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VIA EMAIL (dbickell@supremecourt.gov) AND HAND DELIVERY

October 3, 2014

Mr. Danny Bickell
Deputy Clerk for Practice and Procedure
One First Street, NE
United States Supreme Court
Washington, DC 20543

Re: Emergency Application for Recall and Stay of Mandate - Docket No. 14A358

Dear Mr. Bickell:

Yesterday, we filed an Emergency Application directed to Chief Justice Roberts asking the Court to Recall and Stay the Mandate of the United States Court of Appeals for the Fourth Circuit issued on October 1 under Fourth Circuit Docket No. 14-1845(L). The Application was filed on behalf of the State of North Carolina, Governor Patrick McCrory, and the members of the North Carolina State Board of Elections (collectively "Applicants"). In the Emergency Application for Recall and Stay of Mandate, Applicants requested that this Court enter an interim stay pending the receipt of a response from Respondents.

This morning, Respondents filed the enclosed Petition for Writ of Mandamus with the Fourth Circuit asking the Fourth Circuit to "enter an injunction consistent with its Opinion on October 1" or that the case be "remanded to another Judge of the United States District Court for the Middle District of North Carolina to enter the injunction ordered by the Fourth Circuit."

Respondents did not ask Applicants for their position on the Mandamus Petition before it was filed. After the Mandamus Petition was filed, Applicants emailed it to the District Court. Shortly thereafter, the District Court entered the enclosed preliminary injunction.

Applicants request that their Emergency Application be treated as a request for a stay of the Fourth Circuit Mandate and the attached preliminary injunction entered just now by the District Court. Applicants further request that the Court enter an interim stay pending the disposition by the Court of the Application for Recall and Stay.

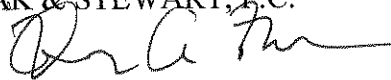
Mr. Danny Bickell
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Ogletree
Deakins

Please let us know if additional filings are required of Applicants following these developments.

Very truly yours,

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



Thomas A. Farr

cc: Counsel of Record (via Email and US Mail)

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1845 (L)
(1:13-cv-00660-TDS-JEP)
(1:13-cv-00658-TDS-JEP)
(1:13-cv-00861-TDS-JEP)

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; HUGH STOHLER

Plaintiffs

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 – 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

APPELLANTS' PETITION FOR WRIT OF MANDAMUS

Appellants respectfully petition this Court to enter an injunction effectuating the order and mandate issued by this Court on October 1, 2014, or in the alternative, to remand the case to another Judge of the United States District Court for the Middle District of North Carolina to execute immediately the mandate entered. This Court was unequivocal in its direction to the court below in the instant case, ordering on October 1, 2014, that the District Court enter an injunction as quickly as possible. This Court also denied the Appellees' October 1 request to stay the mandate. However, the District Court has yet to enter the preliminary injunction.

On October 1, 2014, this Court instructed the District Court "to enter as swiftly as possible a preliminary injunction" granting specific relief related to Same Day Registration and Out-of-Precinct Voting. That evening, the State moved for a recall and stay of this Court's mandate, and that motion was denied on October 2. Then, later on October 2, 2014, the District Court requested a telephonic status conference at 9 A.M. on October 3, 2014, to discuss "the court's authority to enter an injunction." Shortly after that conference was scheduled, Mr. Farr, attorney for the State, emailed the District Court's clerk and all counsel to inform the Court that Defendants had filed an emergency stay application with the

Supreme Court, and that responses were due on Sunday, October 5, at 5 P.M. At 8:46 A.M. today, the District Court then cancelled the conference, and asked the parties to “keep it informed of any appellate filings that may affect its authority to act as to these cases.” It is clear that the District Court does not intend to follow the direction of this Court.

The party seeking a writ of mandamus must demonstrate each and every one of the following requirements: (1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the relief he desires; and (5) the issuance of the writ will effect right and justice in the circumstances. *Earley v. Braxton (In re Braxton)*, 258 F.3d 250, 261 (4th Cir. 2001).

Appellants are entitled to the immediate relief established by this Court’s order and mandate. “Once a case has been decided on appeal and a mandate issued, the lower court may not ‘vary it [the mandate] or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.’” *Stamper v. Baskerville*, 724 F.2d 1106, 1107 (4th Cir. 1984) (quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247,

255–56, 16 S.Ct. 291, 293, 40 L.Ed. 414 (1895)); *see also*, *Doe v. Chao*, 511 F.3d 461 (4th Cir. 2007); *Redic v. Gary H. Watts Realty Co.*, 862 F.2d 314 (4th Cir. 1988).

Not only must the district court follow the express terms of the mandate, the court must also implement the spirit of the mandate. “When this court remands for further proceedings, a district court must, except in rare circumstances, implement both the letter and spirit of the mandate, taking into account our opinion and the circumstances it embraces.” *United States v. Pileggi*, 703 F.3d 675, 679 (4th Cir. 2013) (internal alteration, quotation marks, and citation omitted).

It is clear that a district court in the Fourth Circuit does not have the authority to, in effect, stay the Fourth Circuit’s ruling pending Supreme Court review. In *United States v. Lentz*, 352 F. Supp. 2d 718, 726-27 (E.D. Va. 2005), it was noted that, “a stay of this case pending filing of Lentz’s certiorari petition would violate the “mandate rule,” as it would contravene the spirit of the Fourth Circuit’s mandate in this case. Significantly, Lentz already requested that the Fourth Circuit stay its mandate pending the filing of his certiorari petition, which request was denied.” *Id.* at 727. The court in *Lentz* held that it had no jurisdiction to stay the 4th Circuit’s mandate to enable the defendant to file cert, reasoning that, because 28 U.S.C. § 2101(f) grants that authority to “a judge of the court rendering

the judgment or decree or . . . a justice of the Supreme Court,” that authority clearly doesn’t belong to the district courts. *Id.* at 725.

