

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO. \_\_\_\_\_

LEAGUE OF WOMEN VOTERS OF NORTH )  
CAROLINA, A. PHILIP RANDOLPH )  
INSTITUTE, UNIFOUR ONESTOP )  
COLLABORATIVE, COMMON CAUSE )  
NORTH CAROLINA, GOLDIE WELLS, KAY )  
BRANDON, OCTAVIA RAINEY, SARA )  
STOHLER, and HUGH STOHLER, )

*Plaintiffs,*

*vs.*

THE STATE OF NORTH CAROLINA, )  
JOSHUA B. HOWARD in his official capacity as a )  
member of the State Board of Elections, RHONDA )  
K. AMOROSO in her official capacity as a member )  
of the State Board of Elections, JOSHUA D. )  
MALCOLM in his official capacity as a member of )  
the State Board of Elections, PAUL J. FOLEY in )  
his official capacity as a member of the State Board )  
of Elections, MAJA KRICKER in her official )  
capacity as a member of the State Board of )  
Elections, and PATRICK L. MCCRORY in his )  
official capacity as Governor of the state of North )  
Carolina, )

*Defendants.*

COMPLAINT  
EQUITABLE RELIEF SOUGHT

Plaintiffs, complaining of Defendants, allege and say:

1. This is an action pursuant to 42 U.S.C. § 1983 and the Voting Rights Act of 1965, 42 U.S.C. § 1973, to secure equitable relief for the unlawful deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States. Plaintiffs are citizens and residents of North Carolina who will be harmed by the discriminatory and unduly burdensome

changes to North Carolina election laws encoded in the newly-enacted Voter Information Verification ACT (VIVA), including reductions in early voting, the elimination of same-day registration, and a prohibition on the counting of “out of precinct” provisional ballots. The organizational Plaintiffs are nonprofit, non-partisan groups who actively work to increase voter participation in North Carolina, and whose interests and resources will be directly harmed by these provisions. VIVA makes changes to North Carolina’s election laws that will eliminate registration and voting opportunities relied on by hundreds of thousands of North Carolinians in recent elections, directly denying the franchise or otherwise unreasonably making it harder for many North Carolinians to vote. Moreover, these changes to North Carolina’s election laws will result in longer lines throughout the remaining early voting period and on Election Day itself, further unduly burdening and denying the right to vote throughout North Carolina. As a result, Plaintiffs will be denied equal protection of the law and denied the equal right to vote, in violation of the equal protection clause of the United States Constitution. In particular, the effects of VIVA will be felt most keenly among African-American voters, causing them to have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The result will be the denial or abridgement of the right of African Americans in North Carolina to vote in contravention of Section 2 of the Voting Rights Act. Plaintiffs request that this Honorable Court grant relief in the form of, *inter alia*, a declaratory judgment and preliminary and permanent injunctions preventing Defendants from implementing the challenged provisions of the statute.

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3), and 1357; and 42 U.S.C. §§ 1983 and 1988.

3. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Plaintiff LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA (LWVNC) is a nonpartisan community-based organization, formed in 1920, immediately after the enactment of the Nineteenth Amendment to the U.S. Constitution granting women's suffrage. The LWVNC is dedicated to encouraging its members and the people of North Carolina to exercise their right to vote as protected by the U.S. Constitution and the Voting Rights Act of 1965. The mission of LWVNC is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The LWVNC impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process. Currently LWVNC has 16 local leagues and over 972 members, each of whom, on information and belief, is a registered voter in North Carolina. LWVNC is affiliated with the League of Women Voters of the United States, which was also founded in 1920. LWVNC began as an organization focused on the needs of women and the training of women voters; it has evolved into an organization concerned with educating, advocating for, and empowering all North Carolinians. With members in almost every county in the state, the LWVNC's local leagues are engaged in numerous activities, including hosting public forums and open discussions on issues of importance to the community. Individual league members invest substantial time and effort in voter training and civic engagement activities, including voter registration and get-out-the-vote (GOTV) efforts, including during the early voting period. LWVNC has developed a First Time

Voter Engagement Program that partners with local election boards and schools to encourage young voters to register to vote. LWVNC also devotes substantial time and effort to ensuring that government at every level works as effectively and fairly as possible. This work involves continual attention to and advocacy concerning issues of transparency, a strong and diverse judiciary, and appropriate government oversight.

