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JULIE A. RICHARDS, CLERK
US DISTRICT COURT, EDNC
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IN THE UNITED STATE DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Docket No.:

ALAN PITTS, *pro se*,
SENECA NICHOLSON-PITTS, *pro se*,
DERYL VON WILLIAMS, *pro se*,

Plaintiffs/Petitioners,

vs.

JAMES D. O'GEARY,
RAY GRIFFIN,
FRANK FRAZIER,
FAYE GILL,
GARY O. BARTLETT,
JOHN H. ZOLLICOFFER, Jr.,
NORTH CAROLINA GENERAL ASSEMBLY,
STATE OF NORTH CAROLINA,
CITY OF HENDERSON,
VANCE COUNTY BOARD OF ELECTIONS,
NORTH CAROLINA BOARD OF
ELECTIONS,
SARA M. COFFERY,
GARRY DAEKE,
MICHEAL C. INSCOE,
D. MICHEAL RAINY,
BRENDA G. PEACE-JENKINS,
LONNIE DAVIS, Jr.,
GEORGE M. DAYE,
AND JAMES KEARNEY,

Defendants/Respondents.

**VERIFIED COMPLAINT UNDER §5
OF THE VOTING RIGHTS ACT OF
1965; 18 U.S.C. §1973 *et seq.*; 18 U.S.C.
§1983 and 1985, PETITION FOR
DECLARATORY AND INJUNCTIVE
RELIEF PURSUANT TO 28 U.S.C. §2201,
AND FED. R. CIV. PRO. 65 AND,
REQUEST PURSUANT TO 28 U.S.C. §
2284 (a) FOR A THREE JUDGE COURT**

Comes Now the Plaintiffs, Alan Pitts, *pro se* (hereinafter "Mr. Pitts") and Seneca Nicholson, *pro se* (hereinafter "Ms Nicholson-Pitts") Deryl von Williams, (hereinafter "Ms Von Williams"), or (collectively "The Plaintiffs") and respectfully submitted their claims under the

Voting Rights Act of 1965, 42 U.S.C. §1973c, 42 U.S.C. §1983 and 1985 regarding the right to due process and suffrage and motion and petition for Declaratory and Injunctive Relief:

- (1) Declaring that the elective terms of each named Henderson appointees and elected officials had expired as of November, 2011.
- (2) Declaring that each named elected official violated their *Oath of Office* to uphold the laws of the United States and the State of North Carolina and support the State and Federal Constitutions.
- (3) That said named appointees and elected official failed to arrange for the next regularly scheduled Municipal Elections election before their terms in office had expires thus allowing a public mandate for the operation of the City of Henderson.
- (4) That said Defendants and Defendants Vance County Board of Elections failed to give adequate notice of the proposed May 8, 2012, falsely advertising that such election was a non-partisan primary.
- (5) A Declaration invalidating any change in election law administered by either Vance County or the City of Henderson without preclearance of §5 of the Voting Rights Act of 1965.
- (6) A Declaration invalidating or an Order enjoining any election results achieved while in violation of the Voting Rights Act of 1965 and State law.
- (7) Establish a Declaration to be submitted to the Department of Justice for §5 preapproval of a plan to conduct an alternative, special election, to fill seats made vacant by this law suit.
- (8) Declaring that their was no legal necessity to either delay the Municipal Election or redefine the boundaries of the City's 4 political districts.
- (9) A Declaration disqualifying said officials from holding future elective office in the City of Henderson, North Carolina.
- (10) Enjoining the certification of the result of May 8, 2012 elections, or restraining the certification of any such results and the enforcement of any use of politically gerrymandered ward boundaries.
- (11) Enjoining the enforcement of any spending, budget, agreements, planning etc., undertaken by ex-City Official at a time after their individual terms had expired and an additional declaration rendering such ex-officials responsible for any damages or debt incurred by acts taken without authority or jurisdiction, and,
- (12) Any Order deemed appropriate by this Honorable Court.

