UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA ALLIANCE FOR RETIRED AMERICANS,

Plaintiff,

v.

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; 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; KAREN BRINSON BELL in her official capacity as Executive Director of the State Board of Elections,

Defendants,

and

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,

Intervenors.

CASE NO. 1:23-cv-837

INTERVENORS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS AMENDED COMPLAINT OR, ALTERNATIVELY, TO TRANSFER

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INTRODUCTION

Half a century ago, the North Carolina General Assembly required that every citizen must "have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election" to "be qualified to vote in the precinct in which the person resides." N.C. Gen. Stat. §163-55; *see* N.C. Laws 1973, c. 793, §18 (similar). But Plaintiff North Carolina Alliance for Retired Americans claims to have discovered that this voter qualification law and the constitutional provision that authorizes it, N.C. Const. art. II, §2, ¶1, violate the VRA Amendments of 1970 and—due to a Supreme Court case from 1972—the U.S. Constitution. *Cf.* Am. Compl., Doc. 32 ¶59 (citing *Dunn v. Blumstein*, 405 U.S. 330 (1972)). The Alliance has not unearthed violations of the VRA and the Constitution hiding in plain sight for fifty years.

Even so, this Court cannot reach those merits issues because the Alliance lacks standing. To establish this Court's jurisdiction, "the party seeking review" must itself "be among the injured." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563 (1992) (quotation omitted). The Alliance is not among the allegedly injured. It failed to plead that *any* of its members were unqualified to vote in an election at the time it filed the amended complaint. And the Alliance has not plausibly alleged injury to its own rights. Acting like a roving private attorney general, the Alliance waited to sue in an improper venue after its own claims became barred by laches and while any member's claim remained unripe. This Court should dismiss the amended complaint or, alternatively, transfer the case to the Eastern District, where all parties reside.

QUESTIONS PRESENTED

1. Should this Court dismiss Plaintiff's amended complaint under Fed. R. Civ. P. 12(b)(1) for failure to establish subject-matter jurisdiction?

2. Should this Court dismiss Plaintiff's amended complaint under Fed. R. Civ. P. 12(b)(3) for failure to establish that venue is proper in this district or, alternatively, transfer to the Eastern District of North Carolina under 28 U.S.C. §1406(a)?

3. Should this Court dismiss Plaintiff's amended complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted?

STATEMENT OF FACTS

In 1970, Congress amended the Voting Rights Act and prevented citizens "otherwise qualified to vote in any election for President and Vice President" from being "denied the right to vote for electors for President and Vice President, or for President and Vice President, in such election because of the failure of such citizen to comply with any durational residency requirement." 52 U.S.C. §10502(c). Congress required that "each State shall provide by law for the registration or other means of qualification of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration or qualification to vote for the choice of electors for President and Vice President or for President and Vice President in such election." *Id.* §10502(d). Because some citizens "otherwise qualified to vote" might move to a different State "after the thirtieth day next preceding such election and, for that reason, [] not satisfy the registration requirements of such State or political subdivision," such a citizen is "allowed to vote for the choice of electors for President and Vice President, or for President

and Vice President, in such election . . . in the State or political subdivision in which he resided immediately prior to his removal." *Id.* §10502(e).[1]

Shortly thereafter, a three-judge panel of this Court ruled, and the Supreme Court summarily affirmed, that North Carolina's "one year durational residency requirement as it relates to the right to vote in local elections" was unconstitutional. *Andrews v. Cody*, 327 F. Supp. 793, 795 (M.D.N.C. 1971) (not opining on the 30-day qualification or other elections), *aff'd*, 405 U.S. 1034 (1972). The Supreme Court then ruled unconstitutional Tennessee's "requirement that voters must have been residents in the State for a year and the county for three months." *Dunn*, 405 U.S. at 360.[2] *Dunn* held that "30 days appears to be an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud—and a year, or three months, too much." *Id.* at 348.