6. Plaintiff NORTH CAROLINA A. PHILIP RANDOLPH INSTITUTE (NC APRI) is the North Carolina division of the national A. Philip Randolph Institute, the senior constituency group of the AFL-CIO dedicated to advancing racial equality and economic justice. APRI grew out of the legacy of African-American trade unionists' advocacy for civil rights and the passage of the federal Voting Rights Act and continues to advocate for social, political and economic justice for all working Americans. NC APRI is a statewide organization with local chapters across the state. Its chapters are located in Durham, Greensboro, the Piedmont, Raleigh, Roanoke Rapids and Fayetteville. NC APRI has members who are registered voters across North Carolina. NC APRI works to increase access to the polls, voter registration and voter education, particularly among working class African Americans. It distributes nonpartisan voter guides and hosts phone banks to encourage voter participation. APRI also organizes transportation to the polls throughout the early voting period, concentrating its efforts in predominantly African-American neighborhoods, and encourages first-time registration during the early voting period using same-day registration. NC APRI engaged in these efforts in 36 North Carolina counties in 2012. In addition to its civic engagement efforts, NC APRI is involved in many other activities as well: the organization engages in significant labor and workers' rights organizing and support efforts across the state; works on community services programs such as closing the health disparity gaps between white and African-American

communities; and runs a Feeding the Hungry initiative, which now feeds over 800 people per month, among other projects.

7. Plaintiff UNIFOUR ONESTOP COLLABORATIVE is a nonprofit, nonpartisan, advocacy and education organization headquartered in Conover, NC. Unifour OneStop Collaborative's mission is to promote educational achievement, social equality, and economic self-sufficiency among the underserved people of the Unifour Region and throughout North Carolina. Unifour OneStop Collaborative works to 1) increase voter participation; 2) increase understanding of best practices in voter participation field work; and 3) help politically marginalized citizens increase their civic engagement, hold their elected officials accountable to their communities, and achieve state-level reforms that benefit workers and disadvantaged communities. Unifour OneStop Collaborative works in 31 counties in North Carolina.

8. Plaintiff COMMON CAUSE NORTH CAROLINA (COMMON CAUSE NC) is a nonpartisan, nonprofit citizen's lobbying organization promoting open, honest and accountable government. Common Cause NC is a grassroots organization dedicated to restoring the core values of American democracy, reinventing an open, honest and accountable government that serves the public interest, and empowering ordinary people to make their voices heard in the political process. Common Cause NC is an affiliate of the national Common Cause organization, which was founded in 1970, and shares the same missions as the national Common Cause organization. In addition to lobbying for laws at the state level that would further its mission, Common Cause NC promotes civic engagement by devoting substantial time and effort to registration and GOTV efforts. In particular, in 2006, Common Cause NC started the Campus Outreach Project, which is designed to bolster civic engagement and awareness about important issues among students—especially problems caused by big money interests in politics—and then

converting that interest into action. Common Cause NC lobbied the North Carolina General Assembly for expanded early voting opportunities and the introduction of same-day registration.

9. The organizational Plaintiffs have standing to challenge VIVA, which eliminates registration and voting opportunities that have been used by hundreds of thousands of North Carolinians in recent elections and will thereby directly impair the organizational plaintiffs' mission of civic engagement. The law, which reduces early voting and ends same-day registration, will also make it substantially more difficult for the organizational Plaintiffs to engage in the GOTV and voter registration work that they perform in support of their civic engagement missions. The plaintiff organizations will be forced to expend even more attention and resources on voter registration and GOTV efforts in order to counteract the injuries inflicted by the law on the organizations' missions and their constituents. For example, the prohibition on same-day registration will force the organizational Plaintiffs to devote more resources to independent voter registration efforts before the close of voter registration 25 days prior to an election. The shorter early voting period will force the organizational Plaintiffs to devote more resources to GOTV efforts on the fewer remaining days of early voting and on Election Day itself. The result will be a drain on the organizational Plaintiffs' time and resources, which they will be forced to divert from their many other activities.

10. The organizational Plaintiffs also have associational standing because their members have standing to challenge the law. Several of the organizational Plaintiffs are membership organizations, and their members will be harmed by the restrictions on early voting, and the elimination of same-day registration and "out of precinct" provisional voting. These new laws will unduly burden the organizational Plaintiffs' members' ability to participate freely and equally in the political process and, in some cases, will deny the right to vote altogether.

11. Plaintiff GOLDIE WELLS is an African-American registered voter in Guilford County. She resides at 4203 Belfield Drive, Greensboro, NC 27405. She is a former member of the Greensboro City Council. She is active in civic engagement efforts in her community, the predominantly African-American community of Northeast Greensboro, including being a founding leader of the Greensboro Voter Alliance, whose mission is to register voters and encourage them to vote.

12. Plaintiff KAY BRANDON is an African-American registered voter in Guilford County. She resides at 1437 Old Hickory Drive, Greensboro, NC 27405. She is active in civic engagement efforts in her community, the predominantly African-American community of Northeast Greensboro, including participating in voter registration and GOTV work.

