

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
No. 1:23-CV-862**

	)	
DEMOCRATIC NATIONAL	)	
COMMITTEE; <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	<b><u>RESPONSE IN OPPOSITION TO</u></b>
v.	)	<b><u>PLAINTIFFS’ MOTION FOR</u></b>
	)	<b><u>PRELIMINARY INJUNCTION</u></b>
NORTH CAROLINA STATE BOARD OF	)	
ELECTIONS; <i>et al.</i> ,	)	
	)	
Defendants.	)	

**INTRODUCTION AND STATEMENT OF THE CASE**

United States Supreme Court jurisprudence has long recognized that it is within the province of state legislatures to regulate voter qualifications. *Smiley v. Holm*, 285 U.S. 355, 366–69 (1932); *Gregory v. Ashcroft*, 501 U.S. 452, 461–62 (1991); *Shelby Cnty. v. Holder*, 570 U.S. 529, 543 (2013). In areas where Congress has declined to act, states have the authority to establish rules and regulations regarding the times, places, and manner for registered voters to cast their ballots. *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 8 (2013). This authority includes “regulations relating to ‘registration.’” *Id.* (quoting *Smiley*, 285 U.S. at 366).

The North Carolina General Assembly has exercised its broad constitutional power to regulate “the conditions under which the right of suffrage may be exercised” by enacting S.B. 747. *Shelby Cnty.*, 570 U.S. at 543. The Democratic National Committee and the

North Carolina Democratic Party (“Plaintiffs”) seek to enjoin certain provisions of S.B. 747 relating to same-day voter registration. The majority of Plaintiffs’ claims in their Motion for Preliminary Injunction (the “Motion”) are based upon an unreasonable reading of existing election laws and the plain text of S.B. 747 itself. To the extent that S.B. 747 actually altered existing law, this Court should defer to the General Assembly’s reasonable interpretations of S.B. 747 because the same-day registration provisions do not impose an undue burden on the right to vote or deprive any North Carolinians of their due process rights. For these reasons, Plaintiffs’ Motion should be denied in its entirety.

#### **RELEVANT STATEMENT OF FACTS**

S.B. 747 is the culmination of several months of legislating, with input from the North Carolina State Board of Elections (“NCSBE”) and the public, aimed at addressing feedback from constituents and election officials regarding election management and deadlines to ensure that elections are being conducted in a fair, non-partisan manner. On October 10, 2023, the North Carolina General Assembly overrode the Governor’s veto, making S.B. 747 law. N.C. Sess. Law 2023-140. Within hours of the veto override, Plaintiffs filed suit against the NCSBE and its Members challenging changes to North Carolina’s same-day registration laws, the new deadline for receipt of absentee ballots, and new laws governing poll observers. [D.E. 1]. On that same day, Plaintiffs moved for a preliminary injunction, seeking to enjoin S.B. 747’s same-day voter registration provisions. [D.E. 6, 7].

Specifically, Plaintiffs’ Motion for Preliminary Injunction is brought under Counts II, IV, and V of Plaintiffs’ Complaint. Plaintiffs allege that S.B. 747 violates North Carolinians’ due process rights (Count II) through three same-day registration<sup>1</sup> provisions: (1) the requirement that a same-day registrant show proof of residence “by presenting a HAVA document listing the individual’s current name and residence address[,]” § 10.(a); (2) purportedly failing to give same-day registrants’ notice and a meaningful opportunity to be heard after a registration is rejected; and (3) rejecting a same-day registrant’s application based on the return of one mailed notice card marked undeliverable by the United States Postal Service. Plaintiffs also allege that the same-day registration provisions violate the Civil Rights Act, (“CRA”), 52 U.S.C. § 10101(a)(2)(A), by applying different standards, practices, or procedures to voters in a single county (Count IV). Lastly, Plaintiffs claim that S.B. 747 violates the Help America Vote Act, (“HAVA”), 52 U.S.C. § 21082 (Count V).<sup>2</sup> [D.E. 1, 6, and 7].