Consequently, the North Carolina General Assembly amended its qualification law in 1973 to require that every citizen must "have resided in the State of North Carolina and in the precinct in which the person offers to vote for 30 days next preceding an election" to "be qualified to vote in the precinct in which the person resides." N.C. Gen. Stat. §163-55. Current North Carolina residents who "[r]emov[e] from one precinct to another in this State" have "the right to vote in the precinct from which the person has removed until 30 days after the person's removal." *Id.* §163-55(a). Potential North Carolina voters cannot register to vote without attesting that they qualify to vote. *See id.* §163.82.4(c)(1).

[1] In *Oregon v. Mitchell*, 400 U.S. 112 (1970), the Supreme Court upheld this statute under the Privileges or Immunities Clause. Intervenors reserve the right to challenge *Oregon*.
[2] Intervenors reserve the right to dispute the decisions in *Dunn* and *Andrews*.

The Alliance alleges that North Carolina applies its voter qualification "to all registering voters uniformly" and that this is a requirement "[i]n order to register to vote." Am. Compl. ¶¶23-24.

Normal registration ends 25 days before the election. N.C. Gen. Stat. §163-82.6(d). However, North Carolina also allows "voters who miss the normal registration deadline" to "register to vote through same-day registration, which begins 20 days before the election at the start of the early voting period and ends the Saturday before election day." Am. Compl. ¶29; *see also N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 239 (4th Cir. 2016) (enjoining enforcement of a North Carolina law that ended same-day registration). To register during early voting, potential voters must attest that they satisfy the 30-day qualification, provide proof of residence, and present photo identification in accordance with N.C. Gen. Stat. §163-166.16. *See* N.C. Gen. Stat. §163-82.6B. A same-day registrant must vote via a retrievable ballot. *Id.* Within two business days, the county board of elections must update the registration database, search for possible duplicate registrations, and attempt to verify the applicant's address. *Id.*

On October 2, 2023, the Alliance sued without identifying any member impacted by the 30-day qualification. Compl., Doc. 1. The Alliance waited three months to amend its complaint but still failed to identify any specific member who ever has been or ever will be impacted by the qualification law. Am. Compl. According to its president, the Alliance has existed since 2002. Dworkin Decl., Doc. 33-1 ¶2. The Alliance currently operates as a 501(c)(4) established in January 2016 and resides at 1408 Hillsborough Street, Raleigh,

NC 27605.[3] The Alliance allegedly has "approximately 52,000 members across North Carolina, including thousands of members in this judicial district," but did not identify any specific member who resides in the Middle District or who would be disqualified from registering to vote in a North Carolina election. Am. Compl. ¶16.

The Alliance's first claim is that North Carolina law violates the VRA "by conditioning a voter's eligibility to vote on whether the voter has lived in their current voting precinct for a certain period of time before election day," positing that requiring residency even a day before the election is illegal. *Id.* ¶¶45-52. The Alliance's second claim is that North Carolina law violates the First and Fourteenth Amendments—specifically the right to vote and the "right to interstate travel," *id.* ¶39[4]—by requiring residency in the State and in a precinct more than a day before an election, *id.* ¶¶53-59.

Defendants Alan Hirsch, Jeff Carmon, Stacy Eggers IV, Kevin Lewis, and Siobhan Millen are sued in their official capacities as members of the North Carolina State Board of Elections ("State Board"). Am. Compl. ¶19. Defendant Karen Bell is sued in her official capacity as the Executive Director of the State Board. *Id.* ¶20. The State Board generally "shall meet in its offices in the City of Raleigh, or at another place in the City of Raleigh" and keeps records of its minutes "in the office of the State Board in the City of Raleigh."

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[3] *See* N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz (search for "North Carolina Alliance for Retired Americans," entry appearing with ID#1491517). The Court can consider evidence outside the pleadings when considering Intervenors' Rule 12(b)(3) venue motion. *Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 365-66 (4th Cir. 2012). Additionally, the Fourth Circuit "routinely take[s] judicial notice of information contained on state and federal government websites." *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017).

[4] The Amended Complaint does not specifically claim a right to *intrastate* travel.

N.C. Gen. Stat. §163-20. The State Board, its members, and its Executive Director maintain their official residence at 430 N Salisbury St., Raleigh, NC 27603. *See* N.C. State Bd. of Elections, *Contact*, https://perma.cc/28YD-ELQL.

