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 State Board of Elections, JEFF CARMON, in his official capacity as Secretary of the State Board of Elections, STACY EGGERS IV, in his official capacity as Member of the State Board of Elections, KEVIN N. LEWIS, in his official capacity as Member of the State Board of Elections, SIOBHAN O'DUFFY MILLEN, in her official capacity as Member of the State Board of Elections, KAREN BRINSON BELL, in her official capacity as Executive Director of the State Board of Elections,

Defendants.

Case No.1:23-cv-00837-WO-JLW

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Both the United States Constitution and, for presidential elections, the Voting Rights Act prohibit states from imposing "durational residency requirements" that disenfranchise voters just because they move shortly before an election, if the voters otherwise comply with the state's registration deadlines. 52 U.S.C. § 10502(a)–(c); *Dunn v. Blumstein*, 405 U.S. 330 (1972). The reason is simple: such requirements serve no legitimate purpose other than to "penalize those persons who have traveled from one place to another to establish a new residence during the qualifying period." *Dunn*, 405 U.S. at 334; *see also* 52 U.S.C. § 10502(a)(2) (congressional findings). States can require that voters be bona fide residents on election day, *Dunn*, 405 U.S. at 343, and they can close voter registration before election day to allow them to prepare for the election, *id.* at 347; *see also* 52 U.S.C. § 10502(d) (up to 30 days for presidential elections). But states cannot impose an additional durational residency requirement on voters who seek to register within the time allowed by state law.

North Carolina flouts these prohibitions by requiring voters to have lived in their voting precinct for 30 days before election day, N.C. Gen. Stat. § 163-55(a); *see also* N.C. Const. art. VI, § 2, para. 1, even though voters can register until 25 days before election day or later if they use same-day registration at an early voting location, N.C. Gen. Stat. §§ 163-82.6(d), -82.6A. And because hundreds of thousands of North Carolinians move into the state or between counties every year—

more than 600,000 in 2022[1]—this unlawful requirement invariably disenfranchises many lawful voters every election.

The Court should preliminarily enjoin North Carolina from enforcing its 30-Day Residency Requirement during the November general election. The Requirement injures Plaintiff as an organization and injures its members by disenfranchising them if they move shortly before election day. It is irreconcilable with the Constitution and the Voting Rights Act because it does exactly what they prohibit: prevents voters from timely registering just because they have not lived in the state or their precinct for long enough. The resulting harm is irreparable—disenfranchisement. And the equities favor prompt relief so that, come November, all otherwise eligible voters can cast a ballot for their candidates of choice.

BACKGROUND

A North Carolina resident is "qualified to vote in the precinct in which the person resides" if that voter (1) is at least 18 years old, (2) is a United States citizen, (3) is not disqualified from voting for being adjudged guilty of a felony, and (4) has "resided in the State of North Carolina and in the precinct in which the person offers

[1] *See* U.S. Census Bureau, *Geographical Mobility in the Past Year by Age for Current Residence in the United States*, American Community Survey, ACS 5-Year Estimates Detailed Tables, Table B07001, 2022, https://data.census.gov/table/ACSDT5Y2022.B07001?g=040XX00US37&d=ACS 5-Year Estimates Detailed Tables (last accessed Dec. 26, 2023); *United States v. Johnson*, 122 F. Supp. 3d 272, 282 n.2 (M.D.N.C. 2015) (holding that census data is judicially noticeable).

to vote for 30 days next preceding an election." N.C. Gen. Stat. § 163-55(a); *see also* N.C. Const. art. VI, § 2, para. 1.[2] Because of this 30-day Residency Requirement, voters who have not lived in North Carolina or their current North Carolina precinct for 30 days preceding an election are not qualified to vote in any upcoming election.

To vote in any election in the state, voters must first register. *See* N.C. Gen. Stat. §§ 163-54, -82.1(a). Voters may register by completing a voter registration form at least 25 days before election day, *id*. § 163-82.6(d), or they may use "same-day registration" to register and vote at an early voting site from 20 days before election day until the Saturday before election day, *id.* §§ 163-82.6A,[3] -227.2(b). To register, however, voters must attest "under penalty of a Class I felony" that they meet each of the state's voting eligibility requirements, including the 30-Day Residency Requirement. *Id.* § 163-82.4(c)(1). The North Carolina voter registration

[2] The North Carolina Constitution also purports to require that a voter have resided in the State for at least one year. But the one-year state residency requirement was held unconstitutional in 1971, and North Carolina no longer enforces it. *Andrews v. Cody*, 327 F. Supp. 793, 795 (M.D.N.C. 1971), *aff'd*, 405 U.S. 1034 (1972). That holding did not address the 30-day residency requirement only because the voters who sued had complied with it. *Andrews*, 327 F. Supp. at 793 n.1.

