

16CV013733

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
FILED SUPERIOR COURT DIVISION

2016 NOV -8 P 4: 34

DEMOCRACY NORTH CAROLINA,)
WAKE COUNTY, C.S.C.)

Plaintiff,)

vs.)

BY _____)

NORTH CAROLINA STATE BOARD OF)
ELECTIONS and DURHAM COUNTY BOARD)
OF ELECTIONS,)

Defendant.)

Pursuant to Rule 15(a) of the North Carolina Rules of Civil Procedure, Plaintiff files this Complaint. For its complaint, Plaintiff alleges and states:

1. This emergency action for declaratory and injunctive relief is brought to preserve the rights of Plaintiff and Durham County voters to vote and have their votes counted in the November 8, 2016 general election. These rights are secured by both federal law the laws of this State.

2. This Court has jurisdiction of this action pursuant to N.C.G.S.A. §1-75.3.

3. The Court has jurisdiction of the federal claims pursuant to 42 U.S.C § 1983.

4. Pursuant to N.C.G.S.A. §1-82, venue for this action is appropriate in the Wake County Superior Court.

5. As detailed below, Defendants' acts and/or omissions threaten Plaintiff and numerous eligible registered voters in Durham County with disenfranchisement in this election in violation of the laws of this State and the United States.

PARTIES

6. Plaintiff DEMOCRACY NORTH CAROLINA is a nonpartisan organization based in Durham that is dedicated to reducing barriers to voting and increasing voter

participation in North Carolina. Democracy North Carolina's work is focused on three areas: money in politics, voting and elections, and good governance.

7. Democracy North Carolina conducts year-round voter registration drives and trainings across the state. It provides voter registration services at numerous community gatherings and events.

8. The Organization sues on behalf of all qualified voters of Durham County within its membership, who are being denied the right to vote and have their votes counted by the actions and/or omissions of the Defendants as alleged in this complaint.

9. Defendant North Carolina State Board of Elections of (the "State Board of Election") is the public agency with direct responsibility for the administration and conduct of elections in North Carolina, including Durham County.

10. Defendant Durham County Board of Elections (the "County Board of Elections") is the public agency with specific responsibility for the administration and conduct of elections in Durham County.

11. After voting began on November 8, 2016, because of issue at approximately 5 Durham precincts with use of the electronic pollbooks ("epollbooks") improperly prompting pollworkers that they should ask voters for ID or that certain voters had already voted, every precinct in Durham County was instructed to discontinue use of epollbooks and to instead use paper pollbooks. This has caused backups and excessive wait times for voters checking in. Many pollworkers apparently did not know how to use the paper pollbooks. *See Riggs Affidavit.* It also caused precincts to run out of paper authorization to vote (ATV) forms. As background, with epollbooks, pollworkers are able to print out ATV forms for each voter. When required to use only paper pollbooks, precincts had to rely on the extra paper ATV forms they had available. As a result, numerous voters were turned away and could not vote.

12. Upon information and belief, voters have been turned away from at least Glenn Elementary School (Precinct 29) and Bethesda Ruritan Club (Precinct 31). Upon Information and belief, the following precincts had significant slow-downs in processing voters, and accompanying long lines, attributable to problems associated with the switch to paper pollbooks, and that may have deterred voters from voting, and these slow-downs persisted for more than 15 minutes: Ivy Commons (Precinct 34-2), North Regional Library (Precinct 44), East Regional Library (Precinct 30-1), South Regional Library, North Carolina Central University and Triangle Presbyterian. Upon information and belief, some sites do not have their pollbooks as of the filing of the Complaint, which may further exacerbate the situation. Specifically, as of 3 PM, South Regional Library was still not back to using e-pollbooks and was still relying on paper ATV forms.

13. As a result of these events, voting in Durham County was interrupted at multiple sites for at least one hour.

14. N.C.G.S.A. § 163-166.01 provides that:

In every election, the voting place shall be open at 6:30 A.M. and shall be closed at 7:30 P.M. If the polls are delayed in opening for more than 15 minutes, or are interrupted for more than 15 minutes after opening, the State Board of Elections may extend the closing time by an equal number of minutes. As authorized by law, the State Board of Elections shall be available either in person or by teleconference on the day of election to approve any such extension. If any voter is in line to vote at the time the polls are closed, that voter shall be permitted to vote. No voter shall be permitted to vote who arrives at the voting place after the closing of the polls.