As grounds for this Complaint and Motion/Petition, The Plaintiffs state and allege the following:

I. STANDARD OF REVIEW FOR PRO SE PLEADINGS

The Plaintiffs are each proceeding without the benefit of legal counsel. Additionally, neither Plaintiffs are practicing attorneys nor have they been trained in the complex study of law.

¹ Because the Plaintiffs share a common interest and the claims are identical, they have therefore consolidated their claims in the interest of judicial economy. For that very reason, as well, Plaintiffs join Defendants in a signal action pursuant to Fed. R. Civ. Pro. 19.

As such, Plaintiffs' *pro se* papers are to be construed liberally. *See Haines v. Kerner*, 404 U.S. 519-20, (1972). "A *pro se* litigant should be given a reasonable opportunity to remedy defects in his [or her] pleadings if the factual allegations are close to stating a claim for relief." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly, such pleadings should be held to a less stringent standard than pleadings drafted by licensed, practicing attorneys.

II. CHARACTER OF ACTION AND STATEMENT OF CLAIM²

The unique set of circumstances in this case may well take the court into uncharted territory. It is that uniqueness of these circumstances which underscores the public importance of this action and the need of a three judge court. Such circumstances being, while engaged in a campaign of deception and misinformation, directed against the public and the United States Department of Justice, the Mayor, City Council of Henderson North Carolina and their appointees developed a scheme to change its election laws without §5 preclearance from the United States Department of Justice ("DOJ") as required under the Voting Rights Act of 1965, canceled a regularly scheduled municipal election, remain unelected in power, change the City Charter to permit political and racial gerrymandering. This being done without prior notice to the citizens of the City of Henderson and Vance County. Also done without public input. This scheme having either the intent or the result of disenfranchising African American voters and candidates for office in violation of the 14th and 15th Amendments to the United States Constitution.

A. NCGS §163A-23.1

Plaintiffs' case and the request for emergency preliminary injunction and permanent injunction hinges on the single question of if Defendants had the legal authority to cancel the October 2011 Henderson, North Carolina, Municipal Elections. To best understand Plaintiffs' claim that Defendants unlawfully canceled the Municipal Elections the court must examine the statutory scheme [NCGS §163A-23.1] upon which Defendants rely as authority for their extraordinary waiver of the citizen of Henderson's right to vote in a regularly held election. In 2009 the North Carolina General Assembly amended NCGS §163A-23 to include subsection .1. The added section reads in pertinent part:

§ 160A-23.1. Special rules for redistricting after a federal decennial census.

(a) As soon as possible after receipt of federal decennial census information, the council of any city which elects the members of its governing board on a district basis, or where candidates for such office must reside in a district in order to run, shall evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances. If such revision is necessary, the council shall consider whether it will be possible to adopt the changes (and obtain approval from the United States Department of Justice, if necessary) before the third day before opening of the filing period for the municipal election. The council shall take into consideration the time that will be required to afford ample opportunities for public input. If the council determines that it most likely will not be possible to adopt the changes (and obtain federal approval, if necessary) before the third business day before opening of the filing period, and determines further that the population imbalances are so significant that it would not be

² This statement is given in efforts to summarize, simplify, clarify and argue [preliminarily] Plaintiffs' claims to better assist respondents' understanding of *pro se* allegations. This Statement does not require an answer.

lawful to hold the next election using the current electoral districts, it may adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of this section. Before adopting such a resolution, the council shall hold a public hearing on it. The notice of public hearing shall summarize the proposed resolution and shall be published at least once in a newspaper of general circulation, not less than seven days before the date fixed for the hearing. Notwithstanding adoption of such a resolution, if the council proceeds to adopt the changes, (and federal approval is obtained, if necessary) by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule under the revised electoral districts. Any resolution adopted under this subsection, and any changes in electoral district boundaries made under this section shall be submitted to the United States Department of Justice (if the city is covered under Section 5 of the Voting Rights Act of 1965), the State Board of Elections, and to the board conducting the elections for that city.

