UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS,

Plaintiff,

v.

ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections; JEFF CARMON, in his official capacity as Secretary of the North Carolina State Board of Elections; STACY EGGERS IV, KEVIN N. LEWIS, and SIOBHAN O'DUFFY MILLEN, in their official capacities as members of the North Carolina State Board of Elections; KAREN BRINSON BELL in her official capacity as Executive Director of the State Board of Elections,

Defendants,

and

PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,

Intervenors.

CASE NO. 1:23-cv-837

INTERVENORS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS OR, ALTERNATIVELY, TO TRANSFER

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

INTRODUCTION 1

QUESTIONS PRESENTED 2

STATEMENT OF FACTS 2

ARGUMENT 6

I. The Alliance Failed To Establish Subject-Matter Jurisdiction. 7

A. The Alliance lacks standing. 7

1. The Alliance lacks representational standing. 8

2. The Alliance lacks organizational standing. 8

B. The Alliance's claims are otherwise unripe. 11

II. The Alliance Failed to Establish That Venue Is Proper in This District. 13

III. Laches Bars the Alliance's Claims Brought on Its Own Behalf. 15

IV. The Alliance Failed To Plausibly Allege a VRA Violation. 16

V. The Alliance Failed To Plausibly Allege a Constitutional Violation. 19

CONCLUSION 22

TABLE OF AUTHORITIES

Case	Page
Dunn v. Blumstein, 405 U.S. 330 (1972)	1, 3, 19, 20, 21
Aggarao v. MOL Ship Mgmt. Co., 675 F.3d 355 (4th Cir. 2012)	5
Andrews v. Cody, 327 F. Supp. 793 (M.D.N.C. 1971)	3
Andrews v. Cody, 405 U.S. 1034 (1972)	3
Ashcroft v. Iqbal, 556 U.S. 662 (2009)	7
Bartholomew v. Virginia Chiropractors Ass'n, Inc., 612 F.2d 812 (4th Cir. 1979)	7
City of Boerne v. Flores, 521 U.S. 507 (1997)	19
Costello v. United States, 365 U.S. 265 (1961)	15
Int'l Refugee Assistance Proj. v. Trump, 961 F.3d 635 (4th Cir. 2020)	7
Jackson v. Leake, 2006 WL 2264027 (M.D.N.C. Aug. 7)	13
Jarrett v. State of N.C., 868 F. Supp. 155 (D.S.C. 1994)	14
Jenkins Brick Co. v. Bremer, 321 F.3d 1366 (11th Cir. 2003)	13, 14
King v. Burwell, 576 U.S. 473, 492 (2015)	16, 17
Leroy v. Great W. United Corp., 443 U.S. 173 (1979)	14
Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992)	1
Marshall v. Meadows, 921 F. Supp. 1490 (E.D. Va. 1996)	15, 16
Marston v. Lewis, 410 U.S. 679 (1973)	20
Moore v. Circosta, 2020 WL 6591307 (E.D.N.C. Sept. 30)	13
Moore v. Circosta, 494 F. Supp. 3d 289 (M.D.N.C. 2020)	11
N.C. State Conf. of the NAACP v. McCrory, 831 F.3d 204 (4th Cir. 2016)	4, 15
Oregon v. Mitchell, 400 U.S. 112 (1970)	3, 19
Purcell v. Gonzalez, 549 U.S. 1 (2006)	12, 20, 21
Renne v. Geary, 501 U.S. 312 (1991)	7
Republican Party of N.C. v. Martin, 682 F. Supp. 834 (M.D.N.C. 1988)	13, 14
Res. Room SI, Inc. v. Borrero, 2022 WL 17407968 (E.D.N.C. Dec. 2)	14
Rosario v. Rockefeller, 410 U.S. 752 (1973)	9
S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC, 713 F.3d 175 (4th Cir. 2013)	6, 7, 8, 10

Saenz v. Roe, 526 U.S. 489 (1999) 21
Sierra Club v. Morton, 405 U.S. 727 (1972) 10
South Carolina v. United States, 912 F.3d 720 (4th Cir. 2019) 7, 8, 11, 12
Union Lab. Life Ins. Co. v. Pireno, 458 U.S. 119 (1982) 7
United States v. Garcia, 855 F.3d 615 (4th Cir. 2017) 5
Wash. State All. for Retired Americans v. Hobbs, No. 3:23-cv-06014 (W.D. Wash. Nov. 7, 2023) 5
White v. Daniel, 909 F.2d 99 (4th Cir. 1990) 15, 16
Wild Va. v. Council on Envtl. Quality, 56 F.4th 281 (4th Cir. 2022) 7, 8, 11
Will v. Mich. Dep't of State Police, 491 U.S. 58 (1989) 9

