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 REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

North Carolina's 30-Day Residency Requirement disenfranchises voters who move within 30 days of an election, even if they seek to register within the time allowed by state law. This Requirement is prohibited by the Section 202 of the Voting Rights Act in presidential elections, and by the U.S. Constitution in all elections. 52 U.S.C. § 10502(c); *Dunn v. Blumstein*, 405 U.S. 330, 336, 338 (1972). Plaintiff is likely to succeed on the merits and will be irreparably harmed absent preliminary relief because the Requirement prevents its members who move shortly before election day from voting where they live. The equities favor prompt relief to protect the right of eligible voters to vote.

None of Defendants' arguments justifies denial of injunctive relief. The Alliance has standing because the 30-Day Residency Requirement disenfranchises its members who move shortly before an election, thereby undermining its mission and requiring a diversion of resources. The Alliance's claims are ripe because they do not depend on "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 here because the Requirement is enforced here. 28 U.S.C. § 1391(b)(2). And laches does not bar relief.

The Court should therefore grant the Motion and enjoin enforcement of the 30-Day Residency Requirement beginning with the November 2024 general election.[1]

ARGUMENT

I. Plaintiff has standing and its claims are ripe.

A. The Alliance has associational standing.

The Alliance has associational standing on behalf of its members because they would have standing to sue in their own right, as the 30-Day Residency Requirement prevents the Alliance's members who move within or to North Carolina within 30 days of an election from voting where they live. PI Br. at 11–12, ECF No. 34; Dworkin Decl. ¶¶ 6, 7, ECF No. 33-1; *see Gray v. Sanders*, 372 U.S. 368, 375 (1963) (holding that plaintiffs have standing to challenge laws that impair their voting rights). Rather than contest these facts, Intervenors argue only that the Alliance must identify a *particular* injured member. Intervenors' Opp. at 7–8, ECF No. 40. But a membership organization "need not identify individual members" who have been injured where, as here, "a reasonable inference can be drawn that such individuals exist." *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))

[1] Plaintiff does not seek an injunction that would affect the 2024 primary election, in recognition of the administrative difficulties that such relief might entail.

(finding associational standing without an identified member, even after citing *Southern Walk*); *see also Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (disclaiming need for identifying members if "it is relatively clear . . . that one or more members have been or will be adversely affected by a defendant's action).

Intervenors' contrary argument rests entirely, and mistakenly, on *Southern Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175 (4th Cir. 2013), which declined to find representational standing of a plaintiff organization that did not allege injury to its individual members. *Id*. at 184. Unlike the plaintiff in that case, the Alliance makes a detailed factual showing supporting the non-speculative conclusion that its members face impending injuries. *See* Dworkin Decl. ¶¶ 6, 7.

Finally, resolving this suit does not require the participation of individual Alliance members because it concerns purely legal questions and seeks only injunctive relief. Intervenors speculate that some new residents might prefer to vote at their prior place of residence, where they could elect local officials and representatives who no longer represent them, but Intervenors provide no factual support for that speculative concern, nor do they explain how it would affect Plaintiff's claims. Intervenors' Opp. at 8.

B. The Alliance has organizational standing based on injuries to itself.

The Alliance also has organizational standing because the 30-Day Residency Requirement "impede[s] its efforts to carry out its mission," requiring a diversion of resources. *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)).

The 30-Day Residency Requirement impedes the Alliance's mission by preventing some Alliance members from voting, thereby "undermin[ing] 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." Dworkin Decl. ¶ 8. 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."[2] It is common sense that an advocacy organization will be more effective if more of its membership votes. Intervenors' argument that the injury does not affect the organization's "core mission," Opp. at 9–10, ignores this obvious fact. And, indeed, courts regularly recognize the

[2] *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. 20, 2023) (search for "North Carolina Alliance for Retired Americans," select entry No. 1491517, select "View Filings," then select Doc. No. C201600700084).

organizational standing of advocacy organizations like the Alliance to challenge laws that threaten their members' voting rights. *See, e.g.*, *N.C. State Conf. of NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 402 (M.D.N.C. 2017).

