

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHIGAN STATE A. PHILIP RANDOLPH INSTITUTE,
MARY LANSDOWN, ERIN COMARTIN, and
DION WILLIAMS,

No. _____

Plaintiffs,

v.

RUTH JOHNSON, in her official
capacity as Michigan Secretary of State,

Defendant.

_____ /

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COME Plaintiffs Michigan State A. Philip Randolph Institute, Mary Lansdown, Erin Comartin and Dion Williams (collectively "Plaintiffs"), by and through their attorneys, Goodman Acker, P.C. and Sachs Waldman, P.C., and for their complaint for declaratory and injunctive relief against Defendant Ruth Johnson, in her official capacity as Michigan Secretary of State, state as follows:

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. §1983, Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, and Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131 et seq., to secure declaratory and injunctive relief for the unlawful deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States. Plaintiff citizens and voters of Michigan will be harmed by the discriminatory and burdensome provisions

of Michigan's 2015 Public Act 268 (Exhibit 1) which eliminated the ability of Michigan voters to cast a straight party vote if they so chose, an option which they had enjoyed for 125 years and which at least half of them had used in recent elections. The elimination of straight-party (or straight ticket) voting, relied upon by millions of Michigan voters, will make it unreasonably harder for those voters to vote. This elimination will result in longer lines, more congestion and more confusion in polling places on Election Day as well as confusion among absentee voters, further unreasonably burdening the right to vote of all voters in Michigan, and will consequently disenfranchise tens of thousands of voters. Lines and waiting times will increase even more in jurisdictions with larger minority populations, as minority voters have used the straight party voting option at a much higher rate. Plaintiff voters will be denied equal protection of the law and the equal right to vote, in violation of the Fourteenth Amendment of the United States Constitution. Further, 2015 PA 268 will more detrimentally affect African-American voters, reducing their opportunity more than that of white voters to participate in the electoral process and to elect representatives of their choice, in denial or abridgement of their right to vote under §2 of the Voting Rights Act. Finally, 2015 PA 268 will discriminate against voters with disabilities in violation of the Americans with Disabilities Act, 42 U.S.C. § 12132. Plaintiffs seek declaratory and preliminary and permanent injunctive relief preventing Defendant from implementing the provisions of 2015 PA 268 abolishing straight party voting.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§1331, 1343(a)(3) and 1357; and 42 U.S.C. §§ 1983 and 1988.

3. This Court has authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

4. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b).

5. This action is timely brought, 2015 PA 268 having been signed into law on January 5, 2016, and it will ban straight party voting beginning with the November 8, 2016 general election.

PARTIES

6. Plaintiff Michigan State A. Philip Randolph Institute (MI APRI) is the Michigan division of the national A. Philip Randolph Institute, the senior constituency group of the AFL-CIO dedicated to advancing racial equality and economic justice. Founded by A. Philip Randolph and Bayard Rustin, APRI grew out of the legacy of African-American trade unionists' advocacy for civil rights and the passage of the federal Voting Rights Act and it continues to advocate for social, political and economic justice for all working Americans. MI APRI is a statewide organization with 10 local chapters across the state: Battle Creek, Detroit Metro, Detroit Downriver, Flint, Grand Rapids, Kalamazoo, Lansing, Muskegon, Saginaw and Southwest (Benton Harbor). MI APRI has members who are registered voters across Michigan. MI APRI works to increase access to the polls, voter registration and voter education, particularly among working class African Americans.

7. Plaintiff Mary Lansdown is a 77 year old African-American, a life-long resident of Flint and a registered voter in Flint. She has been active in her community for many, many years. She is active in the AARP Flint Chapter and the Genesee County Community Action and is currently President of the Flint Chapter of the A. Philip Randolph Institute. She is active in

her church. One of the things they are most involved with is trying to get people to vote. They do voter registration, GOTV (Get Out The Vote) drives and voter education.

8. Plaintiff Erin Comartin is a registered voter in West Bloomfield Township in Oakland County. She is white, a professor of social work at Oakland University and a social justice activist interested in voting rights. She is concerned about the impact of 2015 PA 268 on her rights and the rights of others to vote.