Constitutions, Statutes, and Rules

28 U.S.C. §113(a) 13
28 U.S.C. §1406(a) 13
28 U.S.C. §1391(b) 13
52 U.S.C. §10502(a) 17, 19
52 U.S.C. §10502(b) 17
52 U.S.C. §10502(c) 2, 17, 19
52 U.S.C. §10502(d) 2, 16, 18, 21
52 U.S.C. §10502(e) 2, 3, 9, 10, 12, 17
N.C. Const. art. II, §2, para. 1 1
N.C. Gen. Stat. §163-20 6
N.C. Gen. Stat. §163-55 ..... 1, 3
N.C. Gen. Stat. §163-55(a) 9
N.C. Gen. Stat. §163.82.4(c)(1) 4
N.C. Gen. Stat. §163-82.6(d) 4, 21
S.L. 2023-140 (S.B. 747) §10, *codified at* N.C. Gen. Stat. §163-82.6B (effective Jan. 1, 2024) 4, 16
Laws 1973, c. 793, §18 1
10 Ill. Comp. Stat. 5/5-2 18
10 Ill. Comp. Stat. 5/5-50 18
25 Pa. Cons. Stat. §1301 18

25 Pa. Cons. Stat. §3071 18
N.J. Stat. Ann. 19:31-5 18
N.J. Stat. Ann. 19:31-6 18
R.C. Wash. 29A.08.230 18
R.C. Wash. 29A.08.140 18
Utah Code §20A-2-101 18
Utah Code §20A-2-102.5 18

Other Authorities

N.C. Gen. Assem., *Rep. Tim Moore Biography*, https://www.ncleg.gov/Members/Biography/H/339 6
N.C. Gen. Assem., *Sen. Phil Berger Biography*, https://www.ncleg.gov/Members/Biography/S/64 6
N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz 5, 15
N.C. State Bd. of Elections, *Contact*, https://www.ncsbe.gov/contact 6

INTRODUCTION

Half a century ago, the North Carolina General Assembly required that every citizen must "have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election" to "be qualified to vote in the precinct in which the person resides." N.C. Gen. Stat. §163-55; *see* Laws 1973, c. 793, §18 (similar). But Plaintiff North Carolina Alliance for Retired Americans claims to have discovered that this voter qualification law and the constitutional provision that authorizes it, N.C. Const. art. II, §2, para. 1, violate the VRA Amendments of 1970 and—due to a Supreme Court case from 1972—the U.S. Constitution. *Cf.* Compl., Doc. 1 ¶59 (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). Despite its claims to the contrary, the Alliance has not unearthed violations of the VRA and the Constitution that have hidden in plain sight for fifty years.

Even so, this Court cannot reach those merits issues because the Alliance, which is an organization that allegedly consists solely of members already residing in North Carolina, Compl. ¶16, lacks standing. To establish this Court's jurisdiction, "the party seeking review" must itself "be among the injured." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563 (1992) (quotation omitted). The Alliance is not among the allegedly injured. It failed to plead that *any* of its members were unqualified to vote in an election at the time it filed the complaint. And the Alliance has not alleged any injury to its own rights. Acting like a roving private attorney general, the Alliance waited to sue in an improper venue after its own claims became barred by laches and while any future member's claim remained unripe. This Court should dismiss the complaint or, alternatively, transfer the case to the Eastern District, where all the parties reside.

QUESTIONS PRESENTED

1. Should this Court dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(1) for failure to establish subject-matter jurisdiction?

2. Should this Court dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(3) for failure to establish that venue is proper in the Middle District of North Carolina or, alternatively, transfer to the Eastern District of North Carolina under 28 U.S.C. §1406(a)?

3. Should this Court dismiss Plaintiff's complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted?

STATEMENT OF FACTS

In 1970, Congress amended the Voting Rights Act and prevented citizens "otherwise qualified to vote in any election for President and Vice President" from being "denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement." 52 U.S.C. §10502(c). Congress required that "each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election." *Id.* §10502(d). Because some citizens "otherwise qualified to vote" might move to a different State "after the thirtieth day next preceding such election and, for that reason, [] not satisfy the registration requirements of such State or political subdivision," such a citizen is "allowed to vote for the choice of electors for President and Vice President, or for President

and Vice President, in such election, (1) in person in the State or political subdivision in which he resided immediately prior to his removal if he had satisfied, as of the date of his change of residence, the requirements to vote in that State or political subdivision, or (2) by absentee ballot in the State or political subdivision in which he resided immediately prior to his removal." *Id.* §10502(e).[1]

Shortly thereafter, a three-judge panel of this Court ruled that North Carolina's "one year durational residency requirement as it relates to the right to vote in local elections" was unconstitutional. *Andrews v. Cody*, 327 F. Supp. 793, 795 (M.D.N.C. 1971) (not opining on the 30-day qualification or other elections), *summarily aff'd*, 405 U.S. 1034 (1972). And then the Supreme Court ruled unconstitutional Tennessee's "requirement that voters must have been residents in the State for a year and the county for three months." *Dunn*, 405 U.S. at 360.[2] The Supreme Court held that "30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much." *Id.* at 348.

