
No. 26-1532

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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

Plaintiffs-Appellants,

v.

FRANCIS X. DE LUCA, in his official capacity as CHAIR OF THE STATE
BOARD OF ELECTIONS; STACY EGGERS, IV, in his official capacity as SEC-
RETARY OF THE STATE BOARD OF ELECTIONS; JEFF CARMON, in his
official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; AN-
GELA HAWKINS, in her official capacity as MEMBER OF THE STATE
BOARD OF ELECTIONS; SIOBHAN O'DUFFY MILLEN, in her official capac-
ity as MEMBER OF THE STATE BOARD OF ELECTIONS; SAM M. HAYES,
in his official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD
OF ELECTIONS; NORTH CAROLINA STATE BOARD OF ELECTIONS,

Defendants-Appellees',

and

PHILIP BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF
THE NORTH CAROLINA SENATE; DESTIN HALL, in his official capacity as
SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES,

Intervenors-Appellees.

Appeal from the United States District Court for the Middle District of
North Carolina

Case No. 1:23-cv-878

The Honorable Thomas D. Schroeder

**REPLY BRIEF OF APPELLANTS DEMOCRACY NORTH CAROLINA,
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, and NORTH
CAROLINA BLACK ALLIANCE**

(counsel listed on reverse)

Jeffrey Loperfido
Christopher Shenton
Adrienne M. Spoto
Hilary H. Klein
Helena Abbott
Lily Talerman
SOUTHERN COALITION FOR-SO-
CIAL JUSTICE
PO BOX 51280
Durham, NC 27717
919-794-4213
jeffloperfido@scsj.org
chrisshenton@scsj.org
adrienne@scsj.org
hilaryhklein@scsj.org
helenas@scsj.org
lily@scsj.org

Michael Dockterman
Laurel Taylor
Kristin Hendriksen
MCDERMOTT WILL & SCHULTE
LLP
444 West Lake Street, Suite 4000
Chicago, IL 60606
312-984-7730
mdockterman@mcdermottlaw.com
ltaylor@mcdermottlaw.com
khendriksen@mcdermottlaw.com

Rachel Cannon
STEPTOE LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
312-577-1270
rcannon@steptoe.com

Michelle Kallen
Laura Niday
STEPTOE LLP
1330 Connecticut Ave NW
STE Office 785
Washington, DC 20036
202-429-6415
Mkallen@steptoe.com
Lniday@steptoe.com

***Attorneys for
Plaintiffs-Appellants***

TABLE OF CONTENTS

INTRODUCTION 1

ARGUMENT 3

 I. Defendants Never Address the Burden That Matters: The
 Threat of Rejecting an Already-Cast SDR Ballot After One
 Failed Mailing. 3

 A. Registration options that disappear before the burden
 arises cannot mitigate that burden. 4

 B. Defendants’ “no new harm” argument ignores the
 different legal consequences SB 747 attaches to one
 failed mailing. 8

 C. The State’s interests do not establish a freestanding
 interest in SB 747’s single-mailer mechanism. 13

 II. Discriminatory Intent Was a Motivating Factor in, and a But-
 For Cause of, SB 747..... 15

 A. Defendants’ threshold objections do not defeat Plaintiffs’
 Twenty-Sixth Amendment claim. 15

 B. Defendants defend the same collective-intent requirement
 that caused the district court’s error..... 20

 C. Defendants’ impact arguments do not rescue the
 judgment..... 26

CONCLUSION 28

CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND WORD
COUNT LIMITATIONS..... 30

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983)	13, 14
<i>Arizona Libertarian Party v. Hobbs</i> , 925 F.3d 1085 (9th Cir. 2019)	6
<i>Bray v. Alexandria Women’s Health Clinic</i> , 506 U.S. 263 (1993)	19
<i>Brnovich v. Democratic Nat’l Committee</i> , 594 U.S. 647 (2021)	3, 7, 22, 23
<i>Coal. for TJ v. Fairfax Cnty. Sch. Bd.</i> , 68 F.4th 864 (4th Cir. 2023)	21
<i>Colo. Republican Party v. Griswold</i> , 2026 U.S. Dist. LEXIS 70265 (D. Colo. Mar. 31, 2026)	7
<i>Crawford v. Marion Cnty. Elec. Bd.</i> , 553 U.S. 181 (2008)	7, 14
<i>Feldman v. Arizona Sec’y of State’s Office</i> , 208 F. Supp. 3d 1074 (D. Ariz. 2016)	12
<i>Greidinger v. Davis</i> , 988 F.2d 1344 (4th Cir. 1993)	7
<i>Griffin v. N.C. State Bd. of Elec.</i> , 781 F. Supp. 3d 411 (E.D.N.C. 2025)	8
<i>Jesus Christ Is the Answer Ministries, Inc. v. Balt. Cnty.</i> , 915 F.3d 256 (4th Cir. 2019)	17