9. Plaintiff Dion Williams is a registered voter in Detroit. An African-American, he uses the straight party option and is active in Detroit elections. He is concerned about the impact of 2015 PA 268 on his rights and the rights of others to vote.

10. Defendant Ruth Johnson is the Michigan Secretary of State, Michigan's "chief election officer," M.C.L. §168.21, and is being sued in her official capacity.

FACTUAL ALLEGATIONS

The Administration of Elections in Michigan

11. Michigan has the most decentralized election system in the country. Administration of elections is divided among 1,602 county, city, township and village clerks. The Secretary of State is the "chief election officer," with "supervisory control" over these local officials. M.C.L. §168.21.

12. Michigan's 83 county clerks have limited responsibilities with regard to elections. They provide advice to the city and township clerks in their counties, are responsible for the printing of ballots, provide training to election inspectors in some of the jurisdictions, program all of the voting equipment used in all county jurisdictions, and, in some elections, canvass the votes.

13. Cities, townships and villages, particularly cities and townships, are responsible for the administration and supervision of all elections, and for all of the expenses of those elections, including purchasing voting booths, ballot tabulators, and all other supplies, hiring election inspectors, and in the larger jurisdictions training them, obtaining space for thousands of polling places and paying the cost where necessary, tabulating millions of ballots and, in some elections, canvassing the results, among many other functions.

14. The financial and personnel resources available to counties, cities, townships and villages to administer elections vary considerably, as those jurisdictions range from very affluent communities to financially distressed ones, including Detroit, only recently emerging from bankruptcy, and communities such as Flint and Pontiac which are under such financial stress that the State of Michigan has intervened in their management. See City of Detroit, U.S. Bankruptcy Court, E.D. Mich. No. 13-53846; Michigan Dept. of Treasury, Local Government Fiscal Health, http://www.michigan.gov/documents/treasury/EM-EFM_Appointment_History_2-12-16_514604_7.pdf (detailing history of all cities and school districts found to suffer financial distress and subject to state intervention).

15. To vote at the polls on Election Day, Michigan voters must provide a valid photo ID if they have one and complete and sign a paper application showing their residence address. M.C.L. §168.523(1). Upon confirmation that they are registered to vote in that precinct, id. (2), (3), they are issued an optical scan ballot and directed to a voting booth where they vote secretly. When they have finished voting their ballot by filling in the ovals or completing the arrows (depending on the type of voting tabulators used), they are directed to the single ballot tabulator for their precinct where they insert their ballot for counting. If they have made an error which the tabulator is programmed to catch, such as overvoting for an office (casting more than the

permissible votes for that office), the tabulator rejects the ballot, giving the voter an opportunity to correct this error.

16. According to a national study, Michigan already has the 6th longest average waiting time to vote in the country – nearly 20 minutes. See Stewart, “Managing Polling Place Resources,” Caltech/MIT Voting Technology Project at 6 & Appendix (2012) (copy attached as Exhibit 2). This study is “highly recommend[ed]” to Michigan local clerks by Christopher Thomas, longtime Director of the State’s Bureau of Elections. See Exhibit 3,

17. According to the same national study, minority voters wait twice as long on average as white voters to vote, and voters in densely populated areas wait, on average, 3 times longer to vote than voters in less densely populated areas. Exhibit 2 at 7-8. Michigan’s experience mirrors or exceeds these national averages. Presidential election years have seen waiting times as long as 2½ to 5 hours in Detroit, 4 hours in Grand Rapids and over an hour in Ann Arbor according to media reports [collected as Exhibit 4]. A representative of Defendant Johnson acknowledged a 2½ hour wait at a Detroit polling location in 2008. See id.

18. In January, 2014, a bipartisan commission, appointed by President Obama and co-chaired by Robert F. Bauer, Counsel to the Obama 2102 campaign, and Benjamin L. Ginsberg, Counsel to the Romney 2012 campaign, issued its report, “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration.” Christopher Thomas, Director of the Bureau of Elections in the office of the Michigan Secretary of State, was a member of this commission. (Exhibit 5)

19. The Report set forth numerous statutory changes and improved practices designed to improve the voting experience and reduce the length of lines so that no voter would need to wait

longer than half an hour to vote. (Exhibit 5, at 6) Michigan has adopted none of these recommendations for election improvement.

