IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION No. 1:15-CV-559

THE CITY OF GREENSBORO, LEWIS A. BRANDON III, JOYCE JOHNSON, NELSON JOHNSON, RICHARD ALAN KORITZ, SANDRA SELF KORITZ, AND CHARLI MAE SYKES, Plaintiffs, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, Defendant.	**SUPPLEMENTAL BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

Plaintiffs The City of Greensboro ("City of Greensboro" or "City") and Lewis A. Brandon III, Joyce Johnson, Nelson Johnson, Richard Alan Koritz, Sandra Self Koritz, and Charli Mae Sykes (collectively "Citizen Plaintiffs") offer this Supplemental Brief pursuant to this Court's Order (Doc. 23) entered July 14, 2015. Session Law 2015-138 (the "Greensboro Act" or the "Act") purports to make wholesale and unconstitutional changes to the City of Greensboro's plan of self-governance on the eve of Greensboro's 2015 municipal election cycle. Specific to that election, the Act purports to alter:

- The dates of the candidate filing period;
- The number of council members elected by district and at-large;
- The makeup of the districts in which candidates will run and in which citizens will cast their votes; and
- The method of election—from primary (in October) and election (in November); to election (in October) and, if needed, runoff (in November).

Changes of this nature, enacted on the eve of the election season, are highly likely to cause uncertainty and confusion for candidates and voters alike and constitute a disincentive for participation in the electoral process. *See Purcell v. Gonzalez,* 549 U.S. 1, 4-5 (2006). That, combined with the unconstitutionality of the Act, as discussed more fully in our prior briefing, compels Plaintiffs to request the Court to order the following relief:

1. Defendant and its agents, officers, and employees are enjoined from enforcing, implementing, or giving any effect to Session Law 2015-138 in its entirety.

2. Elections for Greensboro City Council shall take place using the electoral districts, method of election, and form of government as they existed prior to the enactment of Session Law 2015-138. Specifically, five (5) council members will be elected to represent a single district, three (3) council members shall be elected at-large, and the mayor will be elected at-large. Terms will last for two (2) years. Elections shall proceed under the nonpartisan primary and election method of voting set forth in North Carolina General Statutes Section 163-294. *See* Greensboro, N.C., Charter, Ch. II, § 2.21 (last amended by 1973 N.C. Sess. Laws 213 § 1); *id.* § 2.41 (last amended in 1983 by Ord. No. 83-7, § 1).

3. The filing period for elections to Greensboro City Council shall open at 12:00 noon on July 27, 2015 and close at 12:00 noon on August 7, 2015.

The legal underpinning and rationale for this relief are set forth below. A proposed order is attached hereto as **EXHIBIT A.**

I. Plaintiffs seek a TRO against the entirety of the Greensboro Act because the Act is part of an interrelated and integrated scheme to destroy Greensboro's self-government.

Plaintiffs seek to enjoin the entirety of the Greensboro Act in advance of the City Council election cycle because it is part of an integrated scheme to destroy the rights of the City and its citizens to govern themselves locally.

Cases involving unconstitutional discrimination against interstate commerce, although not directly analogous to discrimination against voters, are instructive regarding the propriety of injunctive relief against the entirety of an unconstitutional scheme when parts of that scheme violate constitutional restrictions. For example, *Environmental Technologies Council v. South Carolina*, 901 F. Supp. 1026 (D.S.C. 1995), dealt with a challenge to "South Carolina's discriminatory efforts to regulate the management of hazardous waste services located in the State. At issue are two statutes, two executive orders, and one regulation which constitute an integrated and interconnected discriminatory program." *Id.* at 1029 (footnote omitted) (emphasis added), *aff'd sub nom. Envtl. Tech. Council v. Sierra Club*, 98 F.3d 774, 786 (4th Cir. 1996). The court viewed South Carolina's legislative, regulatory, and executive efforts as "one overall program designed to provide a system of preferential treatment for hazardous waste generators in-state at the expense of out-of-state generators." *Id.* at 1030-31. "[T]he constituent parts of South Carolina's program are unconstitutional, because they discriminate against out-of-state interests. Further, because those parts work together to compose an overall

discriminatory program the entire program is unconstitutional." *Id.* at 1036 (emphasis added).

Indeed, even where one provision of a discriminatory program is constitutional on its own, the combination of the seemingly constitutional provisions with the unconstitutional scheme can render the entirety unconstitutional. *See id.* at 1037 (citing *West Lynn Creamery, Inc. v. Town of Clarkstown, New York*, 512 U.S. 186, 114 S.Ct. 2205, 2214-2215 (1994)).

