

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

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SUPERIOR COURT DIVISION
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ORANGE CO., N.C.
ALBERTA CURRIE, PARIS VAUGHN,
CASSANDRA PERKINS, MARY CAITLYN
SANDERS, HAYLEY FARLESS, LEAGUE OF)
WOMEN VOTERS OF NORTH CAROLINA)
and NORTH CAROLINA A. PHILIP)
RANDOLPH INSTITUTE)
INC.)

AMENDED COMPLAINT

Plaintiffs,

vs.

THE STATE OF NORTH CAROLINA, and)
THE NORTH CAROLINA STATE BOARD OF)
ELECTIONS,)

(REQUEST TO DESIGNATE AS
EXCEPTIONAL CASE PURSUANT
TO RULE 2.1 OF THE GENERAL
RULES OF PRACTICE FOR THE
SUPERIOR AND DISTRICT COURTS)

Defendants.)

PRELIMINARY STATEMENT

1. The right to vote on equal terms in North Carolina has long been recognized as a fundamental right. So enshrined is this right that the only qualifications for exercising the right to vote are those enumerated in the state constitution. Time and again, the North Carolina Supreme Court has held that the General Assembly cannot create qualifications that go beyond what is enumerated in the state constitution concerning the fundamental rights concerning elections. In *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 221 (1875), the Court rejected the General Assembly's attempt to require longer residency requirements for voting in Wilmington elections than the general residency requirements given in the North Carolina Constitution. The Court held that:

Not only is freedom to vote and hold office secured in our present Constitution, but it is so imbedded in the hearts of the people that it

was thought necessary to stipulate against any interference with it by a contemplated Convention to alter the Constitution. The act of the last General Assembly calling a Convention has a provision that the Convention “shall not require, or propose any educational or property qualification for office, or voting,” and requires the delegates to take an oath to observe it.

People ex rel. Van Bokkelen v. Canaday, 73 N.C. at 221. In *Van Bokkelen* and cases following it, the North Carolina Supreme Court held that creating qualifications on the elections process is beyond the realm of the General Assembly.

2. Despite the deep, constitutional entrenchment of the right to vote, the General Assembly has now imposed a new and additional qualification on this right when it enacted a law requiring all voters to show acceptable photo identification (photo ID) in order to vote in person and have their ballots counted.

3. The Voter Information Verification Act, S. L. 2013-381 (hereinafter “VIVA”), passed by the General Assembly on July 29, 2013 and signed into law by the Governor on August 12, 2013, unconstitutionally and unjustifiably burdens the right to vote of the conservatively estimated 232,502 voters¹ who currently lack a photo ID accepted under the law. Effective January 1, 2016, voters who lack a certain type of photo ID will be unable to vote in-person. If the unconstitutional sections of VIVA are not declared unconstitutional and enjoined, plaintiffs and voters across North Carolina will be denied the fundamental right to vote on equal terms through a law that exceeds the General Assembly’s constitutional powers.

4. As an act exceeding the General Assembly’s power, VIVA violates the state constitution in the following ways:

¹ H.B. 589, Legislative Fiscal note, available at <http://www.ncleg.net/Sessions/2013/FiscalNotes/House/PDF/HFN0589v2.pdf>, (last accessed July 26, 2013)

- a. It constitutes an impermissible additional qualification to vote, in violation of Article VI, § 1;
- b. It unduly burdens the fundamental right to vote on equal terms guaranteed by Equal Protection Clause in Article I, §19; It violates the requirement that "all elections shall be free" of Article I, §10;
- c. It imposes an impermissible property qualification on the right to vote of Article I, §11;
- d. It requires the payment of money to vote, in violation of the Equal Protection Clause in Article I, § 19; and
- e. It disparately impacts African-Americans, as intended by the General Assembly, in violation of the Equal Protection Clause in Article 1 § 19 of the North Carolina Constitution.

This action seeks a declaratory judgment that the provisions of VIVA pertaining to a photo ID requirement to vote violate multiple provisions of the North Carolina Constitution. The Plaintiffs, nonprofit, nonpartisan organizations and individual, affected voters, seek injunctive relief to prevent the implementation of those plans in any future election.