The Long Michigan Ballot

20. Michigan voters directly elect over 19,000 federal, state and local officials, see Citizens Research Council of Michigan, “The Long Ballot in Michigan” (1984) at 1, and also have the right to vote on state and local ballot questions, see Mich. Const. 1963, Art. II, §9; Art. XII.

21. For these reasons all jurisdictions in Michigan have long ballots and the largest jurisdictions in the largest counties have the longest ballots because of the number of judicial offices on which citizens vote. For example, in Detroit in Wayne County voters in 2016 will be voting on 37 judicial offices. In Houghton in Houghton County, voters will be voting on only 4 judicial offices.

22. Michigan ballots are 18-22” long and 8-9³/₄” wide, accommodating 3 columns of offices and ballot questions on both sides. It is very common for both sides to be filled, see, e.g., Exhibits 6-8 attached hereto, and in 2012 the City of Detroit had a ballot of 2 full 2-sided sheets, attached hereto as Exhibit 9.

Straight Party Voting in Michigan, 1892-2016

23. Since 1891, Michigan voters have had the option to vote for all of the candidates of a political party in partisan general elections by making a single selection at the top of their ballot, known as straight ticket or straight party voting. No voter is required to use it and a voter can override that choice in any given race and vote a so-called “mixed ticket” simply by voting for a

candidate from another party or an independent candidate. See 1891 PA 190, §14, codified in M.C.L. §§ 168.736c, 168.782b, 168.795c, 168.803 and 168.804. This is how the straight party ticket voting option appears at the top of Michigan general election ballots:

OFFICIAL BALLOT			PAGE 1 OF 2
General Election Tuesday, November 6, 2012 Wayne County, Michigan City of Detroit, Precinct 432			
PARTISAN SECTION	LEGISLATIVE	COUNTY	
STRAIGHT PARTY TICKET Vote for not more than 1	REPRESENTATIVE IN STATE LEGISLATURE 5th DISTRICT Vote for not more than 1	PROSECUTING ATTORNEY Vote for not more than 1	
 Republican Party	Samuel R. Rodriguez Republican	Kym L. Worthy Democratic	
 Democratic Party	Fred Durhal, Jr. Democratic	David S. Afton Libertarian	
 Libertarian Party	STATE BOARDS	SHERIFF Vote for not more than 1	
 U.S. Taxpayers Party	MEMBER OF THE STATE BOARD OF EDUCATION Vote for not more than 2	Shelly L. Milton Republican	
 Green Party	Todd A. Courser Republican	Benny N. Napoleon Democratic	
 Natural Law Party	Melanie A. Kurdys Republican	Bob Czask U.S. Taxpayers	
PRESIDENTIAL	Michelle Fecteau Democratic	CLERK Vote for not more than 1	
ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES Vote for not more than 1	Lupe Ramos-Montigny Democratic	Werner J. Klein Republican	
Mitt Romney Paul Ryan Republican	Andy LeCureaux Libertarian	Cathy M. Garrett Democratic	
Barack Obama Joe Biden Democratic	Karen Adams U.S. Taxpayers	TREASURER Vote for not more than 1	
	Gail M. Graesser U.S. Taxpayers	Raymond J. Wojtowicz Democratic	
	Candace R. Caveny Green	William Rushlow Libertarian	
	Dwain Reynolds III Green		
	REGENT OF THE UNIVERSITY OF MICHIGAN Vote for not more than 2	REGISTER OF DEEDS Vote for not more than 1	

24. Straight party voting has been a fixture in Michigan elections. It predates other well-established election procedures such as primary elections, compare 1891 PA 190 § 10 (all candidates nominated at political party conventions) with 1909 PA 281 (establishing primary

elections in certain situations), and absentee voting, see 1915 PA 270 (first establishing right of certain voters to vote by absentee ballot).

25. Beginning in 1892, tens of millions of Michigan voters have used the straight party voting option without complaints or problems. It shortened lines and eased congestion in polling places on Election Day by allowing voters who chose to use it to vote the partisan section of their ballot more quickly with one mark instead of 18 to 32. It allowed absentee voters to complete their ballots more quickly with one mark instead of 18 to 32. It saved money in election administration.

