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 State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections,

Defendants.

Case No.1:23-cv-00837-WO-JLW

PLAINTIFF'S RESPONSE IN OPPOSITION TO INTERVENORS' MOTION TO DISMISS

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INTRODUCTION

This is a straightforward facial challenge to North Carolina's requirement that voters reside in their voting precinct for 30 days before election day, even though North Carolina allows eligible voters to register long after that. Both Section 202 of the Voting Rights Act and the U.S. Constitution prohibit states from enforcing "durational residency requirements" like this. 52 U.S.C. § 10502(c); *Dunn v. Blumstein*, 405 U.S. 330, 336, 338 (1972). And the enforcement of North Carolina's 30-Day Residency Requirement injures Plaintiff North Carolina Alliance for Retired Americans by preventing its members who move shortly before election day from voting in their new place of residence.

None of Intervenors' arguments justifies dismissal. The Alliance has standing both as an organization and on behalf of its injured members because the 30-Day Residency Requirement will prevent the Alliance's members from voting where they reside if they move in the month before election day, and it will for that reason undermine the Alliance's mission and require a diversion of resources in response. The Alliance's claims are ripe because the 30-Day Residency Requirement will inevitably have this effect—it does not depend on any "contingent future events that may not occur as anticipated." *South Carolina v. United States*, 912 F.3d 720, 730 (4th Cir. 2019). Venue is proper in this district because the 30-Day Residency Requirement is enforced here, as it is enforced across the State, so a substantial part

of the events giving rise to the Alliance's claims occur here. The Alliance has stated a claim for relief because the 30-Day Residency Requirement violates the express text of Section 202 and is contrary to Supreme Court's directly applicable holding in *Dunn*. 52 U.S.C. § 10502(c); *Dunn*, 405 U.S. at 336, 338. And laches does not bar relief: unconstitutional laws are not immune from challenge merely because they are longstanding.

The Court should deny Intervenors' motion to dismiss.

BACKGROUND

To vote in North Carolina, voters must live in the state and in the precinct in which they intend to vote for at least 30 days before the election. *See* N.C. Gen. Stat. § 163-55(a); N.C. Const. art. VI, § 2, para. 1. Under this 30-Day Residency Requirement, voters who move to North Carolina or to a new precinct within 30 days of an election cannot vote at their new address.[1]

Voters must also register before they may vote. N.C. Gen. Stat. § 163-54; *id*. § 163-82.1(a); *id*. § 163-82.3(a). The general deadline to register is 25 days before election day, *id*. § 163-82.6(d), but voters may also register and vote through same-

[1] The North Carolina Constitution also requires one year of state residency in the state, but that requirement has been held unconstitutional and is not enforced. *Andrews v. Cody*, 327 F. Supp. 793, 795 (M.D.N.C. 1971), *aff'd*, 405 U.S. 1034 (1972).

day registration, which begins 20 days before the election and ends the Saturday before election day, *see id*. § 163-166.40(b).

The Alliance filed this case on October 2, 2023, to enjoin the State Board of Elections from enforcing the 30-Day Registration Requirement on the grounds that it violates the Voting Rights Act and the United States Constitution. ECF No. 1. Intervenors moved to intervene on October 16, and the Court granted that motion on January 26, 2024. ECF Nos. 22, 41. Meanwhile, the Alliance filed an Amended Complaint on January 2. ECF No. 32. The State Board Defendants filed an answer on January 11, ECF No. 36; only Intervenors have moved to dismiss, ECF No. 37.

ARGUMENT

I. The Court has subject matter jurisdiction because Plaintiff has standing and its claims are ripe.

The Alliance has standing because it alleges that the 30-Day Residency Requirement injures its members as voters and itself as an organization, and the Alliance's claims are ripe for adjudication because those injuries flow directly and inevitably from the 30-Day Residency Requirement and are not subject to any contingency.

Intervenors bring only a "facial challenge" to subject matter jurisdiction, because they challenge only the adequacy, not the veracity, of Plaintiff's jurisdictional allegations. *See Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017). The facts alleged in the complaint are therefore taken as true, and "general factual

allegations of injury" suffice to support standing, because courts "presume that general allegations embrace those specific facts that are necessary to support the claim." *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

A. The Alliance has associational standing on behalf of its members.

The Alliance has associational standing on behalf of its members because (1) they would have standing to sue in their own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members. *Outdoor Amusement Bus. Ass'n, Inc. v. Dep't of Homeland Sec.*, 983 F.3d 671, 683 (4th Cir. 2020) (citing *Friends of the Earth, Inc. v. Laidlaw Env't. Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000)).