<i>League of Women Voters of Fla. v. Detzner</i> , 314 F. Supp. 3d 1205 (N.D. Fla. 2018)	19
<i>Lee v. Va. State Bd. of Elections</i> , 843 F.3d 592 (4th Cir. 2016)	15
<i>Luft v. Evers</i> , 963 F.3d 665 (7th Cir. 2020)	6, 7
<i>McWright v. Alexander</i> , 992 F.2d 222 (7th Cir. 1992)	19
<i>Mi Familia Vota v. Fontes</i> , 129 F.4th 691 (9th Cir. 2025)	24
<i>N.C. State Conference of the NAACP v. Raymond</i> , 981 F.3d 295 (4th Cir. 2020)	7
<i>Nashville Student Org. Comm. v. Hargett</i> , 155 F. Supp. 3d 749 (M.D. Tenn. 2015)	19
<i>Northeast Ohio Coalition for the Homeless v. Husted</i> , 837 F.3d 612 (6th Cir. 2016)	6, 10
<i>One Wis. Inst. v. Nichol</i> , 186 F. Supp. 3d 958 (W.D. Wis. 2016)	19
<i>Richardson v. Hughs</i> , 978 F.3d 220 (5th Cir. 2020)	7
<i>Tennessee Conference of the NAACP v. Lee</i> , 139 F.4th 557 (6th Cir. 2025)	6
<i>Tully v. Okeson</i> , 78 F.4th 377 (7th Cir. 2023)	17
<i>United States v. Texas</i> , 445 F. Supp. 1245 (S.D. Tex. 1978)	19

Statutes

N.C. Gen. Stat. § 163-90.1..... 11

Other Authorities

College Enrollment Trends and Statistics: 2024-2025
 <https://www.bestcolleges.com/> 19

<https://data.census.gov/table?q=Age+and+Sex> 19

Report of the Western Interstate Commission for Higher
 Education, *Knocking at the Door*, 10th, 2020..... 19

U.S. Const. amend. XV, § 1 16

U.S. Const. amend. XIX 16

U.S. Const. amend. XXVI, § 1 16

RETRIEVED FROM DEMOCRACYDOCKET.COM

INTRODUCTION

Defendant-Appellees' ("Defendants") Opposition Brief ("Opp.") never adequately addresses the two errors that decide this appeal. On the undue-burden claim, the district court itself described what SB 747 changed and what makes it unconstitutional: the prior system gave a same-day registrant two verification mailings to validate their ballot, while SB 747 eliminated the second mailing and made a returned first mailing, regardless of the reason, the trigger for automatically removing an already-cast ballot from the count. JA2-3. Defendants do not dispute that. Nor do they dispute that, before their ballot is removed, that voter has already registered, produced the documentation North Carolina uniquely requires of same-day registrants, presented identification, and cast a ballot.

Under the SB 747 scheme, that voter has *at best* a short window, and often no window at all, to prove their ballot is valid, in contrast to so-called "traditional" ballots that are presumed valid. The district court's adoption of the term "traditional" for earlier registration options creates an inherent class system for voters when the Constitution guarantees that all voters are equal. Defendants' doubling down on the district court's error is fatal.

Defendants' remaining *Anderson-Burdick* argument follows the same pattern. They collapse the old two-mailer system and SB 747's one-mailer rule into the same

generic “mail verification” category, as though the constitutional question turned on whether North Carolina may use the mail at all. It does not. They recite another charged phrase – election integrity and administration – as though invoking a legitimate interest ends the balancing inquiry. It does not, because the courts must balance how those interests are actually served by the challenged provisions. Similarly, although Defendants attack Plaintiffs’ experts and the form of Plaintiffs’ proof they leave the central point unchallenged: SB 747 makes one unsuccessful mailing capable of putting an otherwise completed vote on a racetrack to rejection. *Anderson-Burdick* requires the Court to evaluate the burden as it actually operates, not to dilute it with alternatives that disappeared before the burden arose or with general interests that do not explain this particular rule.

Defendants’ Twenty-Sixth Amendment argument is equally flawed. Defendants try to distract this Court from *Arlington Heights* by conjuring uncertainty about the governing framework (there is none) and by denying that young voters constitute a cognizable class (that is not the test). Opp. 35-43. The Twenty-Sixth Amendment expressly prohibits age discrimination in voting, and *Arlington Heights* prescribes the structure for evaluating that discrimination, as Defendants’ own authorities concede. When they finally reach the heart of the matter, Defendants’ explanation of the district court’s central error—requiring Mitchell and Womack’s

discriminatory purpose to be “attributed” to the General Assembly as a whole rather than asking whether that purpose was a motivating factor in SB 747’s enactment—merely compounds that error. Plaintiffs do not ask the Court to automatically impute outside advocates’ views to legislators; they rely on evidence that Mitchell and Womack generated and advanced the SDR restriction, out of hostility toward the young and college voters who disproportionately use it. Neither *Brnovich*, legislative good faith, the State Board’s later implementation advice, nor Defendants’ disparate impact arguments answers that evidence under the correct motivating-factor standard.

Properly framed, Defendants’ arguments do not sustain the judgment below. This Court should reverse.

ARGUMENT

I. **Defendants Never Address the Burden That Matters: The Threat of Rejecting an Already-Cast SDR Ballot After One Failed Mailing.**

Defendants point to registration options that have disappeared before the burden arises, minimize SB 747’s new consequences as ordinary “mail verification,” discount quantified evidence of voter impact, and invoke general state interests without explaining why they justify this particular one-mailer rule, but they never confront the burden SB 747 actually imposes. None of their labels answer what

Anderson-Burdick asks: whether SB 747's actual burden is justified by the State's asserted interests.

A. Registration options that disappear before the burden arises cannot mitigate that burden.

Defendants continue to rely on an invented category of “traditional registration methods” to justify the burdens placed on same-day registration (“SDR”). Opp. 3-7, 26-28. Going beyond using “traditional” as shorthand, *contra* Opp. 26-27, Defendants effectively commit the error they deny: demoting SDR to second-class status. In Defendants’ (and the district court’s) conception, same-day registrants are entitled to less protection because they supposedly accepted unique “risks attending SDR” through the “realities of individual choice.” Opp. 26-27 (citing JA84-85). But neither North Carolina nor federal law classifies any method of voter registration as “traditional.” *See* Plaintiff-Appellants’ (“Plaintiffs”) Opening Brief (“Br.”) 12-13 & n.3. Nor should any voter be deemed second-class when they have provided even more validating information than so-called “traditional” voters. Different registration methods may involve different procedures; that does not justify a different level of constitutional protection. *See* Br. 13.