(b) In adopting any revision under this section, if the council determines that in order for the plan to conform to the Voting Rights Act of 1965, the number of district seats needs to be increased or decreased, it may do so by following the procedures set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes, except that the ordinance under G.S. 160A-102 may be adopted at the same meeting as the public hearing, and any referendum on the change under G.S. 160A-103 shall not apply to the municipal election in the two years following a federal decennial census.

(c) If the resolution provided for in subsection (a) of this section is not adopted and:

(1) Proposed changes to the electoral districts are not adopted, or

(2) Such changes are adopted, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third business day before the opening of the filing period, the election shall be held on the regular schedule using the current electoral districts.

(d) If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified. (1989 (Reg. Sess., 1990), c. 1012, s. 2; 1999-227, s. 4; 2000-140, s. 34; 2002-159, s. 52; 2009-414, s. 1.) A copy of said statute is attached at Exhibit A.

The North Carolina General Statute sets out a formula for canceling and rescheduling a regularly held election of a political subdivision which elects the members of its governing board by districts and, where recently released federal decennial census information reveal that such districts are so significantly out of population balance, that to hold such election under such conditions would render the election illegal. A plain language construction of the statutory scheme reveal that the first sentence of the statute prescribes a triggering mechanism for the application of the rule. That being the receipt of the federal decennial census information. With this information in hand, the city council is then required (1) first, to "evaluate the existing district boundaries to determine whether it would be lawful to hold the next election without revising districts to correct population imbalances." *Id.* NCGS §163A-23.1. (2) Secondly, if finding, based upon the census information, that a revision of the district boundaries is necessary to comply with the law, [one person one vote] then the city council is then required to perform a calculation determining, if after ample opportunities for public input has been afforded, if the changes can be adopted, and if required, federal preapproval can be received three business days before the opening for filing or declaring a candidacy. If determining that the all of the above can most likely not be done before the date specified, then (3) the city council is required to make a

third determination [also based upon federal decennial census information] "finding that the population imbalances are *so significant* that it would not be lawful to hold the next election using the current electoral districts[.]" (*emphases added*). (4) And, after a public hearing on the matter, then, and only then does the statute allow the City Council to adopt a resolution delaying the election so that it will be held on the timetable provided by subsection (d) of the section. Which is holding the election approximately 7 month later in consolidation with the regular county primary elections.

Plaintiffs request that the court take judicial notice of the fact that the operation of the statute is dependent upon a point and time when City Council members become aware of the latest federal decennial census information. Until such time, the statute is inapplicable to the common affairs of a political subdivision within the State of North Carolina.

Of similar note, an election could not be found unlawful if there is no available evidence showing that the population of certain political districts are out of balance. If that were the case, a voter or candidate could claim any past election unlawful by virtue of the fact that new decennial census information suddenly indicate that a ward or district, at some time in the past, was out of balance with the other wards. The same yielding an absurd result.

Plaintiffs also note that sub-paragraph (d) essentially authorizes a jurisdiction covered, under §4(b) of the Voting Rights Act, such as the City of Henderson, to evade the preapproval requirement specified in §5 of 42 U.S.C. §1973a *et seq.*, by simply submitting its request for preclearance just days before the opening date for candidacy filing. This alone would render the provision objectionable under the Voting Rights Act as it pertains to covered jurisdictions. And makes the statute unconstitutional as it undermines superseding federal authority.

