

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

Democratic National Committee; North  
Carolina Democratic Party,

Plaintiffs,

v.

North Carolina State Board of Elections;  
Karen Brinson Bell, *in her official capacity  
as Executive Director of the North Carolina  
State Board of Elections*; Alan Hirsch, *in his  
official capacity as Chair of the North  
Carolina State Board of Elections*; Jeff  
Carmon, *in his official capacity as Secretary  
of the North Carolina State Board of  
Elections*; and Stacy Eggers IV, Kevin N.  
Lewis, and Siobhan O’Duffy Millen, *in their  
official capacities as members of the North  
Carolina State Board of Elections*,

Defendants,

and

Philip E. Berger, *in his official capacity as  
President Pro Tempore of the North  
Carolina Senate*; Timothy K. Moore, *in his  
official capacity as Speaker of the North  
Carolina House of Representatives*;  
Republican National Committee; North  
Carolina Republican Party; Virginia A.  
Wasserberg; and Brenda M. Eldridge,

Intervenors.

Case No. 1:23-cv-862-TDS-JEP

**FIRST AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiffs Democratic National Committee and North Carolina Democratic Party,  
by and through counsel, and pursuant to Rule 15(a)(1)(B) of the Federal Rules of Civil  
Procedure, allege:

## INTRODUCTION

1. The right to vote ““is a fundamental matter in a free and democratic society,”” and a right that is ““preservative of other basic civil and political rights.”” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 667 (1966) (quoting *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964)). Indeed, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.” *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Accordingly, “[i]t has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote and to have their votes counted.” *Reynolds*, 377 U.S. at 554 (citation omitted). Put simply, “voting is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992).

2. North Carolina Senate Bill 747 (“S.B. 747”), which became North Carolina Session Law 2023-140 on October 10, 2023, is a direct assault on the “most fundamental” right to vote, *Burdick*, 504 U.S. at 433. In fact, despite its innocuous-sounding name—“An Act to Make Various Changes Regarding Elections Law”—S.B. 747 (which is attached as Exhibit A) is designed to undermine the right to vote in North Carolina. The changes it adopted would make it much harder for some North Carolinians to register to vote, would allow ballots by same-day registrants to be rejected without any notice to the voter or any right to challenge the rejection, would explicitly permit intimidating and largely unconstrained poll observers to move freely about voting places (including in proximity to voters), would require the discarding of absentee ballots that

are returned even a minute after the polls close on election day (no matter how far in advance of the election voters place their ballots in the mail), and would allow certain voters to be purged from the voting rolls even on the eve of an election. The U.S. Constitution and multiple federal statutes prohibit these myriad efforts at vote suppression, which will disenfranchise many North Carolinians.

3. Under S.B. 747, any individual who wishes to both register to vote and vote early on the same day—a so-called “same-day registrant”—must produce documentation that all other registrants in North Carolina need not. And even if a same-day registrant produces that documentation, his or her application to register will *still* be rejected—and his or her ballot excluded from the vote count—if a single verification notice sent to the mailing address the registrant provides is returned by the U.S. Postal Service (mistakenly or not) as undeliverable. By contrast, the applications submitted by non-same-day registrants in North Carolina cannot be rejected unless *two* separate verification notices are returned as undeliverable. S.B. 747 also does not require election officials to try to notify a same-day registrant that his or her application was rejected and that the accompanying ballot will thus be excluded from the count. Nor does it establish any mechanism for the registrant to challenge the rejection as erroneous. This again is different from the rule for non-same-day registrants, who may generally appeal adverse determinations to county boards of elections.

4. There is more. For North Carolina voters who need or prefer to vote by mail—as so many do—S.B. 747 requires not counting any absentee ballot that is received after 7:30 p.m. on election day, eliminating the statutory grace period North Carolina

previously provided, whereby absentee ballots postmarked by election day were counted as long as they were received within three days after election day. This change cannot be justified as a way to ensure that election results are determined by election night (or very soon thereafter), because S.B. 747 simultaneously extends the window for *challenging* absentee ballots to five days *after* election day, abandoning the prior requirement that such challenges be made by 5:00 p.m. on election day. The legislature has thus perversely given *less* time to those who seek to exercise their fundamental right to vote and *more* time to those who seek to deny it.

5. The North Carolina General Assembly passed S.B. 747 strictly along party lines, without any legislative reports justifying its voting restrictions. Plaintiffs are not aware, for example, of *any* instances of actual voter fraud, whether cited by North Carolina legislators or otherwise, that warranted S.B. 747's restrictive measures—even indulging the dubious assumption that the measures would deter or prevent such fraud.

6. Governor Roy Cooper vetoed S.B. 747, stating in his veto message that the bill “has nothing to do with election security and everything to do with Republicans keeping and gaining power.” *Governor Roy Cooper Objections and Veto Message*.<sup>1</sup> S.B. 747 seeks to accomplish that objective, the governor elaborated, by “erect[ing] new barriers for younger and non-white voters, many of whom use early voting and absentee ballots.” *Id.* At the same time, the law “hurts older adults, rural voters and people with

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<sup>1</sup> <https://webservices.ncleg.gov/ViewBillDocument/2023/7138/0/S747-BILL-NBC-11326> (all websites cited herein were visited February 6, 2024).

disabilities.” *Id.* In sum, S.B. 747 attempts to “block voters and their ballots unnecessarily.” *Id.*

7. On October 10, 2023, the General Assembly overrode Governor Cooper’s veto, again strictly along party lines (and with barely the three-fifths threshold required). In light of the override, S.B. 747 is now or will soon become the law in North Carolina: Some provisions became effective on December 1, 2023, and January 1, 2024, while others will become effective on July 1, 2024. S.B. 747 §§37.(b), 44.(f), 50. The rest took effect as of the date of the law’s enactment. *Id.* §50. S.B. 747 therefore poses an urgent problem for many eligible individuals in North Carolina who wish to exercise their right to vote.

8. S.B. 747’s voting restrictions are unconstitutional. For example, the law violates the First and Fourteenth Amendments to the U.S. Constitution, which bar States from adopting procedures that unduly burden the right to vote (or even create an unreasonable *risk* of erroneous deprivations of voting rights). S.B. 747 unduly burdens North Carolinians’ right to vote in several ways. First, for same-day registrants, S.B. 747 imposes new requirements to provide highly specific documentation to register, directs election officials to retrieve and discard a ballot if the Postal Service returns a single verification notice as undeliverable, and fails to provide any mechanism to challenge adverse determinations. These provisions are not justified by any sufficient state interest, and they will deny eligible voters their fundamental right to cast ballots and have those ballots counted. Second, S.B. 747 will force many voters to endure encounters with intimidating and unconstrained poll observers in order to cast their ballots in person. And

third, S.B. 747 arbitrarily *reduces* the window in which voters can cast absentee ballots, requiring such ballots to be received by 7:30 p.m. on election day, even if postmarked before that day—while at the same time *lengthening* the period in which challenges to absentee ballots can be made.

9. S.B. 747 also violates the Due Process Clause. The statute provides no process for same-day registrants to contest erroneous rejections of their applications and ballots, and it establishes a system in which a registration application is denied—and hence any ballot the person has cast is not counted—if a county board or the Postal Service makes a single mistake resulting in the improper return of a verification notice as undeliverable, again without any notice to the affected voter that his or her application was denied or any mechanism to dispute any administrative error in the denial.