I. JURISDICTION AND VENUE

5. This Court has jurisdiction of this action pursuant to Article 26 of Chapter 1 of the North Carolina General Statutes.

6. Venue is proper in Orange County because Plaintiffs Paris Vaughn, Cassandra Perkins, and Mary Caitlyn Sanders are citizens and residents of Orange County. N.C. Gen. Stat. §1-82.

II. PARTIES

7. Plaintiff Alberta Currie is a registered voter residing in Hope Mills, North Carolina. Ms. Currie, an African-American, is 78 years old and does not have a photo ID acceptable for voting purposes under VIVA. She also lacks a birth certificate. She was born at home in North Carolina in 1935 without the issuance of any birth certificate. Recently she has spent nearly \$100 trying to obtain a birth certificate so that she could acquire the necessary documentation to obtain a state-issued photo identification, with no success. Ms. Currie has voted consistently since first becoming eligible to vote at the age of 21 in 1956.

8. Plaintiff Paris Vaughn is a registered voter residing in Chapel Hill, North Carolina. Ms. Vaughn first registered to vote in North Carolina in September, 2011. She voted using early voting in the November, 2012 general election. Ms. Vaughn does not possess any of the forms of photo identification permissible to allow her to cast a ballot under the provisions of VIVA.

9. Plaintiff Cassandra Perkins is a registered voter residing in Chapel Hill, North Carolina. Ms. Perkins first registered to vote in North Carolina in October of 2012. She voted in person in the November, 2012 general election. Ms. Perkins does not possess any of the forms of photo identification permissible to allow her to cast a ballot under the provisions of VIVA.

10. Plaintiff Mary Caitlyn Sanders is a registered voter residing in Chapel Hill, North Carolina. Ms. Perkins registered to vote in North Carolina in September of 2013. Ms. Sanders does not possess any of the forms of photo identification permissible to allow her to cast a ballot under the provisions of VIVA.

11. Plaintiff Hayley Farless resides in Durham, North Carolina. She is a citizen, over the age of 18 and considers Durham her permanent residence. She submitted her voter

registration form in October of 2013. Ms. Farless does not possess any of the forms of photo identification permissible to allow her to cast a ballot under the provisions of VIVA.

12. Plaintiff League of Women Voters of North Carolina (LWVNC) is a nonpartisan community-based organization, formed in 1920, immediately after the enactment of the Nineteenth Amendment to the U.S. Constitution granting women's suffrage. The LWVNC is dedicated to encouraging its members and the people of North Carolina to exercise their right to vote as protected by the U.S. Constitution and the Voting Rights Act of 1965. The mission of LWVNC is to promote political responsibility through informed and active participation in government and to act on selected governmental issues. The LWVNC impacts public policies, promotes citizen education, and makes democracy work by, among other things, removing unnecessary barriers to full participation in the electoral process. Currently LWVNC has 16 local leagues and over 972 members, each of whom, on information and belief, is a registered voter in North Carolina. LWVNC is affiliated with the League of Women Voters of the United States, which was also founded in 1920. LWVNC began as an organization focused on the needs of women and the training of women voters; it has evolved into an organization concerned with educating, advocating for and empowering all North Carolinians. With members in almost every county in the state, the LWVNC's local leagues are engaged in numerous activities, including hosting public forums and open discussions on issues of importance to the community. Individual league members invest substantial time and effort in voter training and civic engagement activities, including voter registration and get-out-the-vote (GOTV) efforts. VIVA will impair its fundamental mission to increase civic participation among all citizens by making it more difficult for North Carolina voters to vote in person. It will be further harmed by implementation of VIVA because it will be required to divert its resources from its usual

activities in order to deal with the adverse effects of VIVA on its members and other North Carolina voters.

