

TAKING IT TO THE COURTS: VOTER IDENTIFICATION LAWS IN NORTH
CAROLINA

by

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Table of Contents

Acknowledgements	ii
Abstract	iv
Chapter One	1
Chapter Two	12
Chapter Three	24
Chapter Four	32
Chapter Five	45
Conclusions	51
References	54

Abstract

For over two-hundred years, the United States of America has personified itself as a world-wide protector of democracy and equality. Yet, at home, the United States has struggled to protect its own citizens' basic democratic right -- the right to vote. The United States was founded on the concept that individuals should have a right to represent themselves in their own government; the right to vote awards citizens this power. Conversely, throughout history, both the federal and state governments have continually placed limitations on an individual's right to vote. Each of these historic restrictions has continuously been challenged in an effort to protect the right to vote. Today, voters face a new type of restraint -- voter identification laws. Like the historic limitations placed on voting, the legality of voter identification laws has repeatedly been challenged in the nation's courts. One such law that has been challenged is North Carolina's voter identification law -- HB 589 / S.L. 2013-381. Since its passage in 2013, it has faced various lawsuits and has even made it onto the docket of the Supreme Court of the United States. An analysis of North Carolina's voter identification law will provide insight into the motive(s) behind the passage of these laws and the impact they have on the electorate of the state of North Carolina.

Chapter One

Today, members of the electorate have erupted into mass demonstrations to protest the legality of voter identification laws. Protesters have compared today's voter identification laws to those historically used by states to suppress voting. In order to understand and evaluate the controversy surrounding the legality of voter identification laws, it is important to first understand the history of voter suppression and how it compares to voter identification laws utilized by state and local governments today.

Historically, states have held a considerable amount of power in determining the rules and guidelines of elections, both state and federal, within their borders. Today, states still hold this power, maybe even more so than the first national election in 1789. Thus, states across the country have continuously modified their elections, declaring it to the benefit of the state's government and its citizens, all the while keeping in line with state and federal election guidelines. Even though this appears to be a legitimate power held by the states, it has previously been used as a way to justify voter suppression efforts. Used to keep less desirable populations from voting, voting suppression efforts have been ingrained in the history of American elections ever since the first election almost 230 years ago.

Since the first election in 1789, certain inhabitants of the United States have been barred from voting. In addition to property tests used by the colonists to limit less wealthy, non-land owning males from voting, other members of the population were disenfranchised based solely on their gender or the color of their skin (Williamson, 1960). During the 18th century, in addition to non-propertied white males, the disenfranchised populace included African Americans, Native Americans, and women. By 1790, only around 60 to 70 percent

of adult white males were eligible to vote (Keyssar, 2009). Despite claiming to be an equal and democratic nation, the majority of America's inhabitants were not allowed to vote.

Slowly, over the next few decades, suffrage was extended to white males who did not own property. Previously thought to be dangerous, some individuals were coming around to the idea that extending suffrage to larger numbers of the population would lead to more democratic representation. In 1818, in a Connecticut newspaper titled the *Times*, a reporter declared that, when a large portion of people are deprived from voting, the basic principle of democracy has been destroyed (Free, 2015). By 1855, 17 of the then 31 states had eliminated the possession of property as a requirement for voting (Free, 2015).

By the end of the 1850s, there had been a dramatic decline in the property requirements to vote; this resulted in a broadening of the American electorate. By the end of the decade, only two states still required some form of property requirements for their electorate, applying to foreign born residents of Rhode Island and to free African-American residents of North Carolina (Keyssar, 2009). Furthermore, there were other individuals within the electorate who retained the right to vote, but were stripped of this right due to their behavior. This most commonly included felons and those jailed for being paupers (Keyssar, 2009). In addition to felons and paupers, the recent influx of immigrants resulted in a sea of voter restrictions attempting to disenfranchise those who were not Protestant white males. In 1845, the *American Review* published an argument that condemned allowing foreigners to vote in an attempt to maintain racial homogeneity (Williamson, 1960).

By 1861, the Civil War was in full swing, along with questions regarding the possible enfranchisement of black males. As a result of the 1857 Supreme Court decision, *Dred Scott v. Sanford*, black individuals who were descendants of those imported to the United States

and sold as slaves were not legally considered American citizens. If this case remained law, then it would be impossible to award the right to vote to an entire population of individuals who were not even considered American citizens. By the end of 1865, the Civil War was over and Congress had formulated a solution to the *Dred Scott* decision, eight years prior. In order to address this issue, Congress passed the 13th Amendment outlawing slavery and the 14th Amendment three years later awarding citizenship to former slaves. Now that slavery was outlawed and African-Americans considered citizens under the Constitution, African-Americans were then able to claim the right to vote, which they were then awarded by the 15th Amendment. However, this was only extended to black males.

After the ratification of the 15th Amendment in 1870, the American electorate was on a path towards universal suffrage. The black vote began to rise in former Confederate states, including Mississippi, which had a higher population of black voters than white (Waldman, 2016). Throughout Reconstruction, the electorate in former Confederate states elected between 264 and 324 black representatives to office (Waldman, 2016). Regrettably, this still only accounted for one out of every six lawmakers from the South. Still, black suffrage in the South continued to thrive. By 1877, the Compromise of 1877 had brought an end to Reconstruction. Now that Rutherford B. Hayes was in the White House, the federal government withdrew their military forces from the South. Surprisingly, despite the withdrawal of federal troops, two-thirds of black men continued to vote in the former Confederate states with little to no problems (Waldman 2016).

Nevertheless, three years later in 1890, southern Democrats saw a threat in black voters as the economy dove into a depression (Waldman, 2016). Now that the Northern troops had withdrawn from the South, former Confederate states began to exercise further

control over their elections. Southern Democratic Party leaders recognized that the power to carry out elections still remained with the independent jurisdictions of each state. Since this power remained with the states, former Confederate and some northern states, which did not allow blacks to vote prior to the ratification of the 15th Amendment, now had the power to suppress, if not eliminate, the black vote, while keeping in line with the 15th Amendment. Following Reconstruction, former Confederate states took the opportunity to begin introducing different variations of voter suppression efforts that bypassed the 15th Amendment using Jim Crow laws. Common methods of voter suppression included poll taxes, grandfather clauses, and literacy tests.

Under a Republican controlled Congress, representatives wrote the 15th Amendment so that no individual could be banned from voting based solely on their race; however, the newly instituted Jim Crow laws did not ban eligible residents who could vote based solely on their race; rather, the new laws restricted other aspects of a residents' character, aspects which were more likely to disenfranchise black and not white voters (Ewald, 2009). To "purify the electorate," states implemented two types of legal restrictions (Keyssar, 2009, p. 103). First, states prescribed certain qualifications potential voters had to meet before they could register. Second, the state would enforce procedures members of the electorate had to follow in order to retain their right to vote.

These efforts began when Mississippi convened a constitutional convention to draw up a new constitution that would allow them to circumvent the Civil War Amendments, particularly the 15th (Porter, 1971). If Mississippi officials found a way to circumvent the 15th Amendment, they would legally have a method to disenfranchise black voters. Mississippi began this practice by implementing literacy tests, which gave voting officials the discretion

to prohibit voters who were deemed “insufficiently educated” (Waldman, 2016, p. 84).

Remarkably, the earliest adoption of literacy tests occurred in Massachusetts and Connecticut in the 1850s (Keyssar, 2009). Yet, in these cases, literacy tests were an attempt to disenfranchise potential non-English speaking immigrants from voting. Eventually, the use of this form of literacy test died out by the 1870s.

In 1898, Mississippi’s literacy tests were challenged in the U.S. Supreme Court in *Williams v. Mississippi*. The ruling in the case held that Mississippi’s literacy test did not violate the 15th Amendment because they were not facially racially discriminatory towards black voters (Ewald, 2009). As a result of the *Williams* ruling, other former Confederate states, and some Northern states, implemented literacy tests so they could curtail the black populations within their states from voting. In 1899, North Carolina amended its constitution to include an educational test that required potential voters to be able to read and write any section of the state or federal constitution in English (Porter, 1971).

The implementation of literacy tests was found to be exceedingly effective in restricting the black vote throughout the South. At this time, 50 percent of black men were illiterate, compared to only 15 percent of white men (Keyssar, 2009). This severely restricted the power of blacks to register enough voters to elect black representatives, resulting in sweeping representative turnovers in Southern states. Literacy tests persevered through the 20th century in the case *Giles v. Harris (1903)*, when the U.S. Supreme Court refused to help a black man who was denied his right to vote by local election officials (Ewald, 2009). The use of literacy tests continued well through the middle of the 20th century in a majority of Southern states.

In 1961, the U.S. Commission on Civil Rights examined the content of literacy tests still used in the South. A literacy test administered in Selma in 1965 included the questions, “At what time of day on the 20th of January each four years does the term of the President of the United States end?” and “If the President does not wish to sign a bill, how many days is he allowed in which to return it to Congress for reconsideration?” (Waldman, 2016). On the other hand, literacy tests in Louisiana asked potential registers to answer 30 illogical questions within the span of 10 minutes without making a single mistake (Waldman, 2016). Yet, the most common form of literacy tests administered required potential registers to recite a particular section(s) of their state and/or federal constitution, similar to North Carolina’s test (Wang, 2012).