10. In addition to being unconstitutional, S.B. 747 violates multiple federal statutes, each of which is either directly enforceable or enforceable under 42 U.S.C. §1983.

11. First, it violates the Civil Rights Act (“CRA”), which prohibits officials from applying different voting-registration standards, practices, or procedures to different groups of individuals in the same county. S.B. 747 does exactly that, applying different standards and procedures, in each county, to same-day registrants than to non-same-day registrants.

12. S.B. 747’s provisions for same-day registration and voting violate the Help America Vote Act (“HAVA”) as well. HAVA requires that election officials establish a free tracking system for provisional ballots and provide those who cast provisional ballots

with written notice of the system. S.B. 747 fails to establish any system by which same-day registrants may track whether their ballots are ultimately counted, and it therefore also fails to require written information about such a system to be given to same-day registrants after they vote.

13. S.B. 747 also violates the Voting Rights Act (“VRA”), which prohibits anyone from intimidating voters or attempting to do so. In derogation of this provision, S.B. 747 explicitly allows poll observers who can engage in intrusive conduct to move freely about voting places.

14. Finally, S.B. 747 violates the National Voter Registration Act (“NVRA”), which prohibits states from systematically disqualifying voters within 90 days of an election. S.B. 747 violates this prohibition by systematically discarding same-day registrants’ ballots based on the return of lone verification notices. It also violates this prohibition by establishing a program in which voters may be purged from the voting rolls shortly before elections based on their answers to questionnaires related to potential jury service.

15. Given the multiple infirmities with the challenged provisions of S.B. 747, and because those provisions will inflict irreparable harm by denying North Carolinians their fundamental constitutional right to vote, this Court should declare the challenged provisions unlawful and enjoin their enforcement.<sup>2</sup>

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<sup>2</sup> On January 21, 2024, this Court preliminarily enjoined enforcement of certain aspects of S.B. 747. Specifically, the Court enjoined use of:

the procedures of N.C. Gen. Stat. § 163-82.6B(d) to remove from the official count the votes of the ballot of any voter who

## JURISDICTION AND VENUE

16. This Court has subject-matter jurisdiction under 28 U.S.C. §1331, as this action arises under the U.S. Constitution and four federal statutes: the CRA, HAVA, the VRA, and the NVRA. This Court also has subject-matter jurisdiction under 28 U.S.C. §1343(a), as plaintiffs seek equitable relief for protection of the right to vote. And the Court has jurisdiction over the CRA claim under 52 U.S.C. §10101(d) and 42 U.S.C. §1983.

17. This Court has personal jurisdiction over the North Carolina State Board of Elections, which is a state agency in North Carolina.

18. This Court has personal jurisdiction over Executive Director Karen Brinson Bell, Chair Alan Hirsch, Secretary Jeff Carmon, Stacy Eggers IV, Kevin N. Lewis, Siobhan O’Duffy Millen, as they are sued in their official capacities as appointed officials in North Carolina. Each also works and resides in North Carolina.

19. Venue in this Court is proper under 28 U.S.C. §1391(b). Among other things, a substantial portion of the violations outlined in this complaint have occurred or will occur in this district.

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has provided contact information in the registration process and whose first notice required under N.C. Gen. Stat. § 163-82.7(c) is returned by the Postal Service as undeliverable before the close of business on the business day before the canvass, without first providing such voter notice and an opportunity to be heard[.]

Memorandum and Order, D.E. 68 at 93-94.



20. This Court has the authority to grant declaratory and injunctive relief under 28 U.S.C. §§2201-2202. The Court also has authority to enter a declaratory judgment and provide preliminary and permanent injunctive relief under Federal Rules of Civil Procedure 57 and 65.

## **PARTIES**

### *Plaintiffs*

21. The Democratic National Committee (“DNC”) is the oldest continuing party committee in the United States. It is a “national committee” as that term is defined in 52 U.S.C. §30101(14), with a principal place of business at 430 South Capitol Street S.E., Washington, D.C. 20003.

22. The DNC’s organizational purposes and functions are to communicate the Democratic Party’s position and messages on issues; protect the legal rights of voters; and aid and encourage the election of Democratic candidates at the national, state, and local levels, including by persuading and organizing citizens not only to register to vote as Democrats, but also to cast their votes for Democratic candidates.

23. The DNC is composed of the chair, vice chairs, and over 200 members elected by Democrats in every U.S. state and territory, plus the District of Columbia.

24. The North Carolina Democratic Party (“NCDP”) is a state committee, as that term is defined by 52 U.S.C. §30101. NCDP’s purpose is to elect Democratic candidates to public office throughout North Carolina. To accomplish that purpose, NCDP supports Democratic candidates in national, state, and local elections through fundraising and organizing efforts; protects the legal rights of voters; and ensures that all

voters can cast ballots in North Carolina, including absentee ballots. NCDP has members and other constituents throughout North Carolina, including many voters who regularly support and vote for candidates affiliated with the Democratic Party.

25. There are over 2.4 million registered members of the Democratic Party in North Carolina. *See Voter Registration Statistics.*<sup>3</sup> It is exceedingly likely that one or more members of NCDP, or other individuals who would vote for Democratic candidates in North Carolina, will be removed from the voting rolls or otherwise prevented from voting because of S.B. 747. The DNC and NCDP can obtain relief on behalf of such voters without their individual participation. The DNC and NCDP thus bring the claims below as well as on behalf of their members and other individuals who would vote for Democratic candidates in North Carolina and will be harmed by S.B. 747's burdens on the right to vote and unlawful treatment of voters.

26. S.B. 747 also directly harms the DNC and NCDP as organizations, and thus they sue as well on their own behalf. The law will require each organization to expend and divert funds and resources that they would otherwise spend on voter outreach and mobilization efforts toward informing and educating voters about their rights under the First and Fourteenth Amendments to the U.S. Constitution, the CRA, HAVA, the VRA, and the NVRA in order to ensure that those voters are not erroneously prevented from voting. The likely erroneous denial of Democratic voters' right to cast a ballot and have it counted further injures the DNC and NCDP, by reducing the number of registered

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<sup>3</sup> <https://vt.ncsbe.gov/RegStat/Results/?date=09%2F09%2F2023>.

Democrats able to vote in North Carolina, thus undermining the two organizations' abilities to succeed in getting Democrats elected.

Defendants

27. The North Carolina State Board of Elections (“NCSBE”) is the state agency with “general supervision over the primaries and elections in the State.” N.C. Gen. Stat. §163-22. NCSBE is “the state agency charged with the administration of the elections process and campaign finance disclosure and compliance.” About NCSBE.<sup>4</sup> NCSBE “works in conjunction with county boards of elections” throughout North Carolina “to ensure that elections are conducted lawfully and fairly.” *Id.*<sup>5</sup>

28. Karen Brinson Bell is NCSBE’s executive director. As North Carolina’s “Chief State Election Official,” N.C. Gen. Stat. §163-82.2, she is tasked with “administering elections,” “overseeing 100 county boards of elections,” and “ensuring voting for more than 7 million voters.” About NCSBE, *supra* n.4. She is sued in her official capacity.

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<sup>4</sup> <https://www.ncsbe.gov/about>.

