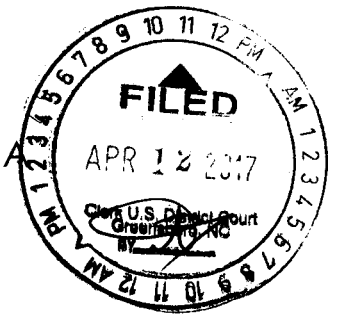

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

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

REPLY TO NC BOARD ELECTIONS REPLY DATED 6 APRIL 2017

COMES NOW, Russell Walker, plaintiff and comments to the Reply filed by the NC State Board dated 6 April 2017.

I. Complaint is barred by the 11th Amendment. False.

NC Elections Board claims that because the State Board is a State Agency that the Board is immune to civil action pursuant to the Eleventh Amendment. In North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ___ (2015) neither the majority nor the

minority opinions mentioned the Eleventh Amendment. Again Ex Parte Young is still in effect and this court has jurisdiction to grant non-monetary equitable relief.

II. Walker Fails to State Claim upon which Relief can be Granted. False.

¶¶ 27-28 of the Complaint prays for 5 election districts which have an approximately equal number of voters, be compact and contiguous. Walker has not prayed for districts drawn on race in contradiction to the top paragraph, page 3, of NC Board's Reply.

True, Walker has proffered an "equal protection claim". NC State Elections Board again mentions Rogers v. Lodge (1982) a 35 year old case. I believe that the case law in this matter has changed markedly since 1982.

True, Walker has not asserted that he is in the minority. He does not need to do so and the NC Board of Elections has not told us why. The "Equal Protection" and "Privileges and Immunities" clauses of the Fourteenth Amendment were written and ratified by white men

especially considering that the Fourteenth Amendment was antecedent to the Fifteenth Amendment. It is inconceivable that the white scriveners of the Fourteenth Amendment would intend to write a Constitutional Amendment that would disadvantage themselves or their descendants.

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."

This is the exact situation in Hoke County. The result is that 50% white population results in 20% white representation on the Board of Commissioners.

NC Board of Elections mentions Thornburg v. Gingles, 478 U.S. 30. Well when a 50% population white county elects 20% white members

on a Board of Commissioners, then this fact alone shows a lack of Equal Protection voter dilution result.

> "To the extent Plaintiffs' claims do "not fall within the four corners of our prior case law," this "does not justify dismissal under Rule 12(b)(6). On the contrary, Rule 12(b)(6) dismissals `are especially disfavored in cases where the complaint sets forth a **novel legal theory** that can best be assessed after factual development.'" *McGary v. City of Portland,* 386 F.3d 1259, 1270 (9th Cir.2004) (quoting *Baker v. Cuomo,* 58 F.3d 814, 818-19 (2d Cir.1995), vacated in part on other grounds, 85 F.3d 919 (2d Cir.1996) (en banc)). *See also* 5B Charles Alan Wright & Arthur R. Miller et al., *Federal Practice & Procedure* § 1357 (3d ed.2015) (noting that courts should "be especially reluctant to dismiss on the basis of the pleadings when the asserted theory of liability" is "novel" and thus should be "explored"). Indeed, as the law "firm[s] up" in unsettled areas, "it may be more feasible to dismiss weaker cases on the pleadings;" otherwise, plaintiffs should be given "an opportunity to develop evidence before the merits are resolved." *Metts v. Murphy,* 363 F.3d 8, 11 (1st Cir.2004).
>
> 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 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.

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 10 April 2017 to:

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