26. In 1964 the Legislature attempted to abolish the right to straight party voting by enacting 1964 PA 240. Michigan voters exercised their State Constitutional right to referendum and rejected PA 240 by a margin of 1,515,875 (66%) to 795,546 (34%) at the November, 1964 General Election.

27. After 1964 tens of millions of Michigan voters continued to use the straight party voting option without complaints or problems. It continued to shorten lines and ease congestion in polling places, and to allow absentee voters to complete their ballots more quickly. It saved money in election administration.

28. In 2001 the Legislature ignored the will of the voters and again attempted to abolish the straight ticket voting option by enacting 2001 PA 269. Michigan voters again exercised their State Constitutional right of referendum and rejected PA 269 by a margin of 1,775,043 (60%) to 1,199,236 (40%) at the November, 2002 General Election.

29. Since 2002 millions of Michigan voters continued to use the straight party voting option without complaints or problems. It continued to shorten lines and ease congestion in

polling places, and to allow absentee voters to complete their ballots more quickly. It saved money in election administration.

30. In Michigan United Conservation Clubs v. Secretary of State, 464 Mich. 359 (2001), the Michigan Supreme Court effectively abolished the State Constitutional right of referendum, Mich. Const. 1963, Art. II, § 9, rejecting the longstanding interpretive principle that the right had to be construed so as to preclude legislative evasion or parry, and holding that the Legislature could evade and parry a referendum by simply attaching any appropriation to a bill.

31. In December, 2015 the Legislature again ignored the will of the voters and again abolished the straight party voting option by enacting 2015 PA 268. (Exhibit 1) Michigan voters were unable to exercise their State Constitutional right of referendum to reject PA 268, as they had previously rejected straight party voting bans, because the Legislature added an appropriation to PA 268, thereby blocking a referendum.

32. Currently, approximately 50% of all Michigan voters use the straight party voting option and 75-80% of African-American voters use it. See Exhibit 10, Kurt Metzger Expert Report [hereinafter “Metzger Report”]; Exhibit 13 at 3.

33. Absent the declaratory and injunctive relief sought here, 2015 PA 268 will eliminate the voters’ ability to cast a straight party vote beginning with the general election on November 8, 2016. At that election, for the first time in 125 years, the millions of Michigan voters who have regularly chosen to vote straight party will no longer have the ability to cast a straight party vote on the partisan section of the ballot.

Legislative History of 2015 PA 268

34. On a handful of session days during the last few weeks of the 2015 legislative session, the Michigan Legislature took rapid action, with little public input, to abolish Michigan voters' 125 year-old option to cast a straight party vote.

35. Senate Bill 13 abolishing straight party voting was first introduced in the Senate on January 20, 2015. No action occurred for nearly ten (10) months. (Michigan Legislature record of actions on SB 13, Exhibit 11.)

36. On November 10, 2015, a Senate committee voted SB13 out in the morning and the full Senate passed it that afternoon. According to the Senate Legislative Analysis, SB13, November 10, 2015 (Exhibit 12), the Department of State said that the elimination of straight ticket voting could "cause an increase in the time it takes to vote due to voters' reading the new instructions as well as having to mark their vote for each candidate. . . As a result, it could become necessary for local units of government to purchase additional voting booths." At 4. Amendments which would have eased congestion in polling places by allowing early voting and no reason absentee voting were rejected. The Legislature adjourned that same day for its 3-week hunting season and Thanksgiving break.

37. A House committee took up SB13 on December 3, 2015, and again on December 8, 2015, when the Legislature reconvened after the weekend and voted SB13 out that day. Amendments were again rejected. The next day the full House passed SB13, linking it to legislation allowing no-reason absentee voting. See Exhibit 11.

38. On December 16, 2015, the Senate, after locking down the Senate and barring Senators from leaving the chamber under penalty of arrest, rejected linking SB13 to no-reason

absentee voting. The House concurred that same day and the bill was sent to the Governor for his signature which occurred on January 5, 2016, and SB13 was enrolled as 2015 PA 268.

