

NORTH CAROLINA STATE HEARING

Opportunities Industrialization Center Of Rocky Mount Rocky Mount, North Carolina March 28, 2014

GUEST COMMISSIONERS

Barbara Arnwine, President and Executive Director, Lawyers' Committee for Civil Rights Under Law

Eva Clayton, former Congresswoman

David Harris, attorney, formerly of the U.S. Department of Justice

Ellie Kinnaird, former state Senator

Raymond Pierce, Partner, Nelson Mullins Riley and Scarborough, LLP and former Dean, North Carolina Central University School of Law

PANELISTS

Laila Ali, North Carolina State University

Rev. William Barber, President, North Carolina NAACP

Mary Bethel, Associate State Director for Advocacy, AARP North Carolina

Chris Brook, Legal Director, ACLU North Carolina

Juliana Cabrales, National Association of Latino Elected and Appointed Officials

Hon. Judge Caudill, former Director of Elections, Lincoln County

Anita Earls, Executive Director, Southern Coalition for Social Justice

George Gilbert, former Director of Elections, Guilford County

Bill Gilkeson, former legal staff, North Carolina General Assembly

Elizabeth Haddix, Staff Attorney, University of North Carolina Center for Civil Rights in Chapel Hill

Erika Hagensen, Director of Public Policy and Advocacy, Arc of North Carolina

Penda D. Hair, Co-Founder, Advancement Project

Bob Hall, Executive Director, Democracy North Carolina

Jarvis Hall, Professor of Political Science, North Carolina Central University

Irving L. Joyner, Professor, North Carolina Central University

Joseph Lofton, retired

Rep. Mickey Michaux, North Carolina General Assembly

Bryan Perlmutter, Director, Ignite North Carolina and the North Carolina Vote Defenders Project

Bob Phillips, Executive Director, Common Cause North Carolina

Mercedes Restucha-Klem, Attorney, Disability Rights North Carolina

Allison Riggs, Staff Attorney, Southern Coalition for Social Justice

Keith Rivers, Executive Committee Member, North Carolina NAACP

Estelle "Bunny" Sanders

Rep. Evelyn Terry, North Carolina General Assembly

Marcus Thompson

Sandra Thompson, Board Member, Lawyers' Committee for Civil Rights Under Law

PUBLIC TESTIMONY

Clarence Albert, Jr.	Ophelia Gould-Faison
Mark Dorosin, Orange County Commissioner	Evelyn Paul
Melanie Goff Bradley	Susan Perry-Cole
Jenny Catorlich, poll worker	Hernando Ramirez Santos, Editor, <i>Que Pasa</i>
Rev. Curtis Gatewood, HKongJ Coalition	Liamia Smith
Coordinatoo, North Carolina NAACP	Nehemiah Smith, owner, <i>Weekly Defender</i>
Madison Gimmery	

SUPPORTING ORGANIZATIONS (NOT EXHAUSTIVE)

ACLU of North Carolina	HKonJ People's Assembly
Advancement Project	North Carolina NAACP
Democracy North Carolina	Southern Coalition for Social Justice
Forward Together Moral Movement	UNC Center for Civil Rights

NORTH CAROLINA STATE HEARING HIGHLIGHTS

On March 28, voters, activists, and voting rights advocates gathered at the Opportunities Industrialization Center of Rocky Mount in North Carolina, to share their experiences of the voting challenges they continue to face in North Carolina at a hearing convened by the Lawyers' Committee for Civil Rights Under Law. Witnesses testified about continued barriers to equal participation in our democratic process for voters in North Carolina, including the disproportionate impact of recent changes in election administration practices on racial minority communities and equal representation for racial minority communities.

Prior to *Shelby County*, 40 of North Carolina's 100 counties were required to seek preclearance of voting changes under Section 5 of the Voting Rights Act.¹ Between 1971 and 2013, the Department of Justice ("DOJ") interposed 67 objections against North Carolina and its subjurisdictions.² George Gilbert, who served as Director of Elections for Guilford County for 25 years, testified that "complying with Section 5... was a relatively simple process... [and] it was very much an active part of our considerations in making the decisions at Guilford County." Witnesses provided testimony on the impact that the Voter Information Verification Act ("VIVA") and the absence of Section 5 preclearance will have on minority voters.

