

**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 UNGER PALMER)

Plaintiffs,)

v.)

PATRICK LLOYD MCCRORY, 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 DANIEL T. BLUE,

JR.

Case No.: 1:13-CV-658

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,

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 MCCRORY, 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.

Case No.: 1:13-CV-660

Case No.: 1:13-CV-861

Declaration of Daniel T. Blue, Jr.

I, Daniel T. Blue, Jr., hereby declare as follows:

1. I am a U.S. citizen, resident of Raleigh, North Carolina, a registered voter, and the elected Senator representing North Carolina's 14th Senatorial District in Wake County. I am currently serving as the Senate Minority Leader in the North Carolina General Assembly.

2. I served for 25 years in the North Carolina House of Representatives during two periods, from 1980-2002, and from 2006-2009. I served as the only African-American Speaker of the North Carolina House of Representatives, from 1991-1995 and as the president of the National Conference of State Legislatures from 1998-1999.

3. My 5 years in the Senate and 25 years in the House give me significant perspective on the legislative process in North Carolina, and I am qualified to speak to the legislative process of House Bill 589 ("H.B. 589"). In my opinion, the legislative process behind H.B. 589 diverged significantly from the norm, and was intended to avoid a considered legislative or public debate on the bill.

4. Based on my nearly 30 years of experience in the legislature on behalf of the voters of North Carolina and Wake County, it is my opinion that H.B. 589 is the most restrictive voting legislation passed since 1960, around the start of the Civil Rights Movement, because the bill packages numerous voter suppression efforts into a single piece of legislation. H.B. 589 stands to reverse the election reforms made since the 1960s in a way that was purposely intended by the legislature to impede participation by African American voters in North Carolina.

Background

5. I am a North Carolina native, born in Robeson County, North Carolina. I graduated from North Carolina Central University in 1970 and from Duke Law School in 1973.

I served 16 years on the Duke University Board of Trustees, and in 2009, became the first African American to serve as the Chairman of the Board of Trustees for Duke University.

6. After law school, I was hired by Sanford, Cannon, Adams & McCullough (now Parker, Poe, Adams, & Bernstein LLP), a firm founded by Terry Sanford, former governor and U.S. Senator of North Carolina. Since 1976, I have worked as an attorney with Blue, Stephens & Fellers, representing individuals and businesses in a variety of business and civil litigation, administrative, estate and public affairs matters.

7. I served in the North Carolina House of Representatives from 1980 thru 2002. In 2002, I ran for U.S. Senate, coming in second in the Democratic primary. I then returned to the North Carolina House in 2006. I was elected then and reelected in 2008.

8. In 2009, I was appointed to the North Carolina Senate. I was elected in 2010 and 2012. I am now running unopposed in the 2014 election. I serve on a number of Senate committees, including Appropriations on the Department of Transportation, Appropriations/Base Budget, Commerce, Finance, Judiciary I, Rules, and UNC Board of Governors.

9. My three decades of service as a member of the North Carolina House of Representatives and the North Carolina Senate, my active participation in the legislative debates surrounding voting legislation, including pre-H.B. 589 efforts to expand the franchise, and my participation during the debate and vote on H.B. 589 in 2013, enables me to speak to the unusual legislative process used to pass H.B. 589 and the likely impact that H.B. 589 will have on North Carolina voters, particularly among African American communities.

Pre-H.B. 589 Election Laws Expanding Voter Participation

10. I was serving in the North Carolina legislature when we considered and passed most of the laws designed to expand voter participation in our state. These laws included the

expansion of voter registration to create: mail-in registration; no-excuse in-person early voting; same-day registration during the in-person early voting period; and pre-registration for 16-and 17-year olds. Expanding voter participation was a major goal of the legislature, and these measures were designed to do that.

11. I strongly supported S.B. 568 (codified in N.C. Gen. Stat. § 163-226 and § 163-227.2), passed in 1999, which allowed for no-excuse in-person absentee voting (“early voting”) in general elections, and which has contributed significantly to increased participation by African American voters. Early voting was a common-sense way to address North Carolina’s low electoral participation at that time. Many of my constituents, particularly low-income voters without access to reliable transportation, or those working multiple jobs, told me that they found it very difficult to get to the polls and wait in lines during limited hours on Election Day, and so expanding the number of days any voter could vote, without their having to provide an excuse to vote early, was a logical solution to increase opportunities to vote in person without having to obtain an absentee ballot.