The evidence offered by Defendants at trial does not support the distinction they ask this Court to draw. Dr. Quinn testified that, before SB 747’s “regular registrants were verified by essentially the same process as same-day registrants”

because both used a two-mailer system. JA805. And State Board General Counsel Paul Cox testified that what set same-day registrants apart was an additional requirement to prove residential address using a HAVA document, rather than any lower threshold for registration. JA1196-1198. The district court nevertheless adopted the notion that a same-day registrant's decision not to register earlier was "almost certainly the product of his or her own choice," and relied on what it viewed as the "neglect[]" inherent in that choice to discount the heightened burden imposed on same-day registrants. JA84, JA106. Choice is a red herring. The issue is the burden SB 747 imposes after the voter has exercised that choice and cast a ballot.

Defendants' reliance on witnesses' colloquial use of "regular registrants" does not change the analysis. Opp. 4-6. Their own examples show that, before SB 747, the verification processes for all registrants were substantially aligned. Dr. Quinn testified that "for both types of voters, a two-mailer system" worked "very, very similar across both[,] JA805, and that State Board administrative data did not distinguish between registration types, which means that the data *does not support* the distinction the district court adopted and Defendants urge. JA806. Indeed, the shorthand utilized is irrelevant: the State may not attach a heightened burden to one registration method over another and then discount that burden *after* a voter has chosen an option that the State made available.

Plaintiffs do not dispute that courts should analyze a State's entire election framework when determining the character of a law's burden. *See* Opp. 26-28. But the purpose of that broad analysis is to identify how a challenged law's burdens function in the election scheme. *See Arizona Libertarian Party v. Hobbs*, 925 F.3d 1085, 1096 (9th Cir. 2019) (Opp. 27); *Luft v. Evers*, 963 F.3d 665, 671 (7th Cir. 2020) (Opp. 24-25). It is this fulsome analysis that makes the timing of SB 747's burden dispositive.

As Defendants point out, "any burden imposed on voters who choose one of the available options cannot be evaluated without also taking into account the other available means." Opp. 28 (citing *Brnovich v. Democratic Nat'l Committee*, 594 U.S. 647, 671 (2021)). But for an option to actually ameliorate a particular burden, it must still be available to the voter to avoid that burden. *Accord Northeast Ohio Coalition for the Homeless v. Husted*, 837 F.3d 612, 632-34 (6th Cir. 2016) (distinguishing an impact "wholly in [voters'] own control" from "ballot rejection on a technicality").¹

This is why SB 747's burden is unique. After voters have chosen SDR, they

¹ Defendants claim *Husted* was abrogated and involved no cure provision. Opp. 26 n.16. But *Husted*'s organizational standing analysis is what was called into question in *Tennessee Conference of the NAACP v. Lee*, 139 F.4th 557, 562-67, not the burden analysis relevant here. Nor does the existence of a cure process make an alternative registration method available after a ballot has been cast, or prevent SB 747 from causing "ballot rejection on a technicality" for eligible North Carolina voters. *See* JA1208-1216.

cannot later vote through another method. There are no alternatives available. The challenged burden arises only afterward, when SB 747 subjects the already-cast ballot to a verification process that likely will result in its rejection even though the voter was qualified to vote. *See* Br. 14-17.

Plaintiffs' *ex ante/ex post* framing illuminates this. The principal cases Defendants cite address *ex ante* burdens, known and at least theoretically surmountable before the vote. *See, e.g., Brnovich*, 594 U.S. at 679-80; *Crawford v. Marion Cnty. Elec. Bd.*, 553 U.S. 181, 198 (2008); *N.C. State Conference of the NAACP v. Raymond*, 981 F.3d 295, 309-10 (4th Cir. 2020); *Luft*, 963 F.3d at 675; *Richardson v. Hughs*, 978 F.3d 220, 238 n.36 (5th Cir. 2020). Defendants' ballot-access cases are the same. *See* Opp. 27-30. Their reliance on those authorities does not answer—let alone justify—a burden that arises only after the voter's alternatives are extinguished.² *See* Br. 14-17.

² Curiously, Defendants cite *Greidinger v. Davis*, 988 F.2d 1344, 1349-50 (4th Cir. 1993) (Opp. 29, 31) for the proposition that only laws singling out an identified class of voters have been found to impose severe burdens under *Anderson-Burdick*. Setting aside that this case, over 30 years old, is being cited for a proposition proven wrong as recently as five months ago, *see, e.g., Colo. Republican Party v. Griswold*, 2026 U.S. Dist. LEXIS 70265, at *17-*23 (D. Colo. Mar. 31, 2026), *Greidinger* itself held that “the statutes at issue” there “[o]bviously...do not impose such a prohibition, but rather place a burdensome condition on the exercise of the fundamental right to vote.” 988 F.2d at 1350. This Court declared the provisions in *Greidinger* imposed a “substantial” burden and were unconstitutional under *Anderson-Burdick*,

Ex post burdens pose a different problem. There is nothing a voter can do with certainty to avoid a burden that arises after their ballot is cast and their alternative choices for voting are eliminated. Accordingly, disqualification of a ballot after it has been cast imposes a substantial voting burden. *Griffin v. N.C. State Bd. of Elec.*, 781 F. Supp. 3d 411, 449 (E.D.N.C. 2025) (collecting cases). “It’s hard to envision a more ‘severe restriction’ than retroactive invalidation of one’s vote.” *Id.* (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). Defendants attempt to distinguish *Griffin* because one of the election procedures it enjoined did not involve notice and an opportunity to cure. Opp. 32 n.20. But a cure process does not prevent ballots from being retroactively discarded, especially where, as here, that cure process is largely ineffective. Br. 53-54. And the cure process does not somehow convert unavailable alternatives into available ones; a voter still cannot choose another registration or voting method after casting an SDR ballot.

