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

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, et al., Plaintiffs, v. PATRICK LLOYD MCCRORY, in his official capacity as the Governor of North Carolina, et al., Defendants.	**PLAINTIFFS' REPLY BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION** **Case No.: 1:13-CV-658**
LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA, et al., Plaintiffs, v. THE STATE OF NORTH CAROLINA, et al., Defendants.	**Case No.: 1:13-CV-660**
UNITED STATES OF AMERICA, Plaintiffs, v. THE STATE OF NORTH CAROLINA, et al, Defendants.	**Case No.: 1:13-CV-861**

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

INTRODUCTION

Defendants' brief confirms that a preliminary injunction is warranted. Defendants do not (because they cannot) dispute that, when faced with sharply increased voter participation among African Americans and young voters, the General Assembly eliminated the very voting methods on which such voters disproportionately relied. Defendants do not (because they cannot) dispute that African Americans in North Carolina suffer from severe socioeconomic inequalities that will make it far more difficult for them to vote in the post-HB 589 world than it will be for whites. Defendants do not (because they cannot) dispute that the General Assembly failed to articulate any credible, nondiscriminatory rationale for enacting the challenged provisions before HB 589 was signed into law. Moreover, Defendants ignore persuasive evidence that the challenged provisions unduly burden the right to vote and violate the 26th Amendment.

Instead, Defendants primarily rest their defense on two arguments. *First*, Defendants argue that because HB 589 is facially "neutral" and provides all voters an "equal opportunity" to vote, it necessarily must be lawful. Defendants thus dismiss any future "statistical disparity in the rate of minority participation" as "the result of the minority voters' choices … to not take advantage of equally open voting and registration process." Opp. at 13. That reflects a fundamental misunderstanding of the scope and nature of Section 2 of the Voting Rights Act ("VRA"). As numerous courts have held, facially neutral voting practices are unlawful under Section 2 if they interact with existing and historical socioeconomic conditions to impose disproportionate burdens on African

Americans. That is precisely what HB 589 does. In light of gross disparities in education, poverty, unemployment rates, health metrics, and access to transportation, African Americans in the post-HB 589 world do not have the same "opportunity" to vote that white voters do. To the contrary, HB 589 imposes barriers to voting that are disproportionately born by African Americans. The "statistical disparity in the rate of minority participation" that will result from the implementation of HB 589, moreover, does not result from "minority voters' choices," but from the consequences of centuries of discrimination and economic and political subjugation—the very harm that Section 2 of the VRA was enacted to prevent.

Second, Defendants argue that the results of the May 2014 midterm primary election prove that the challenged provisions will not impose disproportionate burdens on African Americans. That is wrong. A single midterm primary in which less than 16% of the electorate participated—generally, the most committed partisans who are least likely to be affected by electoral changes—is not probative of the effect HB 589 has on the electorate generally. Defendants also ignore significant differences between the 2010 and 2014 primaries that render their comparison of the two grossly misleading. Given the multitude of factors that can affect turnout in a single election, the strongest evidence in this case is the historically consistent (and undisputed) pattern of disparate reliance by African Americans on the eliminated modes of registration and voting.

ARGUMENT

I. Plaintiffs Are Likely To Succeed On Their Section 2 Claims

A. Defendants Concede The Critical Facts For A Section 2 Claim

Two uncontested facts establish Plaintiffs' likelihood of success. *First*, the State's own records reveal that African Americans have disproportionately used SDR, early voting, and out-of-precinct balloting, including in the 2010 elections. *See* Pls.' Br. at 17-20. Defendants do not dispute that these racial differences are statistically significant, and persist when controlling for factors such as partisanship and age. *See* JA615-17 (Gronke Rpt. ¶¶ 26-28); Opp. at Attach. No. 7 (Trende Dep. at 168:17–170:24). Where, as here, "minority voters disproportionately use" voting practices, they "will be disproportionately affected by ... changes [to those practices]." *Florida v. United States*, 885 F. Supp. 2d 299, 364 (D.D.C. 2012).

Second, Defendants do not dispute that (i) African Americans in North Carolina bear the effects of discrimination in areas such as poverty, unemployment, education, housing, and access to transportation; or (ii) because of those socioeconomic disparities, the new barriers to voting imposed by HB 589 are "especially consequential" and "more acute" for African Americans. Pls.' Br. at 23-26, 42; *see also Frank v. Walker*, *Nos. 11-cv-01128*, 2014 WL 1775432, at *17 (E.D. Wis. Apr. 29, 2014). The undisputed evidence thus demonstrates that the disparate burdens imposed by the challenged provisions are not, as Defendants blithely assert, "the result of minority voters' choices," Opp. at 13, but

rather a direct result of socioeconomic disparities and discrimination in North Carolina.[1] That is dispositive. Courts have sustained Section 2 claims against facially neutral voting laws in analogous circumstances. *See* Pls.' Br. at 16-17. Defendants' claim that "there has never been a successful Section 2 challenge to neutral voting and registration processes not involving voting qualifications," Opp. at 14, is simply incorrect.

B. Defendants' Arguments Are Without Merit

Rather than engage in the well-established analysis applied in other Section 2 vote denial cases, Defendants raise inapt legal arguments and make factual claims that are either specious or legally irrelevant.

1. Defendants Misconstrue the Standard for a Vote Denial Claim

Plaintiffs' Section 2 challenge presents a simple question: whether, "based on the totality of circumstances," the challenged provisions result in racial minorities having "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C. § 1973(b); *see also* Pls.' Br. at 15-16. Such a claim has nothing to do with Section 5's "retrogression" standard, which compares a new voting practice with a pre-existing one (the Section 5 "benchmark"). *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 478 (1997). Section 2 considers the relative burdens a challenged measure imposes on minority voters

[1] This distinguishes this case from those in which statistical disparities alone did not establish liability. *See* Opp. at 24-26. The racially disparate effects here are "not merely a product of chance," but directly "result[] from the interaction of the voting practice with the effects of past or present discrimination." *Frank*, 2014 WL 1775432, at *31.

compared with white voters. *See, e.g.*, *Chisom*, 501 U.S. 380, 408 (Scalia, J., dissenting) (issue is whether enactment "ma[kes] it more difficult for blacks to register [or vote] than whites."). That comparison establishes a Section 2 violation here.

Indeed, *Brown v. Detzner*, 895 F. Supp. 2d 1236 (M.D. Fla. 2012), on which Defendants rely, acknowledged that Section 2 is applicable to laws that curtail or eliminate existing voting opportunities, by "consider[ing] whether, based on an objective analysis of the totality of the circumstances," the early voting reductions at issue in that case "act[ed] to exclude African American voters from meaningful access to the polls." *Id.* at 1249-50 (citation and internal quotation marks omitted). Although the *Brown* plaintiffs failed to carry their burden of proof,[2] the court's legal analysis refutes Defendants' assertion that a reduction in early voting cannot violate Section 2.

