

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:13-CV-00861

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 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.)
)
 _____)

**DEFENDANTS' ANSWER TO
FIRST AMENDED COMPLAINT**

Defendants answer plaintiff's First Amended Complaint as follows:

FIRST DEFENSE

Defendants answer the specific allegations of plaintiff's First Amended Complaint:

1. Plaintiff's allegation that this action was filed to enforce voting rights is argumentative and represents a legal conclusion to which no response is required. Defendants admit that the Attorney General of the United States ("USAG") has filed this complaint and that the cited statutes speak for themselves. In all other respects, defendants deny the allegations of paragraph 1.

2. Defendants admit that that House Bill 589 (2013) ("HB 589") was signed by Governor McCrory on August 12, 2013 and designated as Session Law ("S.L.") 2013-

381, and that HB 589 speaks for itself. In all other respects, defendants deny the allegations of paragraph 2.

“JURISDICTION AND VENUE”

3. Defendants admit that the cited statutes speak for themselves and that the Court has authority to issue declaratory and injunctive relief. In all other respects, defendants deny the allegations of paragraph 3.

4. Defendants consent to venue in this judicial district. Defendants admit that the cited statutes speak for themselves. In all other respects, defendants deny the allegations of paragraph 4.

“PARTIES”

5. The allegations of this paragraph are argument or are legal or conclusory allegations to which no response is required. To the extent a response is required, defendants admit that the cited statute speaks for itself. In all other respects, defendants deny the allegations of paragraph 5.

6. Defendants admit the allegations of paragraph 6.

7. Defendants admit the allegations of paragraph 7.

8. Defendants admit that Kim W. Strach is the Executive Director of the North Carolina State Board of Elections (“SBOE”) and that she has been sued in her official capacity. In all other respects, defendants deny the allegations of paragraph 8.

“ALLEGATIONS”

“The State of North Carolina”

9. Defendants admit that the 2010 census and its report regarding the total population of North Carolina and the population by race are matters of public record. In all other respects, defendants deny the allegations of paragraph 9.

10. Defendants admit that the 2010 census and its report regarding the voting age population of North Carolina and the voting age population by race are matters of public record. In all other respects, defendants deny the allegations of paragraph 10.

11. Defendants admit that information published by the American Community Survey speaks for itself. In all other respects, defendants deny the allegations of paragraph 11.

12. Defendants admit that information published by the SBOE is a matter of public record and speaks for itself. In all other respects, defendants deny the allegations of paragraph 12.

13. Defendants admit that the race of persons registered as voters and the race of individuals who have actually voted are matters of public record and speak for themselves. In all other respects, defendants deny the allegations of paragraph 13.

14. Defendants admit that information published by the American Community Survey is a matter of public record and speaks for itself. In all other respects, defendants deny the allegations of paragraph 14.

15. Defendants admit that information published by the American Community Survey is a matter of public record and speaks for itself. In all other respects, defendants deny the allegations of paragraph 15.

16. Defendants admit that information published by the American Community Survey is a matter of public record and speaks for itself. In all other respects, defendants deny the allegations of paragraph 16.

17. Defendants admit that information published by the American Community Survey is a matter of public record and speaks for itself. In all other respects, defendants deny the allegations of paragraph 17.

“The State of North Carolina’s History of Discrimination”

18. Defendants admit that the cases cited in this paragraph speak for themselves. In all other respects, defendants deny the allegations of paragraph 18.

19. Defendants admit that the cited statutes, regulations, and case speak for themselves. In all other respects, defendants deny the allegations of paragraph 19.

20. The allegations of this paragraph are argument or are legal or conclusory allegations to which no response is required. To the extent a response is required, defendants admit that the cited statute speaks for itself. In all other respects, defendants deny the allegations of paragraph 20.

21. Defendants are without knowledge or information sufficient to form a belief about the allegations of paragraph 21.

22. Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 22.

“Provisions of HB 589”

23. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 23.

“A. Early Voting”

24. Defendants are without knowledge or information sufficient to form a belief about plaintiff’s definition of “early voting,” a term that is neither a term of art nor a term defined in North Carolina’s election statutes. Defendants admit that North Carolina formerly granted county boards of election the discretion to schedule one-stop absentee voting for as many as 17 days and that the legislation that gave this authority to county boards of election speaks for itself. In all other respects, defendants deny the allegations of paragraph 24.

25. Defendants are without knowledge or information sufficient to form a belief about plaintiff’s definition of “early voting,” a term that is neither a term of art nor a term defined in North Carolina’s election statutes. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 25.

26. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 26.

27. Defendants admit that the number and race of voters are matters of public record and speak for themselves. In all other respects, defendants deny the allegations of paragraph 27.

28. Defendants admit that the number of voters who cast one-stop ballots during the 2008, 2010, and 2012 general elections is a matter of public record. In all other respects, defendants deny the allegations of paragraph 28.

29. Defendants are without knowledge or information sufficient to form a belief about plaintiff's definition of "early voting," a term that is neither a term of art nor a term defined in North Carolina's election statutes. Defendants admit that the number and race of registered voters and voters who voted during each day of one-stop absentee voting in the 2008 and 2012 general elections are matters of public record. In all other respects, defendants deny the allegations of paragraph 29.

30. Defendants are without knowledge or information sufficient to form a belief about plaintiff's definition of "early voting," a term that is neither a term of art nor a term defined in North Carolina's election statutes. Defendants admit that the number and race of voters and voters who voted during each day of one-stop absentee voting in the 2012 general election are matters of public record. In all other respects, defendants deny the allegations of paragraph 30.

31. Defendants are without knowledge or information sufficient to form a belief about the truth of allegations related to voting in Florida during the 2012 general election. In all other respects, defendants deny the allegations of paragraph 31.

32. Defendants are without knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 32.

33. Defendants admit that testimony, statements, or evidence presented during the legislature's consideration of HB 589 speaks for itself. In all other respects, defendants deny the allegations of paragraph 33.

34. Defendants admit that memoranda prepared by the former executive director of the SBOE speaks for itself. In all other respects, defendants deny the allegations of paragraph 34.

“B. Same-Day Registration”

35. Defendants admit that the effective date for Same-Day Registration (“SDR”) is a matter of public record and that the provisions of the legislation allowing SDR speak for themselves. In all other respects, defendants deny the allegations of paragraph 35.

36. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 36.

37. This paragraph includes a legal conclusion to which no response is required. To the extent that a response is required, defendants admit that the number and race of voters who used SDR are matters of public record. In all other respects, defendants deny the allegations of paragraph 37.

38. Defendants admit that the number and race of voters who used SDR during the 2008 and 2012 general elections are matters of public record. In all other respects, defendants deny the allegations of paragraph 38.

“C. Out of Precinct Provisional Ballots”

39. Defendants admit that the legislation that permitted voters to cast out-of-precinct ballots speaks for itself and that the effective date of that legislation is a matter of public record. In all other respects, defendants deny the allegations of paragraph 39.

40. Defendants admit that the provisions of HB 589 regarding out of precinct ballots speak for themselves. In all other respects, defendants deny the allegations of paragraph 40.

41. Defendants admit that the cited statute speaks for itself. In all other respects, defendants deny the allegations of paragraph 41.

42. Defendants deny the allegations of paragraph 42.

“D. Voter Photo Identification”

43. Defendants admit that state and federal statutes on registration requirements speak for themselves. In all other respects, defendants deny the allegations of paragraph 43.

44. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 44.

45. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 45.

46. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 46.

46A. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 46A.

47. Defendants admit that the provisions of HB 589 speak for themselves. In all other respects, defendants deny the allegations of paragraph 47.

48. Defendants are without knowledge or information sufficient to form a belief about the allegations of paragraph 48.

49. Defendants admit that the April 2013 report issued by the SBOE speaks for itself and that the report was published before HB 589 was ratified by the General Assembly. In all other respects, defendants deny the allegations of paragraph 49.

50. Defendants admit that the report issued by the SBOE speaks for itself. In all other respects, defendants deny the allegations of paragraph 50.

50A. Defendants deny the allegations of paragraph 50A.

“Legislative History and Enactment of HB 589”

51. Defendants admit the allegations of paragraph 51.

52. Defendants admit that public hearings were held on March 12, 2013, and April 10, 2013, and that testimony during those hearings speaks for itself. In all other respects, defendants deny the allegations of paragraph 52.

53. Defendants admit that any amendments offered to HB 589 and any vote by House members on any amendment are matters of public record. In all other respects, defendants deny the allegations of paragraph 53.

54. Defendants admit that HB 589 was passed by the House on April 24, 2013, and that the votes, partisan affiliation, and race of members of the General Assembly who voted on amendments to the bill, committee reports, or readings of the bill are matters of public record. In all other respects, defendants deny the allegations of paragraph 54.

55. Defendants admit that the version of HB 589 passed by the House on April 24, 2013, speaks for itself. In all other respects, defendants deny the allegations of paragraph 55.