*Voting Outside of Election Day in North Carolina*

North Carolina has some of the most expansive and voter-friendly election laws in the country. Under North Carolina law, citizens can register to vote in person, online, via mail, or even at the DMV up to 25 days prior to election day. N.C.G.S. § 163-82.6(d). For voters who miss this 340-day window, North Carolina provides an accommodation in the form of same-day registration during the early voting period, which runs for sixteen days

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<sup>1</sup> As used herein, the terms “same-day registration” or “same-day registrants” refers to voters who both seek to register to vote and actually vote at the same time during early voting.

<sup>2</sup> Plaintiffs do not seek a preliminary injunction on their remaining claims.

beginning the third Thursday prior to election day and ends at 3:00 p.m. the Saturday before election day. N.C.G.S. § 163-227.2; S.B. 747 § 10.(a) (*modifying* §163-82.6B). North Carolina also allows no-excuse absentee voting for all registered voters, § 163-226(a), and voters may request an absentee ballot until 5:00 p.m. the Tuesday before election day. N.C.G.S. § 163-230.1. Finally, as an additional accommodation to all voters who might experience registration issues or perhaps visit the wrong polling place or precinct, North Carolina also allows all individuals to cast a provisional ballot on election day or during in-person early voting. N.C.G.S. § 163-82.4(f). Under no circumstance is an election worker allowed to deny an individual the right to vote a provisional ballot. *See* N.C.G.S. § 163-166.11.

#### *Same-Day Voter Registration in North Carolina*

Unlike North Carolina, the majority of other states do not offer same-day voter registration.<sup>3</sup> In order to register to vote and actually vote on the same day, North Carolina law has long required that same-day registrants (1) submit the same voter registration application form as is statutorily required for all persons registering to vote and (2) present to a statutorily-designated elections official “official written or documentary evidence that the applicant is the person he represents himself to be.” N.C.G.S. § 163-82.6 (effective

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<sup>3</sup> *Same-Day Voter Registration*, National Conference of State Legislatures (Oct. 31, 2023), <https://www.ncsl.org/elections-and-campaigns/same-day-voter-registration>. The same is true for absentee voting: North Carolina is one of only approximately half of the states that allow no-excuse absentee voting. *Table 1: States with No-Excuse Absentee Voting*, National Conference of State Legislatures (July 12, 2022), <https://www.ncsl.org/elections-and-campaigns/table-1-states-with-no-excuse-absentee-voting>.

until January 1, 2024). If the official has reason to doubt the right of the applicant to register, the official “may require other evidence satisfactory to that official as to the applicant’s qualifications.” *Id.* Notably, S.B. 747 codifies previous NCSBE Guidance, *see Exhibit 1*, Numbered Memo 2016-15, which defines that documentary evidence as “a HAVA document.”<sup>4</sup> S.B. 747 §10.(a). Then, when the registered voter seeks to vote, S.B. 747 provides that the voter must provide photo ID—just like every other voter. *Id.* (citing N.C.G.S. § 163-166.16).

In relevant part, S.B. 747 altered the same-day registration provisions in the following ways:

- A same-day registrant casts what is now known as a “retrievable ballot” which is counted unless the county board of elections where the voter cast his/her ballot determines that the applicant is not qualified to vote. [D.E. 1 at ¶47] S.B. 747 § 10(a). A retrievable ballot is simply a ballot with an identifier to allow for retrievability. N.C.G.S. § 163-227.5 Under N.C.G.S. §163-227.5, a statute undisturbed by S.B. 747, the State Board “shall adopt” standards for retrievable ballots, which mandates that ballots have a number or equivalent identifier to allow for retrievability such as those for absentee ballots printed in accordance. *See* N.C.G.S. § 163-230.1.
- As part of the address verification process, the county board of elections will retrieve any ballot cast if, before the close of canvass, the required address verification card is returned undeliverable. [D.E. 1 at ¶47] S.B. 747 § 10(a). This change was made at the request of the NCSBE because the time between early voting and the end of canvass did not allow sufficient time for the mailing and return of two verification cards.