[3] The current, controlling version of N.C. Gen. Stat. 163-82.6A can be found in NCSBE's Numbered Memo 2016-15. *See Same-Day Registration During One-Stop Early Voting*, Numbered Memo 2016-15 at Appendix A, NCSBE (Sept. 22, 2016), https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered_Memo_2016-15_Same-Day_Registration.pdf. The version of N.C. Gen. Stat. 163-82.6A in the Election Code reflects changes to the state's same-day registration laws that have been enjoined by the Fourth Circuit and are therefore not controlling. *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

form therefore requires registrants to sign a statement attesting that they "have been a resident of North Carolina, this county, and precinct for 30 days before the date of the election in which [they] intend to vote. . . ." N.C. State Bd. of Elections, North Carolina Voter Registration Application (Aug. 2023) (emphasis in original), https://dl.ncsbe.gov/Voter_Registration/NCVoterRegForm_06W.pdf (last accessed Dec. 29, 2023).

The 30-Day Residency Requirement therefore prevents otherwise eligible voters from registering to vote, and thus from voting, even if they seek to register before North Carolina's deadline for doing so.

LEGAL STANDARD

A movant seeking a preliminary injunction must establish that (i) they are likely to succeed on the merits of their case; (ii) they are likely to suffer irreparable harm in the absence of relief; (iii) the balance of the equities tips in their favor; and (iv) an injunction would be in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). The third and fourth requirements "merge when the government is the opposing party." *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

ARGUMENT

The Alliance has standing, and it is likely to succeed on the merits of its claims. The 30-Day Residency Requirement violates the express terms of the VRA, and it also disenfranchises the Alliance's members in violation of the First and Fourteenth Amendments to the U.S. Constitution. The Alliance and its members will be irreparably harmed absent an injunction because no post-election relief can cure the harm of disenfranchisement. Finally, the equities and public interest favor protecting the Alliance's members' fundamental right to vote.

I. The Alliance has standing.

The Alliance has standing to challenge the 30-Day Residency Requirement because it has shown an injury that is fairly traceable to Defendants' conduct and which a favorable ruling can redress. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016); *Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, 892 F.3d 613, 619–20 (4th Cir. 2018). An organization has "standing to sue in federal court either based on an injury to the organization in its own right or as the representative of its members who have been harmed." *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 155 (4th Cir. 2000).

Thus, organizations like the Alliance can establish standing in one of two ways. *First*, organizations have representational or associational standing to sue on behalf of their members if at least one member has standing. *See, e.g.*, *Warth v.*

Seldin, 422 U.S. 490, 511 (1975) (explaining that the organizational plaintiff "must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit"). *Second*, organizations may challenge actions that cause them direct injury. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982). When an organization claims direct injury, courts "conduct the same inquiry as in the case of an individual." *Id.* at 378. The Alliance has sufficiently alleged both associational and direct standing. Its injuries (as to itself and its members) are traceable to Defendants, who enforce the 30-Day Residency Requirement, and an injunction against Defendants would redress these injuries.

A. The Alliance has associational standing.

The Alliance has standing, first, on behalf of its injured members. As of 2023, the Alliance has approximately 52,000 members across North Carolina. New members join the Alliance every month, as North Carolina is an especially popular state for relocating retirees. Dworkin Decl. ¶ 6. For instance, over the last three years, the Alliance has added over 14,000 new members. *Id*. Between January 2021 and November 2023, the Alliance gained an average of 300 voters every month. *Id*. Since the Alliance began collecting this data, not a single month has gone by that the Alliance has not gained multiple new members. *Id*. Based on these metrics, the Alliance will gain multiple new members within the month before the November

