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' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

For five decades, the North Carolina General Assembly has 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* N.C. Laws 1973, c. 793, §18 (similar). Plaintiff North Carolina Alliance for Retired Americans has existed for more than two of those decades. Nevertheless, after waiting two decades to sue and another three months after filing suit, the Alliance suddenly seeks to preliminarily enjoin enforcement of this law and the constitutional provision that authorizes it, N.C. Const. art. VI, §2, ¶1. *See* PI Mot., Doc. 30. The Alliance is not entitled to such equitable relief.[1]

On the merits, the Alliance has not clearly shown that it is likely to prevail. The Alliance has not established standing sufficient for the preliminary injunction. At the time the Alliance requested the injunction, it could not identify any specific member harmed by the law. Nor has the Alliance established injury to the organization itself, which has sat on its claims so long that they are barred by laches. Claims of future harm are unripe, and this Court is an improper venue. Even so, the Alliance has not discovered violations of the VRA and the U.S. Constitution hiding in plain sight for half a century.

The equities heavily weigh in the State's favor. After numerous elections occurred with the 30-day qualification in place, the Alliance belatedly asks the Court to nullify the law in its entirety. Such relief would be inequitable and irreparably harm North Carolina.

[1] Magistrate Judge Webster recommended that Intervenors' Motion to Intervene be granted, Doc. 29. The deadlines for a party to object passed without objection, Doc. 30.

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). "[E]ach 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." *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, . . . in such election . . . in the State or political subdivision in which he resided immediately prior to his removal." *Id.* §10502(e).

Shortly thereafter, a three-judge panel of this Court ruled, and the Supreme Court summarily affirmed, 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 30-day qualification), *aff'd*, 405 U.S. 1034 (1972). The Supreme Court then ruled unconstitutional Tennessee's "requirement that voters must have been residents in the State for a year and the county for three months." *Dunn v. Blumstein*, 405 U.S. 330, 360 (1972). *Dunn* 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, North Carolina 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. Current North Carolina residents who "[r]emov[e] from one precinct to another in this State" have "the right to vote in the precinct from which the person has removed until 30 days after the person's removal." *Id.* §163-55(a). Potential North Carolina voters cannot register to vote without attesting that they qualify to vote. *See id.* §163.82.4(c)(1).

Normal registration ends 25 days before the election. *Id.* §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." Am. Compl. ¶29. To register during early voting, potential voters must attest that they satisfy the 30-day qualification, provide proof of residence, and present photo identification in accordance with N.C. Gen. Stat. §163-166.16. *See* N.C. Gen. Stat. §163-82.6B.[2] A same-day registrant must vote via a retrievable ballot. *Id.* Within two business days, the county board of

[2] Plaintiff ignores this new law. PI Memo. 8 & n.2; *see also* Numbered Memo 2023-05, *Same-Day Registration*, State Board (Dec. 8, 2023), https://perma.cc/824B-RM3F (replacing Numbered Memo 2016-15, the memorandum Plaintiff cites); *Voto Latino v. Hirsch*, 2024 WL 230931, at *31 (M.D.N.C. Jan. 21) (requiring "notice and an opportunity to be heard" for the address verification process of N.C. Gen. Stat. §163-82.6B(d)).

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 filed its original complaint. Compl., Doc. 1. The Alliance waited three months to amend its complaint but still failed to identify any specific member who ever has been or ever will be impacted by the qualification. Am. Compl. On the same day, Plaintiff also requested a preliminary injunction. PI Mot. According to its president, the Alliance has existed since at least 2002. Dworkin Decl. 33-1 ¶2. The Alliance currently operates as a 501(c)(4) 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 a specific member who resides in the Middle District or who would be injured by the law. Am. Compl. ¶16.

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"). Am. Compl. ¶19. Defendant Karen 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 records of its minutes "in the office of the State Board in the City of Raleigh."

[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), Ex. A. The Fourth Circuit "routinely take[s] judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017).

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://perma.cc/28YD-ELQL.

Legislative Intervenors 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://perma.cc/Z3WG-R7YW. 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://perma.cc/PKX3-NCUU.