¹ Civil Rights Div., *Jurisdictions Previously Covered by Section 5*, U.S. Dep't of Just., http://www.justice.gov/crt/about/vot/sec_5/covered.php (last visited July 15, 2014).

² Civil Rights Div., *Voting Determination Letters for North Carolina*, U.S. Dep't of Just., http://www.justice.gov/crt/records/vot/obj_letters/state_letters.php?state=nc (last visited July 15, 2014).

I. H.B. 589: Voter Information Verification Act

On August 12, 2013, the Governor of North Carolina signed into law the VIVA.³ The law reforms many election laws, including establishing a strict photo ID requirement, eliminating same-day voter registration, expanding voter challenge opportunities (Part 20), and reducing early voting opportunities. Chris Brook, the Legal Director for the American Civil Liberties Union of North Carolina testified, “[VIVA] is going to make it harder for every North Carolinian to vote, but those burdens are going to be disproportionately borne in communities of color.” Indeed, although African Americans constitute just over 22 percent of registered voters,⁴ they represent a much larger proportion of voters who will be adversely affected by VIVA. Several lawsuits have been filed in state and federal courts challenging the VIVA: *Currie v. North Carolina*, No. 13-CV-001419 (Orange Cnty. Sup. Ct. filed Aug. 12, 2013); *League of Women Voters of North Carolina v. Howard*, No. 1:13-cv-00660 (M.D. N.C. filed Aug. 12, 2013); *North Carolina NAACP v. McCrory*, No. 1:13-cv-658 (M.D. N.C. filed Aug. 12, 2013); *United States v. North Carolina*, No. 13-CV-00861 (M.D. N.C. filed Sept. 30, 2013).

Voter ID

Under Part 2 of VIVA, voters are required to present photo ID in order to vote. According to Bob Hall, the Executive Director of Democracy North Carolina, of the voters the State Board of Elections identified as not having a valid ID, 34 percent are African-American.⁵ Penda D. Hair of the Advancement Project testified that the acceptable forms of photo ID “are difficult to obtain if you don’t have the documents that are required.” Numerous speakers testified that the ability to obtain a photo ID can be more difficult in rural areas, where there is no permanent DMV office. For example, according to Chris Brook, in Bertie County, where African Americans make up 62.5 percent of the population,⁶ the DMV is open one day a month for six hours.⁷ Gilbert commented that, in his time with the County, “I never found a compelling public interest that justified the voter ID requirements of House Bill 589.”

Early Voting

Participants also presented testimony on the impact that reducing early voting opportunities has on minority communities. Part 25 of VIVA reduced the early voting period by one week and reduced the hours county boards of elections are required to be open during this period. According to Penda Hair, 70 percent of African Americans and over half of Latinos who voted in 2012 used early voting. According to Bob Hall, “African Americans... were 36 percent of those who used the first week of early voting. They were 43 percent of those who voted on that first Sunday.”

³ 2013 N.C. Sess. Laws 381 (2013), available at <http://www.ncleg.net/Sessions/2013/Bills/House/PDF/H589v9.pdf>.

⁴ NC Voter Statistics, N.C. St. Board of Elections, http://www.ncsbe.gov/webapps/voter_stats/

⁵ Memorandum from Gary O. Bartlett, Exec. Dir. of N.C. State Bd. of Elections (Apr. 17, 2013), available at <http://www.democracy-nc.org/downloads/SBOE-DMVMatchMemoApril2013.pdf>.

⁶ American Fact Finder, U.S. Census Bureau, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

⁷ Driver’s License Office, DMV Hours, <http://www.dmvhours.com/office/111-S-York-St-Windsor-NC-27983>

Reverend Dr. William Barber, the President of the North Carolina State Conference of the NAACP, testified that VIVA's elimination of the last Sunday before Election Day from early voting will have an adverse effect on the Souls to the Polls initiative, which had been a popular voting opportunity for church-going African Americans. Joseph Lofton, former chairman of the Wake County Board of Elections, noted that "the presence of Sunday voting can be an enhancement to [voting], rather than a deterrence."