39. SB13 was opposed by The Michigan Association of Municipal Clerks, The Michigan Association of County Clerks, and The Michigan Townships Association, among others. The Secretary of State was “neutral.” House Legislative Analysis, SB 13, December 9, 2015.

(Exhibit 13 at 6)

40. According to the House Legislative Analysis, “Proponents of this bill believe that eliminating the option to vote straight-ticket will encourage voters to vote more deliberately.”

(Exhibit 13 at 2)

41. According to the House Legislative Analysis, “City and county clerks testified that the average wait time to vote in Michigan is already 22 minutes, and that this measure could double that wait.” Clerks also testified that the number of spoiled ballots would increase, causing still longer lines and more frustration. (Exhibit 13 at 5).

42. Clerks testified before the Legislature that the bill would have a disproportionately negative impact on minority communities, and particularly on African-American voters. (Exhibit 13 at 5) Not a single African-American member of the House or Senate voted in favor of SB13.

43. While eliminating the option of straight party voting, the Legislature did not eliminate the provision in the Michigan election law, M.C.L. § 168.684, which requires the printing of party vignettes on the ballot.

44. The Michigan Bureau of Elections has directed the county clerks to print party vignettes across the top of the ballot, as shown here:

OFFICIAL BALLOT General Election Tuesday, November X, 20XX Sample County, Michigan Jurisdiction Name, Precinct Number		
INFORMATION ONLY -- PARTIES WITH BALLOT ACCESS -- INFORMATION ONLY		
The following Political Parties are approved to appear:		
 Republican	 Democratic	 Libertarian
 U.S. Taxpayers	 Green	 Natural Law
VOTING SECTION BEGINS BELOW		
PARTISAN SECTION	CONGRESSIONAL	STATE BOARDS
PRESIDENTIAL	LEGISLATIVE	
ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF THE UNITED STATES Vote for not more than 1	REPRESENTATIVE IN CONGRESS 1st DISTRICT Vote for not more than 1	REGENT OF THE UNIVERSITY OF MICHIGAN Vote for not more than 2
Presidential Candidate ☐ Vice Presidential Candidate Republican	Candidate ☐ Republican	Candidate ☐ Republican
Presidential Candidate ☐ Vice Presidential Candidate Democratic	Candidate ☐ Democratic	Candidate ☐ Democratic
Presidential Candidate ☐ Vice Presidential Candidate Libertarian	Candidate ☐ Green	Candidate ☐ Democratic
Presidential Candidate ☐ Vice Presidential Candidate	REPRESENTATIVE IN STATE LEGISLATURE 1st DISTRICT Vote for not more than 1	Candidate ☐ Green
Presidential Candidate ☐ Vice Presidential Candidate		☐
Presidential Candidate ☐ Vice Presidential Candidate		☐

The Adverse Effects of Eliminating Straight Party Voting Generally

45. On and before November 8, 2016, and at general elections thereafter, millions of Michigan voters who previously exercised the option to cast a straight party vote on an absentee ballot or at the polls will be denied its use and confused by its absence.

46. Straight party voting helps voters cope with the long Michigan ballot, see Paragraphs 20-22 supra. Without it, voting the entire ballot will become more difficult and time-consuming, adding to congestion, longer lines, and longer waiting times in polling places. (Declarations of Joseph Rozell, Daniel A. Baxter, Chris Swope, and Mary Lansdown, collected at Exhibit 14.)

47. The confusion resulting from the elimination of straight party voting will be exacerbated by the printing of party vignettes across the top of the ballot, as shown in ¶44, above, which will serve no purpose but to confuse the voter.