In the present case, the Greensboro Act's integrated scheme unconstitutionally discriminates against Greensboro and its citizens by: (a) redrawing voting districts in a manner that overpopulates certain districts; (b) pairing the four African-American incumbent council members against each other in two newly-drawn districts (i.e. Districts 1 and 2); (c) dividing precincts and communities of interest; (d) mandating a new election/runoff method in place of the primary/election method that has been used for almost half a century; (e) eradicating the right of the City and its Citizens to change their form of self-government (a right granted to all citizens and municipalities in North Carolina except Greensboro). As a whole, the Greensboro Act unconstitutionally discriminates against the citizens of Greensboro, depriving them of equal protection as guaranteed by the Fourteenth Amendment of the United States Constitution and Article I, Section 19 of the North Carolina Constitution. For this reason, the entirety of the Greensboro Act must be enjoined.

II. Plaintiffs seek a TRO to restore the *status quo* as it existed prior to the Greensboro Act.

In fashioning injunctive relief, a paramount consideration must be the proximity and time of the election to the passage of the new law:

> In awarding or withholding immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles. With respect to the timing of relief, a court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable or embarrassing demands on a State in adjusting to the requirements of the court's decree.

Reynolds v. Sims, 377 U.S. 533, 585 (1964) (emphasis added). When the Greensboro Act was passed into law, it disrupted a filing period that was set to open just four (4) days later (on Monday, July 6, 2015)—(a) utilizing electoral districts that had been redrawn after the last decennial census, approved by the U.S. Department of Justice, and used for the 2011 and 2013 municipal elections; and (b) pursuant to the primary and election method that had been in place since 1973 and to which citizens are well accustomed.

The Court need not "reinvent the wheel" to fashion a plan for the upcoming 2015 municipal elections in Greensboro. Returning to the system of self-government as it existed prior to the Greensboro Act poses no constitutional concerns and minimizes voter confusion and frustration. Moreover, it would properly restore the *status quo* during the

pendency of this action.[1] *See Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013) ("This Court has defined the status quo as the 'last uncontested status between the parties which preceded the controversy.' " (quoting *Aggarao v. MOL Ship Mgmt. Co., Ltd.*, 675 F.3d 355, 378 (4th Cir. 2012)); *Aggarao*, 675 F.3d at 378 ("The status quo to be preserved by a preliminary injunction . . . is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the 'last uncontested status between the parties which preceded the controversy.' " (quoting *Stemple v. Bd. of Ed. of Prince George's Cnty.*, 623 F.2d 893, 898 (4th Cir. 1980))).

Plaintiffs' desire to restore the *status quo* as it existed prior to the Greensboro Act is supported by other voting rights cases. *See Wright v. State of North Carolina*, 787 F.3d 256, 2015 U.S. App. LEXIS 8731, at *10 (4th Cir. May 27, 2015) ("The district court could, for example, mandate that the Board of Elections conduct the next election according to the scheme in place prior to the Session Law's enactment until a new and valid redistricting plan is implemented. The Board of Elections has administered elections under this system before and can do so again."), *petition for reh'g en banc denied*, Case 5:13-cv-00607, Doc. 47 (4th Cir. July 15, 2015) (attached hereto as **EXHIBIT B**); *Obama for Am. v. Husted*, 697 F.3d 423, 437 (6th Cir. 2012) ("The order clearly restores the *status quo ante*, returning discretion to local boards of elections to allow all Ohio voters to vote

[1] Section 3 of the Greensboro Act makes most of the Act effective for the 2015 municipal elections or on the first Monday in December 2015. (*See* Doc. 10-1 p. 10). Because the first concrete step towards the 2015 elections occurs with the opening of the filing period on July 27, 2015, the *status quo* is preserved by enjoining the Greensboro Act prior to that date.

during [certain dates]. Because Ohio Rev. Code § 3509.03 is unconstitutional to the extent that it prohibits non-military voters from voting during this period, the State is enjoined from preventing those voters from participating in early voting. . . . Under the district court's order, the boards have discretion, just as they had before the enactment of § 3509.03. The district court's remedy was therefore appropriate."); *Bone Shirt v. Hazeltine*, 2005 S.D. 84, ¶ 23, 700 N.W.2d 746, 755 (Koenkamp, J. concurring) (observing that in a prior case the South Dakota Supreme Court "voided the 1996 [redistricting] plan, thus reinstating the preexisting 1991 plan").

It is important to note that the Greensboro Act does not redraw the districts anew for the coming decade following the decennial census. There is no mandate that the districts be redrawn or that the election process be altered. It is logical, workable, and in the interests of the citizens of Greensboro that the current form of self-governance remain in place during the pendency of this action.