15. Pursuant to § 302(c) of the Help America Vote Act, “[a]ny individual who votes in an election for Federal office as a result of a Federal or State court order or any other order extending the time established for closing the polls by a State law in effect 10 days before the date of that election may only vote in that election by casting a provisional ballot under

subsection (a). Any such ballot cast under the preceding sentence shall be separated and held apart from other provisional ballots cast by those not affected by the order.” Accordingly, all ballots cast pursuant to this Court’s order by voters who are not in line at the regularly-scheduled close of polls must be cast as provisional ballots, should be secured separately from other provisional ballots, and should be identified as having been cast pursuant to the order of this Court.

16. Counsel for Plaintiff first became aware of the violations of law alleged in this Complaint as they were occurring. At around 12:30 p.m. counsel for Plaintiff contacted State Board of Election, informed it of these events, and demanded immediate action to rectify the situation, including (1) extending the time to vote in Durham County for one hour, and (2) opening the Durham County Board of Elections office as a “super precinct,” where any Durham County voter can vote. (A copy of this letter is attached to this Complaint as Exhibit A.) Plaintiff, through its counsel, requested a teleconference with the State Board of Elections, during which Defendant State Board refused to extend the time for voting. As of the time of the filing of this Complaint, upon information and belief, the violations complained of herein have not been corrected, and no reason has been provided to believe that – absent timely relief from this Court – those violations will be corrected.

COUNT 1 (State Law)

17. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 16 above, as if set forth at length herein.

18. Pursuant to N.C.G.S.A. §163-166.01, Defendant State Board of Elections has the power to extend the voting hours for voting in Durham County for a time equal to the time voting was interrupted by the pulling of the epollbooks from the system and its after-effects.

19. Defendant State Board of Elections and Defendant County Board of Elections have the power to open the County Board of Election offices as a “super precinct” where voters can vote.

20. Defendants’ refusal to extend the voting hours for voting in Durham County for a time equal to the time voting was interrupted by the pulling from the epollbooks from the system and its after-effects and to open the Durham County Board of Elections as a “super precinct” were without good cause.

21. Plaintiff and Durham County voters are threatened with irreparable injury by the Defendants’ actions and/or omissions because: (1) it is reasonably certain and imminent that as a direct result of Defendants’ actions and/or omissions, Plaintiff and many voters will lose their right to vote in this election; (2) Plaintiff has no adequate remedy at law, since the right to vote if not safeguarded now cannot later be restored; and (3) the election results may irreversibly be affected by the Defendants’ acts and omissions.

22. The public interest weighs in favor of injunctive relief because the fundamental right to vote is integral to the democratic process and because Defendants have no legitimate interest in violating, disobeying or disregarding the laws of this State. The potential harm to Defendants in following the laws of this State is minimal. The harm to Plaintiff is severe and irreversible in the absence of immediate injunctive relief from this Court.

COUNT II (Federal Law)

23. Plaintiff repeats and realleges the allegations set forth in paragraphs 1 through 22 above, as if set forth at length herein.

24. The fundamental right to vote in the November 8, 2016 election is guaranteed by, *inter alia*, the First and Fourteenth Amendments to the United States Constitution. The conduct of Defendant as alleged herein deprives Plaintiff of their fundamental right to vote as guaranteed

by the First and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983.

25. Defendants' conduct described herein has violated and threatens to continue to violate Plaintiff's rights and those of numerous Durham County voters.

26. Plaintiff has no adequate remedy at law for the violation of its federal claims.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully asks this Court to issue declaratory and injunctive relief, including preliminarily and permanently enjoining the Defendants, their agents, employees, servants, designees, including all clerks and managers, servants, designees, and all persons acting in concert with them, to immediately undertake the following:

1. Defendant Durham County shall keep all polling sites in Durham County open until 9:00 p.m. and allow all voters who are duly registered to cast a regular ballot as provided by law;
2. Defendant Durham County Board of Elections shall use its office as a "super precinct" to remain open for voting until 9:00 p.m.;
3. In the alternative, if state law requirements are not present, Defendant Durham County Board of Elections shall permit voters who are in line before 7:30 p.m. to cast regular ballots and those who arrive between 7:30 p.m. and 9:00 p.m. to cast provisional ballots as required by federal law, 52 U.S.C. § 21082, and segregating these provisional ballots.
4. Defendants shall provide immediate notice of this injunction to election officials at all polling sites, to provide a written copy of this injunction to election officials at every polling site at the earliest opportunity, and to provide notice to the public through such other means as the Court finds necessary and appropriate to promptly correct the violations of law herein.

Plaintiff further requests that the Court grant such other and further relief as may be just, including awarding Plaintiff costs and attorneys' fees pursuant to 42 U.S.C. §1988.

Dated: November 8, 2016

Respectfully submitted,

with permission
Allison Riggs (NCSJ 37762)

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