Legislative Defendants 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, timely moved to intervene. Mot. to Intervene, Doc. 22. Both the North Carolina Senate and House of Representatives convene in Raleigh and officially reside at 16 West Jones Street, Raleigh, NC 27601. Intervenor Philip E. Berger officially resides at 16 West Jones Street, Rm. 2007, Raleigh, NC 27601. N.C. Gen. Assem., *Sen. Phil Berger Biography*, https://perma.cc/Z3WG-R7YW. Intervenor Timothy K. Moore officially resides at 16 West Jones Street, Rm. 2304, Raleigh, NC 27601. N.C. Gen. Assem., *Rep. Tim Moore Biography*, https://perma.cc/PKX3-NCUU.

ARGUMENT

Plaintiff bears the burden of establishing this Court's subject-matter jurisdiction and venue. *See S. Walk at Broadlands Homeowner's Ass'n v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 181 (4th Cir. 2013) (standing); *Wild Va. v. Council on Env't Quality*, 56 F.4th 281, 293 (4th Cir. 2022) (ripeness); *Bartholomew v. Va. Chiropractors Ass'n*, 612 F.2d 812, 816 (4th Cir. 1979) (venue), *abrogated on other grounds by Union Lab. Life Ins. Co. v. Pireno*, 458 U.S. 119 (1982).

"'To survive a motion to dismiss'" for failure to state a claim, "'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is *plausible*

on its face' in the sense that the complaint's factual allegations allow 'the court to draw a reasonable inference that the defendant is liable for the misconduct alleged.'" *Int'l Refugee Assistance Project v. Trump*, 961 F.3d 635, 648 (4th Cir. 2020) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)).

I. The Alliance Failed To Establish Subject-Matter Jurisdiction.

The Alliance has failed to establish this Court's jurisdiction because (1) the Alliance lacked standing when it filed the amended complaint; and (2) to the extent its claims are based on the possibility of future injury, its claims are unripe. Federal courts "presume" that they "lack jurisdiction unless the contrary appears affirmatively from the record." *Renne v. Geary*, 501 U.S. 312, 316 (1991) (quotation omitted). Here, the Alliance failed to "clearly [] allege facts demonstrating that [it] is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Id.*

A. The Alliance lacks standing.

"To establish Article III standing, a plaintiff must show (1) it has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *South Carolina v. United States*, 912 F.3d 720, 726 (4th Cir. 2019) (quotation omitted). An organization like the Alliance "can assert standing either in its own right or as a representative of its members." *S. Walk*, 713 F.3d at 182.

Here, the Alliance claims that North Carolina's voter qualification law "threatens both the Alliance's members' voting rights and the Alliance itself, as an organization." Am. Compl. ¶17. Neither theory suffices.

1. The Alliance lacks representational standing.

The Alliance lacks representational standing because it failed to allege facts sufficient to establish that any member had standing at the time the Alliance filed suit and because the claim and relief sought require the participation of individual members. "To plead representational standing, an organization must allege that (1) its own members would have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to the organization's purpose; and (3) neither the claim nor the relief sought requires the participation of individual members in the lawsuit." *S. Walk*, 713 F.3d at 184 (quotation omitted). "[T]o show that its members would have standing," the Alliance must at least "identify a single *specific member* injured by" each part of the North Carolina voter qualification that the Alliance challenges. *Id.* "When evaluating standing," this Court "must look to the facts at the time the complaint was filed." *Wild Va.*, 56 F.4th at 293.

In its amended complaint, the Alliance failed to identify any specific current member presently or imminently injured in fact by either the state or precinct aspects of the qualification law. The Alliance alleged having current members only "across North Carolina." Am. Compl. ¶¶16-17. The Alliance did not identify a specific member who—as of January 2, 2024—either (1) currently resides outside North Carolina but will imminently move into the State within 30 days of an election and thus be prevented from voting due to the state qualification; or (2) will imminently move to a different county or

precinct within the State and thus be prevented from voting due to the precinct qualification. The Alliance thus lacks representational standing to challenge either the state or precinct qualification. *See Rosario v. Rockefeller*, 410 U.S. 752, 759 n.9 (1973) (no standing to challenge "durational residence requirement" when plaintiffs were not "recently arrived residents of the State" and had not "moved from one county to another").