56. Defendants admit that the version of HB 589 passed by the House on April 24, 2013, speaks for itself. In all other respects, defendants deny the allegations of paragraph 56.

57. Defendants admit the allegations of paragraph 57.

58. Defendants admit that the opinion by the United States Supreme Court in *Shelby County v. Holder* speaks for itself. In all other respects, defendants deny the allegations of paragraph 58.

59. Defendants admit that the committee substitute offered and adopted, as amended, in the Senate speaks for itself. In all other respects, defendants deny the allegations of paragraph 59.

60. Defendants admit that the committee substitute offered and adopted, as amended, in the Senate speaks for itself. In all other respects, defendants deny the allegations of paragraph 60.

61. Defendants admit that non-privileged, public statements by members of the General Assembly during public hearings, committee meetings, or the floor of either chamber speak for themselves and are matters of public record. In all other respects, defendants deny the allegations of paragraph 61.

62. Defendants admit that non-privileged, public statements by members of the General Assembly during public hearings, committee meetings, or the floor of either

chamber speak for themselves and are matters of public record. In all other respects, defendants deny the allegations of paragraph 62.

63. Defendants admit that votes, partisan affiliation, and race of members of the General Assembly who voted on amendments to the bill, committee reports, readings of the bill or concurrence with the bill may be matters of public record and speak for themselves. In all other respects, defendants deny the allegations of paragraph 63.

64. Defendants admit that votes, political affiliation, and race of members of the General Assembly who voted on amendments to the bill, committee reports, readings of the bill or concurrence with the bill may be matters of public record and speak for themselves. In all other respects, defendants deny the allegations of paragraph 64.

65. Defendants admit that prior bills proposed in the Senate speak for themselves. In all other respects, defendants deny the allegations of paragraph 65.

66. Defendants admit that HB 589, as amended, was passed by the House on July 25, 2013, ratified on July 26, 2013, presented to the Governor on July 29, 2013, and signed by the Governor on August 12, 2013. In all other respects, defendants deny the allegations of paragraph 66.

67. Defendants admit that statements by the North Carolina Attorney General speak for themselves. In all other respects, defendants deny the allegations of paragraph 67.

“Subsequent Amendments to Voter Photo Identification Requirement”

67A. Defendants admit that HB 836 speaks for itself and that the process by which it became law is a matter of public record. In all other respects, defendants deny the allegations of paragraph 67A.

“Implementation of HB 589 Will Have a Discriminatory Result”

68. Defendants deny the allegations of paragraph 68.

69. Defendants deny the allegations of paragraph 69.

70. The allegations of this paragraph are argumentative or are legal or conclusory allegations to which no response is required. To the extent a response is required, defendants are without knowledge or information sufficient to form a belief about plaintiff’s definition of “early voting,” a term that is neither a term of art nor a term defined in North Carolina’s election statutes. Defendants admit that the number and race of voters who have used one-stop absentee voting in the 2008 and 2012 general elections are matters of public record. In all other respects, defendants deny the allegations of paragraph 70.

71. Defendants deny the allegations of paragraph 71.

72. The allegations of this paragraph are argumentative or are legal or conclusory allegations to which no response is required. To the extent a response is required, defendants are without knowledge or information sufficient to form a belief about plaintiff’s definition of “early voting,” a term that is neither a term of art nor a term defined in North Carolina’s election statutes. Defendants admit that the number and race of voters who used SDR or one-stop absentee voting are a matter of public record. In all other respects, defendants deny the allegations of paragraph 72.

73. The allegations of this paragraph are argumentative or are legal or conclusory allegations to which no response is required. To the extent a response is required, defendants admit that the number and race of voters who cast out of precinct ballots is a matter of public record. In all other respects, defendants deny the allegations of paragraph 73.

74. Defendants deny the allegations of paragraph 74.

75. Defendants incorporate by reference their responses to paragraphs 18-22. Defendants admit that past court decisions in the area of voting rights speak for themselves and that racially polarized voting continues to exist in North Carolina. In all other respects, defendants deny the allegations of paragraph 75 and all of its subparts.

“Passage of HB 589 was Motivated by Discriminatory Purpose”

76. Defendants deny the allegations of paragraph 76.

77. Defendants admit that the legislation adopted in 2005 speaks for itself. In all other respects, defendants deny the allegations of paragraph 77.

78. Defendants deny the allegations of paragraph 78.

79. Defendants deny the allegations of paragraph 79.

80. Defendants deny the allegations of paragraph 80.

81. Defendants deny the allegations of paragraph 81.

82. Defendants admit that amendments offered during the legislative process speak for themselves. In all other respects, defendants deny the allegations of paragraph 82.