ARGUMENT

To prevail on a motion for preliminary injunction, Plaintiff "must establish that" it is (1) "likely to succeed on the merits"; (2) "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "that the balance of equities tips in [Plaintiff's] favor"; and (4) "that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "A preliminary injunction shall be granted only if the moving party clearly establishes entitlement to the relief sought." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017). This standard is even stricter for mandatory injunctions such as the one Plaintiff seeks here "to alter the status quo" by forcing North Carolina to allow

unqualified individuals to register and vote. *Perry v. Judd*, 471 F. App'x 219, 223-24 (4th Cir. 2012).

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

The Alliance has failed to establish this Court's jurisdiction because (1) Plaintiff lacked standing when it filed the amended complaint and moved for a preliminary injunction; and (2) its claims based on the possibility of future injury are unripe.

A. The Alliance lacks standing.

"Without standing to sue," Plaintiff "cannot show that it is likely to succeed on the merits." *Speech First, Inc. v. Sands*, 69 F.4th 184, 191-92 (4th Cir. 2023). "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). "When evaluating standing," this Court "must look to the facts at the time the complaint was filed." *Wild Va. v. Council on Env't Quality*, 56 F.4th 281, 293 (4th Cir. 2022). For standing at this stage, Plaintiff cannot rely on material it would have had "access to" but chose not to disclose "at the time the motion for a preliminary injunction was filed." *Democracy N.C. v. State Bd.*, 2020 WL 4288103, at *15 (M.D.N.C. July 27).

An organization "can assert standing either in its own right or as a representative of its members." *S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 182 (4th Cir. 2013). Neither theory suffices here.

1. The Alliance lacks representational standing.

The Alliance lacks representational standing because it failed to establish that any member at the time Plaintiff moved for a preliminary injunction had standing and because the claim and relief sought require the participation of individual members. "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." *Id.* at 184 (quotation omitted). "[T]o show that its members would have standing," Plaintiff must at least "identify a single *specific member* injured by" each part of the North Carolina voter qualification that the Alliance challenges. *Id.*

The Alliance has not identified any specific current member who will be injured in fact during the 2024 general election—or any other North Carolina election—by either the state or precinct aspects of the qualification law. Plaintiff claims to have current members only "across North Carolina." Am. Compl. ¶¶16-17; Dworkin Decl. ¶6. The Alliance has failed to carry its burden of identifying a specific member who—as of January 2, 2024—either (1) currently resides outside North Carolina but will move into the State within 30 days of the 2024 general election and thus be prevented from voting due to the state qualification; or (2) will move to a different county or precinct within the State and thus be prevented from voting in the 2024 general election due to the precinct qualification.[4]

[4] To the extent Plaintiff attempts to represent the interests of non-members who are "unnamed voters in North Carolinians" or who might move into North Carolina, Plaintiff

Plaintiff thus lacks representational standing to challenge either the state or precinct qualification. *See Rosario v. Rockefeller*, 410 U.S. 752, 759 n.9 (1973) (no standing to challenge "durational residence requirement" when plaintiffs were not "recently arrived residents of the State" and had not "moved from one county to another").

Without the participation of a potential 2024 general election voter, this Court cannot determine the validity of Plaintiff's claims or the necessity of a facial preliminary injunction. New North Carolina residents might prefer to vote one last time in their previous State—as the VRA expressly allows. *See* 52 U.S.C. §10502(e). And current residents might prefer to vote again at their previous precinct, N.C. Gen. Stat. §163-55(a), which could potentially include every single election on the ballot in the new precinct.

2. The Alliance lacks organizational standing.

The Alliance also fails to establish "standing in its own right" to obtain a preliminary injunction. *S. Walk*, 713 F.3d at 182. To start, Plaintiff's own rights are not violated. The Alliance does not claim to possess a right to vote or to travel. The qualification does not "amount to a *personal harm* to" the Alliance as an organization. *Id.* at 183.