Without the participation of any potential voter, this Court cannot determine the validity of the Alliance's claims or the necessary scope of relief. New North Carolina residents might prefer to vote one last time in their previous State—as the VRA expressly allows. *See* 52 U.S.C. §10502(e). And current North Carolina residents might prefer to vote again at their previous precinct, N.C. Gen. Stat. §163-55(a), which could potentially include every single election on the ballot in the new precinct. This Court cannot determine that both the state and precinct qualification are facially unlawful without the Alliance identifying a specific member harmed by the law.

2. The Alliance lacks organizational standing.

The Alliance also fails to establish "standing in its own right" to bring these claims. *S. Walk*, 56 F.4th at 182. To start, the Alliance does not allege that its own rights are violated. The Alliance does not claim to possess a right to vote or to travel. The qualification does not "amount to a *personal harm* to" the Alliance as an organization. *Id.* at 183.

Instead, the amended complaint alleges only that, "[b]y systematically preventing many of the Alliance's members from voting in North Carolina or in their new voting precinct," the qualification law "undermines the Alliance's get-out-the-vote work in North

Carolina and its advocacy work on other public policy issues that are critical to its membership, . . . making the Alliance less effective in furthering its mission than it otherwise would be, and requiring it to spend additional resources that it would otherwise spend in other ways." Am. Compl. ¶18. That does not suffice.

Start with how the Alliance describes its "mission" as having a "particular emphasis on safeguarding [retirees'] right to vote." *Id.* ¶16. That "overstates its corporate purpose." *S. Walk*, 713 F.3d at 183 n.3 (granting motion to dismiss). The Alliance's Articles of Incorporation say its "purposes" include "education, communication, and advocacy on issues of importance to older and retired workers and their families,"[5] not litigating the contours of the right to vote. "The plain language of its articles of incorporation simply does not reflect this exaggeration." *Id*. Thus, any "diversion of resources" that "might harm the organization by reducing the funds available for other purposes . . . results not from any actions taken by" North Carolina, "but rather from the" Alliance's "own budgetary choices." *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012).

Even if that were not the case, the Alliance fails to provide a concrete example of how the qualification law has ever forced the Alliance to spend more resources or how it would expend fewer resources if this Court were to enjoin the law's enforcement. The Alliance does not explain how its get-out-the-vote work would suddenly require fewer resources: Presumably the Alliance reaches out to its members to explain when the election

[5] *See* N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz (search for "North Carolina Alliance for Retired Americans," entry appearing with ID#1491517, View Filings, at Doc. ID# C201600700084). The Court may judicially notice this information.

is and how to register and vote. If anything, the qualification law *reduces* the resources the Alliance would have to expend because new arrivals do not need assistance voting in North Carolina while current residents can still vote at their previous precincts without changing registration. Similarly, the Alliance provides no explanation about what its "advocacy work" entails or how exactly the qualification has impacted the resources spent on that advocacy. Am. Compl. ¶18. Any financial impact is neither "traceable to the challenged provisions" nor "redressable by a federal court." *S. Walk*, 713 F.3d at 182.

The Alliance seems to fall back on the idea that the qualification makes it "less effective" in achieving policy victories. Am. Compl. ¶18. Such nebulous claims of "injury to organizational purpose, without more, do[] not provide a basis for standing," *S. Walk*, 713 F.3d at 183. The Alliance cannot explain why its "special interest" in certain policy topics gives it standing without providing a reason that would mean "any individual citizen with the same bona fide special interest would not also be entitled to do so." *Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972). Even so, if a majority of new residents, most of whom never join the Alliance, disapprove of its policy objectives, then the qualification would in fact *benefit* the Alliance under its ideological effectiveness theory.

B. The Alliance's claims are otherwise unripe.

The Alliance's claims are otherwise unripe. "The question of whether a claim is ripe turns on the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration." *South Carolina*, 912 F.3d at 730 (quotation omitted). Courts cannot preemptively "entangl[e] themselves in abstract disagreements over" alleged future violations of the VRA and Constitution. *Wild Va.*, 56 F.4th at 295.

