

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
CASE NO. 1:23-CV-861**

VOTO LATINO, et al.,

Plaintiffs,

vs.

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

Defendants.

**LEGISLATIVE INTERVENORS
ANSWER AND AFFIRMATIVE
DEFENSES**

Legislative Intervenors, Philip E. Berger in his official capacity as President *Pro Tempore* of the North Carolina Senate, and Timothy K. Moore in his official capacity as Speaker of the North Carolina House of Representatives answer Plaintiffs' Complaint as follows:

FIRST DEFENSE

Legislative Intervenors answer the specific allegations of Plaintiffs' Complaint:

“NATURE OF THE CASE”

1. Legislative Intervenors admit that the cited case and the Plaintiffs' Complaint speak for themselves. In all other respects, denied.
2. Denied.
3. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE's Numbered Memo 2023-05. In all other respects, denied.
4. Denied.

5. Denied.

6. Legislative Intervenors admit that the cited case speaks for itself, in all other respects, denied.

7. Denied.

8. Denied.

9. Denied.

10. Legislative Intervenors admit that Governor Cooper's veto message speaks for itself. In all other respects, denied.

11. Legislative Intervenors admit that the relief Plaintiffs' seek in their Complaint speaks for itself. In all other respects, denied.

“JURISDICTION AND VENUE”

12. Legislative Intervenors admit that the cited statutes speak for themselves. Legislative Intervenors specifically deny that Plaintiffs are entitled to any relief or that S.B. 747 violates any constitutional amendment or law.

13. Admitted.

14. Admitted.

15. Denied.

16. Legislative Intervenors admit that the cited statutes and rules of civil procedure speak for themselves. Legislative Intervenors specifically deny that Plaintiffs are entitled to any relief or that S.B. 747 violates any constitutional amendment or law.

“PARTIES”

17. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 17. To the extent a further response is required, the allegations are denied.

18. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 18. To the extent a further response is required, the allegations are denied.

19. Denied.

20. Denied.

21. Denied.

22. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 22. To the extent a further response is required, the allegations are denied.

23. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 23. To the extent a further response is required, Legislative Intervenors state that the cited case speaks for itself, and in all other respects, the allegations are denied.

24. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 24. To the extent a further response is required, the allegations are denied.

25. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 25. To the extent a further response is required, the allegations are denied.

26. Denied.

27. Denied.

28. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 28. To the extent a further response is required, the allegations are denied.

29. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 29. To the extent a further response is required, the allegations are denied.

30. Denied.

31. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 31. To the extent a further response is required, the allegations are denied.

32. Legislative Intervenors lack information or knowledge sufficient to admit or deny the allegations of Paragraph 32. To the extent a further response is required, the allegations are denied.

33. Ms. Barrow voluntarily dismissed her claims, and thus no response is required. [D.E. 34]. To the extent a further response is required, the allegations are denied.

34. Legislative Intervenors admit that the cited statutes and regulations speak for themselves. Legislative Intervenors also admit that Alan Hirsch, Jeff Carmon, Stacy Eggers

IV, Kevin Lewis, and Siobhan Millen are members of the North Carolina State Board of Elections. Except as specifically admitted, the allegations of Paragraph 34 are denied.

35. Legislative Intervenors admit that the cited statutes and regulations speak for themselves. Legislative Intervenors also admit that Karen Bell is the Executive Director of the North Carolina State Board of Elections. Except as specifically admitted, the allegations of Paragraph 35 are denied.

36. Plaintiffs' voluntarily dismissed their claims against the Durham County Board of Elections and its members, and thus no response is required. [D.E. 40]. To the extent a further response is required, the allegations of Paragraph 36 are denied.

37. Legislative Intervenors admit that the cited statutes speak for themselves. Legislative Intervenors also admit that Michael Behrent is the Chair of the Watauga County Board of Elections, and that Leta Councill, Eric Eller, Matt Walpole, and Elaine Rothenberg are members of the Watauga County Board of Elections. Except as specifically admitted, the allegations of Paragraph 37 are denied.

"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. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

39. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

40. Legislative Intervenors admit that S.B. 747 was intended to make voting more secure by closing the same-day registration loophole in which a vote would count regardless of whether the address verification card was returned as undeliverable, thus leaving no time to verify the voter's address. In all other respects, denied.

“North Carolina’s registration process”

41. Legislative Intervenors admit that the cited statute and voter registration process speak for themselves. In all other respects, denied.

42. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

43. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

44. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

45. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

46. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

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

47. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

48. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

49. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

“Same-day registration after the Undeliverable Mail Provision”

50. Legislative Intervenors admit that S.B. 747 speaks for itself. In all other respects, denied.

51. Legislative Intervenors admit that the cited statute speaks for itself. In all other respects, denied.

52. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE’s Numbered Memo 2023-05. In all other respects, denied.

53. Denied.

54. Denied.

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

55. Denied.

56. Legislative Intervenors are without information sufficient to admit or deny the allegations of Paragraph 56 because Plaintiffs offer no citation for the statistics cited in the paragraph. To the extent a further response is required, the allegations of Paragraph 56 are denied.

57. Legislative Intervenors admit that the cited case speaks for itself. In all other respects, denied.

58. Legislative Intervenors admit that the cited case speaks for itself. In all other respects, denied.

59. Denied.

60. Legislative Intervenors are without information sufficient to admit or deny the allegations of Paragraph 60 because Plaintiffs offer no citation to the 2021 study. To the extent a further response is required, the allegations of Paragraph 60 are denied.

61. Legislative Intervenors are without information sufficient to admit or deny the allegations of Paragraph 61 because Plaintiffs offer no citation for the statistics cited in the paragraph. To the extent a further response is required, the allegations of Paragraph 61 are denied.

62. Legislative Intervenors are without information sufficient to admit or deny the allegations of Paragraph 62 because Plaintiffs offer no citation for the statistics cited in the paragraph. To the extent a further response is required, the allegations of Paragraph 62 are denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

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

67. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE’s Numbered Memo 2023-05. In all other respects, denied.

68. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE’s Numbered Memo 2023-05. In all other respects, denied.

69. Denied.

70. Denied.

71. Denied.

72. Legislative Intervenors admit that the cited source speaks for itself. In all other respects, denied.

73. Legislative Intervenors admit that S.B. 747 speaks for itself. In all other respects, denied.

74. Denied.

75. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE’s Numbered Memo 2023-05. In all other respects, denied.

76. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE’s Numbered Memo 2023-05. In all other respects, denied.

77. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE's Numbered Memo 2023-05. In all other respects, denied.

78. Denied.

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

79. Denied.

80. Denied.

81. Denied.

82. Denied.

“CLAIMS FOR RELIEF
COUNT I

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

83. Legislative Intervenors incorporate their responses to Paragraphs 1-82 as if set forth fully herein.

84. Paragraph 84 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

85. Paragraph 85 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

86. Paragraph 86 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

87. Paragraph 87 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

88. Denied.

89. Denied.

90. Legislative Intervenors admit that S.B. 747 speaks for itself, and that the cited portion of S.B. 747 was preliminarily enjoined and that alternative procedures have been put in place by the NCSBE's Numbered Memo 2023-05. In all other respects, denied.

91. Denied.

92. Denied.

"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. Legislative Intervenors incorporate by reference their responses to Paragraphs 1-92 as if set forth fully herein.

94. Paragraph 94 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747

violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

95. Paragraph 95 contains a legal conclusion to which no response is required. To the extent a response is required, Legislative Intervenors specifically deny that S.B. 747 violates any statute, law, or constitutional provision and further deny that Plaintiffs are entitled to any relief whatsoever.

96. Denied.

97. Denied.

98. Denied.

“PRAYER FOR RELIEF”

Response to Unnumbered “PRAYER FOR RELIEF”

Legislative Intervenors deny that Plaintiffs are entitled to any relief whatsoever.

SECOND DEFENSE

Any allegations in paragraphs 1-98 of the complaint not specifically admitted are denied.

THIRD DEFENSE

Plaintiffs’ complaint, in whole or in part fails to state a claim upon which relief can be granted and thus should be dismissed.

FOURTH DEFENSE

Plaintiffs lack standing to assert the claims in their Complaint.

FIFTH DEFENSE

Plaintiffs’ claims are not ripe.

SIXTH DEFENSE

To the extent state court litigation is filed over the allegations in the Complaint, or the Complaint raises issues under the state constitution not yet resolved by the North Carolina Supreme Court, the Court should abstain from considering those claims.

WHEREFORE, Legislative Intervenors move the court:

1. That plaintiffs' Complaint be dismissed with prejudice and that judgment be entered for the Defendants on all claims;
2. That Legislative Intervenors be awarded their attorneys' fees and costs; and
3. That Legislative Intervenors be awarded such other and further relief as the Court may deem just and proper.

Respectfully, submitted this the 16th day of April 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach

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CERTIFICATE OF SERVICE

I, Phillip J. Strach, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification to counsel of record.

This the 16th day of April, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

/s/ Phillip J. Strach _____
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