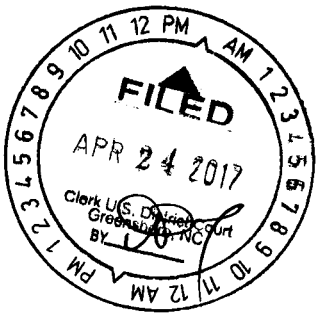
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



Russell F. Walker, Plaintiff	)	
vs.	)	
North Carolina State Board of Elections	)	C.A. NO. 1:17CV78
and	)	
Hoke County Board of Elections, Defendants	)	

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON THE PLEADINGS PURSUANT TO LOCAL RULE 7.3(a)

COMES NOW, Russell Walker, plaintiff and states that the pleadings are closed. The complaint has been responded to with two motions for dismissal including briefs in support of those motions have been filed. No alleged facts in the complaint have been disputed by either party, the Complaint alleges sufficient claims for relief and this case is ripe for judgment as a matter of law.

Re: Hoke County Board of Elections Motion to Dismiss

While Hoke Elections lists factual allegations on pp 2-3 of its brief, it fails to contradict so much as <u>one</u> plaintiff asserted fact. The next

thing is that Hoke Elections proffers no case later than 2009. Granted chronology is not a determining factor legally, but in this case it fails to mention more recent cases damaging to its interests in violation of Rule 11(b)(2).

The fact that Hoke County has approximately 50% white voters and one white commissioner out of five (20%), is a conclusive "result" that voter dilution has occurred. Walker does not need to show anything more.

The simple fact of the matter is that since Shelby County v. Holder (2013) that the 4th Circuit Court has taken a distinctly enhanced view of voter discrimination and dilution.

The amended complaint started out with this opening paragraph from RALEIGH WAKE CITIZENS v. BOARD OF ELECTIONS, 827 F.3d 333 (CA 4th - 2016)

> "The right to vote is "fundamental," and once that right "is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment." Bush v. Gore, 531 U.S. 98, 104-05, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000). "It must be remembered that" the right to vote "can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free

exercise." Id. (quoting Reynolds v. Sims, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964))."

It is the same attorney, Craig D. Schauer of Brooks Pierce, who defended the Wake County Board of Elections in that case, who is defending the Hoke County Board of Elections in this case. You would think that Craig might mention this very recent case in his brief. Why not? Because his client lost, that is why.

Hoke Elections appears to rely on the concept of "Zimmer Factors" from Zimmer v. McKeithen, 485 F.2d 1297, 1305 (5th Cir. 1973). How weak to rely on a 44 year old case from the 5th Circuit while ignoring Raleigh Wake Citizens and Wright v. North Carolina, two very recent 4th Circuit cases.

From Wikipedia – "Senate Judiciary Committee Chairman Strom Thurmond and House Speaker Tip O'Neill responded by passing an amendment to the Civil Rights Act, and President Ronald Reagan signed it into law on June 29, 1982. Congress's amended

Section 2 to create a **"results" test**, which prohibits any voting law that has a discriminatory effect irrespective of whether the law was intentionally enacted or maintained for a discriminatory purpose."

Well when a 50% population white county elects 20% white members on a Board of Commissioners, then this uncontested fact alone shows a lack of Equal Protection voter dilution result.

> Finally, we bear in mind that "`a complaint is to be construed liberally so as to do substantial justice.'" *Pub. Employees' Ret. Ass'n of Colo. v. Deloitte & Touche LLP,* 551 F.3d 305, 311 (4th Cir. 2009) (quoting 5 Charles Alan Wright & Arthur R. Miller et al., *Federal Practice and Procedure* § 1202 (3d ed.2004)). *See also, e.g., Anderson v. Found. for Advancement, Educ. & Emp't of Am. Indians,* 155 F.3d 500, 505 (4th Cir.1998) (noting that "pleading standards require that the complaint be read liberally in favor of the plaintiff").
>
> Wright v. North Carolina 787 F.3d 256, 263 (2015) CA 4th" (emphasis added)

This Walker case is novel in one respect. Probably this is the first voting rights case in the United States filed by a white complaining about black controlled at-large voting.

Re: North Carolina State Board of Elections Motion to Dismiss

NC ELECTIONS claims that this civil action is barred by the 11th amendment. No monetary damages are sought and only future prospective injunctive and declaratory relief are prayed for.

> "The present suit is thus barred unless it falls within the exception announced by the Supreme Court in Ex parte Young, 209 U.S. 123 (1908), which permits a federal court to issue prospective, injunctive relief against a state officer to prevent ongoing violations of federal law, on the rationale that such a suit is not a suit against the state for purposes of the Eleventh Amendment. Id. at 159-60."
> McBURNEY v. CUCCINELLI, 616 F.3d 393 (4th Cir. 2010)

This case clearly falls within the exception announced by Ex parte Young because of ongoing violations of Federal law.

Walker has not asserted that he is a member of any minority group, that there was intentional discrimination and does not claim that there was a history of discrimination etc. None of those claims are necessary. NC Elections mentions the 1982 case of Rogers v. Lodge. That 35 year old case is irrelevant and intended to deceive. Frankly this case, Walker v NC Board, is probably a case of "first impression" where a white person claims voting dilution from a colored Board of Commissioners. Is the NC Board of

Elections saying that a white plaintiff does not deserve the protection of the equal protection clause of the 14th amendment or does equality apply only to one race rather than to all races? Orwell's famous dictum applies. **"All animals are created equal, some more than others."**

Walker did not allege that the existing at-large voting system was established to discriminate against white voters. It is not necessary under a results test. The issue is prospective equitable relief.

The complaint prominently features the leading case of RALEIGH WAKE CITIZENS v. BOARD OF ELECTIONS, 827 F.3d 333 (CA 4th - 2016) a recent case from the 4th Circuit and no mention of this landmark case is even responded to let alone distinguished. Nowhere in Raleigh do we find any minority status concept, history of discrimination etc.

The complaint does not state that Walker is a member or any racial group. That is not necessary. In fact Walker is white and has been registered to vote for over 1 year. This fact is acknowledged by a

State Board and Hoke County Elections public record and anyone who accesses the State Board website can receive this information.

This is a *pro bono publico* case filed in equity. A maxim of equity is that -- **"Equity will not suffer a wrong to be without a remedy."**

Russell F. Walker

CERTIFICATE OF SERVICE

I certify that I have placed a copy of this Reply in the U.S. mail, postage prepaid on 21 April 2017 to:

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