These injuries to the Alliance's mission confer organizational standing when combined with a "consequent drain on the organization's resources." *S. Walk*, 713 F.3d at 183 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)). Although Intervenors complain that the Alliance has not detailed with more *precision* how the 30-Day Residency Requirement drains its resources, Intervenors' Opp. at 10, injured parties need not precisely enumerate their diversion of resources to obtain preliminary injunctive relief. *N.C. A. Philip Randolph Inst. v. N.C. State Bd. of Elections*, No. 1:20CV876, 2020 WL 6488704, *4–5 (M.D.N.C. Nov. 4, 2020), *report and recommendation adopted*, 2021 WL 149046 (M.D.N.C. Jan. 15, 2021) (finding standing to seek a preliminary injunction based on declarations describing a diversion of resources at a similar level of detail to those in this case). And an order enjoining enforcement of the 30-Day Residency Requirement would redress the disenfranchisement of its members and resulting resource drains. *See Cooksey v. Futrell*, 721 F.3d 226, 238 (4th Cir. 2013).

C. The Alliance's claims are ripe.

Courts assessing ripeness 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.

Whether the 30-Day Residency Requirement violates the VRA or the U.S. Constitution presents "purely legal" questions that would not benefit from further factual development. *Id*. Further, waiting until an Alliance member is disenfranchised by the 30-Day Residency Requirement, as Intervenors suggest, would be disruptive to the electoral process and would, as a practical matter, guarantee the irreparable harm the Alliance seeks to prevent. *Id.* at 321. Ripeness does not require withholding court consideration until the Alliance suffers the harm it seeks to prevent. *See Guilford Coll. v. McAleenan*, 389 F. Supp. 3d 377, 390 (M.D.N.C. 2019).

II. This is a proper venue.

The Alliance fully addresses Intervenors' venue arguments in its Opposition to Intervenors' Motion to Dismiss. ECF No. 45 at 18–21. In brief, venue is proper here because a substantial part of the Requirements' statewide enforcement occurs in this judicial district, where millions of North Carolinians and thousands of the Alliance's members live and vote.

III. The Alliance will likely succeed on the merits of its claims because the 30-Day Residency Requirement violates the Voting Rights Act and the U.S. Constitution, and Intervenors' laches defense fails.

A. The 30-Day Residency Requirement violates Section 202 of the VRA.

The VRA prohibits states from denying a citizen the right to vote in presidential elections "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). By denying otherwise qualified voters the right to vote for president where they live based solely on their failure to comply with a durational residency requirement, the 30-Day Residency Requirement does precisely what the VRA prohibits. N.C. Gen. Stat. § 163-55(a); *see also* N.C. Const. art. VI, § 2, para. 1.

Intervenors attempt to distinguish between the VRA's "declaratory" language in § 10502(a)-(b) and "mandatory" language in § 10502(c)-(e), Intervenors' Opp. at 16, but Intervenors admit that § 10502(c) is mandatory, and it is clear: "No citizen. . . shall be denied the right to vote for electors for President and Vice President . . . because of the failure of such citizen to comply with any durational residency requirement." 52 U.S.C. § 10502(c). The 30-Day Residency Requirement violates this mandate.

Intervenors' argument conflates durational residency with registration deadlines. While the VRA allows states to impose *registration deadlines* of up to 30 days, it does not allow *durational residency requirements* of any length. North

Carolina does not impose a 30-day registration deadline: it allows registration until 25 days before election day and same day registration during early voting. *See* N.C. Gen. Stat. §§ 163-82.6(d), 163-166.40(b). During those times, it is *only* the 30-Day Residency Requirement that prevents voters who recently moved from voting.

