

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:23-cv-00861-TDS-JEP

VOTO LATINO, et al,)
)
Plaintiffs,)
)
v.)
)
ALAN HIRSCH, et al.,) **STATE BOARD DEFENDANTS’**
) **ANSWER**
Defendants,)
)
And)
)
PHILIP E. BERGER, et al.,)
)
Intervenor-Defendants.)

Defendants Alan Hirsch, Jeff Carmon, Stacy Eggers, IV, Kevin N. Lewis, Siobhan O’Duffy Millen and Karen Brinson Bell, in their official capacities (collectively, “State Board Defendants”), hereby answer Plaintiffs’ Complaint [D.E. 1] as follows:

NATURE OF THE CASE

1. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

2. Denied that this accurately reflects the mail verification process prior to the enactment of S.B. 747. Neither admitted nor denied to the extent that the provisions cited are matters of public record, speak for themselves, and are the best evidence of their contents.

3. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

4. Admitted upon information and belief as to the number of voters who utilized same-day registration. Neither admitted nor denied to the extent that the allegations reference matters of public record, which speak for themselves and are the best evidence of their contents. To the extent that this paragraph contains argument or conclusory allegations, no response is required.

5. Neither admitted nor denied to the extent that the allegations reference matters of public record, which speak for themselves and are the best evidence of their contents. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Otherwise, State Board Defendants lack sufficient information to admit or deny the allegations in this paragraph.

6. Neither admitted nor denied to the extent the allegation is not directed at State Board Defendants. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

7. Neither admitted nor denied as the allegation is not directed at State Board Defendants. To the extent that this paragraph contains argument or conclusory allegations, no

response is required.

8. Neither admitted nor denied as the allegation is not directed at State Board Defendants. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

9. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

10. Neither admitted nor denied as the allegation is not directed at State Board Defendants. Neither admitted nor denied to the extent that the reference to the Governor's veto is a matter of public record, speaks for itself, and is the best evidence of its contents. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations.

11. Neither admitted nor denied to the extent that this paragraph contains argument, conclusory allegations, and requested relief, such that no response is required.

JURISDICTION AND VENUE

12. Admitted.

13. Admitted that the Court had original jurisdiction over the subject matter of the action when filed. Otherwise denied.

14. Admitted.

15. Admitted as to (1). Admitted upon information and belief as to (2). Denied as to (3) to the extent that the allegations all appear to involve alleged actions that arose from the official conduct of state actors in Raleigh, North Carolina.

16. Admitted.

PARTIES

17. State Board Defendants lack sufficient information to admit or deny the allegations of this paragraph.

18. State Board Defendants lack sufficient information to admit or deny the allegations of this paragraph.

19. State Board Defendants lack sufficient information to admit or deny the allegations of this paragraph regarding Plaintiff. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

20. Neither admitted nor denied to the extent that the statistical references and the early voting period set forth in statute are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity

cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

21. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

22. Admitted that Watauga County is home to Appalachian State University. Otherwise, State Board Defendants lack sufficient information to admit or deny the allegations of this paragraph.

23. Neither admitted nor denied to the extent that the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents. Otherwise, State Board Defendants lack sufficient information to admit or deny the allegations in this paragraph.

24. State Board Defendants lack sufficient information to admit or deny the allegations of this paragraph.

25. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

26. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack

sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

27. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

28. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

29. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

30. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument or conclusory allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

31. State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

32. State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

33. State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

34. Denied that the State Board enforces Numbered Memo 2016-15. Otherwise, admitted.

35. Denied that Executive Director Bell promulgated or signed Numbered Memo 2016-15. Otherwise, admitted.

36. Neither admitted nor denied to the extent these parties have been voluntarily dismissed. To the extent a response is required, admitted upon information and belief with respect to the individuals named. Neither admitted nor denied to the extent that the statute cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

37. Admitted upon information and belief with respect to the individuals named. Neither admitted nor denied to the extent that the statute cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

STATEMENT OF FACTS AND LAW

I. Same-day registration is a secure, long-standing method of voter registration and voting that has been extremely popular among North Carolina voters since its inception.

38. Denied to the extent that the early voting period begins 19 days before the election. Otherwise, admitted.

39. Admitted.

40. Admitted to the extent that same-day registration is secure and has several safeguards in place to ensure that only eligible applicants are registered, and that additional verification measures are added.

41. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

North Carolina's registration process

42. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

43. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

44. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

45. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

46. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

Additional steps required of same-day registrants before the Undeliverable Mail Provision

47. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

48. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

49. Neither admitted nor denied to the extent that the statute cited is a matter of public record, speaks for itself, and is the best evidence of its contents. State Board Defendants incorporate by reference their response to paragraph 43.

Same-day registration after the Undeliverable Mail Provision

50. Neither admitted nor denied to the extent that the same-day registration provisions reference are matters of public record, speak for themselves, and are the best evidence of their contents.

51. To the extent that the first sentence contains argument or conclusory allegations, no response is required. As to the remainder, neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

52. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

53. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

54. Denied that the state lacks a legitimate state interest to support the same-day registration processes. Otherwise, State Board Defendants incorporate responses to paragraphs 42-43 and 48-49 above. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

II. Meaningful and reliable same-day registration is particularly critical to the enfranchisement of eligible Black, Latinx, and young North Carolinians.

55. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

56. To the extent that this paragraph contains argument or conclusory allegations without citation, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

57. Neither admitted nor denied to the extent that the case cited is the source of this allegation, which is a matter of public record, speaks for itself, and is the best evidence of its

contents.

58. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

59. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

60. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

61. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

62. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

63. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining

allegations.

64. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

65. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

66. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

III. The Undeliverable Mail Provision significantly undermines the same-day registration process.

67. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Otherwise, State Board Defendants incorporate their response to paragraph 8 above. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

68. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining

allegations. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

69. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

70. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the argument, conclusory allegations, or any remaining allegations.

71. Neither admitted nor denied to the extent that the USPS document cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

72. Neither admitted nor denied to the extent that the USPS document cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

73. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that this accurately reflects the same-day registration process. Every same-day registrant either (1) fills out the registration form themselves or (2) reviews the registration form after it has been filled out by election staff and then approves it. While State Board Defendants admit that the alleged poll worker errors do occur, it is denied that they are “commonplace.” Denied to the extent that the State Board has established a notice and opportunity cure process for address verification

failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

74. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Denied that whether a person moves frequently has any bearing on whether a poll worker is more or less likely to make an error in inputting a registrant's address.

75. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to respond to a conclusory allegation without a basis, and therefore, it is denied. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

76. Neither admitted nor denied to the extent that the statutes reference are matters of public record, speak for themselves, and are the best evidence of their contents. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

77. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the conclusory allegations, or any remaining allegations. State Board Defendants incorporate responses to paragraphs 56-67 above. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

78. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack

sufficient information to admit or deny the conclusory allegations, or any remaining allegations. State Board Defendants incorporate responses to paragraphs 56-67 above. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

IV. The Undeliverable Mail Provision is not necessary to secure the state's elections or guard against ineligible registration.

79. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied to the extent that the state has a legitimate interest in the address verification process. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

80. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, State Board Defendants lack sufficient information to admit or deny the conclusory allegations, or any remaining allegations.

81. Neither admitted nor denied to the extent that the same-day registration provisions referenced are matters of public record, speak for themselves, and are the best evidence of their contents. State Board Defendants incorporate responses to paragraphs 42-43 and 48-49 above.

82. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, denied that whether a piece of mail is successfully delivered has “almost no bearing” on whether a voter is eligible to cast a ballot. State Board Defendants lack sufficient information to admit or deny the argument,

conclusory allegations, or any remaining allegations.

CLAIMS FOR RELIEF COUNT I

**Fourteenth Amendment: Denial of Due Process
U.S. Const. Amend. XIV; 42 U.S.C. § 1983**

83. State Board Defendants repeat each response above as if set forth fully herein.

84. Neither admitted nor denied to the extent that this paragraph contains legal conclusions and the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

85. Neither admitted nor denied to the extent that this paragraph contains legal conclusions and the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

86. Neither admitted nor denied to the extent that this paragraph contains legal conclusions and the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

87. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required it is denied that the provisions referenced are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

88. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the provisions referenced are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-

05. [D.E. 72-1].

89. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that no sufficient state interest exists with respect to address verification for same-day registrants. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

90. To the extent that this paragraph contains argument or conclusory allegations, no response is required. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents. To the extent a response is required, it is denied that the provisions referenced are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

91. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the provisions referenced are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

92. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the provisions referenced are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-

05. [D.E. 72-1].

COUNT II

First and Fourteenth Amendments: Undue Burden on the Right to Vote U.S. Const. Amend. I and XIV; 42 U.S.C. § 1983, 28 U.S.C. §§ 2201, 2202

93. State Board Defendants repeat each response above as if set forth fully herein.

94. Neither admitted nor denied to the extent that the legal authorities cited are matters of public record, speak for themselves, and are the best evidence of their contents.

95. Neither admitted nor denied to the extent that this paragraph contains legal conclusions and the case cited is a matter of public record, speaks for itself, and is the best evidence of its contents.

96. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the referenced provisions are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

97. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the referenced provisions are unlawful. Denied to the extent that the State Board has established a notice and opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

98. To the extent that this paragraph contains argument or conclusory allegations, no response is required. To the extent a response is required, it is denied that the referenced provisions are unlawful. Denied to the extent that the State Board has established a notice and

opportunity cure process for address verification failure pursuant to Numbered Memo 2023-05. [D.E. 72-1].

ANY AND ALL OTHER ALLEGATIONS MADE IN PLAINTIFFS' COMPLAINT, INCLUDING THE RELIEF REQUESTED, EXCEPT AS SPECIFICALLY ADMITTED ABOVE, ARE HEREBY DENIED.

FURTHER ANSWERING THE COMPLAINT AND AS FOR ANY DEFENSES THERETO, DEFENDANTS ASSERT THE FOLLOWING:

State Board Defendants reserve the right to assert defenses against Plaintiffs that may become apparent during the course of litigation and discovery.

Respectfully submitted this the 30th day of January, 2024.

NORTH CAROLINA
DEPARTMENT OF JUSTICE

/s/ Terence Steed

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