<sup>5</sup> On October 10, 2023 (the same day S.B. 747 was enacted via a veto override), the General Assembly also overrode Governor Cooper’s veto of S.B. 749. That legislation restructures the NCSBE in the very way North Carolina voters rejected at the ballot box in 2018, when the legislature proposed that restructuring as an amendment to the North Carolina Constitution. On November 30, 2023, a three-judge panel of the North Carolina Superior Court in Wake County preliminarily enjoined the implementation of S.B. 749 on the ground that Governor Cooper is likely to succeed in showing that S.B. 749 violates the North Carolina Constitution. *See Cooper v. Berger*, No. 23CV029308-910, Index #15 (N.C. Super. Ct. Nov. 30, 2023).

29. Alan Hirsch is NCSBE's chair. He resides in Chapel Hill, North Carolina, and is sued in his official capacity.

30. Jeff Carmon is NCSBE's secretary. He resides in Snow Hill, North Carolina, and is sued in his official capacity.

31. Stacy Eggers IV is an NCSBE member. He resides in Boone, North Carolina, and is sued in his official capacity.

32. Kevin N. Lewis is an NCSBE member. He resides in Rocky Mount, North Carolina, and is sued in his official capacity.

33. Siobhan O'Duffy Millen is an NCSBE member. She resides in Raleigh, North Carolina, and is sued in her official capacity.

*Intervenor-Defendants*

34. Philip E. Berger is the president *pro tempore* of the North Carolina Senate.

35. Timothy K. Moore is the speaker of the North Carolina House of Representatives.

36. The Republican National Committee described itself in its motion to intervene here as "a national committee, as defined by 52 U.S.C. §30101, that manages the Republican Party's business at the national level, supports Republican candidates for public office at all levels, coordinates fundraising and election strategy, and develops and promotes the national Republican platform." D.E. 36 at 3.

37. The North Carolina Republican Party described itself in its motion to intervene here as "a state political party that works to promote Republican values and to

assist Republican candidates in running for partisan federal, state, and local offices.”  
D.E. 36 at 3.

38. Virginia A. Wasserberg and Brenda M. Eldridge described themselves in their motion to intervene here as “registered voters ... who typically vote for Republican candidates, have served as poll observers in the past, and intend to do so in the future.”  
D.E. 36 at 3. Ms. Wasserberg also identifies herself as “a county Republican Party chairperson who appoints site-specific and county at-large election observers.” *Id.*

### **FACTUAL ALLEGATIONS**

#### *Registration and Voting in North Carolina Before S.B. 747*

39. In North Carolina, “[e]very person born in the United States and every person who has been naturalized,” is “18 years of age,” and meets certain qualifications “shall be entitled to vote at any election.” N.C. Const. art. VI, §1. To be eligible to vote in a certain county, a voter must have resided there for 30 days. N.C. Gen. Stat. §163-55(a). And to vote in person, voters must “present photographic identification.” N.C. Const. art. VI, §§2(4), 3(2).

40. North Carolina law includes various provisions governing voter registration, one-stop voting, absentee voting, and removal of voters from the rolls.

41. An individual must register before he or she can vote in North Carolina. N.C. Const. art. VI, §3(1); N.C. Gen. Stat. §§163-54, 163-82.1(a). The state registration form asks an applicant to provide various pieces of information, including his or her

name, residential address, county of residence, and political party affiliation (if any).<sup>6</sup> An applicant must also answer questions to ensure that he or she is old enough to vote and a U.S. citizen. N.C. Gen. Stat. §163-82.4(e). And election officials can ask an applicant for any other “information the [NCSBE] finds is necessary to enable officials of the county where the person resides to satisfactorily process the application.” *Id.* §163-82.4(a).

42. When an applicant fills out the state registration form, he or she is not required to present any specific documentation verifying his or her eligibility to vote. Rather, the applicant must sign an attestation under penalty of perjury that he or she meets all the requirements to register. N.C. Gen. Stat. §163-82.4(c)(1). Registration forms typically must be submitted no later than 25 days before the election in which the applicant would like to vote. *See id.* §163-82.6(d).<sup>7</sup>

43. When a county board of elections receives an application to register to vote, the board either tentatively determines that the applicant is qualified to vote at the given address or determines that the applicant is not qualified to vote at the given address. N.C. Gen. Stat. §163-82.7(a). If a board tentatively determines that an applicant is qualified to vote at the given address, it “shall send a notice to the applicant, by nonforwardable mail,

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<sup>6</sup> [https://s3.amazonaws.com/dl.ncsbe.gov/Voter\\_Registration/NCVoterRegForm\\_06W.pdf](https://s3.amazonaws.com/dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf).

<sup>7</sup> If an individual becomes eligible to vote after the standard registration deadline, he or she may register on election day by completing the registration form and submitting it to an election official. N.C. Gen. Stat. §163-82.6(f). If the official denies the application, the person may vote a challenged ballot and appeal the denial to the county board of elections. *Id.*

at the address the applicant provide[d] on the application form.” *Id.* §163-82.7(c). If the U.S. Postal Service does not return the verification notice to the board as undeliverable, then “the county board shall register the applicant to vote.” *Id.* §163-82.7(d). If the Postal Service does return the notice to the board as undeliverable, then “the county board shall send a second notice by nonforwardable mail to the same address to which the first was sent.” *Id.* §163-82.7(e). If the second notice is not returned to the county board as undeliverable, then the board “shall register the applicant to vote.” *Id.* If the second verification notice is returned to the board as undeliverable, then the board “shall deny the application” and “need not try to notify the applicant further.” *Id.* §163-82.7(f).

44. If a county board determines that an applicant is not qualified based on his or her application to register, then the board “shall send, by certified mail, a notice of denial of registration.” N.C. Gen. Stat. §163-82.7(b). An applicant who wishes to dispute the denial of the registration may appeal to the county board within five days. *Id.*; *see also id.* §163-82.18(a). The board must conduct a public hearing on any such appeal. *Id.* §163-82.18(b). An applicant whose application is denied after such a hearing may appeal to the North Carolina Superior Court within ten days of the board’s post-hearing denial. *Id.* §163-82.18(c). If the applicant is dissatisfied with the outcome in superior court, the applicant may appeal to the North Carolina appellate courts. *Id.*

45. North Carolinians can both register and vote on the same day (before election day) at what was (before S.B. 747) called a “one-stop” voting site in their county

of residence. *See* N.C. Gen. Stat. §163-227.6 (2023); *see also* Vote Early in Person.<sup>8</sup> Those who sought to register and vote on the same day (again, before election day) were required both to attest to their eligibility to vote, by filling out a registration application, and to provide proof of residence. *See* Register in Person During Early Voting.<sup>9</sup> Anyone who was “eligible to vote by absentee ballot”—which means *every* “qualified voter” in the state, *id.* §163-226(a)—could obtain and complete an application for an absentee ballot and then vote at a one-stop voting site. N.C. Gen. Stat. §163-227.2(a) (2023). Each site was required to be open during certain hours leading up to election day. *Id.* §163-227.6(c) (2023).

46. Before S.B. 747, completed absentee ballots that North Carolinians returned by mail were counted as long as they were postmarked by election day and “received by the county board of elections not later than three days after the election by 5:00 p.m.” N.C. Gen. Stat. §163-231(b)(2)(b) (2023).