13. Plaintiff OCTAVIA RAINEY is an African-American registered voter in Wake County. She resides at 1516 E. Lane Street, Raleigh, NC 27610. She is an officer of Southeast Raleigh Community Association and active in voter registration and GOTV efforts.

14. Plaintiffs SARA STOHLER and HUGH STOHLER are white registered voters and residents of Wake County. They reside at 528 N. Bloodworth Street, Raleigh, NC 27604. They are active in their precinct and frequently use early voting because they work at the polls on Election Day.

15. The individual Plaintiffs have standing to bring this action because they are personally aggrieved in that they will have their rights burdened and infringed by the change in the early voting and registration laws in the state of North Carolina. The individual Plaintiffs have utilized in-person early voting and same-day registration, and have expended substantial efforts to encourage other voters to do the same. The challenged provisions of VIVA will eliminate modes of registration and voting relied on by the individual Plaintiffs in the past and

will unduly burden the right to vote, causing substantial hardship to the individual Plaintiffs in both exercising their own right to vote and in their efforts to promote voter participation in future elections.

16. This action is brought timely, in that VIVA was signed on August 12, 2013. The provisions that are challenged in this complaint go into effect starting January 1, 2014, and will first affect early voting (beginning in April) for the primary election in May of 2014.

17. Defendant STATE OF NORTH CAROLINA is a sovereign state in the United States.

18. Defendant JOSHUA B. HOWARD is the chairman of the North Carolina State Board of Elections and is being sued in his official capacity as a member of the State Board of Elections, which is charged with administering the election laws of the state of North Carolina.

19. Defendant RHONDA K. AMOROSO is being sued in her official capacity as a member and secretary of the State Board of Elections, which is charged with administering the election laws of the state of North Carolina.

20. Defendant JOSHUA D. MALCOLM is being sued in his official capacity as a member of the State Board of Elections, which is charged with administering the election laws of the state of North Carolina.

21. Defendant PAUL J. FOLEY is being sued in his official capacity as a member of the State Board of Elections, which is charged with administering the election laws of the state of North Carolina.

22. Defendant MAJA KRICKER is being sued in her official capacity as a member of the State Board of Elections, which is charged with administering the election laws of the state of North Carolina.



23. Defendant PATRICK L. MCCRORY is being sued in his official capacity as Governor of the state of North Carolina.

## **FACTUAL ALLEGATIONS**

### **Early Voting in North Carolina 2000-2012**

24. Legislation that would enable counties to offer early voting opportunities to their residents was first enacted in 1999 and first utilized in the presidential general election of 2000.

25. The authority to determine the extent of early voting opportunities during the days allowed under the statute was delegated to the counties. Counties are required to have at least one early voting site but may have more. Since 2000, the number of early voting sites open on each day of early voting, across the state, has increased exponentially.

26. Prior to the enactment of VIVA, North Carolina election laws provided for seventeen (17) days of early voting—starting on the third Thursday before an election and ending on the Saturday before the election—and that had been the law since 2001.

27. North Carolinians utilize early voting opportunities to an overwhelming extent. In the November 2012 elections, more than 2.5 million ballots were cast during early voting—more than half of all of the ballots cast in the election. In the November 2008 elections, approximately 2.4 million ballots were cast during early voting. North Carolinians have come to rely heavily on the opportunities the State used to provide for access to the ballot box.

28. Across the state, 366 sites accommodated early voting in the 2012 presidential general election. In the 2008 election, there were 368 early voting sites across the state.

29. Despite a 17-day early voting period and 366 early voting sites, North Carolina, on average, witnessed the tenth longest waiting times to vote out of all 50 states on Election Day in 2012.

30. Part 25 of VIVA cuts a full week off of the early voting period, including the first Sunday of early voting. This reduction in the early voting period will unduly burden the right to vote in at least two ways. First, it will eliminate early voting days during which 899,083 North Carolinians cast their ballots in the 2012 November general elections (or 19.96% of the entire electorate), directly depriving hundreds of thousands of voters an opportunity to vote .

31. Second, the inevitable result of eliminating seven days of early voting will be even longer lines and waiting times for all voters throughout the early voting period and on Election Day itself, unduly burdening the right to vote throughout the electorate and effectively denying the franchise to thousands of voters who are prevented or deterred from casting ballots. Part 33 of House Bill 589, however, eliminates the discretion of county boards of elections to direct polls to remain open an additional hour on Election Day.

32. Evidence from the 2012 presidential general election in Florida—where the state eliminated six days of the early voting period—demonstrates that reductions in the number of early voting days will result in dramatically longer lines on Election Day. With fewer opportunities to vote early, the number of individuals who voted early in Florida during the 2012 general election dropped by 10.7% in comparison to 2008. But even with fewer early voters, Florida experienced significantly more congestion during the early voting period. Because early voters were compressed into a shorter time frame, crowds were 50-100% greater during the 2012 general election early voting period in Florida, when compared to corresponding days during the 2008 general election. And, on Election Day itself, Florida experienced the longest average wait

times to vote of any state, with many voters casting ballots after midnight, and the last ballot cast nearly 8 hours after the polls closed. Waits were longest in predominantly minority communities. These undue burdens on the right to vote effectively deprived the franchise from hundreds of thousands of voters, with one study estimating that at least 201,000 voters gave up in frustration in the face of such long lines.