Intervenors challenge only the first prong of this test.[2] The Alliance meets it by alleging facts showing that the 30-Day Residency Requirement will inevitably injure the Alliance's members who move within or to North Carolina less than 30

[2] The second and third prongs are undeniably met. The interests the Alliance seeks to protect with this lawsuit are germane to its organizational mission to "ensure social and economic justice and full civil rights for retirees, with particular emphasis on safeguarding their right to vote." Am. Compl. ¶ 16. And the suit itself, which concerns a purely legal question and seeks only injunctive relief, does not require participation from individual Alliance members. Intervenors' argument that some new residents might prefer to vote in their old state, or at their old precinct, is irrelevant, because Intervenors do not explain how the existence of such members could affect the facial validity of the challenged Requirement. Mot. at 9.

days before election day by preventing them from voting at their new place of residence. Am. Compl. ¶¶ 17, 31; *see Gray v. Sanders*, 372 U.S. 368, 375 (1963) (holding that plaintiff, "like any person whose right to vote is impaired," has standing to challenge the source of the impairment). The Alliance's factual allegations show there will be many such members, including both new members who will join the Alliance because they have just moved to North Carolina and existing members who move to a new county or precinct. Am. Compl. ¶ 17. The Alliance has more than 52,000 members in North Carolina. *Id.* ¶ 16. And because "North Carolina is an especially popular state for relocating retirees," the Alliance has "gained an average of 300 members every month" between January 2020 and November 2023. *Id.* ¶ 17. In all that time, "not one month has gone by that the Alliance has not gained multiple new members." *Id.* "Existing Alliance members also regularly move within the State." *Id.* These allegations make clear that the Alliance's members will be injured by the 30-Day Residency Requirement.[3]

Intervenors do not dispute any of that. They argue only that the Alliance must identify a *particular* injured member by name. Mot. at 8–9. No such member-identification requirement applies. Where a complaint supports "a reasonable

[3] Intervenors do not deny that this alleged injury is traceable to Defendants' enforcement of the 30-Day Residency Requirement, nor that the injury is redressable by the Court.

inference" that individual members "would suffer harm" absent plaintiff's requested relief, the plaintiff organization "need not identify individual members." *Democratic Party of Va. v. Brink*, 599 F. Supp. 3d 346, 355 n.10 (E.D. Va. 2022) (citing *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 270 (2015)). After all, if "it is relatively clear, rather than merely speculative, that one or more members have been or will be adversely affected by a defendant's action," there would be "no purpose to be served by requiring an organization to identify by name the member or members injured." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015); *see also All. for Hippocratic Med. v. U.S. Food & Drug Admin.*, 78 F.4th 210, 234 (5th Cir.), *cert. granted*, No. 23-235, 2023 WL 8605746 (Dec. 13, 2023) (holding that "it is not speculative to base standing on the likelihood that some members of a discrete group, but not all, will be injured," as long as the record is "specific enough to establish" that the group is "really at risk"); *March for Our Lives Idaho v. McGrane*, No. 1:23-CV-00107-AKB, 2023 WL 6623631, at *7 (D. Idaho Oct. 11, 2023) (finding associational standing based on allegations of non-speculative future injury to unidentified members similar to those in this case).

In arguing that particular members must be identified, Intervenors rely entirely on *Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175 (4th Cir. 2013). Mot. at 8. But in *Southern Walk*, the plaintiff organization "only allege[d] that it, the homeowners' association, is

being harmed—not that *any*, let alone *all*, of its individual members are." 713 F.3d at 184 (emphasis in original). *Southern Walk* therefore did not involve anything like the detailed factual allegations of impending member injuries the Alliance makes here. *See* Am. Compl. ¶¶ 10, 16–17. Courts in this Circuit have not read *Southern Walk*'s broader dicta as requiring member identification in all circumstances, "so long as a reasonable inference can be drawn that such individuals exist." *Dem. Party of Va.*, 599 F. Supp. 3d at 355–56 & n.10 (finding associational standing without an identified member, even after citing *Southern Walk*). And other courts of appeals have since rejected a bright-line member-identification requirement, too. *See La Raza*, 800 F.3d at 1041; *All. For Hippocratic Med.*, 78 F.4th at 234.