B. Defendants’ “no new harm” argument ignores the different legal consequences SB 747 attaches to one failed mailing.

Defendants next claim that SDR has always been an inherently risky enterprise, so SB 747 did not create any new harm when it altered SDR and exposed

despite their general applicability beyond any identifiable class of voters. *Id.* at 1354-55. Regardless of whether this Court finds SB 747’s burden severe or merely substantial, it should do the same here.

same-day registrants to a heightened risk of after-the-fact disenfranchisement. Opp. 6-7, 17-18, 31. This argument conflates the source of an administrative error with the legal consequences attached to it. Plaintiffs do not contend that returned mail was invented by SB 747, but rather that SB 747 changed what happens after mail is returned, and that change is unlawful. *See* Br. 4-7, 14-17.

Simply put, the evidence showed that SB 747 exposes more SDR ballots to disqualification than the pre-SB 747 scheme. Defendants acknowledge that thousands of same-day registrants enter the single-mailer cure process, and they acknowledge that only a minority successfully cure. *See* Opp. 58-59. Nor do Defendants' attacks on Plaintiffs' expert evidence change the bottom line. Although Drs. White and Quinn made different methodological choices, they reached substantially similar conclusions regarding the number of voters burdened by SB 747's verification process. Br. 46-47 & n.11. Before SB 747, same-day registrants received a second verification mailing if the first mailing failed. SB 747 upped the ante on the failure of the first mailing, using a single failure to place an already-cast ballot on a path to removal unless the voter cures. That mail verification remains a potential source of error under SB 747 does not mean that error poses the same legal

burden as it did pre-747.³

The cure process, even as modified by the district court's preliminary injunction, does not eliminate that change. Defendants concede that the cure process was not part of SB 747 as enacted and that a large majority of voters who entered it did not successfully cure. Opp. 58-59. The facts at trial showed that the existence of a theoretical cure—especially one that depends upon the vicissitudes of the mail being timely and accurately delivered in a college dorm—is far from the same thing as an effective cure. The constitutional question is why a single returned mailing should place an eligible voter's already-cast ballot at risk in the SB 747 statutory scheme and require that voter to re-prove eligibility at all. *See* Br. 20-22, 52-54.

Defendants also argue that same-day registrants who failed mail verification could be challenged under the pre-SB 747 scheme. Opp. 7, 31. But SB 747 changed the allocation of risk to the point where the scales are tipped decidedly against an SDR voter. A voter whose ballot was challenged under the pre-SB 747 scheme was presumptively eligible, and the challenge process required additional, individualized

³ Defendants attempt to characterize the number of voters impacted by SB 747 as insubstantial. Opp. 54. This is wrong and legally insignificant. First, Defendants' expert Dr. White conceded that thousands of voters would be impacted. JA1556-1558. Second, courts have found unconstitutional burdens even where only low hundreds of voters were impacted. *See, e.g., Husted*, 837 F.3d at 632-34 (finding an unconstitutional undue burden where state interests could not justify the challenged provision).

evidence that they were *not* eligible before their ballot could be removed. Br. 53-54; N.C. Gen. Stat. § 163-90.1. SB 747 (as modified by the cure process) reverses the statutory presumption, but only for SDR voters: a same-day registrant whose single mailing fails now must take affirmative steps to re-prove eligibility in a very short window or lose their vote. Br. 52-54. Calling both regimes potential routes to ballot removal does not make their predicates or burdens equivalent. Under the challenge process, additional evidence of ineligibility is required, and the default is that a voter is eligible; under SB 747, a single failed mailing itself triggers ballot disqualification unless the voter affirmatively cures.

That change matters all the more because a returned verification mailing is not itself proof that the voter is ineligible. The record showed that eligible voters can fail mail verification at valid addresses for reasons unrelated to residence or qualification. *See* Br. 4, 20-22. SB 747 nevertheless freights that single mailing with a consequence it did not carry before. The increased burden that single mailing imposes on SDR voters is real and severe, to which Defendants and the district court pay too little constitutional attention.

Defendants also focus on the methodological differences between Dr. White and Dr. Quinn. Opp. 17-18, 54-59. But those methodological disputes do not answer the relevant point on which they agree: both experts' work confirms that thousands

of ballots are newly put at risk by SB 747's single-mailer process. JA835-836; JA1556-1558; JA2109. Defendants may dispute the precise magnitude of the burden but they cannot convert that disagreement into "no new harm."

Nor are Plaintiffs challenging "mail verification generally." Opp. 31. As Plaintiffs likewise detailed in the opening brief, it is not mail verification itself that renders SB 747 an unconstitutional burden, but the shift to "a single, error-prone verification mailing" for SDR users alone and the legal consequence SB 747 attaches to that mailing. Br. 20-22, 54. SB 747 does not use mail verification for SDR as it had always been used in North Carolina. It changes the consequence of the first returned mailing, and that is the harm Defendants' framing attempts to obscure.

