IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA STATE CONFERENCE OF
THE NAACP, EMMANUEL BAPTIST CHURCH,
NEW OXLEY HILL BAPTIST CHURCH,
BETHEL A. BAPTIST CHURCH, COVENANT
PRESBYTERIAN CHURCH, CLINTON
TABERNACLE AME ZION CHURCH,
BARBEE’S CHAPEL MISSIONARY BAPTIST
CHURCH, INC., ROSANELL EATON,
ARMENTA EATON, CAROLYN COLEMAN,
BAHEEYAH MADANY, JOCELYN FERGUSON-
KELLY, FAITH JACKSON, MARY PERRY, and
MARIA TERESA UNGER PALMER

Plaintiffs,

v.

PATRICK LLOYD MCCRARY, in his official
capacity as the Governor of North Carolina, KIM
WESTBROOK STRACH, in her official capacity as
Executive Director of the North Carolina State
Board of Elections, JOSHUA B. HOWARD, in his
official capacity as Chairman of the North Carolina
State Board of Elections, RHONDA K. AMOROSO,
in her official capacity as Secretary of the North
Carolina State Board of Elections, JOSHUA D.
MALCOLM, in his official capacity as a member of
the North Carolina State Board of Elections, PAUL
J. FOLEY, in his official capacity as a member of
the North Carolina State Board of Elections and
MAJA KRICKER, in her official capacity as a
member of the North Carolina State Board of
Elections,

Defendants.

DECLARATION OF
ELEANOR G. KINNAIRD
Case No.: 1:13-CV-658

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

   Plaintiffs,

v.

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 LLOYD MCCORY, in his official
capacity as the Governor of North Carolina,

   Defendants.

UNITED STATES OF AMERICA,

   Plaintiffs,

v.

THE STATE OF NORTH CAROLINA; THE
NORTH CAROLINA STATE BOARD OF
ELECTIONS; and KIM W. STRACH, in her official
capacity as Executive Director of the North Carolina
State Board of Elections,

   Defendants.
Declaration of Eleanor G. Kinnaird

I, Eleanor G. Kinnaird, hereby declare as follows:

1. I am a U.S. citizen, resident of Orange County, North Carolina, and a registered voter. Until August 19, 2013, I was the elected representative for North Carolina Senate District 23, which encompasses portions of Chatham and Orange counties.

2. I served over 16 years in the North Carolina Senate, and I was serving in the Senate when the General Assembly passed House Bill 589 (HB 589) in July 2013.

3. I resigned my seat in the Senate on August 19, 2013, because I was dismayed to see the General Assembly dismantling many of the programs and practices that I and so many of my colleagues worked so hard to enact. I was particularly distressed by the changes to North Carolina election law contained in HB 589, which represent a significant rollback of the work I and others had done since the 1990s to expand access to the ballot in North Carolina.

4. Proponents of HB 589 in the General Assembly said they wanted to prevent voter fraud by enacting a voter photo identification bill. The bill they pushed through the General Assembly in the final days of the 2013 legislative session, however, included only about five pages related to a voter photo identification requirement and dozens more pages of other provisions, many of which will have the effect of reducing access to the ballot. During the limited debate Senate leadership permitted on HB 589, the bill proponents offered virtually no justification for these new and highly restrictive measures, and they offered no response to criticism by the bill’s opponents, myself included, that many of HB 589’s provisions would have a discriminatory impact on voters in certain demographic groups.

5. I believe HB 589 will restrict access to the ballot, particularly among groups of voters, like African Americans and young voters, who were broadly enfranchised by election practices instituted during my tenure in the General Assembly, which have now been eliminated.
or curtailed by HB 589. Indeed, I believe the purpose behind the bill was to restrict access to
voting by these groups specifically.

Background

6. I received my bachelor’s degree from Carleton College, in Northfield, Minnesota,
and a master’s degree in Music from the University of North Carolina at Chapel Hill.

7. I have been long been active in North Carolina elections. In 1987, I was elected
Mayor of Carrboro, North Carolina. I served four terms as mayor.

8. While serving as mayor, I earned a law degree from North Carolina Central
University, and entered private practice.

9. In 1996, I ran for and won a seat in the North Carolina Senate. I served eight
terms and a portion of a ninth term in the Senate. Although the contours of my district evolved
over time, it was always centered on Orange County and included Chapel Hill and the University
of North Carolina’s Chapel Hill campus. I frequently gave talks and attended political events on
campus during my time in the Senate.