Thus, in light of this Court’s detailed order, Appellants respectfully request that the Fourth Circuit enter an injunction consistent with its Opinion on October 1, or, in the alternative, the case be remanded to another Judge of the United States District Court for the Middle District of North Carolina to enter the injunction ordered by the Fourth Circuit.

Dated: October 3, 2014

Respectfully submitted,

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Attorneys for Plaintiffs in League of Women Voters of North Carolina, et al. v. North Carolina, et al.

Dated: October 2, 2014

Respectfully submitted,

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McCrory, et al.*

Dated: October 2, 2014

Respectfully submitted,

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*Counsel for Duke Plaintiff-
Intervenors
(Local Counsel in District Court)*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 3, 2014, I served a copy of the foregoing Petition for Mandamus, with service to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action, namely:

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Of Counsel

Respectfully submitted,

/s/ Allison J. Riggs
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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.)

1:13CV658

PATRICK LLOYD MCCRORY, in his)
Official capacity as Governor of)
North Carolina, KIM WESTBROOK)
STRACH, in her official capacity)
As Executive Director 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.)

LEAGUE OF WOMEN VOTERS OF NORTH)
CAROLINA; A. PHILIP RANDOLPH)
INSTITUTE; UNIFOUR ONESTOP)
COLLABOARATIVE; COMMON CAUSE NORTH)

CAROLINA; GOLDIE WELLS; KAY)
BRANDON; OCTAVIA RAINEY; SARA)
STOHLER; and HUGH STOHLER,)

Plaintiffs,)

and)

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

Plaintiff-Intervenors,)

v.)

1:13CV660

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 L.)
MCCRORY, in his official capacity)
as the Governor of the State of)
North Carolina,)

Defendants.)

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

1:13CV861

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.)
)

ORDER OF PRELIMINARY INJUNCTION

On August 8, 2014, this court issued its Memorandum Opinion and Order, denying a preliminary injunction requested by Plaintiffs in the above-captioned cases. (Doc. 184 in case 1:13cv658; Doc. 182 in case 1:13cv660; Doc. 171 in case 1:13cv861.) Plaintiffs appealed this decision to the Court of Appeals for the Fourth Circuit, which issued a split decision on October 1, 2014, that affirmed this court's judgment in part and reversed in part. See League of Women Voters v. North Carolina, Nos. 14-1845, 14-1856, 14-1859, 2014 WL 4852113 (4th Cir. Oct. 1, 2014). The court of appeals remanded the case with instructions to this court to issue a preliminary injunction against the Defendants from enforcing two components of the voting law in question - North Carolina Session Law 2013-381 (referred to by the court of appeals as "HB 589," its earlier House Bill designation) - "as swiftly as possible." Id. at *21.

On October 2, 2014, Defendants filed a motion with the Fourth Circuit for a recall and stay of that court's mandate pending the filing and disposition of a petition for a writ of

certiorari with the Supreme Court of the United States. The filing of the motion to stay had the effect of staying the mandate during the pendency of the motion. Fed. R. App. P. 41(d)(1). Later that day, the Fourth Circuit denied the motion, with a dissent, which had the effect of lifting the stay of the mandate.

Late on October 2, 2014, Defendants filed an Emergency Application for Recall and Stay of Mandate with the Chief Justice of the United States Supreme Court as Circuit Justice for the Fourth Circuit. The Court has directed Plaintiffs to file a response by 5:00 p.m. Sunday October 5, 2014.

No party has indicated to this court that the filing of the emergency application with the Supreme Court acts as a further stay of the mandate and the court of appeals' direction to act "as swiftly as possible," and this court is unaware of any authority that it does.

Therefore, in accordance with, and at the direction of, the majority opinion of the court of appeals and the mandate issued thereupon, the court's Memorandum Opinion and Order denying the injunction request of Plaintiffs (Doc. 184 in case 1:13cv658; Doc. 182 in case 1:13cv660; Doc. 171 in case 1:13cv861) is modified such that

IT IS ORDERED that Defendants in the above-captioned cases, their officers, agents, servants, employees, and attorneys, as

well as any other person acting in active concert or participation with the Defendants are PRELIMINARILY ENJOINED as follows:

- Part 16: House Bill 589's elimination of Same-Day Voter Registration, previously codified at G.S. 163-82.6A, is enjoined, with the provisions in effect prior to House Bill 589's enactment in full force pending the conclusion of a full hearing on the merits;
- Part 49: House Bill 589's elimination of Voting in Incorrect Precinct, previously codified at G.S. 163-55, is enjoined, with the provisions in effect prior to House Bill 589's enactment in full force pending the conclusion of a full hearing on the merits.

League of Women Voters, 2014 WL 4852113, at *21.

IT IS FURTHER ORDERED that the parties appear before the court on Tuesday October 7, 2014, at 3:00 p.m. in Winston-Salem, Courtroom # 2 for a status conference to address how Defendants intend to comply with this Order.

/s/ Thomas D. Schroeder
United States District Judge

October 3, 2014