47. Also before S.B. 747, a person registered to vote in the same precinct as an absentee voter could challenge that absentee voter’s ballot between noon and 5:00 p.m. on election day. N.C. Gen. Stat. §163-89(a)-(b) (2023). For absentee ballots that were postmarked by election day but received within the three-day window after election day, *see id.* §163-231(b)(2)(b) (2023), challenges were permitted between “noon on the day

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<sup>8</sup> <https://www.ncsbe.gov/voting/vote-early-person>.

<sup>9</sup> <https://www.ncsbe.gov/registering/how-register/register-person-during-early-voting>.



following the election and no later than 5:00 p.m. on the next business day following the deadline for receipt of such absentee ballots,” *id.* §163-89(a) (2023).

48. And also before S.B. 747, each political party was entitled to designate election observers to watch the polls on election day. Specifically, each party could designate two observers per voting place, plus an additional ten at-large observers per county who could go to any voting place in the county, and an additional hundred at-large observers who could go to any voting place in the state. N.C. Gen. Stat. §163-45(a) (2023). No more than three observers from the same party were permitted in any one voting enclosure at the same time. *Id.* Observers were not permitted to “impede the voting process or interfere or communicate with or observe any voter in casting a ballot.” *Id.* §163-45(c) (2023). They carried out their functions from a specific place in the voting enclosure designated by election officials.<sup>10</sup>

49. The NCSBE is tasked with periodically doing “list maintenance” to keep North Carolina’s voting rolls up to date. Specifically, the NCSBE “shall adopt a uniform program that makes a diligent effort not less than twice each year ... [t]o remove the names of ineligible voters from the official lists of eligible voters.” N.C. Gen. Stat. §163-82.14(a)(1). North Carolina law provides that this voter-removal program must be “nondiscriminatory” and must comply with the VRA and NVRA. *Id.* §163-82.14(a). The program relies on various sources of information:

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<sup>10</sup> A “voting place” is defined as “the building or area of the building that contains the voting enclosure,” and a “voting enclosure” is in turn defined as “the room within the voting place that is used for voting.” N.C. Gen. Stat. §163-165(9)-(10).

- Every month, the North Carolina Department of Health and Human Services provides the NCSBE with a list of “deceased persons who were residents,” and the NCSBE forwards those names to the county boards of elections so that those deceased individuals may be removed from the voting rolls. *Id.* §163-82.14(b).
- Every month, the NCSBE reports to the county boards the identity of any “individual against whom a final judgment of conviction of a felony has been entered” so that the county board may notify the voter and subsequently cancel the voter’s registration. *Id.* §163-82.14(c).
- Each county board “shall conduct a systematic program to remove from its list of registered voters those who have moved out of the county,” based in part on information received from the North Carolina Department of Transportation and other voter-registration agencies. *Id.* §163-82.14(d).

*S.B. 747’s Multiple Restrictions on the Right To Vote*

50. S.B. 747 restricts North Carolinians’ right to vote in several ways.

51. To start, S.B. 747 changes the procedure for same-day registration and voting. For same-day registration under S.B. 747, an individual must: (1) “[c]omplete a voter registration application form,” (2) “[p]rovide proof of residence by presenting a HAVA document listing the individual’s current name and residence address,” and (3) “[p]resent photo identification.” S.B. 747 §10.(a) (codified at N.C. Gen. Stat. §163-82.6B(b)). A “HAVA document” is any of the following: (1) a “current utility bill,” (2) a “current bank statement,” (3) a “current government check,” (4) a “current paycheck,” (5) “[a]nother current government document,” or (6) a “current document issued from the institution who issued the photo identification shown by the voter.” *Id.* (codified at N.C. Gen. Stat. §163-82.6B(e)). If an election official rejects an individual’s application based

on allegedly deficient documentation, S.B. 747 is silent as to whether or how the individual can be heard on a challenge to that rejection.<sup>11</sup>

52. An individual who uses the new procedures for same-day registration does not cast a regular ballot; rather “[a]n applicant who registers under this section shall vote a retrievable ballot.” S.B. 747 §10.(a) (codified at N.C. Gen. Stat. §163-82.6B(c)). After such an individual submits his or her application under the new same-day-registration procedures (and votes a retrievable ballot), the appropriate county board of elections must work with NCSBE to verify the individual’s qualifications. *Id.* (codified at N.C. Gen. Stat. §163-82.6B(d)). In particular, “[w]ithin two business days of the individual’s registration under this section, the county board of elections in conjunction with the State Board shall verify the North Carolina drivers license or social security number ..., update the statewide registration database, search for possible duplicate registrations, and proceed ... to verify the applicant’s address.” *Id.* To “verify the applicant’s address,” *id.*, the board must send a verification notice to the same-day registrant’s mailing address—and if the U.S. Postal Service returns that lone verification notice as undeliverable before the close of business on the business day before canvass, then the county board “shall retrieve the applicant’s ballot and remove that ballot’s votes from the official count,” *id.*

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<sup>11</sup> S.B. 747 made changes throughout Chapter 163 of the North Carolina General Statutes so that early voting is no longer classified as a form of absentee voting. For example, S.B. 747 altered the law so that challenges to early voting are governed by N.C. Gen. Stat. §§ 163-87 and 163-88, not N.C. Gen. Stat. § 163-89. Nonetheless, the function of early voting, both before and after enactment of S.B. 747, is to permit eligible North Carolina voters to submit their ballots before election day.

53. S.B. 747 does not provide a mechanism for notifying same-day registrants that they have been deemed ineligible to register and vote—and hence that any ballots they already cast will be retrieved and discarded. Nor does S.B. 747 provide same-day registrants an opportunity to contest (i.e., be heard on) such an adverse determination, even though it automatically results in the removal of their ballots from the official count.<sup>12</sup>

54. S.B. 747 also alters the deadline by which absentee ballots must be returned to be counted. Now, it is not sufficient for an absentee ballot to be *postmarked* by election day and received by the county board of elections no later than 5:00 p.m. three days after the election. Rather, absentee ballots must now be *received* by 7:30 p.m. on election day. S.B. 747 §35 (codified at N.C. Gen. Stat. §163-231(b)(1)). That deadline will be extended only if dictated by federal law or if the closing time for polls throughout a county is extended. *Id.* (codified at N.C. Gen. Stat. §163-231(b)(2)). If an absentee ballot is received by the county board even a minute after the closing of the polls on election day, that ballot will be discarded, even if it is postmarked days earlier and the delay is entirely attributable to the Postal Service.

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<sup>12</sup> The NCSBE recently instructed county boards to file a challenge (pursuant to the NCSBE’s Numbered Memo 2022-05) “[i]f the county board has reliable grounds to believe [an] applicant is not qualified to vote at this initial stage.” NCSBE, Numbered Memo 2023-05 (updated January 29, 2024), <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2023/Numbered%20Memo%202023-05%20Same-Day%20Registration.pdf>.

