

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
STATE OF NORTH CAROLINA, *et al.*)
)
Defendants.)
_____)

**DEFENDANTS’ MEMORANDUM IN
OPPOSITION TO PLAINTIFFS’
MOTION FOR ADDITIONAL
RELIEF**

INTRODUCTION

Plaintiffs’ request that this Court order the State to enact new legislative redistricting plans within two weeks of the date the 2017 North Carolina General Assembly convenes (January 11, 2017) as well as special elections in 2017 for the new legislative districts is overreaching, unreasonable, and unrealistic. The combination of the number of districts that have been declared unlawful and the operation of the requirements for grouping counties adopted by the North Carolina Supreme Court to give effect to the “Whole County Provisions” (“WCP”) of the North Carolina Constitution, N.C. CONST. art. II, §§ 3(3) and 5(3), will require substantial changes to a significant number of districts. *Dickson v. Rucho*, 367 N.C. 542, 570, 766 S.E.2d 238, 257-58 (2014) (“*Dickson I*”). In light of the number of districts that need to be revised, and the significant financial and administrative burdens resulting from a general election in 2017, the only way to guarantee an orderly redistricting process is to allow the General Assembly at least as much time in 2017 as it took to enact the original plans in 2011.

Moreover, because this Court's judgments regarding North Carolina's 2011 districting are now pending before the United States Supreme Court, special elections in 2017 are not warranted and the Court should reject plaintiffs' request for such elections.

Alternatively, should the Court order special elections, the General Assembly should have, at a minimum, until at least May 1, 2017 to enact new legislative districting plans. Allowing the legislature this bare minimum amount of time to conduct hearings and ensure passage of new plans would still give this Court time to review new plans and permit the State to conduct special elections (albeit on a very tight schedule) in November of 2017. While defendants will comply with any order of this Court, requiring the General Assembly to enact plans in two weeks will guarantee no meaningful opportunities for public input, and force upon the General Assembly an opaque and highly truncated legislative process.

BACKGROUND

1. 2011 Redistricting Process

For the 2011 session of the North Carolina General Assembly, the North Carolina House of Representatives and the North Carolina Senate convened on January 26, 2011. Both chambers elected leadership on that date. The Senate first constituted the Senate Redistricting Committee and designated Senator Bob Rucho as Chair on January 27, 2011. The House first constituted the House Redistricting Committee and designated Representative David Lewis as Chair on January 27, 2011.

Thereafter, public hearings were held on twelve different dates between April 13, 2011, and July 18, 2011. The co-chairs first published proposed "VRA districts," a term

first used by the North Carolina Supreme Court to describe districts adopted by the state to avoid liability under the Voting Rights Act. *Stephenson v. Bartlett*, 355 N.C. 354, 381, 562 S.E. 2d 377, 396-97 (2002) (“*Stephenson I*”). Subsequently, the co-chairs released proposed House and Senate districting plans for the entire State and conducted a public hearing on those plans. (Joint Exhibits [“JX”] 1005-07) While the co-chairs solicited recommendations from various sources, including Democratic members of the General Assembly, only one alternative set of legislative plans was offered during the public hearing process – House and Senate plans proposed by a group that called itself the Alliance for Fair Redistricting and Minority Voting Rights (“AFRAM”).¹

The General Assembly then convened on July 25, 2011, to consider legislative districting plans, including plans that were proposed by the two redistricting chairs. On that same date, the Democratic leadership and members of the Legislative Black Caucus, for the first time, published proposed districting plans for the Senate and the House.

The Senate plan adopted by the General Assembly was ratified on July 27, 2011. The House plan enacted by the General Assembly was also ratified on July 27, 2011. *Dickson I*, 367 N.C. at 547, 766 S.E2d at 243. Both plans were enacted largely based upon party-line votes.