Despite the promise that no voter would be barred from voting based on race, literacy tests continued to discriminate against blacks who attempted to register. Finally, 100 years after the end of the Civil War, blacks and other minority voters were guaranteed that they would not be denied the right to vote “by the United States or by any State on account of race, color, or previous condition of servitude” (U.S. Const. amend. 15) due to the passage of the Voting Rights Act of 1965. Thanks to this act, states could no longer administer literacy tests to any individuals who wished to register to vote. This suspension of literacy tests across the nation led to number of black voters in the South increasing from 31 to 73 percent of black eligible voters (Berman, 2016).

In addition to literacy tests, local voting districts also implemented secret-ballot laws as an attempt to further restrict voting by illiterate members of the electorate. First referred to as an “Australian ballot,” secret ballots were intended to protect the privacy of the electorate when voting. Secret-ballots were ballots printed with list of candidates’ names that voters

could fill out in private without any influence from election officials (Waldman, 2016). The implementation of secret ballots required illiterate members of the electorate to choose their candidates without any form of aid to read the ballot. This intentionally resulted in electors choosing candidates they did not intend and scores of ballots filled out incorrectly, making them invalid (Wang, 2012). Today, voters still use the secret ballot method when voting for candidates. Unlike 100 years ago, most of the American electorate is literate; still, there are those among the electorate today who are illiterate, but unlike a century ago these voters are offered help when casting their ballot.

Sadly, former Confederate states did not just stop at literacy tests to bar blacks from voting. Like literacy tests, Southern states also wrote in grandfather clauses into their new constitutions following Reconstruction. In addition to the suppression of black voters, grandfather clauses also disenfranchised large populations of immigrant voters. Grandfather clauses required potential voters to show that, if they or their ancestors had voted in the 1860 election, then they were exempt from literacy tests, poll taxes, or property requirements (Keyssar, 2009). The first grandfather clause was implemented by South Carolina in 1890 and had a striking resemblance to a similar anti-immigrant law passed in 1857 in Massachusetts (Keyssar, 2009).

Following suit, in 1899, North Carolina amended its 1876 constitution to include a grandfather clause that said, prior to 1909, individuals who could vote in the 1867 election, or were the descendant of someone who could, would not have to satisfy their recently implemented educational test (Porter, 1971). In 1915, in one of their earliest lawsuits, the National Association for the Advancement of Colored People (NAACP) challenged an Oklahoma grandfather clause that required potential voters to prove they were a descendant

of someone who voted in the 1865 election if they wanted to avoid taking a literacy test (Waldman, 2016). The U.S. Supreme Court ruled in *Guinn v. United States*, that Oklahoma's law did indeed violate provisions of the 15th Amendment by trying to manipulate its intentional meaning (Waldman, 2016).

In 1944, the U.S. Supreme Court issued a similar ruling outlawing the use of white primaries by state election districts (Keyssar, 2009). First used in the early 1890s by Democratic party members in former Confederate states, white primaries excluded blacks from participating in pre-elections (Marshall, 1957). By not allowing black voters to participate in primaries, whites had the sole power of choosing candidates who would be on the ballot. This gave whites the opportunity to cherry pick candidates they felt would be more sympathetic to white issues. Despite the fact some blacks could vote, their votes would not have mattered if they did not have the opportunity to vote for candidates who would represent them as members of their constituency. Before joining the Supreme Court, then civil rights attorney, Thurgood Marshall (1957), asserted white primaries were the most effective methods used by the Democratic South to disenfranchise black and other minority voters.

Moreover, another method used by former Confederate states to disenfranchise voters was the requirement of voters to pay poll taxes before they could cast their ballot. Mississippi was the first state to amend its constitution in 1890, with seven other states following suit over the next 18 years (Waldman, 2016). At first, a poll tax was understood to be a head tax that everyone had to pay, which could also sometimes go towards a taxpaying requirement to vote. However, its original intention was shifted to mean a tax someone had to pay if they wanted to vote (Keyssar, 2009).

Registered voters who wished to vote were required to pay fees to the voting jurisdiction, typically at the county level, ahead of an election in order to cast their ballot (Wang 2012). This proved particularly difficult for members of the electorate who did not have their own forms of transportation or relied on public transportation to reach the county office to pay their fees. This requirement was also problematic for voters who could not leave their jobs during business hours, thus requiring them to take pay cuts to pay an additional fee to vote. Those who did not have their fees paid before the election or had a back list of taxes they had not yet paid would be deemed ineligible to vote. By 1954, only five states using poll taxes remained: Alabama, Arkansas, Mississippi, Texas, and Virginia (Keyssar, 2009). Voters in these states were subjected to economic hurdles, such as government officials not sending tax bills to blacks and not giving blacks their receipts when their taxes are paid, making it impossible for them to prove their poll taxes had been paid (Keyssar, 2009).

Fortunately, 12 years later, Congress passed the 24th Amendment, making the requirement of poll taxes in federal elections illegal. Regrettably, this decision only applied to the use of poll taxes in federal elections, not state elections. States could still require voters to pay polls taxes if they wished to vote in state and local elections. Still, Senator Edward Kennedy (D-Mass.) continued to fight for an amendment that would outlaw poll taxes in state elections (Waldman, 2016). Kennedy got his wish in 1966 when the Supreme Court decided *Harper v. Board of Virginia* and outlawed the use of poll taxes in state elections, holding that it violated the Equal Protection Clause of the 14th Amendment (Keyssar, 2009). On the other hand, voters today have made comparisons between the historic use of poll taxes and the current requirement by states for voters to present a valid form of identification

before they can cast their ballot. These laws require voters to pay a fee before they can obtain an acceptable form of identification needed to vote, just like poll taxes.

The following chapters will continue the discussion of history of voter suppression and its relationship with the recent implementation of voter identification laws by state governments. Chapter Two will examine the implementation of recent voter identification laws throughout the country, with a focus on how these laws affect voting and the electorate within each state and the country. Chapter Three will cover North Carolina's voter identification laws and how they affect North Carolina's electorate. This will entail looking into the history of North Carolina's voter identification laws, including when they were enacted, gauging the possible differences between elections with and without North Carolina's voter identification laws, to see how they affect different variables, such as electoral turnout.

Chapter Four will inspect the recent challenges to North Carolina's voter identification laws. This includes how the electorate has responded to the implementation of these voter identification laws and the legal suits brought against states challenging their constitutionality. Chapter Five will analyze the unanimous decision regarding the constitutionality of North Carolina's voter identification laws, issued by the U.S. Court of Appeals for the 4th Circuit. Implications of this decision will be discussed, including how this decision affects the future of voter identification laws in the state and the country for future elections.

Voter suppression laws are an issue that has dominated both state and federal elections since the first election in 1789. They have survived by taking on different forms throughout America's history. Today, they are present in the practice of requiring voters to

present a valid form of identification, depending on each state, prior to voting. Like previous voter identification laws, the voter identification laws of today have been both supported and challenged by different members of state legislatures, the federal government, and the electorate. The U.S. Supreme Court has yet to hear a case regarding the constitutionality of these laws, however, some identification laws, like North Carolina's, have been challenged in lower federal district courts. From these decisions, the future of voting identification laws and the impact they will have on electors and future elections can be assessed.

Chapter Two

For the past seventeen years, states throughout the country have rapidly implemented voter ID laws. Nevertheless, in 1950, South Carolina enforced the country's first form of ID law when it required voters to show a form of identification. Unlike most voter ID laws today, South Carolina did not require voters to show a photo to prove identification; instead, voters were asked to provide a document showing the voter's name (National Conference of State Legislatures, 2016). Nonetheless, there are still a few states today who only request a document displaying a voter's name, instead of requiring voters to show a photo before voting.

It was not until 1970 that Hawaii became the second state to implement its own voter ID law. Texas, Florida and Alaska followed suit within the next 10 years by implementing their own versions of voter ID laws. By 2000, voter ID laws were beginning to gain controversial attention as a total of 14 states had come to adopt similar voter ID laws. Since 2000, other states rapidly began to enact voter ID laws since the passage of the Help Americans Vote Act (HAVA) in 2002 (Alvarez et. al., 2008). The passage of HAVA resulted in the formation of the United States Election Assistance Commission (EAC). This new commission was awarded \$3 billion in federal funding to go towards election administration (Montjoy, 2010). This commission was the first of its kind to receive federal funding for an election administration. (Montjoy, 2010). The passage of HAVA required significant changes to be made to how voters registered throughout the United States. In addition to voter registration, HAVA also altered states' use of voting technology and polling place operations.

Yet, the largest issue that stemmed from the passage of HAVA was Section 303, which required all new registrants to provide or show a proof of identification either with their mail application or when the first time they turned up to vote (Alvarez et. al., 2008). Section 303's impact on the creation and/or alteration of state voting ID laws led to the rapid implementation of such laws by states since 2002. It began when Missouri enacted non-photo ID requirements in 2002, followed by four other states adopting a similar law and South Dakota requiring a photo ID in 2003. By May of 2016, there had been 33 additional occurrences of states either adopting new voter ID laws or amending ones their states already had in place (National Conference of State Legislatures, 2016).