55. At the same time that S.B. 747 *reduces* the time for North Carolina voters to return their absentee ballots by mail, it *increases* the time for challenging such ballots. Specifically, S.B. 747 provides that “[t]he absentee ballot of any voter received by the county board of elections” before 7:30 p.m. on election day “may be challenged no later than 5:00 P.M. on the *fifth business day* after the ... election[.]” S.B. 747 §15 (codified at N.C. Gen. Stat. §163-89(a)) (emphasis added). And anyone who is registered to vote in the same *county* as the absentee voter (not just the same *precinct*, as before S.B. 747) may now challenge an absentee ballot. *Id.* (codified at N.C. Gen. Stat. §163-89(b)). When a county board of elections resolves any such challenge, its decision may be appealed to the superior court in that county within ten days. *Id.* (codified at N.C. Gen. Stat. §163-89(c)).

56. Moreover, S.B. 747 empowers poll observers to engage in more intrusive conduct in voting places. Most notably, observers are now explicitly permitted to “[m]ov[e] about the voting place,” with few if any clear limits. S.B. 747 §7.(b) (codified at N.C. Gen. Stat. §163-45.1(g)(3)).

57. Finally, S.B. 747 creates a novel voter-removal program under which certain individuals are systematically removed from the voting rolls. To implement that program, S.B. 747 mandates that the administrative office of the North Carolina courts develop a form for prospective jurors to fill out in order to indicate any potential excuses from jury duty, including ineligibility to serve due to lack of U.S. citizenship. S.B. 747 §44.(b) (codified at N.C. Gen. Stat. §9-6(a1)). S.B. 747 then requires that the clerks of the North Carolina Superior Courts to “communicate [to the NCSBE] information

regarding requests to be excused from jury duty on the basis that the person is not a citizen of the United States.” *Id.* §44.(d) (codified at N.C. Gen. Stat. §9-6.2(b)).

58. Under S.B. 747, the NCSBE “shall use this information” from superior courts “to conduct list maintenance efforts,” similar to the efforts described above (*see supra* ¶49) for deceased people and convicted felons. S.B. 747 §44.(d) (codified at N.C. Gen. Stat. §9-6.2(b)). Like already-existing voter-removal programs, this new program is explicitly required to be “nondiscriminatory” and to comply with federal statutes governing elections. *Id.* §44.(e) (amending N.C. Gen. Stat. §163-82.14).

59. Once it receives a list of self-reported non-citizens from the clerks of the Superior Courts, the NCSBE is required to disseminate the relevant portions of that list to the corresponding county boards of elections along with the results of the NCSBE’s review of the individuals on the list. S.B. 747 §44.(e) (codified at N.C. Gen. Stat. §163-82.14(c1)(1)). Within 30 days of a county board receiving this information from the NCSBE, the board “shall give 30 days’ written notice to [each listed] voter by sending notice to the voter’s residential address and, if different from the voter’s residential address, the voter’s registration address and mailing address.” *Id.* (codified at N.C. Gen. Stat. §163-82.14(c1)(2)(a)). If any such voter does not object to the notice, then that voter’s name is removed from the voting rolls. *Id.* If a voter who is sent such a notice objects, then the chair of the county board will enter a challenge, but the board’s receipt of the information from the NCSBE will “establish a rebuttable presumption in the preliminary hearing ... that the person is not a citizen of the United States.” *Id.* (codified at N.C. Gen. Stat. §163-82.14(c1)(2)(b)).

60. Under S.B. 747, “[t]he list of persons requesting to be disqualified from jury duty due to lack of being a citizen of the United States shall be a public record.” S.B. 747 §44.d (codified at N.C. Gen. Stat. §9-6.2(b)); *see also id.* §44.(e) (codified at N.C. Gen. Stat. §163-82.14(c1)(3)).

## **CLAIMS FOR RELIEF**

### **Count I: Violation of the First and Fourteenth Amendments to the United States Constitution – Undue Burden on the Fundamental Right To Vote**

61. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

62. State laws that burden the right to vote violate the First and Fourteenth Amendments to the U.S. Constitution unless relevant and legitimate state interests of sufficient weight justify the burden or burdens. *See Anderson v. Celebrezze*, 460 U.S. 780, 788-790 (1983); *Burdick*, 504 U.S. at 434. The more severely a law burdens the right to vote, the more strictly it must be scrutinized. Hence, “election laws that impose a severe burden on ballot access are subject to strict scrutiny, and a court applying strict scrutiny may uphold the restrictions only if they are ‘narrowly drawn to advance a state interest of compelling importance.’” *Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014) (quoting *McLaughlin v. North Carolina Board of Elections*, 65 F.3d 1215, 1220 (4th Cir. 1995)); *see also Burdick*, 504 U.S. at 434.

63. S.B. 747 imposes multiple severe burdens on North Carolinians’ right to vote, with no sufficient justification.

64. *First*, S.B. 747’s same-day-registration provisions severely burden the right to vote in North Carolina in several ways.

65. S.B. 747 §10.(a) requires a same-day registrant to provide *both*: (1) photo identification, and (2) proof of residence shown in a “HAVA document” that lists the individual’s current name and residence address. For many individuals, that burden will be insurmountable. In particular, students, young voters, elderly voters, low-income voters, and voters of color may have more difficulty producing documentation verifying their addresses. For example, a student who moved into an off-campus apartment not long before an election (but long enough to be eligible to vote in the relevant county) may not have the necessary documentation if her utility bills are in a roommate’s or her landlord’s name. And some individuals in communities that have a higher prevalence of multigenerational households may not have utility bills listing their names.<sup>13</sup> As a result, S.B. 747’s documentation requirement for same-day registrants may prevent eligible people from registering and voting at all, which is the most serious burden on the right to vote. The requirement to produce both photo identification and a HAVA document, moreover, is not justified by any governmental interest. Plaintiffs are not aware of anything (whether cited by the North Carolina General Assembly or otherwise) indicating that requiring both forms of documentation avoids registration and voting by ineligible individuals, or furthers any other valid government interest.

66. S.B. 747 §10.(a) also requires that a same-day registrant’s application to register be rejected, and his or her ballot be retrieved and discarded, if a single verification notice sent to the registrant’s address is returned by the U.S. Postal Service as

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<sup>13</sup> <https://www.pewresearch.org/social-trends/2022/03/24/the-demographics-of-multigenerational-households/>.



undeliverable. Hence, if a county board of elections makes a mistake in addressing a verification notice, or if the Postal Service makes a mistake in attempting to deliver the notice, the same-day registrant's ballot will through no fault of the registrant not be counted and the registrant will be disenfranchised, which is the most serious burden on the right to vote. Indeed, there are several reasons why mail may be returned to the sender as undeliverable.<sup>14</sup> One such reason is mistakes by the Postal Service: As one study found, the Postal Service is responsible for nearly a *quarter* of failures to deliver mail deemed "undeliverable as addressed." Strategies for Reducing Undeliverable as Addressed Mail at 1.<sup>15</sup> S.B. 747's single-verification-notice provision for same-day registrants is not justified by any governmental interest. Again, plaintiffs are not aware of anything indicating that sending same-day registrants only a single verification notice (rather than two) avoids registration and voting by ineligible individuals, or furthers any other valid government interest.

67. S.B. 747 §10.(a) does not expressly permit a same-day registrant to appeal any adverse determination about registration to the county board of elections. Accordingly, if there is an improper denial of a same-day registrant's application, an eligible voter will be unable to vote, which is the most serious burden on the right to vote. S.B. 747's lack of an appeals process for same-day registrants is not justified by any governmental interest. Once more, plaintiffs are not aware of anything indicating that the

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<sup>14</sup> <https://pe.usps.com/text/dmm300/507.htm>.