Consequently, the North Carolina General Assembly amended its qualification law in 1973 to require that every citizen must "have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election" to "be qualified to vote in the precinct in which the person resides." N.C. Gen. Stat. §163-55. Potential North Carolina voters cannot register to vote "without attesting they

[1] In *Oregon v. Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld this statute under the Fourteenth Amendment's Privileges or Immunities Clause. Intervenors expressly reserve the right to challenge this ruling.

[2] Intervenors expressly reserve the right to dispute the decisions in *Dunn* and *Andrews*.

have resided in the state for at least 30 days before the date of the" next election. Compl. ¶8 (citing N.C. Gen. Stat. §163.82.4(c)(1)). The Alliance alleges that North Carolina applies this law "to all registering voters uniformly" and that this is a requirement "[i]n order to register to vote." *Id.* ¶¶23-24.

North Carolina usually requires a prospective voter to complete registration 25 days before the election. N.C. Gen. Stat. §163-82.6(d). However, North Carolina also allows "voters who miss the normal registration deadline" to "register to vote through same-day registration, which begins 20 days before the election at the start of the early voting period and ends the Saturday before election day." Compl. ¶28; *see also N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 239 (4th Cir. 2016) (enjoining enforcement of a North Carolina law that ended same-day registration); S.L. 2023-140 (S.B. 747) §10, *codified at* N.C. Gen. Stat. §163-82.6B (effective Jan. 1, 2024) (allowing same-day registration through the early voting period). To register during early voting, potential voters must attest that they satisfy the 30-day qualification, provide documentary proof of residence, and present photo identification. *Id.* A same-day registrant must vote via a retrievable ballot. *Id.* Within two business days, the relevant county board of elections must update the registration database, search for possible duplicate registrations, and attempt to verify the applicant's address. *Id.*

On October 2, 2023, the Alliance sued by itself and without identifying any then-current member who would be impacted by the 30-day qualification. The Alliance is a 501(c)(4) established in January 2016 and that resides at 1408 Hillsborough Street,

Raleigh, NC 27605.[3] The Alliance allegedly "has approximately 52,000 members across North Carolina, including thousands of members in this judicial district," but did not identify any specific member who resides in the Middle District or is impacted by the qualification law. Compl. ¶16. While the Alliance claims that "new members are constantly joining its ranks," *id.*, it did not identify any new member who would be disqualified from registering to vote in a North Carolina election within 30 days of the Alliance filing the complaint.

The Alliance's first claim is that North Carolina violates the VRA "by conditioning a voter's eligibility to vote" in presidential elections "on whether the voter has been in the state for a certain period of time before election day," positing that requiring residency even a day before the election is illegal. *Id.* ¶¶45-52. The Alliance's second claim is that North Carolina violates the First and Fourteenth Amendments—specifically the right to vote and the "right to interstate travel," *id.* ¶39—by requiring residency in North Carolina more than a day before an election, *id.* ¶¶53-59. The Alliance is "a chartered state affiliate of the Alliance for Retired Americans," *id.* ¶16, whose Washington affiliate recently alleged that Washington similarly violates the VRA and Constitution, *Wash. State All. for Retired Americans v. Hobbs*, No. 3:23-cv-06014 (W.D. Wash. Nov. 7, 2023).

[3] *See* N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz (search for "North Carolina Alliance for Retired Americans," entry appearing with ID#1491517). The Court can consider evidence outside the pleadings when considering Intervenors' Rule 12(b)(3) venue motion. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 365-66 (4th Cir. 2012). Additionally, the Fourth Circuit "and numerous others routinely take judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (collecting authority).

Defendants Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin Lewis, and Siobhan Millen are sued in their official capacities as members of the North Carolina State Board of Elections ("State Board"). Compl. ¶19. Defendant Karen Brinson Bell is sued in her official capacity as the Executive Director of the State Board. *Id.* ¶20. The State Board generally "shall meet in its offices in the City of Raleigh, or at another place in the City of Raleigh" and keeps the records of its minutes "in the office of the State Board in the City of Raleigh." N.C. Gen. Stat. §163-20. The State Board, its members, and its Executive Director maintain their official residence at 430 N Salisbury St., Raleigh, NC 27603. *See* N.C. State Bd. of Elections, *Contact*, https://www.ncsbe.gov/contact.

Legislative Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, timely moved to intervene. Mot. to Intervene, Doc. 22. Both the North Carolina Senate and House of Representatives convene in Raleigh and officially reside at 16 West Jones Street, Raleigh, NC 27601. Intervenor Philip E. Berger officially resides at 16 West Jones Street, Rm. 2007, Raleigh, NC 27601. N.C. Gen. Assem., *Sen. Phil Berger Biography*, https://www.ncleg.gov/Members/Biography/S/64. Intervenor Timothy K. Moore officially resides at 16 West Jones Street, Rm. 2304, Raleigh, NC 27601. N.C. Gen. Assem., *Rep. Tim Moore Biography*, https://www.ncleg.gov/Members/Biography/H/339.

