

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)	

**MOTION IN OPPOSITION TO DEFENDANT’S NC BOARD OF ELECTIONS
MOTION TO DISMISS INCLUDING MEMORANDUM IN SUPPORT**

STANDARD OF REVIEW

NC Elections seeks to have the complaint dismissed due to failure to state a claim due to alleged “threadbare recitals”. Walker filed a fact filled complaint giving publically available, estimated Hoke County population, voting numbers, racial breakdown, Board of Commissioners racial composition, racial breakdown for Hoke County as well as descriptions of the State Board of Elections and the Hoke County of Board of Elections. Hardly threadbare and certainly not conclusory.

ELEVENTH AMENDMENT RESPONSE

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.

STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED

Frankly James Bernier has provided one of the most deceptive and irrelevant briefs that I have ever seen. Yes 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 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 James Bernier going to say 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? Walker did not allege that the existing at-large voting system was established to discriminate against white voters. It is not necessary. The issue is prospective equitable relief and not 1950 or 1960.

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 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))."

STANDING

True 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. Frankly the NC Board could have easily checked out Walker's voting situation before they filed their 12(b)(6) motion. Now the State Board is precluded by estoppel to deny that fact. I am attaching my voter registration listing from the NC Board of Elections website. Anyone worldwide with a computer can access this information. Walker is listed as voter 54776, white, male and registered since January 25, 2016.

I pray that this court recognize defendant's public record which cannot be challenged under F.R.E. 803(A). The omission in a complaint of a known and verifiable fact is *de minimus non curat lex*.

This is a case filed in equity. A maxim of equity is that -- **“Equity will not suffer a wrong to be without a remedy.”**

If this Court dismisses the current complaint then Walker prays that he be granted leave to file an amended complaint with this not explicitly stated and uncontested allegation about being a registered voter.

Pursuant to 28 U.S. Code § 1746 –

“I declare under penalty of perjury that the foregoing is true and correct.

Executed on 21 March 2017



Russell F. Walker

CERTIFICATE OF SERVICE

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

James Bernier
Assistant Attorney General
P.O. Box 629
Raleigh, NC 27602

Grady L. Hunt
Locklear, Jacobs, Hunt & Brooks
P.O. Box 999
Pembroke, NC 28372



Russell F. Walker
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littlefarm1@windstream.net

[New Search](#)**Voter Details** 

FRANCIS RUSSELL WALKER
176 QUEWHIFFLE RD
ABERDEEN, NC 28315

County:	HOKE
Status:	ACTIVE
Voter Reg Num:	000000054776
NCID:	CE38087
Party:	REP
Race:	WHITE
Ethnicity:	NOT HISPANIC or NOT LATINO
Gender:	MALE
Registration Date:	01/25/2016
NCDMV Customer:	Yes

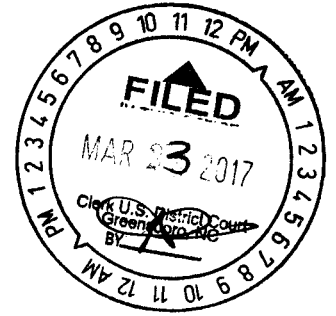
Election Day Polling Place 

BUCHAN PINEHILL FIRE DEPARTMENT
6390 CALLOWAY RD
ABERDEEN, NC 28315

Jurisdictions 

Precinct:	BUCHAN
VTD:	04
Congress:	CONGRESSIONAL DISTRICT 8
NC Senate:	NC SENATE DISTRICT 21
NC House:	NC HOUSE DISTRICT 66
Superior Court:	16A SUPERIOR COURT

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Hoke County Board of Elections,)	
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AMENDED COMPLAINT IN EQUITY

Summary -- This is an action pursuant to 42 U.S.C. §1983 and §1988(a), 28 U.S.C. §1331 and 1343(a) which prays that the present Hoke County "at large" election scheme be abolished and that election districts be created because it deprives the plaintiff of rights, privileges secured by the Constitution of the United States and the laws of the State of North Carolina.

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))."

PARTIES

1. Plaintiff, Russell Walker is a registered voter, number 54776, and has voted in at least the two most recent elections, resides at 176 Quewhiffle Road, Aberdeen, NC in Quewhiffle Township, Hoke County, North Carolina
2. Defendant North Carolina State Board of Elections is a distinct legal entity, with offices in Raleigh, NC, created by state statute and empowered by state law with the responsibility of administering elections for the State of North Carolina.
3. Defendant Hoke County Board of Elections is a distinct legal entity, with offices in Hoke County, created by state statute and empowered by state law with the responsibility of administering elections for the Hoke County Board of County Commissioners. Hoke County is within the Middle District of North Carolina.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a)(3); and 42 U.S.C. §§ 1983 and 1988(a).
5. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.
6. This Court has pendant jurisdiction over Plaintiffs' state constitutional claim under 28 U.S.C. §1367.
7. Venue in this district is proper pursuant to 28 U.S.C. §1391(b).