<sup>15</sup> <https://www.uspsoig.gov/sites/default/files/reports/2023-01/ms-ma-15-006.pdf>.

lack of an appeals process avoids registration and voting by ineligible individuals, or furthers any other valid government interest.

68. No sufficiently weighty state interest justifies any of S.B. 747's restrictions on same-day registration. There is no evidence (or other sound basis to conclude) that any same-day registrants engage (or have engaged) in voter fraud, much less that any of S.B. 747's restrictions on same-day registration would prevent such fraud.

69. *Second*, S.B. 747 §35 imposes a significant burden on the right to vote by requiring absentee ballots to be received by 7:30 p.m. (or whenever all polls in a particular county close) on election day in order to be counted. Before S.B. 747, absentee ballots were accepted in North Carolina as long as they were *postmarked* by election day and received by 5:00 p.m. three days *after* election day. S.B. 747 therefore burdens the right to vote by reducing the window in which people can cast a ballot by mail—and deprives people of the right to vote even where the delay in receipt of their absentee ballot is the result of circumstances beyond their control. For example, in fall 2020, the U.S. Postal Service failed to deliver letters and other flat mail nearly 20 percent of the time. *See* Nationwide Service Performance at 7.<sup>16</sup> Although delays have lessened somewhat since then, they persist: Nearly 10 percent of first-class mail, for example, was not delivered on time between July and September 2023. *See* U.S. Postal Service Press Release.<sup>17</sup>

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<sup>16</sup> <https://www.uspsoig.gov/sites/default/files/reports/2023-01/21-120-R21.pdf>.

<sup>17</sup> <https://about.usps.com/newsroom/national-releases/2023/0922-postal-service-delivery-performance-continues-to-average-2.5-days.htm>.

70. No sufficiently weighty state interest justifies S.B. 747's burden on voting by mail, an option that has long been used by many North Carolina voters. The burden assuredly cannot be justified as necessary to enable county boards to process the ballots for canvassing, because S.B. 747 §15 *expands* the window of time for challenging absentee ballots so that challenges may now be made until 5:00 p.m. on the fifth business day after election day.

71. *Third*, S.B. 747's poll-observer provisions burden the right to vote in North Carolina, in several ways.

72. S.B. 747 §7.(a)-(b) permits poll observers to engage in intrusive activities in voting places. For instance, observers are now explicitly authorized to move freely about voting places, potentially allowing them to get uncomfortably close to voters. This intrusiveness will no doubt be disconcerting to many voters (particularly in the COVID era), and some of those will surely choose not vote at all. There is no valid justification for this burden.

73. S.B. 747 §7.(a)-(b) also imposes a significant burden on the right to vote, establishing vague standards governing the conduct of poll observers. For example, the law states that poll observers may engage in certain activities provided that they “do[] not interfere with the privacy of any voter.” S.B. 747 §7.(b) (codified at N.C. Gen. Stat. §163-45.1(g)). That language does not make clear when a poll observer crosses the line from acceptable conduct to an unacceptable invasion of privacy. The state has no legitimate interest in S.B. 747's vague standards, and certainly no interest that justifies the burden of those vague standards on North Carolinians' right to vote.

74. Unless enjoined, defendants will unconstitutionally burden North Carolinians' right to vote under the First and Fourteenth Amendments by implementing and enforcing the challenged provisions of S.B. 747.

**Count II: Violation of the Fourteenth Amendment to the United States Constitution  
– Procedural Due Process**

75. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

76. Due process prohibits states from depriving “any person of life, liberty, or property without due process of law.” U.S. Const. amend. XIV, §1. A state thus may not deny a constitutionally protected liberty interest without adequate procedural protections.

77. To succeed on a procedural-due-process claim, a plaintiff must show: “(1) a cognizable liberty interest or property interest; (2) the deprivation of that interest by some form of state action; and (3) that the procedures employed were constitutionally inadequate.” *Kendall v. Balcerzak*, 650 F.3d 515, 528 (4th Cir. 2011) (quotation marks omitted). On the last element, procedures are typically inadequate if they do not provide “notice and an opportunity to be heard.” *Wolf v. Fauquier County Board of Supervisors*, 555 F.3d 311, 323 (4th Cir. 2009); *see also Fuentes v. Shevin*, 407 U.S. 67, 81 (1972).

78. To assess the adequacy of procedural protections, courts examine three factors: (1) “the private interest that will be affected by the official action”; (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards”; and (3) “the Government’s interest, including the function involved and the fiscal and administrative

burdens that the additional or substitute procedural requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).<sup>18</sup>

79. S.B. 747 violates procedural due process by not giving same-day registrants notice and an opportunity to be heard when their applications are rejected and their ballots consequently discarded.

80. Under S.B. 747, an individual may register and vote on the same day during early voting by filling out the necessary form, providing proof of residence, and presenting a photo ID. S.B. 747 is silent, however, as to how any disputes over the acceptability of the applicant’s documentation should be resolved, meaning that any election official could unilaterally deny a person his or her right to vote without due process. Moreover, under S.B. 747 §10.(a), a same-day registrant’s “vote shall be counted unless the county board determines that the applicant is not qualified to vote.” But S.B. 747 does not prescribe a mechanism for notifying a same-day registrant of an adverse determination by a board, despite the substantial risk that such adverse determinations could be erroneous. Nor does S.B. 747 provide any opportunity for the same-day registrant to be heard on any disputes over any adverse determinations.

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<sup>18</sup> “Multiple district courts ... have considered procedural due process challenges to election regulations under ordinary procedural due process principles,” i.e., the *Mathews* factors. *Arizona Democratic Party v. Hobbs*, 485 F.Supp.3d 1073, 1093 (D. Ariz. 2020) (collecting cases); *see also Democracy North Carolina v. North Carolina State Board of Elections*, 476 F.Supp.3d 158, 228-229 (M.D.N.C. 2020) (applying the *Mathews* factors for a procedural-due-process claim against a North Carolina law governing absentee ballots). But S.B. 747 would be unconstitutional even if a procedural-due-process claim were assessed instead under the *Anderson-Burdick* framework. *See supra* ¶¶61-74.

81. S.B. 747 also violates procedural due process by failing to provide adequate procedures to verify a same-day registrant's address and by failing to provide any notice when a same-day registrant's address is not confirmed (via a single mailing). Under the statute, a county board of elections cannot register a same-day registrant (and must discard the registrant's retrievable ballot) if the U.S. Postal Service returns as undeliverable a single verification notice sent to the mailing address the registrant provided. A single error by the county board in preparing the mailing, or a single error by the Postal Service in processing the mailing, therefore, could mean that a valid vote is discarded, i.e., that an eligible voter's fundamental right to vote is denied, through no fault of the voter's. As noted, such errors by the Postal Service occur frequently. *See supra* n.15. North Carolina has identified no sufficient reason why same-day registrants should be provided only one verification notice by mail, especially considering that two verification notices must be returned as undeliverable before all other registrants can be deemed ineligible to vote, N.C. Gen. Stat. §163-82.7(e)-(f). Moreover, when a county board determines that a same-day registrant should not be registered based on the purported undeliverability of a single verification notice, S.B. 747 does not establish any procedure for attempting to notify the same-day registrant of that adverse determination so that he or she can be heard on the matter.