Finally, citing *Feldman v. Arizona Sec'y of State's Office*, 208 F. Supp. 3d 1074 (D. Ariz. 2016), Defendants contend that the absence of voter testimony overcomes the evidence of substantial burden. Opp. 18, 25, 29-30. *Feldman* drew a negative inference where the plaintiffs lacked evidence allowing the court to quantify the "magnitude of the burden." *Id.* at 1090 (quoting *Crawford*, 553 U.S. at 200). Here, there is evidence of the burden from both sides' experts, who used State Board data generated for this case to quantify the number of affected voters. *See* Br. 46-54. No negative inference can overcome the State Board's own data.

C. The State’s interests do not establish a freestanding interest in SB 747’s single-mailer mechanism.

Defendants have legitimate interests in verifying voter addresses, election integrity, finality, and efficient administration. Opp. 32-35. Plaintiffs do not dispute those interests in the abstract. But the *Anderson-Burdick* inquiry asks whether those interests justify this burden and this mechanism. *Anderson* requires the Court to consider not only the legitimacy and strength of the State’s interests but “the extent to which those interests make it necessary to burden the plaintiff’s rights.” *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983); see Br. 10-11, 19-22.

Mail verification is not itself an eligibility criterion. Opp. 3-4 (citing North Carolina voter qualifications established by law). The State interest served by mail verification is in confirming that a voter is registered in the correct jurisdiction and is eligible to vote there. *See id.* (citing N.C. Gen. Stat. § 163-55). And that interest is more precisely, and more effectively, served for same-day registrants by the proof-of-residency requirements unique to SDR. Br. 20-22; JA1210-1211. Defendants’ own witness confirmed that mail verification does not prove where someone lives; it confirms whether mail can be received at the listed address,⁴ and mail may be

⁴ As Defendants’ witnesses acknowledged, that address need not be the voter’s actual residence if the voter instead lists a separate mailing address, such as a P.O. Box. JA1213.

returned for reasons unrelated to residence. *See* Br. 4-5, 20-22. Further, as Defendants concede, the legislative sponsors of SB 747 admitted that a failed verification mailing does not indicate voter fraud. Opp. 13 n.10; *see also* JA1014, JA1034. That makes the State's existing contemporaneous documentation requirement especially important to the inquiry.

North Carolina has a well-founded interest in verifying that its voters live in the jurisdiction where they present to vote. But North Carolina has no interest in conditioning that residential verification on an error-prone, single-mailer process for the *only* group of voters who provide real-time, affirmative evidence that they do indeed live in the jurisdiction.⁵ Yet this is exactly what SB 747 does for same-day registrants, forcing only same-day registrants to run this gauntlet.

That a two-mailer verification system may be permissible does not establish that SDR's unique one-mailer consequence is constitutionally justified. Defendants cite *Crawford* and related cases for the proposition that states need not wait for fraud to materialize before acting. Opp. 34. Plaintiffs do not argue otherwise. But those cases do not dispense with *Anderson*'s requirement to connect the asserted interest

⁵ Defendants insist that they do, merely because the statute uses mail verification. Opp. 31 n.18. But the Constitution does not allow the tail to wag the dog in this way; after all, as Defendants note, "a party's characterizations carry little weight" on their own. Opp. 29.

to the particular burden imposed. Here, same-day registrants already must provide affirmative documentary proof of residence before voting, while the single-mailer rule threatens an already-cast ballot based on a later event that is not itself proof of ineligibility. Br. 19-22.

II. Discriminatory Intent Was a Motivating Factor in, and a But-For Cause of, SB 747

Defendants' response does not cure the district court's Twenty-Sixth Amendment errors. Their threshold objections do not displace *Arlington Heights* or defeat young voters' status as a group. And on the merits, Defendants repeat the same collective-intent mistake that led the district court to discount evidence that Mitchell and Womack's anti-youth animus influenced and "spurred," JA100, SB 747's enactment. Their remaining same-decision and disparate impact arguments do not show SB 747 would have been enacted absent that discriminatory impetus.

A. Defendants' threshold objections do not defeat Plaintiffs' Twenty-Sixth Amendment claim.

Defendants first dispute the governing framework and the existence of a group of young voters. Opp. 35-43. Neither argument answers Plaintiffs' claim.

On the framework, Defendants overread *Lee v. Va. State Bd. of Elections*, 843 F.3d 592 (4th Cir. 2016). *Lee* observed the relationship between the Twenty-Sixth Amendment and Fifteenth Amendment doctrine was unresolved; it did not hold that

Anderson-Burdick governs intentional age-discrimination claims or that *Arlington Heights* cannot. *Id.* at 607. Defendants' own authorities likewise acknowledge that question remains unresolved. *See* Opp. 35 (citing *Tully v. Okeson*, 78 F.4th 377, 382 (7th Cir. 2023), and *Tex. Democratic Party v. Abbott*, 978 F.3d 168, 183-84 (5th Cir. 2020)). An unresolved question is not a rule that *Arlington Heights* does not apply.

More fundamentally, Defendants' reliance on Fourteenth Amendment suspect-class doctrine misses the point. Opp. 36-38. Three constitutional amendments prohibit discrimination in voting on specified grounds: race, U.S. Const. amend. XV, § 1; sex, *id.* amend. XIX; and age for citizens eighteen years or older, *id.* amend. XXVI, § 1. Those prohibitions do not depend on whether the protected characteristic independently triggers heightened scrutiny under the Fourteenth Amendment. The Fifteenth and Nineteenth Amendments prohibit race- and sex-based discrimination in voting because their own text says so, not because the Fourteenth Amendment separately treats race and sex as suspect or quasi-suspect classifications. The Twenty-Sixth Amendment operates the same way. It expressly guarantees citizens eighteen and older the right to vote free from denial or abridgment "on account of age." U.S. Const. amend. XXVI, § 1. And *Arlington Heights* supplies the familiar framework for deciding whether discriminatory intent infected governmental action. Br. 23-26.

