

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

VOTO LATINO, et al.,

Plaintiffs,

v.

ALAN HIRSCH, in his official capacity
as Chair of the State Board of Elections,
et al.,

Defendants.

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Case No. 1:23-CV-861-TDS-JEP

**INTERVENORS' SUPPLEMENTAL BRIEF
CONCERNING PLAINTIFF DOWN HOME NORTH CAROLINA**

This supplemental brief concerning Plaintiffs' preliminary injunction motion is filed by agreement of the parties, given Intervenors' inability to take all necessary discovery before the deadline to oppose Plaintiffs' preliminary-injunction motion. Intervenors were set to depose Dreama Caldwell, the executive co-director of Plaintiff Down Home North Carolina ("Down Home"), on December 8, 2023, but after "an unexpected death in [her] family," Plaintiffs' counsel requested an alternative date after the deadline to oppose Plaintiffs' preliminary-injunction motion. Ex. A, Correspondence of Counsel (Dec. 7, 2023); Ex. B Correspondence of Counsel (Dec. 12, 2023). Plaintiffs' counsel proposed that the prejudice from the untimely deposition be cured by their "consent to you supplementing your response brief as necessary in advance of the Dec. 28 hearing." Ex. A, Correspondence of Counsel (Dec. 7, 2023). The parties agreed to that arrangement. *Id.* This is the agreed upon brief, and it is tailored to case issues concerning Down Home.

Down Home is unlikely to establish standing for the same reasons the other Plaintiffs are unlikely to do so. *See* Doc. 51 at 4–7. Associational standing includes a requirement of “naming” the members whose standing is asserted. *Summers v. Earth Island Inst.*, 555 U.S. 488, 498 (2009); Doc. 51 at 4–5. Down Home has identified three members, but is unlikely to prove standing for any. As to the first, Mark Ortiz, Plaintiffs cannot establish an intent to use same-day registration in the future, as Ms. Caldwell has never spoken with him about same-day registration, and he appears not to have used it for the past ten years. Ex. C, Caldwell Depo. 67:24-68:2, 68:12-15, Ex. D, Caldwell Ex. 27. The same is true for the second named member, Crystal Pennix, who is already registered and with whom Ms. Caldwell has never discussed same-day registration. Ex. C, Caldwell Depo. 69:3-70:6, 70:12-15, 71:4-7; Ex. E, Caldwell Ex. 28. A third named member, who might be named Dustin, Dylan, or Dillon, is more or less unknown to Ms. Caldwell, who has no knowledge of whether (or how) this person might be harmed by S.B. 747. Ex. C, Caldwell Depo. 57:21-24, 71:8-25, 73:8-12, 73:13-22. Plaintiffs are unlikely to establish that these individuals “would otherwise have standing to sue in their own right,” *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023), on that thin evidence. Down Home did not name other members, *see* Doc. 59 at 9–10; Doc. 44-3, and it otherwise relies on the same type of “statistical probability that some of [its] members are threatened with concrete injury” that the Supreme Court rejected in *Summers*. 555 U.S. at 497–98; *see* Doc. 44-3 ¶¶ 8–24; Doc. 59 at 9.

That aside, the standing assertion regarding members is too speculative to support standing for members, for the same reasons Plaintiffs Mead’s standing is too speculative.

Doc. 51 at 5–6; *Simmons v. Poe*, 47 F.3d 1370, 1382 (4th Cir. 1995). There is no evidence that any votes will be denied by operation of the Undeliverable Mail provision and, even assuming the small percentage of mail erroneously returned undeliverable nationally is relevant here, the risk would be miniscule. *See* Ex. C, Caldwell Depo. 60:3-10 (no knowledge of impact of postal error on voter registration). This case does not involve “*en masse* challenges to large numbers of registered voters,” *N.C. State Conf. of NAACP v. N.C. State Bd. of Elections*, 283 F. Supp. 3d 393, 404 (M.D.N.C. 2017), but a rare occurrence, even by reference to Plaintiffs’ data.

Down Home also is unlikely to show organizational standing. Plaintiffs assert that Down Home must “expend limited monetary and staff resources educating voters about their registration options and standing up a new voter registration program,” Doc. 59 at 10, but the evidence does not support that. Down Home has spent nothing responding to S.B. 747 and no money has been budgeted for a response. Ex. C, Caldwell Dep. 62:1-63:10. Down Home North Carolina does not participate in voter registration efforts, *id.* at 25:19-21, 56:16-19, and thus has no basis to claim injury to such efforts. Down Home endorses candidates, *id.* at 25:19-21; 56:16-19, but that has nothing to do with S.B. 747. While Down Home provides a “Voter Guide,” Ex. F, Caldwell Ex. 21, it links to the North Carolina State Board of Elections website for information on early voting, which includes information about same-day registration. Ex. G, Caldwell Ex. 22; Ex. H, Caldwell Ex. 23; Ex. C Caldwell Depo. 31:21-33:7. It is a mystery how S.B. 747 could divert resources related to that.

Respectfully submitted, this 22nd day of December, 2023.

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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 22nd day of December, 2023.

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