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<sup>4</sup> A HAVA document is either: (1) a current utility bill; (2) current bank statement; (3) current government check; (4) current paycheck; (5) another current government document; or (6) a current document issued from the institution who issued the photo identification shown by the voter. S.B. 747 §10.(a). Similar documents were acceptable under Numbered Memo 2016-15.

Notably, S.B. 747 does nothing to alter several existing election laws pertaining to same-day registration and early/absentee voting. These include:

- The requirement that individuals are notified that their voter registration application (which all same-day registrants must complete) was rejected by the county board. This requirement as codified in N.C.G.S. § 163-82.7(b), requires that voters are notified of their denial of registration by certified mail within two days of the denial, and provides for appeals from the denial of registration up to, including up to the North Carolina Supreme Court. N.C.G.S. §163-82.18.
- The system put in place by the NCSBE that allows voters to track their ballots during early and absentee voting. See <https://www.ncsbe.gov/news/press-releases/2020/11/05/how-know-your-vote-counted-north-carolina>. The tracking system put in place by the NCSBE also allows voters to sign up for notifications via voice, text, and/or email. <https://northcarolina.ballottrax.net/voter>.
- That voters present a HAVA document similar to those already required by Numbered Memo 2016-15.

On October 16, 2023, 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, (the “Legislative Defendants”) moved to intervene. [D.E. 31]. Intervention was granted on November 3, 2023. [D.E. 47]. After a status conference on November 15, 2023, the response deadline for all Defendants to respond to Plaintiffs’ Motion for Preliminary Injunction was set as November 20, 2023. Defendants now file this Response.

### **QUESTION PRESENTED**

1. Are Plaintiffs entitled to a preliminary injunction of S.B. 747’s same-day voter registration provisions as articulated in their Motion for Preliminary Injunction?

## ARGUMENT

“A preliminary injunction is an extraordinary remedy intended to protect the status quo and prevent irreparable harm during the pendency of a lawsuit.” *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (internal citations omitted). Plaintiffs cannot meet the burden here for such an extraordinary remedy. Plaintiffs, as the moving party, have not “clearly establishe[ed] entitlement to the relief sought.” *Id.* (citing *Fed. Leasing, Inc. v. Underwriters at Lloyd’s*, 650 F.2d 495, 499 (4th Cir. 1981)). The burden of proof is on Plaintiffs to demonstrate (1) likelihood of success on the merits; (2) “irreparable harm in the absence of preliminary relief[;]” (3) “that the balance of equities tips in [their] favor[;]” and (4) “that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (internal citations omitted).

Plaintiffs’ Motion must be denied for two fundamental reasons. First, Plaintiffs are not seeking to preserve the *status quo*; rather, they are asking this Court to alter the current *status quo* and enjoin the enforcement of laws that have already passed and where preparation for implementation has already begun. Second, the motion should be denied because Plaintiffs have failed to make a clear showing that *any* of the four necessary elements that are required for a preliminary injunction are present, starting with a clear showing of a likelihood of succeeding on the merits.

### **I. Plaintiffs Will Not Succeed on the Merits.**

As will be more fully detailed in Legislative Defendants’ forthcoming Motion to Dismiss, Plaintiffs lack Article III standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555,

560–61 (1992). First, Plaintiffs fail to present to the court a cognizable injury as required under Article III. *Warth v. Seldin*, 422 U.S. 490, 498 (1975) (requiring a “personal stake in the outcome of the controversy”). Plaintiffs have utterly failed to allege that any of the same-day registration provisions challenged in S.B. 747 create specific harm to their organizations or Democratic voters. Rather, these claims are generalized grievances that are speculative and not judicially cognizable. *Id.* (a “generalized grievance shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction”).

