cf. Voto Latino*, 712 F. Supp. 3d at 677 ("[T]he State, having offered the option of voting during SDR, cannot discard their ballots due to governmental error and without notice and an opportunity to be heard simply on the ground that voters should have known not to take such a risk." (emphases in original)).

RETRIEVED FROM DEMOCRACYDOCKET.COM

B. Defendants cannot justify the burden placed on same-day registrants' right to have a ballot counted once it is cast

Just as Defendants will be unable to show that SB 747 would have been enacted absent anti-youth animus, they will also be unable to justify the burden SB 747 places on same-day registrants. The relevant burden for that analysis is the decision to make the success or failure of a voter's ballot dependent upon matters completely out of their control by utilizing an admittedly imprecise system of mail verification that all but guarantees eligible voters who have already proven their residential address will have their ballots disqualified through no fault of their own. That burden cannot be justified by the state's interests here.

First, many of the interests ostensibly served by SB 747 were already served by the prior SDR system. Most notably, the stated interest in preventing voter fraud was already served by the two-mailer system. As the State Board has repeatedly noted, same-day registrants were already required to provide documentation establishing their current residence, which was not required of regular registrants. This safeguard imposed a substantial burden on voters, because such documentation is not always readily available (especially for youth voters, who frequently rent and do not have utility bills in their own name). But unlike SB 747's scheme, the prior scheme constituted a well-calibrated tradeoff for allowing registration during the early voting period, allowing real-time registration and voting only after independent, real-time verification of a registrant's address. This required voters to affirmatively prove residence before voting while also ensuring that—unlike SB 747's new scheme—no one's fundamental right to vote was entirely conditioned on a

RETRIEVED FROM DEMOCRACYDOCKET.COM

single, error-prone verification mailing. That careful balancing of interests is completely absent in the SB 747 scheme: despite requiring the same, additional burden of documentary proof of address for same-day registrants, it nonetheless imposes a newfound risk of arbitrary, post-hoc disenfranchisement on those same voters, with zero additional benefit to election security or any other feasible state interest.

Second, there is no reason to think that any of the interests that SB 747 purportedly advances are furthered in a substantial, let alone well-calibrated, way. Indeed, the provision contradicts other stated goals of the bill as a whole. *See supra* Section II.B.2. Legislative Defendants have advanced additional, purported risks that they contend SB 747's scheme protects against—the risk that someone may forge an address document to falsely claim North Carolina residence, and the risk that ineligible voters take advantage of same-day registration to cast a ballot without verification—that even they concede are entirely speculative. There is no evidence that any of these hypothetical scenarios occur with any regularity, and hardly any evidence that any of them *ever* occur.

RETRIEVED FROM DEMOCRACYDOCKET.COM

And even if these motivations could justify SB 747's burdens, there remains no evidence that the bill sponsors based this provision on any analysis of whether the burdens were "necessary" to advance actual state interests. *See Celebrezze*, 460 U.S. at 789. Instead, the record reflects a cursory and conclusory calculation that even severe burdens can be justified if it is possible to merely imagine a reason that could justify them. North Carolina voters deserve, and the Constitution requires, more.

CONCLUSION

Plaintiffs will demonstrate at trial that the SDR provision of SB 747 was enacted with discriminatory intent in violation of the Twenty-Sixth Amendment and constitutes an undue burden in violation of the First and Fourteenth Amendments. The law should be permanently enjoined.

Dated: October 1, 2025

Respectfully Submitted,

/s/ Jeffrey Loperfido

Jeffrey Loperfido (State Bar #52939)
Christopher Shenton (State Bar #60442)
Hilary H. Klein (State Bar #53711)
Lily A. Talerman (State Bar #61131)
Helena C. Abbott (State Bar #62225)
Adrianne M. Spoto (State Bar #63569)
SOUTHERN COALITION FOR SOCIAL JUSTICE
PO Box 51280
Durham, NC 27717
Telephone: 919-794-4213
jeffloperfido@scsj.org
chrisshenton@scsj.org
hilaryhklein@scsj.org
lily@scsj.org
helena@scsj.org
adrianne@scsj.org

Rachel Cannon
Laurel Taylor
Kristin Hendriksen
STEPTOE LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
Telephone: (312) 577-1300
rcannon@steptoe.com
lataylor@steptoe.com
khendriksen@steptoe.com

Counsel for Plaintiffs

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rules 7.3(d) and 40.1(c), I hereby certify that this brief contains less than 6,250 words as counted by the word-count feature of Microsoft Word.

/s/ Jeffrey Loperfido
(State Bar #52939)

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to all parties of record.

/s/ Jeffrey Loperfido
(State Bar #52939)

RETRIEVED FROM DEMOCRACYDOCKET.COM