2024 election. *Id*. ¶ 7. Because the 30-Day Residency Requirement targets members who retire and move to North Carolina within the month leading up to any election, these likely hundreds of members—who would otherwise vote in North Carolina—will be unable to do so. *Id*. ¶ 7. And of course, that is on top of those Alliance members who will surely move between precincts *within* the state in the month before election day, just as hundreds of thousands of North Carolinians move between counties every year.[4]

The 30-Day Residency Requirement injures those members who move shortly before election day by prohibiting them from voting in their new precinct in the November election. And while a separate subsection of the Voting Rights Act entitles such members to vote for President and Vice President in their old jurisdiction, *see* 52 U.S.C. § 10502(e), and North Carolina law authorizes them to vote in their old precinct in other contests as well, N.C. Gen. Stat. § 163-55(a), that does not eliminate the injury. Such voters are still unable to vote in the state legislative and local races that will directly affect them in their new place of residence. And attempting to exercise this right comes with injury of its own: the

[4] *See* U.S. Census Bureau, *Geographical Mobility in the Past Year by Age for Current Residence in the United States*, American Community Survey, ACS 5-Year Estimates Detailed Tables, Table B07001, 2022, https://data.census.gov/table/ACSDT5Y2022.B07001?g=040XX00US37&d=ACS 5-Year Estimates Detailed Tables (last accessed Dec. 26, 2023); *Johnson*, 122 F. Supp. 3d at 282 n.2.

need to travel to the old jurisdiction, or to go through the hassle of requesting and returning an absentee ballot, rather than simply voting in the voter's new polling place as normal. *See Common Cause/Ga. v. Billups*, 554 F.3d 1340, 1351 (11th Cir. 2009) ("For purposes of standing, a denial of equal treatment is an actual injury even when the complainant is able to overcome the challenged barrier.").

B. The Alliance has organizational standing.

The Alliance also has organizational standing based on its own injuries. The mission of the Alliance and its nationwide affiliate is to ensure social and economic justice and full civil rights for retirees. Dworkin Decl. ¶ 4. It furthers its mission by working in coalitions, educating the public and policymakers about critical issues facing older Americans and working families, lobbying elected officials, taking direct action through creative demonstrations and protests, and organizing around labor movement priorities. *Id.* The Alliance also accomplishes its mission by championing and fiercely protecting its members' right to have their voices heard at the ballot box. *Id.* ¶ 5. As a result, it is imperative for the Alliance that its members who move to or within North Carolina and intend to change their domicile close to election day are entitled to vote in every election that matters to them and will affect them as residents of their new state or jurisdiction. *Id.*

The 30-Day Residency Requirement directly undermines that imperative by disenfranchising newly minted Alliance members in the first month of their move.

Id. As a result, the 30-Day Residency Requirement impairs 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, including the pricing of prescription drugs and protecting benefits from Social Security, Medicare, and Medicaid, making the Alliance less effective in furthering its mission than it otherwise would be, which directly affects the efficacy of its expenditure of resources. *Id*. ¶ 8.

For these reasons, the Alliance has direct, organizational standing to challenge the 30-Day Residency Requirement. *See Democracy N.C. v. N.C. State Bd. of Elections*, 476 F. Supp. 3d 158, 183 (M.D.N.C. 2020) (finding organizational standing where plaintiff alleged that challenged action would frustrate part of its mission and require it to divert some resources to address this frustrated mission).

II. The Alliance will likely succeed on the merits of its claims.

The Alliance is likely to prevail on its claim that the 30-Day Residency Requirement infringes upon the rights of voters who move into and within North Carolina within 30 days of election day in violation of both the U.S. Constitution and the VRA. To obtain a preliminary injunction, "[a] plaintiff need not establish a certainty of success, but must make a clear showing that he is likely to succeed at trial." *Di Biase v. SPX Corp*., 872 F.3d 224, 230 (4th Cir. 2017) (internal quotation marks omitted).

A. The 30-Day Residency Requirement violates the VRA.

The 30-Day Residency Requirement prevents voters who move to North Carolina or a new county or precinct within North Carolina within 30 days of a presidential election from voting at their new place of residence, even if they timely seek to register to vote. This precondition on voter eligibility is irreconcilable with Section 202 of the VRA Amendments of 1970, which "completely abolish[es] the durational residency requirement as a precondition to voting for President and Vice President." 52 U.S.C. § 10502(b). The VRA is clear that otherwise qualified voters may not "be 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 of such State or political subdivision." 52 U.S.C. § 10502(c); *see also id.* § 10310(c)(2) (defining "political subdivision" as "any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting.").