33. As was the case in Florida, the effects of reducing the number of early voting days will be felt disproportionately by minority voters and in precincts that serve predominantly minority voters. African-American voters disproportionately utilize early voting opportunities in North Carolina. In the 2012 general election, African-American voters made up 22.45% of registered voters and 23.08% of the actual (turned out) voters in that election, but cast at least 28.9% of ballots cast during the early voting period.

34. Moreover, at least 70.49% of African-American voters cast their ballot during early voting in the 2012 general election, as compared with 51.87% of white voters who cast their ballot during early voting for that election.

35. In the 2008 general election, African-American voters made up 21.69% of registered voters in the state and 22.32% of the actual (turned out) voters in that election but cast at least 28.52% of ballots cast during the early voting period.

36. Moreover, at least 70.92% of African-American voters cast their ballot during early voting in the 2008 general election, as compared with 50.95% of white voters who cast their ballots during early voting for that election.

37. During the first seven days of early voting in the 2012 November general elections, 296,093 African-American North Carolinians cast their ballots. At least 36.44% of all

the North Carolinians who voted during the first seven days of early voting that year were African American.

38. In early voting in the 2012 November general election, African-American voters demonstrated a pronounced peak in participation on the weekend, with white voters demonstrating a pronounced decline in participation on the weekends.

39. On the first Sunday of early voting in the 2012 November general election, African Americans cast 43.44% of all ballots cast, even though African-American voters constituted only 22.45% of the registered voters and 23.08% of the actual (turned out) voters in that election.

40. Many voters have a limited window of opportunity to go to the polls. For voters experiencing poverty, early voting significantly eases the burden of arranging transportation to the voting site, as well as providing flexibility in finding time to vote. Voters living in poverty often have limited access to transportation so a trip to a voting site may require time for a detour from their daily routes on public transportation or arranging a ride from a friend or relative. These voters are also more likely to have one or more hourly-wage jobs that do not allow workers enough time to go to the polls on Election Day or during common work hours generally. Those voters are frequently employed in jobs that do not allow any flexibility for stepping away to vote. Work, combined with childcare responsibilities, places great demands on voters living in poverty. Many such voters must vote early if they are to vote at all. The previous, seventeen-day early voting period allowed significant flexibility for these voters to arrange transportation and time to vote.

41. Poverty in North Carolina is higher amongst African Americans due in part to discrimination in areas such as education, employment, housing, and health. Because of such

inequalities, the reduction in early voting opportunities will have a disproportionate impact on African-American voters. In North Carolina, 28% of African Americans live in poverty according to the American Community Survey collected by the Census Bureau. Poverty is defined by the American Community Survey as income below a certain threshold based on the number of members of the household. In comparison, only 12.9% of whites live in poverty.

42. According to the 2010 American Community Survey data (5-year set), African Americans in North Carolina are 3.5 times more likely than whites to not own a vehicle. According to the survey, 4.14% of whites do not own a vehicle, but 14.35% of African Americans do not own a vehicle.

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

43. Legislation allowing for voters to register to vote during the early voting period, rather than only allowing them to vote if they were registered 25 days prior to the election, so-called “same-day registration” or “one-stop voting,” was first introduced in 2003. It was enacted in 2007 and went into effect in the 2007 municipal elections. In 2008, same-day registration was first offered in statewide elections. Before that, voters had to be registered 25 days prior to election. The 2007 legislation had bipartisan support. At least five different safety features were incorporated into the 2007 legislation to ensure that the integrity of elections would be preserved while simultaneously making it easier for North Carolinians to exercise their constitutional right to vote.

44. Turnout in North Carolina elections has substantially and impressively increased since the implementation of same-day registration. In the 2004 November general election, prior to the introduction of same-day registration, only 64.26% of registered voters actually cast a ballot, and only 54.78% of voters eligible by age cast a ballot. In the 2008 November general

election, the first presidential election in which same-day registration was offered, 69.53% of registered voters cast a ballot, and 60.91% of all voters eligible by age cast a ballot. That trend held in 2012. In the 2012 November general election, 68.42% of all registered voters cast a ballot, and 60.71% of all voters eligible by age cast a ballot.

45. North Carolinians extensively utilize same-day registration to register to vote for the first time and to make changes to their registrations while voting. In the 2012 general election, 97,357 voters registered to vote using same-day registration, and 152,565 voters used same-day registration to update their registrations at a one-stop early voting site.