Defendants' attempt to cabin *Arlington Heights* to racial discrimination is also inconsistent with *Jesus Christ Is the Answer Ministries, Inc. v. Balt. Cnty.*, 915 F.3d 256 (4th Cir. 2019) ("*JCIAM*"). Opp. 36-37. Plaintiffs do not cite *JCIAM* because its facts mirror this case. They cite it because this Court used *Arlington Heights* to probe discriminatory governmental purpose outside the racial-discrimination context. Defendants' factual distinctions miss the point. See Br. 25-26.

Nor does *Tully* help Defendants. Its observation that the Twenty-Sixth Amendment does not prohibit every age distinction is unremarkable: the Amendment lowered the voting age to eighteen, not to birth. 78 F.4th at 382-83. And *Tully*'s description of constitutional abridgement as encompassing laws that impose "onerous procedural requirements which effectively handicap exercise of the franchise" is entirely consistent with Plaintiffs' claim. *Id.* at 385-86.

Defendants' protected-class argument fares no better. They contend that young voters cannot constitute a cognizable class because age changes over time, Plaintiffs' experts used different age cutoffs, and college students are an imperfect proxy for youth. Opp. 40-43. More sophistry does not change the clock or the calendar. Age changes, but no person controls whether they are eighteen, nineteen, or twenty at a particular time, and that age is objectively ascertainable. If a constitutionally protected class had to remain permanently fixed, the Twenty-Sixth

Amendment would be a dead letter—protecting only those who happened to be eighteen when the Amendment was ratified, rather than each successive generation of eighteen-year-old voters.

Defendants’ focus on the precise upper boundary of “young voters” is likewise misplaced. Opp. 41. The record showed that younger voters share characteristics that make them substantially more likely to rely on same-day registration and thus more exposed to restrictions on that process. As Dr. Grumbach explained and Defendants did not rebut, young voters share characteristics, including residential mobility, career and life changes, and especially an ongoing process of habit formation in voting that is essential to civic participation well into the future, that make them particularly likely to use SDR. JA1968-1974. And Drs. White and Quinn agreed that young voters used SDR—and were affected by elimination of the second mailer for SDR—at substantially higher rates than the voting population overall. Br. 46-47 & n.11. A discernible class need not be permanently closed to be ascertainable at the time the challenged law operates.

Nor must Plaintiffs identify an exclusively or perfectly contoured proxy. Defendants emphasize that not every college student is young. Opp. 41-42. But that observation does not make evidence concerning college voters irrelevant to age discrimination. College-student populations skew young and are recognizably

associated with young voters. There are just over 13.5 million citizens between the ages of 18 and 21 in the United States;⁶ 3.9 million students graduated from high school in 2025,⁷ over 62% of high school graduates enroll in colleges immediately upon graduation,⁸ and that 3-year cohort can be empirically defined every year, yet Defendants act as if their shared characteristics under the Twenty-Sixth Amendment did not exist. Courts addressing the Twenty-Sixth Amendment accordingly treat restrictions directed at students or student-heavy populations as probative of age discrimination even though not every member of the affected group falls within a single age band. *See McWright v. Alexander*, 992 F.2d 222, 228 (7th Cir. 1992)⁹; *Nashville Student Org. Comm. v. Hargett*, 155 F. Supp. 3d 749, 757 (M.D. Tenn. 2015); *League of Women Voters of Fla. v. Detzner*, 314 F. Supp. 3d 1205, 1222 (N.D. Fla. 2018); *United States v. Texas*, 445 F. Supp. 1245 (S.D. Tex. 1978), *aff'd sub nom. Symm v. United States*, 439 U.S. 1105 (1979); *One Wis. Inst. v. Nichol*, 186 F. Supp. 3d 958, 976 n.8 (W.D. Wis. 2016).

⁶ <https://data.census.gov/table?q=Age+and+Sex> last accessed on August 11, 2026.

⁷ Report of the Western Interstate Commission for Higher Education, *Knocking at the Door*, 10th ed. 2020.

⁸ *College Enrollment Trends and Statistics: 2024-2025* <https://www.bestcolleges.com>.

⁹ Defendants' assertion that *McWright* bars only "involuntary" proxies (Opp. 42) is unprincipled and unworkable. Is wearing a yarmulke involuntary for Jewish people? *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 270 (1993). Defendants' theory cannot say.

More importantly, the actors who spurred the restriction on SDR treated college students as a proxy for young voters themselves. Their statements did not object to college status in the abstract; they invoked stereotypes about youth. Mitchell complained that SDR allowed college students to “just roll out of bed, vote, and get back into bed,” while Womack described college voters as “going home to mommy and daddy,” as “social butterflies,” and as motivated to vote by their “beer-drinking buddies.” Br. 39-40. That linkage between college students and negative stereotypes about young people went unrebutted at trial. Defendants cannot now insist that college students are an inadequate proxy for young voters when the very actors who “spurred,” JA99-100, the passage of SB 747 drew that connection themselves.

And that SB 747 also applies to older same-day registrants does not cleanse an age-based purpose. Opp. 43. As the opening brief explained and Defendants did not rebut, willingness to impose collateral harm on others does not eliminate discriminatory intent toward the targeted group. Br. 27-28.

B. Defendants defend the same collective-intent requirement that caused the district court’s error.

Once the threshold issues are cleared away, the central error is straightforward. *Arlington Heights* asks whether discriminatory purpose was a motivating factor in

the challenged decision. The district court instead asked whether Mitchell and Womack's discriminatory intent could be "attributed to the General Assembly" as a whole. JA99; *see* Br. 29-33. Defendants embrace the same framing. Opp. 44-45. Repeating the district court's erroneous standard does not cure it.

