



Kinston regarding a change in elections from a partisan election system to a nonpartisan election system. Defendant is without sufficient information to form a belief about whether Plaintiffs are indeed voters, prospective candidates, and proponents or sponsors of the citizen referendum, including any claim concerning Plaintiffs' efforts to pass the referendum, and therefore denies those allegations. Plaintiffs' allegation concerning nullification is a statement of law and/or conclusion of law to which no response is required. If deemed to allege facts, Defendant admits that the Attorney General objected to the change in the election system and such objection, in conjunction with other factors in this case, prevents the change from taking effect. Defendant denies that Section 5 is unconstitutional and denies that Plaintiffs are entitled to any relief on their claims.

2. Defendant lacks knowledge or information sufficient to form a belief about whether Stephen LaRoque is a registered voter and resident of Kinston or whether he is a former state legislator, and therefore denies that allegation. Defendant lacks knowledge or information sufficient to form a belief about what is meant by "is involved in politics," or "intends to offer additional positive changes to Kinston's electoral system in the future", and therefore denies that allegation. Defendant lacks knowledge or information sufficient to form a belief about whether LaRoque organized the "petition drive" to place the referendum on the ballot, and therefore denies that allegation. Defendant admits that the referendum passed with 64% of the vote and received the majority of the votes in 5 of 7 of Kinston's majority-black precincts. Defendant, however, denies the allegations in paragraph 2 insofar as they purport that a majority of black voters supported the referendum.

3. Defendant lacks knowledge or information sufficient to form a belief about whether the allegations in paragraph 3 are true, and therefore denies those allegations.

4. Defendant lacks knowledge or information sufficient to form a belief about whether the allegations in paragraph 4 are true, and therefore denies those allegations.

5. Defendant lacks knowledge or information sufficient to form a belief about whether the allegations in paragraph 5 are true, and therefore denies those allegations.

6. Defendant lacks knowledge or information sufficient to form a belief about whether the allegations in paragraph 6 are true, and therefore denies those allegations.

7. Defendant lacks knowledge or information sufficient to form a belief about whether the allegations in paragraph 7 are true, and therefore denies those allegations.

8. Defendant admits the allegations in paragraph 8.

9. Defendant admits the allegations in paragraph 9 only to the extent that 28 U.S.C. 1331 grants federal courts original jurisdiction over civil actions arising under the Constitution or laws of the United States and only to the extent that the United States District Court for the District of Columbia is the only court in which an action can be brought seeking a declaration of the unconstitutionality of a provision of the Voting Rights Act under Section 14(b), 42 U.S.C. 1973l(b). The allegation that this court has jurisdiction pursuant to 28 U.S.C. 1343 is a statement of law and/or conclusion of law to which no response is required. Defendant continues to maintain that this Court lacks subject matter jurisdiction over all of Plaintiffs' claims. Defendant further avers that there is no cause of action for Plaintiffs to bring claims based on the Attorney General's objection.

10. Defendant denies that Plaintiffs' claims may be heard by a three-judge panel.

11. Defendant admits the allegations in paragraph 11.

12. The allegations in paragraph 12 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant lacks knowledge or information sufficient to form a belief what is meant by “periodic,” and whether elections in Kinston are conducted in compliance with the Voting Rights Act, and therefore denies those allegations.

13. Defendant lacks knowledge or information sufficient to form a belief about the number of localities in North Carolina that hold partisan elections, and therefore denies those allegations.

14. Defendant admits that the Kinston City Council voted to place the referendum on the ballot for the November 2008 election. Defendant avers that North Carolina General Statute § 160A-104 speaks for itself. Defendant lacks knowledge or information sufficient to form a belief about whether the remaining allegations in paragraph 14 are true, particularly those allegations relating to purported actions of the Plaintiffs, and therefore denies those allegations.

15. Defendant admits that the referendum passed with 64% of the vote and received the majority of the votes in 5 of 7 of Kinston’s majority-black precincts. Defendant, however, denies the allegations in paragraph 15 insofar as they purport that a majority of black voters supported the referendum.