III. To minimize voter confusion and allow the City of Greensboro to rejoin other Guilford County municipalities, the filing period should be set to open on July 27, 2015.

The passage of the Greensboro Act (on July 2, 2015) prevented Defendant Board from opening the previously-set candidate filing period of July 6, 2015 through July 17, 2015, which would have applied to the City of Greensboro and still applies to all other Guilford County municipalities. *See* Guilford County Board of Elections, *2015 Filing Schedule*, http://www.myguilford.com/wp-content/uploads/2015/06/2015-Filing-Schedule-Burlington-Kernersville-ORIGINAL-3-USE.pdf (last accessed July 16, 2015),

attached hereto as **EXHIBIT C**; Guilford County Board of Elections, *Offices for 2015 Municipal Elections*, http://www.myguilford.com/wp-content/uploads/2015/01/OFFICES-FOR-2015-MUNICIPAL-ELECTIONS-APPROVE-BY-CHARLIE-USE.pdf (last accessed July 16, 2015), attached hereto as **EXHIBIT D**; Guilford County Board of Elections, *2015 Municipal Filing and Fee Schedule*, http://www.myguilford.com/wp-content/uploads/2015/06/Filing-Fees-for-2015-Municipal-Election-2-USE.pdf (last accessed July 16, 2015), attached hereto as **EXHIBIT E**.

To restore the *status quo* until the constitutionality of the Greensboro Act can be fully adjudicated, and to allow candidates and voters to prepare for the upcoming elections, it is imperative that candidate filing begin soon. For that reason, Plaintiffs request the Court to order the filing period to open on July 27, 2015 at 12:00 noon. *See NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 529-31 (M.D.N.C. 2012) (fashioning remedy for equal protection problems in session law redistricting of county commissioner seats).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court enter a temporary restraining order (to be followed by a preliminary injunction) prohibiting the implementation of the Greensboro Act and directing that on July 27, 2015, the filing period for City Council elections open based upon the electoral districts and form of government as they existed prior to the Greensboro Act.

Respectfully submitted this the 17th day of July 2015.

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day electronically filed the foregoing Brief in Support of Plaintiffs' Motion for Temporary Restraining Order in the above-titled action with the Clerk of the Court using the CM/ECF system, and served the document by mail and electronic mail to the following:

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A copy of the document was also sent by mail and electronic mail to the following counsel at the Attorney General's office:

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Respectfully submitted this 17th day of July, 2015.

/s/ Jim W. Phillips, Jr.
Jim W. Phillips, Jr.

Supplemental Brief in Support of Plaintiffs' Motion for Temporary Restraining Order

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:15-CV-559

THE CITY OF GREENSBORO, LEWIS A. BRANDON III, JOYCE JOHNSON, NELSON JOHNSON, RICHARD ALAN KORITZ, SANDRA SELF KORITZ, AND CHARLI MAE SYKES, Plaintiffs, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, Defendant.	**[PROPOSED] TEMPORARY RESTRAINING ORDER**

THIS MATTER is before the Court on Plaintiffs' Motion for a Temporary Restraining Order filed pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Court understands that Plaintiffs have provided notice of their Motion to Counsel for Defendant as well as the North Carolina Department of Justice pursuant to N.C. Gen. Stat. § 1-260.

Having reviewed the materials and arguments presented to the Court, the Court finds:

1. Plaintiffs are likely to succeed on the merits of their claims that Session Law 2015-138 violates Plaintiffs' equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution. *See Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964); *Avery v. Midland County*, 390 U.S. 474, 479-80 (1968); *Wright v. State of North Carolina*, 787

F.3d 256, 2015 U.S. App. LEXIS 8731, at *27-28 (4th Cir. May 27, 2015) (citing *Blankenship v. Bartlett*, 363 N.C. 518, 522, 681 S.E.2d 759, 762-63 (2009)), *petition for reh'g en banc denied*, Case 5:13-cv-00607, Doc. 47 (4th Cir. July 15, 2015); *Daly v. Hunt*, 93 F.3d 1212, 1216-18 (4th Cir. 1996); *Molinari v. Bloomberg*, 564 F.3d 587, 597 (2d Cir. 2009); *Save Palisade FruitLands v. Todd*, 279 F.3d 1204, 1210-11 (10th Cir. 2002).