North Carolina does exactly what the VRA prohibits. The 30-Day Residency Requirement denies otherwise qualified voters the right to vote in presidential elections based solely on their not having lived in the state or their voting precinct for 30 days before election day. N.C. Gen. Stat. § 163-55(a); *see also* N.C. Const. art. VI, § 2, para. 1. Voters who have recently moved cannot attest "under penalty

of a Class I felony" on their registration paperwork that they are qualified to vote under state law, N.C. Gen. Stat. § 163-82.4(c)(1), without perjuring themselves, and thus cannot lawfully register to vote or vote in their new place of residence.

Moreover, the 30-day Residency Requirement bars such voters from voting even if they move to their new residence in time to meet North Carolina's 25-day pre-election-day registration deadline, or to register using same day registration at an early voting location. *Id.* §§ 163-82.6(d), -82.6A, -227.2(b). This fact is fatal to the 30-Day Residency Requirement under the VRA. The VRA does allow states to impose pre-election *registration* requirements of up to 30 days for presidential elections. 52 U.S.C. § 10502(d). But North Carolina does not impose such a requirement—it lets voters register until 25 days before the election, or same-day during early voting. The only thing keeping such voters from voting in their new place of residence is the 30-day Residency Requirement. And the VRA "completely abolish[es] the durational residency requirement as a precondition to voting for President and Vice President," and provides that no citizen may be prevented from voting for President in any State or political subdivision "because of the failure of such citizen to comply with any durational residency requirement of such State or political subdivision." *Id.* § 10502(b), (c).

Plaintiff is therefore likely to succeed in showing that the 30-Day Residency Requirement violates the VRA.

B. The 30-Day Residency Requirement is unconstitutional.

The 30-Day Residency Requirement is unconstitutional under longstanding Supreme Court precedent, which holds that durational residency requirements are subject to strict scrutiny because they penalize voters for exercising their right to travel and deprive them of the fundamental right to vote. *See Dunn v. Blumstein*, 405 U.S. 330 (1972). Much like VRA Section 202, that precedent distinguishes durational residency requirements like the 30-Day Residency Requirement—which are subject to strict scrutiny and invariably struck down—from pre-election *registration* requirements—which are generally upheld if they are reasonable. *Compare id. with Marston v. Lewis*, 410 U.S. 679 (1973). The 30-Day Residency Requirement falls on the wrong side of that line and fails strict scrutiny for the same reasons that many states' similar laws have been struck down.

In *Dunn*, the U.S. Supreme Court addressed Tennessee's durational residency requirement, which required voters to reside in the state for a year and in the county for three months before election day. 405 U.S. 330. The Court held that this requirement violated two fundamental rights. First, the residency requirement completely barred residents who do not meet the fixed durational standard from voting, which was a deprivation of "a fundamental political right, . . . preservative of all rights." *Id.* at 336 (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)). Second, the law classified "residents on the basis of recent travel, penalizing those

persons, and only those persons, who have gone from one jurisdiction to another during the qualifying period." *Id.* at 338. This directly infringed on the "exercise of a second fundamental personal right, the right to travel." *Id.*; *see also id.* at 342 ("In the present case, such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote.").

The 30-Day Residency Requirement, just like the Tennessee requirement at issue in *Dunn*, defines voting eligibility based on residency in the state and in the locality before election day. *See* N.C. Gen. Stat. § 163-55(a); N.C. Const. art. VI, § 2, para. 1. Thus, they implicate an individual's right to vote and move about freely, whether interstate or intrastate. *See Dunn*, 405 U.S. at 338, *see also Meyers v. Jackson*, 390 F. Supp. 37, 44 (E.D. Ark. 1975) (3-judge court) (concluding that "within precinct residency requirement[s] obviously discriminate[] between voters who move their residences across precinct lines shortly before elections and those who do not"); *Willis v. Town Of Marshall, N.C.*, 426 F.3d 251, 264–65 (4th Cir. 2005) (noting that various U.S. Supreme Court cases appear to support the existence of a right to intrastate travel).