ARGUMENT

Plaintiff bears the burden of establishing this Court's subject-matter jurisdiction and venue. *See S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*,

713 F.3d 175, 181 (4th Cir. 2013) (standing); *Wild Va. v. Council on Envtl. Quality*, 56 F.4th 281, 293 (4th Cir. 2022) (ripeness); *Bartholomew v. Virginia Chiropractors Ass'n, Inc.*, 612 F.2d 812, 816 (4th Cir. 1979) (venue), *abrogated on other grounds by Union Lab. Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982).

"'To survive a motion to dismiss'" for failure to state a claim, "'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible* on its face' in the sense that the complaint's factual allegations allow 'the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.'" *Int'l Refugee Assistance Proj. v. Trump*, 961 F.3d 635, 648 (4th Cir. 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

I. The Alliance Failed To Establish Subject-Matter Jurisdiction.

The Alliance has failed to establish this Court's Article III jurisdiction because (1) the Alliance lacked standing when it filed the complaint; and (2) to the extent its claims are based on the possibility of future injury, its claims are unripe. Federal courts "presume" that they "lack jurisdiction unless the contrary appears affirmatively from the record." *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quotation omitted). Here, the Alliance failed to "clearly [] allege facts demonstrating that [it] is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Id.*

A. The Alliance lacks standing.

"To establish Article III standing, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant;

and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019) (quotation omitted). An organization like the Alliance "can assert standing either in its own right or as a representative of its members." *S. Walk*, 713 F.3d at 182.

Here, the Alliance claims that North Carolina's voter qualification law "threatens both the Alliance's members voting rights and the Alliance itself, as an organization." Compl. ¶17. Neither theory suffices.

1. The Alliance lacks representational standing.

The Alliance lacks representational standing for the simple reason that it failed to allege facts sufficient to establish that any member had standing at the time the Alliance filed suit. "To plead representational standing, an organization must allege that (1) its own members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim nor the relief sought requires the participation of individual members in the lawsuit." *S. Walk*, 713 F.3d at 184 (quotation omitted). "[T]o show that its members would have standing," the Alliance must at least "identify a single *specific member* injured by" the North Carolina voter qualification. *Id.* "When evaluating standing," this Court "must look to the facts at the time the complaint was filed." *Wild Va.*, 56 F.4th at 293.

In its complaint, the Alliance failed to identify any specific current member presently or imminently injured in fact by the North Carolina voter qualification. The Alliance alleged having current members only "across North Carolina." Compl. ¶16. While the Alliance generally alleged that "[n]ew members join the Alliance's ranks each month,

including in the month before each federal election," as retirees "move to North Carolina," *id.* ¶17, it did not identify any specific member who—as of October 2, 2023—currently resides outside of North Carolina but will imminently move into the State within 30 days of an election and thus be prevented from voting solely due to the alleged VRA and constitutional violation.

That pleading failure is fatal to the Alliance's attempt to assert representational standing. Without identifying specific members who are "recently arrived residents of" North Carolina and who would be impacted the 30-day qualification, the Alliance lacks representational standing to raise its claims. *Rosario v. Rockefeller*, 410 U.S. 752, 759 n.9 (1973) (plaintiffs lacked standing to challenge "durational residence requirement").

For its VRA claim, the next presidential election was over a year away when the Alliance sued. Even at that point, new residents unable to register in North Carolina due to their inability to attest satisfying the voter qualification law could vote in the presidential election by casting an in-person or absentee vote in their previous State, as the VRA expressly allows. *See* 52 U.S.C. §10502(e). And for its constitutional claim, the Alliance identified no election where the challenged law presently or imminently injures a specific member of the Alliance.[4]

[4] The complaint focuses exclusively on the *interstate* movement of potential new members "who move to North Carolina within the month leading up to any federal election." Compl. ¶17. The Alliance does not challenge North Carolina granting current residents who "[r]emov[e] from one precinct to another in this State" the right to "vote in the precinct from which the person has removed until 30 days after the person's removal." N.C. Gen. Stat. §163-55(a). No current member benefits from the *prospective* relief available under *Ex parte Young*. *See Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 & n.10 (1989).

2. The Alliance lacks organizational standing.

The Alliance also fails to establish standing for the organization itself to bring these claims. *See S. Walk*, 713 F.3d at 182 (requiring an "organization claiming standing in its own right" to satisfy the same injury-in-fact, traceability, and redressability requirements).