82. Application of the three *Mathews* factors confirms that S.B. 747 violates procedural due process in each of the ways just described.

83. *First*, the private interest affected by S.B. 747's same-day-registration provisions is extremely strong. As noted at the outset of this complaint, voting is a

“fundamental political right, preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The right to vote is also “a constitutionally protected liberty interest.” *Democracy North Carolina*, 476 F.Supp.3d at 227 (citing *Burdick*, 504 U.S. at 433). That right “may not be confiscated without due process.” *Raetzel v. Parks/Bellefont Absentee Election Board*, 762 F.Supp. 1354, 1356 (D. Ariz. 1990).

84. *Second*, S.B. 747’s same-day-registration provisions create a high risk of wrongly barring voters from registering, voting early, or participating in elections—a risk that additional procedural protections would greatly reduce. Such protections include: (1) a requirement that two verification notices be returned as undeliverable before any registration application is rejected and the corresponding ballot is retrieved and discarded, and (2) a requirement that voters be given notice and meaningful opportunities to be heard within sufficient time to remedy any incorrect rejections of applications for registration and retrieval and discarding of ballots.

85. *Third*, although the government has an interest in preventing ineligible people from voting, it would not undermine that interest for North Carolina to provide additional procedural protections. In other words, additional procedural protections would not allow voting by those who are ineligible. Nor would they be unduly burdensome. For example, S.B. 747 provides an opportunity to be heard when anyone in the same county as a registered voter challenges the voter’s ability to vote in that election. S.B. 747 §13.(b) (codified at N.C. Gen. Stat. §163-88). It also leaves intact the requirement that two verification notices be returned as undeliverable before any non-same-day registrant’s application can be rejected. N.C. Gen. Stat. §163-82.7(e). And it

preserves the voter's opportunity to be heard on challenges to absentee ballots, even while extending the time for such challenges until five business days after election day. S.B. 747 §15 (extension codified at N.C. Gen. Stat. §163-89(a), without altering the preexisting right to be heard codified at §163-89(e)).

86. In short, application of the *Mathews* factors confirms what common sense suggests: Due process is “not provided when ... election procedures do not give some form of post-deprivation notice to the affected individual so that any defect in eligibility can be cured and the individual is not continually and repeatedly denied so fundamental a right.” *Raetzel*, 762 F.Supp. at 1358. S.B. 747's new procedures for same-day registrants are therefore unconstitutional.

87. Unless enjoined, defendants will violate North Carolina voters' Fourteenth Amendment procedural-due-process rights by implementing and enforcing the challenged provisions of S.B. 747.

**Count III: Violation of the Civil Rights Act, 52 U.S.C. §10101(a)(2)(A) – Applying Different Standards, Practices, or Procedures to Voters in a Single County**

88. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

89. The Civil Rights Act states in relevant part that:

No person acting under color of law shall ... in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar subdivision who have been found by State officials to be qualified to vote[.]

52 U.S.C. §10101(a)(2)(A).



90. S.B. 747 requires officials, in determining whether North Carolinians are eligible to vote, to apply different standards, practices, or procedures to different sets of individuals who reside in the same county.

91. *First*, the registration standard for same-day registrants under S.B. 747 is different from the standard that applies to those who register and vote on different days (i.e., non-same-day registrants). Non-same-day registrants do not have to provide documentation as proof of residence in addition to photo identification in order to register, whereas same-day registrants in the same county must provide *both* photo identification *and* a HAVA document. Thus, a heightened standard is applied to determining eligibility of same-day registrants compared with others in the same county.

92. *Second*, for non-same-day registrants, a registration form is rejected if the U.S. Postal Service is unable to deliver two verification notices sent to the mailing address provided on the registration form. N.C. Gen. Stat. §163-82.7. But for otherwise-identical same-day registrants, registration is rejected if the Postal Service is unable to deliver only one verification notice. S.B. 747 §10.(a) (codified at N.C. Gen. Stat. §163-82.6B(d)). Again, then, a different standard is applied in determining eligibility of non-same-day registrants compared to same-day registrants to register within the same county.

93. *Third*, when a county board of elections determines that a non-same-day registrant is not qualified to vote, it must send the individual a notice of denial of registration. N.C. Gen. Stat. §163-82.7(b). The person is then entitled to an appeal with a hearing before the county board, plus additional appeals to the North Carolina courts.

*Id.* §163-82.18(a)-(c). For same-day registrants, however, S.B. 747 does not explicitly provide allegedly ineligible voters with notices of registration denials, nor does it establish a process for allegedly ineligible voters to appeal county boards' determinations. Once more, then, the procedures for non-same-day registrations (i.e., for determining eligibility to vote) differ from the procedures for same-day registrations within the same county.

94. Unless enjoined, defendants will violate 52 U.S.C. §10101(a)(2)(A) by implementing and enforcing S.B. 747 in a way that applies different voter-registration standards and procedures to different North Carolinians in a single county.

**Count IV: Violation of the Help America Vote Act,  
52 U.S.C. §21082 – Failure To Provide a System To Track Provisional Ballots**

95. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

96. HAVA provides that:

The appropriate State or local election official shall establish a free access system (such as a toll-free telephone number or an Internet website) that any individual who casts a provisional ballot may access to discover whether the vote of that individual was counted, and, if the vote was not counted, the reason that the vote was not counted.

52 U.S.C. §21082(a)(5)(B). When an individual casts a provisional ballot, the “election official shall give the individual written information” about the tracking system. *Id.* §21082(a)(5)(A).

97. S.B. 747 violates this provision of HAVA because it does not establish a free access system (such as a website or a toll-free phone number) allowing for the tracking of retrievable ballots, including whether retrievable ballots are counted and, if

not, the reasons why they were discarded. Nor does S.B. 747 make retrievable ballots trackable in a manner that complies with HAVA through a preexisting ballot-tracking system. Because S.B. 747 does not establish or involve the use of such a tracking system, it also does not require election officials in North Carolina to provide written information about such a system to North Carolina voters.

98. Unless enjoined, defendants will violate 52 U.S.C. §21082 by implementing and enforcing the challenged provisions of S.B. 747.

**Count V: Violation of the Voting Rights Act, 52 U.S.C. §10307(b) –  
Intimidation of Voters by Poll Observers**

99. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

100. Section 11(b) of the Voting Rights Act provides that:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote[.]

52 U.S.C. §10307(b).

101. S.B. 747 violates this provision by explicitly allowing poll observers to roam freely around voting places. Voters will thus face the intimidating prospect of managing offensive conduct by unconstrained poll observers, with little clarity as to when and how lines of prohibited conduct may be crossed. This poll-observer conduct permitted by S.B. 747 is so intrusive that it is highly likely to intimidate voters.

102. Unless enjoined, defendants will violate 52 U.S.C. §10307(b) and/or increase violations of that provision by third parties by implementing and enforcing the challenged provisions of S.B. 747.