46. During early voting in the 2008 Presidential election, 104,966 voters registered to vote using same-day registration, and 148,018 voters used same-day registration to update their registrations at a one-stop early voting site.

47. Part 16 of VIVA prohibits same-day Voter Registration, eliminating a means of voting utilized by approximately 100,000 voters during each of the last two presidential general elections.

48. The effect of prohibiting same-day registration will be felt most keenly by African-American voters, who disproportionately utilize same-day registration to register to vote or to update their registration. During early voting before the 2012 presidential general election, at least 34.01% of all new registrations using same-day registration were made by African-American voters, despite the fact that African Americans constituted only 22.45% of the registered voters and 23.08% of the actual (turned out) voters for that election. During that same period, at least 44.99% of all changed registrations using same-day registration were made by African-American voters. During early voting before the 2008 presidential general election, at least 35.32% of all new registrations using same-day registration were made by African-

American voters, despite the fact that African Americans constituted only 21.69% of the registered voters and 22.32% of the actual (turned out) voters for that election. During that same period, at least 36.21% of all changed registrations using same-day registration were made by African-American voters.

49. One reason that African-American voters are more likely to use same-day registration is that they are more likely to move than their white counterparts. According to the 2010 5-year Selected Population Tables from the 2006-2010 American Community Survey, in North Carolina, 20% of African Americans lived in a different house in 2010 than in 2009, compared to 14.3% of whites. 17.1% of African Americans had moved within the state, while 2.9% moved from out-of-state, compared to 10.9% of whites moving within the state and 3.4% moving from out-of-state.

50. Poverty also contributes to the disproportionately high usage of same-day registration by African Americans. As noted above, African Americans in North Carolina suffer from poverty at a substantially higher rate than do whites. In general, individuals living in poverty tend to have lower voter registration rates and move more frequently than other voters.

#### **“Out of Precinct” Voting in North Carolina**

51. Prior to the enactment of VIVA, North Carolina election law allowed for a voter who went to vote in a precinct to which he or she was not assigned, or an incorrect precinct, to cast a provisional ballot. The county board of elections would count that voter’s provisional ballot for all ballot items on which it determined the individual was eligible under state or federal law to vote. This ensured that a voter who went to or was directed to the wrong precinct would not be disenfranchised with respect to his vote for upper-ticket races such as President,

Governor, U.S. Senate, and other offices for which the voter was eligible to cast a ballot. This had been the law since 2001.

52. In legislation enacted in 2005, the General Assembly made the following findings:

(4) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that any individual who is a registered voter in a county but whose name does not appear on the official list of registered voters at the voting place at which that voter appears be allowed to cast a provisional official ballot.

(5) When it enacted G.S. 163-166.11, it was then and is now the intent of the General Assembly that all provisional ballots be counted for those ballot items for which a voter was eligible to vote. In enacting G.S. 163-166.11 in 2003, the General Assembly was fully mindful of and intended to reinforce the fact that prior statutory enactments in 2001 had already recognized the right of a voter to cast a provisional ballot and to have that ballot counted for all items for which that voter was eligible to vote....

(9) The General Assembly takes note of the fact that of those registered voters who happened to vote provisional ballots outside their resident precincts on the day of the November 2004 General Election, a disproportionately high percentage were African-American....

(11) It would be fundamentally unfair to discount the provisional official ballots cast by properly registered and duly qualified voters..."

S.L. 2005-2, § 1.

53. The State Board of Elections keeps data on the reasons for the casting of provisional ballots. For provisional ballots that are cast because the voter was in the wrong precinct, the provisional ballot is categorized as an "out of precinct" provisional ballot.

54. In the 2012 presidential general election, 7,486 "out of precinct" provisional ballots were cast, and 89.6% of those were either accepted or partially accepted.

55. Part 49.3 of VIVA provides that provisional ballots "shall not be counted if the voter did not vote in the proper precinct," even when the voter casting the provisional ballot is eligible under state or federal law to vote on certain items on that ballot.



56. As with the other challenged provisions, the prohibition on counting “out of precinct” provisional ballots will have a disparate impact on African Americans, who are disproportionately likely to cast “out of precinct” provisional ballots. In the 2012 presidential general election, African Americans cast at least 30.8% of all “out of precinct” provisional ballots, despite constituting only 22.45% of the registered voters and 23.08% of the actual (turned out) voters in that election. Of those “out of precinct” ballots cast by African-American voters, 93.4% were accepted or partially accepted.

57. Black voters disproportionately live in low-income neighborhoods without access to transportation or flexible work schedules that might allow them to get to their home precincts.