10. My service as a member of the North Carolina Senate since 1997 and my active
participation in the 2013 legislative debates surrounding HB 589 enable me to speak with
personal knowledge on the legislative process and impact of HB 589.

Pre-HB 589 Election Laws in North Carolina

11. One of the first bills I sponsored after joining the North Carolina Senate was a bill
to authorize a centralized polling place on campus for students at the University of North
Carolina, Chapel Hill. Several student leaders – I believe one of them was the student body
president – requested a meeting to discuss voting-related issues of particular importance to the
students. They explained that UNC students lived all over Chapel Hill and often did not know
where they were supposed to vote on Election Day. The students thought a single, centralized
voting site on campus would help reduce confusion and increase turnout among the student
population, and I agreed. Although this particular bill did not become law, it was the precursor
to the successful early voting bill that I sponsored in 1999. The students also wanted the
registrar’s office to supply voter registration forms so that students could register to vote when
they went to the registrar’s office to register for classes at the beginning of the semester. I
introduced a bill addressing this request. These days, students register online and do not
regularly visit the registrar’s office. Same-day registration took the place of these paper
registration forms for many students.

12. In 1999, I introduced SB 568, which authorized no-excuse early voting for the
first time in North Carolina. The bill also allowed county boards of election to offer early voting
at multiple sites. Under prior law, early voting could be conducted only at county board of
elections offices, and it was only available to voters who could claim one of a few limited
excuses for not being able to vote in person on election day. SB 568 applied only to even-
numbered year general elections. Other elections – primaries and odd-numbered year elections,
such as municipals – were still subject to the excuse requirement in prior law. SB 568 (S.L.
1999-455) passed in 1999.

13. Early voting proved to be quite popular in the 2000 general election, and it grew
from there. In 2001, the General Assembly passed HB 977 (S.L. 2001-337), which expanded no-
excuse early voting from even-numbered year general elections to all elections, including
primaries and municipal elections. Then-Representative Martin Nesbitt, who had guided my
early voting bill through the North Carolina House of Representatives in 1999, sponsored HB
977, and it passed with overwhelming majorities in both houses.
14. In 2001, the General Assembly also passed HB 831 (S.L. 2001-319), which set the early voting period at 17 days – from the third Thursday before Election Day until the Saturday before Election Day. It required counties to offer early voting on the final Saturday before the election, and permitted them to conduct early voting on evenings and other weekends during the early voting period (previously, early voting was available only during regular business hours). The 17-day early voting period that HB 831 established was the law in North Carolina until 2014, when HB 589 took effect, and the early voting period was cut to 10 days.

15. In 2007, the General Assembly further expanded access to the ballot by authorizing same-day registration during early voting (HB 91 (S.L. 2007-253)); and in 2009, we passed HB 908 (S.L. 2009-541), which among other things allowed 16- and 17-year olds to preregister to vote so that their names would automatically appear on the voter rolls when they turned 18.

16. The General Assembly passed these and other bills because expanding access to the franchise was a core democratic value that we embraced. Many of us were looking for ways to eliminate structural barriers to the vote. No excuse early voting seemed a natural way to provide greater flexibility and make it easier for voters to access the franchise. Generally speaking, a majority of legislators in the General Assembly believed that voting should be more, not less, accessible to the citizens of North Carolina, and that more participation was better for everyone. Indeed, political participation through the ballot box is what democracy is all about.

17. Although we expected that practices like early voting and same day registration would expand access to the franchise for all voters, it quickly became clear that these practices were particularly important to certain demographic groups. Early voting and same-day
registration have been especially beneficial for increasing African Americans' and college students' ability to participate in the electoral process.

HB 589 Legislative Process and Impact on Voters

18. HB 589 passed the North Carolina House of Representatives on April 24, 2013. At that point, HB 589 was about 16 pages long, and its provisions focused almost exclusively on requiring voters to show photo identification to vote in person starting in 2016.

19. HB 589 was received in the Senate on April 25, 2013 and immediately referred to the Committee on Rules and Operations ("Rules Committee"). Then, HB 589 just sat there. Until late July 2013, there were no committee hearings or other public airing or debate on the bill. We had a very active Democratic caucus, and our leadership kept us informed when legislation was about to move through committee or come to the Senate floor. During this period, even the Democratic leadership had virtually no information about the majority’s plans for HB 589. I believe the bill’s Senate sponsors were intentionally holding HB 589 back while they waited to see how the United States Supreme Court ruled in Shelby County v. Holder, and because they wanted to minimize the time for debate on the bill.