Thus, it is much more likely that Plaintiffs speculative claims fail, than they are likely to succeed. But even assuming *arguendo* that Plaintiffs have standing, which they do not, Plaintiffs’ claims will not succeed on the merits and their Motion for Preliminary Injunction must be denied.<sup>5</sup>

#### **A. Plaintiffs’ HAVA and CRA Claims Cannot Succeed.**

Even if the Court determines that Plaintiffs’ Complaint meets a threshold standing inquiry, Plaintiffs’ HAVA and CRA claims underlying their Motion, do not create a private right of action and fail as a matter of law. *See Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 572 (6th Cir. 2004) (as to HAVA); *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008) (per curiam) (holding a Republican political committee was “not sufficiently likely to prevail on the question [of] whether Congress has authorized the

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<sup>5</sup> Legislative Defendants intend to file a Motion to Dismiss all of Plaintiffs’ claims on the basis of standing and other arguments on the deadline set by the Court, January 16, 2024.



District Court to enforce [HAVA] in an action brought by a private litigant to justify the issuance of a TRO”); *Morales-Garza v. Lorenzo-Giguere*, 277 Fed. Appx. 444, 446 (5th Cir. 2008) (per curiam) (“HAVA does not provide the declaratory relief sought by [plaintiff].” (internal citations omitted)). *See also McKay v. Thompson*, 226 F.3d 752, 756 (6th Cir. 2000) (the CRA is “enforceable by the Attorney General, not by private citizens.”); *Gilmore v. Amityville Union Free Sch. Dist.*, 305 F. Supp. 2d 271, 279 (E.D.N.Y. 2004) (holding the same); *Milgori v. Lehigh Valley Cnty Bd. of Elections*, No. 5:22-cv-00397, 2022 WL 802159, \*9 (E.D. Pa. Mar. 16, 2022) (“Following a review of the text and structure of § 10101, its legislative history, and relevant case law, this Court concludes that § 10101 does not provide for a private right of action.”).

Even if these statutes created a private right of action, which they do not, Plaintiffs are unlikely to succeed. First, Plaintiffs complain that S.B. 747 failed to create a system by which absentee and early/one stop voters can track their ballot as contemplated under HAVA, 52 U.S.C. § 21082. [D.E. 6 p. 2]. But this ignores the practical fact that such a system *already exists*, and State Board of Elections Director Karen Brinson Bell testified at length about this system during hearings about S.B. 747 at the General Assembly.<sup>6</sup>

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<sup>6</sup> *See*, Hearing on North Carolina State Board of Elections, House Oversight & Reform Committee, \*5-6, \*11-12 (June 22, 2023), <https://webservices.ncleg.gov/ViewDocSiteFile/80708>. A court may take judicial notice of a bill’s legislative history, *Territory of Alaska v. Am. Can Co.*, 358 U.S. 224, 226–27, (1959); *Hall v. Virginia*, 385 F.3d 421, 424 (4th Cir. 2004).

Plaintiffs' claims under the CRA that same-day voters are subjected to different standards, fare no better [D.E. 6 p. 2].<sup>7</sup> For starters, the same-day registration and absentee ballot provisions apply equally to individuals within each county. To the extent Plaintiffs attempt to allege that it is a violation of the CRA for states to regulate different methods of voting differently, this argument fails both common-sense and legal tests.

First, states across the country provide for different methodologies and regulations to govern different types of voting, including absentee vote by mail and early voting. Under Plaintiffs theory, all mail-in voting would be a violation of the CRA. So too would North Carolina's previous early voting laws, which Plaintiffs ask this Court to return, that *already* require same-day registrants to produce additional documentation. *See* Exhibit 1. Legally, Plaintiffs' theory has been tested by the Indiana Democratic Party and failed. *See Indiana Democratic Party v. Rokita*, 458 F. Supp. 2d 775, 839 (S.D. Ind. 2006), *aff'd sub nom. Crawford v. Marion Cnty. Election Bd.*, 472 F.3d 949 (7th Cir. 2007), *aff'd*, 553 U.S. 181, 128 S. Ct. 1610 (2008) (dismissing, among others, the Indiana Democratic Party's claim under the CRA alleging that Indiana's law exempting absentee voters from showing photo ID violated the same provision of the Civil Rights Act).<sup>8</sup>

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<sup>7</sup> Notably, Plaintiffs cite to no case law in support of their argument they are likely to succeed on their Civil Rights Act Claim.