Defendants' reliance on *Holder v. Hall*, 512 U.S. 874 (1994), is similarly misplaced. *Holder* stands for the narrow proposition that "a plaintiff cannot maintain a § 2 challenge to the size of a government body," *id.* at 885, and its ruling was expressly limited to vote *dilution* claims, which are considered under a different standard than vote denial claims—which is what Plaintiffs bring here. As the *Holder* Court explained, "*[i]n a § 2 vote dilution suit* ... a court must find a reasonable alternative practice as a

[2] In explaining that the "distinction between a Section 5 and a Section 2 claim play[ed] a significant role in the Court's decision," 895 F. Supp. 2d at 1251, *Brown* simply held that the plaintiffs in that case had failed to carry their burden of proof, as all plaintiffs must under Section 2 (as opposed to Section 5, where the jurisdiction bears the burden). The facts of this case, however, are readily distinguishable from *Brown*. *See* Pls.' Br. at 37 n.2. Also, the early voting law at issue in *Brown*, unlike HB 589, actually *increased* early voting hours on weekends. *See* 895 F. Supp. 2d at 1253; JA624-25 (Gronke Rpt. ¶ 39).

benchmark against which to measure the existing voting practice." *Id.* at 880 (emphasis added); *see also Bossier Parish*, 520 U.S. at 480 ("Because the very concept of vote dilution implies—and, indeed, necessitates—the existence of an 'undiluted' practice against which the fact of dilution may be measured, a § 2 plaintiff must also postulate a reasonable alternative voting practice to serve as the benchmark 'undiluted' voting practice."). By contrast, vote denial claims are evaluated through a different lens. Instead of comparing the challenged provision to an "alternative *practice*," vote denial claims consider whether a challenged enactment causes minority voters to have "less opportunity than other members of the electorate to participate in the political process." 42 U.S.C. § 1973(b); *see supra* page 4. It therefore is no surprise that not a single court considering a Section 2 vote denial case has evaluated alternative "benchmarks"; courts simply analyze whether a challenged practice imposed burdens disproportionately on minority voters. *See* Pls.' Br. at 16-17 (citing cases sustaining vote denial claims).[3]

2. Defendants' Arguments Regarding Turnout Do Not Rebut Plaintiffs' Showing

Defendants next resort to a series of unfounded and speculative claims about voter turnout. Those assertions are unavailing. As the *Florida* court explained, a "dramatic

[3] Even if a benchmark were necessary, the facts of this case provide one: the pre-existing methods of registration and voting that HB 589 eliminated. This further distinguishes this case from *Holder*, where the plaintiffs challenged a county's "failure" to replace the only form of government the county ever had, with something entirely new and different. 512 U.S. at 882. Here, Plaintiffs do not demand the enactment of new, hypothetical practices; they challenge the lawfulness of a recent enactment whose "effect ... can be evaluated by comparing a system with that rule to a system without that rule." *Id.* at 880-81.

reduction in a form of voting disproportionately used by African-Americans" will deny African-American voters an equal opportunity to participate, because, "[a]lthough such action would not bar African-Americans from voting, it would impose a sufficiently material burden to cause some reasonable minority voters not to vote." 885 F. Supp. 2d at 329. The record with respect to each of the eliminated practices, including uncontradicted qualitative testimony from Plaintiffs, *see* Pls.' Br. at 28-34, confirms this.

With respect to SDR, Defendants' purported expert Sean Trende does not deny that the universal scholarly consensus is that SDR has increased turnout. *See* Opp. at Attach. No. 7 (Trende Dep. at 252:24–253:1); JA678 (Gronke Sur-Reply ¶ 53). This is the product not of "theoretical speculation," Opp. at 5, but rigorous empirical study of the actual effect of SDR on turnout in past elections. *See* JA627-28 (Gronke Rpt. ¶ 43); JA678 (Gronke Sur-Reply ¶ 53). Notably, African-American registration in North Carolina skyrocketed after the adoption of SDR, *see* JA800-01 (Stewart Rpt. ¶¶ 51-53)—a fact that Defendants do not dispute, *see* Opp. at Attach. No. 7 (Trende Dep. at 151:13-20)—and African Americans continued to use SDR at higher rates than whites during the 2010 midterm. *See* JA629 (Gronke Rpt. Ex. 14).

With respect to out-of-precinct ballots, the undisputed facts are: (1) over 6,000 such ballots have been counted in each of the last three general elections, *see* Pls.' Br. at 59-60; and (2) African Americans are twice as likely to cast an out-of-precinct ballot as are whites, *see id.* at 18. Under HB 589, these ballots would simply be discarded.

The elimination of seven days of early voting—during which over 36,000 African Americans voted in the 2010 midterm (at a disproportionately higher rate than whites), *see* JA624 (Gronke Rpt. Ex. 12)—will undeniably affect African-American participation. Defendants rely on Trende to argue to the contrary, who in turn relied on a self-serving selection of academic articles, all based on old data (collected when in-person early voting was a relatively new phenomenon), and including a seven-year-old article from Dr. Gronke for the proposition that early voting does not affect turnout. *See* Opp. at 33. That was indeed Gronke's view *seven years ago*—and a sign of his objectivity. But Defendants ignore that Gronke's view has changed, because elections since 2008 have "overturned the conventional wisdom." JA604 (Gronke Rpt. ¶ 15). Recent academic "work analyzing data from 2008 and subsequent elections ... indicates that early in-person voting has come to be relied on disproportionately by African-American voters, and can be used to increase turnout among historically low-participation groups." JA678-79 (Gronke Sur-Reply ¶¶ 55-56). If there were any doubt about the effect of early voting cutbacks, one need look no further than Florida in 2012, where long lines and a drop-off in African-American early voting speak for themselves. *See* Pls.' Br. at 36.[4]

In the face of this clear and consistent evidence, Defendants resort to a series of inapt and misleading comparisons. First, Defendants rely heavily on increased turnout in

[4] Tellingly, Trende did not offer an opinion as to the cause of longer lines in Florida in 2012, see Opp. at Attach. No. 7 (Trende Dep. at 238:25 – 240:4), and did not offer any opinion as to whether the challenged provisions will impose burdens such as longer waiting times to vote *see, e.g., id.* at 162:19 – 165:21; 311:12-22.

this year's midterm primary compared to 2010. However, a single midterm primary—in which less than 16% of the electorate participated, *see* Opp. at 7; Opp. at Attach. No. 1 (Strach Decl. ¶¶ 61-62)—"is not productive for assessing the effects of" HB 589 on the electorate generally "because it could easily result in faulty conclusions." JA2810 (Burden Supp. Decl. ¶ 8). Midterm primaries "are generally low profile elections that attract very low turnout, and those citizens who do turn out to vote are habitual voters ... who are least likely to be influenced by changes in voting laws." JA2783 (Gronke 2d Sur-Reply Decl. ¶ 9); *see also* JA2810 (Burden Supp. Decl. ¶¶ 8-9). Indeed, none of Defendants' experts examined data from *any* past primary elections in their reports.