Because the 30-Day Residency Requirement implicates these two fundamental rights, the laws "must be measured by a strict equal protection test: they are unconstitutional unless the State can demonstrate that such laws are 'necessary to promote a compelling governmental interest.'" *Dunn*, 405 U.S. at 342 (quoting

Shapiro v. Thompson, 394 U.S. 618, 634 (1969)). The state bears a "heavy burden of justification," and the statutes "will be closely scrutinized in light of [their] asserted purposes" to assess whether the impacted statues are drawn with "precision" and are appropriately "tailored" to serve legitimate objectives. *Id.* at 343.

The 30-Day Residency Requirement does not protect a compelling and substantial governmental interest. *Dunn* addresses—and rejects as inadequate—every conceivable interest that North Carolina could possibly put forward to justify the Requirement. *See* 405 U.S. at 345–60. It is not justified as a means of limiting voting to *bona fide* residents because voter registration and a required oath adequately serve that interest, and because the 30-day Residency Requirement does not add any additional protection: a durational residency requirement longer than the pre-election registration requirement "does not increase the amount of time the State has in which to carry out an investigation into the sworn claim by the would-be voter that he is in fact a resident." *Id.* at 346–47. It is not acceptable as establishing a conclusive presumption of residency, because it is "all too imprecise" and "excludes many residents." *Id.* at 351. And it is not justified by a desire to ensure informed voters, because the State is not entitled to disenfranchise new arrivals based on a concern about how they might vote, and the line it draws is too crude. *Id.* at 356–60. States are fully entitled to impose short, pre-election *registration* requirements for election administration and other reasons, such as where "necessary to permit

preparation of accurate voter lists." *Marston*, 410 U.S. at 681. But that is not what the 30-Day Residency Requirement is.

To be sure, the 30-Day Residency Requirement is shorter than the one-year and three-month requirements at issue in *Dunn*. But given North Carolina's decision to allow registration until 25 days before election day, and same-day registration during early voting, the fact that the 30-Day Residency Requirement is shorter makes no difference. It remains true that the Requirement provides no extra time for North Carolina to investigate residency, is too-crude a means of ensuring *bona fide* residency, and is both arbitrary and inadequate as a means of promoting informed voting. *Dunn*, 405 U.S. at 345–60.

Confirming this point, courts applying *Dunn* and *Marston* have repeatedly held that even 30-day durational residency requirements are unconstitutional when they are paired with shorter registration requirements. *See Meyers*, 390 F. Supp. at 42–43 (holding that a 30-day durational residency requirement was unconstitutional where Arkansas allowed registration until 20 days before the election); *Fisher v. Herseth*, 374 F. Supp. 745, 747 (D.S.D. 1974) (holding South Dakota's durational residency requirements, including a 30-day precinct-residency requirement, unconstitutional where South Dakota allowed registration until 20 days before election); *see also Hinnant v. Sebesta*, 363 F. Supp. 398, 400 (M.D. Fla. 1973) (explaining that under *Dunn* and *Marston*, durational residency requirements are

allowed only if they are "a mere corollary of and/or coincident with a *reasonable* period of time before an election during which all registration is precluded"). The *Fisher* court went so far as to declare the constitutionality of such requirements "foreclosed as a litigable issue" and the defense of such requirements "frivolous," so that a one-judge court could invalidate them even under a statute that then required three judges when a case sought to enjoin a state law. 374 F. Supp. at 746 (quoting *Bailey v. Patterson*, 369 U.S. 31, 33 (1961)). Precisely the same conclusion follows here.

Simply put, the 30-Day Residency Requirement prohibits applicants from availing themselves of the state's same-day registration processes and participating in the state's elections solely because they have chosen to move recently. This infringement on two core constitutional rights—the right to travel and to vote—is not justified by any compelling state interest. *See Dunn*, 405 U.S. at 360 (concluding that "we cannot say that durational residence requirements are necessary to further a compelling state interest"); *Meyers*, 390 F. Supp. at 44 (concluding that Arkansas's within precinct residency requirement has "no conceivable legitimate interest" and "is both discriminatory and absurd."). Thus, the 30-Day Residency Requirement violates the First and Fourteenth Amendments.