The extent of voter ID laws varies depending on each state. The extent of voter ID laws is typically measured by labeling them as either strict or non-strict. There is also an additional label applied depending on whether or not a state requires a photo before voting. The least restrictive form of voter ID law is a non-strict, no-photo ID law. These requirements for these laws typically vary from state to state. For example, in Arkansas, an election official can waive the identification requirement if he/she knows the voter. In Delaware, electors are asked to sign an affidavit of affirmation saying they are the person listed to vote and, in Hawaii, voters who do not have an acceptable form of identification are asked to recite their place of residence and date of birth (Underhill, 2016). Currently, 14 states have non-strict, non-photo ID laws in place (Underhill, 2016)

The second level of severity is non-strict photo ID laws. These laws require voters to show an acceptable form of photo identification, depending on the state, in order to vote. Still, if electors do not have an acceptable form of photo identification, they may be allowed to cast a provisional ballot or sign an affidavit of affirmation. There are eight states that

presently use non-strict photo ID laws (Underhill, 2016). The next level of severity includes strict, non-photo ID laws. These laws request voters to produce a form of identification, like a power bill displaying the voter's address or a birth certificate. They do not require electors to show a photo to vote. If electors are not able to provide an acceptable form of identification, they may either be allowed to cast a provisional ballot or sign an affidavit of affirmation, depending on the state. There are currently three states whose elections operate under strict, non-photo voter ID laws.

The most extensive voter ID laws are strict photo ID laws. Presently, there are seven states that have implemented strict photo ID laws (Underhill, 2016). Similar to non-strict photo ID laws, strict photo-ID laws allow electors who do not have an acceptable form of photo ID to cast a provisional ballot or sign an affidavit of affirmation. Unlike non-strict photo ID laws, voters who cast provisional ballots or sign affidavit of affirmation in these states must bring a valid photo ID to an official state office, determined by each state, like a county registrar's office, within a certain time-period after the election, also determined by each state, if they want their ballot to be counted.

The effect of these voter ID laws, like their extent, varies from state to state. Still, there are common patterns that show that, no matter the extent of a state's voter ID law, all voter ID laws impact the electorate not just of a single state, but the electorate of the entire country. Without the implementation of voter ID laws, voters are already deterred from voting due to their socio-demographic factors and their declining political motivation to vote (Sobel & Smith, 2009). In addition to these factors, the inclusion of a voter ID laws can further deter the eligible voting population from voting.

ID laws have the power to disproportionately affect the poor because of the need to use a government issued ID. Those classified as poor voters often do not have the means to own cars or travel by air (Sobel & Smith, 2009). Their inability to use these methods of transportation causes them to not need either a driver's license or passport, both of which can be used to satisfy voter ID laws. Poor voters who are homeless, live with relatives, or move often from place to place may not have the proof of address needed to satisfy voter ID requirements (Sobel & Smith, 2009). Elderly voters may also face extreme difficulty, no matter their socioeconomic status, because of the distances they may have to travel to obtain an acceptable form of identification (Sobel & Smith, 2009).

In addition to the poor and elderly, there are several other groups of people, such as minorities and students, who encounter trouble when obtaining an acceptable form of identification. In regards to minorities, around twenty-five-percent of registered African-Americans do not have a proper photo ID needed to vote, compared to only eight-percent of white voters (ACLU, 2016). In North Carolina, the elimination of teenage pre-registration and the rejection of university issued student photo-IDs further attempt to disenfranchise young voters (Foley, 2016). Younger voters' face a difficulty to effectively grasp the new concept of voting during their first election, this makes it indirectly difficult for young voters to properly cast their ballots, especially when election rules are changing frequently and drastically (Turner, 2015).

Despite the possibility that voter ID laws negatively affect some populations of the electorate more than others, there has been little research done on the effects of voter ID laws. Most of the studies that have attempted to address this issue have isolated their experiments to just one or a few states. This could be because of the discrepancy of voter ID

laws between states. In a 2006 study monitoring the effect of voter ID laws in New Mexico, political scientists found that, despite the numerous ways voters could prove their identity, New Mexico's voter ID law was disproportionately implemented in polling places throughout the states (Alvarez et. al., 2008).

In New Mexico, polling officials were expected to implement their state's voter ID law equally. In reality, polling officials were given a large amount of discretion, which resulted in some polling officials applying the voter ID laws unevenly among voters in different voting districts (Alvarez et. al., 2008). Not having a uniform system of implementation increases the chance that some voters, depending on their voting district, will experience discrimination at the polls. The improper education and training of polling place workers who are expected to enforce voter ID laws could counter the purpose of the laws by giving some voters unfair advantages over others.

In a separate study, Barreto, Nuno, and Sanchez (2007) analyzed the effect of voter ID laws on immigrant and minority voters in Washington, New Mexico, and California. Their results found that, out of the six types of identification they sampled, Latinos, Asians, Blacks, and immigrants were statistically less likely to have access to five out of the six types of IDs they surveyed (Barreto, Nuno, & Sanchez, 2007). They also found that social class and voters' level of education was a factor when determining how many acceptable forms of identification they had out of the six surveyed. Voters in a higher social class and with higher levels of education were more likely to have five of the six types of valid ID (Barreto, Nuno, & Sanchez, 2007). This suggests that voters in higher social classes, who also have higher levels of education, have an advantage over voters in lower social classes with lower levels of education when it comes to voting in states with ID laws.

In addition to social class, race, and education level, a voter's age also plays a large part in determining access to the polls in states with voter ID laws. Since its ratification in 1971, the 26th Amendment has granted citizens eighteen and above the right to vote in both state and federal elections. Prior to its ratification, only citizens over the age of twenty-one could vote. Unfortunately, the recent implementation of voter ID laws have been shown to counter this progress by disproportionately impacting college-age voters. For example, in 2011 Kansas strengthened their voter ID law by requiring voters to provide proof of citizenship when registering and an approved photo ID when voting (National Conference of State Legislatures, 2016). As a result of this change, voter turnout among eighteen year olds fell 7.1 percent more than voters between the ages of forty-four and fifty-three, since younger voters were less likely to have an ID accepted under Kansas new voter ID law (Foley, 2016).

One way states may impact the registration of college-age voters is requiring voters to present a ID at their polling place, but not accepting student-issued IDs. In Texas, a minority student filled a suit against the state after they excluded the use of student IDs as an acceptable form of identification in the case *Veasey v. Perry* (2014) (Foley, 2016). At the time, 25 percent of Black students in Texas did not have an acceptable government-issued ID needed to vote in Texas (Foley, 2016). The Texas League of Young Voters joined the students on the suit and claimed that the Texas voter ID laws violated Section 2 of the Voting Rights Act, as well as the 1st, 14th, 15th, and 21st Amendments (Foley, 2016). Ultimately, the district court ruled that Texas voter ID law did disproportionately impact African-American and Hispanic voters and created a burden on this population of voters. Sadly, this is just one case of voter disenfranchisement among college-age students.

In addition to younger voter populations being affected by voter ID laws, studies have also shown that older voters are less likely to have the proper form of identification needed to vote. Like college students, certain segments of the senior population are limited in their ability to access the proper transportation needed to reach government facilities that issue accepted forms of identification. Furthermore, seniors may be constrained by their health while trying to complete the process of obtaining their ID. Simple tasks like driving and waiting in line disproportionately impact the elderly over other, able populations. A study conducted by a team political scientists found evidence of Indiana's voter ID law disproportionately impacting different age groups. This team of political scientists found that Indiana's voter ID law impact voter on a curvilinear pattern (Barreto, Nuno, & Sanchez, 2009). This means that voters on the opposite sides of the study, being the youngest and oldest, were less likely to have the proper form of identification needed to vote in Indiana. Sadly, the same issues that impair seniors from obtaining IDs could also impact the ability of disabled voters as well.

As the number of voter ID laws continued to grow, the litigation rate challenging them grew as well. Over half of the states that have enacted voter ID laws have seen at least one legal challenge, while some state have seen three or four (National Conference of State Legislatures, 2014). The most common arguments used to challenge voter ID laws are equal protection, poll tax, discriminatory intent/effects, right to vote, and unlawful additional qualification. The most significant challenge to arguments of equal protection was in January of 2008 in the Supreme Court Case *Crawford v. Marion County Election Board*. The petitioner, William *Crawford*, argued that a 2005 law passed by the Indiana Legislature and enforced by the Marion County Election Board placed an undue burden on citizens' right to

vote (Barreto, Nuno, & Sanchez, 2009). This 2005 law required voters to present either a valid state or federal photo identification before voters could cast their ballot.

Ultimately, the Supreme Court ruled that Indiana's law did not create an undue burden on voters; rather, the law served a legitimate state interest by attempting to prevent voter fraud in the state of Indiana (Mycoff et. al., 2009). In response to this ruling, there have been countless studies examining whether or not Indiana's 2005 law is indeed discriminatory and creates an undue burden. In their study, Barreto, Nuno, and Sanchez (2009) concluded that the Supreme Court's majority decision relied on previous cases that had no bearing in this decision. Even though the Supreme Court recognized there were no cases of voter impersonation in Indiana, the fact that there were cases across the country justified Indiana's legitimate state interest to pass their 2005 law (2009). On the other hand, Barreto, Nuno, and Sanchez (2009) concluded that cases of voter impersonation were so rare that they in no way outweighed the burden placed on Indiana's voters over the state of Indiana's right to protect a legitimate state interest.

Since the *Crawford* decision, both federal appellate and state courts have continued to apply the balancing test used in *Crawford* for other equal protection cases. like *Common Cause v. Billups* (2009) and *Democratic Party of Georgia v. Perdue* (2011), both which were ruled in the state of Georgia's favor, asserting Georgia's right to protect the state's interest to prevent voter impersonation. Despite the fact the Supreme Court ruled that laws, such as the one in Indiana, did not create an undue burden, there have been dozens more cases challenging similar state laws on different grounds. Unlike the unsuccessful attempt in Indiana, there have been some cases that have supported the unconstitutionality of voter ID laws. Six years before *Democratic Party of Georgia v. Perdue*, a district court in the state of

Georgia accepted the argument that Georgia's original voter ID law served as a poll tax by requiring Georgia's electorate to pay a \$20 fee for valid ID cards (National Conference of State Legislatures, 2014). Unlike the equal protection argument, the poll tax argument has seen more success, most likely due to the historic impact of poll taxes and the significance of the 24th Amendment.