Instead, Plaintiff alleges only that, "[b]y systematically preventing many of the Alliance's members from voting in North Carolina or in their new voting precinct," 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, . . . making the Alliance less effective in furthering its mission than it otherwise would be, and

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also cannot do so because it lacks a "close relationship" with such potential voters. *Democracy N.C. v. State Bd.*, 476 F. Supp. 3d 158, 190 (M.D.N.C. 2020).

requiring it to spend additional resources that it would otherwise spend in other ways." Am. Compl. ¶18; *see also* Dworkin Decl. ¶¶5, 8. That does not suffice.

Start with how Plaintiff describes its "mission" as having a "particular emphasis on safeguarding [retirees'] right to vote." Am. Compl. ¶16. That "overstates its corporate purpose." *S. Walk*, 713 F.3d at 183 n.3 (granting motion to dismiss). The Alliance's Articles of Incorporation say its "purposes" include "education, communication, and advocacy on issues of importance to older and retired workers and their families,"[5] not litigating the contours of the right to vote. "The plain language of its articles of incorporation simply does not reflect this exaggeration." *Id*. Thus, any "diversion of resources" that "might harm the organization by reducing the funds available for other purposes . . . results not from any actions taken by" North Carolina, "but rather from the" Alliance's "own budgetary choices." *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012). The Alliance may decide to "further[] its mission by ardently working to protect the rights of its members to vote," Dworkin Decl. ¶5, or to "accomplish[] its mission by championing and fiercely protecting its members' right to have their voices heard at the ballot box," PI Memo. 13. But those tactics are not themselves the mission of the Alliance.

That distinguishes the Alliance from the "voting-rights organization" in *Democracy North Carolina*, 476 F. Supp. 3d at 236-37 (quotation omitted). Given its Articles of Incorporation, Plaintiff has not clearly established that getting voters registered and to the

[5] *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, View Filings, at Doc. ID# C201600700084), Ex. B.

polls is the "core mission" of the Alliance. *Id.* at 186 (quotation omitted). The Alliance is asserting no more than a "generalized grievance," and any "diversion of resources has not stemmed from Defendants' frustrating" the Alliance's "mission." *Id.* at 188.

Nebulous claims about the qualification making the Alliance "less effective" in achieving policy victories, PI Memo. 14, "without more, do[] not provide a basis for standing," *S. Walk*, 713 F.3d at 183. Plaintiff cannot explain why its "special interest" in certain 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 the case, Plaintiff fails to provide a concrete example of how, without a preliminary injunction for the 2024 general election, the qualification law will force the Alliance to spend more resources. If anything, the qualification law *reduces* the resources Plaintiff would have to spend on get-out-the-vote work because new arrivals do not need assistance voting in North Carolina while current residents can still vote at their previous precincts without changing registration. Similarly, the Alliance provides no explanation about what its "advocacy work" entails or how the 2024 general election will impact the resources spent on that advocacy. Am. Compl. ¶18; Dworkin Decl. ¶8. Any financial impact is neither "traceable to the challenged provisions" nor "redressable by a federal court." *S. Walk*, 713 F.3d at 182. And Plaintiff might in fact *benefit* under its ideological effectiveness theory if a majority of new residents for the 2024 general election, most of whom will not join the Alliance, oppose its policy objectives.

B. The Alliance's claims are otherwise unripe.

The Alliance's claims are otherwise unripe. "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." *South Carolina*, 912 F.3d at 730 (quotation omitted). Courts cannot preemptively "entangl[e] themselves in abstract disagreements over" alleged future violations of the VRA and Constitution. *Wild Va.*, 56 F.4th at 295.

The Alliance's request for a preliminary injunction for the state qualification turns on the idea that, within 30 days of the 2024 general election, some unspecified individual will move to North Carolina, join the Alliance, and then be prohibited by the law from registering to vote and voting in that election. And its preliminary injunction request for the precinct qualification is premised on the idea that, within 30 days of the 2024 general election, some unspecified Alliance member will move to a different precinct that does not have the same elections on the ballot and then be prohibited from registering to vote and voting in that different election. *Id.* 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." *Wild Va.*, 56 F.4th at 293. A dispute, as in *Dunn*, over a specific potential voter's concrete claim would illuminate apparent points of dispute. Plaintiff has not demonstrated that withholding consideration of its claims would harm its current members, all allegedly North Carolina residents. Dworkin Decl. ¶6. The challenged law cannot impact their ability to vote in presidential or statewide elections, and Plaintiff has not identified any specific

election—local or otherwise—where the ability to vote in a new precinct would matter. 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, as explained above, the Alliance has presented no concrete example of future injury to the organization itself. Plaintiff can complain of no "hardship . . . of withholding court consideration" because the Alliance waited two decades to challenge the law. *South Carolina*, 912 F.3d at 730.