More fundamentally, Defendants' blunt comparisons of total turnout across a few cherry-picked elections are not probative, because many factors can affect overall turnout from election to election or from state to state, *see* JA664-65 (Gronke Sur-Reply ¶ 19) (turnout is a "complex, multivariate phenomenon"). For example, Defendants' facile comparison of the 2010 and 2014 primaries misleadingly ignores that 2014 featured contests for three open Congressional seats (including in one of the two majority-nonwhite Congressional districts in North Carolina), compared to none in 2010, and twice as many competitive congressional races in Democratic primaries, in which the vast majority of African-American voters participate. *See* JA2786-87 (Gronke 2d Sur-Reply Decl. ¶¶ 17-19, 23); JA2810 (Burden Supp. Decl. ¶ 11). Moreover, in 2014, a primary race for State Supreme Court drew an unprecedented $2 million in total spending, while the U.S. Senate primary garnered national media attention in anticipation

of a hotly contested general election. *See id.* JA2787 ¶ 22. Not surprisingly, then, turnout increased relative to 2010—but that does not explain the persistent racial disparities in the *mode* of voting across multiple elections, nor does it in any way cast doubt on the evidence that voting laws have a "separate and independent effect" on voters. JA674 (Gronke Sur-Reply ¶ 42). Because overall turnout can vary for a number of reasons, the best evidence for determining whether HB 589 has racially disparate effects is the undisputed fact that African Americans disproportionately relied on the eliminated practices for multiple election cycles. *See* JA2789 (Gronke 2d Sur-Reply Decl. ¶ 30).

Next, Defendants rely on Trende's report to argue that the eliminated practices do not affect turnout. *See* Opp. at 29. Unlike Gronke—a tenured political scientist acknowledged as perhaps the nation's leading expert on early voting, *see Florida*, 885 F. Supp. 2d at 322 n.19—Trende has never previously attempted to analyze the effect of voting laws on turnout or published a single peer-reviewed political science article *on any topic*. Regardless, Trende's analysis—notwithstanding its voluminous defects[5]—actually indicates that there is a "positive correlation" between the eliminated practices and increased African-American turnout. Opp. at Attach. No. 2 (Trende Rpt. ¶ 121). Trende attempts to explain away his own results, arguing that the relationship is not statistically significant at the 95 percent confidence level; but he acknowledged during his deposition that, prior to adding dubious controls, his analysis found an ***82 percent chance*** that the

[5] Because of the defects detailed in Plaintiffs' *Daubert* motion, Trende's report should be given no weight even if it is not excluded. *See* Brief in Supp. of Pls.' Mot. to Strike Decls. of Sean Trende (06/30/14 Dkt. #157).

eliminated practices have a positive impact on African-American turnout. *See* Opp. at Attach. No. 7 (Trende Dep. at 308:4-9). This certainly suffices to establish a likelihood of success. *See* JA662 (Gronke Sur-Reply ¶ 8) (95% confidence level is inappropriate given the small number of examples Trende analyzed).

Defendants also compare the change in African-American turnout in North Carolina with that in Mississippi and Virginia, which did not have the reforms at issue. *See* Opp. at 20. Such a simplistic comparison, which ignores meaningful differences between those states that can affect turnout, has no probative value. *See* JA662, JA665-69 (Gronke Sur-Reply ¶¶ 6, 20-27). But even accepting Defendants' premise that these comparisons are informative, the data belies their conclusions. African-American turnout increased in North Carolina by 67% between 2000 and 2012, versus only 41% in Mississippi. *See* Opp. at Attach. No. 7 (Trende Dep. at 99:10-16). These are "substantial differences." JA666 (Gronke Sur-Reply ¶ 22); *see also* JA1139 (Burden Sur-Reply). The 13% growth in African-American participation in Virginia, which Defendants trumpet, *see* Opp. at 20, is also relatively meager in comparison. In fact, of all the states Trende examined, North Carolina experienced the *largest increase* in African-American turnout before the repeal of HB 589. *See* Opp. at Attach. No. 2 (Trende Rpt. ¶ 119).

In any event, Trende's conclusions about turnout are irrelevant. Because he does not examine *relative* differences in voting patterns, *see* Opp. at Attach. No. 7 (Trende Dep. at 140:12-16, 207:7-11), he offers "no insights into whether [the effects of the challenged provisions] are likely to be greater for African Americans or whites." JA1001

(Stewart Surrebuttal ¶ 22); *see also id.* JA1022 ¶ 77. Furthermore, as one court recently recognized, the type of analysis employed by Trende—which purports to analyze the effect of implementing voting reforms—is inapposite, because "even if the addition of early voting days does not significantly increase turnout, it is not methodologically sound to assume that there will ... be little or no impact on overall turnout when voters (who have habituated to early in-person voting) face a loss of previously available voting days." *Florida*, 885 F. Supp. 2d at 332 (alteration in original) (quoting declaration of Gronke); *see also* JA663 (Gronke Sur-Reply ¶ 12); JA1098-99 (Burden Rpt.).

Ultimately, Defendants' arguments about turnout are a distraction from the inquiry before this Court: whether HB 589 "creates a *barrier* to voting that is more likely to appear in the path of a voter if that voter is a member of a minority group than if he or she is not." *Frank*, 2014 WL 1775432, at *25 (emphasis added). Indeed, "[t]here is nothing ... indicating that a Section 2 plaintiff must show that ... minorities are incapable of complying with the challenged voting procedure." *Id.* at *29. That some voters might be able to adjust to the barriers enacted by Defendants does not legitimize HB 589's impact on those voters, any more than Plaintiff Rosanell Eaton's ability to recite the preamble to the Constitution legitimized the literacy test that North Carolina forced her to take 70 years ago. JA32 (R. Eaton Decl. ¶ 5).

3. Defendants' Alternate Causation Theories Are Irrelevant

Defendants' assertion that the disproportionate reliance of African Americans on SDR, out-of-precinct voting, and early voting can be attributed to factors such as the

presidential campaigns and the proximity of African Americans to early voting locations also fails. *See* Opp. at 28, 30. The uncontroversial fact that multiple factors can affect voting patterns does not disprove that voting practices also have an independent effect. Moreover, Defendants have not established that these factors were causes—let alone the sole causes—of African Americans' disproportionate use of the eliminated practices.