2. Post 2011 Redistricting Litigation

(a) *Dickson v. Rucho*

In the fall of 2011, two different sets of plaintiffs filed two different lawsuits in the Wake County Superior Court challenging the constitutionality of numerous legislative

¹ This coalition included the North Carolina Conference of Chapters of the NAACP.

and congressional seats. These two cases were assigned to a three-judge panel of the Superior Court of Wake County pursuant to North Carolina law and then consolidated. *Dickson I*, 367 N.C. at 547, 766 S.E.2d at 243 (citing N.C. Gen. Stat. § 1-267.1). While plaintiffs alleged numerous claims, the primary focus of both complaints was their contentions that Congressional Districts 1 and 12 (“CD 1” and “CD 12”) and numerous legislative districts were racial gerrymanders. On February 6, 2012, the three-judge panel allowed in part and denied in part defendants’ motion to dismiss; on July 8, 2013, the three-judge panel entered a unanimous ruling entering summary judgment for defendants on all of plaintiffs’ remaining claims. *Dickson I*, 367 N.C. at 547-48, 766 S.E.2d at 243.

Plaintiffs then appealed to the North Carolina Supreme Court, which affirmed the decision by the superior court. *Dickson I, supra*. After that, plaintiffs filed a petition for a writ of *certiorari* with the United States Supreme Court. The Court granted the petition and remanded the case to the North Carolina Supreme Court for further consideration in light of the decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257 (2015). Upon remand, the North Carolina Supreme Court once again affirmed the decision of the Superior Court. *See Dickson v. Rucho*, 368 N.C. 481, 485-86, 781 S.E.2d 404, 410-11 (2016) (“*Dickson II*”).

On June 30, 2016, the plaintiffs in *Dickson* filed a second petition for a writ of *certiorari*. The petition was circulated for a conference of the Supreme Court on September 26, 2016. To date, the Court has not ruled upon this petition. *See* Supreme Court Docket 16-24.

(b) *Harris v. McCrory*

After the ruling by the North Carolina Supreme Court in *Dickson I*, two individual plaintiffs filed a lawsuit in the Middle District of North Carolina challenging the 2011 versions of CD 1 and CD 12 as racial gerrymanders. The matter was tried before the three-judge court in October of 2015. On February 5, 2016, the *Harris* Court entered a judgment finding that CD 1 and CD 12 constituted racial gerrymanders. *Harris v. McCrory*, 159 F. Supp. 3d 600 (2016). On February 8, 2016, defendants filed their notice of appeal (M.D.N.C. 1:13-CV-949), and on April 8, 2016, defendants filed a statement of probable jurisdiction with the Supreme Court. *See* Supreme Court Docket 15-1262. On June 27, 2016, the Court noted probable jurisdiction and ordered briefing on the merits. *Id.* The case has been scheduled for oral argument before the Supreme Court on December 5, 2016. *Id.*

(c) *Covington v. North Carolina*

The instant case involves challenges to 28 legislative districts enacted in 2011. On August 11, 2016, this court entered a judgment finding in plaintiffs' favor on all challenged districts. (D.E. 123) On September 13, 2016, defendants filed their notice of appeal to the Supreme Court. (D.E. 130) Defendants' jurisdictional statement is due to be filed and will be filed no later than November 15, 2016.

3. Impact of this Court's Judgment on 2011 Legislative Districts

This court found that 28 legislative districts enacted in 2011 constitute racial gerrymanders. These districts and any other districts impacted by changes to these districts will need to be modified.

Because of the county grouping formula, first mandated in *Stephenson I*, followed in *Stephenson v. Bartlett*, 357 N.C. 301, 582 S.E.2d 247 (2003) (“*Stephenson II*”), and *Pender County v. Bartlett*, 361 N.C. 491, 49 S.E.2d 364 (2007), and then further clarified in *Dickson I* and *Dickson II*, addressing the 28 challenged districts will require a significant re-grouping of the county groups that must be used as a matter of state law under any new districting plans. *See Dickson II*, 368 N.C. at 530-31, 781 S.E.2d at 438-39 (explaining the WCP county group formula). This in turn will require the General Assembly to revise a majority of all legislative districts enacted in 2011. *See* Declaration of Dr. Thomas Hofeller, PH.D. (October 28, 2016) (“Hofeller Decl.”) ¶¶ 17-23 (attached as Ex. 1).

More specifically, new legislative maps, drawn strictly in compliance with the *Stephenson* county grouping formula, may result in changes in the boundaries for 35 Senate districts and 81 House districts. Stated differently, in the 2011 Senate plan, only 15 Senate districts are located in county groups that do not include a challenged 2011 VRA district and that comply with the *Stephenson* grouping requirement. Similarly, only 39 of the 2011 House districts are located in county groups that do not contain a challenged VRA district and that comply with the *Stephenson* grouping requirement. *See* Hofeller Decl. ¶¶ 17-23.²

² The re-grouping required by the *Stephenson* formula will substantially impact the districts in which incumbents have been elected, including African American incumbents elected in three Senate districts and at least six House districts located in eastern North Carolina. Hofeller Decl. ¶¶ 25-27.