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

Venue is improper in this district so, rather than issuing a preliminary injunction, this Court must instead dismiss the amended complaint or, alternatively, transfer the case to the Eastern District of North Carolina. 28 U.S.C. §1406(a). Relevant here, 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; [or] (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." *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 State Board members 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) (district boundaries). Defendants' residency in a different district of the same State, Am. Compl. ¶14, is not enough for venue.

Further, because Defendants have performed every alleged event or omission giving rise to Plaintiff's 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. Even if Plaintiff's residency were relevant, the Alliance itself officially resides in Raleigh, and Plaintiff has not even identified a specific member who resides in this district and would be injured by the law.

III. Laches Bars the Alliance's Claims and Preliminary Injunction Request.

The doctrine of laches bars any claims the Alliance might otherwise have.[6] Laches is an appropriate issue for the preliminary-injunction stage in this case. *See Marshall v. Meadows*, 921 F. Supp. 1490, 1494 (E.D. Va. 1996) (using laches even at motion-to-dismiss stage for VRA claim). 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).

"[L]ack 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 defendant may show lack of diligence either by proof that the action was not commenced within the period provided by the applicable statute of limitations or by facts otherwise indicating a lack of vigilance." *Id.* Both apply here.

Plaintiff has existed as a 501(c)(4) organization since January 2016. The Alliance's predecessor 501(c)(3) organization—dissolved in 2016 after the creation of the 501(c)(4)—was founded in June 2003,[7] and the Alliance's president claims the organization has existed since at least 2002, Dworkin Decl. ¶2. The qualification law "was unambiguous and available for all to see" as it "governed" numerous elections during the Alliance's existence. *Perry*, 471 F. App'x at 225 (affirming denial of preliminary injunction due to laches). Even considering only the Alliance as a 501(c)(4), Plaintiff has

[6] Intervenors have reserved the defense of whether the statute of limitations bars the claims.
[7] *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); Ex. C. The Court may judicially notice this information.

inexcusably and unreasonably delayed filing suit until well after the 2016, 2018, 2020, and 2022 general elections and other elections during that period. The Alliance expressed no qualms in 2016, a presidential election year, when the Fourth Circuit enjoined North Carolina from eliminating same-day voter registration, *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 239 (4th Cir. 2016), which Plaintiff belatedly claims as an impetus for its claims. Section 1983 claims have a 3-year statute of limitations in North Carolina, and the Alliance waited well after that period would have run to file suit. *See Epcon Homestead, LLC v. Town of Chapel Hill*, 62 F.4th 882, 886-88 (4th Cir. 2023).

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. Plaintiff'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, Plaintiff waited until the last month of the most recent legislative session to file suit. Preparing for the 2024 elections, 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 Plaintiff sued. *See* S.L. 2023-140 (S.B. 747), §10 (effective Jan. 1, 2024). Throughout the public debate over these legislative actions, the Alliance never advocated for the changes it now asks this Court to impose by

judicial fiat. The organization did not even request a preliminary injunction or file its amended complaint—expanding its claims to challenge the precinct-residency qualification on behalf of unidentified North Carolinians—until *after* the new law's effective date. The Alliance slept on its supposed rights, so laches now bars its claims and the remedy of a preliminary injunction. *See Marshall*, 921 F. Supp. at 1494.

IV. The Alliance Failed To Clearly Establish a VRA Violation.

The Alliance has not clearly established that it will likely prevail on its VRA claim because the VRA amendments squarely allow North Carolina to limit "registration" or voting "qualification" for its presidential electors to citizens who reside in North Carolina at least "thirty days immediately prior to any presidential election" and impose no restriction on qualifications for other elections. 52 U.S.C. §10502(d). Reading the words of the statute "in their context and with a view to their place in the overall statutory scheme" shows there is no VRA violation here. *King v. Burwell*, 576 U.S. 473, 492 (2015).