Finally, it is important to distinguish that the State of North Carolina did not, and does not need preclearance from the United States Department of Justice before administering the above specified, recent enactment. However, neither the City of Henderson nor Vance County were free to administer NCGS 160A-23.1 without first obtaining preclearance from the United States Department of Justice pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. §1973 *et seq.*

B. Voting Rights Act of 1965; 42 U.S.C. §1973 et. seq.

The Fifteenth Amendment provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. CONST. amend. XV, § 1. Yet 95 years after the Amendment's ratification, the struggle for the realization of this constitutional guarantee was far from complete. *See* H.R. Rep. No. 89-439, at 2439 (1965). In 1965, literacy tests, poll taxes, and other devices were still being "widely used" in certain regions of the country as part of "a calculated plan to deprive African Americans of their right to vote." *Id.* at 2443. When traditional litigation proved ineffective to counter "those determined to circumvent the guarantees of the 15th amendment," *id.* at 2441, Congress decided that "the wrong to our citizens is too serious -- the damage to our national conscience is too great not to adopt more effective measures than exist [that day.]" *id.* at 2442. Hence, almost a century after the Fifteenth Amendment was ratified, Congress passed the Voting Rights Act of 1965 -- with Section 5 at its core -- in order "to make

the guarantees of the Fifteenth Amendment finally a reality for all citizens." *Allen v. State Bd. of Elections*, 393 U.S. 544, 556 (1969). Congress reauthorized the Act four times (in 1970, 1975 and 1982), and the Supreme Court upheld each reauthorization against constitutional challenges. *See* *Nw. Austin II*, 129 S. Ct. at 2510.

The Voting Rights Act of 1965 "was designed by Congress to banish the blight of racial discrimination in voting." *South Carolina v. Katzenbach*, 383 U.S. 301, 308 (1966). Although the Fifteenth Amendment guaranteed African-American citizens the right to vote as early as 1870, southern states quickly responded by creating a series of voting qualifications and devices to perpetuate black disenfranchisement. *See id.* at 310-311; *see* also H.R. Rep. No. 89-439, at 2439-40. None of this new voting legislation mentioned race on its face, but it was nonetheless "motivated entirely and exclusively by a desire to exclude the African Americans from voting." H.R. Rep. No. 89-439, at 2443, 2451. Southern states imposed poll taxes, which disproportionately burdened African-Americans as a result of their comparatively lower incomes. *See id.* at 2451-53. They enacted literacy requirements as a precondition to voting "based on the fact that as of 1890 . . . more than two-thirds of the adult African American [in southern states] were illiterate while less than one-quarter of the adult whites were unable to read or write." *Katzenbach*, 383 U.S. at 311. And they adopted alternate tests, such as grandfather clauses and property qualifications, in order to "assure that white illiterates would not be deprived of the franchise." *Id.*

Not only were these tests intentionally discriminatory in their design, but southern voting officials were given unfettered discretion to administer them in a discriminatory fashion. Officials would refuse to accept poll taxes from blacks seeking to pay them, or would withhold poll tax exemption certificates from otherwise-qualified black applicants. *See* H.R. Rep. No. 89-439, at 2452. They would provide whites with "easy versions" of literacy tests or excuse them altogether, but demand that blacks pass "difficult versions . . . without the slightest error." *Katzenbach*, 383 U.S. at 312-13. Other voting qualifications -- including the infamous "good-morals requirement" and "constitutional interpretation" tests -- were so inherently "vague and subjective" that they "constituted an open invitation to abuse at the hands of voting officials." *Id.*

In addition to these methods of direct disenfranchisement, southern officials before 1965 also enacted laws designed to dilute black voting strength, if and when blacks were able to register and cast ballots. Specifically, southern officials "gerrymandered election districts, instituted at-large elections, annexed or deannexed land as it fit their racial and partisan interests, and required huge bonds of officeholders." *J. Morgan Kousser, The Strange, Ironic Career of Section 5 of the Voting Rights Act, 1965-2007*, 86 TEX. L. REV. 667, 678-79 (2008); *see also To Examine the Impact and Effectiveness of the Voting Rights Act, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 109th Cong. 1138 (Oct. 18, 2005) ("Impact and Effectiveness") (Chandler Davidson and Bernard Grofman, eds., *Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990* (Princeton University Press 1994)). These tactics aimed at reducing the ability of blacks to elect candidates of their choice -- sometimes referred to as "[d]isenfranchisement by indirection" -- were widely employed throughout the South in the late nineteenth century, and they reemerged during the "Second Reconstruction" of the mid-twentieth century as well. *See* 1 Voting Rights Act: Evidence of Continued Need, Hearing Before the Subcomm. on the Constitution of the H. Comm. on the