In fact, because patterns in presidential elections are probative of the effect of voting laws, "there is no sound basis for disregarding the 2008 [or 2012] election in our evaluation of the effects of the new statute's changes in early voting procedures." *Cf. Florida*, 885 F. Supp. 2d at 328; *see also* JA673 (Gronke Sur-Reply ¶ 40). And, while active presidential campaigning surely boosted *overall* turnout, it does not explain racial disparities in the method of voting. Nor can presidential campaigns explain African Americans' continued disproportionate reliance on early voting during the 2014 primary, *see* JA2788 (Gronke 2d Sur-Reply Decl. ¶ 25), or similar disparities during the 2010 midterms, *see* JA629 (Gronke Rpt. Ex. 14) (SDR); *id*. JA617 ¶ 28 (early voting); *see* JA876 (Stewart Rpt. ¶ 235) (out of precinct voting); *Cf. Florida*, 885 F. Supp. 2d at 327-28 ("[E]ven discounting the 2008 election, the data shows a clear and statistically significant trend of higher usage … over time by African American voters.").

Defendants' discussion of the location of voting sites is a mere distraction, and is not even supported by their own evidence. Defendants' reliance on Dr. Thornton—a trained labor economist with no previous experience analyzing voter-turnout data, voter behavior, or other election-related issues, *see* Opp. at Attach. No. 5 (Thornton Dep. at

23:10-24, 28:20-30:23)—is unhelpful.[6] In fact, Thornton does not conclude that the disproportionate use of early voting among African Americans is *caused by* their proximity to early voting sites. *See, e.g.*, Opp. at Attach. No. 5 (Thornton Dep. at 86:2-87:19). This is for several good reasons, including: (i) the differences in the racial composition of areas with early voting sites and those without them are simply too small to explain the large racial disparities in early voting, *see* JA769-770 (Lichtman Surrebuttal); (ii) African-American households are less likely than white households to have access to a vehicle, meaning that the location of a one-stop site within the same county or census tract, without more, says little about a voter's access to those sites, *see* id. JA770; and (iii) county boards of elections ("CBOEs") may simply have selected early voting sites in response to increased demand in prior elections, *see* Opp. at Attach. No. 5 (Thornton Dep. at 85:3-87:23). Thornton's data simply does not have the explanatory power that Defendants suggest.[7]

C. The General Assembly Gave No Credible Rationale For The Challenged Provisions

Finally, in enacting HB 589, the General Assembly gave no credible reason for repealing the challenged provisions—a fact that further confirms that Plaintiffs are likely

---

[6] The declaration of Thomas Hofeller also fails to substantiate Defendants' assertions. *See* Brief in Supp. of Pls.' Mot. to Strike Decl. of Thomas Hofeller (06/30/14 Dkt. #162).

[7] In fact, Thornton's analysis, which indicates that counties (and census tracts) that offered early voting were disproportionately African American only supports Plaintiffs' case. Under these facts, reducing early voting opportunities is, in a very real sense, "analogous to (although certainly not the same as) closing polling places in disproportionately African-American precincts." *Florida*, 885 F. Supp. 2d at 329.

to succeed under Section 2. *See, e.g.*, *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986). In arguing otherwise, Defendants tellingly do not include a *single* citation to the legislative record. *See* Opp. at 35-40. Instead, they almost entirely offer *post-hoc* rationales invented by their lawyers for purposes of this litigation. Such after-the-fact reasoning tells the Court nothing about the General Assembly's intent in passing the challenged provisions. *See United States v. Virginia*, 518 U.S. 515, 533 (1996) (legislature's reasons for enacting laws that impinge on fundamental rights "must be genuine, not hypothesized or invented *post hoc* in response to litigation"). Indeed, Defendants' need to resort to *post-hoc* rationalizations only confirms that the General Assembly's true motivations were unlawful. *Cf. Dennis v. Columbia Colleton Med. Ctr., Inc.*, 290 F.3d 639, 647 (4th Cir. 2002) ("The fact that an employer has offered inconsistent post-hoc explanations for its employment decisions is probative of pretext."). In any event, Defendants' justifications fail on their own terms.

Same-Day Registration. Defendants first argue that the elimination of SDR was necessary because "North Carolina voter rolls are highly inflated and include many alleged registered voters who no longer reside in North Carolina." Opp. at 35. But SDR did not cause inflation in the voter rolls, and its elimination does not address that problem. *See* JA2778 (Bartlett 2d Decl. ¶ 3). As Defendants elsewhere acknowledge, this issue is largely a product of the National Voter Registration Act ("NVRA"), which limits when States can remove voters from registration lists. *See* Opp. at 35 (stating NVRA "has resulted in the inflation of voter rolls"). And although Defendants try to argue that SDR

might somehow increase the number of inaccurate entries on the State's voter rolls, *see id* at 35-36, Plaintiffs have already explained why that is not true: SDR had numerous built-in safeguards to prevent inaccurate registration, including requiring ID and the sending of two verification mailings. SDR thus resulted in *more* accurate voter registrations than did registration through the traditional process. *See* JA226-27 (Gilbert Decl. ¶ 24); *see also* JA2778-79 (Bartlett 2d Decl. ¶¶ 3-5).

Early Voting. Neither of Defendants' *post-hoc* rationales for shortening the early-voting period holds water. *First*, HB 589 does little to further the State's purported interest in "uniformity." Counties are required to maintain the same number of early voting hours they had in the election four years earlier, and they can obtain waivers from this requirement (further undermining uniformity). HB 589 §§ 25.2, 25.3. Thus, the days, total hours, specific hours during each day, and number of early voting locations and their capacity to handle voters will continue to vary from county to county.

Second, Defendants offer only the slimmest evidence that shortening the early-voting period will have any meaningful impact on the cost of political campaigns. Defendants' entire support for this novel theory is a four-page declaration of Thomas Fetzer, the former Chairman of the North Carolina Republican Party. *See* Opp. at Attach. No. 9 (Fetzer Decl. ¶ 3). Fetzer candidly acknowledges, however, that this conclusion is based on his "intuition," JA2851 (Fetzer Dep. at 15:1-3), as opposed to empirical data, quantitative analysis, *id.* JA2855 at 30:2-31:1, or any academic literature. *Id*. JA2858 at 42:4-11. Indeed, "there is no systematic evidence" supporting his view. JA683 (Gronke

Sur-Reply ¶ 69). And, Fetzer admits his opinion is not reflected in the legislative record of HB 589. JA2861 (Fetzer Dep. at 54:15-19). The pertinence of his claim is further diminished by the fact he has "not been directly involved in political campaigns" since the 2010 election cycle. *Id*. JA2861 at 56:1-3.[8]

Out-of-Precinct Voting. Defendants' attempts to rationalize the General Assembly's elimination of out-of-precinct voting are particularly specious. There is no evidence in the record that "candidates and political parties" have a habit of "deliver[ing] large groups of voters to vote in precincts to which they are not assigned," or that such a phenomenon (even if it did exist) was somehow "creat[ing] backlogs and lines." Opp. at 39. If such a problem were occurring, surely there would be some evidence that the SBOE had been apprised of the problem. The fact that no such record evidence exists shows that Defendants' administrative-burden rationale is entirely fanciful.