B. The Alliance has organizational standing.

The Alliance also has organizational standing based on injuries to itself. An organization has organizational standing when a challenged law (1) "impede[s] its efforts to carry out its mission," and (2) forces it to "divert its resources" as a result. *Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 182 (M.D.N.C. 2020) (citing *Lane v. Holder*, 703 F.3d 668, 674–75 (4th Cir. 2012)). Thus, in *Democracy North Carolina*, the court found that nonprofit organizations had organizational standing to challenge a voter registration law that at least partially frustrated their mission to register voters, requiring a diversion of resources. *Id.* at 183; *see also Voto Latino v. Hirsch*, No. 1:23-CV-861, 2024 WL 230931 at *10

(M.D.N.C. Jan. 21, 2024) (finding organizational standing based on allegations that challenged voting law would hinder plaintiff's mission of registering eligible voters, requiring resource expenditures).

The Alliance has organizational standing under this standard because it alleges that the 30-Day Residency Requirement "systematically prevent[s] many of the Alliance's members from voting in North Carolina or in their new voting precinct," and thereby "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." Am. Compl. ¶ 18. This "mak[es] the Alliance less effective in furthering its mission than it otherwise would be, and require[s] it to spend additional resources that it would otherwise spend in other ways." *Id.*

In arguing otherwise, Intervenors incompletely quote from the Alliance's Articles of Incorporation, which provide that the Alliance's purposes "include, *but are not limited to*, education, communication, and advocacy on issues of importance

to older and retired workers and their families."[4] There is therefore no inconsistency between the Amended Complaint and the Articles, and the Court must take as true the allegation that the Alliance places "particular emphasis on safeguarding [retirees'] right to vote." Am. Compl. ¶ 16. In any event, the Amended Complaint clearly explains the relationship between protecting retiree voting rights and the Alliance's advocacy mission, *id.* ¶ 18, and it is common sense that an advocacy organization will be more effective if more of its membership votes.

Intervenors' remaining arguments fare no better. Even if injury to an organization's purpose, without more, may be insufficient to confer standing, such an injury becomes sufficient when "combined with an alleged 'consequent drain on the organization's resources.'" *Southern Walk*, 713 F.3d at 183 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). The Alliance alleges such a drain. Am. Compl. ¶ 18. And although Intervenors complain that the Alliance has not detailed with more precision *how* the 30-Day Residency Requirement impairs its mission or drains its resources, Mem. at 10–11, "broad allegations of diverting resources are sufficient to establish organizational injury." *N.C. A. Philip Randolph*

[4] *See* Articles of Incorporation, *North Carolina Alliance for Retired Americans* (Jan. 14, 2016), https://www.sosnc.gov/online_services/search/Business_Registration_Results (last visited Feb. 5, 2023) (search for "North Carolina Alliance for Retired Americans," select entry No. 1491517, select "View Filings," then select Doc. No. C201600700084).

Inst. v. N.C. State Bd. of Elections, No. 1:20CV876, 2022 WL 446833, at *6 n.6 (M.D.N.C. Feb. 14), *report and recommendation adopted*, 2022 WL 903114 (M.D.N.C. Mar. 28, 2022).

C. The Alliance's claims are ripe.

The Alliance's claims are ripe. This is a facial challenge to a law that has been in effect for years and is sure to be in effect in the future unless the Court enjoins it. And the direct, intended effect of the 30-Day Residency Requirement is to prevent new residents from voting in their new place of residence, so there is nothing speculative or contingent about Plaintiff's allegation that this will occur. There are therefore no "contingent future events that may not occur as anticipated, or indeed may not occur at all" that could prevent this case from being ripe. *South Carolina*, 912 F.3d at 730. Nor does Plaintiff's facial challenge depend on any facts about the 30-Day Residency Requirement's actual application to any particular election. *See Edgar v. Haines*, 2 F.4th 298, 311 (4th Cir. 2021) (holding that a challenge was ripe because plaintiffs raised "legal issues for which no further factual development is necessary").