For injury in fact, the Complaint alleges that the qualification law "undermines the Alliance's get-out-the-vote work in North Carolina and its advocacy work on other public policy issues that are critical to its membership, including the pricing of prescription drugs and protecting benefits from Social Security, Medicare, and Medicaid." Compl. ¶18. But the Alliance does not allege that any of its own rights is violated. The Alliance does not claim to possess a right to vote or to interstate travel. While it alleges some unspecified "spend[ing]" of "additional resources that it would otherwise spend in other ways," *id.*, such nebulous claims of "injury to organizational purpose, without more, does not provide a basis for standing," *S. Walk*, 713 F.3d at 183. The Alliance cannot explain why its "special interest" in these policy topics gives it standing without providing a reason that would mean "any individual citizen with the same bona fide special interest would not also be entitled to do so." *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972).

Even if that were not so, the Alliance suffers no imminent and concrete injury from generally assisting new residents with voting in their previous states of residence in any unspecified future election, as the VRA expressly allows residents who move within 30 days of a presidential election to do. *See* 52 U.S.C. §10502(e). The Alliance claims to have the exact same mission as "its nationwide affiliate," *id.* ¶17, which makes sense because issues such as prescription drug pricing, Social Security, Medicare, and Medicaid

are nationwide in scope, *id.* ¶18. The Alliance failed to identify any North Carolina-specific policy issue with regard to which the qualification law hinders the Alliance's organizational purpose. And Plaintiff does not allege that the challenged law is draining the Alliance's resources because, if it were, the Alliance would not have sat on its hands while the 2016, 2018, 2020, and 2022 elections passed by, not to mention numerous local and special elections. *Cf. Moore v. Circosta*, 494 F. Supp. 3d 289, 302-05 (M.D.N.C. 2020) (describing the Alliance's involvement in lawsuits around the 2020 general election).

B. The Alliance's claims are otherwise unripe.

Assuming the Alliance has standing, which it does not, its claims are otherwise unripe. "As with standing, ripeness is a question of subject matter jurisdiction." *South Carolina*, 912 F.3d at 730. "The question of whether a claim is ripe turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *Id.* (quotation omitted). A "plaintiff's claim is not ripe for judicial review if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (quotation omitted). The Alliance—and its affiliated entities in other States—may want federal courts to "entangl[e] themselves in abstract disagreements over" alleged future violations of the VRA and Constitution. *Wild Va.*, 56 F.4th at 295. But that is exactly the sort of non-concrete dispute that the ripeness doctrine forbids federal courts from preemptively weighing in on.

The Alliance's representational claims turn on the idea that, within 30 days of some unspecified future election, some unspecified individual who is not currently a member of the Alliance will move to North Carolina, join the Alliance, and then be prohibited by the

qualification law from registering to vote and voting in that election. *See* Compl. ¶17. Such anticipated future injury "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *South Carolina*, 912 F.3d at 730. The Alliance certainly has not carried its burden "to *demonstrate* that the claim is ripe." 56 F.4th at 293. A dispute, as in *Dunn*, over a specific potential voter's concrete claim would illuminate apparent points of dispute, such as the Alliance's mistaken belief that new residents cannot vote in a presidential election by casting a vote in their previous state of residence if they move within 30 days of a presidential election. *See* Compl. ¶37 (misreading 52 U.S.C. §10502(e)). Delay does not harm current Alliance members, all allegedly North Carolina residents, *id.* ¶16, because the challenged law does not impact their rights. To be sure, Intervenors sympathize with the desire to resolve disputes about election laws well ahead of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). But Plaintiff did not identify *any* specific member who will be, or even has been, injured by the challenged law.

Similarly, the Alliance's organizational claims hinge on the qualification law making it harder for the Alliance to conduct "get-out-the-vote work" targeted at unspecified future new residents—who might be uninterested in joining the Alliance or might disagree with its policy objectives—and to increase the Alliance's power in unspecified future elections and advocacy campaigns. *Id.* ¶18. Without a concrete example, the Alliance's organizational claim is unripe to the extent it is based on future injury. The Alliance can complain of no "hardship . . . of withholding court consideration" until then because the Alliance itself withheld filing this lawsuit through numerous North Carolina elections.

II. The Alliance Failed to Establish That Venue Is Proper in This District.

Venue is improper in this district so this Court must dismiss the complaint or, alternatively, transfer the case to the Eastern District of North Carolina. 28 U.S.C. §1406(a). "A civil action may be brought in . . . (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action." *Id.* §1391(b).

Intervenors and all other Defendants officially reside in Raleigh, which is in Wake County, so venue would be proper in the Eastern District, not in the Middle District. *See Jackson v. Leake*, 2006 WL 2264027, at *10 (M.D.N.C. Aug. 7) (transferring to the Eastern District because members of State Board maintain official residences in Raleigh); *Republican Party of N.C. v. Martin*, 682 F. Supp. 834, 835-37 (M.D.N.C. 1988) (same); *Moore v. Circosta*, 2020 WL 6591307, at *2 (E.D.N.C. Sept. 30) (State Board resides in Raleigh); *see also* 28 U.S.C. §113(a) (boundaries of districts). Defendants' residency in a different district of the same State "in which this judicial district is located" is not enough for residency here. Compl. ¶14.