#### **The History and Current Pattern of Racial Discrimination in North Carolina**

58. North Carolina has a long and sad history of official discrimination against African Americans, including official discrimination in voting that has touched upon the right of African Americans and other people of color to register, vote, or otherwise participate in the democratic process. Over the past 30 years in North Carolina, there have been over thirty (30) successful cases brought under Section 2 of the Voting Rights Act and forty (40) objections to discriminatory changes to voting laws lodged by the Department of Justice under Section 5 of the Voting Rights Act, 42 U.S.C. § 1973b, many of which were based in whole or in part on findings of discriminatory purpose. Based on concerns about intimidation at the polling place, the United States Justice Department sent federal observers to North Carolina to help enforce federal voting rights laws that protect ballot access in the November 2012 general election.

59. Up through recent history, political campaigns in North Carolina have been characterized by overt or subtle racial appeals, including discriminatory campaign tactics and racial appeals in elections deliberately and demonstrably designed to keep African Americans

from registering and turning out to vote. Such tactics continue to affect the ability of African Americans to participate in the political process.

60. Elected officials in North Carolina demonstrate a lack of responsiveness to the interests of minority communities.

61. The present effects of current and past discrimination affect the ability of African-American voters to participate effectively in the political process.

62. There is a significant history and ongoing pattern of discrimination in education, housing, employment and health services in North Carolina which causes African Americans as a group to have less access to transportation and health care, and to be less well-educated, less well-housed, lower-paid, and more likely to live in poverty than their white counterparts. Past and ongoing discrimination in these areas causes higher rates of poverty amongst African Americans. This hinders the ability of African Americans to participate effectively in the political process, causing African Americans to be more likely to rely on the very modes of participation (such as early voting and same-day registration) that are reduced or eliminated by the challenged provisions.

#### **Legislative History of House Bill 589 (VIVA)**

63. During the last week of the 2013 legislative session, the North Carolina General Assembly enacted sweeping changes to North Carolina's election laws, undoing many of the improvements made to access to the ballot in the last fourteen years.

64. House Bill 589 was first introduced in the House on April 4, 2013, and proposed changes to the State's requirements for proving identity when voting in person and some changes to how absentee ballots are requested and submitted. It contained no provisions that affected early voting, same-day registration, or "out of precinct" voting.

65. On April 24, 2013, the bill passed Third Reading in the House and was referred to the Committee on Rules and Operation of the Senate. The bill at that point still contained no provisions that affected early voting, same-day registration, or “out of precinct” voting.

66. The Senate took no action on House Bill 589 for three months, until July 23, 2013, at which point an amendment was offered that dramatically increased the scope of the bill. In addition to even stricter government-issued photo ID requirements for in-person voters, the amended House Bill 589 at that point included: reductions in early voting; the elimination of same-day registration; a provision that explicitly prevented county boards of election from counting “out of precinct” voting; the elimination of discretion for county boards of elections to direct that polls remain open for an additional hour on Election Day; the elimination of pre-registration for 16- and 17-year-olds; the elimination in flexibility for the county boards of election to open early voting sites at different hours within a county; the elimination of straight party ticket voting; the authorization of rogue poll observers to challenge voters with an expanded range of authority; added regulations that make it more difficult to add satellite polling sites for the elderly or voters with disabilities; and many more changes.

67. These drastic changes were introduced only one day before the Senate passed the amended bill and only two days before the House passed the bill.

68. Specifically, Part 16 of the bill prohibits same-day voter registration, repealing G.S. 163-82.6A (except for subsection (e)).

69. Part 25 of the bill amends G.S. 163-227.2 to cut a full week off of the early voting period. Early voting now may only begin the second Thursday before an election, rather than the third Thursday before an election. Part 25 also amends G.S. 163-227.2 to end early voting on the last Saturday before an election at 1:00 P.M., where counties had previously been authorized to

conduct voting on that day until 5:00 P.M. Although, as a practical matter, early voting sites and hours are not interchangeable to voters, Part 25 of the bill treats them as fungible. It permits each county to reduce the total number of early voting hours offered, so long as the county offsets a reduction in early voting hours by operating additional early voting sites. The ability of this provision to mitigate for the loss of a week of early voting is further undermined by another provision of law, Part 25.1(g), which requires that all early voting sites within each county be open uniformly for the same days of operation and same number of hours of operation on each day. This deprives County Boards of Elections of the flexibility to keep certain early sites open later, depending on community needs. Moreover, despite the fact that a reduction in early voting days will translate to longer lines to vote on Election Day, Part 33 of the bill amends G.S. 163-166.01 to eliminate the discretion of county boards of elections to direct polls to remain open an additional hour on Election Day under extraordinary circumstances.

70. Part 49.3 of the bill amends G.S. 163-166.11(5) to note that provisional ballots “shall not be counted if the voter did not vote in the proper precinct” even when the individual casting the provisional ballot is eligible under state or federal law to vote on certain ballot items on the provisional ballot.