Judiciary, 109th Cong. 142 (Mar. 8, 2006) (hereinafter, "1 Evidence of Continued Need") (National Commission on the Voting Rights Act, Protecting Minority Voters: The Voting Rights Act at Work 1982-2005 (Feb. 2006) (hereinafter, "Nat'l Comm'n Report")); see also An Introduction to the Expiring Provisions of the Voting Rights Act and Legal Issues Relating to Reauthorization, Hearing Before the S. Comm. on the Judiciary, 109th Cong. 206 (May 9, 2006) ("Introduction to Expiring Provisions") (prepared statement of Chandler Davidson).

The Supreme Court eventually responded to these attempts to evade the requirements of the Reconstruction Amendments by striking down some of the most egregious practices used to impede blacks from effectively exercising their right to vote. *See Katzenbach*, 383 U.S. at 311-12 (internal citations omitted). The Court invalidated grandfather clauses in 1915, *see Guinn v. United States*, 238 U.S. 347 (1915); *Myers v. Anderson*, 238 U.S. 368 (1915); outlawed the so-called "white primary" in 1944, *see Smith v. Allwright*, 321 U.S. 649 (1944); and condemned racial gerrymandering in 1960, when the city of Tuskegee, Alabama, attempted to transform its square-shape into "a strangely irregular twenty-eight-sided figure," which had the effect of removing "from the city all save four or five of its 400 Negro voters while not removing a single white voter or resident," *Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960).

Congress in turn responded to southern states' sophisticated disenfranchisement strategies by enacting civil rights legislation in 1957, 1960, and 1964, which sought to "facilitat[e] case-by-case litigation against voting discrimination." *Katzenbach*, 383 U.S. at 313. But it soon became apparent that "case-by-case" litigation would not be sufficient to protect African-Americans' access to the ballot. *See* H.R. Rep. No. 89-439, at 2440-41. Not only was litigation expensive and slow, but even where it proved successful, southern officials would often ignore court orders, "close[] their registration offices to freeze the voting rolls," or "merely switch[] to discriminatory devices not covered by the federal decrees." *Katzenbach*, 383 U.S. at 314. As Congress explained, "[b]arring one contrivance too often has caused no change in result, only in methods." H.R. Rep. No. 89-439, at 2441. Hence, in 1965 Congress decided that "sterner and more elaborate measures" were needed to combat the "insidious and pervasive evil which had been perpetrated in certain parts of our country through unremitting and ingenious defiance of the Constitution." *Katzenbach*, 383 U.S. At 309.

To craft these measures effectively, the Senate and House Committees on the Judiciary held hearings for nine days, during which they discussed 122 proposed voting rights bills and heard testimony from 67 witnesses. *See id.*; *see* also H.R. Rep. No. 89-439, at 2438. The House debated the legislation for three full days, while the Senate discussed the Act for almost a month. *See Katzenbach*, 383 U.S. at 308. Ultimately, when it came time to vote, "the verdict of both chambers was overwhelming": the Voting Rights Act of 1965 passed by a margin of 328-74 in the House, and 79-18 in the Senate. *Id.*; *see* also Voting Rights Act of 1965 ("1965 Act"), Pub. L. No. 89-110, 79 Stat. 437 (codified as amended at 42 U.S.C. § 1973 *et seq.*).