48. County clerks reviewing the new ballot format stated that this was certain to cause great confusion and that they expect voters, used to being able to vote straight party, will circle the party they want or otherwise mark it, as they will see no other reason for displaying the vignettes on the ballot. (Exhibit 14, Declaration of Joseph Rozell ¶18; Exhibit 15, May 23, 2016 Gongwer Report)

49. The elimination of straight party voting will result in more voting errors, more spoiled ballots, and more requests for assistance from election officials and/or from friends or family, all resulting in more delays and increased anger and frustration. (Declarations of Joseph Rozell, Daniel A. Baxter, Chris Swope and Mary Lansdown)

50. Michigan already has the 6th longest average waiting time to vote in the country – nearly 20 minutes--and many urban and African-American voters wait in line for hours to vote. See Paragraphs 16-17 supra. On November 8, 2016, and at general elections thereafter, waiting time will increase and lines will lengthen because millions of voters, deprived of the ability to cast a straight party vote, will take longer to vote their ballot than previously. (Declarations of Joseph Rozell, Daniel A. Baxter and Chris Swope)

51. For the November 8, 2016, election, the State of Michigan and county, city and township clerks will have to incur the expense of redesigning ballots to eliminate the straight party voting option.

52. On and before November 8, 2016, and at general elections thereafter city and township clerks who administer Michigan's elections will have to spend additional funds to

educate voters about the lack of a straight party voting option, to hire additional staff, to provide extra training to the existing and additional staff, and to purchase additional voting equipment and supplies in efforts to ameliorate the congestion and longer lines created by the lack of a straight party voting option. Nevertheless, election officials and others do not anticipate that their efforts will be able to overcome the numerous difficulties created by the abolition of straight party voting. (Declarations of Joseph Rozell, Daniel A. Baxter, Chris Swope and Mary Lansdown, Exhibit 14)

53. Clerks testified before the Legislature that they would need an estimated \$30 million for equipment alone to address the impact of PA 268. (Exhibit 13 at 5) The final bill included an appropriation of only \$5 million”to purchase voting equipment to implement the elimination of straight party ticket voting.” See 2015 PA 268, § 795c(2). However, the State of Michigan has advised local election officials that the \$5 million will not be used to offset the costs of eliminating straight party voting. (Declaration of Joseph A. Rozell) In fact, the entire cost of attempting to address the impact of eliminating straight party voting will be borne by the cities and townships.

The Disproportionate Impact on African-American Voters of Eliminating Straight Party Voting

54. The adverse effects of eliminating straight party voting will be imposed disproportionately on African-American voters and in polling places that serve predominantly African-American voters because African-American voters disproportionately utilize straight party voting. (Metzger Report, Exhibit 10, pp. 1, 9-12).

55. African-Americans in Michigan have long endured illegal discrimination in such areas as education, employment and housing. See, e.g., Sipes v. McGhee, 334 U.S. 1 (1948)

(housing); Bradley v. Milliken, 418 U.S. 717 (1974); (education); Davis v. School District of City of Pontiac, 443 F.2d 573 (6th Cir., 1971), cert. denied, 404 U.S. 913 (1971) (education); Stamps v. Detroit Edison, 365 F. Supp. 87 (E.D. Mich., 1973) (employment); Garrett v. City of Hamtramck, 335 F. Supp. 16 (E.D. Mich., 1971) (housing). African-Americans in Michigan suffer from higher poverty and unemployment rates, and lower income and education levels than whites. See Metzger Report (Exhibit 10).

56. Political campaigns in Michigan have been characterized by covert and subtle racial appeals including discriminatory campaign tactics designed to discourage the ability of African-Americans to participate in the political process. For example:

a. On August 9, 2012 the Finance Chair of the Republican National Committee and former Michigan Republican Party Chair (a 2016 candidate for University of Michigan Regent) Ron Weiser spoke to a Republican Party meeting in suburban Detroit about Detroit's African-American voters:

"Secondly, no Coleman Young machine. No Kwame Kilpatrick machine. There is no Dave Bing machine. There's no machine to go to the pool halls and the barbershops and put those people on buses and then bus them from precinct to precinct where they vote multiple times. And there's no machine to get 'em to stop playing pool and drinking beer in the pool hall. And it does make a difference.

...

"Obama has hired a lot of people to go help him get that vote out. But if you're not from Detroit, the places where those pool halls and barbershops are, you're not going to be going at 6:30 in November. Not without a side arm."

Exhibit 16.

b. On July 16, 2004 Republican State Representative John Pappageorge told the Detroit Free Press that “[i]f we do not suppress the Detroit vote, we’re going to have a tough time this election.”

Exhibit 17.