One argument that has faced problematic outcomes is the accusation of discriminatory intent and/or effects. Signed into law in 1965, Section 5 of the Voting Rights Act claimed that voting districts with a history of discrimination, defined within Section 4(b), are subject to preclearance from the Department of Justice before they could enact any law that would change their current approved election laws. Section 5 of the Voting Rights Act allowed the Department of Justice to monitor historically discriminatory districts in an effort to promote the equal right of all citizens to vote, without fear of discriminatory tactics similar to those of poll taxes and literacy tests. For over 40 years, the Department of Justice continued to supervise the passage of new election laws in historically discriminatory districts; that is, until Section 5 was subject to renewal in 2006. After Section 5 was renewed by Congress for another 25 years, the renewal was challenged in *Shelby County v. Holder* (2011).

Per *Shelby County*, the Court ruled that Section 5 of the Voting Rights Act was constitutional; however, the method in which districts were labeled discriminatory, under Section 4(b), was unconstitutional (570 U.S. (2013)). In the Court's majority opinion, Chief Justice Roberts declared that the restrictions determined by Section 4 of the Voting Rights Act were no longer necessary to regulate state election laws (570 U.S. (2013)). As a result of this ruling, other states, like South Carolina, began to challenge their state's election laws

that were previously denied preclearance under Section 5. Like Shelby County, South Carolina was granted their previously denied preclearance (National Conference of State Legislatures, 2014).

Another argument used to challenge voter ID laws is the perception that voters have a right to vote granted to them by state constitutions, which is being violated through the use of voter ID laws. In addition to federal protections found in the Constitution, most state constitutions also have additional provisions protecting a citizen's right to vote. Several state constitutions protect their citizens by assuring that election held within their state will remain free and open (National Conference of State Legislatures, 2014). The right to vote argument has since been successful in states that grant free elections, such as Arkansas, Missouri, and Pennsylvania. For example, in Pennsylvania, the state constitution claims that elections will remain free by denying an influence of power from civil or military interference (National Conference of State Legislatures, 2014). This protection was created to safeguard the suffrage of Pennsylvania's citizens and the free exercise of voting. Yet, this argument has also seen success in states that do not explicitly include a free elections clause in their state constitutions. In the state court decision, *Milwaukee NAACP v. Walker* (2012), the state of Wisconsin found that the voting criteria laid out in the state's constitution equals the protection of a free elections clause, thereby defending an individual's right to vote (National Conference of State Legislatures, 2014).

National Conference of State Legislature's final argument against state voter ID laws is unlawful additional qualification. In addition to the already existing list of qualifications needed to vote, voter ID laws add an additional, unnecessary, and unlawful requirement to an individual's right to vote (2014). Generally, this argument has been met with mixed results.

Lower state courts in Arkansas, Georgia, and Wisconsin acknowledge this argument; however, higher state courts Georgia and Wisconsin have rejected this argument and overturned the decisions of their lower courts (National Conference of State Legislatures, 2014). Instead of being viewed as additional qualification, higher state courts see voter ID laws as “regulations on existing qualifications” (National Conference of State Legislatures, 2014, 6). This implies that voter ID laws are not qualifications for voting, but a way to administer election laws states already have in place. This reasoning strengthens the power held by states, given to them through the 10th Amendment, to conduct their elections within their districts as they see fit.

Noticeably, voter ID laws have been irregularly applied to states throughout the country. Thus, different populations of the electorate have been disproportionally affected by these voter ID laws depending on the state in which they vote. As of September, of 2016, only 16 states do not have voter ID laws in place (Underhill, 2016). Of the 34 states that do, 14 enforce non-strict, no-photo ID laws, eight enforce non-strict photo ID laws, three enforce strict, non-photo ID laws, and seven states enforce strict photo ID laws, the most extensive type of photo ID law in place (Underhill, 2016).

Yet, this still leaves two out of the 34 states uncounted for-- South Dakota and North Carolina. South Dakota, who is included in the 34 states, has passed a voter ID law, but it will not go into effect until 2018. On the other hand, North Carolina’s voter ID law, HB 589, has been struck down by the U.S. Court of Appeals for the 4th Circuit. The next chapter will explore in detail the text of North Carolina’s former voter ID law, including the history of voter ID laws in North Carolina, how HB 589 came to be put in place, and how HB 589 specifically affected North Carolina’s electorate.

Chapter Three

On July 25, 2013, the North Carolina House of Representatives voted to pass the HB 589 / S.L. 2013-381, also known as the Voter Information Verification Act (VIVA), by a vote of 73-42. This vote occurred on deep party lines with all 73 ayes coming from the Republican party and all 42 nays from Democrats. The bill passed with the promise to restore confidence in government by protecting the integrity of North Carolina elections. Prior to its passage, state governments across the country voiced concern regarding a possible increase in voter fraud in elections throughout the country, including the Governor of North Carolina, Pat McCrory (Hawkins, 2015). The bill sought to curb these fears.

Prior to the decision in *Shelby County v. Holder* (2013), North Carolina was required to receive approval from the Department of Justice for any change they intended to make to the state's voting laws due to a provision in the Voting Rights Act (VRA) of 1965 (Herron and Smith, 2015). After the passage of the VRA, Section 5 of the act placed North Carolina into a category of states with historically discriminatory voting practices. All the states within Section 5, North Carolina included, were required to have pre-clearance from the Department of Justice before they could pass any new election and/or voting laws within their state.

Instead, *Shelby* resulted in the Supreme Court invalidating section 4(b), which determined what voting districts needed to obtain preclearance before implementing any new voting provisions, of the Voting Rights Act (VRA) of 1965 which in turn allowed the Department of Justice to enforce Section 5 of the VRA, prior to the decision in *Shelby* (Turner, 2015). Section 5 of the VRA allowed the Department of Justice to freeze the electoral practices of states which required pre-clearance, until their new electoral practices could be approved by the Attorney General or another member of the Department of Justice.

Once Section 4(b) was declared unconstitutional, the federal government could no longer freeze new electoral practices of states-which previously had to obtain preclearance under Section 5.

That change meant that after the outcome of *Shelby County v. Holder* (2013), the North Carolina state legislature no longer needed approval from the Department of Justice to pass laws relating to voting. No longer needing permission from the Department of Justice, the North Carolina legislature began to fashion a new voter photo ID law and other drastic voter reforms the day after *Shelby* was decided (Turner, 2015). On July 23, 2016, the North Carolina Senate pushed forward with HB 589 / S.L. 2013-381, which had received no acknowledgment by either chamber for almost three months. Within 20 days, HB 589 was signed into law by then-Governor Pat McCrory.

In addition to the enthusiastic response to the *Shelby* decision, it was put forth that HB 589 was also a product of increasing partisan politics within the North Carolina legislature, partisan politics that began three years earlier after the 2010 election. Following the 2010 mid-term election, North Carolina experienced a shift in party leadership, which resulted in Republicans gaining control of the House and Senate (Raymond, 2014). Unlike Democrats, Republicans tend to have more of an incentive to pass voter photo ID laws, especially in North Carolina. For Example, in North Carolina, Democrats make up 43 percent of registered voters; however, they also make up 55 percent of registered voters who do not have an acceptable form of ID under North Carolina law (Raymond, 2014).

As a byproduct from the recent shift in power, the new Republican-controlled House and Senate introduced a new voter photo ID bill in 2011. Similar to HB 539, HB 351 required voters to present a government issued photo ID for in-person voting (Raymond,

2014). Unlike HB 539, HB 351 chiefly focused on voter identification; it did not call for an overhaul of North Carolina's traditional election procedures.

By March 14, 2011, HB 351 had officially passed through both the House and the Senate. Like HB 589, HB 351 acquired all its votes of support from the Republican Party, with no Republican voting against the bill (Raymond, 2014). Unsurprisingly, all opposition to the bill arose from the Democratic Party. Identical to the vote for HB 589, no Democratic legislator voted to support the 2011 bill. By June 17, the bill had reached Democratic Governor Bev Perdue's desk to be signed (Raymond, 2014). She, unlike Pat McCrory two years later, vetoed HB 351 (Raymond, 2014).

After Perdue's veto, the House was unable to garner enough votes to override the gubernatorial veto. The House's inability to override Perdue's veto left them with no other choice than to forfeit their plans for a voter photo ID law, at least until 2013. The 2013 election of Republican Governor Pat McCrory, paired with the *Shelby* decision, provided the Republican-controlled legislature with the ammunition they needed to successfully pass a new and improved voter photo ID law, HB 589. Unlike HB 351, the North Carolina legislature recognized they now had the power to include additional election-altering provisions they did not attempt to include in HB 351. Instead of the six-page voter photo ID law introduced in 2011, in 2013, the House introduced HB 589, a fifty-seven-page document announcing an almost entirely new method for carrying out elections in North Carolina.

The extent of the new North Carolina voter ID law, put in place through the passage of HB 589, met the requirements of a strict photo ID law, the most extensive form of voter identification law states could employ. Within the text of the bill, HB 589 laid out extensive election reform, which resulted in an entirely new approach to voting unseen in any North

Carolina election districts prior to 2013. Beginning in January 2014, poll officials were allowed to ask voters for a photo ID; however, voters were not obligated to provide one. Yet, by January of 2016, poll officials were expected to ask voters for a photo ID and voters were required to present one so long as it meet the requirements of a photo ID in HB 589.

