



## What Voters Should Know about Same Day Registration

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A case pending in federal court in the Middle District of North Carolina focuses on recent changes to same-day registration (SDR) which were passed last year in Senate Bill 747 (SB747). As that case, *Democracy v. Hirsch*, winds its way through court, voters may find the allegations and changes to elections a little tough to follow. Here is some history of the SB 747 and the case.

SB747 was first introduced on June 1, 2023. Over the next several months, the General Assembly held hearings and received feedback from both voters and state and local level election officials, including the North Carolina State Board of Elections ("NCSBE"). That feedback resulted in [18 amendments to SB 747](#). The General Assembly passed SB747 on August 18, 2023. The aim was to ensure that North Carolina elections are conducted in a fair and non-partisan manner. Senator Warren Daniel, a co-sponsor of the bill, [described](#) it as "the jumbo jet of election integrity."

On August 24, 2023, Governor Cooper vetoed the bill which he [labeled](#) "dangerous." On October 10, 2023, the General Assembly overrode the Governor's veto making SB747 law (the effective date is January 1, 2024). N.C. Sess. Law 2023-140.

Just a week after SB747 became law, three activist groups filed a federal lawsuit challenging changes to the state's SDR requirements. Specifically, they claim the new law: (1) denies procedural due process rights under the [14th Amendment](#) (Count I); (2) presents an undue burden on the right to vote under the [1st](#) and 14th Amendments (Count II); and (3) discriminates against young voters on basis of age under the [26th Amendment](#) (Count III).

Under North Carolina law, citizens can register to vote in person, online, via mail, or at the DMV up to 25 days prior to election day. N.C.G.S. [§ 163-82.6\(d\)](#). For voters who fail to register in time, the law allows SDR during the early voting period, which runs for 17 days beginning the third Thursday prior to election day and ends at 3:00 p.m. the Saturday before election day. N.C.G.S. [§ 163-227.2](#); S.B. 747 § 10.(a) (*modifying* §163-82.6B). North Carolina also allows no-excuse absentee voting for all registered voters, [§ 163-226\(a\)](#), and voters may request an absentee ballot until 5:00 p.m. the Tuesday before election day. N.C.G.S. [§ 163-230.1](#). Finally, state law permits someone who "claims to be registered" and eligible to vote in an election but who "does not appear on the official list of registered voters" to cast a

provisional ballot. See [N.C.G.S. § 163-166.11](#).

SB 747 altered the SDR provisions in the following way:

- A SDR voter casts a “retrievable ballot” which is counted unless the county board of elections where the voter cast his/her ballot determines that the voter is not qualified to vote. SB747 § 10(a). A retrievable ballot is a ballot with an identifier to allow for retrievability. N.C.G.S. [§ 163-227.5](#) Under N.C.G.S. [§ 163-227.5](#), a statute undisturbed by S.B. 747, the State Board “shall adopt” standards for retrievable ballots, which mandates that ballots have a number or equivalent identifier to allow for retrievability such as those for absentee ballots printed in accordance. N.C.G.S. [§ 163-230.1](#).
- As part of the address verification process, the county boards of elections will retrieve any ballot if, before the close of canvass, the required address verification card is returned undeliverable. S.B. 747 § 10(a). This change was made at the request of the NCSBE because the time between early voting and the end of canvass did not allow sufficient time for the mailing and return of two verification cards.

Notably, SB747 does nothing to alter several existing election laws pertaining to same-day registration and early/absentee voting, including the requirement that individuals are notified if their voter registration application (which an SDR voter must complete) was rejected. This requirement, codified in N.C.G.S. [§ 163-](#)

[82.7\(b\)](#), requires that voters be notified of their denial of registration by certified mail within two days, and provides for appeals from the denial of registration. N.C.G.S. [§163-82.18](#). Nothing alters this provision, and in fact the NCSBE’s new numbered memo provides additional notification in the form of a challenge.

In Democracy NC V. Hirsch, the plaintiffs challenged several features of SB747. The defendants are the State Board of Elections and various legislative leaders. The defendants have filed a motion to dismiss the case and the federal court is still considering that motion. The core of the plaintiffs’ case is their claim that SB747’s changes to SDR disenfranchises voters.

A major flaw in the plaintiffs’ case is their reading of SB747 is incompatible with their claim that the pre-SB747 law was adequate. Same-day registrants complete the same registration application as timely registrants. See SB747 §10.(a); N.C.G.S. [§ 163-82.4](#). Although SDR voters are allowed to vote immediately after registration, the application is still subject to the same registration verification by the county boards of election as timely registration applications. If a same-day registrant’s registration is denied, they are then entitled to the same due process as all other timely registrants including those set forth in N.C.G.S. [§ 163-82.7\(b\)](#), [§ 163-82.18](#).

More importantly, Plaintiffs entirely ignore that under North Carolina law *all* registrants are entitled to vote a provisional ballot. The State’s provisional

ballot statutes and processes were unaltered by SB747. Those statutes are at N.C.G.S. [§ 163-82.4\(f\)](#), [§ 163-166.11](#).

Furthermore, Plaintiffs make much ado about the fact that voters who fail mail verification do not receive notice, but the pre-SB747 version of the law likewise provided no notice when a voter failed mail verification. And the statutory right to register and vote immediately has long been subject to a mail verification process. See [52 U.S.C. § 20507](#). Because Plaintiffs misinterpret the applicable statutory scheme, and identical due process is provided for registration denials of same-day registrants and timely registrants, the risk of harm under SB747 to a voter is minimal and no additional procedure is needed.

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Constitution of 197, art. I, §35  
Constitution of 1868, art. I, § 29  
Constitution of 1176, Declaration of Rights, § 21