ALLEGATIONS

8. Hoke County is a political subdivision of the State of North Carolina and is administratively controlled by 5 County Commissioners.
9. The Hoke County Commissioners are currently elected in an "at large" manner.
10. Based upon 2015 publically available US Census estimates, the population of Hoke County is approximately 51% white and 49% non-white.
11. Census data 2015 estimate
White alone, percent, July 1, 2015 50.6%
Black or African American alone, percent, July 1, 2015 33.5%

American Indian and Alaska native alone, percent, July 1, 2015
9.3%

12. Presently in 2017 there are 4 non-white County Commissioners and one white County Commissioner on the Hoke County Board of Commissioners.

13. Based upon information and belief none of the 5 present commissioners reside in Quewhiffle Township.

14. Plaintiff resides in Quewhiffle Township. Quewhiffle Township is in the extreme western portion of the County and is primarily agricultural in nature.

15. The composition of the Board of Commissioners is racially skewed due to racial block voting in the City of Raeford and political organizations deriving their power and influence from several colored Church congregations.

16. The resulting composition of the Board of Commissioners differs significantly from the County population makeup as a whole due to the *de facto* representation of the Board of Commissioners due to the weighted influence of voters especially in the City of Raeford.

17. Plaintiff's right to vote has been debased and diluted to the point of effective denial through the "democratic" process.

18. As a result of this block voting the Board of Commissioners have voted *inter alia*, for projects that are economically ridiculous and only serve a limited portion of the county's residents. The 2008 \$3.8 million give away of 500 acres of land to private interests and an approximately \$150,000 splash area in the City of Raeford are just two examples.

19. Residents of Quewhiffle Township are forced to pay through mandated property taxation for projects that do not benefit them and for which they have no recourse to oppose. It's called "Taxation without representation".

20. Many citizens of the County are deprived of effective representation in violation of the "equal protection clause" of the 14th amendment of United States Constitution and article 1 section 19 of the North Carolina Constitution.

PRAYER FOR RELIEF

21. WHEREFORE, Plaintiff prays that the Court:

Declare that the “at large” method of election currently established in Hoke County violates the equal protection clause and the Fourteenth Amendment to the United States Constitution and Article 1 §19 of the North Carolina Constitution; and

22. Declare that the “at large” method of election constitutes a racial gerrymander in violation of the Equal Protection Clause of the Fourteenth Amendment.

23. Declare that the rights and privileges of Plaintiff will be irreparably harmed without the intervention of this Court to secure those rights for the exercise thereof in a timely and meaningful manner.

24. Enter a preliminary injunction, and a permanent injunction enjoining the Defendants, their agents, officers and employees, from enforcing or giving any effect to the current “at large” election procedures for that relate to the method of election of members of the Hoke County Board of Commissioners.

25. Declare that the unless the North Carolina General Assembly acts to promulgate a non-discriminatory lawful method of election

for the Hoke County Board of Commissioners, constitutional state laws require that the Hoke County Board of Commissioners itself adopt a districting plan that does comply with the one-person, one-vote requirement of the state and federal constitutions.

26. Make all further orders as are just, necessary and proper to preserve Plaintiffs' rights to participate equally in elections to the Hoke County Board of Commissioners.

27. Plaintiff prays that the defendant Boards of Elections be ordered to set up 5 election districts with each election district in Hoke County being represented by one representative County Commissioner.

28. Presumably each election district would have an approximately equal number of voters, be compact and be contiguous.

29. The assignment of districts should be complete so that an election in November 2017 would present to the voters an opportunity to select Commissioners of their individual choice.

30. Grant such other relief as the Court deems just and proper.

31. Pursuant to 28 U.S. Code § 1746 --

"I declare under penalty of perjury that the foregoing is true and correct.

21 MARCH 2017

Executed on ~~31~~ January 2017



Russell F. Walker

CERTIFICATE OF SERVICE

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

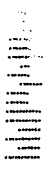
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176 Greenway
ABERDEEN NE
28315



ANNE 1135

INSPECTED

ZLENE
US DISTRICT COURT

324 W ANDREWS ST

GREENSBORO NC

27401-2588



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