**Count VI: Violations of the National Voter Registration Act,  
52 U.S.C. §20507(c)(2)(A) – Systematic Removal of Voters**

103. Plaintiffs reallege all preceding paragraphs as if fully set forth herein.

104. Section 8 of the NVRA provides that:

A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

52 U.S.C. §20507(c)(2)(A).

105. S.B. 747 violates this provision of the NVRA in two independent ways.

106. *First*, S.B. 747's new procedures for same-day registration create a program that operates exclusively within the weeks immediately preceding elections. Under that program, all same-day registrants must be added to "the statewide registration database" "[w]ithin two business days of the individual's registration." S.B. 747 §10.(a) (codified at N.C. Gen. Stat. §163-82.6B(d)). But if the lone verification mailing to that person is returned as undeliverable by a certain deadline, "the county board shall not register the applicant and shall retrieve the applicant's ballot and remove that ballot's votes from the official count voters." *Id.* Because such a person has already completed "registration" and been added to "the statewide registration database," *id.*, this command "not [to] register the applicant" and to discard his or her vote, *id.*, effectuates removal from the rolls. Such removals within 90 days of any federal election violate the NVRA.

107. In a prior case, another judge in this district held that county boards of elections violated 52 U.S.C. §20507(c)(2)(A) when they removed voters from the voting rolls within 90 days of a federal election based on challenges that were made when mailings to those voters were returned as undeliverable. *See North Carolina State Conference of NAACP v. Bipartisan Board of Elections and Ethics Enforcement*, 2018 WL 3748172, at \*5-10 (M.D.N.C. Aug. 7, 2018). The Court enjoined the relevant North Carolina officials from continuing to do so “without individualized inquiry as to the circumstances of each voter in the 90 days preceding a federal election.” *Id.* at \*12. S.B. 747’s approach to same-day registrants cannot be squared with the injunction in *NAACP*.

108. North Carolina’s upcoming primary election, which includes primaries for federal offices, is on March 5, 2024.<sup>19</sup> Accordingly, plaintiffs were not required to provide notice of this NVRA violation to North Carolina’s chief election official before suing, because violations occurred and/or will occur “within 30 days before the date of an election for Federal office.” 52 U.S.C. §20510(b)(3).

109. *Second*, S.B. 747 violates 52 U.S.C. §20507(c)(2)(A) by creating a program in which voters may be removed from the voting rolls in the 90 days before any federal election based on their responses to a question in a survey for potential jurors about whether they are U.S. citizens. Specifically, the new law states that “[t]he clerk of superior court shall, at least on a schedule as determined by the State Board of Elections, communicate information regarding requests to be excused from jury duty on the basis

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<sup>19</sup> <https://www.ncsbe.gov/voting/upcoming-election>.

that the person is not a citizen of the United States to the State Board of Elections” and that “[t]he State Board of Elections shall use this information to conduct list maintenance efforts.” S.B. 747 §44.(d) (codified at N.C. Gen. Stat. §9-6.2(b)). The law does not contain any limitation precluding this systematic voter-removal program from occurring in the 90 days before any federal election.

110. Plaintiffs were not required to provide notice of this NVRA violation to North Carolina’s chief election official, because violations occurred and/or will occur “within 30 days before the date of an election for Federal office.” 52 U.S.C. §20510(b)(3). In any event, plaintiffs sent notice to Executive Director Bell on October 10, 2023. A copy of that notice is attached as Exhibit B. The NCSBE’s general counsel responded to plaintiffs by letter on November 3, 2023. In that letter (a copy of which is attached as Exhibit C), the NCSBE denied that there has been or will be any violation of the NVRA. Plaintiffs received no further correspondence from the NCSBE regarding the NVRA violation, let alone any such correspondence within the 90 days following plaintiffs’ notice letter. Because “the violation [was] not corrected within 90 days after receipt of ... notice,” plaintiffs have a statutory right to “bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.” 52 U.S.C. §20510(b)(2).

111. Unless enjoined, defendants will violate 52 U.S.C. §20507(c)(2)(A) by implementing and enforcing the challenged provisions of S.B. 747.

### **PRAYER FOR RELIEF**

WHEREFORE, the DNC and NCDP request entry of a judgment:

a. Declaring that the challenged provisions of North Carolina law, as amended by S.B. 747, violate the First and Fourteenth Amendments to the U.S. Constitution, the CRA, HAVA, the VRA, and the NVRA;

b. Preliminarily and permanently enjoining defendants, their agents, successors in office, and all persons acting in concert with them from: (1) requiring same-day registrants to produce documentation that other registrants do not need to produce, (2) denying a same-day registrant's application to register without providing that individual with sufficient notice and an opportunity to be heard, (3) rejecting a same-day registrant's application to register based on the return of a single notice by the U.S. Postal Service as undeliverable, (4) refusing to include in the official vote totals any absentee ballots that are postmarked by election day and received after 7:30 p.m. on election day but before 5:00 p.m. three days after election day, (5) applying different voting-registration standards, practices, or procedures to different groups of individuals in the same county, (6) failing to provide a free access system by which same-day registrants can track their retrievable ballots, (7) permitting poll observers to intimidate, threaten, or coerce or to attempt to intimidate, threaten, or coerce voters, (8) systematically removing same-day registrants' ballots from vote counts in the 90 days before any federal election because of verification notices returned as undeliverable, and/or (9) systematically removing voters from the voter rolls in the 90 days before any federal election based on self-reported information in response to jury questionnaires;

c. Directing defendants, their agents, successors in office, and all persons acting in concert with them to take any necessary and appropriate action to ensure that

state, county, and local authorities who administer North Carolina's elections comply with this Court's orders;

d. Ordering defendants to pay plaintiffs' reasonable attorney fees, including litigation expenses and costs, as allowed under 42 U.S.C. §1988, 52 U.S.C. §20510(c), and any other applicable law; and

e. Awarding plaintiffs such other and further relief as the Court deems just and proper.

### **JURY-TRIAL DEMAND**

Plaintiffs demand a jury trial on any and all issues so triable.

February 6, 2024

Respectfully submitted,

SETH P. WAXMAN\*  
DANIEL S. VOLCHOK\*  
CHRISTOPHER E. BABBITT\*  
GARY M. FOX\*  
JOSEPH M. MEYER\*  
WILMER CUTLER PICKERING  
HALE AND DORR LLP  
2100 Pennsylvania Avenue N.W.  
Washington, D.C. 20037  
Phone: (202) 663-6000  
Fax: (202) 663-6363  
seth.waxman@wilmerhale.com  
daniel.volchok@wilmerhale.com  
christopher.babbitt@wilmerhale.com  
gary.fox@wilmerhale.com  
joseph.meyer@wilmerhale.com

\* Local Rule 83.1(d) special appearance

/s/ Jim W. Phillips, Jr.  
JIM W. PHILLIPS, JR.  
N.C. Bar No. 12516  
SHANA L. FULTON  
N.C. Bar No. 27836  
WILLIAM A. ROBERTSON  
N.C. Bar No. 53589  
JAMES W. WHALEN  
N.C. Bar No. 58477  
BROOKS, PIERCE, MCLENDON,  
HUMPHREY & LEONARD, LLP  
150 Fayetteville Street  
1700 Wells Fargo Capitol Center  
Raleigh, N.C. 27601  
Phone: (919) 839-0300  
Fax: (919) 839-0304  
jphillips@brookspierce.com  
sfulton@brookspierce.com  
wrobertson@brookspierce.com  
jwhalen@brookspierce.com