A voter's ability to vote in their prior place of residence does not save the law. Intervenors' Opp. at 17. To be sure, Section 202(e) provides that voters barred from voting in their new place of residence by "the *registration requirements* of such State or political subdivision" can vote in their old place of residence. 52 U.S.C. § 10502(e) (emphasis added). But Section 202(e)'s safe harbor for voters who miss a *registration* cutoff does nothing to help voters who move in time to register, but do not satisfy the 30-Day Residency Requirement.

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 travel. *Dunn*, 405 U.S. at 336, 338.

Intervenors are incorrect that voters who move within North Carolina lack a right to vote where they live. Intervenors' Opp. at 19. There is also a constitutional right to intrastate travel. *See Standley v. Town of Woodfin*, 661 S.E.2d 728, 730 (N.C. 2008); *Johnson v. City of Cincinnati*, 310 F.3d 484, 498 (6th Cir. 2002); *Lutz v. City of York*, 899 F.2d 255, 259–68 (3d Cir. 1990); *see also Willis v. Town of Marshall*,

426 F.3d 251, 265 (4th Cir. 2005) (identifying "language in various [Supreme Court] cases that could be viewed as supporting the existence" of a right to intrastate travel). And even aside from the right to intrastate travel, the Requirement denies intrastate voters their right to vote where they live, and it infringes on the voting and travel rights of voters who move *to* North Carolina. *Dunn*, 405 U.S. at 336, 338.

Durational residency requirements such as North Carolina's that "completely bar from voting all residents not meeting the fixed durational standards" are subject to strict scrutiny, and survive "only upon a clear showing that the burden imposed is necessary to protect a compelling and substantial governmental interest." *Id.* at 336, 338, 340–41. Intervenors and Defendants make no attempt to argue that the 30-Day Residency Requirement satisfies strict scrutiny. It does not.

Dunn addresses—and rejects as inadequate—all of Intervenors' proffered justifications. *See* 405 U.S. at 345–60. The 30-Day Residency Requirement is not justified as a means of limiting voting to bona fide residents, *contra* Intervenors' Opp. at 20, because voter registration and a required oath adequately serve that interest. It is not an acceptable means to establish a conclusive presumption of residency, because it is "all too imprecise" and "excludes many residents." *Id.* at 351. Nor is it justified to ensure an informed electorate, *contra* Intervenors' Opp. at 20, because the State is not entitled to disenfranchise new arrivals based on a concern about how they might vote, and certainly not using such crude means, *Dunn*, 405

U.S. at 356–60. That North Carolina allows registration within 30 days of an election indicates that the 30-Day Residency Requirement is not necessary to complete administrative tasks or ensure accurate voting rolls. *Contra* Intervenors' Opp. at 20; *Dunn*, 405 U.S. at 348–49 (looking to registration cutoff to determine how much time is necessary to complete administrative tasks, ensure accurate voting rolls, and prevent fraud).

It makes no difference whether North Carolina could have achieved a similar result, with respect to voters who move shortly before election day, by adopting a 30-day registration cutoff. Intervenors' Opp. at 19 (citing *Dunn*, 405 U.S. at 348). North Carolina has not adopted such a law, which would also disenfranchise long-time residents who do not register in time, instead of targeting only voters new to the area. *Dunn* upheld a 30-day durational residency requirement only upon finding that the requirement aligned with the 30-day registration cutoff, and therefore served the compelling state interest in allowing the preparation of poll books. 405 U.S. at 349. In contrast, North Carolina's 30-Day Residency Requirement does not match the state's registration cutoff and obviously is not needed to allow the preparation of poll books, because North Carolina allows registration later than that.

This Court cannot accept Intervenors' invitation to depart from settled case law and adopt a lower level of scrutiny. Intervenors' Opp. at 18–19. *Dunn*'s holding requiring strict scrutiny is directly on point, and the Court 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, 207 (1997) (quoting *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989)). Moreover, *Dunn*'s strict-scrutiny standard is not undermined by *Anderson-Burdick* in any event. *See Greidinger v. Davis*, 988 F.2d 1344, 1349–51 (4th Cir. 1993) (citing *Dunn*, 405 U.S. at 336 and *Rosario v. Rockefeller*, 410 U.S. 752, 757 (1973)). And this is not "new territory" for *Dunn*. Intervenors' Opp. at 21. 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); *Fisher v. Herseth*, 374 F. Supp. 745, 747 (D.S.D. 1974).