71. During the Senate Committee hearing, the Senate floor debate, and the House floor debate, all conducted within the last 48 hours of the legislative session, members of the General Assembly were made aware of the burdens that these changes would place on the exercise of the franchise of all North Carolinians. The members were also made aware of the disparate negative impact that the reduction in early voting, the elimination of same-day registration, and the prohibition on the counting of “out of precinct” provisional ballots would have on African Americans.

72. The reduction in early voting, the elimination of same-day registration, and the prohibition on the counting of “out of precinct” ballots are not supported by any plausible rationales or benefits to the State, even cost. Indeed, a former Executive Director of the State Board of Elections, has publicly opined that reducing the early voting period would cause more congestion on the remaining voting days and would require more staff training and recruitment for polling stations, resulting in more expenses to the State and to counties.

73. Not a single African-American member of the House or the Senate voted in favor of House Bill 589.

74. VIVA is only one of many measures the General Assembly has passed with full knowledge of the resulting negative effects on African Americans. For example, the General Assembly repealed the landmark Racial Justice Act, which allowed judges to reduce the sentence of a death-row inmate to life in prison without parole if the inmate could prove that racial bias was a factor in their sentence.

### **FIRST CLAIM FOR RELIEF**

(Denial of Equal Protection under the 14<sup>th</sup> Amendment to the U.S. Constitution Pursuant to 42 U.S.C. § 1983)

75. Plaintiffs rely herein upon all of the paragraphs of this Complaint. The equal protection clause of the Fourteenth Amendment prohibits the states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1. This provision also prohibits states from imposing severe burdens upon the fundamental right to vote unless they are narrowly tailored to advance a compelling state interest. It requires that any

state election law that imposes reasonable and non-discriminatory restrictions on the right to vote be justified by an important state regulatory interest. The court:

must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”

*Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983)).

76. Here, Plaintiffs’ right to vote is burdened by the arbitrary and unjustified reduction in early voting days, and the loss of same-day registration and “out of precinct” provisional voting opportunities. Hundreds of thousands of voters relied on these methods of participation in recent elections and will now be denied an opportunity to do so. Voters who cannot adjust to the truncated early voting period, who fail to register in time, or who go to or are directed to vote in the incorrect precinct will be disfranchised. Other voters will encounter longer lines, undue delay, and in many cases, be prevented from voting altogether due to increased congestion during the remaining early voting period and on Election Day. In contrast, there are no plausible benefits to the State.

### **SECOND CLAIM FOR RELIEF**

(Denial of Equal Protection under the 14<sup>th</sup> Amendment to the U.S. Constitution Pursuant to 42 U.S.C. § 1983)

77. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

78. The equal protection clause of the Fourteenth Amendment prohibits the states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.” U.S.

Const. amend. XIV, § 1. This provision prevents a state and its officials from discriminatorily or arbitrarily treating qualified voters differently on account of their race or skin color.

79. A motivating purpose behind VIVA was to suppress the turnout and electoral participation of African-American voters, who disproportionately vote early and use same-day registration and “out of precinct” voting.

80. At the time of the law’s enactment, the General Assembly had before it evidence that African-American voters use early voting, same day registration, and “out of precinct” voting at higher rates than white voters. The General Assembly eliminated or reduced these ballot access opportunities with knowledge that such action would affect African-American voters at substantially higher rates than white voters. The legislature enacted HB 589 with minimal public debate on an extremely compressed legislative schedule, with the bill passing both houses of the legislature after only two days of debate on its full contents.

81. Both the discriminatory effect of a statute and its legislative history are relevant factors in analyzing a statute for discriminatory intent. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977).

82. Evidence in the record before the General Assembly shows that VIVA was enacted with the intent to discriminate against African-American voters.

### **THIRD CLAIM FOR RELIEF**

(Section 2 of Voting Rights Act of 1965, 42 U.S.C. § 1973)

83. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

84. Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973(a) provides:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial of

abridgment of the right of any citizen of the United States to vote on account of race or color.

85. African-American citizens in North Carolina, as a group, disproportionately participate in early in-person voting, utilize same-day registration opportunities during early voting, and utilize “out of precinct” voting opportunities on Election Day. They do so in part because, as a group, African Americans’ ability to participate effectively in the political process has been hindered by discrimination and resulting socio-economic inequalities.