Other Changes

Bob Phillips, the Executive Director of Common Cause, North Carolina, provided testimony on Part 20 of VIVA, which expands the ability of observers to challenge voters' registration. Prior to VIVA, said Phillips, voters could not challenge on Election other voters unless they resided in their same precinct, and they could not challenge other voters on early voting days unless they lived in the same county. VIVA amended these limits to permit voters to challenge any voter in their county on Election Day and any voter in the state on other days. Phillips said, "I've seen firsthand at high-volume precincts in minority communities, outsiders come in to ask inappropriate questions of voters outside the polls [in an attempt to disqualify them]." In Buncombe County, where Asheville is the county seat, political groups challenged 182 voters, of whom 19.2 percent were African-American.⁸ According to 2012 census data, Buncombe County's total population is 6.5 percent African American.⁹ Bob Hall noted that the group of challengers "chose the poorest blackest precinct in Asheville to challenge voters."

Bill Gillkeson, former legal counsel to the North Carolina General Assembly, provided testimony on Part 32 of VIVA, which eliminated straight-ticket voting. He noted that African-American voters make considerable use of straight-ticket voting.

Reverend Barber provided testimony on Part 16 of VIVA, which eliminated same-day registration. He noted that African Americans disproportionately used same-day registration: "African Americans cast 34 percent of the same-day registration ballots."¹⁰

II. Minority Representation

Several witnesses provided testimony on redistricting and electoral practices that dilute minority voting strength and prevent adequate minority representation. Bob Hall provided testimony on the state decennial redistricting plans. Hall testified that the approved redistricting

⁸ Romando Dixon, *Voters Removed from the Buncombe Voter Roll*, *Citizen-Times* (Apr. 10, 2014), <http://www.citizen-times.com/story/news/local/2014/04/10/voters-removed-buncombe-voter-roll/7574481/>; see also *Buncombe County Board of Elections Minutes, Buncombe County Board of Elections* (Apr. 22, 2014), <http://www.buncombecounty.org/common/election/BoardMtgMinutes/2014/2014-04-22-minutes.pdf>.

⁹ See, *United States Census Bureau's State and County Quickfacts for Buncombe County, NC*: <http://quickfacts.census.gov/qfd/states/26/2611555.html>

¹⁰ See also, *Complaint at 14, League of Women Voters of North Carolina v. North Carolina, 1:13-cv-00660-TDS-JEP* (M.D.N.C. filed Aug. 12, 2013).

maps “systematically packed African Americans in fewer districts... [and] African Americans were 50 percent more likely to live in a split precinct than whites.”¹¹ Reverend Barber testified that the redistricting plan was “worst voter redistricting plan since the 19th Century,” for the way it packing black voters into few senate and house districts. According to Anita Earls, the Executive Director of the Southern Coalition for Social Justice, “It was designed to minimize [not only] the influence of black voters but also progressive white voters who voted with them.”

In addition, Elizabeth Haddix, a senior staff attorney at the University of North Carolina Center for Civil Rights, provided testimony on the continued use of electoral systems that create a barrier to minority representation. Among the counties with the greatest racial disparity in representation, all used an at-large or mixed electoral system. Haddix pointed to Hyde and Jones Counties, which are each over 30 percent African-American, “but have all white Boards of County Commissioners. Both elect commissioners at large, but Hyde has residency districts.”¹² Minority representation is further hindered by racial bloc voting, which, according to Edgecombe County resident Susan Perry-Cole, “is still in existence, still alive and well today, and it’s a part of the fabric – particularly in rural eastern North Carolina.”

III. Language Access

Juliana Cabrales, representing the National Association of Latino Elected and Appointed Officials, presented testimony on language barriers that voters face. Although North Carolina is not covered by the Voting Rights Act’s minority language provisions, the state has a growing Latino population that would benefit from bilingual assistance at the polls. According to 2010 Census data, people of Hispanic or Latino origin make up 8.4 percent of the total population of North Carolina.¹³ Cabrales estimated that among the Latino population, 81 percent speak another language at home. “Latino participation is significantly enhanced by the access to translated materials and availability of bilingual poll workers at convenient voting locations on Election Day who are readily available to provide comprehensive in-person assistance,” she said.

¹¹ Plaintiff-Appellants’ Brief at 30, *Dickson v. Rucho*, No. 201PA12-2 (N.C. filed Oct. 11, 2013).

¹² See also, American Fact Finder, U.S. Census Bureau, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml> and The University of North Carolina Center for Civil Rights, *The State of Exclusion*, available at <http://www.uncinclusionproject.org/documents/stateofexclusion.pdf>

¹³ American Fact Finder, U.S. Census Bureau, <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>