The Alliance's representational claims challenging the state qualification turn on the idea that, within 30 days of some unspecified future federal election, some unspecified individual will move to North Carolina, join the Alliance, and then be prohibited by the law from registering to vote and voting in that election. Am. Compl. ¶17. And the representational claims challenging the precinct qualification are premised on the idea that, within 30 days of some unspecified future federal election, some unspecified Alliance member will move to a different precinct that does not have the same elections on the ballot and then be prohibited from registering to vote and voting in that different election. *Id.* Such anticipated future injury "rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *South Carolina*, 912 F.3d at 730.

The Alliance certainly has not carried its burden "to *demonstrate* that the claim is ripe." *Wild Va.*, 56 F.4th at 293. A dispute, as in *Dunn*, over a specific potential voter's concrete claim would illuminate apparent points of dispute, such as the Alliance's mistaken belief that new North Carolina residents cannot vote in a presidential election by casting a vote in their previous state of residence if they move within 30 days of a presidential election. *See* Am. Compl. ¶37 (misreading 52 U.S.C. §10502(e)). The Alliance has not demonstrated that withholding consideration of its claims would harm its current members, all allegedly North Carolina residents. *Id.* ¶16. The challenged law cannot impact their ability to vote in presidential or statewide elections, and Plaintiff has not identified any specific election where the ability to vote in a new precinct would matter. To be sure, Intervenors sympathize with the desire to resolve disputes about election laws well ahead

of elections. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006). But Plaintiff did not identify *any* specific member who will be, or even has been, injured by the challenged law.

Similarly, the Alliance's organizational claims hinge on the qualification making it harder for the Alliance to conduct "get-out-the-vote work" targeted at unspecified future new residents (who might be uninterested in joining the Alliance or disagree with its policy objectives) and at members who move to a new precinct (who might remain able to vote in the same elections or prefer to vote in their old precinct) and to increase the Alliance's power in unspecified future elections and advocacy campaigns. Am. Compl. ¶18. Without a concrete example, the Alliance's organizational claim is unripe to the extent it is based on future injury. The Alliance can complain of no "hardship . . . of withholding court consideration" until then because the Alliance waited two decades to challenge the law. *South Carolina*, 912 F.3d at 730.

II. The Alliance Failed to Establish That Venue Is Proper in This District.

Venue is improper in this district so this Court must dismiss the amended complaint or, alternatively, transfer the case to the Eastern District of North Carolina. 28 U.S.C. §1406(a). "A civil action may be brought in . . . (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located; (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction." *Id.* §1391(b).

Intervenors and all other Defendants officially reside in Raleigh, which is in Wake County, so venue would be proper in the Eastern District, not in the Middle District. *See Jackson v. Leake*, 2006 WL 2264027, at *10 (M.D.N.C. Aug. 7) (transferring to the Eastern District because State Board members maintain official residences in Raleigh); *Republican Party of N.C. v. Martin*, 682 F. Supp. 834, 835-37 (M.D.N.C. 1988) (same); *Moore v. Circosta*, 2020 WL 6591307, at *2 (E.D.N.C. Sept. 30) (State Board resides in Raleigh); *see also* 28 U.S.C. §113(a) (district boundaries). Defendants' residency in a different district of the same State, Am. Compl. ¶14, is not enough for venue.

Further, because Defendants have performed every alleged event or omission giving rise to Plaintiff's purported claims in Raleigh, jurisdiction is also proper on that basis in the Eastern District, not here. The venue statute "*protects defendants*, and Congress therefore meant to require courts to focus on relevant activities of the defendant, not of the plaintiff." *Jenkins Brick Co. v. Bremer*, 321 F.3d 1366, 1371-72 (11th Cir. 2003) (quotation omitted) (emphasis added); *see Res. Room SI, Inc. v. Borrero*, 2022 WL 17407968, at *5 (E.D.N.C. Dec. 2) ("[V]enue is a defendant-focused statute[.]" (citing *Jenkins Brick*, 321 F.3d at 1371)).

Whether Plaintiff would be injured in this district is irrelevant. The Alliance has not alleged that "the official duties" of Intervenors and other Defendants "performed relevant to this action occurred anywhere other than in Raleigh, which is in the Eastern District." *Moore*, 2020 WL 6591307, at *2. The State Board's "mere supervisory role over" county boards of election "does not make" venue proper in the Middle District. *Republican Party of N.C.*, 682 F. Supp. at 836. Even if Plaintiff's residency were relevant, the Alliance itself

officially resides in Raleigh, and Plaintiff has not even identified a specific member who resides in this district and would be injured by the law.