Intervenors' contrary arguments rehash their inadequate challenges to the Alliance's standing, addressed above. These arguments are, if anything, even less persuasive under the guise of ripeness, where the court must balance "the fitness of the issues for judicial decision" against "the hardship to the parties of withholding

court consideration." *Miller v. Brown*, 462 F.3d 312, 319 (4th Cir. 2006). That balance weighs firmly in favor of prompt adjudication here, for three reasons.

First, the case presents "purely legal question[s]" that do not require further factual development. *Id.* Waiting until closer to the election will do nothing to assist the Court in determining whether the 30-Day Residency Requirement violates the VRA or the U.S. Constitution, questions that turn entirely on statutory construction and longstanding precedent.

Second, waiting would be disruptive and might, as a practical matter, preclude relief. "Challengers to election procedures often have been left without a remedy in regard to the most immediate election because the election is too far underway or actually consummated prior to judgment." *Id.* at 320 (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 301 n.12 (1979)) And "[b]ringing lawsuits on the eve of pending elections disrupts the electoral process." *Id.* If the Court adopts Intervenors' apparent position that these claims cannot be brought until one of the Alliance's members is in fact prevented from voting by the 30-Day Residency Requirement, courts would have to decide the case during the month before the election. "Providing only thirty days for briefing, argument, and [a] decision . . . is troublesome." *Id.*

Third, and for that reason, withholding court consideration would cause significant hardship to the Alliance. In considering hardship, "courts consider 'the

immediacy of the threat and the burden imposed' on a plaintiff." *Guilford Coll. v. McAleenan*, 389 F. Supp. 3d 377, 390 (M.D.N.C. 2019) (quoting *Charter Fed. Sav. Bank v. Office of Thrift Supervision*, 976 F.2d 203, 208–09 (4th Cir. 1992)). Ripeness doctrine does not require the Alliance to wait to bring suit until it has suffered the harm it seeks to prevent. "While the injury faced by a plaintiff 'must be certainly impending,' [courts] 'do not require parties to operate beneath the sword of Damocles until the threatened harm actually befalls them.'" *Guilford Coll.*, 389 F. Supp. 3d at 390 (finding challenge to law ripe because it "present[ed] an immediate threat and burden" on plaintiff) (quoting *Iowa League of Cities v. E.P.A.*, 711 F.3d 844, 867 (8th Cir. 2013)).

The Court should therefore deny Intervenors' motion to dismiss for lack of subject matter jurisdiction.

II. This is a proper venue.

The Middle District of North Carolina is a proper venue because it is "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred." 28 U.S.C. § 1391(b)(2). In applying this prong of the venue statute, "a court should not focus only on those matters that are in dispute or that directly led to the filing of the action," but must instead consider "the entire sequence of events underlying the claim." *Mitrano v. Hawes*, 377 F.3d 402, 405 (4th Cir. 2004). That includes the plaintiff's activities—the analysis does not focus solely on

defendants. *See id.* at 405–06 (holding that venue was proper if *the plaintiff's* "work under the contract" in the district "constituted 'a substantial part of the events [and] omissions giving rise to [its] claim' for breach of contract" (quoting 28 U.S.C. §1391(a))). Venue will be "proper in more than one judicial district" under the events or omissions prong if substantial parts of the events giving rise to claim occurred in more than one place. *Mitrano*, 377 F.3d at 405.

Consistent with this approach, the Western and Middle Districts of North Carolina have repeatedly heard election-related cases against Raleigh-based defendants arising out of voting rules applicable across the state. *See, e.g.*, *Voto Latino*, 2024 WL 230931 at *31 (granting a preliminary injunction against enforcement of a state-wide voting rule in two non-consolidated cases, one of which was brought solely against the state board of elections); *Brody v. N.C. State Bd. of Elections*, No. 3:10cv383, 2011 WL 1843199, at *5 (W.D.N.C. May 16, 2011) (rejecting venue challenge in suit against state board of elections challenging election statutes as unconstitutional); *Greene v. Bartlett*, No. 5:08CV88-V, 2008 WL 4223691, at *1–2 (W.D.N.C. Sept. 9, 2008) (rejecting venue challenge in suit against state board of elections for refusing to list independent candidate on ballot). The Court should do the same here.

Venue is proper in the Middle District because the "events or omissions giving rise to" the Alliance's claim include the *enforcement across the entire State* of the

30-Day Residency Requirements. Am. Compl. ¶¶ 6–8. A substantial part of those events occur in this judicial district, where millions of North Carolinians live and vote, including thousands of the Alliance's members. *Id.* ¶ 16. The Alliance therefore properly filed this case here, and its venue choice is entitled to substantial deference. *Trs. of Plumbers & Pipefitters Nat'l Pension Fund v. Plumbing Servs.*, 791 F.3d 436, 444 (4th Cir. 2015).