Further, because Defendants have performed every alleged event or omission giving rise to Plaintiffs' purported claims in Raleigh, jurisdiction is also proper on that basis in the Eastern District, not here. The venue statute "*protects defendants*, and Congress

therefore meant to require courts to focus on relevant activities of the defendant, not of the plaintiff." *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371-72 (11th Cir. 2003) (quotation omitted) (emphasis added); *see Res. Room SI, Inc. v. Borrero*, 2022 WL 17407968, at *5 (E.D.N.C. Dec. 2) ("[V]enue is a defendant-focused statute[.]" (citing *Jenkins Brick*, 321 F.3d at 1371)).

Whether Plaintiff would be injured in this district is irrelevant. The Alliance has not alleged that "the official duties" of Intervenors and other Defendants "performed relevant to this action occurred anywhere other than in Raleigh, which is in the Eastern District." *Moore*, 2020 WL 6591307, at *2. The State Board's "mere supervisory role over" county boards of election "does not make" venue proper in the Middle District. *Republican Party of N.C.*, 682 F. Supp. at 836. To construe §1391(b)(2) as permitting venue based on the location of some of Plaintiff's activities or a fraction of Plaintiff's members would make the residence of a plaintiff (or its members) a *de facto* venue option in most every lawsuit—yet, Congress "did not intend [for §1391] to provide for venue at the residence of the plaintiff." *Leroy v. Great W. United Corp.*, 443 U.S. 173, 184-85 (1979); *see Jarrett v. State of N.C.*, 868 F. Supp. 155, 157-59 (D.S.C. 1994).

Even if the location of Plaintiff's purported injury were relevant, the Alliance itself officially resides in Raleigh. Plaintiff has not identified a specific current member who resides in this district and will be harmed by the challenged law. By definition, future members "who move to North Carolina within the month leading up to any federal election" did not live in the Middle District when the Alliance sued. Compl. ¶17.

III. Laches Bars the Alliance's Claims Brought on Its Own Behalf.

Even if the Alliance would otherwise have a cause of action to bring claims on its own behalf, the doctrine of laches would bar such claims. "[L]aches is an appropriate issue for a motion to dismiss in this case." *Marshall v. Meadows*, 921 F. Supp. 1490, 1493 (E.D. Va. 1996) (dismissing VRA claim).[5] Laches applies when a defendant can prove "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282 (1961).

"The first element of laches—lack of diligence—exists where the plaintiff delayed inexcusably or unreasonably in filing suit." *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990) (quotation omitted). The Alliance has existed as a 501(c)(4) organization since January 2016. And the Alliance's predecessor 501(c)(3) organization—dissolved in 2016 after the creation of the 501(c)(4)—was founded in June 2003.[6] Even considering only the Alliance as a 501(c)(4), Plaintiff has inexcusably and unreasonably delayed filing suit until well after the 2016, 2018, 2020, and 2022 general elections and other elections during that period. North Carolina's qualification law has existed for half a century. The Alliance expressed no qualms in 2016, a presidential election year, when the Fourth Circuit enjoined North Carolina from eliminating same-day voter registration, *McCrory*, 831 F.3d at 239, which the Alliance belatedly claims as an impetus for its VRA and constitutional claims.

[5] Intervenors expressly reserve arguments about whether laches also bars the Alliance's claims brought on a representational basis or any particular remedy.

[6] *See* N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz (search for "North Carolina Alliance for Retired Americans," entry appearing with ID#0677808). The Court may judicially notice this information.

Because the Alliance's delay was "inexcusable and unreasonable," Intervenors "need not show the degree of prejudice that would be required if the delay had been less aggravated." *White*, 909 F.2d at 103. The Alliance's delay disadvantaged North Carolina by allowing numerous intervening modifications to election laws that might be impacted by a finding that the State's election laws cannot simultaneously impose a 30-day qualification and allow registration during early voting. On top of the Alliance's silence before and after the Fourth Circuit enjoined a North Carolina law that would have ended same-day registration, the Alliance waited until the last month of the most recent legislative session to file suit. The General Assembly had *already* enacted a comprehensive law in August 2023 that, in part, made clear North Carolina allows same-day registration during early voting and then overrode the Governor's veto of that law 8 days after the Alliance sued. *See* S.L. 2023-140 (S.B. 747), §10. Throughout the public debate over these legislative actions, the Alliance never advocated for the change it now asks this Court to impose by judicial fiat. The Alliance as an organization slept on its supposed rights, so laches now bars its claims. *See Marshall*, 921 F. Supp. at 1494.

