

FILED: August 4, 2016

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 16-1468 (L)
(1:13-cv-00658-TDS-JEP)

NORTH CAROLINA STATE CONFERENCE OF THE NAACP; ROSANELL EATON; EMMANUEL BAPTIST CHURCH; BETHEL A. BAPTIST CHURCH; COVENANT PRESBYTERIAN CHURCH; BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC.; ARMENTA EATON; CAROLYN COLEMAN; JOCELYN FERGUSON-KELLY; FAITH JACKSON; MARY PERRY; MARIA TERESA UNGER PALMER

Plaintiffs - Appellants

and

JOHN DOE 1; JANE DOE 1; JOHN DOE 2; JANE DOE 2; JOHN DOE 3; JANE DOE 3; NEW OXLEY HILL BAPTIST CHURCH; CLINTON TABERNACLE AME ZION CHURCH; BAHEEYAH MADANY

Plaintiffs

v.

PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina; KIM WESTBROOK STRACH, in her official capacity as a member of the State Board of Elections; 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;

JAMES BAKER, in his official capacity as a member of the North Carolina State Board of Elections

Defendants - Appellees

CONSTITUTIONAL ACCOUNTABILITY CENTER; STACEY STITT; MARIA DIAZ; ROBERT GUNDRUM; MISTY TAYLOR; SERVICE EMPLOYEES INTERNATIONAL UNION; DEMOCRACY NORTH CAROLINA; UNC CENTER FOR CIVIL RIGHTS; PEARLEIN REVELS; LOUISE MITCHELL; ERIC LOCKLEAR; ANITA HAMMONDS BLANKS

Amici Supporting Appellant

JUDICIAL WATCH, INCORPORATED; ALLIED EDUCATIONAL FOUNDATION; THOM TILLIS; LINDSEY GRAHAM; TED CRUZ; MIKE LEE; JUDICIAL EDUCATION PROJECT; LAWYERS DEMOCRACY FUND; MOUNTAIN STATES LEGAL FOUNDATION; AMERICAN CIVIL RIGHTS UNION; STATE OF INDIANA; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF KANSAS; STATE OF MICHIGAN; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF TEXAS; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PACIFIC LEGAL FOUNDATION; CENTER FOR EQUAL OPPORTUNITY; PROJECT 21

Amici Supporting Appellee

No. 16-1469
(1:13-cv-00660-TDS-JEP)

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

Plaintiffs

CHARLES M. GRAY; ASGOD BARRANTES; MARY-WREN RITCHIE

Intervenors/Plaintiffs

and

LOUIS M. DUKE; JOSUE E. BERDUO; NANCY J. LUND; BRIAN M. MILLER; BECKY HURLEY MOCK; LYNNE M. WALTER; EBONY N. WEST

Intervenors/Plaintiffs - Appellants

v.

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; PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina

Defendants - Appellees

CONSTITUTIONAL ACCOUNTABILITY CENTER; STACEY STITT; MARIA DIAZ; ROBERT GUNDRUM; MISTY TAYLOR; SERVICE EMPLOYEES INTERNATIONAL UNION; DEMOCRACY NORTH CAROLINA; UNC CENTER FOR CIVIL RIGHTS; PEARLEIN REVELS; LOUISE MITCHELL; ERIC LOCKLEAR; ANITA HAMMONDS BLANKS

Amici Supporting Appellant

JUDICIAL WATCH, INCORPORATED; ALLIED EDUCATIONAL FOUNDATION; THOM TILLIS; LINDSEY GRAHAM; TED CRUZ; MIKE LEE; JUDICIAL EDUCATION PROJECT; LAWYERS DEMOCRACY FUND; MOUNTAIN STATES LEGAL FOUNDATION; AMERICAN CIVIL RIGHTS UNION; STATE OF INDIANA; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF KANSAS; STATE OF MICHIGAN; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF

OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF TEXAS; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PACIFIC LEGAL FOUNDATION; CENTER FOR EQUAL OPPORTUNITY; PROJECT 21

Amici Supporting Appellee

No. 16-1474
(1:13-cv-00660-TDS-JEP)

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

Plaintiffs - Appellants

and

LOUIS M. DUKE; CHARLES M. GRAY; ASGOD BARRANTES; JOSUE E. BERDUO; BRIAN M. MILLER; NANCY J. LUND; BECKY HURLEY MOCK; MARY-WREN RITCHIE; LYNNE M. WALTER; EBONY N. WEST

Intervenors/Plaintiffs

v.