57. Elected officials in Michigan demonstrate a lack of responsiveness to the interests of African-American communities. See, e.g. Flint Water Advisory Task Force, “Final Report” at 54 (March, 2016) (“The facts of the Flint water crisis lead us to the inescapable conclusion that this is a case of environmental injustice. Flint residents, who are majority Black or African American and among the most impoverished of any metropolitan area in the United States, did not enjoy the same degree of protection from environmental and health hazards as that provided to other communities. Moreover, by virtue of their being subject to emergency management, Flint residents were not provided equal access to, and meaningful involvement in, the government decision-making process.”).

58. There is a significant history and ongoing pattern of discrimination in education, housing and employment in Michigan which causes African-Americans as a group to be less well-educated, less well-housed, lower-paid, and more likely to live in poverty than their white counterparts. See Metzger Report (Exhibit 10). Past and ongoing discrimination in these areas causes higher rates of poverty amongst African-Americans. See id.

59. There is a significant educational achievement difference between non-Hispanic whites and African-Americans in Michigan. The statistics for persons 25 and older in 2014 showed the following: 47% of African-Americans compared to 38.5% of whites had only a high

school education or less; 16.9% of African-Americans compared to 28.4% of whites had a bachelor's degree or more. (Metzger Report, Exhibit 10, at pp. 13-14, 21)

60. Studies have established a direct correlation between low educational achievement, low income, and low literacy levels. According to the 2003 report (the most recent available) on adult literacy, by the National Center on Educational Statistics, 12% of the adults in Wayne County lacked basic literacy skills. <https://nces.ed.gov/naal/estimates/StatesEstimates.aspx>.

61. Current and past discrimination hinder the ability of African-American voters to participate effectively in the political process. African-Americans register to vote and vote at lower rates than whites. (Metzger Report, Exhibit 10).

COUNT I – VIOLATION OF EQUAL PROTECTION UNDER 14TH AMENDMENT

62. Plaintiffs incorporate by reference paragraphs 1 - 61 hereof as if set forth word for word.

63. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits states from denying to any person the “equal protection of the laws.” U.S. Const. amend XIV, § 1.

64. The Fourteenth Amendment prohibits states from burdening the fundamental right to vote and the Supreme Court has set out the analysis to be applied:

{A} court considering a challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”

Burdick v. Takushi, 504 U.S. 428, 434 (1992) (quoting Anderson v. Celebrezze, 460 U.S. 780, 789 (1983)). “This standard is sufficiently flexible to accommodate the complexities of state election regulations while also protecting the fundamental importance of the right to vote.” Obama for America v. Husted, 697 F.3d 423, 429 (6th Cir., 2012).

65. Plaintiffs’ right to vote is heavily burdened by the arbitrary and irrational abolition of the option of straight party voting after 125 years without complaint or problem. Millions of Michigan voters have relied upon this method of voting and will be denied the opportunity to continue to do so. As a result of the abolition of straight party voting, lines, congestion and confusion will increase at polling places, affecting all voters, but affecting African-American voters more . (Exhibit 14, Declarations of Joseph Rozell, Daniel A. Baxter, Chris Swope and Mary Lansdown, and Metzger Report)

66. Long lines at polling places discourage voting, reduce voter confidence in elections and impose other costs on voters. See Stewart, supra, at 1, 11-12 (Exhibit 2).

67. The abolition of straight party voting serves no state interest: it will increase the cost of elections, not reduce it; it will increase voter confusion; not reduce it; it will increase congestion and long lines at the polling places, not reduce them; it will decrease voter participation, not increase it and it will reduce voter confidence in elections, not increase it.

68. The abolition of straight party voting will burden the fundamental right to vote of all Michigan voters in violation of the Fourteenth Amendment.

69. The abolition of straight party voting will disproportionately burden the fundamental right to vote of African-American voters, in violation of the Fourteenth Amendment.

COUNT II – VIOLATION OF THE VOTING RIGHTS ACT § 2

70. Plaintiffs incorporate by reference paragraphs 1-69 hereof as if set forth word for word.

71. Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301(a), provides:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color.

72. African-American citizens in Michigan, as a group, disproportionately use straight party voting more than white citizens. (Metzger Report, Exhibit 10, pp. 9-10).