16. Defendant admits the allegations in paragraph 16.

17. Defendant lacks knowledge or information sufficient to form a belief about whether there has ever been “any” finding that Kinston engaged in discriminatory practices in

voting, and therefore denies those allegations. Defendant admits the remaining allegations in paragraph 17.

18. Defendant admits the allegations in paragraph 18.

19. Defendant admits that paragraph 19 quotes the objection letter. Defendant avers that the objection letter speaks for itself.

20. Defendant denies the first clause of paragraph 20. To the extent the remainder of paragraph 20 is a statement of fact, it is admitted. To the extent paragraph 20 alleges a violation of any statutory or constitutional provision, it is denied.

21. The allegations in paragraph 21 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations of paragraph 21 only to the extent that Congress reauthorized Section 5 until 2031. If deemed to allege facts, Defendant denies the remainder of the allegations in paragraph 21. Defendant avers that the Voting Rights Act and its legislative history speak for themselves.

22. The allegations in paragraph 22 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant lacks knowledge or information sufficient to form a belief about the speculative allegations referred to in paragraph 22, including current conditions in Lenoir County, voter turnout and voter registration for the November 2008 general election, and whether “any” analysis of the conditions in the City of Kinston has been undertaken, and therefore denies those allegations. Defendant further avers that the Voting Rights Act, its coverage determinations, and its legislative history speak for themselves.

23. The allegations in paragraph 23 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits that Section 5 requires covered jurisdictions and political subdivisions to seek preclearance for voting changes. If deemed to allege facts, Defendant denies the remainder of the allegations in paragraph 23. Defendant denies that the preclearance process is costly, burdensome, or requires unnecessary or disruptive delays. Defendant lacks knowledge or information sufficient to form a belief about the speculative allegations concerning “essential attributes of self-governance” and therefore denies those allegations. Defendant denies the allegations in paragraph 23 insofar as they purport that a majority of minority voters may have supported the referendum. Defendant further avers that the Voting Rights Act and its legislative history speak for themselves.

24. The allegations in paragraph 24 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations in paragraph 24 only to the extent that Congress made amendments to Section 5 when it reauthorized it in 2006. If deemed to allege facts, Defendant denies the remainder of the allegations in paragraph 24. Defendant denies that those changes “coerce jurisdictions to maintain and adopt race-based electoral schemes that prefer certain groups.” Defendant further avers that the Voting Rights Act and its legislative history speak for themselves.

25. The allegations in paragraph 25 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations in paragraph 25 only to the extent that Section 5 was amended in the 2006 reauthorization. If deemed to allege facts, Defendant denies the remainder of the allegations in paragraph 25. Defendant denies that the 2006 amendment “established a floor for minority electoral success in

all covered jurisdictions until 2031, regardless of whether minorities in those jurisdictions have an equal opportunity to elect their preferred candidates or to participate in the political process under the voting change, and regardless of whether there are compelling reasons supporting the voting change.” Defendant further avers that the Voting Rights Act and its legislative history speak for themselves.

26. The allegations in paragraph 26 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations in paragraph 26 only to the extent that Section 5 was amended in the 2006 reauthorization. If deemed to allege facts, Defendant denies the remainder of the allegations in paragraph 26. Defendant lacks knowledge or information sufficient to form a belief about what Plaintiffs mean by “[p]articularly given the Justice Department’s Section 5 enforcement record concerning changes that do not increase minority-preferred candidates’ success to the maximum practicable extent, this expansion of Section 5’s scope constitutes at least an implicit command for covered jurisdictions to engage in race-based voting practices and procedures” and therefore denies those allegations. Plaintiffs have not pled with specificity what past enforcement practices they are referencing and how such practices allegedly render the 2006 amendments to Section 5 unconstitutional. Defendant denies that Section 5 as amended constitutes any command for covered jurisdictions to engage in any unconstitutional voting practices and procedures. Defendant further avers that the Voting Rights Act as amended and its legislative history speak for themselves.

27. The allegations in paragraph 27 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations in

paragraph 27 only to the extent that a voting change may not be implemented unless and until the covered jurisdictions obtains preclearance from either the District Court in the District of Columbia or from the Attorney General. Defendant denies that Section 5 “presumptively” invalidates voting changes. Defendant further denies the allegations in paragraph 27 insofar as they assert that the Attorney General’s objection in Kinston is the sole cause of the referendum not being implemented. Defendant further avers that the Voting Rights Act as amended speaks for itself.