13. Plaintiff North Carolina A. Philip Randolph Institute, Inc. (NC APRI) is a North Carolina non-profit corporation and affiliated with the national A. Philip Randolph Institute, the senior constituency group of the AFL-CIO dedicated to advancing racial equality and economic justice. APRI grew out of the legacy of African-American trade unionists' advocacy for civil rights and the passage of the federal Voting Rights Act and continues to advocate for social, political and economic justice for all working Americans. NC APRI has members who are registered voters across North Carolina. Its chapters are located in Durham, Greensboro, the Piedmont, Raleigh, Roanoke Rapids and Fayetteville. NC APRI works to increase accessibility to the polls, voter registration and voter education. It distributes nonpartisan voter guides and hosts phone banks to encourage voter participation. VIVA will impair its fundamental mission to increase civic participation among working Americans, and in particular, among African-Americans, by making it more difficult for North Carolina voters to vote in person. It will be further harmed by implementation of VIVA because it will be required to divert its resources from its usual activities in order to deal with the adverse effects of VIVA on its members and other North Carolina voters.

14. Defendant State of North Carolina is one of the 50 sovereign states in the United States.

15. Defendant State Board of Elections is a state agency of North Carolina, headquartered in Wake County, which administers the election laws of the State of North Carolina.

III. FACTUAL ALLEGATIONS

16. On July 25, 2013, the General Assembly enacted VIVA, a law which requires all duly registered voters to show an acceptable photo ID before voting.

17. Forms of acceptable photo ID under the statute are limited to:

- a. A North Carolina drivers' license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
- b. A special identification card for non-operators issued under G.S. 20-37.7.
- c. A United States passport.
- d. A United States military identification card
- e. A Veterans Identification Card issued by the United States Department of Veterans Affairs for use at Veterans Administration medical facilities
- f. A tribal enrollment card issued by a federally recognized tribe or a tribe recognized by this State under Chapter 71A of the General Statutes.
- g. A tribal enrollment card issued by a tribe recognized by this State under Chapter 71A of the General Statutes, provided that card meets all of the following criteria:
 - i. Is issued in accordance with a process approved by the State Board of Elections that requires an application and proof of identity equivalent to the requirements for issuance of a special identification card by the Division of Motor Vehicles under G.S. 20-7 and G.S. 20-37.7.b.
 - ii. Is signed by an elected official of the tribe.
- h. A drivers' license or non-operators' identification card issued by another state, the District of Columbia, or a territory or commonwealth of the United States, but only if the voter's voter registration was within 90 days of the election.

18. All drivers licenses, special ID cards, and U.S. passports must have a printed expiration date above and be unexpired at the time it is presented for voting.

19. Veterans ID, military IDs and tribal IDs will be accepted without expiration date so long as the ID has a printed issuance date that is not more than eight years before it is presented for voting.

20. The law allows for voters over 70 years of age to present an expired form of one of the accepted IDs, provided that the ID did not expire before the voter's 70th birthday.

21. If a voter fails to present acceptable photo ID at the polls, he or she may cast a provisional ballot. The provisional ballot will only be counted, however, if the voter returns to the local board of elections with acceptable photo ID before the end of the seven to ten day canvass period following the election.

22. The only voters exempted from the photo ID requirement are those who sign affidavits attesting to their religious objection to being photographed, or those that vote curbside due to a disability. Those voters must produce a current utility bill, bank statement, government check, paycheck, or other government document with their name and address in accordance with NC. Gen. Stat §163.166(a)(2). VIVA provides no exception for individuals with disabilities who do not use curbside voting, or people experiencing homelessness, groups that traditionally lack the mobility and resources necessary to procure photo ID and the documents necessary to obtain photo ID.

23. Additionally VIVA does not allow voters to present valid student IDs, even if those IDs were issued by a state college or university.

24. The Senate approved the bill by a vote of 33-14 and the House approved the bill by a vote of 73-41.

25. No African-American senator or representative voted for VIVA when it was ratified by the General Assembly.

a. Thousands lack acceptable photo ID

26. In January of 2013, the State Board of Elections released a study that revealed that more than 600,000 registered voters lack photo ID (hereinafter referred to as DMV-No Match Study). The Board matched voter registration records against DMV records and found that as many as 612,955 voters could not be matched with a DMV-issued drivers' license or photo ID card. That study is part of the legislative record for VIVA.

27. The General Assembly estimated that, in the Legislative Fiscal Note for H.B. 589, an earlier version of VIVA, between 232,502 and 364,393 voters will lack acceptable photo ID by 2017. These estimates are between 3.6% and 5.6% of North Carolina's registered voters.

b. Cost of photo ID

28. By the General Assembly's own estimate, hundreds of thousands of voters will have to expend time and money to acquire a photo ID to vote.