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; PATRICK L. MCCRORY, in his official capacity as Governor of the state of North Carolina

Defendants - Appellees

CONSTITUTIONAL ACCOUNTABILITY CENTER; STACEY STITT; MARIA DIAZ; ROBERT GUNDRUM; MISTY TAYLOR; SERVICE EMPLOYEES INTERNATIONAL UNION; DEMOCRACY NORTH CAROLINA; UNC CENTER FOR CIVIL RIGHTS; PEARLEIN REVELS; LOUISE MITCHELL; ERIC LOCKLEAR; ANITA HAMMONDS BLANKS

Amici Supporting Appellant

JUDICIAL WATCH, INCORPORATED; ALLIED EDUCATIONAL FOUNDATION; THOM TILLIS; LINDSEY GRAHAM; TED CRUZ; MIKE LEE; JUDICIAL EDUCATION PROJECT; LAWYERS DEMOCRACY FUND; MOUNTAIN STATES LEGAL FOUNDATION; AMERICAN CIVIL RIGHTS UNION; STATE OF INDIANA; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF KANSAS; STATE OF MICHIGAN; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF TEXAS; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PACIFIC LEGAL FOUNDATION; CENTER FOR EQUAL OPPORTUNITY; PROJECT 21

Amici Supporting Appellee

No. 16-1529
(1:13-cv-00861-TDS-JEP)

UNITED STATES OF AMERICA

Plaintiff - Appellant

v.

STATE OF NORTH CAROLINA; NORTH CAROLINA STATE BOARD OF ELECTIONS; KIM WESTBROOK STRACH

Defendants - Appellees

and

CHRISTINA KELLEY GALLEGOS-MERRILL; JUDICIAL WATCH, INCORPORATED

Intervenors/Defendants

CONSTITUTIONAL ACCOUNTABILITY CENTER; STACEY STITT; MARIA DIAZ; ROBERT GUNDRUM; MISTY TAYLOR; SERVICE EMPLOYEES INTERNATIONAL UNION; DEMOCRACY NORTH CAROLINA; UNC CENTER FOR CIVIL RIGHTS; PEARLEIN REVELS; LOUISE MITCHELL; ERIC LOCKLEAR; ANITA HAMMONDS BLANKS

Amici Supporting Appellant

JUDICIAL WATCH, INCORPORATED; ALLIED EDUCATIONAL FOUNDATION; THOM TILLIS; LINDSEY GRAHAM; TED CRUZ; MIKE LEE; JUDICIAL EDUCATION PROJECT; LAWYERS DEMOCRACY FUND; MOUNTAIN STATES LEGAL FOUNDATION; AMERICAN CIVIL RIGHTS UNION; STATE OF INDIANA; STATE OF ALABAMA; STATE OF ARIZONA; STATE OF ARKANSAS; STATE OF GEORGIA; STATE OF KANSAS; STATE OF MICHIGAN; STATE OF NORTH DAKOTA; STATE OF OHIO; STATE OF OKLAHOMA; STATE OF SOUTH CAROLINA; STATE OF TEXAS; STATE OF WEST VIRGINIA; STATE OF WISCONSIN; PACIFIC LEGAL FOUNDATION; CENTER FOR EQUAL OPPORTUNITY; PROJECT 21

Amici Supporting Appellee

O R D E R

After careful consideration, we deny the State’s request to recall and stay our mandate. As explained in our opinion, the law compels the injunction of the challenged provisions of SL 2013-381. The State’s arguments to the contrary in the instant motion do not alter that conclusion.

Moreover, recalling or staying the mandate now would only undermine the integrity and efficiency of the upcoming election. “Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” Purcell v. Gonzalez, 549 U.S. 1, 4-5 (2006). The State has already notified its voters that it will not ask them to show ID and that early voting will begin on October 20. Press Release, N.C. State Bd. Of Elections, Statement regarding Fourth Circuit Ruling (July 29, 2016), www.ncsbe.gov/press-releases?udt_2226_param_detail=52. Voters are likely to rely on that announcement.

At oral argument, the State assured us that it would be able to comply with any order we issued by late July. As to early voting locations and staffing, we were told that at a minimum the State could conduct early voting at the Board of Elections office for each county. As to the photo ID requirement, the State informed us that it would comply with an injunction of that law by instructing its poll workers not to require photo ID. And, as the State acknowledges, its SEIMS system is already prepared to implement same-day registration and out-of-precinct voting. The State told us that the proofs for its voter guide were not due until August 5, and that its election official training would not begin until August 8. We issued our opinion, injunction, and mandate a week in advance of those dates. Because of these assurances, we are confident that North Carolina can conduct the 2016 election in compliance with our injunction.

Furthermore, the balance of equities heavily weighs against recalling the mandate or granting a stay. Voters disenfranchised by a law enacted with discriminatory intent suffer irreparable harm far greater than any potential harm to the State. For the Supreme Court has long recognized that “[t]he right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.” Reynolds v. Sims, 377 U.S. 533, 555 (1964).

Finally, we observe that our injunction merely returns North Carolina’s voting procedures to the status quo prevailing before the discriminatory law was enacted.

Entered at the direction of Judge Motz with the concurrence of Judge Wynn and Judge Floyd.

For the Court

/s/ Patricia S. Connor, Clerk