It is the height of irony for Defendants to argue that the elimination of out-of-precinct voting "helps ensure that voters will not be disenfranchised." Opp. at 39. Under the pre-HB 589 regime, voters who showed up at the wrong precinct were unable to vote in some local elections. But refusing to count an out-of-precinct ballot for *any* election

[8] Nor does the speculative "likelihood of voters voting with incomplete information about the candidates" justify the early voting reductions imposed by HB 589. Opp. at 39. Consistent research demonstrates the opposite, that early voters are in fact generally among the "more informed" voters. JA682 (Gronke Sur-Reply ¶ 64). The miniscule possibility that some event could occur in the seven days of early voting eliminated by HB 589 that might lead a voter to change his vote hardly justifies the substantial burdens imposed by the law, particularly given that voters have the option of waiting to vote if they need more information.

for which the voter is qualified only exacerbates the disenfranchisement that results from showing up at the wrong precinct.

Most telling, however, is that the declarant on whom Defendants rely—Cherie Poucher, Director of the Wake CBOE, *see* Opp. at 40—has previously been emphatic that out-of-precinct voting is an important tool in ensuring that all ballots are counted:

> The provisional ballot is a wonderful tool allowing all citizens who feel they are eligible to vote to cast a ballot. It places the burden of determining voter eligibility on the Boards of Election who have at hand all the information necessary to make a decision. The voter is not disenfranchised and the local precinct official does not have the final say.

JA3065 (Written Comments of Cherie Poucher Before the Elections Assistance Commission). Indeed, Poucher has previously stated that "[p]rovisional voting provides a mechanism to ensure that all citizens have a chance to vote and at the same time maintains the integrity of the election process." JA3062. She also has made clear that both voters and CBOEs preferred out-of-precinct voting: "The voters appreciated the fact that they were allowed to vote and the precinct officials appreciated the fact that they no longer had to tell a person that they could not vote in that precinct. It alleviated angry responses to the official and decreased the number of calls into the Board of Elections office." JA3062. As Poucher put it at the time, "you never deny the person the right to vote—you allow them to vote a provisional ballot and the office will research the eligibility of the voter." JA3064.

II. Plaintiffs Are Likely To Succeed On Their Intentional Discrimination Claim

Except as discussed above, Defendants do not respond to the great majority of Plaintiffs' arguments that HB 589 was enacted with the intent to suppress minority voting. Defendants do not dispute that HB 589 imposes disproportionate burdens on African Americans—a fact that is highly "probative" of why the General Assembly enacted the challenged provisions "in the first place." *Reno*, 520 U.S. at 487. They do not dispute the historical background leading up to HB 589's enactment, which shows that the General Assembly acted to eliminate the very provisions that enabled higher African-American voter participation in recent elections. *See* Pls.' Br. at 53-54. And they do not dispute that the General Assembly specifically requested race data from the SBOE and had before it evidence making it indisputably clear that the challenged provisions would disproportionately burden African Americans. *See id*. at 55. Instead, Defendants' only argument in response to Plaintiffs' evidence of intentional discrimination is that the "process followed in the enactment of H.B. 589 was consistent with legislative rules and practices and do not suggest any improper motive." Opp. at 40 (bold font removed). That argument fails for several reasons.

First, Defendants' assertion sets up a straw man. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), does not require that a legislative body violate its own rules to give rise to an inference of discriminatory intent. Rather, it provides that "[d]epartures from the *normal* procedural sequence … might afford evidence that improper purposes are playing a role," *id.* at 267 (emphasis added).

Plaintiffs have put forward overwhelming evidence of such departures—including multiple declarations from current legislators. *See* PI Br. at at 7-10, 54-55.

Second, Defendants' description of the legislative process relating to HB 589 overwhelmingly pertains to the General Assembly's consideration of the *original* version of HB 589—which, as Plaintiffs have explained, contained only a narrow voter ID provision and bore no resemblance to the final version of the bill. *See* Pls.' Br. at 8; Opp. at 42-43.[9] The expanded version of HB 589 was introduced mere days before the legislative session ended, and was passed just a few days after it was introduced. *See* Pls.' Br. at 8-9, 54; *see also* Opp. at 43-45.[10] Moreover, the General Assembly proposed the full-bill version of HB 589 only *after* the Supreme Court issued its decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), implicitly admitting that the challenged provisions likely would have failed preclearance requirements under Section 5.

Third, Defendants' argument that other bills have been passed through similar processes does not withstand scrutiny. Defendants' evidence consists of a single declaration. Opp. at 46-51. Plaintiffs, in contrast, have cited the declarations of several legislators showing that HB 589 was passed through an irregular process, as well as the

[9] Defendants misleadingly claim that members of the public were permitted to comment on HB 589 "at multiple points in the legislative process." Opp. at 45-46. Members of the public were afforded only one opportunity to comment on the full-bill version of HB 589, on the day the full bill was introduced. *See* JA3336-51 (7/23/13 N.C. Senate Sess. Tr. at 41:2-56:22).

[10] Although some of the provisions in the full-bill version of HB 589 "were pending in bills introduced earlier in the 2013 session," Opp. at 44, there is no evidence that any of those bills was debated, much less passed through a committee.

acknowledgement of a supporter of HB 589 that the rushed process was "not good practice" and "something we can be justly criticized for doing," JA 1887-88.

The examples Defendants provide of purportedly similar processes employed in passing other bills are readily distinguishable. Unlike the sprawling, full-bill version of HB 589, the bills Defendants discuss (with one exception) were essentially single-issue bills. *See* Opp. at 47-50. Further, *none* of those bills involve the combination of extraordinary factors that resulted in HB 589's enactment. *See* Pls. Br. at 8-10. And the fact that Defendants have identified only a few bills passed since 1999 through processes with features in common with HB 589 only confirms that the process was highly irregular, supporting an inference of discriminatory intent.

III. Plaintiffs Are Likely To Succeed Under *Burdick*

Defendants do not contest that the *Burdick* analysis is applicable to this case. *See* Pls. Br. at 56-57, 66. Under that analysis, the Court should find that Plaintiffs are likely to succeed in establishing that the challenged provisions unduly burden the right to vote.

Early Voting. Defendants have not meaningfully challenged the abundant evidence showing that the reduction in early voting will result in much longer lines and waiting times at the polls. *See* Pls.' Br. at 62-64. Indeed, Defendants' sole response is to point to the results of the 2014 primary election—an argument akin to a claim that road construction will not cause traffic problems during rush hour because it did not cause such problems at night. *See also supra* page 9 (there is a limited relationship, if any, between midterm primaries and general elections). Likewise, Defendants have not

rebutted the evidence that reducing early voting will disenfranchise voters, and particularly burden African-American, poor, and young voters. *See* Pls.' Br. 60-64, 74.

Because HB 589's reduction in early voting will impose severe burdens on voters, that provision can survive *Burdick* scrutiny only if it is supported by a substantial state interest. *See Frank*, 2014 WL 1775432, at *4. The reduction does not foster uniformity or reduce the costs of political campaigns, *see supra* page 16, however, and neither marginal benefits to uniformity nor saving money for political campaigns is the type of substantial interest necessary to justify a law that will result in the burdens described above.