29. VIVA provides for any voter or person seeking to register to vote to receive a free photo ID from the North Carolina Department of Motor Vehicles, if the voter signs an affidavit stating they lack acceptable photo identification.

30. However, to obtain the "free ID" a voter needs to present three different categories of documents to prove (1) their social security number; (2) their residence; (3) their full name and date of birth.

31. A voter must show two documents to prove their full name and date of birth, limited to a U.S. or Canadian driver's license; a birth certificate; an original Social Security card; tax forms; a motor vehicle driver's record; school documents; a U.S. military ID; a passport; a

certified marriage certificate; a North Carolina limited driving privilege; U.S. government documents; or U.S. or Canadian court documents. Additionally, if women have changed their name through marriage or divorce, they may have to show their marriage license or divorce decree to prove their name.

32. Free IDs will be made available to the blind, people over 70, people who are registered or are in the process of registering to vote and who do not have photo ID, people who experience homelessness and people whose driver licenses have been cancelled because of disability. To obtain a free ID, a voter must sign an affidavit saying she does not have an acceptable photo ID and is a registered voter. Voters who want a free ID but are not yet registered may register at DMV at the same time they receive the free ID.

33. Additionally, the clerk of court in each county will make free certified birth certificates and marriage license copies available for a voter who signs an affidavit saying she does not have photo ID, is a registered voter, and needs the documentation.

34. However, the provision for free birth certificates and marriage licenses is only helpful for voters who were born in North Carolina or married in state. Voters born or married out of state must pay fees to receive copies of the documents necessary to obtain photo ID. For example, a copy of a birth certificate issued in New York currently costs \$30.00. A copy of a New York marriage license also costs \$30.00. Thus, a woman born and married in New York who changed her name after marriage may have to pay \$60.00 to obtain the documents necessary to receive a "free" photo ID.

35. Additionally, upon information and belief, some states require proof of photo ID before the voter can obtain a birth certificate. There is no relief under the statute for North

Carolina voters caught in this cycle and some voters may be completely barred from voting in person.

36. People who lack photo ID are also unable to drive because they also lack a drivers' license. To obtain photo ID, they must arrange transportation to the local DMV office, which may be a great distance from where they live. In many areas of the state, there is no way to access the DMV office by public transportation. The photo ID requirement makes voters either pay for private transportation, or depend on the kindness of others to access the "free" ID at the DMV.

37. In addition, voters may have to make multiple trips to Social Security offices and the offices of registers of deeds in order to obtain the documentation necessary to receive a photo ID. Again, without the ability to drive or access public transportations, each one of these trips imposes an undue burden on voters who previously could walk to their local precinct on Election Day. This burden is particularly high for voters who lack a stable address at which to receive mail.

38. As it may take weeks to receive requested documents by mail, some voters may be forced to make in-person trips in order to receive the free photo ID by election day.

39. The repeated trips to various government agencies pose an undue burden on voters resulting in excessive time and expense, who cannot drive and who, previously, only had to make one trip to their local precinct to cast a ballot on election day.

Burdens on special groups

a. African Americans

40. The expenses of obtaining documents and securing transportation impose the greatest burdens on the poor, to whom \$10 or \$30 may mean the choice between voting and feeding one's family.

41. Poverty in North Carolina is higher amongst people of color, causing the photo ID requirement to have a disproportionate impact on voters of color. In North Carolina, 28% of African-Americans and 34% of Latinos live in poverty according to the American Community Survey. Poverty is defined by the American Community Survey as income below a certain threshold based on members of the household. In comparison, only 12.9% of whites live in poverty. The General Assembly was presented with this information showing the disparate impact of photo ID during the public hearings on Voter ID.

42. Additionally, African Americans are 22% of all active registered voters, but they account for 31% of the active registered voters who do not have a NC photo ID according to the State Board of Elections' DMV-No Match study. The Board matched voter registration records against DMV records and reported the number of voter registrations by age and race that could not be matched with a DMV-issued drivers' license or photo ID card.