83. Defendants deny the allegations of paragraph 83.

84. Defendants deny the allegations of paragraph 84.

85. Defendants admit that the number and race of voters during the 2008 and 2012 general election are matters of public record and that the enacted legislation and the decision in *Shelby County v. Holder* speak for themselves. In all other respects, defendants deny the allegations of paragraph 85.

86. Defendants admit that the Chairman of the Senate Rules Committee stated that the decision in *Shelby County* clarified the applicable legal standards. In all other respects, defendants deny the allegations of paragraph 86.

87. Defendants admit that the legislative record speaks for itself. In all other respects, defendants deny the allegations of paragraph 87.

88. Defendants admit that amendments offered during the legislative process speak for themselves. In all other respects, defendants deny the allegations of paragraph 88.

89. Defendants deny the allegations of paragraph 89.

90. Defendants admit that decisions by North Carolina courts that address the presence of racially polarized voting in North Carolina speak for themselves and that racially polarized voting continues to be present in North Carolina elections. In all other respects, defendants deny the allegations of paragraph 90.

91. Defendants deny the allegations of paragraph 91.

92. Defendants deny the allegations of paragraph 92.

93. Defendants admit that HB 836 speaks for itself. In all other respects, defendants deny the allegations of paragraph 93.

94. Defendants deny the allegations of paragraph 94.

“The Need for Section 3(c) Relief”

95. Defendants deny the allegations of paragraph 95.

96. Defendants deny the allegations of paragraph 96.

“CAUSE OF ACTION”

“Section 2 of the Voting Rights Act”

97. Defendants reallege and incorporate by reference their responses to paragraphs 1-97.

98. Defendants admit that the cited statute speaks for itself. In all other respects, defendants deny the allegations of paragraph 98.

99. Defendants deny the allegations of paragraph 99.

100. Defendants deny the allegations of paragraph 100.

101. Defendants deny the allegations of paragraph 101.

102. Defendants deny the allegations of paragraph 102.

SECOND DEFENSE

Any allegations in paragraphs 1-102 of the complaint not specifically admitted are denied.

THIRD DEFENSE

The Attorney General of the United States has no standing to assert claims under the Fourteenth or Fifteenth Amendments as the Plaintiff may not press a claim which only an aggrieved person may press. Instead, the Attorney General may only bring

claims under specific statutes which codify Constitutional claims and permit actions pertaining to intentional discrimination which violates a statute, not the Constitution.

FOURTH DEFENSE

Plaintiff's claim for relief under Section 3 of the Voting Rights Act fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P., in that plaintiff has not alleged a violation of the Fourteenth or Fifteenth Amendments to the United States Constitution.

FIFTH DEFENSE

Plaintiff's claims challenging the Voter Photo ID Requirement in HB 589, as amended by HB 836 are moot, or are not ripe.

WHEREFORE, defendants move the court:

1. that plaintiff's complaint be dismissed with prejudice and that judgment be entered for the defendants on all claims;
2. that defendants be awarded their attorneys' fees and costs; and
3. that defendants be awarded such other and further relief as the Court may deem just and proper.

Respectfully submitted this 20th day of November, 2015.

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov
N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763
Counsel for Defendants

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
Phillip J. Strach
N.C. State Bar No. 29456
thomas.farr@ogletreedeakins.com
phil.stach@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Co-counsel for Defendants

BOWERS LAW OFFICE LLC

By: /s/ Karl S. Bowers, Jr.

Karl S. Bowers, Jr.*

Federal Bar #7716

P.O. Box 50549

Columbia, SC 29250

Telephone: (803) 260-4124

E-mail: butch@butchbowers.com

*appearing pursuant to Local Rule 83.1(d)

Counsel for Governor Patrick L. McCrory

By: /s/ Robert C. Stephens

Robert C. Stephens (State Bar #4150)

General Counsel

Office of the Governor of North Carolina

20301 Mail Service Center

Raleigh, North Carolina 27699

Telephone: (919) 814-2027

Facsimile: (919) 733-2120

E-mail: bob.stephens@nc.gov

Counsel for Governor Patrick L. McCrory

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth M. Ryan
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
Attorneys for Plaintiff

Alexander Peters, Esq.
NC Department of Justice
PO Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
Attorney for Defendants

This, the 20th day of November, 2015.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr
Thomas A. Farr (N.C. Bar No. 10871)
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

Counsel for Defendants

23048606.1