12. No-excuse in-person early voting was embraced by legislators in both parties. Indeed, not only was early voting popular among those who would find it difficult to get to the polls on Election Day, but it was also preferred to traditional mail-in absentee voting, especially among low-income voters, because the required notaries cost money and arranging for witnesses can be a hassle.

13. I believe that in-person absentee voting is less subject to fraud than mail-in absentee voting because the voter appears in person at the polls, where someone might recognize him, and signs an affidavit under penalty of perjury attesting to his identity. In contrast, with mail-in absentee voting, the voter and the two witnesses that purport his identity are never seen

in person at the polls. Therefore, it doesn't make sense to me why the legislature would cut in-person absentee voting, but open even more opportunities for mischief in the mail-in absentee voting process, as provided under H.B. 589, if addressing fraud was truly their concern.

14. I also supported the implementation of same-day registration, also known as "one-stop voting," created by H.B. 91 (codified in N.C. Gen. Stat. § 163-82.6) in 2007. I recall that this measure also had bi-partisan support in the legislature. During the legislative debate surrounding one-stop voting, I do not recall any concerns being raised about voter fraud related to same-day registration. Instead, the overall goal of the legislature in enacting this provision was to make voting as accessible as possible.

15. I was also involved in efforts to enact legislation to allow pre-registration for 16- and 17-year olds (codified in N.C. Gen. Stat. § 163-82.1). I found that pre-registration was a particularly effective means of increasing participation among young African American voters in North Carolina – especially when done in the high schools – by offering an easy opportunity for them to register that they otherwise would lack. When pre-registration was enacted in North Carolina in 2009, other members of the legislative black caucus and I viewed pre-registration as an important tool for fueling interest in civic participation among young voters of color and specifically as a way to remedy decades of denial of access to voting to African Americans.

H.B. 589 Legislative Process

16. The legislative process surrounding the passage of H.B. 589 did not afford legislators with the opportunity to meaningfully review or debate its many measures.

17. After the House passed the original version of H.B. 589 in April 2013, limited primarily to a photo identification requirement, it came to the Senate. The Senate sat on the bill

for several months while the Supreme Court considered a challenge to Section Four of the Voting Rights Act in *Shelby v Holder*.

18. After the *Shelby* decision came down, the Senate Rules Committee circulated a significantly modified version of the bill that included a host of new provisions, including the elimination of (i) same-day registration, (ii) a week of early voting, (iii) pre-registration, and (iv) the counting of out-of-precinct ballots, among other measures. In addition, the acceptable forms of photo identification provided for in the original version of the bill passed in the House were radically restricted in the Senate version.

19. The Rules Committee did not circulate this “full” version of the bill until late on July 22nd, the night before the committee was to vote on the bill. Because the full version was sent so late, I did not have a chance to read through the bill until the next morning and was not aware of any of the new provisions until we returned the next day to the General Assembly to vote on the significantly revised bill.

20. I expected the bill to be strictly limited to the photo identification provisions, as was the case with the House version of the bill. I was shocked by the inclusion of so many new provisions. I had not seen this scope of voter suppression in my nearly 30 years in the General Assembly.

21. After the Rules Committee passed the full version of the bill, the Senate debate on the bill occurred over a two day period. Many other legislators and I highlighted how this bill would roll back the progress of our electoral system and decrease the access to the polls. We believed that each of the steps we had taken to increase access to the polls for voters of color, youth, uneducated, low income, thereby producing a more representative democracy. The efforts

were largely undone or limited by the full version of H.B. 589. Nonetheless, with no testimony from experts or time to subject the bill to public scrutiny, the bill was passed in the Senate.

Intent and Impact of H.B. 589's Provisions:

22. *Cuts to Early Voting* – I believe the elimination of seven days of early voting was designed to cut African American participation in elections because African Americans in North Carolina participate to a higher degree during the first week of early voting. Senators knew that this would be the likely impact of this provision; there were studies introduced in the Senate, including one submitted by Senator Josh Stein, demonstrating that African Americans disproportionately voted during the first week of early voting.

23. Reducing the number of days of early voting means more people voting in fewer days, and more people appearing at the polls on Election Day. This is especially problematic for larger, urban counties like Wake County. Indeed, during the legislative debate around H.B. 589, I mentioned that in Wake County, where there are over 600,000 registered voters, the early voting period has saved us from long lines on Election Day. So, in my view, a reduction of one whole week will inconvenience my constituents, who have come to rely on this early voting period, will lead to longer lines at the polls on the remaining days and on Election Day, and will reduce the number of people participating because there will be fewer opportunities to vote and lines and wait times will be longer.