The Act's basic prohibition against racial discrimination in voting is contained in Section 2, which provides that "[n]o 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." 42 U.S.C. § 1973. Although Section 2 echoes the language of the

Fifteenth Amendment, at least since 1982 it has been interpreted to prohibit a broader category of conduct than that which the Amendment itself proscribes, as it forbids all electoral practices with discriminatory "results," not just those enacted with a discriminatory purpose. *Compare City of Mobile v. Bolden*, 446 U.S. 55, 62 (1980) (holding that Section 2 merely restates "the prohibitions already contained in the Fifteenth Amendment" and that "racially discriminatory motivation is a necessary ingredient of a Fifteenth Amendment violation") with S. Rep. No. 97-417, at 28 (1982) (explaining Congress's intent to amend Section 2 in response to *City of Mobile* to make clear that a plaintiff can establish a Section 2 violation "without proving any kind of discriminatory purpose"). Other provisions of the Voting Rights Act ban poll taxes, 42 U.S.C. § 1973h, prohibit voter intimidation and coercion, 42 U.S.C. § 1973i(b), and establish civil and criminal sanctions for the deprivation of rights secured by the Act, 42 U.S.C. § 1973j.

In addition to these permanent provisions -- which apply nationwide -- the Act sets forth "a complex scheme of stringent remedies aimed at areas where voting discrimination has been the most flagrant." *Katzenbach*, 383 U.S. at 315. These targeted provisions are temporary, and only apply to jurisdictions that are "covered" under Section 4(b). For example, Section 4(a) of the Act bans the use of voting tests in all covered jurisdictions, *see* 42 U.S.C. § 1973b(a), while Section 8 authorizes the Attorney General to send federal observers to enter polling places and monitor elections in covered jurisdictions when "necessary to enforce the guarantees of the 14th or 15th amendment," 42 U.S.C. § 1973f(a)(2); *see also* H.R. Rep. No. 109-478, at 91 (2006).

Section 5, however, remains the most innovative -- and the most controversial -- of the Act's targeted, temporary provisions. Under Section 5, a covered jurisdiction cannot make any changes to its voting qualifications, standards, practices, or procedures unless those changes are first "submitted to and approved by a three-judge Federal District Court in Washington, D.C., or the Attorney General." *See* *Nw. Austin II*, 129 S. Ct. at 2509; 42 U.S.C. § 1973c. Preclearance under Section 5 will only be granted if a jurisdiction can show that its proposed voting change "neither 'has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color.'" *Nw. Austin II*, 129 S. Ct. at 2509 (quoting 42 U.S.C. § 1973c(a)).

Section 5 of the Act constitutes a direct response to the "common practice in some jurisdictions of staying one step ahead of the federal courts by passing new discriminatory voting laws as soon as the old ones had been struck down." *Beer v. United States*, 425 U.S., 130, 140 (1976). Prior to 1965, such novel methods of minority disenfranchisement would continue to operate "until the Justice Department or private plaintiffs were able to sustain the burden of proving that the new law, too, was discriminatory." *Id.* But with the passage of Section 5, Congress "shift[ed] the advantage of time and inertia from the perpetrators of the evil to its victim," *Katzenbach*, 383 U.S. at 328. Rather than requiring minority voters to sue to challenge discriminatory voting practices after their implementation, Section 5 places the burden on covered jurisdictions to show their voting changes are nondiscriminatory before those changes can be put into effect. *See id.* Accordingly, Section 5 of the Voting Rights Act of 1965 prevents certain "covered" jurisdictions from implementing any change to voting practices or procedures unless and until the jurisdiction demonstrates to federal authorities that the change "neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c.