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

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). The Alliance's claims are not barred by laches because no inequity results from permitting them to proceed. Intervenors do not identify any concrete action they would have taken but for the Alliance's alleged delay. 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). And applying laches here would have the bizarre effect of immunizing North Carolina's unconstitutional conduct from challenge merely because it is longstanding.

IV. The Alliance's members will suffer irreparable harm absent injunctive relief.

"Courts routinely deem restrictions on fundamental voting rights irreparable injury." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014). Denying the right of North Carolinians who move within 30 days of an election to vote where they live constitutes irreparable injury because it infringes upon constitutional rights and monetary damages are inadequate. *See Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011).

Defendants do not deny that infringement on the right to vote constitutes irreparable harm, but rather, reiterate their failed arguments on the merits. The Alliance has no obligation to establish with *certainty* that their members' rights will be harmed absent injunctive relief, State Defs.' Opp. at 6, ECF No. 43, because they have established that the 30-Day Residency Requirement is "likely" to disenfranchise some of its members, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)) (requiring only a showring that "irreparable injury is likely in the absence of an injunction"). Once more, the Alliance need not identify a particular injured member to demonstrate sufficient likelihood of injury. *See League of Women*

Voters of N.C., 769 F.3d at 247 (reversing denial of preliminary injunction upon finding that unspecified voters will be irreparably harmed absent injunction of voting laws).

The 30-Day Residency Requirement also irreparably harms the Alliance because advocacy groups are irreparably harmed by voting laws that impair their ability to carry out their mission. *See Action NC v. Strach*, 216 F. Supp. 3d 597, 616, 643 (M.D.N.C. 2016) (finding that voting law irreparably harmed non-profit organization devoted to "reducing the root causes of poverty").

V. The public interest and balance of equities favor granting a preliminary injunction.

The balance of equities tips sharply in the Alliance's favor because the potential harm to the Alliance and the public interest far outweighs any alleged harm to Defendants. Defendants fail to respond to the Alliance's point that their requested relief would further the public interest by vindicating constitutional rights and permitting as many qualified voters as possible to vote. PI Br. at 24. While the State Defendants urge this Court to consider the "public consequences" of Plaintiff's requested relief, they do not argue that such relief would harm the public. State Defs.' Opp. at 7.

Defendants' arguments that injunctive relief would harm *them* fail to tip the balance of equities in their favor. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 520–21 (4th Cir. 2002) (explaining that any harm to Defendants must be weighed

against injury to plaintiff and public interest). Contrary to the Defendants' arguments, State Defs.' Opp at 7, the state's interest in easing administrative burdens cannot outweigh the right to vote. *See, e.g.*, *Fish v. Kobach*, 840 F.3d 710, 755 (10th Cir. 2016) (explaining that there is "no contest" between voter disenfranchisement and state's administrative burdens); *United States v. Georgia*, 892 F. Supp. 2d 1367, 1377 (N.D. Ga. 2018) (finding that administrative and financial burdens on state are "minor when balanced against the right to vote"). And states are "in no way harmed" by preliminary injunctions of "restrictions likely to be found unconstitutional." *Giovani Carandola, Ltd.*, 303 F.3d at 521 (enjoining unconstitutional state law).

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin the 30-Day Residency Requirement.

Dated: February 20, 2024.

Respectfully submitted,

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

Undersigned counsel certifies that this Reply complies with Local Rule 7.3(d), in that the word count function of Microsoft Word shows the brief to contain 3,121 words, excluding those portions of the brief permitted to be excluded by the Rule.

This 20th day of February, 2024.

/s/ Narendra K. Ghosh
Narendra K. Ghosh

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