The cases Intervenors cite are irrelevant, because they do not address the events or omissions prong at all. *Jackson v. Leake* addressed only the separate, defendant-residence prong, because the plaintiff there alleged only residence as a basis for venue. No. 1:05-CV-00691, 2006 WL 2264027, at *9 (M.D.N.C. Aug. 7, 2006). That was presumably because the substance of the case was a constitutional challenge to a public campaign finance fund based and operated entirely out of Raleigh. *See id.* at *9–10. *Jackson* therefore had nothing to say about the "events or omissions" prong of the venue statute at issue here. *See id. Republican Party of N.C. v. Martin* does even less to help Intervenors because it was decided before the "events or omissions" prong was added to the venue statute, at a time when venue was proper only where defendants resided or in "*the* district where the claim *arose*"—an entirely different, far narrower standard. 682 F. Supp. 834, 836 (M.D.N.C. 1988) (emphasis added). And in *Moore v. Circosta*, No. 5:20-CV-507-D, 2020 WL 6591307 (E.D.N.C. Sept. 30, 2020), the parties seeking to transfer the

case to the Middle District offered no showing that any events or omission giving rise to their claim happened in the Middle District—they pointed only to the identity of the defendants and their waiver of a venue objection in a related case.[5]

The Court should therefore deny Intervenors' motion to dismiss for improper venue. The Court should also deny Intervenors' alternative request to transfer the case under 28 U.S.C. § 1406(a): transfer under Section 1406 is appropriate only if the case was filed in an improper venue, and Intervenors do not seek discretionary transfer under 28 U.S.C. § 1404.

III. The Alliance states claims for relief under the Voting Rights Act and the U.S. Constitution, and Intervenors' laches defense fails.

On the merits, the Alliance states valid claims under Section 202 of the Voting Rights Act and under the U.S. Constitution, both of which prohibit durational residency requirements for voting that are longer than a state's pre-election registration requirement, as the 30-Day Residency Requirement undeniably is. And Intervenors' laches defense fails for lack of any prejudice. The Court should therefore deny Intervenors' motion to dismiss for failure to state a claim.

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[5] *See* Mem. of L. in Supp. of Defs.' Mot. to Transfer at 10, *Moore*, No. 5:20-cv-00507-D (E.D.N.C. Sept. 28, 2020), ECF No. 15; Reply Mem. of L. in Supp. of Defs.' Mot. to Transfer at 2, *Moore*, No. 5:20-cv-00507-D (E.D.N.C. Sept. 29, 2020), ECF No. 23.

A. The 30-Day Residency Requirement violates Section 202 of the Voting Rights Act.

The 30-Day Residency Requirement violates Section 202 of the Voting Rights Act Amendments of 1970, which "completely abolish[es] the durational residency requirement as a precondition to voting for President and Vice President." 52 U.S.C. § 10502(b). The VRA prohibits states from preventing otherwise eligible voters from voting for President and Vice President based on how long they have resided in the state or their voting precinct before election day, if they otherwise comply with the state's voter registration deadlines. *Id.* § 10502(a), (b), (c). Yet the 30-Day Residency Requirement does exactly that, by requiring voters to have resided in the state for 30 days before election day despite allowing voter registration to continue after that.

Intervenors' attempt to distinguish between the VRA's "declaratory" language in § 10502(a)-(b) and "mandatory" language in § 10502(c)-(e) is meaningless, because durational residency requirements are prohibited throughout. Mot. at 17–18. Intervenors admit that § 10502(c) is mandatory, and it is clear as can be:

> No citizen of the United States who is otherwise qualified to vote in any election for President and Vice President shall be denied the right to vote for electors for President and Vice President . . . in such election because of the failure of such citizen to comply with *any* durational residency requirement of such State or political subdivision.

52 U.S.C. § 10502(c) (emphasis added). The 30-Day Residency Requirement violates this mandatory requirement by preventing voters from voting if they have not lived in their precinct for the 30 days before election day.