86. The changes in G.S. 163-227 that reduce the number of days in which early voting is allowed, from 17 days to 10 days, and reduce the number of hours offered on early voting the last Saturday before an election, were enacted with the intention of suppressing the votes of African-American voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

87. The changes in G.S. 163-227 that reduce the number of days in which early voting is allowed, from 17 days to 10 days, and reduce the number of hours offered on early voting the last Saturday before an election, will result in the denial or abridgment of the right to vote of the individual Plaintiffs and others on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

88. The reduction in early voting will interact with social and historical conditions—which are themselves largely due to discrimination in areas such as education, employment, housing, health services, and voting—to cause an inequality in the opportunities enjoyed by African-American and white voters to elect their preferred representatives.

89. Under the totality of the circumstances, the reduction in early voting will result in the dilution of African-American voting strength.



90. The change in G.S. 163-82.6A that prohibits same-day registration was enacted with the intention of suppressing the votes of African-American voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

91. The change in G.S. 163-82.6A that prohibits same-day registration will result in the denial or abridgment of the right to vote of the individual Plaintiffs and others on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

92. The prohibition on same-day registration will interact with social and historical conditions—which are themselves largely due to discrimination in areas such as education, employment, housing, health services, and voting—to cause an inequality in the opportunities enjoyed by African-American and white voters to elect their preferred representatives.

93. Under the totality of the circumstances, the prohibition on same-day registration will result in the dilution of African-American voting strength.

94. The change in G.S. 163-166.11(5) that prohibits the acceptance or partial acceptance of “out of precinct” provisional ballots was enacted with the intention of suppressing the votes of African-American voters in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

95. The change in G.S. 163-166.11(5) that prohibits the acceptance or partial acceptance of “out of precinct” provisional ballots will result in the denial or abridgment of the right to vote of the individual Plaintiffs and others on account of race or color in violation of Section 2 of the Voting Rights Act, 42 U.S.C. § 1973.

96. The prohibition on counting “out of precinct” provisional ballots will interact with social and historical conditions—which are themselves largely due to discrimination in areas such as education, employment, housing, health services, and voting—to cause an inequality in

the opportunities enjoyed by African-American and white voters to elect their preferred representatives.

97. Under the totality of circumstances, the prohibition on the counting of “out of precinct” provisional ballots will result in the dilution of African-American voting strength.

#### **FOURTH CLAIM FOR RELIEF**

(Section 3(c) of Voting Rights Act of 1965, 42 U.S.C. § 1973)

98. Plaintiffs rely herein upon all of the paragraphs of this Complaint.
99. Section 3(c) of the Voting Rights Act provides as follows:

If in any proceeding instituted by the Attorney General or an aggrieved person under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment in any state or political subdivision the court finds that violations of the fourteenth or fifteenth amendment justifying equitable relief have occurred within the territory of such a state or political subdivision, the court, in addition to such relief as it may grant, shall retain jurisdiction for such a period as it may deem appropriate and during such period no voting qualification or prerequisite to voting or standard, practice, or procedure with respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of this title: Provided, that such qualification, prerequisite, standard, practice, or procedure may be enforced if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the court's finding nor the Attorney General's failure to object shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice or procedure.

42 U.S.C. § 1973a(c).

100. Section 3(c) requires that a court, after finding that a jurisdiction has committed constitutional violations, in addition to any equitable remedy imposed, retain jurisdiction for a time it deems appropriate and require that the jurisdiction obtain preclearance from the court or the Attorney General for any changes to designated voting practices or procedures. This is known as “bail-in” or “pocket trigger.”

101. Here, the General Assembly has discriminated against African Americans and other voters of color in violation of the Fourteenth Amendment, and thus coverage under Section 3(c) is mandated under the Voting Rights Act.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs ask that the Court:

1. Declare that the challenged provisions of VIVA violate the equal protection clause of the Fourteenth Amendment to the United States Constitution and the Voting Rights Act of 1965; and
2. Declare that the rights and privileges of Plaintiffs will be irreparably harmed without the intervention of this Court to secure those rights for the exercise thereof in a timely and meaningful manner; and
3. Enjoin preliminarily and permanently the Defendants, their agents, officers and employees, from enforcing or giving any effect to the provisions of VIVA that relate to early voting or one-stop voting (same-day registration) in any election, “out of precinct” voting, and the discretion of county boards of elections to direct polls to remain open an additional hour on Election Day; and
4. Retain jurisdiction for such a period as it may deem appropriate, and during such period, no voting qualification or prerequisite to voting or standard, practice, or procedure with

respect to voting different from that in force or effect at the time the proceeding was commenced shall be enforced unless and until the Court finds that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the voting guarantees set forth in section 1973b(f)(2) of the Voting Rights Act.

5. Make all further orders as are just, necessary, and proper to preserve Plaintiffs' constitutional rights to participate equally in elections; and

6. Award Plaintiffs their costs, disbursements and reasonable attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. §§ 1988, 1973l(e); and

7. Grant such other relief as the Court deems just and proper.

Dated this 12th day of August, 2013.

/s/ Allison J. Riggs

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