SDR. Aside from pointing to the 2014 primary, Defendants do not contest that the elimination of SDR imposes severe burdens on the right to vote. They do not dispute that tens of thousands of voters will be affected by this change, and they cannot dispute that it will result in the complete disenfranchisement of any voter not registered to vote by the close of books. *See* Pls.' Br. at 58-59, 72 n.7. Further, Defendants provide no persuasive evidence to contradict the conclusion that the repeal of SDR will disproportionately burden African Americans, young voters, and the poor. *See* Pls.' Br. at 17-18, 29-30, 59, 72. And, Defendants' proffered interests in eliminating SDR are neither materially furthered by the elimination of SDR, *see supra* pages 15-16, nor sufficiently important to justify the severe burdens on voting rights resulting from its elimination.

Out-of-Precinct Voting. Defendants have failed to rebut the evidence that thousands of voters cast out-of-precinct ballots in the last three general elections, or that over 90% of those ballots were partially or completely counted. *See* Pls.' Br. at 59-60.

Nor could they possibly dispute that the elimination of out-of-precinct voting will result in the complete disenfranchisement of individuals who cast a ballot somewhere other than their assigned precinct. *See id.* at 59. Further, Defendants provide no evidence disputing that this change will also disparately burden groups of voters that disproportionately lack access to vehicles, including poor and young citizens. *See* Pls.' Br. at 60, 73-74; *see also supra* page 14. Given that Defendants have not put forth any credible basis for the elimination of out-of-precinct voting, *see supra* page 17-18 this change cannot survive *Burdick* scrutiny.

Pre-Registration. Defendants do not dispute that over 160,000 North Carolinians pre-registered to vote from 2010 to 2013 or that young citizens must now find a different way to register. And they cannot credibly dispute that some young citizens will fail to register by the close of books and be prevented from voting. *See* Pls.' Br. at 64, 69. The elimination of pre-registration thus imposes a substantial burden on the voting rights of young voters, and Defendants have not identified a significant interest that permits this change to survive *Burdick* scrutiny. *See generally Frank*, 2014 WL 1775432, at *4-5.

Although Defendants assert that pre-registration created confusion, the sole support for this assertion is a single conclusory statement in a declaration with no supporting evidence. *See* Opp. at 40; Opp. at Attach. No. 10 (Poucher Decl. ¶ 4). The weight of the evidence thus supports the conclusion that North Carolina did not reduce

confusion by eliminating pre-registration.[11] In any event, the State's asserted interest clearly does not justify eliminating a practice that well over 100,000 individuals used to register to vote. *See* Pls.' Br. 70. Likewise, the *post-hoc* assertion that pre-registration caused extraordinarily minor administrative burdens, *see* Opp. at Attach. No. 10 (Poucher Decl. ¶ 4), does not justify the elimination of a law that facilitated the registration of a huge number of young citizens.[12]

Discretion To Keep Polling Locations Open. Defendants provide no evidence (besides the 2014 primary results) to challenge the conclusion that removal of discretion to keep polling locations open for an extra hour will burden voters. *See* Pls.' Br. at 65, 77. Because no rationale was articulated for this change in the General Assembly, Plaintiffs are likely to succeed on the merits of their argument that this provision unduly burdens the right to vote. *See Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling opinion) ("However slight th[e] burden may appear, ... it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.") (citation and internal quotation marks omitted).

Defendants' Argument that North Carolina's Laws Are Within the Mainstream. Defendants' contention that North Carolina's post-HB 589 election laws are within the

[11] Poucher's statement is contradicted by SBOE Executive Director Strach's testimony that she had never heard of any confusion regarding pre-registration, JA529 (Strach Dep. at 307:14-308:10), as well as the declaration of George Gilbert, who served as Director of the Guilford CBOE for 25 years and avers that "[c]onfusion did not seem to be an issue with pre-registration," JA230 (Gilbert Decl. ¶ 35). *See generally* Pls.' Br. at 70.

[12] Defendants have provided no justification for the elimination of mandatory high school voter-registration drives. *See also* Opp. at Attach. No. 10 (Poucher Decl. ¶ 4).

national mainstream is a red herring. There is no exception to the *Burdick* test for laws that fall within the mainstream of voting practices. Nor is that a factor in the *Burdick* analysis. Indeed, the burden on voting rights from a particular electoral practice depends on a number of factors that vary from state to state, including the interplay of the electoral practice at issue with other practices, the history of discrimination in the state, whether voters had become habituated to and had come to rely upon the practice, and the number of students and citizens in poverty in the state.

This conclusion is confirmed by the Sixth's Circuit's affirmance in *Obama for America v. Husted,* 697 F. 3d 423, 436-37 (6th Cir. 2012), of the district court's decision that the plaintiffs were likely to succeed on the merits of their argument that a three-day reduction to Ohio's 35-day early voting period violated the Equal Protection Clause, notwithstanding that a 32-day early voting period would have left Ohio with one of the longest early voting periods in the country, *see* Opp. at Attach. No. 2 (Trende Decl. at 11). That decision cannot be squared with any analysis that looks to whether changes to voting practices leave a state's laws within the mainstream.

In addition, the assertion that North Carolina's election laws are now within the national mainstream is not supported by credible evidence. In making this assertion, Defendants rely on the reports of Schroeder and Trende. Opp. at 18-21. But neither should be regarded as an expert, and both employ fatally flawed methodologies. Further, Trende finds that, after HB 589, North Carolina is one of only nine jurisdictions with none of the five voting-facilitative practices he addresses, Opp. at Attach. No. 2 (Trende

Rpt. at 13, ¶ 60, meaning that North Carolina in fact now has election laws that are among the most restrictive in the country.

IV. Plaintiffs Are Likely To Succeed On Their 26th Amendment Claims

Defendants entirely fail to respond to Plaintiffs' argument that the challenged provisions violate the 26th Amendment, and the undisputed evidence before the Court demonstrates that young voters are disproportionately burdened by those provisions. *See Reno*, 520 U.S. at 487. Defendants do not—and plainly cannot—dispute that the elimination of pre-registration and mandatory high school voter-registration drives impacts young voters exclusively, or that over 160,000 citizens pre-registered to vote from 2010 to 2013. *See* Pls.' Br. at 69; *see also id.* at 67.[13] Nor have they pointed to anything that contradicts the conclusion that SDR made voting easier for young voters and increases youth turnout in absolute terms and relative to that of older voters, *see id.* at 72; the finding that out-of-precinct voting "has been much more important for young voters than for older voters," JA1455 (Levine Rpt.); *see also* Pls.' Br. at 73-74; or the evidence cited by Plaintiffs regarding the burdens the other challenged provisions impose on young voters, *see* Pls.' Br. at 74-75, 77.