Per HB 589, acceptable forms of photo ID included: North Carolina driver's license/learner's permit/provisional license; a special form of North Carolina ID for non-drivers; US passport, military/veterans ID; US or North Carolina enrollment card from a recognized tribe; or an out-of-state driver's license valid for 90 days after the voter registered in North Carolina. The only exceptions to the photo ID requirements above included voters who have religious objection to having their photo taken and voters who use curbside voting; however, curbside voters were still required to present some form of identification, such as a utility bill or government document with their name and current address. Even mail-in absentee voters were required to give their ID number in the form of either their driver's license or last four digits of their Social Security number.

In addition to the new photo ID modifications, HB 589 similarly altered other traditional North Carolina voting practices. Early voting was reduced to 10 days and all voting sites within a county were required to be open at the same. This resulted in the customary first week of early voting being cut from polling locations across the state. Polling locations were also no longer required to remain open if they experienced problems or delays in voting. Furthermore, HB 589 barred same day registration and straight party voting. Voters who wished to vote in an upcoming election were required to register at least 25 days before election day. Potential voters aged 16 and 17 were also restricted from registering to vote; this included the elimination of registration drives in high school throughout the state.

North Carolina legislatures also put safeguards in HB 589 to protect certain segments of the electorate which were to take effect in January of 2014 (democracy North Carolina, 2013). This included exceptions for elderly voters who have had their licenses revoked and the blind (Hawkins, 2015). Voters who claimed that did not have sufficient funds to obtain a proper form of identification were also allowed to sign a declaration asking to have fees waived from services like obtaining a birth or marriage certificate (Hawkins, 2015). Even though some segments of the electorate were protected under HB 589, there were scores of other voters who were adversely affected that were not protected under HB 589.

One population that has been adversely affected by the new changes was black voters. Studies have shown that most black early voters cast their ballot in the first week of early voting (Herron and Smith, 2015). This is no longer possible since the first week of early voting was eliminated in HB 589. In 2012, 56 percent of ballots for the entire election were cast during early voting (Raymond, 2014). In both the 2008 and 2012 elections, black voters voted proportionally higher compared to all other voters within North Carolina's electorate every single day of early voting (Herron and Smith, 2015). Blacks in North Carolina were also more likely to register to vote during early voting and in the days leading up to an election, including same day registration (Herron and Smith, 2015).

Now that early voting is limited to only 10 days, instead of the original 17 days, potential black voters are now restricted in their access to vote during early voting (Raymond, 2014). Furthermore, new election laws requiring voters to register to vote at least 25 days before an election do not allow these voters to register leading up to or the day of an election. By reducing the number of days for early voting and placing stricter requirements

on when people may register, HB 589 has not only limited the ability of black voters to cast their ballots, but the ability of all individuals with limited mobility and time.

Not only is it difficult for black voters to be registered to vote and arrive at a polling location within a restricted time frame, black voters are also directly affected by the type of accepted identifications outlined in HB 589. According to Herron and Smith, in North Carolina, black voters are disproportionately less likely to possess two or more HB 589 acceptable forms of identification (2015). In North Carolina, 23 percent of voters are black, yet black voters make up 34 percent of the electorate in North Carolina without an acceptable form of photo ID needed to vote (Raymond, 2014).

Also not included in this new law was the acceptance of student university issued photo ID cards (Foley, 2016). By not accepting university issued photo ID cards, the North Carolina legislature indirectly potentially disenfranchised hundreds of thousands of postsecondary students attending the 125 colleges throughout the state (Turner, 2015). Prior to HB 589, students in North Carolina could use their university-issued photo ID to verify their identification when voting. This change eventually led to a group of college students filing a lawsuit that challenged the elimination of same day registration, the use of student photo IDs as an accepted means of voter ID, and the preregistration of 16-and-17-year-olds (Foley, 2016). This issues of this case will be discussed in greater detail in the following chapter.

In addition to the elimination of student photo IDs as an accepted form of identification, young voters have been both directly and indirectly affected by other provisions and changes made to North Carolina's elections in HB 589. Young voters were directly affected by their inability to register at the age of sixteen and seventeen when HB

589 eliminated teenage pre-registration. In addition to the elimination of teenage pre-registration, HB 5589 removed Citizens Awareness Month, put in place by 2012 North Carolina Governor Bev Perdue, which intended to raise awareness of voter registration for North Carolina citizens.

Making it difficult to vote for young voters is particularly troublesome due to their inexperience following correct voting procedures. Young voters' inability to fully grasp a novice concept makes it indirectly difficult for young voters to properly cast their ballots, especially when election rules are changing frequently and drastically (Turner, 2015). Eventually, HB 589 could face a 26th Amendment challenge due to the law disproportionately affecting younger and college-age voters. In 1979, the Supreme Court ruled under the 26th Amendment college students have a right to vote in the community where they attend college (Turner, 2015). For some college students, especially those who live out of state, it becomes increasingly difficult to obtain an acceptable form of identification needed to vote in North Carolina elections.

In 2015, after opposition to the new voter photo ID law, which was intended be implemented in January of 2016, HB 589 was amended by HB 836. The revision of HB 589 resulted in the extent of the law changing from a strict photo ID law to a non-strict photo ID law. Now, voters who were not able to obtain a photo ID could declare their incapability through one of eight claims, including transportation, disability or illness, lost or stolen identification card, or lack of identifying documents (Hawkins, 2015). Still, regardless if individuals met one of these claims, they still might have to provide either a voter registration card or their Social Security number (Hawkins, 2015).

Hawkins (2015) claims that North Carolina amended HB 589 with HB 836 in an effort to avoid litigation over the original bill. Despite the 2015 amendment, HB 589 has continued to face countless lawsuits and has remained a topic of concern in both state and federal courts for the past four years. HB 589's legal battles began on August 12, 2013, the same day Governor Pat McCrory signed HB 589 into law, in the case *League of Women Voters of North Carolina, et al. v. North Carolina*. The next chapter will review and analyze the complaint filed by the League of Women Voters of North Carolina (LWVNC), as well as two other complaints filed against HB 589 by the North Carolina National Association for the Advancement of Colored People (North Carolina NAACP) and the Department of Justice.

Chapter Four

From the day HB 589 was signed into law, it has been a continuous topic of judicial controversy. When the bill was signed into law on August 12, 2013, it simultaneously became the subject of two lawsuits in the *League of Women Voters of North Carolina, et al. v. Howard* (2013) and in *North Carolina NAACP v. McCrory* (2013). By September, a new complaint was filed against HB 589 by the United States Department of Justice in *United States v. North Carolina* (2013). Despite the slight difference in their complaints, each of these cases raised the issue of whether HB 589 violated the 14th and 15th Amendments and the Voting Rights Act of 1965. Even though each of these cases are similar in their intent, it is important to examine them separately in order to understand the motives behind why each party challenged HB 589 so soon after its passage.

League of Women Voters of North Carolina, et al. v. Howard (2014)

The first complaint filed against HB 589 was filed by the League of Women Voters of North Carolina (LWVNC). Since its founding in 1920 and in this case, the LWVNC, a nonpartisan organization, has claimed to protect the U.S. Constitution and the Voting Rights Act of 1965 to make sure every level of the government is running successfully and impartially (*League of Women Voters of North Carolina v. Howard* (2014)). In addition to the LWVNC, there were three other organization plaintiffs involved in the case. The second organization plaintiff was the North Carolina A. Philip Randolph Institute (NC APRI). The NC APRI, a senior constituency group of the AFL-CIO, became a party in the case to advance racial equality and economic justice. NC APRI has also historically attempted to increase NC African Americans' access to the polls by providing transportation and encouraging registration on election day, which would no longer be allowed under HB 589.

The third organization plaintiff was Unifour OneStop Collaborative, a nonprofit primarily focused in the Unifour Region of North Carolina, which has expanded to include 31 counties throughout the state (League of Women Voters of North Carolina v. Howard (2014)). The final organization plaintiff was Common Cause North Carolina (Common Cause NC), which is also a grassroots nonprofit like Unifour OneStop Collaborative. Though their involvement in this case, Common Cause NC hoped to expand early voting opportunity and reintroduce same-day registration (League of Women Voters of North Carolina v. Howard (2014)). Each of these plaintiffs claimed they had standing in this case because once enacted, VIVA would “directly impair the organizational plaintiffs’ mission of civic engagement” and the members of these organizations also have standing, which gives these organizations associational standing (League of Women Voters of North Carolina v. Howard (2014)). In addition to the four organization plaintiffs, there were also five individual plaintiffs; Goldie Wells, Kay Brandon, Octavia Rainey, and Sara and Hugh Stohler (League of Women Voters of North Carolina v. Howard (2014)). Each of these plaintiffs claimed they had standing because, under VIVA, their personal rights would be burdened and infringed upon.

The first defendants listed on the complaint were five individual members, who acted in their official capacity as members of the North Carolina State Board of Elections; Joshua Howard, Rhonda Amoroso, Joshua Malcom, Paul Foley, and Maja Kricker (League of Women Voters of North Carolina v. Howard (2014)). In addition to the five members of the North Carolina State Board of Elections, then-Governor Pat McCrory was also listed among the defendants in his official capacity as Governor of the State of North Carolina. The

plaintiffs began their complaint by alleging the defendants, violated 42 U.S.C. § 1983 and the Voting Rights Act of 1965 (*League of Women Voters of North Carolina v. Howard* (2014)).