4. The General Assembly's Intention to Reduce the Size of Precincts

In its opinion on the merits, the Court criticized the 2011 districting plans because of the number of divided precincts. *See Covington v. North Carolina*, 316 F.R.D. 117, 137 (M.D.N.C. 2016) (three-judge court). Over the years, precincts in North Carolina have rarely been changed. Many precinct boundaries have been in existence for more than 20 years. (D.E. 103-4 [*Dickson*, Bartlett Dep. 21-22]; D.E. 103-2 [*Colicutt* Dep. 46-47]; D.E. 103-5 [*Doss* Dep. 19-20]; D.E. 103-1 [*Poucher* Dep. 39]; Tr. Vol. I, pp.96-100) This reality has resulted in many precincts with very high numbers of registered voters. For example, 48% of registered voters are located in a precinct with 3000 or more registered voters. *See* attached Ex. 2 (Press Release and Supporting Documents by Democracy North Carolina (August 10, 2016)).

To address election administration and districting problems caused by large precincts, on July 22, 2016, the General Assembly enacted S.L. 2016-109. Under Section 7(c), the State Board of Elections (“SBE”) has been directed to provide proposed voting districts or precincts for the entire State. One of the factors to be considered by the SBE is the reduction of the number of voters assigned to large precincts. Under this statute, SBE is required to produce its recommendations for new precinct criteria by December 1, 2016. Also under this statute, each county board of elections has until November 1, 2017, to request changes in the precinct boundaries proposed by the SBE for their county. New precincts will thereafter be established to be used in elections taking place after

January 1, 2018. *Id.*, Section 7(d). As a result, new and smaller sized precincts will not be available for purposes of redistricting until on or after January 1, 2018.

ARGUMENT

- 1. The Court should not order a special election for new legislative districts, and members elected in 2016 should be allowed to serve their full two-year term.**

This Court should follow the precedent set by the three-judge court following the Supreme Court's decision in *Shaw v. Hunt*, 517 U.S. 899 (1996), and not order a special election for 2017. *See Shaw v. Hunt*, No. 92-202-Civ-BR (July 30, 1996). Allowing all representatives elected in 2016 to serve their full two-year term (as established by the North Carolina Constitution in N.C. Const. art. II, § 8) is consistent with the equitable judgment made by the North Carolina Supreme Court in *Pender County v. Bartlett*, 361 N.C. 491, 509-10, 649 S.E. 2d 364, 376 (2007). Allowing legislators elected in 2016 to serve their full two-year term is also an appropriate remedy here because of the two decisions by the North Carolina Supreme Court (on the same record evidence that was before this Court) finding that all of the challenged legislative districts are constitutional. *Dickson I, supra; Dickson II, supra*. It is highly likely that all three decisions regarding North Carolina's 2011 redistricting will be reviewed by the Supreme Court. One of these cases, *Harris v. McCrory*, is already calendared for oral argument in less than two months. Therefore, allowing legislators elected in 2016 to serve their full two-year term will provide sufficient time for the Supreme Court to clarify whether the North Carolina Supreme Court or this Court correctly applied the law on racial gerrymandering. Under

these circumstances it is neither equitable nor fair to the voters of North Carolina to compel the disruption that will flow from holding special elections in 2017.

In *Dickson II*, the North Carolina Supreme Court adopted a strict county grouping formula to ensure compliance with North Carolina's WCP, harmonized with the requirements of federal law. The General Assembly must start by identifying all single counties with enough population to support a whole number of legislative districts. For such counties, the legislative district or districts must be drawn within each county. Thereafter, the General Assembly must identify the maximum number of two-county combinations with sufficient population to support a whole number of legislative districts and these districts must be drawn within that two-county group. This process continues with the General Assembly then being required to identify the maximum number of three-county combinations, the maximum number of four-county combinations, and so forth. *Dickson II*, 368 N.C. at 532, 781 S.E.2d at 439-40.

