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' JOINT MOTION
FOR LEAVE TO FILE SEPARATE MERITS BRIEFS
OR, IN THE ALTERNATIVE, TO INCREASE THE PAGE LIMIT

Appellants in the three appeals that have been consolidated under docket number 14-1845 (L) (collectively, "Appellants") jointly move the Court pursuant to Rule 28 of the Federal Rules of Appellate Procedure ("FRAP") and Fourth Circuit Local Rule 28(d) for leave to file three separate merits briefs (of no more than 15 pages each) on behalf of the three groups of Appellants who are before this Court. In the alternative, Appellants move the Court pursuant to Local Rule 32(b) (and to the extent necessary, pursuant to FRAP 2) to increase the page limit for any consolidated merits brief to be filed by Appellants, from the current limit of 15 pages, to an increased limit of 45 pages. In support whereof, Appellants show the Court as follows:

STATEMENT OF FACTS

Appellants consist of three separate groups of individual and organizational Plaintiffs and Plaintiffs-Intervenors (collectively, the "Plaintiff Groups") who are challenging the constitutionality of numerous provisions contained in N.C. Sess. Law 2013-381 (hereinafter "H.B. 589"). For purposes of shorthand, the three Plaintiff Groups have sometimes been referred to in this litigation as (1) the "NAACP

Plaintiffs"; (2) the "League Plaintiffs"; and (3) the "Duke Intervenors" (or simply "Intervenors"), respectively.[1]

Each of the Plaintiff Groups previously filed with this Court separate Motions to Expedite, in which they briefly summarized the nature and procedural history of this litigation. In the interest of brevity, Appellants will not repeat those narratives; however, they will set forth below certain additional facts, including a summary of recent procedural developments, that are relevant to the Court's understanding of why separate briefs are appropriate in this case.

In an order dated September 9, 2014 (the "Briefing Order"), this Court granted the motions for expedited briefing and oral argument filed by the Plaintiff Groups. The Court stated that (1) "[t]he parties may supplement their memoranda in the district court with appellate briefs of no more than 15 pages"; (2) "[a]ll parties must file their briefs by September 17, 2014"; and (3) "[t]he United States is also invited to file a statement of its views on or before September 17, 2014." The

[1] *See, e.g.*, District Court's August 8, 2014 Order at 4. (The district court's order, in total, was 125 pages long.) In the district court, the United States was treated as a fourth plaintiff "group." As the Court is aware, the United States is not a party to this appeal.

Court thereafter entered an order consolidating the three appeals (the "Consolidation Order").

ARGUMENT

I. THE COURT SHOULD GRANT LEAVE TO EACH OF THE PLAINTIFF GROUPS TO FILE SEPARATE MERITS BRIEFS.

Pursuant to Local Rule 28(d), motions to file separate briefs "are granted only upon a particularized showing of good cause, such as, but not limited to, cases in which the interests of the parties are adverse." However, the movants' interests need not be adverse; this Court has also granted leave to file separate briefs in consolidated cases where the appellants' interests were described as "not adverse" but "not completely aligned," either. *See Bostic, et al. v. Rainey*, No. 14-1167 (L), Doc. No. 38 (4th Cir. March 10, 2014) (granting the appellants' motion to consolidate, Doc. No. 12, in which the quoted language appeared).

Although the members of the three Plaintiff Groups could very well share many similar goals and values (broadly speaking), the specific claims that they are prosecuting in this litigation—as well as the legal theories upon which those claims are based—vary

considerably. For purposes of the preliminary injunction motion that is the subject of this appeal, the Plaintiff Groups have challenged numerous provisions of H.B. 589, including (1) the repeal of same-day registration, (2) the elimination of out-of-precinct voting, and (3) the shortening of the applicable early-voting period—all of which the NAACP Plaintiffs challenged on the basis of Section 2 of the Voting Rights Act; the League Plaintiffs challenged on the basis of imposing an undue burden on the right to vote under the Fourteenth Amendment; and the Duke Intervenors challenged as violations of young people's right to vote under the Fourteenth and Twenty-Sixth Amendments.

That difference in legal theories is an important and critical reason for granting separate briefs in this case. Fifteen pages is simply far too short for all three Plaintiff Groups to advance their arguments on (i) Section 2 of the Voting Rights Act; (ii) the Fourteenth Amendment; and (iii) the Twenty-Sixth Amendment. With separate briefs (which themselves would be short) each Plaintiff Group could focus their arguments on each individual legal issue and provide the Court with a fulsome discussion of each issue. Wedging three of these

important arguments into a 15 page brief, in contrast, would fail to provide adequate justice to any single argument. Also, per FRAP 28(a), Appellants are required to include numerous sub-sections in their brief, which count towards the 15 page limit, including a jurisdictional statement, statement of the issues presented, statement of the case, and summary of the argument. Inclusion of the required sub-sections would provide each appealing party less than five pages of argument—likely three or four pages—which would hinder and prejudice Appellants' distinct legal arguments.