24. Many of my fellow legislators and I found that the longer early voting period was an invaluable and necessary time to connect with and educate voters – a task that is more challenging in low wealth and African American communities. Furthermore, shortening the early voting period by one week will make it more difficult for organizations like churches to get out the vote, a practice that voters in African American communities have come to rely on. I

believe that churches and groups in low-income and African American communities are going to have a more difficult time getting people to the polls in the shortened period.

25. *Elimination of Same-Day Registration* – In my opinion, Senators were aware when they voted on the bill that the elimination of same-day registration would have a disproportionate impact on African American voters. This is because many African American organizations were effectively using same day registration as part of their mass voter engagement efforts. For instance, with the “Souls the Polls” campaign, African American churches transported members, some unregistered, to the polls to both register and vote.

26. *Out of Precinct Voting* – Eliminating ballots cast out of precinct makes little sense to me. Under federal law, voters who appear in the wrong precinct must be allowed to cast provisional ballots, but H.B. 589 now says that in North Carolina they cannot count, even for races where the voter is eligible to cast a vote. To my knowledge, county Boards of Elections are efficient and technologically advanced enough to handle provisional ballots that are cast by voters who vote in the wrong precinct. I received no reports or concerns from county election officials that counting these ballots was too problematic for them. To me, the benefit of guaranteeing every citizen the opportunity to cast their ballot outweighs the costs of having to manage some provisional ballots for voters who voted in the right county but wrong precinct.

27. I am worried that the elimination of out of precinct ballots could have a particularly acute impact in the upcoming elections. This last redistricting created a large number of split precincts, especially in highly populated urban areas around majority minority districts. In my district, there are over thirty split precincts. The increase in the number of split precincts is bound to create confusion. I believe this will disproportionately impact African Americans, who now live in split precincts at higher rates than white voters.

28. *Poll Observers* – I have no doubt that expansion of poll observers is intended to facilitate the intimidation of African American voters, who have experienced a history of intimidation by poll observers and challengers at the polls in the ways that other voters have not. Prior to H.B. 589, the number of poll observers and their roles was more limited, and that helped protect against their intimidating impact. Previously, challengers had to live in the same precinct as the voter, which increased the likelihood that voters knew each other, and reduced opportunities for intimidation by outside individuals. Given the history of challenges to African American voters, I believe the changes made to challenger and poll observer guidelines was designed to give outsiders greater access into African American precincts to agitate and disrupt voters and create a climate where confrontation is more likely. At the least, this creates a chilling effect for voters. The potential of that climate could lead to counter-efforts by African Americans and other civic organizations, in an effort to organize in response to the threat of more observer and challenge activity. All of this will invariably lead to unnecessary disorder at the polls and an intimidating environment in communities of color.

29. *Elimination of Pre-Registration* – I cannot envision any valid legislative reason to eliminate pre-registration opportunities for young people. Not only is pre-registration one of the best ways to get young people in the habit of voting, which studies show impacts their civic engagement (and thus the health of their community) throughout the rest of their lives, but it is also one of the easiest and most patriotic things we can do to expand voter participation. Reaching these youth where they are, at school, is the best way to get them engaged. It is hypocritical to teach civics in every public school and then erect barriers to prevent these soon to be eligible voters from being able to participate.

30. *Elimination of Straight Party Ticket Voting* – I believe that the elimination of straight party ticket voting is aimed directly at the African American community, as these communities have come to rely on this method of voting for decades. Legislators were provided with statistics compiled by Gerry Cohen, a former legislative staffer, and reports from county Board of Elections demonstrated that African Americans disproportionately voted by straight ticket, and thus they knew the racial impact of this provision when they passed it. Indeed, straight party ticket voting has long been a strategy designed to advance African American participation. Studies show many African American voters strategically vote a straight ticket because they know candidates from one party at the top of the ticket represent their interests and believe the same about candidates from the same party down the ticket with whom they might not be as familiar. Over the years this voting method has helped narrow the racial participation gap caused in part by lower rates of education and literacy in African American communities in the state. I believe that the elimination of straight-ticket voting is going to significantly increase the amount of time it takes every voter to cast a ballot; however, because straight-ticket voting is far more prevalent in predominantly African American precincts, its elimination will lead to disproportionately longer lines in African American polling places.

31. 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 May 8 2014.


Daniel T. Blue, Jr.