<sup>8</sup> As detailed further in Legislative Defendants' forthcoming Motion to Dismiss, Plaintiffs' CRA claim also fails because they "have not alleged, much less proven, any discrimination based on race," as required under the Civil Rights Act. *Rokita*, 458 F. Supp. 2d at 839.

**B. Plaintiffs Will Not Succeed on their Procedural Due Process Claims**

Plaintiffs’ procedural due process claims are also unlikely to succeed. To evaluate claims of procedural due process, courts analyze three factors: (1) the private interest that will be affected by the official action; (2) the risk that the individual will be wrongly deprived of that interest under the existing procedure, as well as the value of additional procedures to safeguard against the loss of the interest; and (3) the governmental interest, including the function involved and the fiscal and administrative burdens that additional procedure would entail. *Mathews v. Eldridge*, 424 US 319, 334-35 (1976). Plaintiffs cannot satisfy any of the three.

North Carolina citizens have an undeniable interest in the right to vote.<sup>9</sup> But Plaintiffs are not North Carolina voters, so it is unclear what relevant private interest they have that is affected by the same-day-registration provisions at issue. Plaintiffs offer no argument beyond recounting the fundamental nature of the right to vote in assuming this private interest is one they possess. Even assuming Plaintiffs have a private interest in seeing more Democrats elected, it is hard to see how that interest matters here because they have not alleged any disparate impact on Democratic voters. And even assuming Plaintiffs have a private interest that matters here, their procedural due process claims fail the other two *Mathews* prongs.

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<sup>9</sup> However as discussed below a same-day registrant is never prohibited from voting and may always cast either a provisional or retrievable ballot. Thus, the “right to vote” is not affected by S.B. 747.

First, Plaintiffs' reading that S.B. 747 "fail[s] to give same-day registrants notice and an opportunity to be heard when their applications are rejected" [D.E. 7 at 14] is an implausible reading of the statute. Same-day registrants complete the same registration application as timely registrants who register in person, online, or via mail. S.B. 747 10.(a); N.C.G.S. §163-82.4 While it is true that individuals are allowed to vote immediately after same-day registration, the registration application is still subject to the same subsequent verification of registration by the county board as timely registration applications. If a same-day registrant's registration is denied, they are then entitled to the same due process as all other timely registrants including notice by certified mail within two days of denial, as well as hearing and appeal rights. N.C.G.S. § 163-82.7(b); §163-82.18. This correct reading of the statute allows the statutory provisions to be read as a whole. *Territory of Guam v. United States*, 141 S. Ct. 1608, 1613(2021). Because same-day registrants are entitled to the same due process rights as timely registrants, which Plaintiffs acknowledge are sufficient [D.E. 7 at 9-10] the risk of erroneous deprivation is low.

Moreover, Plaintiffs entirely ignore that under North Carolina law all registrants are entitled to vote a provisional ballot. This means that, even if a poll worker informed an individual that they were not eligible to register for one reason or another, the individual could still vote via provisional ballot. The State's provisional ballot statutes and processes were unaltered by S.B. 747. *See* N.C.G.S. § 163-82.4(f); N.C.G.S. § 163-166.11.

Because Plaintiffs' reading of the statute is incorrect, and identical due process is provided for registration denials to same-day registrants and timely registrants, the risk of

harm under S.B. 747 to a voter is minimal and no additional procedure is needed. *Mathews*, 424 US at 334-35. It also highlights the clear state interest in ensuring that a same-day registrant's ballot is retrievable in the event the voter registration application is denied.

Plaintiffs' arguments that the single mail card for address verification violate procedural due process are also unpersuasive. First, Plaintiffs fail to address the commonsense elephant in the room—timing. Early voting begins the third Thursday before election day and runs through 3:00 p.m. the Saturday before election day. This means that a North Carolina citizen could register and vote on the same day as early as 19 days before election day and as late as 3 days before election day. Unlike timely registration which ends 25 days before election day, there is not enough time to send a newly registered voter two mail verification cards and have them returned before the relevant deadlines. This means that, under the pre- S.B. 747 system, there was a high likelihood that a same-day registrant who was otherwise ineligible to vote under North Carolina law – would nevertheless have their vote count.