[13] SBOE Executive Director Strach admits that the SBOE "had requested that the [DMV] not register 17-year olds," but now claims that "[s]ince the date of [her] deposition, the DMV has been instructed to register 17-year olds who will be eligible to vote in the general election." Opp. at Attach. No. 1 (Strach Decl. ¶ 56); *see also* Pls.' Br. at 71-72. *But see* JA3287 (5/16/14 Ltr. From A. Peters to M. Elias) (SBOE was still "working to address this issue" one month after Strach deposition); *see also* JA3285 (5/5/14 Ltr. from M. Elias to A. Peters). At no point have Defendants plausibly explained why the SBOE implemented the repeal of pre-registration by making registration exceedingly more difficult for young voters who will be 18 by the next election.

Defendants have also provided no reason to believe that members of the General Assembly had anyone in mind other than disproportionate users of SDR, including young voters, when they made statements demonstrating that a purpose of eliminating SDR was to make voting more difficult. *See* Pls.' Br. at 49-50, 72-73. Similarly, Defendants have supplied no legitimate rationale for the bill that would have imposed a tax penalty on a parent whose child registered to vote at an address other than the parent's, *see id.* at 78, and do not dispute that Senator Cook, a primary sponsor of that bill, stated that college students "don't pay squat in taxes" and "skew the results of elections in local areas," *see id.* at 67, 78-79. Senator Cook not only voted for HB 589 that same session but was a primary sponsor of SB 666 (another bill with (among other things) a tax penalty on parents whose children registered to vote elsewhere), which Defendants *specifically identify* as a precursor to HB 589. *See* Opp. at 44; *see also* JA3289 (SB 666 as Filed).

Moreover, Defendants offer no evidence of legitimate rationales that the members of the General Assembly had in mind *at the time HB 589 was passed*. Even the *post-hoc* rationales supplied by Defendants do not withstand scrutiny. *See supra* pages 14-18 Further, Defendants have supplied no nondiscriminatory explanation of any kind for the General Assembly's decision to permit military IDs, veterans' IDs, and certain types of tribal enrollment cards, *but not college or high school IDs*, to be used for voter ID. *See* Pls.' Br. at 67, 75-76; *cf. Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982). And Defendants have failed to rebut the evidence that the General Assembly employed an extraordinary process in enacting HB 589. *See* Pls.' Br. at 7-10, 54-55, 80. These facts,

taken together, show that HB 589 was intended, at least in part, to discriminate against young voters.

V. The Balance of Harms And Public Interest Favor A Preliminary Injunction

Plaintiffs previously explained why failing to issue a preliminary injunction would irreparably harm them and other voters and serve the extraordinary public interest in preventing the right to vote from being denied or abridged. Pls.' Br. at 12-14. In response, Defendants argue that those harms are outweighed by the "administrative burdens" and "costs" that election officials would incur from administering the 2014 election under the pre-HB 589 regime. For several reasons, those alleged burdens and costs do nothing to undermine the necessity of an injunction.

First, the relevant *status quo* in this case is not the election procedures that were "enforced in the 2014 primary," Opp. at 52, but instead the election procedures that existed before this suit was filed. The Fourth Circuit "has defined the *status quo* as the last uncontested status between the parties *which preceded the controversy*." *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) (citation and internal quotations omitted and emphasis added). Here, the original complaints in these cases were filed almost eleven months ago, immediately after HB 589 was signed into law and long before the 2014 primary. The "last uncontested status" between the parties, therefore, were the election procedures that were in place before HB 589 was enacted, and which governed the 2012 general election (and, before that, the 2010 general election).

Second, the burdens and costs of which Defendants complain were entirely avoidable and of Defendants' own making. Plaintiffs made clear early on that they would seek to enjoin the challenged provisions before the 2014 General Election, and the parties have operated under an expedited schedule to ensure a full and complete hearing of the issues before that time. Having been made aware many months ago of the real possibility that some or all of the challenged provisions could be enjoined, Defendants should have prepared to reinstitute certain practices if the Court so ordered. Instead, they chose to ignore the possibility that a preliminary injunction would be issued. Defendants cannot in good faith rush to implement the very provisions being challenged in a pending preliminary injunction motion and then claim an undue burden associated with returning to the pre-HB 589 election regime.

Third, and finally, any additional costs or burdens incurred by Defendants in complying with this Court's preliminary injunction order are far outweighed by the injury that Plaintiffs and other North Carolinians will suffer—the abridgement or denial of their right to vote—absent an injunction. *See Taylor v. Louisiana*, 419 U.S. 522, 535 (1975); *Johnson v. Halifax Cnty.*, 594 F. Supp 161, 171 (E.D.N.C. 1984).

VI. The Soft Rollout Of HB 589's Photo Identification Requirement Should Be Enjoined

Finally, Defendants do not respond *at all* to the NAACP Plaintiffs' arguments that the Court should enjoin the planned "soft rollout" of HB 589's photo ID provisions during the 2014 general election. *See* Pls.' Br. 39-41. As the NAACP Plaintiffs explained in their opening brief, the soft rollout will confuse poll workers and voters, add additional

times at the polls, contribute to longer lines, and create disproportionate burdens on African Americans. *See id*. Indeed, those concerns were born out during the May 2014 primary election, during which voters were wrongly told that they needed to present photo identification in order to voter. *See, e.g.*, JA2827 (S. Cannon Decl. ¶¶ 10-13); JA2823 (J. Cannon Decl. ¶¶ 11-13). Because it will involve a far higher turnout rate, many more such incidents can be expected to occur during the 2014 general election, and an untold number of voters without identification likely will not even make the trip to the polls, under the false belief that they will not be able to vote.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court preliminary enjoin implementation of the challenged provisions pending the outcome of this litigation.

Dated: June 30, 2014

Respectfully submitted,

By: */s/ Adam Stein*

Adam Stein (N.C. State Bar # 4145)
Of Counsel
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Phone: (919) 240-7089
astein@tinfulton.com

/s/ *Daniel T. Donovan*
Thomas D. Yannucci
Daniel T. Donovan
Susan M. Davies
Bridget K. O'Connor
K. Winn Allen
Uzoma Nkwonta
Kim Knudson
Jodi Wu
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Phone: (202) 879-5000
tyannucci@kirkland.com

Penda D. Hair
Edward A. Hailes, Jr.
Denise D. Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Phone: (202) 728-9557
phair@advancementproject.com

Irving Joyner (N.C. State Bar # 7830)
P.O. Box 374
Cary, NC 27512
Phone: (919)319-353
ijoyner@nccu.edu

Attorneys for Plaintiffs in North Carolina Conference of NAACP, et al. v. McCrory, et al.