Plaintiffs need not show that every legislator acted from discriminatory motives, or that anti-youth animus was SB 747's sole or overriding purpose. *Arlington Heights* expressly contemplates decisions produced by multiple considerations. The question is whether an impermissible consideration was among the factors that motivated the governmental action. *See* Br. 29-34. Under *Arlington Heights*, requiring Plaintiffs to negate every fact consistent with legislative regularity would simply resurrect a sole purpose test by another name. *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 883 (4th Cir. 2023) (an intentional discrimination plaintiff "need not establish that the challenged policy 'rested solely on discriminatory purposes,' or even that 'a particular purpose was the 'dominant' or 'primary' one.'" (quoting *Arlington Heights*, 429 U.S. at 265)). The district court could not acknowledge that legislators may have been "spurred in part by the efforts of Mitchell and Womack," even where those efforts were discriminatory, JA99-100, and then dismiss that evidence merely because Plaintiffs had not established discriminatory purpose across the legislature as a whole. Being "spurred in part" by actors pursuing an avowedly

discriminatory objective is evidence of a motivating factor—the very inquiry *Arlington Heights* requires—that invalidates SB 747; the district court erred by insisting on evidence from everyone in the legislature that they endorsed the bill’s obviously discriminatory purpose in order to invalidate it.

And the record supporting the inference of discriminatory purpose is not subtle. Mitchell and Womack were the only identified source of the proposal to restrict SDR. *See* Br. 34-46. Mitchell announced her intention to come to North Carolina to solve the young voter problem, then accompanied Womack to press their proposal directly to legislators, supplying both rationales and bill language. Why? Their own testimony supplied the answer: Mitchell characterized college-student voting as “unfair” and “manipulated,” complained that SDR let students “just roll out of bed, vote, and get back into bed,” and associated SDR and campus voting with cheating. *See* Br. 39-40. Womack complained that North Carolina “bend[s] over backwards” for college students, questioned why students should vote where they attend school rather than “go home to mommy and daddy,” called them “social butterflies,” and attributed their voting to “beer-drinking buddies.” *See* Br. 39-40. If those statements do not evince anti-youth animus, it is difficult to imagine what would.

Defendants’ reliance on *Brnovich* does not salvage the judgment. Opp. 50-

53. Plaintiffs do not advance a “cat’s paw” theory under which Mitchell and Womack’s intent is automatically imputed to legislators. The argument is based on *actual* influence. Mitchell and Womack pressed for restrictions on SDR based on anti-youth animus, supplied the policy rationale for doing so, communicated with legislators during the drafting process, and were the only identified source of the proposal that became part of SB 747. *See* Br. 36-46. No one contends that legislators were “duped” and Plaintiffs do not rest on automatic imputation. *See Brnovich*, 594 U.S. at 689-90. *Brnovich* does not require accepting any *possible* explanation that favors the legislature, only *plausible* ones, and there are none in this record. *Brnovich* therefore does not eliminate the evidence that discriminatory actors generated the SDR proposal, pressed it on legislators, and were essential to moving it into law.

SB 747 would drive young voters out of the democratic process, targeting a voting method they disproportionately employ in order to do so.¹⁰ Mitchell and Womack urged the Legislature to keep those young voters out of the polls and SB 747 was the result. No invocation of presumptions or references to others marginally

¹⁰ These changes carry stakes beyond the impact on a single election’s turnout, but across the lifetimes of the voters affected. *Compare* JA780-781 (Mitchell testifying about how SDR has been “manipulated” to build a voting bloc of college students) *with* JA1973-1974 (discussing the importance of habit formation in lifelong civic engagement and citing unrebutted research that shows “when an individual’s ballot is rejected due to administrative procedure, he or she is less likely to vote in subsequent elections[.]”).

affected by the statute can cure the district court's error in minimizing the constitutional harm in the law.

Defendants therefore cannot answer the evidence merely by invoking legislative "independent judgment" or the presumption of good faith. Opp. 51-54. Those principles do not require a court to disregard evidence of discriminatory influence or to select any conceivable inference favoring the legislature. The presumption of good faith does not compel acceptance of every theoretically possible benign account of the record. Defendants identify no alternative source for the proposal to change SDR in SB 747, despite repeatedly claiming one. *See* Opp. 46, 54, 59-60; *see also* Br. 36-38 & n.9.

Their treatment of *Mi Familia Vota v. Fontes*, 129 F.4th 691 (9th Cir. 2025), has the same defect. Opp. 53-54. Defendants catalogue factual differences between two legislative records. Of course, two legislative processes differ in their particulars. The legally relevant principle is the same: an outside actor's discriminatory purpose matters when that actor generates policy ideas, rationales, and legislative text that feed into the challenged enactment. *See* 129 F.4th at 727-28; Br. 43-44. That is precisely Plaintiffs' evidence here.

Defendants' same-decision argument fails for the same reason. Opp. 59-60. Bereft of an alternate source for the SDR restriction, Defendants point to the State

Board's later implementation recommendation. But the State Board repeatedly disclaimed being the source of the decision to alter SDR and its General Counsel testified that it would not have sought the change on its own. Br. 45-46; JA1187-1188 (Q: "And your recommendation was not something the State Board would have adopted of its own accord; right?" A: "Correct." Q: "And not something it would have advocated for of its own accord?" A: "Correct.")). Defendants likewise do not account for Representative Mills' introduction of bill language he received from Womack. Br. 36-37. A later administrative recommendation about how to implement a policy does not establish that the legislature would have adopted the underlying restriction absent the discriminatory impetus that caused the policy to be considered in the first place. The resulting bill—SB 747—may not have been as draconian as Mitchell and Womack wanted, but it was and remains unlawful.