73. African-American citizens in Michigan, as a group, have, as a result of discrimination in housing, employment and education, a significant educational achievement deficit. More African-Americans have only a high school degree or less. Fewer African Americans have a bachelor's degree or more. (See Metzger Report, Exhibit 10, pp. 13-14, 21)

74. The elimination of straight ticket voting will cause disproportionately longer lines and waiting times for African-American voters than for white voters both because the disproportionately higher rate of straight party voting which will result in more people taking more time to vote, and also because low literacy, associated with the educational achievement gap and the other factors cited above, will cause an even greater increase in the time to vote among African-American voters.

75. 2015 PA 268's abolition of straight party voting will have the effect of suppressing the votes of African-American voters in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a).

76. 2015 PA 268's abolition of straight party voting will result in the denial or abridgement of the right to vote of the individual Plaintiffs and others on account of race or color in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a).

77. The abolition of straight party voting will interact with social and historical conditions – which are themselves largely due to discrimination in areas such as education, employment, housing, health services, and voting – to cause an inequality in the opportunities enjoyed by African-American and white voters to elect their preferred representatives.

78. Under the totality of the circumstances, the abolition of straight party voting will result in the dilution of African-American voting strength and the denial of African-Americans' fundamental right to vote in violation of §2 of the Voting Rights Act.

COUNT III – VIOLATION OF AMERICANS WITH DISABILITIES ACT

79. Plaintiffs incorporate by reference paragraphs 1-78 hereof as if set forth word for word.

80. The Americans with Disabilities Act, 42 U.S.C. § 12132, prohibits discrimination against persons with disabilities in the provision of “services, programs or activities of a public entity,” including access to a polling place for the purposes of voting and voting equipment which permits them to vote notwithstanding their disability.

81. In Michigan, all polling places are required to have an AutoMARK Voter Assist Terminal for use by voters with disabilities. The AutoMARK “operates like an electronic ink pen. It simply marks the ballot with the voter’s choices but does not tally the votes. Once the ballot is marked, it is counted in exactly the same fashion as all other ballots. The AutoMARK

features a touch screen, a keypad marked with Braille, and the opportunity for voters to use their personal sip-puff device, a stylus or a footpad to mark their ballots. The AutoMARK is wheelchair-accessible and is equipped with headphones so that voters may hear the ballot read aloud to them if they wish.” Michigan Secretary of State, “The Rights of Voters with Disabilities” at 2.

82. When they work properly (and many times they do not) the AutoMARK is a very time-consuming way to cast a ballot. Without straight party voting voters with disabilities will spend even more time casting a ballot making waiting times and lines for those devices longer. See Declaration of Daniel A. Baxter.

83. On November 8, 2016, and at general elections thereafter, by abolishing straight party voting 2015 PA 268 will require millions of voters to take longer to complete their ballot leading to longer lines and more congestion at polling places. Longer lines and waiting times will create a hardship for voters with disabilities for whom walking or standing in line is a burden.

84. Voters with disabilities will be denied their right to vote by the longer lines and longer time to cast a ballot caused by the abolition of straight party voting, in violation of the Americans with Disabilities Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs ask that the Court:

1. Declare that the challenged provisions of 2015 PA 268 abolishing straight party voting:

- a. Violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by unreasonably burdening the right to vote of all Michigan citizens;
 - b. Violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by unreasonably and disproportionately burdening the right to vote of African-American citizens;
 - c. Violate Section 2 of the Voting Rights Act of 1965 by denying and abridging the right to vote of African-Americans because of their race and color; and
 - d. Violate the Americans with Disabilities Act.
2. Declare that the rights and privileges of Plaintiffs and other citizens will be irreparably harmed without the intervention of this Court to secure those rights for the exercise thereof in a timely and meaningful manner; and
3. Enjoin preliminarily and permanently the Defendant, her agents, officers and employees, and all persons acting in concert or cooperation with her from enforcing or giving any effect to the provisions of 2015 PA 268 that prohibit straight party voting; and
4. Award Plaintiffs their costs, disbursements and reasonable attorneys' and experts' fees incurred in bringing this action pursuant to 42 U.S.C. §§ 1988 and 52 U.S.C. § 10310(e); and
5. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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