At trial, Dr. Hofeller explained that during the 2011 legislative process, he first started with a map that maximized the county combination as required by the WCP. Dr. Hofeller then followed an iterative process where he attempted to harmonize the maximum county combination map with geographically compact African American populations so that "VRA districts" could comply with the WCP "to the maximum extent practicable." *Stephenson I*, 355 N.C. at 383-84, 562 S.E.2d at 397; D.E. 128, Defendants' Proposed Findings of Fact Nos. 86-90. This iterative process resulted in county groups that contained more counties than the number of counties that could be combined under the strictest application of the WCP. *Id.* The process followed by Dr.

Hofeller resulted in enacted county groups and districts (including majority black VRA districts) which the North Carolina Supreme Court found to be in compliance with the North Carolina Constitution. *Dickson II*, 368 N.C. at 532, 781 S.E.2d at 439-40.

While districts located in a single-county group, such as districts located in Mecklenburg or Wake Counties, are not affected by the county grouping rules, many of the challenged districts are located in multiple counties, such as House Districts 12 and 21. If majority black districts located in county groups consisting of multiple counties are not permissible, then the State must change its county grouping formula to more strictly comply with the WCP formula.

Thus, as explained by Dr. Hofeller, only 15 of the 2011 Senate Districts are located in counties that do not have a challenged district and in a county group that complies with the strictest version of the county grouping formula. Hofeller Decl. ¶¶ 17-20. Only 39 of the 2011 House Districts are located in counties that do not have a challenged district and in a county group that complies with strictest version of the county grouping formula. *Id.* at ¶¶ 17, 19, 21. As a result, any new districting in 2017 will require new county groups and new district lines for 35 Senate Districts and 81 House Districts, or a total of 116 new legislative districts. *Id.* at ¶ 17.

A decision by the Court ordering new districts and new elections in 2017 will also effectively overrule the decision by North Carolina Supreme Court that the 2011 districts fully complied with state and federal law, a significant intrusion into that court's proper authority in a federal system of government. The Court should consider whether intervention by this Court into the lawful authority of the North Carolina Supreme Court

is appropriate where the United States Supreme Court, in pending cases, might very well decide that the North Carolina Supreme Court was right and this Court was wrong. Because the decisions in the two *Dickson* cases could be upheld by the Supreme Court, and this Court's decision reversed, this Court should refrain from requiring rushed redistricting and the dislocation of 116 legislative incumbents just so that special elections can be held in 2017.

Declining to order special elections for 2017 is consistent with the precedent set by the three-judge court in *Shaw II*. There, the district court was directed to enforce a judgment by the Supreme Court holding the 1992 version of CD 12 unconstitutional. Enforcing that judgment would have only required the State to redraw one Congressional District and any surrounding districts impacted by changes made in the 1992 CD 12, as opposed to the much more extensive legislative redistricting that will be required here. Despite the relatively minimal changes required by the Supreme Court's order in *Shaw II*, the district court did not order special elections for 1997 and gave the General Assembly until April 1, 1997 to enact a revised Congressional Plan. Despite the fact that voters residing in the 1992 CD 12 were living in a district which the Supreme Court had ruled to be a racial gerrymander, the district court allowed elections to proceed in 1996 and for the eventual winner of the 1996 election to serve the full two-year term provided for Congress under the United States Constitution.³

³ In arguing for special elections in 2017, plaintiffs rely upon the decision in *Smith v. Beasley*, 846 F.Supp. 1174 (D.S.C. 1996). The facts in *Smith* are easily distinguished. In *Smith*, the federal district court found various South Carolina house and senate districts to be racial gerrymanders and ordered a special election. However, at the time of the *Smith*

The equitable arguments against a court-ordered special election are far more compelling in this case than in *Shaw II*. Unlike the circumstances in *Shaw II*, there is no Supreme Court decision affirming the unconstitutionality of the districts that must be changed based upon this Court's judgment. Nor did the *Shaw II* court have to consider the impact of two decisions by the North Carolina Supreme Court finding the 1992 version of CD 12 to be constitutional. Under these circumstances, this Court should refrain from truncating the two-year terms provided for members of the General Assembly under the North Carolina Constitution or ordering the significant disruption in legislative district lines required to comply with this Court's judgment and North Carolina's WCP formula.