In arguing otherwise, Intervenors conflate durational residency requirements—which Section 202 absolutely prohibits in presidential elections—with registration deadlines—which are allowed if they are 30 days or less before election day. Section 202(c) is clear that voters may not be prevented from voting for President and Vice President based on "*any* durational residency requirement." *Id.* § 10502(c) (emphasis added). Section 202(d) then separately turns to registration, providing that states must allow "the *registration* or other means of qualification" for voters who apply "not later than thirty days immediately prior to any presidential election." *Id.* § 10502(d) (emphasis added). Section 202(d) therefore provides a floor: states must let voters register for presidential elections until at least 30 days before election day. But it does not impose a ceiling, so states remain free to permit registration later than that. North Carolina does just that by allowing registration until 25 days before election day and same day registration during early voting. *See* N.C. Gen. Stat. § 163-82.6(d); *id*. § 163-166.40(b). During those times, it is *only* the 30-Day Residency Requirement, and not the registration deadline, that prevents voters who recently moved from voting. That is precisely what Section 202(c) prohibits.

Intervenors' theory that the 30-Day Residency Requirement is lawful because a hypothetical 30-day registration requirement—which North Carolina does not have—would be allowed is directly inconsistent with Section 202's text and express purpose. Section 202 says that it seeks to "*completely abolish* the durational residency requirement as a precondition to voting for President and Vice President." 52 U.S.C. § 10502(b) (emphasis added). Under Intervenors' theory, it would merely limit such requirements to 30 days. Moreover, Intervenors' theory is inconsistent with the separate discussions of durational residency requirements and registration requirements in Section 202's operative text, with Section 202(c) prohibiting vote denial based on "*any* durational residency requirement" while Section 202(d) allows registration deadlines of up to 30 days. *Id.* § 10502(c), (d) (emphasis added). If durational residency requirements and registration requirements were the same—or if registration requirements implicitly authorized durational residency requirements—then either these provisions would be inconsistent with each other or one of them would be surplusage. The Court must construe the statute to avoid those results. *See, e.g., Alexander v. Carrington Mortg. Servs.*, LLC, 23 F.4th 370, 378 (4th Cir. 2022) (duty to reject interpretation of statute that would "place[] the statute's two exceptions at war with one another"); *Nero v. Mosby*, 890 F.3d 106, 124–25 (4th Cir. 2018) (duty to avoid surplusage).

Intervenors' argument that voters barred from voting in their new home by the 30-Day Residency Requirement can instead vote in their old polling place does not save the law. To be sure, Section 202(e) provides that if a voter is barred from voting in their new place of residence by "the *registration requirements* of such State or political subdivision," they can vote in their old place of residence. 52 U.S.C. § 10502(e) (emphasis added). But the voters whose rights are at issue in this lawsuit will not be barred by North Carolina's "*registration* requirements"—they could register on the 29th or 28th days before election day, or using same-day registration during early voting. Only the 30-Day Residency Requirement bars such voters from voting, and that is a durational residency requirement that Section 202 absolutely prohibits. Section 202(e)'s safe harbor for voters who miss a registration cutoff therefore does nothing to help. Instead, it confirms the Alliance's reading of the rest of the provision: if Section 202 did allow 30-day durational residency requirements in addition to registration requirements, as Intervenors argue, then Section 202(e)'s safe harbor would surely have been extended to voters affected by those requirements, too.

It is true, but irrelevant, that other states also violate Section 202. Mem. at 18–19. At least one of the states that Intervenors name faces a similar lawsuit.[6] And

[6] *See Wash. State All. for Retired Ams. v. Hobbs et al.*, 3:23-cv-06014 (W.D. Wash.).

South Dakota, which Intervenors do not name, just last month repealed its recently-enacted 30-day residency requirement, with lawmakers explaining that the requirement would not "withstand legal scrutiny" under the U.S. Constitution and the VRA.[7] That other states also violate this provision does not, of course, make North Carolina's law valid.

Finally, contrary to Intervenors' argument, Mot. at 19, the Alliance may sue on its own behalf under 42 U.S.C. § 1983 as a "party injured" by Defendants' violations of the Section 202 rights of others. "Section 1983 plaintiffs . . . often have been allowed to vindicate the rights of others," because "Section 1983 is an appropriate vehicle for third-party claims." *Vote.org v. Callanen*, 89 F.4th 459, 473 (5th Cir. 2023).