Of particular note, although both Vance County, North Carolina and the City of Henderson, North Carolina are each covered jurisdictions under Section 5 of the Voting Rights Act, the State of North Carolina however, is not a covered jurisdiction. If a jurisdiction covered by Section 5 chooses to submit its proposed electoral change to the Attorney General for preclearance, and the Attorney General does not interpose an objection to the change within 60 days, the change may be implemented as proposed. *See* 42 U.S.C. § 1973c(a); *see* also *City of Rome v. United States*, 446 U.S. 156, 170 (1980). If the Attorney General does interpose an objection, the submitting jurisdiction "may at any time request the Attorney General to reconsider an objection," *see* 28 C.F.R. § 51.45(a), or it may institute a declaratory judgment action before a three-judge panel in the U.S. District Court, seeking "*de novo* consideration of whether the method of election violates rights protected by the Voting Rights Act or the Constitution," *Cnty. Council of Sumter Cnty. v. United States*, 555 F. Supp. 694, 706-07 (D.D.C. 1983) (three-judge court); *see* also *City of Rome v. United States*, 450 F. Supp. 378, 381-82 (D.D.C. 1978) (three-judge court), *aff'd*, 446 U.S. 156 (1980) (explaining that "even if . . . the Attorney General objects to certain proposed electoral changes, the applicant-jurisdiction can always seek . . . a declaratory judgment from a three-judge court in this District . . . "); 28 C.F.R. § 51.11 (noting that "[s]ubmission to the Attorney General does not affect the right of the submitting authority to bring an action in the U.S. District Court for the District of Columbia for a declaratory judgment"). However, if the jurisdiction does not receive federal preclearance from either the Attorney General or a three-judge panel of the DCU.S. District Court, the change to its voting practice or procedure may not be implemented.

Section 4(b) establishes the formula that determines which jurisdictions are subject to Section 5's preclearance requirements (and the other temporary provisions of the Act). As originally enacted, a jurisdiction was "covered" under Section 4(b) if it maintained a voting test or device as of November 1, 1964, and had less than 50% voter registration or turnout in the 1964 presidential election. *See* 1965 Act § 4(b). Congress found that the combined presence of one of these "tests or devices" and low voter registration or turnout in a particular jurisdiction made it "a strong probability that low registration and voting are a result of racial discrimination in the use of such tests." H.R. Rep. No. 89-439, at 2444. The jurisdictions originally covered by this formula were Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. *See* 28 C.F.R. pt. 51 app. Thirty-nine counties in North Carolina and one county in Arizona also qualified for coverage as separately designated political subdivisions. *Id.*

It was no coincidence that the six states originally covered in their entirety by Section 4(b) -- and therefore subject to preclearance under Section 5 -- were those southern states with the worst historical records of racial discrimination in voting. The drafters of the Act purposefully designed its coverage formula "to pick up the core Southern states that had been bastions of Jim Crow." Introduction to the Expiring Provisions 221 (statement of Samuel Issacharoff). As one scholar has explained, "those who wrote the legislation knew the states they wanted to 'cover' and, by a process of trial and error, determined the participation level that would single them out." 1 Voting Rights Act: Section 5 of the Act -- History, Scope, and Purpose, Hearing before the Subcomm. on the Constitution of the H. Comm. on the Judiciary, 109th Cong. 68 (Oct. 25, 2005) ("1 History, Scope, & Purpose") (Abigail Thernstrom, *Whose Votes Count? Affirmative Action and Minority Rights* (Harvard University Press 1987)). The reverse-engineered, percentage-based "trigger" for coverage under the Act was, in other words, "a

formally neutral device for capturing a more historically based truth." The Continuing Need for Section 5 Pre-Clearance, Hearing before the S. Comm. on the Judiciary, 109th Cong. 99 (May 16, 2006) ("Continuing Need") (responses of Pamela S. Karlan to questions submitted by Senators Leahy, Kennedy, Kohl, Cornyn, and Coburn) ("Karlan Responses").

C. The City Henderson

Henderson is a small southern city of roughly 15,000 residents. It is important to note, South Henderson is not actually a part of the City of Henderson. Its racial balance in percentage show blacks outnumbering whites at a little over a two to one ratio. Only one of the City's four wards, [Ward 2] has a greater white population than blacks. Currently, four City Council Members are white and four are African American. The Mayor is white.³

Henderson's City Charter describes its form a governance as a "Council-Manager" form of government which gives all decision making power to eight council persons or aldermen/women. Each of these members and the Mayor are elected in a nonpartisan, plurality municipal elections which under certain rare circumstances, allows a candidate to request a runoff as described at NCGS §163-293. All council members are required to reside in the ward they represent. Although at least 3 current council members maintain residences outside the ward which they represent. Four of the eight council members are elected exclusively by the residents of the ward they represent. The other four are elected, as is the case of the Mayor, by the city at large. Each Council Member has the capacity to cast one vote on matters pending before Council. The Mayor may cast a vote on matters of city business only in the event of a tie vote among the Council Seats. Beginning with this current elections, [on a one time basis only,] four Council Members will be elected on a four year term and four will be elected on a two year term. This, to allow future terms to staggering every two years as the council seats terms expiring in two years, will then become four year terms.