Declining to order special elections in this case is consistent with federal equitable principles relied upon by the North Carolina Supreme Court, which has recognized that an immediate remedy for unconstitutional districts is often outweighed by the disruption resulting from court-ordered redistricting. On August 22, 2007, the North Carolina Supreme Court found that the 2003 version of House District 18 violated the WCP provisions of the North Carolina Constitution and that it and any impacted districts needed to be redrawn. The effect of this Court's order resulted in the General Assembly only redrawing a few House districts in southeastern North Carolina, not 35 Senate

decision, that court did not have to consider the impact of two contemporaneous decisions by the State Supreme Court upholding the same districts based upon the same evidence. Nor does the evidence in *Smith* indicate that the *Smith* court's decision on the merits was subject to pending review by the United States Supreme Court. Finally, there is no evidence that South Carolina has a State constitutional criteria related to the grouping of counties or that the order by the *Smith* court would require South Carolina to redraw over two-thirds of its legislative districts in time for a special election.

districts and 81 House districts. But despite this relatively nominal impact, the North Carolina Supreme Court did not order the State to redraw House District 18 in time for the November 2008 General Election. Instead that court ordered that new districts be enacted in time for the November 2010 General Election. In withholding immediate relief – for a general election that was a year in the future as of the time of the court’s opinion – the North Carolina Supreme Court relied upon the decision by the Supreme Court in *Reynolds v. Sims*, 377 U.S. 573, 585 (1964). See *Pender County*, 361 N.C. at 510, 649 S.E.2d at 376. More specifically, in citing *Reynolds*, the North Carolina Supreme Court noted:

In awarding or withholding immediate relief [in an appropriate case] a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a state in adjusting to the requirements of a court’s decree.

Id. (quoting *Reynolds*, 377 U.S. at 585).

Proper application of federal equitable principles, stated in *Reynolds* and relied upon by the North Carolina Supreme Court in *Pender County*, requires that this Court not order special elections for 2017 and instead give the General Assembly until July 28, 2017 (the same date on which plans were enacted in 2011) to enact plans that conform to this Court’s order, with new districts to be used in the 2018 General Election. Delaying any new required redistricting until the 2018 General Election will also give the State an opportunity to expedite its redrawing of precincts so that new districts may be better able

to follow precinct lines. *See supra* at 7. Unlike the overreaching relief requested by plaintiffs, the approach suggested by defendants accords a reasonable amount of deference to the North Carolina Supreme Court's decisions, and accounts for the reality of United States Supreme Court review of that court's decisions and this Court's order.⁴

2. Should this Court order special elections for 2017, the General Assembly should be given until at least May 1, 2017, to enact new districting plans.

Plaintiffs request this Court to force the General Assembly to redistrict nearly 75% of the State's legislative district in only two weeks so that a special election can be held in November 2017. Plaintiffs primarily rely upon a state statute that does not require the truncated legislative process they propose. Further, while defendants believe that it is inequitable for this Court to order special elections for 2017, allowing the General Assembly a bare minimum amount of time to enact new plans will still provide sufficient time for a special election to go forward in 2017.

Plaintiffs claim that N.C. Gen. Stat. § 120-2.4 requires that the General Assembly only be given two weeks to enact new districting plans for North Carolina. This statute was enacted in 2003 (*see* S.L. 2003-434, 658 Ex. Sess. Section 9), four years before the decision by the North Carolina Superior Court in *Pender County*. Clearly, as a matter of state law, the North Carolina Supreme Court did not believe it was obligated to only give the legislature two weeks to modify a few House districts because of this statute. Were

⁴ The Court should also decline to order special elections because of the significant financial and administrative burdens created for county board of election and the potential for voter confusion resulting from overlapping municipal and local elections that are already scheduled for the fall of 2017. Declaration of Kim Westbrook Strach (October 28, 2016) ("Strach Decl.") at ¶¶ 38-50 (attached as Exhibit 3).

that not the case, the decision in *Pender County*, where the equitable reasons for not requiring immediate redistricting were far less compelling than the circumstances in this case, would have been quite different. The fact is that N.C. Gen. Stat. § 120-2.4 only requires that a *state* court give the General Assembly *at least* two weeks to enact new districts before the court implements a *court-drawn* interim plan. Nothing under state law obligates a court to allow the General Assembly *only* two weeks to enact new plans. And in the only reported North Carolina decision following the enactment of N.C. Gen. Stat. § 120-2.4, the North Carolina Supreme Court gave the General Assembly three years to enact and enforce a remedial plan.