20. After three months of silence, the Senate proponents of HB 589 released a wholesale rewrite of the bill, just hours before a scheduled July 23, 2013 Rules Committee hearing on the bill. To the best of my recollection, the July 23 hearing was the only hearing the Rules Committee held on the bill. HB 589 was voted out of committee that same day. I was not a member of the Rules Committee, but I did go to the hearing and observed a significant portion of it. I recall that the Rules Committee Chair, Senator Apodaca, allowed only very brief comments on the bill from members of the public.

21. The version of HB 589 that Senate leadership unveiled in July was a far cry from the limited voter identification bill that passed the House in April. Although the Democratic
caucus suspected that the Senate leadership would make some changes to the House version of HB 589, we had no idea the change would be so dramatic. The Senate version of HB 589 was over 50 pages long, and it included a raft of new provisions completely unrelated to photo voter identification, including cutting a week of early voting, eliminating same-day registration, abolishing pre-registration for 16- and 17-year olds, prohibiting straight ticket voting, and eliminating the counting of out-of-precinct provisional ballots.

22. With respect to the voter photo identification provisions, the Senate version of the bill significantly truncated the types of photo identification that would satisfy the voter identification requirement, as compared to the House-passed version of the bill. I was particularly concerned that the Senate version of HB 589 eliminated student identification cards issued by state colleges and universities, such as the University of North Carolina, North Carolina Central, and others, from the list of acceptable forms of photo identification. This restriction will be particularly harmful for the many college students in my district.

23. HB 589 reached the Senate floor on July 24, 2013. By this point, less than two days had passed since the Senate version of the bill was made public. We were expected to debate and vote on this 50-some-odd page bill notwithstanding the fact that there had been virtually no opportunity for the public to assess and weigh in on the bill, and extremely little time for Senators to digest, research, and analyze the bill’s many new provisions.

24. I was surprised and deeply concerned about the truncated Senate process on HB 589. What started in the House as a fairly short and focused voter photo identification bill was unveiled months later in the Senate as a sweeping overhaul of North Carolina election law. Particularly troubling to me, this transformation happened behind closed doors, without public input or debate. This dramatically overhauled bill was then rushed through the Senate in three
days. Although, during my time in the Senate, it was not unheard of for bills to proceed on a quick timeline, it was highly unusual for a bill of this magnitude and importance to be rushed through the Senate without thorough public airing and debate. This was a process designed to short-circuit the typical deliberative process.

25. The limited committee process HB 589 received in the Senate was particularly unusual, as was the lack of opportunity for members of the public to weigh in, express concerns, and influence the process. In my experience in the General Assembly, committee hearings were typically a rich source of information on matters addressed in proposed legislation. In the case of HB 589, a bill making numerous changes to North Carolina election law, the Senate held only one committee hearing. It was also unusual that the only hearing on HB 589 was before the Rules Committee, rather than the Judiciary I Committee, which often vetted election-related bills, or even the State and Local Government Committee. To the best of my recollection, there was also no testimony before the Senate Rules Committee by subject-matter experts, members or staff from the State Board of Elections, or from any county boards of elections.

26. I believe the Senate majority deliberately orchestrated this unusual and extremely truncated process to keep affected members of the public out of the process. I believe they did this because they knew that if given the opportunity, opponents of HB 589 would introduce to the public record extensive factual information about the disproportionate impact HB 589 would have on certain demographic groups, namely minorities, young people, and the poor. As I discuss further below, notwithstanding the compressed schedule, bill opponents were able to marshal and present on the Senate floor just this kind of evidence.
27. Senate proponents on HB 589 offered minimal justification for the many new provisions they had inserted into the bill. I considered the few justifications they did offer to be, essentially, sham justifications.

28. The bill proponents’ primary policy argument was that HB 589 would improve the security of North Carolina elections by requiring in-person voters to show photo identification. I believe this was merely a pretext, and that the real goal was to reduce access to the ballot. We all knew, based on newspaper reports and information released by the State Board of Elections, that there is extraordinarily little evidence of voter fraud in North Carolina, particularly of in-person voter fraud, which is the only type of fraud a photo voter identification requirement could possibly address. Moreover, although the evidence suggested that absentee voting is the most susceptible to voter fraud, HB 589 did not require absentee voters to provide photo identification in order to cast a mail-in absentee ballot. The fact that the final bill includes about five pages relating to photo voter identification and over 40 pages of other, unrelated, provisions further belies the notion that the overall purpose of HB 589 was to require photo identification so as to deter voter fraud.