Dated: June 30, 2014

Respectfully submitted,

By: */s/ Allison J. Riggs*

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380 ext. 115
Facsimile: 919-323-3942
E-mail: allisonriggs@southerncoalition.org

Laughlin McDonald*
ACLU Voting Rights Project
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
(404) 500-1235
lmcdonald@aclu.org
* *appearing pursuant to Local Rule 83.1(d)*

/s/ *Dale Ho*
Dale Ho*
Julie A. Ebenstein*
ACLU Voting Rights Project
125 Broad Street
New York, NY 10004
(212) 549-2693
dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Christopher Brook (State Bar #33838) ACLU of North Carolina Legal Foundation
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: 919-834-3466
Facsimile: 866-511-1344
E-mail: cbrook@acluofnc.org

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

Dated: June 30, 2014

Respectfully submitted,

/s/ *John M. Devaney*
John M. Devaney
PERKINS COIE LLP
D.C. Bar No. 375465
JDevaney@perkinscoie.com
Marc E. Elias
D.C. Bar No. 442007
MElias@perkinscoie.com
Elisabeth C. Frost
D.C. Bar No. 1007632
EFrost@perkinscoie.com
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211

Joshua L. Kaul
Wisconsin Bar No. 1067529
JKaul@perkinscoie.com
1 East Main Street, Suite 201
Madison, WI 53705
Telephone: (608)294-4007
Facsimile: (608) 663-7499

Attorneys for Duke Plaintiff-Intervenors

/s/ *Edwin M. Speas, Jr.*
Edwin M. Speas, Jr.
POYNER SPRUILL LLP
N.C. State Bar No. 4112
espeas@poynerspruill.com
John W. O'Hale
N.C. State Bar No. 35895
johale@poynerspruill.com
Caroline P. Mackie
N.C. State Bar No. 41512
cmackie@poynerspruill.com
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075
**appearing pursuant to Local Rule 83.1(d)*

CERTIFICATE OF SERVICE

I, Daniel T. Donovan, hereby certify that, on June 30, 2014, I filed a copy of the foregoing Plaintiffs' Reply Brief In Support of Motion for Preliminary Injunction using the CM/ECF system, which on the same date sent notification of the filing to the following:

Counsel for Plaintiffs in North Carolina State Conference of the NAACP, et al. v. McCrory, et al.

Adam Stein
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
Facsimile: (919) 240-7822
E-mail: astein@tinfulton.com

Penda D. Hair
Edward A. Hailes
Denise Lieberman
Donita Judge
Caitlin Swain
ADVANCEMENT PROJECT
Suite 850
1220 L Street, N.W.
Washington, DC 20005
Telephone: (202) 728-9557
E-mail: phair@advancementproject.com

Irving Joyner
PO Box 374
Cary, NC 27512
E-mail: ijoyner@nccu.edu

Daniel T. Donovan
Thomas D. Yannucci
Susan M. Davies
Bridget K. O'Connor
K. Winn Allen
Uzoma N, Nkwonta
Kim Knudson
Jodi K.Wu
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5174
Facsimile: (202) 879-5200
E-mail: daniel.donovan@kirkland.com

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

Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
Clare R. Barnett (State Bar #42678)
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: (919) 323-3380 ext. 115
Facsimile: (919) 323-3942
E-mail: anita@southerncoalition.org

Christopher Brook (State Bar #33838)
ACLU of NORTH CAROLINA LEGAL FOUNDATION
P.O. Box 28004
Raleigh, NC 27611-8004
Telephone: (919) 834-3466
Facsimile: (866) 511-1344
E-mail: cbrook@acluofnc.org

Dale Ho*
Julie A. Ebenstein*
ACLU VOTING RIGHTS PROJECT
125 Broad Street
New York, NY 10004
Telephone: (212) 549-2693
E-mail: dale.ho@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Laughlin McDonald*
ACLU VOTING RIGHTS PROJECT
2700 International Tower
229 Peachtree Street, NE
Atlanta, GA 30303
Telephone: (404) 500-1235
E-mail: lmcdonald@aclu.org
**appearing pursuant to Local Rule 83.1(d)*

Counsel for Plaintiffs in US v. North Carolina, et al.
T. Christian Herren, Jr.
John A. Russ IV
Catherine Meza
David G. Cooper
Spencer R. Fisher
Elizabeth Ryan
Attorneys, Voting Section
Civil Rights Division
U.S. DEPARTMENT OF JUSTICE
Room 7254-NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (800) 253-3931
Facsimile: (202) 307-3961
E-mail: john.russ@usdoj.gov
E-mail: catherine.meza@usdoj.gov

Gill P. Beck (State Bar # 13175)
Special Assistant United States Attorney
OFFICE OF THE UNITED STATES ATTORNEY
United States Courthouse
100 Otis Street
Asheville, NC 28801
Telephone: (828) 259-0645
E-mail: gill.beck@usdoj.gov

Counsel for Plaintiff-Intervenors in League of Women Voters of North Carolina, et al. v. North Carolina, et al.
Marc E. Elias
John M. Devaney
Elisabeth C. Frost
700 Thirteenth St., N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
E-mail: melias@perkinscoie.com
E-mail: jdevaney@perkinscoie.com
E-mail: efrost@perkinscoie.com

Edwin M. Speas, Jr. (State Bar # 4112)
John W. O'Hale (State Bar # 35895)
Caroline P. Mackie (State Bar # 41512)
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Telephone: (919) 783-6400
Facsimile: (919) 783-1075
E-mail: espeas@poynerspruill.com
E-mail: johale@poynerspruill.com
E-mail: cmackie@poynerspruill.com

Counsel for Defendant Patrick McCrory
Karl S. Bowers, Jr.
BOWERS LAW OFFICE LLC
P.O. Box 50549
Columbia, SC 29250
Telephone: (803) 260-4124
Facsimile: (803) 250-3985
E-mail: butch@butchbowers.com

Robert C. Stephens
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
Of Counsel

Counsel for Defendants State of North Carolina and Members of the State Board of Elections
Alexander Peters, Esq.
NC DEPARTMENT OF JUSTICE
PO Box 629
Raleigh, NC 27602
Telephone: (919) 716-6913
Facsimile: (919) 716-6763
E-mail: apeters@ncdoj.gov

Thomas A. Farr, Esq.
Phillip J. Strach, Esq.
OGLETREE, DEAKINS, NASH, SMOAK
& STEWART, P.C
4208 Six Forks Road
Raleigh, NC 27609
Telephone: (919) 787-9700
Facsimile: (919)783-9412
E-mail: thomas.farr@ogletreedeakins.com
E-mail: phil.strach@ogletreedeakins.com

Respectfully Submitted,

/s/ Daniel T. Donovan

Daniel T. Donovan
KIRKLAND & ELLIS LLP
655 Fifteenth St., N.W.
Washington, DC 20005
Telephone: (202) 879-5174
Facsimile: (202) 879-5200
E-mail: daniel.donovan@kirkland.com

/s/ *Adam Stein*

Adam Stein (N.C. State Bar #4145)
TIN FULTON WALKER & OWEN, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
Telephone: (919) 240-7089
E-mail: astein@tinfulton.com