IV. The Alliance Failed To Plausibly Allege a VRA Violation.

The Alliance failed to plausibly allege that the North Carolina voter qualification law violates the VRA because the VRA amendments squarely allow the State to limit "registration" or voting "qualification" for North Carolina's presidential electors to citizens who reside in North Carolina at least "thirty days immediately prior to any presidential election." 52 U.S.C. §10502(d). The "fundamental canon of statutory construction is that

the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 492 (2015).

Section 10502(a) starts out by expressing Congress's legislative findings. Next, §10502(b) "declares" Congress's overarching plan "to completely abolish the durational residency requirement as a precondition to voting for President and Vice President." The Alliance latches on to this declaratory language, *see* Compl. ¶48, and mixes it together with subsequent mandatory language, *id.* ¶33 (combining with §10502(c)). But the rest of §10502, not §10502(a)-(b), provides the rules for how Congress wants the States to accomplish its policy objective.

No citizen "otherwise qualified to vote in any election for President and Vice President" except for a "failure" to "comply with any durational residency requirement," "shall be denied the right to vote for electors for President and Vice President," §10502(c), because Congress expressly provides that citizens who move to a new State "after the thirtieth day next preceding such election and, for that reason, do[] not satisfy the registration requirements of such State" can vote in-person or by absentee ballot in their previous state of residence, §10502(e). Congress was not concerned in §10502 with making sure that someone who moves to North Carolina within 30 days of a presidential election can vote for *North Carolina's* presidential electors. By requiring the previous state of residence to allow the outgoing resident to vote in the presidential election, Congress protects the federal right to vote somewhere in the United States for presidential electors.

Nor was Congress concerned with requiring States to refer to such a qualification solely as "a *registration* requirement." Compl. ¶5. In §10502(d), Congress expressly

mandates that "each State shall provide by law for the registration *or other means of qualification* of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration *or qualification to vote* for the choice of electors for President and Vice President." (Emphases added.) Tellingly, the Alliance completely ignores that §10502(d) expressly allows the use of 30-days' residency as a "qualification to vote." The Alliance cannot square such a provision with its reading of the statute. Even if such a distinction between a registration requirement and a qualification to vote made a difference, the Alliance readily concedes that North Carolina's 30-day qualification is also a requirement "[i]n order to register to vote." Compl. ¶24.

That North Carolina does not completely cut off registration 30 days before an election does not transform its run-of-the-mill voter qualification into a VRA violation. If the Alliance's reading of the statute were correct, then not only North Carolina but every other State that permissively allows registration within 30 days of an election only for individuals who have resided in the State for 30 days or more prior to the election would be violating the VRA. That includes States as diverse as Illinois, New Jersey, Pennsylvania, Utah, and Washington.[7] The Alliance has not discovered widespread VRA violations spread throughout the country. To be sure, States *may* allow new residents to vote in presidential elections even sooner. *See* Compl. ¶35. But the VRA does not *require* that.

[7] *See* 10 Ill. Comp. Stat. 5/5-2 (qualification); *id.* 5/5-50 (election-day registration); N.J. Stat. Ann. 19:31-5 (qualification); *id.* 19:31-6 (registration until 21 days before an election); 25 Pa. Cons. Stat. §1301 (qualification); *id.* §3071 (registration until 15 days before an election); Utah Code §20A-2-101 (qualification); *id.* §20A-2-102.5 (election-day registration); R.C. Wash. 29A.08.230 (qualification); *id.* 29A.08.140 (election-day registration).

If, however, the Alliance has the better read of the statute, then §10502 exceeded Congress's enforcement power under §5 of the Fourteenth Amendment. For §10502 to constitute an "appropriate remedial measure[]," then "there must be a congruence between the means used and the ends to be achieved." *City of Boerne v. Flores*, 521 U.S. 507, 530, (1997). At most, Intervenors' reading of the VRA amendment places the statute at the outer bounds of Congress's authority to remedy the relevant problem it identified: the denial or abridgment of "the inherent constitutional right of citizens to vote for their President and Vice President" due to "movement across State lines." 52 U.S.C. §10502(a); *cf. City of Boerne*, 521 U.S. at 531 (citing positively *Oregon*, 400 U.S. at 207 (opinion of Harlan, J.) (disagreeing with the ruling that Congress had authority to enact §10502)). The Alliance's reading surely takes the statute beyond those bounds. It would not be congruent to protecting the *federal* right to vote in a presidential election to mandate that a new North Carolina resident has the right to select *North Carolina's* presidential electors as opposed to voting in the presidential election in the previous state of residence. At least as a matter of constitutional avoidance, the Court should adopt Intervenors' reading of the statute.

Finally, this claim must be dismissed to the extent the Alliance attempts to plead it on behalf of the organization itself because the Alliance is not a "citizen of the United States" and thus cannot vote in any presidential election. 52 U.S.C. §10502(c).

