

motions in two earlier-filed cases challenging S.B. 747, and all three cases are being coordinated by the parties.¹ Plaintiffs' bases for opposing intervention lack merit.

I. Permissive Intervention Is Warranted.

The Court in parallel matters has already granted Movants' permissive intervention, recognizing that their participation will "strike an appropriate balance" given the many groups challenging S.B. 747. *See* 1:23-cv-861, Doc. 48 at 8. That rationale compels the same result here. Plaintiffs do not deny that (as in the two related matters) Movants' contemplated defense "shares common question[s] of fact and law" with the existing controversy and that Movants timely sought intervention. *See id.* at 5, 7–9; Opp. 11–13.

Plaintiffs contend that intervention "will result in undue delay, inefficiencies, and prejudice," Opp. 12, but that has no basis in fact. The same Movants have been granted intervention in two parallel cases where provisional injunctive relief is sought, and they have not slowed down or hamstrung those time-sensitive proceedings. In this case, by comparison, Plaintiffs do not seek provisional relief. They cite no basis to conclude intervenors capable of litigating expedited matters are unable or unwilling to litigate a matter moving, to date, at a slower pace. Moreover, given Movants' participation in these coordinated cases, it would be cumbersome for them *not* to participate in this case—as attorneys at parallel proceedings would have to clarify at each point whether they speak to this case or just the others. In any event, "[t]his court is also well-equipped to develop pretrial practices that will avoid unnecessary duplication." Doc. 48 at 9.

¹ *Voto Latino, et al. v. Alan Hirsch, et al.*, 1:23-cv-861; *Democratic National Committee, et al. v. North Carolina State Board of Elections, et al.*, 1:23-cv-862.

Plaintiffs also allege that Movants “have distorted and confused the issues in this case,” Opp. 12, but that is not true. For starters, Plaintiffs’ suggestion that their suit is unique among the parallel cases in focusing on §10(a) of S.B. 747, *see* Opp. 2, 5, 7, overlooks that the two parallel cases have the same focus. In fact, Movants’ opposition to the preliminary injunction request in the *Democratic National Committee* case focuses on §10(a), *see* 1:23-cv-862, Doc. 51 at 3-9, as did the preliminary injunction motion itself, *see* 1:23-cv-862, Doc. 7.

Moreover, it is not correct that Plaintiffs’ lawsuit challenges only the same-day registration provisions of §10(a). Their complaint makes the sweeping allegations about S.B. 747 more generally, including that:

- **SB 747** severely restricts voting opportunities that have been used by hundreds of thousands of North Carolinians in recent elections and will make it substantially more difficult for Plaintiffs to engage in the GOTV, voter education, voter protection, and voter registration work that they perform in support of their civic engagement missions. Complaint (Doc. 1) ¶17;
- **Sections 13(a) and 15 of SB 747** change rules to allow any registered voter in the same county (not just precinct) as the challenged voter to file a challenge and also extends the time such challenges can be filed to as late as 5:00 p.m. on the fifth business day after the primary or election for absentee ballots, Complaint (Doc. 1) ¶79;

- **Under Section 35 of SB 747**, an absentee ballot must be received by 7:30 p.m. on the day of the election, regardless of the date of postmark, subjecting ballots to the vicissitudes of the Postal Service, *id.* ¶80;
- **SB 747** upends the balance struck by the previous system and targets youth voters and their preferred method of voting, *id.* ¶93;
- **SB 747 and**, in particular, its same-day registration provision are intended to suppress the number of votes cast by young voters and discriminate on the basis of age, *id.* ¶116;
- **SB 747 and** the same-day registration provision are not justified by any legitimate state interest, much less narrowly tailored to a compelling state interest *id.* ¶117;
- **SB 747 and** the same-day registration provision abridge and deny the right to vote for young voters on the basis of their age, *id.* ¶118.

Ultimately, Plaintiffs’ objection to intervention is that they should not have “to respond to arguments” by opposing litigants or clarify the scope of their sweeping pleading. Opp. 12. But that is precisely why intervention would “strike an appropriate balance.” Doc. 48 at 8. Plaintiffs seeking court orders concerning election laws should be required to defend their positions, which includes clarifying the scope of their own claims. Meanwhile, Plaintiffs’ suggestion that intervention by the RNC and NCGOP is inappropriate where “the Democratic Party is not on one side of the case,” Opp. 13, ignores the interrelation between the three parallel challenges brought by eight organizations and six law firms. Mot. 2. The same balance appropriate in the related matters is appropriate here.

II. Intervention of Right Is Warranted

As in the parallel cases, this Court need not address intervention of right if it concludes (as it should) that permissive intervention is warranted. 1:23-cv-861, Doc. 48 at 8. Regardless, Movants have satisfied the Rule 24(a) standard.

Movants identified their interests in this lawsuit, Mot. 8–11, and Plaintiffs do not deny these interests, *see* Opp. 6–11. Instead, Plaintiffs contend that Movants’ interests are adequately represented by existing parties who have common objectives. *See id.* As an initial matter, Plaintiffs’ position lacks parity. Plaintiffs filed *their own* lawsuit challenging S.B. 747 even though two groups of plaintiffs holding the same goals and objectives filed similar suits a week earlier. Overlapping objectives do not defeat parallel suits, so they should not defeat parallel defenses of the same suits.

In any event, Plaintiffs ignore Supreme Court authority holding that the adequacy of representation standard presents “only a minimal challenge.” *Berger v. N. Carolina State Conf. of the NAACP*, 142 S. Ct. 2191, 2203 (2022); *see also* 1:23-cv-00862, Doc. 47 at 2–4. As Movants have explained, there is no guarantee that public officials aligned with the political party challenging S.B. 747 will tender a robust defense, the adequacy analysis looks to that defense (not intervenors), and the interests of Republican legislators and Movants are far from identical. Mot. 11–13. Plaintiffs do not respond to these arguments.

Instead, they focus on two authorities. Opp. 6–11. But the validity of both is in doubt after *Berger*, and Plaintiffs do not address the veritable sea of authorities Movants cited, *see* Mot. 4–5 & n.3; *see also* 1:23-cv-861, Doc. 48 at 8 n.2 (recognizing the “host” of authorities supporting Movants). Besides, *Stuart v. Huff*, 706 F.3d 345 (4th Cir. 2013), is distinguishable, as the proposed intervenors were supporters of a cause without a unique

perspective.² *See id.* at 351–52. Here, Movants are grassroots activists and political entities of national and local prominence with knowledge of and experience with election integrity operations. Their voice is critical given Plaintiffs’ broad allegations regarding S.B. 747.

CONCLUSION

The Court should grant the intervention motion. It should also permit Movants to participate in any hearings scheduled by the Court prior to the ruling on this motion.

Respectfully submitted, this the 29th day of November, 2023.

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² Likewise, *Democracy N. Carolina v. N. Carolina State Bd. of Elections*, No. 1:20CV457, 2020 WL 6591397 (M.D.N.C. June 24, 2020), is distinguishable in involving different types of election laws, and its discussion of permissive intervention involved circumstances quite different from those here, where Movants already participate in two parallel cases involving the same challenged law and overlapping arguments.

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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 1,673 words as counted by the word count feature of Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that I filed the forgoing document using the Court's CM/ECF System which will send notification to all counsel of record.

This 29th day of November, 2023.

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