Section 10502(a) expresses Congress's legislative findings about "the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President." 52 U.S.C. §10502(a). Congress sought to protect "the inherent constitutional right of citizens to enjoy their free movement across State lines" to vote in presidential elections. *Id.* §10502(a)(2). 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 mandatory language in the rest of §10502, not the declaratory language in §10502(a)-(b), provides the rules for States to accomplish Congress's 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). 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.

Congress has not commanded States to refer to a 30-day qualification solely as a "*registration* requirement[]." PI Memo. 16. Instead, §10502(d) states 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 30-days' residency as a "qualification to vote." Even if such a distinction made a difference, Plaintiff readily concedes that the 30-day qualification is also a requirement "[i]n order to register to vote." Am. Compl. ¶24.

That North Carolina does not completely cut off registration 30 days before a presidential election does not transform its run-of-the-mill qualification into a VRA violation. If the Alliance's reading of §10502 were correct, States as diverse as Illinois,

New Jersey, Pennsylvania, Utah, and Washington would all be violating the VRA.[8] Like North Carolina, those States allow registration within 30 days of a presidential election only for individuals who have resided in the State for 30 days prior to the election.

Further, the VRA has no bearing on qualifications for any election other than "vot[ing] for electors for President and Vice President, or for President and Vice President," §10502(c), so no current resident (including all the Alliance's members) has a VRA claim because the same electors are on the ballot in every North Carolina precinct.

V. The Alliance Failed To Clearly Establish a Constitutional Violation.

Under the *Anderson-Burdick* framework, an election law's burdens are "weigh[ed] against the state's interests by looking at the whole electoral system." *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020) (Easterbrook, J.) (citing *Burdick v. Takushi*, 504 U.S. 428, 434, 439 (1992)).[9] "Only when voting rights have been severely restricted must states have compelling interests and narrowly tailored rules." *Id.* "Where the burden imposed by the state is not 'severe'—where it is 'lesser'—courts engage in 'less exacting review.'" *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 402 (4th Cir. 2019) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)).

[8] *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); Wash. Rev. Code §29A.08.230 (qualification); *id.* §29A.08.140 (election-day registration).

[9] Plaintiff cites lower-court decisions from the 1970s, *see* PI Memo. 20-21, but all those decisions predate the *Anderson-Burdick* framework.

Less exacting review is appropriate here. *See Luft*, 963 F.3d at 675-76 (upholding Wisconsin's 28-day qualification for non-presidential elections despite Wisconsin allowing election-day registration, Wis. Stat. Ann. §6.55). The 30-day qualification is not a severe burden and will not "exclude[] many residents." *Dunn*, 405 U.S. at 351. There is no federal right to move into North Carolina within 30 days of an election and vote at the new place of residency. *See id.* at 348 (allowing 30-day qualification). Interstate travel is also irrelevant for all of Plaintiff's current members. For those current North Carolina residents, the "Supreme Court has not expressly recognized a fundamental right to intrastate travel" at all. *Willis v. Town of Marshall*, 426 F.3d 251, 265 (4th Cir. 2005). That a right to intrastate travel "is not entirely clear" is enough to doom that argument at the preliminary-injunction stage. *Id.* at 265. Even if such a right existed, it would protect no more "than the right of *movement* from place to place" within a State. *Id.* at 268 (Williams, J., concurring); *see also Marston v. Lewis*, 410 U.S. 679, 680 (1973) (upholding 50-day qualification for state and local elections).

Moreover, the ways in which North Carolina's "election system differs from those of Arizona and Tennessee" in *Marston* and *Dunn*—such as allowing registration within 30 days of an election—"make it easier to vote in" North Carolina. *Luft*, 963 F.3d at 676; *see* PI Memo. 6 (conceding North Carolina's law would be constitutional if it completely closed registration then). New residents can still vote in presidential elections in their previous state of residence, and current residents who move within North Carolina can vote at their previous precinct. "[C]onsider[ing] only the statute's broad application to all" voters, as the Court must for this facial challenge, the qualification "'imposes only a limited

burden on voters' rights.'" *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202-03 (2008) (plurality) (quoting *Burdick*, 504 U.S. at 439).