43. Further, the costs associated with obtaining the supporting documents to obtain photo identification are prohibitive for many African Americans. A 2010 report by University of North Carolina's Center on Poverty, Work and Opportunity found that for North Carolina, half of the African American households surveyed had less than \$100 in savings, a finding consistent with other research on African American wealth and savings. A 2011 FDIC survey of unbanked and under-banked households found that 21.4% of African American households lacked a bank account, compared to only 4% of whites. Almost a third of households without a bank account reported that they did not have one because they did not have enough money. This information

demonstrates that African Americans lacking photo identification would face extraordinary burdens in obtaining the supporting documentation necessary to acquire a photo identification, because the fees for the supporting documentation would consume what little savings they have.

b. Women

44. Women are also disproportionately affected by the Photo ID requirement. Women are 54% of active voters, but they account for 66% of the active registered voters who do not have a NC photo ID according to the State Board of Elections' DMV-NoMatch study.

45. The majority of women change their names after being married or divorced. As a woman is required to show a marriage or divorce certificate to prove her name change to obtain identification, the burden to obtain photo ID weighs more heavily upon women than men. Depending on the state where a woman's marriage or divorce was conducted, some state agencies cannot provide a marriage or divorce certificate and thus women must contact the court system that handled the marriage or divorce. This process can cause confusion because state agencies may, for a fee, be able to provide confirmation of marriage or divorce, but this confirmation likely does not qualify as an appropriate document. Additionally, the local court system's website may not provide any guidance on obtaining a marriage or divorce certificate, which creates further confusion.

46. States or court systems can also require a form of identification to prove the identity of the person requesting a marriage or divorce certificate. This places women in a conundrum; they need identification to obtain a marriage or divorce certificate, but they cannot obtain identification without the marriage or divorce certificate.

47. The process of requiring women to obtain a marriage or divorce certificate to demonstrate a name change imposes a financial burden on women not faced by men. In addition

to the fees required to obtain a marriage or divorce certificate, states or court systems can require that the request be notarized, which imposes further time and money requirements in locating and using a notary.

c. Elderly

48. Additionally, photo ID has a disparate impact on voters on both ends of the age spectrum. Voters over the age of 65 are 18% of active voters, but 26% of those without a NC photo ID. Based on a survey by the Brennan Center, eighteen percent of people age sixty-five and over do not have current government-issued photo identification. Some of these seniors have been forced to surrender their driver's license due to medical problems, and consequently may not have acceptable photo identification. As a result, VIVA disenfranchises responsible seniors who surrendered their licenses when they no longer felt capable of driving.

49. Further, many elderly voters have relocated to North Carolina and let their out-of-state drivers licenses expire. Under VIVA, voters over 70 years old may only use expired drivers licenses or special ID cards that were issued by the State of North Carolina and expired after the voter's 70th birthday. Voters with expired, out-of state-drivers licenses may lack the documents necessary to obtain a new valid North Carolina license or ID card.

50. Additionally, seniors face unique challenges in obtaining photo identification. For North Carolina heads of household age sixty-five and older, the 2011 American Community Survey found that twelve percent have no vehicle available to them. However, this number most likely underestimates the number of seniors without access to a car, as it excludes seniors who reside in households without a car where they are not head of household. Lack of private transportation disproportionately affects African American seniors, as demonstrated by the Surface Transportation Policy Project that found that forty-two percent of African American

seniors do not drive, compared to sixteen percent of white seniors. This demonstrates that older African Americans face greater obstacles to obtaining photo identification, and would likely suffer a disparate impact.

51. These problems also disparately impact seniors in rural areas. According to a 2003 study, twenty-three percent of seniors live in rural areas, and only fourteen percent of those have any kind of transit services within half of a mile. In many areas of North Carolina, this problem is even worse. A 2011 study noted that ninety-five percent of seniors in Hickory-Morganton, eighty-seven percent of seniors in Greenville, eighty-five percent of seniors in Jacksonville, and eighty percent of seniors in Raleigh-Durham-Chapel Hill will have poor transit access in 2015. Consequently, senior voters without photo identification would face extraordinary burdens in obtaining photo identification and the necessary supporting documentation for a photo identification.