2. Plaintiffs, in the absence of preliminary relief, are likely to suffer the irreparable harm of the loss of their constitutional rights. *See, e.g.*, *Elrod v. Burns*, 427 U.S. 347, 373 (1976); C. Wright, A. Miller and M. Kane, Federal Practice and Procedure, § 2948.1, at 161 (1995) ("[W]hen a deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.").

3. The balance of equities tips in Plaintiffs' favor. *See Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006); *Reynolds v. Sims*, 377 U.S. 533, 585 (1964).

4. Injunctive relief is in the public interest. *See NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 529 (M.D.N.C. 2012).

Specifically, the Court finds that if the election process for Greensboro municipal officials, as newly established by House Bill 263, is allowed to begin on July 27, 2015, then municipal candidates will file in the new districts that are challenged in this action, and it will become difficult, if not impossible, to unwind the election process upon a later conclusion that the process violates Plaintiffs' constitutional rights.

For the foregoing reasons, the Court GRANTS Plaintiff's Motion for a Temporary Restraining Order and hereby ORDERS as follows:

1. Defendant and its agents, officers, and employees are enjoined from enforcing, implementing, or giving any effect to Session Law 2015-138 in its entirety.

2. Elections for Greensboro City Council shall take place using the electoral districts, method of election, and form of government as they existed prior to the enactment of Session Law 2015-138. Specifically, five (5) council members will be elected to represent a single district, three (3) council members shall be elected at-large, and the mayor will be elected at-large. Terms will last for two (2) years. Elections shall proceed under the nonpartisan primary and election method of voting set forth in North Carolina General Statutes Section 163-294. *See* Greensboro, N.C., Charter, Ch. II, § 2.21 (last amended by 1973 N.C. Sess. Laws 213 § 1); *id.* § 2.41 (last amended in 1983 by Ord. No. 83-7, § 1).

3. The filing period for elections to Greensboro City Council shall open at 12:00 noon on July 27, 2015 and close at 12:00 noon on August 7, 2015.

4. Pursuant to Rule 65(c) of the Federal Rules of Civil Procedure, the Court requires that Plaintiffs give security in the amount of zero dollars ($0) in connection with this Order.

5. This Order shall expire within fourteen (14) days of its issuance unless otherwise ordered by the Court. The Court will schedule a hearing on Plaintiffs' Motion for Preliminary Injunction at the earliest reasonable time within fourteen (14) days of the issuance of this Order.

SO ORDERED, at _____ O'clock on this the ____ day of July, 2015.

_____
United States District Court Judge

Supplemental Brief in Support of Plaintiffs' Motion for Temporary Restraining Order

EXHIBIT B

FILED: July 15, 2015

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1329
(5:13-cv-00607-BO)

CALLA WRIGHT; WILLIE J. BETHEL; AMY T. LEE; AMYGAYLE L. WOMBLE; JOHN G. VANDENBERGH; BARBARA VANDENBERGH; AJAMU G. DILLAHUNT; ELAINE E. DILLAHUNT; LUCINDA H. MACKETHAN; WILLIAM B. CLIFFORD; ANN LONG CAMPBELL; GREG FLYNN; BEVERLEY S. CLARK; CONCERNED CITIZENS FOR AFRICAN-AMERICAN CHILDREN, d/b/a Coalition of Concerned Citizens for African-American Children; RALEIGH WAKE CITIZENS ASSOCIATION

Plaintiffs - Appellants

v.

STATE OF NORTH CAROLINA; WAKE COUNTY BOARD OF ELECTIONS

Defendants - Appellees

O R D E R

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 35. The court denies the petition for rehearing en banc.

For the Court

/s/ Patricia S. Connor, Clerk

Supplemental Brief in Support of Plaintiffs' Motion for Temporary Restraining Order

EXHIBIT C

PLEASE NOTE: SPECIAL ELECTIONS, NOT LISTED BELOW, MAY BE CALLED BY THE STATE LEGISLATURE, GUILFORD COUNTY OR A MUNICIPALITY

2015 FILING SCHEDULE

- **Monday, July 6, 2015 (8:00 A.M.) – Friday, July 17, 2015 (12:00 noon) for the following Municipalities:**

  Greensboro, Jamestown, Gibsonville, Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, Summerfield, Whitsett, Burlington, Kernersville and includes Sedgefield Sanitary District

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2015 ELECTION SCHEDULE

TUESDAY, OCTOBER 6, 2015 — MUNICIPAL PRIMARIES

To be conducted only in the necessary Municipal Precincts of Greensboro, Jamestown, Pleasant Garden and Burlington