B. The 30-Day Residency Requirement is unconstitutional.

The 30-Day Residency Requirement is also unconstitutional—in *all* elections—because it violates the fundamental rights to vote and to travel. *Dunn*, 405 U.S. at 336, 338. Intervenors premise their entire constitutional argument on the wrong assumption that the analysis is governed by the *Anderson-Burdick* framework. Mot. 19. It is not. The Supreme Court's holding in *Dunn* is clear as day:

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[7] *See* John Hult, *State Senate votes to ditch 30-day residency requirement for voter registration*, S.D. SEARCHLIGHT (Jan. 23, 2024), https://southdakotasearchlight.com/briefs/state-senate-votes-to-ditch-30-day-residency-requirement-for-voter-registration/.

"durational residence laws must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.'" *Dunn*, 405 U.S. at 342 (quoting *Shapiro v. Thompson*, 394 U.S. 618, 634 (1969), *overruled on other grounds*, *Edelman v. Jordan*, 415 U.S. 651 (1974) (reversing *Shapiro*'s separate, Eleventh Amendment holding). That is because, as *Dunn* explains, durational residency requirements not only burden voting rights, but also "directly impinge[] on the exercise of a second fundamental personal right, the right to travel." 405 U.S. at 338.

The Supreme Court has never questioned or overruled *Dunn*'s holding that durational residency requirements are subject to strict scrutiny, so this Court must apply that standard here. Even if the Court thought—as Intervenors argue—that *Dunn* "appears to rest on reasons rejected in some other line of decisions," lower federal courts must "follow the case which directly controls, leaving to th[e Supreme] Court the prerogative of overruling its own decisions." *Agostini v. Felton*, 521 U.S. 203, 237 (1997) (quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989)).

There is, in any event, no reason to question *Dunn*'s application of strict scrutiny. Even under *Anderson-Burdick*, laws that "totally den[y] the electoral franchise to a particular class of residents" are subject to strict scrutiny. *Greidinger v. Davis*, 988 F.2d 1344, 1350–51 (4th Cir. 1993) (citing *Dunn*, 405 U.S. at 336 and

Rosario v. Rockefeller, 410 U.S. 752, 757 (1973)). Both the Supreme Court and the Fourth Circuit have pointed to the durational residency requirement in *Dunn* as emblematic of the type of law that is still subject to strict scrutiny. *See Davis*, 988 F.2d at 1350; *Rosario*, 410 U.S. at 757. The 30-Day Residency Requirement is therefore subject to strict scrutiny even under *Anderson-Burdick* for the same reason that *Reidinger* and *Rosario* acknowledged that the law in *Dunn* was: it "totally denie[s] the electoral franchise" to new residents in their new places of residence if they move less than 30 days before election day. *Rosario*, 410 U.S. at 757.[8]

Intervenors do not argue that the 30-Day Residency Requirement survives strict scrutiny, and *Dunn* and related cases show plainly that it does not. *Dunn* addresses—and rejects as inadequate—every conceivable interest that North Carolina could possibly put forward to justify the Requirement. *See* 405 U.S. at 345–60. It is not justified as a means of limiting voting to bona fide residents because voter registration and a required oath adequately serve that interest, and because the 30-day Residency Requirement does not add any additional protection: a durational residency requirement longer than the pre-election registration requirement "does

[8] Intervenors' argument that these voters can vote in their old place of residence does little to alleviate this disenfranchisement: the injury to a voter who has just moved to a new locality and is prevented from voting there is hardly eliminated by allowing them to vote in their *old* locality, where they will cast a ballot for representatives and local officials who no longer represent them.

not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident." *Id.* at 346–47. It is not acceptable as establishing a conclusive presumption of residency, because it is "all too imprecise" and "excludes many residents." *Id.* at 351. And it is not justified by a desire to ensure informed voters, because the State is not entitled to disenfranchise new arrivals based on a concern about how they might vote, and the line it draws is too crude. *Id.* at 356–60. States are fully entitled to impose short, pre-election registration requirements for election administration and other reasons, such as where "necessary to permit preparation of accurate voter lists." *Marston v. Lewis*, 410 U.S. 679, 681 (1973). But that is not what the 30-Day Residency Requirement is.

