

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

Nos. 16-1468(L), 16-1469, 16-1474, & 16-1529

NORTH CAROLINA STATE CONFERENCE OF THE NAACP, *et al.*,

Plaintiffs-Appellants

JOHN DOE, *et al.*,

Plaintiffs

v.

PATRICK LLOYD MCCRORY, in his Official Capacity as
Governor of North Carolina, *et al.*,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

RESPONSE OF THE UNITED STATES IN SUPPORT OF APPELLANTS'
MOTION FOR A STAY OF JUDGMENT AND INJUNCTION
PENDING APPEAL

The United States submits this Response to Appellants' motion for stay of judgment and injunction pending appeal. We support Appellants' request for a stay pending resolution of this appeal. Granting the request for a stay will preserve the status quo by keeping in place the injunction that this Court previously ordered the district court to enter. That injunction has prohibited North Carolina from

implementing the portions of House Bill 589 (2013) (HB 589) that would eliminate same-day voter registration (SDR) and ban the counting of out-of-precinct (OOP) provisional ballots.

1. During the first appeal from the district court's denial of plaintiffs' motion for a preliminary injunction, this Court concluded that HB 589's elimination of SDR and out-of-precinct voting "looks precisely like [a] textbook example of Section 2 vote denial." *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 246 (4th Cir. 2014) (*LWV*). This Court remanded with instructions to the district court to reinstitute SDR and OOP voting under North Carolina's pre-HB 589 law. *Id.* at 248-249.

2. Over a dissent, the Supreme Court recalled and stayed the mandate and the injunction, pending disposition of defendants' petition for a writ of certiorari. *North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 6 (2014). After the Supreme Court denied defendants' petition, *North Carolina v. League of Women Voters of N.C.*, 135 S. Ct. 1735 (2015), this Court reissued its mandate and the district court's injunction went back into effect on May 5, 2015. Same-day registration and out-of-precinct voting thus remained in effect for statewide and municipal elections held in North Carolina in October 2015, November 2015, and March 2016. Under North Carolina's pre-HB 589 state law and the injunction entered at the instruction of this Court, allowance of SDR and OOP voting is the

status quo pursuant to currently-operative North Carolina law. Provision of SDR and OOP voting under North Carolina's pre-HB 589 law will cease effective June 8, 2016, the date that the district court provided in its judgment to lift the preliminary injunction as a result of its rejection of plaintiffs' claims on the merits.

3. Even under the expedited schedule set by this Court, "[i]t takes time to decide a case on appeal." *Nken v. Holder*, 556 U.S. 418, 421 (2009). Given the length of the lower court's opinion and the record in this case, as well as the preparations necessary for the upcoming fall elections, granting a stay may ensure that this Court's decision will not "come too late for the party seeking review." *Ibid.* ("A stay does not make time stand still, but does hold a ruling in abeyance to allow an appellate court the time necessary to review it."); see also *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (recognizing that as an "election draws closer," the risk of harm from "conflicting [court] orders" increases); cf. *Veasey v. Abbott*, No. 15A999, 2016 U.S. Lexis 2927, at *1 (U.S. Apr. 29, 2016) (recognizing, in a Section 2 case pending before the en banc Fifth Circuit, "the time constraints the parties confront in light of the scheduled election in November, 2016" and noting that the possibility of seeking "interim relief" from the Supreme Court if no merits resolution has been reached "on or before July 20, 2016").

4. Each of the four requirements for entry of a stay pursuant to Federal Rule of Appellate Procedure 8(a) and Local Rule 8 is met here. See *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970).

First, for the reasons set out in our merits brief, the United States is likely to prevail on its claim that each of the challenged provisions of HB 589 were adopted in part for the purpose, and will have the result, of denying and abridging the rights of minority voters in violation of Section 2 of the Voting Rights Act, 52 U.S.C. 10301.

Second, irreparable harm is likely absent a stay. As this Court has recognized, “discriminatory voting procedures in particular are ‘the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief.’” *LWV*, 769 F.3d at 247 (quoting *United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir. 1986)). If the November 2016 election takes place under provisions of HB 589 that violate the Voting Rights Act and abridge the rights of minority voters, “[t]he injury to these voters is real and completely irreparable.” *Ibid*. As set out in Appellants’ motion, thousands of voters used SDR to register and vote in the March 2016 primary election and to have their OOP provisional ballot counted. None of those voters would have cast valid ballots absent the relief previously ordered by this Court. And of course the

November 2016 electorate will be far larger, and more likely to be harmed by HB 589's restrictions.

Third, the balance of the hardships weighs heavily in favor of granting a stay pending review by this Court. As against the State, a stay simply preserves the status quo. The State's interest in administrative convenience—which cannot outweigh the public interest embodied in enforcement of the Voting Rights Act in any event, *LWV*, 769 F.3d at 244—is not burdened by maintaining the status quo pending appeal.

Fourth, a stay pending appeal is entirely consistent with the public's "strong interest in exercising the fundamental political right to vote." *Purcell*, 549 U.S. at 4 (citation and internal quotation marks omitted). In this case, a stay allows this Court to protect that interest while it takes the necessary time to reach a determination on the merits of the appeal.

In sum, the United States respectfully urges this Court to preserve the existing injunction by issuing a stay pending resolution of the appeal of this case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

s/ Anna M. Baldwin

Anna M. Baldwin
Attorney

Dated: May 27, 2016