(Registration Deadline: September 11, 2015

TUESDAY, NOVEMBER 3, 2015 — MUNICIPAL ELECTION

To be conducted in the Municipalities of Greensboro, Jamestown, Gibsonville, Oak Ridge, Pleasant Garden, Sedalia, Stokesdale, Summerfield, Whitsett, Burlington, Kernersville and includes Sedgefield Sanitary District

(Registration Deadline: October 9, 2015

Date Issued: January 30, 2015

Supplemental Brief in Support of Plaintiffs' Motion for Temporary Restraining Order

EXHIBIT D

OFFICES FOR 2015 MUNICIPAL ELECTIONS
(Filing begins July 6, 2015 at 8:00A.M. thru July 17, 2015 at Noon)

City of Greensboro – 2 Year Terms – Nonpartisan With Primary
Mayor
1 Seat
City Council
At Large
3 Seats
District 1
1 Seat
District 2
1 Seat
District 3
1 Seat
District 4
1 Seat
District 5
1 Seat

Town of Jamestown – 2 Year Terms – Nonpartisan With Primary
Mayor
1 Seat
Town Council
4 Seats

Town of Pleasant Garden – Nonpartisan With Primary
Mayor – 2 Year Term
1 Seat
Town Council – 4 Year Staggered Terms
2 Seats

Town of Sedalia – 4 Year Staggered Terms – Nonpartisan With No Primary
Town Council
2 Seats

Town of Oak Ridge – 4 Year Staggered Terms – Nonpartisan With No Primary
Town Council
3 Seats

Town of Stokesdale – 4 Year Staggered Terms - Nonpartisan With No Primary
Town Council
3 Seats

Town of Summerfield – Nonpartisan With No Primary
Mayor – 2 Year Term
1 Seat
Town Council – 4 Year Staggered Terms
3 Seats

Town of Whitsett – 4 Year Staggered Terms – Nonpartisan With No Primary
Town Council
3 Seats

Town of Gibsonville – Nonpartisan With No Primary
Mayor – 4 Year Term
1 Seat
Alderman – 4 Year Staggered Terms
3 Seats

City of Burlington – Nonpartisan With Primary
Mayor – 2 Year Term
1 Seat
City Council – 4 Year Staggered Terms
2 Seats

Town of Kernersville – 2 Year Terms – Nonpartisan With No Primary
Mayor
1 Seat
Alderman
5 Seats

Sedgefield Sanitary District – 2 Year Terms – Nonpartisan With No Primary
5 Seats

Updated: 12/23/14

Supplemental Brief in Support of Plaintiffs' Motion for Temporary Restraining Order

EXHIBIT E

2015 Municipal Filing and Fee Schedule

Filing begins: Monday July 6, 2015 at 8:00 A.M.
Filing ends: Friday July 17, 2015 at 12:00 noon
(*2013 Filing fees – 2015 fees to be determined)

GREENSBORO		**PRIMARY**
MAYOR	**$75.00**	**1 SEAT**
CITY COUNCIL	**$25.00**	**8 SEATS**
JAMESTOWN		**PRIMARY**
MAYOR	**$10.00***	**1 SEAT**
TOWN COUNCIL	**$10.00***	**4 SEATS**
PLEASANT GARDEN		**PRIMARY**
MAYOR	**$ 5.00**	**1 SEAT**
TOWN COUNCIL	**$ 5.00**	**2 SEATS**
SEDALIA		**NO PRIMARY**
TOWN COUNCIL	**$ 5.00***	**2 SEATS**
OAK RIDGE		**NO PRIMARY**
TOWN COUNCIL	**$ 5.00***	**3 SEATS**
STOKESDALE		**NO PRIMARY**
TOWN COUNCIL	**$ 5.00***	**3 SEATS**
SUMMERFIELD		**NO PRIMARY**
MAYOR	**$ 5.00**	**1 SEAT**
TOWN COUNCIL	**$ 5.00**	**3 SEATS**
WHITSETT		**NO PRIMARY**
TOWN COUNCIL	**$ 5.00***	**3 SEATS**
GIBSONVILLE		**NO PRIMARY**
MAYOR	**$10.00***	**1 SEAT**
ALDERMAN	**$ 6.00***	**3 SEATS**
BURLINGTON		**PRIMARY**
MAYOR	**$20.00***	**1 SEAT**
CITY COUNCIL	**$20.00***	**2 SEATS**
KERNERSVILLE		**NO PRIMARY**
MAYOR	**$20.00***	**1 SEAT**
ALDERMAN	**$20.00***	**5 SEATS**
SEDGEFIELD SANITARY DISTRICT		**NO PRIMARY**
MEMBER	**$ 5.00***	**5 SEATS**

Updated: June 5, 2015