To be sure, the 30-Day Residency Requirement is shorter than the requirements at issue in *Dunn*. But given North Carolina's decision to allow registration until 25 days before election day, and same-day registration during early voting, the fact that the 30-Day Residency Requirement is shorter makes no difference. It remains true that the Requirement provides no extra time for North Carolina to investigate residency, is too-crude a means of ensuring bona fide residency, and is both arbitrary and inadequate as a means of promoting informed voting. *Dunn*, 405 U.S. at 345–60.

Contrary to Intervenors' argument, this is not "new territory" for *Dunn*. Mot. at 22. Federal courts applying *Dunn* have repeatedly held that even 30-day durational residency requirements are unconstitutional when they are paired with shorter registration requirements. *See Meyers v. Jackson*, 390 F. Supp. 37, 42–43 (E.D. Ark. 1975) (holding that a 30-day durational residency requirement was unconstitutional where Arkansas allowed registration until 20 days before the election); *Fisher v. Herseth*, 374 F. Supp. 745, 747 (D.S.D. 1974) (holding South Dakota's durational residency requirements, including a 30-day precinct-residency requirement, unconstitutional where South Dakota allowed registration until 20 days before election); *see also Hinnant v. Sebesta*, 363 F. Supp. 398, 400 (M.D. Fla. 1973) (explaining that under *Dunn* durational residency requirements are allowed only if they are "a mere corollary of and/or coincident with a reasonable period of time before an election during which all registration is precluded"). The *Fisher* court went so far as to declare the constitutionality of such requirements "foreclosed as a litigable issue" and the defense of such requirements "frivolous," so that a one-judge court could invalidate them even under a statute that then required three judges when a case sought to enjoin a state law. 374 F. Supp. at 746 (quoting *Bailey v. Patterson*, 369 U.S. 31, 33 (1961)).

Precisely the same conclusion follows here. The Alliance has therefore stated a claim that the 30-Day Residency Requirement violates the First and Fourteenth Amendments.

C. The Alliance's claims are not barred by laches.

Finally, the Alliance's claims are not barred by laches because Intervenor shows no prejudice from the asserted delay, nor would inequity flow from permitting the claims to proceed. Laches "is not 'a mere matter of time but principally a question of the inequity of permitting the claim to be enforced.'" *Fed. Trade Comm'n v. Pukke*, 53 F.4th 80, 109 (4th Cir. 2022), *cert. denied*, 144 S. Ct. 73 (2023).

Intervenors make no concrete showing of inequity or prejudice here. They argue that if they had known they could not lawfully impose a residency requirement that is longer than the pre-election registration deadline, they would have passed legislation to eliminate same-day registration. Mot. at 15–16. But Intervenors *already tried to eliminate same-day registration*; they kept it only after the Fourth Circuit enjoined their prior repeal, which "target[ed] African Americans with almost surgical precision" in violation of the Voting Rights Act. *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214–15 (4th Cir. 2016). Intervenors' argument that they would have legislated differently had the Alliance sued sooner is irreconcilable with that existing effort.

More broadly, to apply laches here would have the bizarre effect of immunizing North Carolina's unconstitutional conduct from challenge merely because it has been ongoing for a long time. As Intervenors' standing argument illustrates, this is a difficult law to challenge: it affects particular voters only unpredictably and intermittently, and by the time any individual knows they are harmed it is almost sure to be too late to sue. Indeed, the only reason the 30-Day Residency Requirement was not challenged in 1971 along with the then-accompanying one-year residency requirement was that the individual plaintiffs in that case were not harmed by it. *See Andrews*, 327 F. Supp. at 793 n.1. It would be perverse in the extreme to hold that North Carolina's success in enforcing an unconstitutional law for decades somehow prevents that law from being challenged now.

In any event, Intervenors do not argue that laches bars the Alliance's claims brought on behalf of their members. Mot. at 15–17. The Alliance brings both claims on its own behalf *and* on behalf of its members. Intervenors' argument that the doctrine of laches bars the Alliance's claims brought on its own behalf, even if correct, would therefore not support the dismissal of either of the Alliance's claims.

CONCLUSION

For the foregoing reasons, the Court should deny Intervenors' Motion to Dismiss.

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT
PURSUANT TO LOCAL RULE 7.3(d)

Undersigned counsel certifies that this Response complies with Local Rule 7.3(d), in that the word count function of Microsoft Word shows the brief to contain 6,149 words, excluding those portions of the brief permitted to be excluded by the Rule.

This 6th day of February, 2024.

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