52. Even in the few areas where seniors have access to adequate public transportation, medical problems may prevent them from using public transportation. Seniors may not be able to travel the distances required to access public transportation or may only be able to stand for short periods of time, conditions which can prevent waiting at public transportation stops or using crowded public transportation where seats may not be available. Further, public transportation presents problems to those with limited mobility, as the height of buses can make entering them challenging for those with limited leg movement.

53. Additionally, seniors were born in an era where births were not recorded as diligently as they are now, and finding birth records and witnesses more than half a century old would prove difficult and costly. Even when birth certificates or other records are found, spelling and other errors may invalidate these documents for purposes of proving identity.

d. College Students

54. Youth under age 26 are 13% of active voters, but 16% of those without a NC photo ID according to the State Board of Elections' DMV-No Match study.

55. Photo identification places additional burdens on undergraduate students originating from out of state who attend school in North Carolina and intend to remain in the state upon graduation. These students likely will not have any of the documentation required by the North Carolina DMV to prove their Social Security number, as they have not worked and have had little need for a Social Security card. These students may also be without government-issued photo identification, a common scenario when students face financial or other barriers to driving.

56. These students face numerous difficulties in attempting to obtain the documentation required by the North Carolina DMV to prove they have a Social Security number. If a student has not had a job before college, obtaining a Social Security card is likely the easiest way to demonstrate their Social Security number so they can receive North Carolina photo identification. However, in order to obtain a Social Security card, students need to provide government-issued photo identification. While the Social Security Administration may accept alternate identification, a student may not have enough alternate identification to satisfy the Social Security Administration.

57. Students also need to obtain a proof of citizenship to obtain a Social Security card. Of the documents that can demonstrate proof of citizenship, the easiest for students to obtain is probably a birth certificate. However, students not born in North Carolina will likely face substantial burdens in obtaining a birth certificate incurred from the costs and time spent trying to navigate the administrative process.

58. In addition to the application fee, some states require a notarized statement to obtain a birth certificate, which imposes time and money requirements in locating and using a notary. Further, states can require a copy of a form of identification, leaving students without options. They need identification to obtain a birth certificate, but they cannot obtain identification without the birth certificate. Additional confusion can result from students attempting to use souvenir birth certificates issued by the hospital where they were born, which do not qualify as certified birth certificates.

59. Students lacking a driver's license face significant transportation obstacles in obtaining North Carolina photo identification. In addition to the trips to the North Carolina DMV which are necessary to obtain photo identification, many students will likely lack a Social Security card, and thus need to make additional trips to the Social Security Administration. This requires either organizing transportation from family or friends, who may be unable to offer transportation when the office is open; relying on paid private transportation, which can be cost prohibitive for low-income students; or relying on public transportation, which can be time-intensive or non-existent depending on which area of North Carolina the student is in. Consequently, these options can create a severe to impossible burden on students.

Existing safeguards against voter fraud

60. The photo ID requirement is not justified as a measure to prevent in person voter fraud. Prior North Carolina law already created safeguards on the elections process and deterrents for voter fraud. In previous elections, a voter was required to sign an acknowledgement, under penalty of perjury, of both their identity and the fact that they currently live at the address listed on their voter registration record. N.C. Gen Stat. §163-166.7.

61. Voters who registered by mail and who did not include a valid Driver's License number or the last four digits of their Social Security number in their registration, were also required to produce proof of identity and residence by showing a current and valid photo identification or a copy of one of the following documents that showed the voter's name and address: a current utility bill, bank statement, government check, paycheck, or other government document.

62. Additionally, it is a felony to impersonate another voter when voting. N.C. Gen Stat. 163-275.

63. These existing safeguards and deterrents have always been considered to be and, in fact, are sufficient to protect North Carolina's elections from any threat of voter fraud.

PLAINTIFFS' FIRST CLAIM FOR RELIEF

The Photo ID requirement creates an impermissible qualification on the right to vote, in violation of the state constitution, Article VI, § 1

64. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

65. By barring voters from casting a counted ballot unless they produce photo ID, the General Assembly has created an additional qualification on voting that is barred by the state constitution. Article VI, § 1 states that, "Every person born in the United States and every person who has been naturalized, 18 years of age, and **possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.**" The following section, 2, lists the qualifications to vote, which are:

- (1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any

person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

- (2) Residence period for presidential elections. The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.
- (3) Disqualification of felon. No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

66. The only other qualification for voting in the section is the literacy test, which has since been deemed unconstitutional.