V. The Alliance Failed To Plausibly Allege a Constitutional Violation.

North Carolina's voter qualification law is consistent with the Supreme Court's instruction that "30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months,

too much." *Dunn*, 405 U.S. at 348; *see also Marston v. Lewis*, 410 U.S. 679, 680 (1973) (upholding 50-day requirement for state and local elections). A 30-day qualification is also an appropriate amount of time to fulfill "the State's legitimate purpose [] to determine whether certain persons in the community are bona fide residents." *Dunn*, 405 U.S. at 351. Such a time period will not "exclude[] many residents" but will dissuade "would-be fraudulent voters" who "would remain in a false locale for" a short time before an election. *Id.* at 351-52. And because "campaign spending and voter education occur largely during the month before an election," making sure that a voter has been a resident for the entirety of that period serves the State's interest in providing for an educated electorate with at least some minimal ties to the State. *Id.* at 358.

The Alliance concedes that a State may constitutionally prevent new residents from voting up to 30 days before an election but insists that, while 30-day "pre-election *registration* cutoffs" are constitutional, "independently injur[ing]" a voter with a 30-day voter qualification is unconstitutional. Compl. ¶42. Of course, the election laws in *Dunn* and *Marston* did not allow registration within 30 days of the relevant election. But that does not mean the North Carolina General Assembly's "judgment" about what constitutes "an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud" with its election laws is invalid. *Dunn*, 405 U.S. at 348. New residents—who generally require new or updated registrations—impose greater administrative burdens on the voting process than the average current resident and create a need for additional safeguards to prevent fraud. "A State indisputably has a compelling interest in preserving the integrity of its election process," and further liberalizing its

election procedures by eliminating the qualification law undermines that interest. *Purcell*, 549 U.S. at 4.

Any sort of registration cutoff is also going to "divide residents into two classes, old residents and new residents" and "totally deny[]" new residents who move into the State after the cutoff "the opportunity to vote" in their new State, even though older residents retain the opportunity to vote by registering before the cutoff date. *Dunn*, 405 U.S. at 334-35. And the Alliance's sweeping arguments would mean that the VRA amendments' allowance of 30-day "qualification[s] to vote" is likely unconstitutional. 52 U.S.C. §10502(d). The Fourth Circuit itself prohibited North Carolina, as a matter of constitutional law and the VRA, from eliminating same-day registration during early voting without concern that it was creating a new constitutional violation. *McCrory*, 831 F.3d at 239.

This movement away from an early registration deadline makes the qualification law even more "necessary to prevent a fraudulent evasion of state voter standards," not less. *Dunn*, 405 U.S. at 346. North Carolina's initial 25-day cutoff for registration in many circumstances, N.C. Gen. Stat. §163-82.6(d), remains close to the 30-day voter qualification date anyway. And, as explained above, North Carolina is not alone in maintaining a 30-day qualification despite allowing later registration. *Dunn* "marked a sharp departure from the [Supreme] Court's prior right-to-travel cases because in" *Dunn* "travel itself" was not "prohibited." *Saenz v. Roe*, 526 U.S. 489, 514 (1999) (Rehnquist, C.J., dissenting). Without instruction from the Supreme Court that it wants to extend *Dunn* into new territory, this Court should not call into question the constitutionality of numerous States' laws, Congress's enactment of the VRA amendments, and the Fourth Circuit's

decision in *McCrory*. The Alliance failed to plead that the Fourth Circuit walked North Carolina into a constitutional violation.

Finally, this claim must be dismissed to the extent the Alliance attempts to plead it on behalf of the organization itself because no 501(c)(4) has the right to vote in any North Carolina election. The qualification does not violate the organization's rights.

CONCLUSION

For the reasons stated above, Intervenors ask the Court to dismiss the complaint or, alternatively, transfer the case to the Eastern District of North Carolina.

Dated: December 11, 2023

Respectfully submitted,

/s/ Nicole J. Moss
Nicole J. Moss (State Bar No. 31958)
COOPER AND KIRK, PLLC
1523 New Hampshire Avenue, NW
Washington, D.C. 20036
(202) 220-9600
nmoss@cooperkirk.com

Local Civil Rule 83.1 Counsel
for Legislative Defendant-Intervenors

David H. Thompson
Peter A. Patterson
John D. Ohlendorf
Clark L. Hildabrand
COOPER AND KIRK, PLLC
1523 New Hampshire Avenue, NW
Washington, D.C. 20036
(202) 220-9600
dthompson@cooperkirk.com

Counsel for Legislative
Defendant-Intervenors

CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Memorandum, including body, headings, and footnotes, contains 6,239 words as measured by Microsoft Word.

/s/ Nicole J. Moss
Nicole J. Moss
Counsel for Intervenors

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on December 11, 2023, I electronically filed the foregoing Memorandum with the Clerk of the Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

/s/ Nicole J. Moss
Nicole J. Moss
Counsel for Intervenors