That is the distinction between *Arlington Heights*' two steps. Plaintiffs' evidence shows discriminatory purpose was a motivating factor; Defendants then must show the same decision would have been made absent that purpose. Br. 34-35. They point to nothing in the record—because there is nothing—proving that was the case. A State Board recommendation about how to administer a policy it did not originate and did not advocate for does not make that showing. SB 747 may not have gone as far as Mitchell and Womack wanted, but Defendants identify no evidence

that the restriction would have existed at all without their campaign.

C. Defendants' impact arguments do not rescue the judgment.

Defendants finally defend the district court's treatment of disparate impact by emphasizing certain cure-rate comparisons and increased youth turnout. Opp. 54-59. The opening brief explains why those measures do not capture the relevant comparison under *Arlington Heights*. Br. 46-54. Defendants' response leaves two fundamental problems with their approach unanswered.

First, Defendants emphasize whether younger and older voters experience different outcomes once they have entered the cure process. Opp. 56-59. But that comparison begins after an important source of disparate exposure has already occurred. Plaintiffs' evidence showed both that younger voters use SDR at higher rates and that younger voters fail the first mailer at higher rates, and therefore are disproportionately subjected to the verification-and-cure mechanism in the first place. Br. 46-48. A conditional comparison among voters who have already entered that process answers a narrower question.¹¹

¹¹ Defendants' reliance on a footnote below, which had no record citation or support, that Plaintiffs "failed to show that voters are now more likely to have their votes wrongfully discounted after the implementation of SB 747 and the notice-and-cure process," shows that both Defendants and the court ignored the evidence. Opp. 24-25; JA85 n.19. The district court erroneously ignored Dr. White and Dr. Quinn's

Second, increased aggregate youth turnout does not establish the absence of disparate impact from SB 747. *See* Opp. 55. This Court has cautioned against measuring disparate impact by comparing one group's performance before and after a challenged policy rather than asking how the policy bears on that group relative to others. *See* Br. 49-51. The district court nevertheless relied on precisely that sort of before-and-after reasoning. Aggregate turnout says little about whether SB 747 itself "bears more heavily" on young voters than others.

More fundamentally, disparate impact is one part of *Arlington Heights*' "sensitive inquiry" but it is not a substitute for that inquiry. Defendants' disagreement with Plaintiffs over the strength of one evidentiary factor cannot cure the district court's use of the wrong legal standard for evaluating discriminatory purpose. The district court wrongly concluded that even if Mitchell and Womack sought to target youth voters, and even if legislators were "spurred in part" by their efforts, Plaintiffs had not shown sufficient discriminatory intent. JA99-100. The legal error in the court's reasoning lies in its insistence that there must be evidence of collective intent attributable to the entire legislature. Under the correct motivating

agreement that thousands of voters would be newly exposed to the risk of disenfranchisement by being pushed into the cure process, Br. 46-47 & n.11, the agreement that the cure process is at most 28% effective, Br. 53-54, Opp. 58, and the uncontested evidence that eligible voters would be caught up in this system, JA1208-1212.

factor standard, the evidence of source, sequence, actual influence, anti-youth statements, and disproportionate burden—that discriminatory actors actually “spurred” the legislation to enact an unconstitutional law targeting young voters in order to discourage their participation in the electoral process—SB 747 cannot stand.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment below and remand with instructions to enter judgment for Plaintiffs on their undue burden and Twenty-Sixth Amendment claims, or, at a minimum, to reconsider those claims under the correct legal standards.

August 13, 2026

Respectfully submitted,

/s/ Jeffrey Loperfido

Jeffrey Loperfido

Christopher Shenton

Adrianne M. Spoto

Hilary H. Klein

Helena Abbott

Lily Talerman

SOUTHERN COALITION FOR SO-
CIAL JUSTICE

PO BOX 51280

Durham, NC 27717

919-794-4213

jeffloperfido@scsj.org

chrisshenton@scsj.org

adrianne@scsj.org

hilaryhklein@scsj.org

helena@scsj.org

lily@scsj.org

Michael Dockterman
Laurel Taylor
Kristin Hendriksen
MCDERMOTT WILL &
SCHULTE LLP
444 West Lake Street, Suite 4000
Chicago, IL 60606
312-984-7730
mdockterman@mcdermottlaw.com
ltaylor@mcdermottlaw.com
khendriksen@mcdermottlaw.com

Rachel Cannon
STEPTOE LLP
227 West Monroe Street, Suite 4700
Chicago, IL 60606
312-577-1270
rcannon@steptoe.com

Michelle Kallen
Laura Niday
STEPTOE LLP
1330 Connecticut Ave NW
STE Office 785
Washington, DC 20036
202-429-6415
Mkallen@steptoe.com
Lniday@steptoe.com

Attorneys for Plaintiffs-Appellants

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE AND WORD
COUNT LIMITATIONS**

I, Jeffrey Loperfido, counsel for Plaintiffs-Appellants and a member of the Bar of this Court, certify that the attached Reply Brief is proportionally spaced, has a typeface of 14 points using Times New Roman font, and contains 6,270 words as calculated pursuant to Fed. R. App. P. 32(f).

August 13, 2026

By: s/ Jeffrey Loperfido

Attorneys for Plaintiffs-Appellants

RETRIEVED FROM DEMOCRACYDOCKET.COM