67. Qualifications on the right to vote are completely separate and distinct from the General Assembly's power to regulate the registration of voters in Article VI, § 3 of the North Carolina Constitution. The photo ID requirement affects voters already duly registered to vote who seek to exercise their right to vote.

68. In creating a photo ID requirement that imposes a complete bar to voting in person, the General Assembly overstepped its authority and violated Art. VI, § 1 by creating both an additional qualification to vote as well as a disqualification of all those who do not possess photo ID. *Moore v. Knightdale Bd. of Elections*, 331 N.C. 1, 413 S.E.2d 541 (1992) (General Assembly may not implement legislation that contradicts constitutional provisions); *People ex rel. Van Bokkelen v. Canaday*, 73 N.C. 198, 221 (1875) (striking down a residency requirement for voters because it exceeded the General Assembly's authority by creating another qualification on voting).

69. Plaintiffs are currently subject to an unconstitutional qualification on the right to vote and will be irreparably harmed if VIVA'S photo ID requirement is not enjoined.

PLAINTIFFS' SECOND CLAIM FOR RELIEF

Photo ID imposes a cost upon voters and violates Article I, § 10 of the state constitution

70. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

71. Art. I, § 10 guarantees that "All elections shall be free." VIVA requires voters to pay to obtain the identification necessary to vote in violation of this provision.

72. Voters across North Carolina have moved here after being born, married, or divorced in other states. VIVA requires these voters to pay for birth certificates, marriage licenses and divorce decrees from other states, in order to obtain the "free" photo ID offered by the North Carolina Department of Motor Vehicles under VIVA. Voters who choose not to pay for these documents will be unable to obtain a photo ID and will be barred from voting in person.

73. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are deprived of the right to a free election and will be irreparably harmed if VIVA'S photo ID requirement is not enjoined.

PLAINTIFFS' THIRD CLAIM FOR RELIEF

Photo ID imposes a property requirement upon voters and violates Article I, § 11 of the state constitution

74. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

75. Art. I, § 10 states that "As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office."

76. VIVA imposes a unconstitutional property requirement in violation of Article I, § 10 by requiring voters to possess not only an acceptable photo ID, but also the documents necessary to obtain the photo ID and the resources necessary to procure those documents.

77. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are subject to an unconstitutional property requirement and will be irreparably harmed if VIVA'S photo ID requirement is not enjoined.

PLAINTIFFS' FOURTH CLAIM FOR RELIEF

Photo ID imposes a cost upon classes of voters and violates Article I, § 19 of the state constitution

78. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

79. Art. I § 19 of the state constitution guarantees that: "No person shall be denied the equal protection of the laws."

80. VIVA requires certain classes of voters, those who vote in person who lack photo ID, to expend money, time and resources acquiring a photo ID, while other classes of voters, those who have photo ID and those who vote absentee, are not subject to the same de facto fee.

81. African Americans, women, the elderly, youth, and college students are more likely than other groups of voters to lack acceptable photo ID, and thus will be disproportionately burdened with the cost of voting.

82. The requirement to acquire documents violates the Equal Protection Clause because the state has no rational or compelling purpose to impose an unconstitutional fee on any subset of voters.

83. Imposition of even a minor fee as a voting qualification violates the United States' Constitution's Equal Protection Clause. See *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966).

84. Plaintiffs and other qualified North Carolina voters without acceptable photo ID are subject to an unconstitutional property requirement and will be irreparably harmed if VIVA's photo ID requirement is not enjoined.

PLAINTIFFS' FIFTH CLAIM FOR RELIEF

The Photo ID requirement creates an undue burden on the fundamental right to vote on equal terms, in violation of the Equal Protection Clause in Article I, § 19 of the State Constitution

85. Plaintiffs rely herein upon all of the paragraphs of this Complaint

86. Art. I § 19 of the state constitution guarantees that:

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin. N.C. Const. Art. I, § 19.

87. The photo ID requirement denies the people of North Carolina equal protection under the laws of the state. VIVA's photo ID requirement creates two classes of voters: those who can vote because they possess acceptable photo identification, and those who are denied the right to vote because they lack it.

