

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

FRANCIS X. DELUCA,

Plaintiff,

v.

NORTH CAROLINA STATE BOARD OF
ELECTIONS; KIM WESTBROOK STRACH,
in her official capacity as Executive Director of
the State Board; and A. GRANT WHITNEY,
RHONDA K. AMOROSO, JOSHUA D.
MALCOLM, JAMES BAKER, and MAJA
KRICKER, in their official capacities as
members of the State Board of Elections,

Defendants,

and

LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, NORTH CAROLINA
A. PHILIP RANDOLPH INSTITUTE,
COMMON CAUSE NORTH CAROLINA,
KAY BRANDON, SARA STOHLER, HUGH
STOHLER, ANTHONY MIKHAIL LOBO,
ANNA JAQUAYS, and MICHAEL T.
KUYKENDALL,

Defendant-Intervenors.

No. 5:16-cv-913

DEFENDANT-INTERVENORS' MOTION TO DISMISS

Pursuant to Federal Rule of Civil Procedure 12(b)(6), the League of Women Voters of North Carolina, North Carolina A. Philip Randolph Institute, Common Cause North Carolina, Kay Brandon, Sara Stohler, Hugh Stohler, Anthony Mikhail Lobo, Anna Jaquays, and Michael T. Kuykendall ("Defendant-Intervenors") respectfully submit this Motion to Dismiss all the claims stated in the complaint in this action.

As set forth in the accompanying Memorandum in Support of Motion to Dismiss, Defendant-Intervenors seek to dismiss Plaintiff's Complaint and oppose any requested court-ordered injunction regarding counting of ballots from voters who utilized North Carolina's same-day registration process. For the reasons stated in the Memorandum, no such court action is appropriate given the clear ruling of the U.S. Court of Appeals for the Fourth Circuit in *North Carolina State Conference of the NAACP v. McCrory*, 831 F.3d 204, 237 (4th Cir. 2016) (reinstating North Carolina's same-day registration in a Voting Rights Act and equal protection challenge), and Plaintiff fails to state a cause of action under the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. §§ 20501-20511, or the Equal Protection Clause of the Fourteenth Amendment. Moreover, dismissal is appropriate because this Court cannot grant the requested relief because it would be inconsistent with the Supreme Court's rule established in *Purcell v. Gonzalez*, 549 U.S. 1 (2006).

Respectfully submitted this 30th day of November.

/s/ Allison J. Riggs

Anita S. Earls (N.C. Bar No. 15597)
Allison J. Riggs (N.C. Bar No. 40028)
Emily E. Seawell (N.C. Bar No. 50207)
Southern Coalition for Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
Phone: 919-323-3380
Facsimile: 919-323-3942

CERTIFICATE OF SERVICE

I certify that on this day I filed the foregoing **Motion to Dismiss** with the clerk's office via the CM/ECF system, which will send notification of filing to the following counsel of record:

Karl S. Bowers, Jr.
P.O. Box 50549
Columbia, SC 29250
Telephone: 803-260-4124
butch@butchbowers.com

Joshua Brian Howard
Gammon, Howard & Zeszotarski PLLC
115 ½ West Morgan Street
Raleigh, NC 27601
Telephone: 919-521-5878
jhoward@ghz-law.com

Joshua Lawson
Katelyn Love
North Carolina State Board of Elections
441 N. Harrington St.
Raleigh, NC 27603
Telephone: 919-715-9194
joshua.lawson@ncsbe.gov

Irving L. Joyner
P.O. Box 374
Cary, NC 27512
Telephone: 919-530-6293
jirving@bellsouth.net

Martha A. Geer
Cohen Milstein Seller & Toll PLLC
150 Fayetteville St., Suite 980
Raleigh, NC 27601
Telephone: 919-890-0560
mgeer@cohenmilstein.com

This the 30th day of November, 2016.

/s/Allison J. Riggs
Allison J. Riggs

Counsel for Defendant-Intervenors