The plaintiffs claimed that HB 589 would violate the Constitution and laws of the United States and would unduly burden citizens and residents of North Carolina through discrimination caused by the Voter Information and Verification Act (VIVA). The plaintiffs stated that VIVA would discriminate against North Carolinians through the implementation of provisions intended to eliminate same-day registration, reduce days for early voting, and the prohibition of provisional ballots for voters who vote out of their precinct (*League of Women Voters of North Carolina v. Howard* (2014)). The plaintiffs go on to discuss how each of these new provisions will negatively impact future elections, including making voting lines longer on Election Day.

In addition to their broad claim that HB 589 will unduly burden North Carolina voters, the plaintiffs particularly highlight how the new provisions will especially discriminate against African American voters. The plaintiffs believed that African American voters would be especially affected by the effects of VIVA, which would violate the Equal Protection Clause of the United States Constitution and Section 2 of the Voting Rights Act (*League of Women Voters of North Carolina v. Howard* (2014)). To address the wrongs the plaintiffs claimed VIVA would warrant, they listed four claims for relief.

Both the first and second claims for relief dealt with the denial of equal protection under the 14th Amendment. Under the first claim, per the plaintiffs, VIVA created a severe burden on an individual's fundamental right to vote that was not narrowly tailored to advance a compelling state interest. The plaintiffs claimed that VIVA burdened voters by reducing the number of days allowed for early voting, eliminating same-day registration, and not allowing

provisional ballots to be counted for voters who voted out of their precinct (League of Women Voters of North Carolina v. Howard (2014)). Under their second claim, the plaintiffs alleged that the sole purpose of VIVA was to suppress turnout and electoral participation of African American voters, which would deny them equal protection (League of Women Voters of North Carolina v. Howard (2014)).

Next, the third claim of relief stated that the plaintiffs' rights had been violated under Section 2 of VRA of 1965 and 42 U.S.C. § 1973. The plaintiffs claimed that alterations made to voting through the reduction of early voting days, elimination of same-day registration, and not allowing provisional ballots to be counted for voters who voted out of their precinct disproportionately impact African-American voters because African-Americans are more likely to use these voting opportunities than another other racial group (League of Women Voters of North Carolina v. Howard (2014)). The fourth and final claim for relief deals particularly with Section 3(c) of Voting Rights Act of 1965, 42 U.S.C. § 1973. This claim for relief supposes that once the court finds the defendants guilty of committing constitutional violations, they should retain jurisdiction and require pre-clearance for any future change in voting practices or procedures.

Two-and-a-half years after the plaintiffs filled their complaint, the case went to trial on January 25, 2016. On March 25, the Middle District Court of North Carolina ruled in favor of North Carolina. The opinion of the court upheld VIVA and North Carolina's use of a voter ID requirement. Just twelve days after the opinion of the court was released, LWVNC, filed their notice of appeal and filed their brief thirteen days later. On July 29, the Fourth Circuit Court of Appeals reversed the decision of the District Court. This led to the State of

North Carolina filing an application with the United State Supreme Court on October 2 (Election Law @Moritz, 2016).

On October 8, the U.S. Supreme Court granted the application and kept the mandate put in place by the United States Court of Appeals for the Fourth Circuit until a timely petition for a writ of certiorari was filed. Even though this was a temporary solution, this was a huge win for the LWVNC. The U.S. Supreme Court decision prevented the voter ID law to be effect for the upcoming 2014 election. On April 6, 2015, the U.S. Supreme Court officially denied North Carolina's petition for a writ of certiorari.

North Carolina NAACP v. McCrory (2013)

On August 12, 2013, the same day that LWVNC filed their complaint, so did the North Carolina State Conference of the NAACP (North Carolina NAACP), as well as seven other individual plaintiffs, six of whom who filed under the name of either John or Jane Doe, in order to remain anonymous. The North Carolina NAACP sought to further their mission of advancement and improvement by filing to be a party in this case. Furthermore, the North Carolina NAACP filed to protect their members who would be directly impacted by the discriminatory provisions of HB 589. The North Carolina NAACP also had standing because particular provisions in HB 589 make it difficult for the organization to engage in their typical day-to-day activities and hinder their ability to fulfill their mission (North Carolina NAACP v. McCrory (2013)). The only individual listed on the complaint by name is Rosanell Eaton, a 92-year-old African American woman (North Carolina NAACP v. McCrory (2013)).

The complaint filed by the plaintiffs include a list of defendants that was identical to the list of defendants in the *League of Women Voters of North Carolina, et al. v. Howard*

(2013), except for the addition of Kim Westbrook Strach, the Executive Director of the North Carolina State Board of Elections. In their complaint, the plaintiffs attempted to protect and preserve North Carolinians' voting rights by challenging the passage of HB 589, which imposes various burdens upon the electorate, particularly potential African-Americans voters. The complaint discusses in detail the ramifications of the decision made by the Supreme Court in *Shelby County v. Holder*, which chiefly invalidated Section 4(b) of the VRA (North Carolina NAACP v. McCrory (2013)). This is significant because the plaintiffs see the decision made in *Shelby County v. Holder*, a 133 S. Ct. 2612 (2013) as the primary reason why North Carolina was allowed to pass HB 589, which required no pre-clearance from the Department of Justice.

The complaint continues to North Carolina's history of discriminatory voting practices and how this laid the groundwork for HB 589. Like the plaintiffs in *League of Women Voters of North Carolina, et al. v. Howard* (2013), the plaintiffs in this case highlight provisions within HB 589 that will result in discriminatory voting practices, such as early voting, same-day registration, and, most importantly, modifications made to increase voter identification requirements (North Carolina NAACP v. McCrory (2013)). The most important modifications listed in the complaint include providing a particular form of ID in addition to a driver's license number or last four digits of a social security number and limited the list of acceptable photo identifications, such as a North Carolina issued driver's license, military ID, or a passport. These new provisions disproportionately impacted African-Americans, who were identified by the State Board of Elections as making up a large percentage of North Carolinians who did not have a NC driver's license and/or another form of acceptable photo ID (North Carolina NAACP v. McCrory (2013)).

In order to address the wrongs listed in their complaint, the plaintiffs listed three counts in their claims for relief. The first count listed a violation of Section 2 of the Voting Rights Act (42 U.S.C. § 1973). Like the plaintiffs in *League of Women Voters of North Carolina, et al. v. Howard* (2013), the plaintiffs in *North Carolina NAACP v. McCrory* (2013) claimed that Section 2 of the VRA was being violated because African-Americans were more likely to take advantage of provisions either limited or eliminated by HB 589; provisions which included early voting, same-day registration, and the use provisional ballots for voters who vote out of their precinct (*North Carolina NAACP v. McCrory* (2013)).

It is important that the complaint mentions that the North Carolina General Assembly knew at the time of HB 589's enactment that the changes made to early voting, same-day registration, and provisional ballots for out of precinct voters are more likely to place a higher burden on African-Americans voters. The complaint also claims that the NC General Assembly also knew that African-Americans were less likely to have an acceptable form of photo ID (*North Carolina NAACP v. McCrory* (2013)). By making these claims, the plaintiffs assert that the enactment of HB 589 was intentional to disproportionately keep African-Americans from voting.

The second count asserts that HB 589 violates the 14th Amendment and 42 U.S.C. § 1983. Similar to an assertion made in Count One, the complaint mentions that the legislative history of HB 589 shows that race was an appealing factor when gaining support for the law's enactment (*North Carolina NAACP v. McCrory* (2013)). Count Two also lists the either limited or eliminated provisions of early voting, same-day registration, and the use provisional ballots for voters who vote out of their precinct as proof of discrimination; however, in these claims, the complaint states that the provisions violate the Equal Protection

Clause of the 14th Amendment in addition to violating Section 2 of the VRA. Count Two also claims that the NC General Assembly knew this provision would disproportionately impact African-American voters and, therefore, violate their constitutional right of equal protection under the 14th Amendment. On the other hand, Count Two mentions that, even if the changed provisions serve a compelling or legitimate state interest, there is no way they outweigh the burdens they place on voters (*North Carolina NAACP v. McCrory* (2013)). This statement is significant because it suggests that the rights of a voter should be considered when any part of government attempts to restrict individual rights.

The final count introduces a violation not seen in the *League of Women Voters of North Carolina, et al. v. Howard* (2013). Count Three states that HB 589 violates the 15th Amendment and 42 U.S.C. § 1983. In addition to the three provisions used in the previous two counts, Count Three also states that African-Americans would be disproportionately impacted by a new provision in HB 589 that increases the number of individuals who can challenge ballots independently and collectively (*North Carolina NAACP v. McCrory* (2013)). The complaint states that the previous three provisions are in no way adequately tailored to support a legitimate or compelling state interest. Despite stating this claim, the plaintiffs make no further claims to support this assertion. According to this count, the plaintiffs believe that HB 589 is in violation of the 15th Amendment because it disproportionately denies citizens of the United States the right to vote because of their race and/or color.

On August 8, 2014, the United States District Court for the Middle District of North Carolina filed its opinion and order denying motion for preliminary injunction and motion for summary judgment requested by the plaintiff. On October 16, the appellant, North Carolina

NAACP, filed their notice of appeal. By October 1, the United States Court of Appeals for the Fourth Circuit issued its opinion, which remanded the case to the District Court for a new trial. The Court of Appeals stated that the appellants needed to establish the balance of the burdens placed on African-American voters against the public's interest in a new trial. On April 25, 2016, the District Court released its new opinion, which upheld the use of North Carolina's voter ID law. Once again, the appellants, North Carolina NAACP, filed their notice of appeal on May 6, 2016 (Election Law @Moritz, 2016).