Thus, at most, "the State's asserted regulatory interests need only be sufficiently weighty to justify the limitation imposed on the party's rights." *Timmons*, 502 U.S. at 364 (quotations omitted); *see also Gallagher v. Ind. State Election Bd.*, 598 N.E.2d 510, 514-16 (Ind. 1992) (upholding qualification using rational-basis review). North Carolina's law satisfies that standard. This Court should respect the 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. *Dunn*, 405 U.S. at 348. The 30-day qualification serves North Carolina's "legitimate purpose [] to determine whether certain persons in the community are bona fide residents" by dissuading "would-be fraudulent voters" who "would remain in a false locale for" a short time before an election. *Id.* at 351-52. Plus, because "campaign spending and voter education occur largely during the month before an election," making sure that a voter resided in North Carolina for 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 30-day registration cutoff Plaintiff concedes is constitutional also "divide[s] residents into two classes, old residents and new residents," *id.* at 334-35, by giving only old residents the chance to register in time. Thus, what Plaintiff is truly complaining about is North Carolina experimenting with allowing old residents to register until early voting ends. Same-day registration "does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law" due to a failure

register in time. *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). This "limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise" is not unconstitutional. *Id.* The Fourth Circuit itself prohibited North Carolina from ending this experiment. *McCrory*, 831 F.3d at 239.

Dunn "marked a sharp departure from the [Supreme] Court's prior right-to-travel cases." *Saenz v. Roe*, 526 U.S. 489, 514 (1999) (Rehnquist, C.J., dissenting). This Court should not extend *Dunn* into new territory with a premature injunction calling into question the constitutionality of *McCrory*, numerous States' laws, and the VRA amendments' allowance of 30-day "qualification[s] to vote." 52 U.S.C. §10502(d).

VI. The Remaining Preliminary-Injunction Factors Weigh in the State's Favor.

"[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1301 (2012) (Roberts, C.J., in chambers). Plaintiff, in contrast, has failed to identify a single potential voter who will be harmed during the 2024 general election. The Alliance itself has no rights under the VRA and no constitutional right to vote or travel. As explained above, the Alliance is not an organization "with core voter-advocacy missions," *Democracy N.C.*, 476 F. Supp. 3d at 236 (quotation omitted), and has failed to explain why it needs an injunction for the 2024 general election but not for any election during the previous two decades.

Even if laches does not apply, Plaintiff's "long delay in seeking relief indicates that speedy action is not required." *Quince Orchard Valley Citizens Ass'n, Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989) (denying preliminary injunction). The "prejudice caused by"

the Alliance's delay harms the "public . . . as well, as" Defendants who "are charged with ensuring the uniformity, fairness, accuracy, and integrity of" North Carolina elections. *Perry*, 471 F. App'x at 227. Plaintiff acknowledges the State could retain the 30-day qualification and comply with federal law by simultaneously ending registration but—after failing for decades to request such a legislative change—now asks the Court to completely enjoin enforcement of the qualification via judicial fiat. The public interest and equities do not weigh in favor of allowing unqualified voters to influence the outcome of the 2024 general election.

VII. The Scope of Plaintiff's Requested Relief is Inappropriately Broad.

The Alliance's proposed relief is too broad anyway. While its Memorandum requests an injunction only for the 2024 "November general election," PI Memo. 7, its Motion is so broadly worded that it would apply to *every* North Carolina election, PI Mot. 1-2, including the imminent 2024 primary election. Equity does not favor such broad and last-minute relief. *Purcell*, 549 U.S. at 4-5.

CONCLUSION

The Court should deny the preliminary injunction motion.

Dated: January 23, 2024

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Response, including body, headings, and footnotes, contains 6,250 words as measured by Microsoft Word.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on January 23, 2024, I electronically filed the foregoing Response 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.

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