Not only do Appellants' legal theories differ, but so do the factual allegations upon which many of their claims are predicated, such as the elimination of pre-registration (which is challenged only by the NAACP and the Intervenors, based upon different legal theories) or the shortening of certain poll hours (which is challenged only by the League Plaintiffs and the Intervenors, based upon different legal theories). Moreover, some claims are unique to a particular Plaintiff Group, such as the NAACP Plaintiffs' challenge to certain restrictions placed upon

poll observers and the so-called "soft rollout" of certain new voter ID requirements.

From the outset of this litigation, the Plaintiff Groups have emphasized that although they may be working towards similar results in these cases, their claims and their strategies are their own. For example, when the United States (which is not a party to this appeal) filed a motion in the trial court to consolidate all of the pending cases, the two Plaintiff Groups that were parties at that time (*i.e.*, the NAACP Plaintiffs and the League Plaintiffs; the Intervenors were not yet parties) strenuously opposed consolidation, except for the limited purpose of conducting discovery, and they filed motions in the alternative to request consolidation for that purpose only. As the NAACP Plaintiffs emphasized:

> There are material differences among the claims in the cases including, among others, that certain of the cases challenge the photo ID requirement, while one of the cases does not; one of the cases challenges the provision concerning additional poll observers, while the other cases do not; two of the cases allege claims under the Fourteenth and Fifteenth Amendments of the U.S. Constitution, while one of the cases does not.

> The parties in all three cases held a joint Rule 26(f) conference on November 15 and November 25, 2013. […] Both the NAACP Plaintiffs and the LWV Plaintiffs expressed the view that consolidation for trial purposes was not appropriate at this time.

(NAACP Plaintiffs' December 3, 2013 Motion for Consolidation). The district court subsequently granted the NAACP Plaintiffs' and the League Plaintiffs' motions for limited consolidation only.

Just as differences among the Plaintiff Groups were apparent from the outset, so have issues continued to arise that serve to magnify such differences. For example, although no Defendant (or any other party, for that matter) challenged the Intervenors' standing to assert their claims, the district court *sua sponte* inquired into the Intervenors' standing and requested additional briefing from the Intervenors and Defendants; moreover, the district court devoted a large section of its Opinion to addressing that issue. Indeed, other than its extensive discussion of Intervenors' standing to challenge pre-registration (which is just one of the provisions of H.B. 589 that Intervenors challenge on 26th Amendment grounds and which the district court ultimately did find Intervenors had standing to challenge), the district court's 125-

page opinion largely ignores Intervenors' 26th Amendment claim, except to describe it as "novel." Instead, the district court side-stepped the merits of Intervenors' arguments entirely, finding that Intervenors had failed to show irreparable harm, contrary to the extensive record before it. Thus, Intervenors' argument before this Court will necessarily focus on the issue of their showing of irreparable harm and the evaluation of the merits of their Twenty-Sixth Amendment claim, which the district court entirely failed to consider—both arguments that are unique to Intevenors. The fact that Intervenors must contend with the other Plaintiff Groups to allocate *any* amount of a fifteen-page merits brief to these issues presents a very real divergence of interests among the Plaintiff Groups—and that is just one of many.

For these reasons, the Court should grant leave to the three Plaintiffs Groups to file three separate merits briefs of 15 pages each.

II. ALTERNATIVELY, THE COURT SHOULD INCREASE THE PAGE LIMIT FOR ANY CONSOLIDATED BRIEF TO BE FILED BY APPELLANTS.

In the alternative, Appellants move the Court pursuant to Local Rule 32(b) to increase the page limit for any consolidated merits brief to

be filed by Appellants, from the current limit of 15 pages, to an increased limit of 45 pages, for the reasons set forth above.

STATEMENT PURSUANT TO FOURTH CIRCUIT LOCAL RULE 27(a)

Counsel for Appellees have been notified of the intended filing of this Motion. Prior to filing this Motion, Appellants' counsel conferred with Appellees' counsel regarding this request for leave to file separate merits briefs. Counsel for Appellees advised that they oppose the Motion and do not intend to file a response.

WHEREFORE, Appellants pray that the Court grant the relief requested in this Motion and award such other and further relief as the Court may deem appropriate.

Dated: September 11, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on September 11, 2014, I served a copy of the foregoing Motion, 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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