On July 29, 2016, after the second appeal, the Court of Appeals issued its opinion. In the new opinion, the Court of Appeals temporarily enjoined the photo ID requirement and once again sent the case back to the District Court to determine if a permanent injunction was needed. On August 31, 2016, North Carolina filed for a stay of application, which was rejected by the U.S. Supreme Court. This was a huge victory for North Carolina NAACP, for the denial of the motion to stay prevented HB 589 from being in effect for the 2016 election. On December 27, 2016, North Carolina filed a petition for a writ of certiorari to the Supreme Court. As of December 30, 2016, the case had been placed on the Supreme Court's docket and distributed for conference on March 31, 2017 (Election Law @Moritz, 2016).

United States v. North Carolina (2013)

Almost 50 days after the HB 589 was signed into law and the LVVNC and North Carolina NAACP filed their complaints, the United State Department of Justice filed its own complaint on behalf of the United States of America against the state of North Carolina, the North Carolina State Board of Elections, and the Executive Director of the North Carolina State Board of Election, Kim Strach. Unlike the two previous plaintiffs, the Department of Justice did not include Governor McCrory in its list of defendants. According to Attorney

General Eric Holder, the Voting Rights Act of 1965 authorizes the Department of Justice to file a civil action to seek injunctive, preventive, and permanent reprieve for violating Section 2 of the Voting Rights Act under 42 U.S.C. § 1973j(d) (*United States v. North Carolina* (2013)).

The complaint then makes nine allegations against the state of North Carolina, all of which pertain to changing demographics among the state and its electorate. One key allegation was that blacks were three times less likely to have access to a vehicle compared to non-Hispanic whites, which would make it increasingly more difficult to obtain a proper form of identification in accordance with HB 589 (*United States v. North Carolina* (2013)). The list of allegations also included the claim that voter turnout among African-American voters in North Carolina was lower in the 2004 election, but exceeded the turnout of white voters in the 2008 and 2012 elections (*United States v. North Carolina* (2013)). Like the other complaints, the Department of Justice also discussed the history of voter discrimination in North Carolina, which subjected the state to pre-clearance from the Department of Justice before the state could change its election procedures and rules, prior to *Shelby County v. Holder* (2013) (*United States v. North Carolina* (2013)).

Similar to the other complaints, the Department of Justice goes into detail discussing how HB 589 has affected the provisions of early voting, same-day registration, out-of-precinct provisional ballots, and voter photo identification. The complaint also discusses the legislative history and enactment of HB 589 and how it has affected the perception of how the bill was enacted. This section often referred to the NC General Assembly awareness of the bills' impact on African-Americans in North Carolina. Unlike other complaints, this section also discusses the impact HB 589 has had on the exclusion of student identification as

an acceptable form of voter photo ID in North Carolina. The exclusion of student photo ID card is irrational, according to the complaint, considering they were issued by public North Carolina institutions, which also included a few historically black universities (United States v. North Carolina (2013)).

The Department of Justice continued their list of complaints by discussing how the implementation of HB 589 will have a discriminatory effect on North Carolina's voters, especially African-Americans. Key statistics mentioned by the Department of Justice include that African-Americans used early voting more within the first seven days of early voting than any other race in the 2008 and 2012 elections. Under HB 589, the first seven days of early voting would be eliminated, which would have a discriminatory impact on African-American voters in North Carolina. In North Carolina, black voters are also two times more likely to cast a provisional ballot out of their precinct than whites. Again, under HB 589, provisional ballots cast by voters out of their precinct would be eliminated. African-American voters are also disproportionately less likely to have an acceptable form of identification and/or access to transportation to obtain an acceptable form of identification compared to white voters (United States v. North Carolina (2013)).

In addition to discussing how the implementation of HB 589 will have a discriminatory effect on North Carolina's voters, the Department of Justice also included a section in its complaint addressing its allegation that the passage of HB 589 was motivated by discriminatory purposes. The Department of Justice began its argument by addressing that eight years prior to HB 589, in 2005, North Carolina knew that, by not counting their out-of-precinct provisional ballots, they would be disproportionately excluding African-American votes (United States v. North Carolina (2013)). The Department of Justice also claimed that

the North Carolina legislature enacted HB 589 while fully understanding North Carolina's history of voter discrimination and socioeconomic impact bills such as HB 589 had on African-American voters (*United States v. North Carolina* (2013)).

Furthermore, prior to the decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), in April 2013, HB 589 had been dormant for months. Unsurprisingly, after Section 5 of the VRA was declared invalid, HB 589 reentered the state senate and the voter photo ID provisions were made more extensive. Even the chairman of the Senate Rules Committee admitted that HB 589 was waiting to be reintroduced until a decision was made in *Shelby County*. The NC General Assembly even rejected amendments to HB 589 they knew would alleviate some of the problems for African-Americans voters in the state. In order to address these issues, the Department of Justice asked the courts for relief due to the absence of 3(c) of the Voting Rights Act, 42 U.S.C. 1973a(c) (28), which gives the Attorney General the power to seek relief guaranteed by the 15th Amendment. According to the Department of Justice, if the court does not provide relief, then the state of North Carolina will continue to violate the Voting Rights Act and the 14th and 15th Amendments (*United States v. North Carolina* (2013)).

Rather than appeal to the courts through a series of claims or counts, the Department of Justice issued a cause of action under Section 2 of the VRA. The Department of Justice's cause of action reiterates its points made about the discriminatory effect the implementation of HB 589 would have on North Carolina voters and their allegation that the passage of HB 589 was motivated by discriminatory purposes. In its final plea, it once again asked the courts to enjoin HB 589 by order of the court, stressing that North Carolina will continue to discriminate and violate the rights of its voters if they are not forcibly stopped. On August

8, 2014, the United States District Court for the Middle District of North Carolina filed its order denying motion for preliminary injunction and motion for summary judgment. On May 5, 2015, *United States v. North Carolina* (2013) was consolidated with *League of Women Voters of North Carolina, et al. v. Howard* (2013) and *North Carolina NAACP v. McCrory* (2013).

The three legal actions brought against the state of North Carolina and its various officials have continuously been remanded and appealed. Still, the final fate of HB 589 is unknown. The unanimous decision regarding the constitutionality of HB 589 will be discussed, in Chapter 5, as well as implications of this decision. Moreover, HB 589's date with the Supreme Court will also be discussed and analyzed, including the order denying stay and the petition for writ of certiorari.

Chapter Five

On May, 5, 2015, a motion was granted by the U.S. District Court for the Middle District of North Carolina to consolidate the three cases discussed in the previous chapter, for trial purposes: *United States v. North Carolina* (2013) was consolidated with *League of Women Voters of North Carolina, et al. v. Howard* (2013) and *North Carolina NAACP v. McCrory*, then to be referred to as *North Carolina State Conference of NAACP v. Patrick McCrory* (2013). Almost three years after their complaints were filed, the U.S. Court of Appeals for the Fourth Circuit issued its opinion on July 29, 2016. Their opinion unanimously ruled in favor of the three appellee's -- the League of Women Voters of North Carolina, the North Carolina NAACP, and the Department of Justice of the United States (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016).

The opinion begins with Judge Diana Motz ruling that the District Court erred when they failed to look at the big picture, which was the legislative intent behind HB 589 and, subsequently, the impact HB 589 would have on voters (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). Like the complaints filed by each party, Judge Motz emphasized the discriminatory voting practices that have been historically present in North Carolina. Judge Motz continues by declaring that many areas within North Carolina are racially polarized, which was defined in *Thornburg v. Gingles* (1986) as “the race of voters correlates with the selection of certain candidate or candidates” (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016; 9). Per *Thornburg v. Gingles* (1986), polarized voting occurs when the selection of a particular candidate or candidates is a product of a certain pool of voters who happen to be the same race. Judge Motz uses the precedent in *Thornburg v. Gingles* (1986) to clarify that it is discriminatory to target minority voters in

polarized voting districts. The limited number of acceptable photo IDs, set by HB 589, would particularly affect African Americans, who are customarily members of polarized voting districts. By indirectly disenfranchising voters who are members of a polarized district, HB 589 would inadvertently benefit a particular party, while disadvantaging all other parties (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016).

After discussing the failure of the District Court to look at the big picture, Judge Motz continued her opinion by addressing the impact the decision *Shelby County v. Holder* (2013) had on the court's decision. Within this section of the opinion, Judge Motz delicately discussed the mad dash of state legislatures, from a certain party she does not name, which quickly enacted omnibus election laws after the decision in *Shelby County v. Holder* (2013) was issued. Even though Judge Motz expressly stated in her opinion that this unnamed party "rarely enjoyed African American support," she does not directly refer to this party as the Republican Party -- the party which clearly dominated state legislatures after gaining a substantial number of seats in both the federal and state governments following the 2010 mid-term elections (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016).

Judge Motz claimed that the pairing of the *Shelby County v. Holder* (2013) decision and the release of data requested by the North Carolina General Assembly regarding voting practices by race were a lethal combination that resulted in the creation of HB 589. Within the report requested by the North Carolina General Assembly the data showed different methods for voting that were primarily used by African Americans; five of which were restricted by HB 589 (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). To support her finding that the passage of HB 589 was clearly an intentional

discriminatory act, Judge Motz cited the *League of United States Latin American Citizens v. Perry* (LULAC) (2006) as precedent.