Plaintiffs cite to *Harris*, where the district court gave the state approximately two weeks to enact new congressional districts. Yet it is certainly hard to dispute that the logistics involved in modifying thirteen congressional districts, which are not subject to the WCP, involving thirteen members of Congress who were not members of the General Assembly and who do not have a vote in the ratification of a new congressional plan are far less complicated than the circumstances now facing the General Assembly. Here, the General Assembly will need to enact new plans that strictly comply with the WCP that will result in changed district lines for a supermajority of current legislative incumbents who have the right to vote on new proposed districting plans.

Moreover, during this litigation, plaintiffs complained about the redistricting process followed in 2011, but now ask this Court to impose a timeline that will all but guarantee little, if any, public input and a process that will at best be opaque. Similarly, the *Harris* plaintiffs complained about how the State rushed the legislative process when

the General Assembly ratified the 2016 Congressional Plan. *See* Pl's Objections and Memorandum of Law Regarding Remedial Redistricting Plan in *Harris v. McCrory*, Case No. 1:13-cv-949 (D.E. 157) (filed March 3, 2016). If this Court orders the General Assembly to enact plans within two weeks of convening, and enters this order even before the identity of legislative leaders and committee chairmen for the 2017 session are known, the elected leadership will be required to follow an even more expedited process for changing 116 legislative districts as compared to the legislative process adopted by the 2016 leadership to enact the 2016 Congressional Plan. Given that it took seven months for the 2011 General Assembly to discuss plans and marshal a majority of members to vote for the House and Senate plans, it is both unreasonable and unrealistic to expect the General Assembly to do so in two weeks. This is an especially inequitable where this Court's decision on the merits might be reversed. Fairness and common sense dictate that this Court not impose an unrealistic deadline for enacting new plans.

While this Court should not order special elections for 2017, if this Court nonetheless does so, a deadline of May 1, 2017, will give the General Assembly an improved opportunity to enact remedial districts. Both the *Shaw II* court and the *Smith* court gave the legislatures in those cases a deadline of April 1. Given that there are significantly more districts at issue here than in either of those cases, a May 1 deadline is much more equitable.

Plaintiffs will not be prejudiced if the court orders special elections and allows the General Assembly until May 1, 2017, to enact plans. As shown by the Strach Declaration, there will be sufficient time for this Court to review and approve any plans

enacted by May 1, 2017, and for elections to be held in November 2017. Under the possible schedules explained by Ms. Strach, primaries would be held in September 2017.

Under this scenario, defendants propose the following timeline:

May 1, 2017 – Defendants file copies of the remedial redistricting plans with the Court.

May 8, 2017 – Plaintiffs file objections, if any, to the remedial redistricting plans

May 12, 2017 – Defendants file a response to any objections filed by plaintiffs

Under the above schedule, the Court would have time to review and rule upon any objections by plaintiffs in time to allow the Board of Elections (albeit under a very tight timeline) to conduct special elections in November 2017.

CONCLUSION

For the foregoing reasons, defendants respectfully request that no special elections be ordered for 2017 and that the General Assembly be given until July 28, 2017 to adopt remedial plans to be used in the 2018 General Election, assuming this Court's decision on the merits is not reversed by the Supreme Court. In the alternative, defendants request that the General Assembly be given until at least May 1, 2017, to enact remedial plans, should this Court decide that special elections are required.

Respectfully submitted this the 28th day of October, 2016.

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

/s/ Thomas A. Farr

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

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ Alexander McC. Peters

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

Counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR ADDITIONAL RELIEF** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Edwin M. Speas, Jr.
Carolina P. Mackie
Poyner Spruill LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
espeas@poynerspruill.com
cmackie@poynerspruill.com
Attorneys for Plaintiffs

Anita S. Earls
Allison J. Riggs
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
anita@southerncoalition.org
allisonriggs@southerncoalition.org
Attorneys for Plaintiffs

Adam Stein
Tin Fulton Walker & Owen, PLLC
312 West Franklin Street
Chapel Hill, NC 27516
astein@tinfulton.com
Attorney for Plaintiffs

This the 28th day of October, 2016.

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

/s/ Thomas A. Farr

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