29. To the best of my recollection, the only justification offered for eliminating pre-registration for 16- and 17-year olds was that Senator Rucho’s son was confused by the pre-registration process. This hardly seems like a valid reason to eliminate an entire program serving tens of thousands of North Carolina young people. I believe the real reason for eliminating pre-registration was to deliberately deny voting opportunities to young people.

30. With respect to HB 589’s prohibition on counting out-of-precinct provisional ballots, I recall bill supporters arguing that voters really ought to know their precinct. Similarly, the stated rationale for doing away with straight ticket voting was that voters should be
sufficiently informed that they know who all the candidates are. I consider these to be sham justifications because it simply is not reasonable to expect that voters will never be confused about where they are meant to vote, or that most voters will know who is running for less well-known offices, such as Council of State. I have often seen voters show up at the wrong precinct on election day; this is a particularly common problem among students. Some people think the early voting site near their home is their election day polling place, which is often not the case. For example, the Town Hall polling place in Carrboro, where I lived and voted for decades, is both an early voting site and an election day polling place. In addition, the name of a voter’s precinct is not always the same as the name of the polling place, which can cause confusion. For example, the Lions Club precinct in Carrboro used to be housed at the Lions Club cottage on Fidelity Street. At some point, the polling place moved to Carolina Spring, an assisted living facility on West Poplar Avenue, but the precinct continued to be called the Lions Club precinct. After the polling place moved to Carolina Spring, some voters still went to the Lions Club cottage, where they found no voting place. They sometimes went next to Town Hall, which was an election day polling place but not the polling place for Lions Club precinct voters. By then, Carolina Spring, their correct polling place, was their third stop.

31. Even more troubling than the weakness of the stated justifications for HB 589 was the bill supporters’ failure to respond to evidence showing that several of HB 589’s provisions would have a disproportionate impact on African American voters. I specifically recall Senators Josh Stein and Angela Bryant introducing and discussing on the Senate floor analyses showing that HB 589’s highly restrictive photo identification requirement, cut to early voting, elimination of same-day-registration, and elimination of straight ticket voting would disproportionately burden African American voters because African Americans in North Carolina were
disproportionately more likely to lack a North Carolina driver’s license, and they disproportionately relied on early voting, same-day-registration, and straight ticket voting. The bill’s supporters never engaged with us on these points; they did not meaningfully respond.

32. I also expect—and stated on the Senate floor—that the cut to early voting, and the strict photo voter identification requirement will significantly burden young voters, such as the many college students who reside in my district. The fact that the Senate version of HB 589 eliminated from the list of acceptable forms of voter identification student identification cards issued by North Carolina colleges and universities seemed to be a particularly transparent effort to disenfranchise college students.

33. The elimination of same-day registration will also negatively impact younger voters. Based on my experience talking with students and lecturing at area colleges, I’ve learned that college students rely heavily on the ability to register and cast a ballot at the same time during early voting. Eliminating this practice will burden many prospective voters in this demographic, which includes not just students who moved to North Carolina from out of state, but individuals who moved from one county in North Carolina to another in order to attend school. This change will be especially burdensome because of HB 589’s elimination of pre-registration for 16- and 17-year olds. I expect there will be numerous young voters from North Carolina who, in the past, would have used the pre-registration process but who will now be unregistered. These changes will result in a profound loss of young voters from the North Carolina voter rolls.

34. I’ve also encountered a great deal of confusion among voters about the continued availability of same-day registration. For example, at a recent event at North Carolina Central University’s law school, I heard a law student tell a crowd of students, incorrectly, that if they
were not already registered to vote for the May 2014 primary, they could still do that during early voting. Under HB 589, this is no longer an option.

35. HB 589’s supporters never provided a direct response to the concerns about HB 589’s burden on African American voters or college students. They never addressed Senator Bryant and Senator Stein’s data and analyses reflecting that the bill’s provisions would disproportionally affect African-American voters, and they never discussed the burden HB 589 would have on college students. HB 589 was adopted by the Senate and by the General Assembly even though the bill’s supporters knew these particular changes to North Carolina election law would disproportionally burden the ability of African Americans and young people to exercise their fundamental right to vote. In my mind, this fact reveals the bill’s true intent: to suppress voting among African Americans and young people.

36. This declaration is not intended to capture all of my knowledge or experiences that may be related to this matter.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on 29 April, 2014.

\[Signature\]

Eleanor G. Kimbierd