This is the exact compelling governmental interest S.B. 747 is designed to remedy. It is simply impossible to implement the procedural safeguard suggested by Plaintiffs (a return to the two-card system) because there is not enough time to send two address verification notices without shortening the same-day registration window. Nor, have Plaintiffs offered any viable solutions that would allow address verification during the short same-day registration period that also alleviates the risk of ineligible votes being counted.

Second, Plaintiffs make much ado about the fact that voters who fail mail verification do not receive notice, but the pre-S.B. 747 version of the law that Plaintiffs want this court to return to in the form of two cards [D.E. 7 pp. 10-11], likewise provided no notice when a voter failed mail verification. Moreover, a voter can track their early and absentee ballot online, and even sign up to receive notifications about their ballot.

Plaintiffs try their best to paint the US Mail as unreliable, but the postal service successfully processes hundreds of millions of pieces of mail per day.<sup>10</sup> A properly addressed<sup>11</sup> piece of mail is presumed delivered and is sufficient for service. *Nibagwire v. Gonzales*, 450 F.3d 153, 156 (4th Cir. 2006) (regular mail service is entitled to the presumption of effective delivery); *Fed. Deposit Ins. Corp. v. Schaffer*, 731 F.2d 1134, 1137 n. 6 (4th Cir.1984). Thus, any claim that existing mail procedures create a risk of harm is specious at best. It is unclear how a second mailing *to the same address* would alleviate any alleged risk of harm. Moreover, the risk that the U.S. Mail could lose an absentee voter's mail-in ballot, however small, does not mean that voting by mail should be outlawed. Nor does such risk jeopardize the integrity of North Carolina elections procedures. A ruling by this Court that the use of the U.S. Mail is a constitutionally inadequate procedure would open the door for a similar challenge to voting by mail and

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<sup>10</sup> <https://facts.usps.com/mailpieces-processed-each-hour/>

<sup>11</sup> A same-day registrant either enters their own address in the registration application or dictates it to a poll worker. Under either procedure the registration application is printed and the registrant reviews and signs under penalty of perjury that the information is true and correct.

likely have seismic repercussions in other aspects of government where U.S. Mail is relied upon to conduct the state's business.

## **II. Plaintiffs will Not Suffer Irreparable Harm**

While the right to vote is undeniably a fundamental constitutional right, Plaintiffs have offered no evidence (or even a non-speculative claim), that the same-day registration provisions of S.B. 747 will lead to anyone being denied the right to vote. As detailed above, Plaintiffs offer an implausible reading of S.B. 747's registration provisions, and all same-day registrants are still provided the same due process rights, including notice via certified mail, a hearing, and appeal rights if a registration is denied. N.C.G.S. § 163-82.7(b); §163-82.18.

Lastly, Plaintiffs have presented no evidence to support their claim that same-day registrants receiving only a single mail verification card would cause harm. Plaintiffs complaint is devoid of any allegation, much less one with evidentiary support that any alleged deficiencies in a mail verification card are cured with the mailing of the second card. Nor do Plaintiffs address the commonsense argument that there is no time for two mail verification cards to be sent to a voter who registers and votes three days before election day, on the last day of early voting. Rather, Plaintiffs' chief argument seems to be that if North Carolina is going to offer same-day registration then it must be okay when a vote is counted *even if* the mail verification fails it cannot verify the voters address. Nothing in law or equity demands such a fraudulent result.

### III. The Balance of Equities and Public Interest Weighs Against an Injunction

The third and fourth *Winter* factors, on the balance of the equities and the public interest, “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). In matters involving challenges to election laws such as these, “[a]llowing the election to proceed without enjoining the statutory provisions at issue will provide the courts with a better record on which to judge their constitutionality” *Purcell v. Gonzalez*, 549 U.S. 1, 8 (2006) (Stevens, J., concurring). This is especially true here where there is *no* record for the Court to judge Plaintiffs’ claims, much less one supporting Plaintiffs’ contentions that Democratic voters (or any voter) will be unable to cast a ballot.