According to *Perry*, if the state attempts to disenfranchise voters by restricting their primary methods of voting, but does not expressly state its intention, this act is still considered intentionally discriminatory. The opinion then continues to list examples of how the North Carolina General Assembly used its findings from the report to disenfranchise minority voters. First, Judge Motz discusses that, according to the report, black voters are indeed more likely to take advantage of early voting; as a result, the North Carolina General Assembly restricted the number days for early voting (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). North Carolina also denied same-day-registration and provisional ballots, which, according to the report, are also common voting methods utilized by black voters.

Judge Motz's ruling also stated that the North Carolina General Assembly intentionally restricted alternative photo IDs typically used by African Americans in favor of IDs typically used by white North Carolinians (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). This statement by Judge Motz holds that the North Carolina General Assembly undoubtedly violated the 15th Amendment. By only allowing IDs more commonly possessed by white voters, while simultaneously restricting IDs used by blacks, North Carolina denied black and other minority voters, who are also citizens of the United States, the right to vote because of their race and color.

In Section IV of the opinion, Judge Motz visits the North Carolina General Assembly's claim that the use of photo ID when voting helps prevent voter fraud. The North Carolina General Assembly rightly relied on the ruling in *Crawford v. Marion County*

Election Board (2008), which held that photo IDs were justified in a state's effort to prevent voter fraud. On the other hand, while agreeing with the precedent in *Crawford*, Judge Motz wrote that the attacks against voter IDs in *Crawford* was a facial attack and did not involve racial discrimination (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). This means that the precedent set in *Crawford* does not apply to the present case.

The General Assembly's cry for prevention of voter fraud is invalid due to the racially discriminatory application of HB 589 present in this case. Furthermore, Judge Motz also held that the photo ID requirement in HB 589 is simultaneously too broad and too narrow to prevent voter fraud. The requirement is too narrow because it requires photo ID for in-person voting, but not for absentee ballots. The requirement is too broad because the voting restrictions proposed in HB 589 in no way related to the North Carolina General Assembly's attempt to prevent voter fraud (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016).

Regarding the disagreement in Part V, Section B, it is first important to discuss Part V, Section A. In Section A, the court recognized its authority to invalidate laws when they are written and passed with the intent to discriminate; the court claimed they are awarded this power from *Hunter v. Underwood* (1985) and *Anderson v. Russell* (2001). The court also found authority for the power to sever only part of a law if it is unconstitutional, in *Leavitt v. Jane L.* (1966) (*North Carolina State Conference of NAACP v. Patrick McCrory*, 2016). Since HB 589 was an omnibus bill that contained more than just the changing of voting provisions, the court has the power to strike just the voting provision from HB 589, while keeping the rest of the bill intact, which is exactly what it did.

Subsequently, in Part V, Section B, the court addresses the appropriate remedy for the challenged provisions struck down in HB 589. In Part V, Section B, Judge James Wynn and Judge Henry Floyd concurred that the invalidation of each challenged provision was an acceptable remedy. Additionally, Judge Wynn and Judge Floyd discussed whether or not to remand the case to the District Court, so the lower court could decide if the reasonable impediment exception made the injunction of the challenged provisions unnecessary (*North Carolina State Conference of NAACP v. Patrick McCrory*. 2016). Ultimately, the court decided to not remand the case due to the need to alleviate the impending burden on African American voters in North Carolina.

Meanwhile, in a dissent to Part V, Section B, Judge Motz wrote that, under *Kohl v. Woodhaven Learning Center* (1989), a change in the circumstances surrounding the unconstitutional nature of a law or provision can destroy the need for an injunction. According to Judge Motz, the North Carolina General Assembly's significant change to HB 589 in 2015 constituted a change that could dismiss the need for an injunction in the case. Judge Wynn and Judge Floyd believed that the reasonable impediment exception did not fully remedy the impact of the questioned provision and there was no need for the case to be remanded. Judge Motz wrote that it is impossible to yet assess whether the amendment made in 2015 cures the unconstitutional provisions in the original bill (*North Carolina State Conference of NAACP v. Patrick McCrory*. 2016). To address this confusion, Judge Motz suggested remanding the case and issuing a temporary injunction until the District Court decided whether a temporary or permanent injunction is needed.

Ultimately, the panel of judges unanimously ruled that the challenged provisions of HB 589 were unconstitutional. Thus, the judgment of the District Court was affirmed and the

case was remanded to the District Court to prevent the implementation of HB 589 changes to early voting, same-day registration, out-of-precinct voting, and pre-registration. Following the decision in *North Carolina State Conference of NAACP v. Patrick McCrory* (2016), voters in North Carolina were no longer required to present a photo ID when voting in the 2016 election. The outcome of this ruling could have the ability to impact voter laws in other states as well. The precedent set by the Fourth Circuit Court of Appeals could spark similar legal battles in states that have similar voting laws as HB 589.

For now, the opinion issued by Judge Motz and the U. S. Court of Appeals for the Fourth Circuit is considered a success for voting rights advocates. On December 27, 2016, the state of North Carolina filed a petition for a writ of certiorari to the U.S. Supreme Court, asking the justices to hear their appeal (@ Moritz, 2017). So far, there have been two briefs of *amicus curiae* filed against the state of North Carolina and HB 589. The first was filed by Judicial Watch, Inc. and the Allied Educational Foundation on January 26, 2017 (@ Moritz, 2017). The second brief was filed by the Public Interest Legal Foundation on January 30, 2017. As of April 2017, the U.S. Supreme Court has not yet granted or denied North Carolina's petition for a writ of certiorari.

Conclusions

The main purpose of this thesis was to evaluate North Carolina's voter identification statutes and the numerous challenges they have faced in federal court. The complaints filed against HB 589, regarding its supposed unconstitutional voting provisions, mirror historical objections filed against the unconstitutional use of poll taxes, grandfather clauses, and literacy tests. Each of these voting practices was challenged and all of these provisions were declared unconstitutional by either the courts or by an amendment to the United States Constitution.

Conversely, unlike the three previous anti-voting practices, HB 589's voting provisions have not yet been reviewed by the U.S. Supreme Court. This means that the voting provisions ruled unconstitutional by the Fourth Circuit Court of Appeals could be reversed. If the decision of the Fourth Circuit Court of Appeals is overruled, the way in which Americans vote would once again begin to emulate the corrupt and discriminatory practices used by politicians in the past. Despite the passage of the 15th Amendment, aimed at protecting the right to vote for all United States citizens no matter their race, voting provisions, like those in HB 589, would attempt to maneuver their way around the 15th Amendment protection, just as Jim Crow laws did beginning in the 1870s (Ewald, 2009).

The attempt to bypass the 15th Amendment through the use of voter ID laws became evident when South Carolina passed the first voter ID law in the country in 1950 (National Conference of State Legislatures, 2016). After Jim Crow laws, including the historical provisions used to disenfranchise certain voters, were declared void by the Voting Rights Act of 1965, other states began to enact their own voter ID laws, hoping to disenfranchise specific populations. By the 2000s, 14 states had already adopted their own variations of

voter ID laws. This number continued to increase after the passage of the Help Americans Vote Act in 2002 (Alvarez et al., 2007). By May of 2016, there were over 30 states attempting to either adopt new voter ID laws or amend voter ID laws already had in place (National Conference of State Legislatures, 2016).

This trend eventually made its way to North Carolina, when the North Carolina House of Representatives voted to pass HB 589 / S.L. 2013-381, also known as the Voter Information Verification Act (VIVA), by a vote of 73-42 on July 25, 2013. The passage of this bill was seen as a success by the Republican party, which had failed to pass a similar bill two years earlier, after then Democratic Governor Bev Perdue vetoed the proposed legislation (Raymond, 2014). HB 589 made provisions to reduce the number of day for early voting, restrict the number of accepted forms of photo ID, and eliminate same-day registration and the use of provisional ballots for voters who voted outside of their own precinct (Herron & Smith, 2015). These changes are what eventually led to two complaints filed against HB 589 by the League of Women Voters of North Carolina and the North Carolina NAACP on the same day HB 589 was signed into law by Governor Pat McCrory on August 12, 2013. HB 589 also faced another complaint on September 30, 2013 by the United States Department of Justice against the state of North Carolina.

Each of the three complaints brought against Governor Pat McCrory, the North Carolina State Board of Elections, and the state of North Carolina discussed the discriminatory impact the new voting provisions within HB 589 would have on the voters of North Carolina. Each of the complaints focused particularly on how the alteration of the aforementioned provisions would have an overwhelmingly discriminatory effect on black voters, which is a violation of the 14th and the 15th Amendments, as well as the Voting Rights

Act of 1965. On May 5, 2015, on the second appeal, the three cases against Governor Pat McCrory, the North Carolina State Board of Elections, and the state of North Carolina were granted consolidation by the U.S. District Court for the Middle District of North Carolina. On July 29, 2016, after almost three years of litigation, the Fourth Circuit Court of Appeals issued its opinion, declaring the voting provisions in HB 589 unconstitutional.

Despite achieving this victory, *North Carolina State Conference of NAACP v. Patrick McCrory* (2016) still has a chance of being granted certiorari and the opinion of the Fourth Circuit Courts of Appeals could be reversed. *Amicus curiae* briefs continue to be filed, the state of North Carolina continues to reply, and there has been a conditional motion to add the North Carolina General Assembly as an additional petitioner as of March 9, 2017 (Election Law @ Moritz, 2017). Nonetheless, as of late April of 2017, the decision of the Fourth Circuit Court of Appeals stands and the fate of HB 589 is still unknown.

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