28. The allegations in paragraph 28 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant lacks knowledge or information sufficient to form a belief about whether the partisan election scheme “fundamentally alters the competitive environment” in Kinston, or whether it “directly increases the burdens and costs for candidates,” or even whether Nix and Northrup will be candidates and therefore denies those allegations. Defendant avers that the North Carolina statutes speak for themselves. Defendant denies that a partisan election system “forces candidates” “to associate with a political party or disassociate from all of them,” in such a way that “burden[s] their freedom of political association.” Defendant lacks knowledge or information sufficient to form a belief whether the partisan election system forces candidates to “anticipate and respond to a broader range of competitive tactics and issues,” or whether it “substantially harms their changes for election by, among other things, making party affiliation a factor in voter’s choices” and therefore denies those allegations.

29. The allegations in paragraph 27 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant admits the allegations in

paragraph 29 only to the extent that the Attorney General's objection to the voting change effectively barred the implementation of that voting change unless or until Kinston obtained preclearance from the District of Columbia District Court or the Attorney General. Defendant lacks knowledge or information sufficient to form a belief concerning what efforts if any were nullified by the objection or whether the partisan election system will "impose additional burdens and costs on candidates" that Plaintiffs support and therefore denies those allegations. Defendant denies that denial of preclearance "nullified and infringed" Plaintiffs' right "under North Carolina law to participate in the electoral, political and law-making process through citizen referenda." Defendant further denies that partisan primaries and general elections burden Plaintiffs' "right to politically associate, or refrain from associating with others." Defendant further avers that the Voting Rights Act as amended speaks for itself.

30. The allegations in paragraph 30 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies the allegations in paragraph 30. Defendant further avers that the Voting Rights Act as amended speaks for itself.

31. The allegations in paragraph 31 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies that Section 5 imposes "immediate or threatened injury" to any Plaintiffs. Defendant further denies that any individual members of KCNV have standing to bring this suit. Defendant lacks knowledge or information sufficient to form a belief about whether KCNV's purpose of eliminating partisan municipal elections in Kinston is germane to those of any of its members, or whether any claim asserted or relief requested by KCNV requires the participation of KCNV's members and therefore denies those allegations.

32. In response to paragraph 32, Defendant incorporates by reference the responses in paragraphs 1 through 31 of this Answer as fully set forth herein.

33. The allegations in paragraph 33 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies the allegations in paragraph 33.

34. The allegations in paragraph 34 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies the allegations in paragraph 34.

35. In response to paragraph 35, Defendant incorporates by reference the responses in paragraphs 1 through 34 of this Answer as fully set forth herein.

36. The allegations in paragraph 36 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies the allegations in paragraph 36.

37. The allegations in paragraph 37 are statements of law and/or conclusions of law to which no response is required. If deemed to allege facts, Defendant denies the allegations in paragraph 37.

### **Request for Relief**

1. In Response to Request for Relief paragraph 1, Defendant denies that Plaintiffs are entitled to a declaratory judgment.

2. In Response to Request for Relief paragraph 2, Defendant denies that Plaintiffs are entitled to a declaratory judgment.

3. In Response to Request for Relief paragraph 3, Defendant denies that Plaintiffs are entitled to injunctive relief.

4. In Response to Request for Relief paragraph 4, Defendant denies that Plaintiffs are entitled to injunctive relief.

5. In Response to Request for Relief paragraph 5, Defendant denies that Plaintiffs are entitled any other relief.

Any allegations not specifically admitted herein are denied

**AFFIRMATIVE DEFENSES**

Defendant avers that this Court lacks subject matter jurisdiction over some or all of Plaintiffs' claims due to Plaintiffs' lack of standing and lack of ripeness of the issues presented.

Date: July 22, 2011

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Respectfully submitted,

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*/s/ Richard Dellheim* \_\_\_\_\_

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2011, I served a true and correct copy of the foregoing via the Court's ECF system, to the following counsel of record:

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