88. The right to vote on equal terms is a fundamental right. Art. I, § 19 requires the court to apply strict scrutiny when a law burdens a fundamental right. *Northampton Cty. Drainage Dist. No. One v. Bailey*, 326 N.C. 742, 747 (1990) (applying strict scrutiny to a statute creating drainage voting districts). As the North Carolina Supreme Court observed, "No right is

more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Blankenship v. Bartlett*, 363 N.C. 518, 521 (2009). The law does not survive strict scrutiny because it is not narrowly tailored to serve a compelling governmental interest. Evidence of in-person voter fraud to support a compelling state interest is scant, and a complete bar on voting for those who lack photo ID is an overly broad remedy in search of a problem.

PLAINTIFFS' SIXTH CLAIM FOR RELIEF

By implementing VIVA, the State purposefully discriminates against African-American voters by imposing a burden on the fundamental right to vote on equal terms, in violation of the Equal Protection and Due Process Clauses in Article I, § 19 of the State Constitution

89. Plaintiffs rely herein upon all of the paragraphs of this Complaint.

90. Under the Equal Protection Clause of the North Carolina State Constitution, no person shall "be denied the equal protection of the laws; nor ... be subjected to discrimination by the State because of race, color, religion, or national origin." Art. I, § 19 requires the court to apply strict scrutiny of classifications based on race. To survive strict scrutiny, the State must demonstrate that the classification is narrowly tailored to advance a compelling state interest.

91. VIVA's imposition of a photo ID requirement disparately impacts African-American voters. The General Assembly had information before it at the time of enactment that African-American voters are more likely to not possess an acceptable form of photo ID than white voters. Thus, African-Americans disproportionately bear the additional costs associated with obtaining photo ID in order to vote and are disproportionately disenfranchised by the measure.

92. The General Assembly does not have a rational basis, let alone a compelling state interest, for purposefully burdening African-Americans' right to vote.


93. Plaintiffs are currently subject to an unconstitutional race-based qualification on the right to vote and will be irreparably harmed if VIVA's photo ID requirement is not enjoined.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the following relief:

1. A declaratory judgment declaring that VIVA's photo identification requirement violates the Plaintiffs' rights guaranteed by the North Carolina Constitution and exceeds the power of the General Assembly under the North Carolina Constitution;
2. An injunction permanently enjoining implementation of VIVA's photo identification requirement.
3. Entry of judgment for Plaintiffs against Defendants for nominal damages of \$1.
4. Make all further orders as are just, necessary, and proper including orders providing for an expedited and shortened period of discovery and an expedited trial.
5. Grant Plaintiffs such other and further relief the Court deems just and proper.

This the 5th day of October, 2013.


Anita S. Earls (State Bar # 15597)
Allison J. Riggs (State Bar # 40028)
Clare R. Barnett (State Bar # 42678)
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380 ext. 115
Facsimile: 919-323-3942
E-mail: anita@southerncoalition.org

Counsel for All Plaintiffs

WOMBLE CARLYLE SANDRIDGE
& RICE, LLP

Press Miller/ase

Pressly M. Millen.

N.C. State Bar No. 16178

pmillen@wcsr.com

Womble Carlyle Sandridge & Rice, LLP

P. O. Box 831

Raleigh, NC 27602-831

(919) 755-2100

(919) 755-6067 (facsimile)

Counsel for Individual Plaintiffs

Alberta Currie, Paris Vaughan & Cassandra Perkins

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **AMENDED COMPLAINT** in the above titled action upon all other parties to this cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via facsimile transmittal;
- By email transmittal;
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Alexander McC. Peters
Special Deputy Attorney General
Susan K. Nichols
Special Deputy Attorney General
N.C. DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, N.C. 27602
Telephone: 919.716.6900
Fax: 919.716.6763
apeters@ncdoj.gov
srrichols@ncdoj.gov

Thomas A. Farr
Phillip J. Strach
OGLETREE DEAKINS NASH, SMOAK & STEWART, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27622
Telephone: 919.787.9700
Fax: 919.783.9412
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com

Counsel for Defendants

This, the 8th day of October, 2013.



Anita S. Earls