If a preliminary injunction is not issued, Plaintiffs will suffer no harm. In contrast, Defendants would be subjected to significant and irreparable harm if preliminary injunctive relief is granted. “[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 133 S. Ct. 1, 3 (2012) (quoting *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)); *see also Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (mem.) (Scalia, J., concurring).

It is well-established that “[s]tate legislatures are presumed to have acted within their constitutional power” in the first instance. *McGowan v. Maryland*, 366 U.S. 420, 425–26 (1961); *see Davies Warehouse Co. v. Bowles*, 321 U.S. 144, 153 (1944) (“State statutes, like federal ones, are entitled to the presumption of constitutionality until their invalidity



is judicially declared.”). Therefore, a statute regulating voter qualifications should not be set aside on Fourteenth Amendment grounds “if any state of facts reasonably may be conceived to justify it.” *McGowan*, 366 U.S. at 426 (internal citations omitted).

The balance of the equities and public interest do not favor an injunction. Despite Plaintiff’s rhetoric about the aims of the bill, S.B. 747 is a manifestation of the General Assembly’s desire to expand opportunities to register and vote and to work hand-in-hand with the NCSBE to ensure votes are timely counted. *See supra* pp. 12-14. This promotes at least two government interests: (1) preserving the integrity of the election process; and (2) instilling confidence in the fairness of the election. These are primary interests of our government that go to the very bedrock foundations of our American way of life.

North Carolina, through the General Assembly, has a clear interest in protecting public confidence “in the integrity and legitimacy of representative government.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197, (2008). *See also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 364, (1997) (“States certainly have an interest in protecting the integrity, fairness, and efficiency of their ballots and election processes as means for electing public officials.”). And as pointed out by Justice Kavanaugh, sometimes when election statutes are challenged close to an election, the “important principle of judicial restraint ... prevents election administrator confusion—and thereby protects the State's interest in running an orderly, efficient election and in giving citizens (including the losing candidates and their supporters) confidence in the fairness of the election.”

*Democratic National Committee v. Wisconsin State Legislature*, 141 S.Ct. 28, 31, (Kavanaugh, J., concurring).

One aspect of the government's interest in election integrity is to ensure that registrant's live in the precinct within which they seek to vote. The importance of where voters live in relation to which precinct they vote in is fundamental to ensure that voters cast ballots to elect officials to represent their specific community needs. Without such verification, voters could cast a ballot to elect officials who don't serve the district in which they actually live.

The public's confidence in the integrity of North Carolina's electoral process is another compelling state interest. "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell*, 549 U.S. at 4. To promote confidence in election integrity, the General Assembly has an interest in setting deadlines that ensure timely election finality. An integral part of this is knowing which properly registered voter case a proper ballot. There is nothing radical about ensuring that same-day registrants, who have forgone the timely registration process, can have their address verified in time to ensure election finality. S.B. 747 addresses this very issue, raised by the NCSBE, that there was insufficient time for same-day registrants to be mailed two address verification cards, and ensure the voter was properly registered at that address. On the other side of the coin, ensuring that votes are not cast in an improper district likewise promotes the state's interests of election integrity and promoting public confidence in elections. Moreover, Plaintiffs seek to dismantle these protections and confidence in

elections before the March primary, potentially causing confusion for election administrators and voters. For these reasons, the balance of equities and the risk to public harm weigh against an injunction.

### **CONCLUSION**

It is difficult to fully articulate the scope and complexity of administering elections in North Carolina. Even within this complex election environment, lawmakers sought to provide greater flexibility in registration and voting while still maintaining the government's vital interest in ensuring election integrity and promoting public confidence in elections. S.B. 747 accomplishes that goal. Legislative Defendants respectfully request that the Court deny Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted this 20th day of November, 2023.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Rule 7.3(d), I hereby certify that this brief contains 4,937 words as counted by the word count feature of Microsoft word.

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Phillip J. Strach  
N.C. State Bar No. 29456

**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 20th day of November, 2023.

**NELSON MULLINS RILEY &  
SCARBOROUGH LLP**

/s/ Phillip J. Strach

Phillip J. Strach  
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