III. Absent injunctive relief, the Alliance's members will suffer irreparable harm.

Absent injunctive relief in advance of the November election, the 30-Day Residency Requirement will irreparably harm the Alliance's rights under the Constitution and the VRA. The requirement infringes on voters' fundamental rights to travel *and* vote. *See supra* Section II.B. An infringement or abridgment of a constitutional right is an irreparable harm. *Legend Night Club v. Miller*, 637 F.3d 291, 302 (4th Cir. 2011); *see also Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("The existence of a continuing constitutional violation constitutes proof of an irreparable harm."). Further, an injury is typically deemed irreparable if monetary damages are inadequate or difficult to ascertain. *See Multi-Channel TV Cable Co. v. Charlottesville Quality Cable Operating Co.*, 22 F.3d 546, 551 (4th Cir. 1994), *abrogated on other grounds by Winter*, 555 U.S. at 22. Because "there can be no do-over and no redress" after an election has occurred, laws that infringe upon the right to vote is "real and completely irreparable if nothing is done to enjoin th[ese] law[s]." *League of Women Voters of N.C.*, 769 F.3d at 247.

Additionally, "[o]rganizations with core voter-advocacy missions," like the Alliance, "are irreparably harmed when 'the defendant's actions perceptibly impair[] the organization's programs, making it more difficult to carry out its mission.'" *Democracy N.C.*, 476 F. Supp. 3d at 236–37 (quoting *N.C. State Conference of NAACP v. Cooper*, 430 F. Supp. 3d 15, 51 (M.D.N.C. 2019) (alteration in original)).

The Alliance is also irreparably harmed when "the right to vote is wrongfully denied or abridged—whether belonging to its membership or the electorate at large." *Id.* (quoting *N.C. State Conference of NAACP*, 430 F. Supp. 3d at 51). As demonstrated above, the 30-Day Residency Requirement not only makes it more difficult for the Alliance to accomplish its core organizational missions, but its membership will be denied their fundamental right to vote as a result of this provision. *See supra* Section I. For these reasons, the Alliance and its members' rights will be irreparably injured absent relief. Thus, this factor weighs heavily in favor of the Alliance and injunctive relief.

IV. The public interest and balance of the equities favor granting a preliminary injunction.

Both the public interest, and the balance of equities, weigh in the Alliance's favor. A party seeking a preliminary injunction must establish that the balance of the equities tips in their favor and that a preliminary injunction is in the public interest. *Winter*, 555 U.S. at 20. These requirements "merge when the government is the opposing party." *Miranda*, 34 F.4th at 365. In weighing the equities, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Prod. Co. v. Village of Gambell*, 480 U.S. 531, 542 (1987).

The balance of equities tips sharply in the Alliance's favor. The Alliance's members face irreparable constitutional harm to the fundamental right to vote.

Defendants, by contrast, face no risk of harm whatsoever; the Fourth Circuit has made quite clear that the State cannot claim to be harmed by an injunction against enforcing a law that "is likely to be found unconstitutional." *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) ("With respect to the harm that would befall if an injunction were put in place, [the public school defendant] is in no way harmed by issuance of a preliminary injunction which prevents it from enforcing a regulation, which, on this record, is likely to be found unconstitutional."); *see also Legend Night Club*, 637 F.3d at 302-03 ("[T]he State . . . is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions."). "If anything," the State benefits from "such an injunction." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

A preliminary injunction is also in the public interest. In general, "[t]he public interest always lies with the vindication of constitutional rights." *Bernstein v. Sims*, 643 F. Supp. 3d 578, 588 (E.D.N.C. 2022) (citing *Giovani Carandola, Ltd.*, 303 F.3d at 521). More specifically, "[b]y definition, the public interest favors permitting as many qualified voters to vote as possible." *Democracy N.C.*, 476 F. Supp. 3d at 237 (cleaned up) (quoting *League of Women Voters of N.C.*, 769 F.3d at 247–48). Because the Alliance's requested relief would allow more qualified voters to exercise their right to vote, this factor weighs in favor of the Alliance.

CONCLUSION

For the foregoing reasons, the Court should preliminarily enjoin the 30-Day Residency Requirement.

Dated: January 2, 2024.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT
PURSUANT TO LOCAL RULE 7.3(d)

Undersigned counsel certifies that this Brief complies with Local Rule 7.3(d), in that the word count function of Microsoft Word shows the brief to contain 4434 words, excluding those portions of the brief permitted to be excluded by the Rule.

This 2nd day of January, 2024.

/s/ Narendra K. Ghosh
Narendra K. Ghosh

Counsel for Plaintiff