III. Laches Bars the Alliance's Claims Brought on Its Own Behalf.

Even if the Alliance would otherwise have a cause of action to bring claims on its own behalf, the doctrine of laches would bar such claims.[6] "[L]aches is an appropriate issue for a motion to dismiss in this case." *Marshall v. Meadows*, 921 F. Supp. 1490, 1493 (E.D. Va. 1996) (dismissing VRA claim). Laches applies when a defendant can prove "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *Costello v. United States*, 365 U.S. 265, 282 (1961).

"The first element of laches—lack of diligence—exists where the plaintiff delayed inexcusably or unreasonably in filing suit." *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990) (quotation omitted). The Alliance has existed as a 501(c)(4) organization since January 2016. And the Alliance's predecessor 501(c)(3) organization—dissolved in 2016 after the creation of the 501(c)(4)—was founded in June 2003.[7] Even considering only the Alliance as a 501(c)(4), Plaintiff has inexcusably and unreasonably delayed filing suit until well after the 2016, 2018, 2020, and 2022 general elections and other elections during that period. North Carolina's qualification law has existed for half a century. The Alliance expressed no qualms in 2016, a presidential election year, when the Fourth Circuit enjoined

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[6] Intervenors reserve defenses about (1) whether laches also bars claims brought on a representational basis or any particular remedy; and (2) whether the statute of limitations bars the Alliance's claims.

[7] *See* N.C. Secretary of State, Business Registration Search, https://tinyurl.com/5875cbrz (search for "North Carolina Alliance for Retired Americans," entry appearing with ID#0677808). The Court may judicially notice this information.

North Carolina from eliminating same-day voter registration, *McCrory*, 831 F.3d at 239, which the Alliance belatedly claims as an impetus for its claims. Section 1983 claims have a 3-year statute of limitations in North Carolina, and the Alliance waited well after that period would have run to file this suit. *See Epcon Homestead, LLC v. Town of Chapel Hill*, 62 F.4th 882, 886-88 (4th Cir. 2023).

Because the Alliance's delay was "inexcusable and unreasonable," Intervenors "need not show the degree of prejudice that would be required if the delay had been less aggravated." *White*, 909 F.2d at 103. The Alliance's delay disadvantaged North Carolina by allowing numerous intervening modifications to election laws that might be impacted by a finding that the State's election laws cannot simultaneously impose a 30-day qualification and allow registration during early voting. On top of the Alliance's silence before and after the Fourth Circuit enjoined a North Carolina law that would have ended same-day registration, the Alliance waited until the last month of the most recent legislative session to file suit. The General Assembly had *already* enacted a comprehensive law in August 2023 that, in part, made clear North Carolina allows same-day registration during early voting and then overrode the Governor's veto of that law 8 days after the Alliance sued. *See* S.L. 2023-140 (S.B. 747), §10 (effective Jan. 1, 2024). Throughout the public debate over these legislative actions, the Alliance never advocated for the changes it now asks this Court to impose by judicial fiat. The organization did not even file its amended complaint—expanding its claims to challenge the precinct-residency qualification on behalf of unidentified North Carolinians—until *after* the new law's effective date. The

Alliance as an organization slept on its supposed rights, so laches now bars its claims. *See Marshall*, 921 F. Supp. at 1494.

IV. The Alliance Failed To Plausibly Allege a VRA Violation.

The Alliance failed to plausibly allege that the North Carolina voter qualification violates the VRA because the VRA amendments squarely allow North Carolina to limit "registration" or voting "qualification" for its presidential electors to citizens who reside in North Carolina at least "thirty days immediately prior to any presidential election" and impose no restriction on qualifications for other elections. 52 U.S.C. §10502(d). "[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 492 (2015).

Section 10502(a) expresses Congress's legislative findings. Congress made findings only about "the imposition and application of the durational residency requirement as a precondition to voting for the offices of President and Vice President." 52 U.S.C. §10502(a). Congress sought to protect "the inherent constitutional right of citizens to enjoy their free movement across State lines" to vote in presidential elections. *Id.* §10502(a)(2). Next, §10502(b) "declares" Congress's overarching plan "to completely abolish the durational residency requirement as a precondition to voting for President and Vice President." The Alliance latches on to this declaratory language, Am. Compl. ¶48, and mixes it with subsequent mandatory language, *id.* ¶33. But the rest of §10502, not §10502(a)-(b), provides the rules for States to accomplish Congress's policy objective.

No citizen "otherwise qualified to vote in any election for President and Vice President" except for a "failure" to "comply with any durational residency requirement,"

"shall be denied the right to vote for electors for President and Vice President," §10502(c), because Congress expressly provides that citizens who move to a new State "after the thirtieth day next preceding such election and, for that reason, do[] not satisfy the registration requirements of such State" can vote in-person or by absentee ballot in their previous state of residence, §10502(e). By requiring the previous state of residence to allow the outgoing resident to vote in the presidential election, Congress protects the federal right to vote somewhere in the United States for presidential electors.

Congress has not commanded States to refer to such a qualification solely as "a *registration* requirement." Am. Compl. ¶5. Instead, §10502(d) states that "each State shall provide by law for the registration *or other means of qualification* of all duly qualified residents of such State who apply, not later than thirty days immediately prior to any presidential election, for registration *or qualification to vote* for the choice of electors for President and Vice President." (Emphases added.) Tellingly, the Alliance completely ignores that §10502(d) expressly allows 30-days' residency as a "qualification to vote." Even if such a distinction made a difference, the Alliance readily concedes that the 30-day qualification is also a requirement "[i]n order to register to vote." Am. Compl. ¶24.

That North Carolina does not completely cut off registration 30 days before a presidential election does not transform its run-of-the-mill qualification into a VRA violation. If the Alliance's reading of §10502 were correct, then every State that allows registration within 30 days of a presidential election only for individuals who have resided

in the State for 30 days prior to the election would be violating the VRA. That includes States as diverse as Illinois, New Jersey, Pennsylvania, Utah, and Washington.[8]

Further, the VRA has no bearing on qualifications for any election other than "vot[ing] for electors for President and Vice President, or for President and Vice President," §10502(c), so no current North Carolina resident (including all the Alliance's members) has a VRA claim. The Alliance itself admits that the laws of States like Nevada—which allows voter registration during early voting, Nev. Rev. Stat. §293.5842, and on election day, *id.* §293.5847, despite not allowing new residents to vote in any non-presidential election, *id.* §298.259—comply with the VRA. Am. Compl. ¶35.

Finally, this claim must be dismissed to the extent the Alliance attempts to plead it on behalf of the organization itself because the Alliance is not a "citizen of the United States" and cannot vote in any election. 52 U.S.C. §10502(c).

V. The Alliance Failed To Plausibly Allege a Constitutional Violation.

Under the *Anderson-Burdick* framework, established after *Dunn*, an election law's burdens are "weighed against the state's interests by looking at the whole electoral system." *Luft v. Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020) (Easterbrook, J.) (citing *Burdick v. Takushi*, 504 U.S. 428, 434, 439 (1992)). "Only when voting rights have been severely restricted must states have compelling interests and narrowly tailored rules." *Id.* "Where

[8] *See* 10 Ill. Comp. Stat. 5/5-2 (qualification); *id.* 5/5-50 (election-day registration); N.J. Stat. Ann. 19:31-5 (qualification); *id.* 19:31-6 (registration until 21 days before an election); 25 Pa. Cons. Stat. §1301 (qualification); *id.* §3071 (registration until 15 days before an election); Utah Code §20A-2-101 (qualification); *id.* §20A-2-102.5 (election-day registration); Wash. Rev. Code §29A.08.230 (qualification); *id.* §29A.08.140 (election-day registration).

the burden imposed by the state is not 'severe'—where it is 'lesser'—courts engage in 'less exacting review.'" *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 402 (4th Cir. 2019) (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997)).

Less exacting review is appropriate here. *See Luft*, 963 F.3d at 675-76 (upholding Wisconsin's 28-day qualification for non-presidential elections despite Wisconsin allowing election-day registration, Wis. Stat. Ann. §6.55). The 30-day qualification is not a severe burden and will not "exclude[] many residents." *Dunn*, 405 U.S. at 351. There is no federal right to move into or within North Carolina within 30 days of an election and vote at the new place of residency. *See id.* at 348 (allowing 30-day qualification); *Marston v. Lewis*, 410 U.S. 679, 680 (1973) (upholding 50-day qualification for state and local elections). For current residents, the "Supreme Court has not expressly recognized a fundamental right to intrastate travel" at all, *Willis v. Town of Marshall*, 426 F.3d 251, 265 (4th Cir. 2005), and even if such a right existed, it would protect no more "than the right of *movement* from place to place" within a State, *id.* at 268 (Williams, J., concurring).

Moreover, the ways in which North Carolina's "election system differs from those of Arizona and Tennessee" in *Marston* and *Dunn*—such as allowing registration within 30 days of an election—"make it easier to vote in" North Carolina. *Luft*, 963 F.3d at 676; *see* Am. Compl. ¶42 (conceding North Carolina's law would be constitutional if it completely closed registration then). New residents can still vote in presidential elections in their previous state of residence, and current residents who move within North Carolina can vote at their previous precinct. "[C]onsider[ing] only the statute's broad application to all" voters, as the Court must for this facial challenge, the qualification "'imposes only a limited

burden on voters' rights.'" *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202-03 (2008) (plurality) (quoting *Burdick*, 504 U.S. at 439).

Thus, at most, "the State's asserted regulatory interests need only be sufficiently weighty to justify the limitation imposed on the party's rights." *Timmons*, 502 U.S. at 364 (quotations omitted); *see also Gallagher v. Ind. State Election Bd.*, 598 N.E.2d 510, 514-16 (Ind. 1992) (upholding qualification using rational-basis review). North Carolina's law satisfies that standard. This Court should respect the General Assembly's "judgment" about what constitutes "an ample period of time for the State to complete whatever administrative tasks are necessary to prevent fraud" with its election laws. *Dunn*, 405 U.S. at 348. The 30-day qualification serves North Carolina's "legitimate purpose [] to determine whether certain persons in the community are bona fide residents" by dissuading "would-be fraudulent voters" who "would remain in a false locale for" a short time before an election. *Id.* at 351-52. Plus, because "campaign spending and voter education occur largely during the month before an election," making sure that a voter resided in North Carolina for that period serves the State's interest in providing for an educated electorate with at least some minimal ties to the State. *Id.* at 358.

The complete 30-day registration cutoff Plaintiff concedes is constitutional also "divide[s] residents into two classes, old residents and new residents," *id.* at 334-35, by giving only old residents the chance to register in time. Thus, what Plaintiff is truly complaining about is North Carolina experimenting with allowing old residents to register until early voting ends. Same-day registration "does not restrict or deny the franchise but in effect extends the franchise to persons who otherwise would be denied it by state law"

due to a failure register in time. *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). This "limitation on a reform measure aimed at eliminating an existing barrier to the exercise of the franchise" is not unconstitutional. *Id.* The Fourth Circuit itself prohibited North Carolina from ending this experiment by eliminating same-day registration. *McCrory*, 831 F.3d at 239.

Dunn "marked a sharp departure from the [Supreme] Court's prior right-to-travel cases." *Saenz v. Roe*, 526 U.S. 489, 514 (1999) (Rehnquist, C.J., dissenting). Without instruction from the Supreme Court to extend *Dunn* into new territory, this Court should not call into question the constitutionality of *McCrory*, numerous States' laws, and the VRA amendments' allowance of 30-day "qualification[s] to vote." 52 U.S.C. §10502(d).

Finally, this claim must be dismissed to the extent the Alliance attempts to plead it on behalf of the organization itself because no 501(c)(4) has the right to vote in any North Carolina election.

CONCLUSION

For the reasons stated above, Intervenors ask the Court to dismiss the amended complaint or, alternatively, transfer the case to the Eastern District of North Carolina.

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Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Memorandum, including body, headings, and footnotes, contains 6,244 words as measured by Microsoft Word.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on January 16, 2024, I electronically filed the foregoing Memorandum with the Clerk of the Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

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