The City Manager serves at the pleasure of the City Council and is entrusted with the responsibly of the day to day operation of the city. The City Attorney advises the Council, City Manager and the public on all legal matters concerning the City of Henderson.

North Carolina law requires a political subdivision such as the City of Henderson to establish or amend it's City Charter regarding the manner of choosing it's governing body, by way of selecting one or more optional form(s) of government described in the sub-paragraphs codified at NCGS §160A-101.(6) a. thru e. The City of Henderson's current charter is established under subsection d. which reads as follows:

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into "ward seats" and "at-large seats," one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the "ward seats"; candidates for the "at-large seats" shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for "at-large" seats shall be nominated and elected by all the qualified voters of the

³Plaintiffs preferences the latter two statements upon the fact that Plaintiffs' claim is premised upon Plaintiffs' believe and evidence that the city government is illegitimate as of the point of the completion of the elected terms in November, 2011.

city. See attached statute, NCGS §160A-101et seq., Exhibit B.

The Mayor of Henderson is elected under a separate formula found at NCGS §160A-101(8) a. which prescribes the following:

(8) Selection of mayor:

a. The mayor shall be elected by all the qualified voters of the city for a term of not less than two years nor more than four years.

III. STATEMENT OF PARTIES

3.1 Plaintiff ALAN PITTS, pro se, is an African American U.S. Citizen and a member of a protected class within the meaning of the Civil Rights Act of 1968. He maintains a residential address of 438 Cross Creek Road, Henderson, NC 27537. Mr. Pitts is a registered voter in Vance County North Carolina.

3.2 Plaintiff SENECA NICHOLSON-PITTS, pro se, is an African American U.S. Citizen and a member of a protected class within the meaning of the Civil Rights Act of 1968. She maintains a residential address of 438 Cross Creek Rd, Henderson, NC 27537. Ms. Nicholson-Pitts is a registered voter in Vance County North Carolina.

3.3 Plaintiff DERYL VON WILLIAMS, pro se, who is the Director of the VANCE COUNTY LEARNING CENTER, is an African American U.S. Citizen and a member of a protected class within the meaning of the Civil Rights Act of 1968. She maintains a residential address of 325 S. Garnett Street, Henderson, NC 27536. Ms. Von Williams is a registered voter in Vance County North Carolina.

3.4 Defendant JAMES D. O'GEARY is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.5 Defendant RAY GRIFFIN is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.6 Defendant FRANK FRAZIER is a United States Citizen who, while acting under official right and color of state law,, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.7 Defendant JOHN H. ZOLLICOFFER, Jr. is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.8 Defendant SARA M. COFFERY is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.9 Defendant GARRY DAEKE is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.10 Defendant MICHEAL C. INSCOE is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.11 Defendant D. MICHEAL RAINY is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.12 Defendant BRENDA G. PEACE-JENKINS is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.13 Defendant LONNIE DAVIS, Jr. is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.14 Defendant GEORGE M. DAYE is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendant in both his individual/personal and official capacity. Such Defendants maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.15 Defendant JAMES KEARNEY is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendants in both his individual/personal and official capacity. Such Defendant maintains an official mail-box at 134 Rose Street, Henderson, North Carolina 27536.

3.16 Defendant FAYE GILL is a United States Citizen who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County. This complaint names such Defendants in both his individual/personal and official capacity. Such Defendant maintains an official mail-box at 120 Young Street, Henderson, North Carolina 27536.

3.17 All remaining Defendants are government entities, individual or persons who, while acting under official right and color of state law, violated the civil rights of minority citizens of Vance County and the State of North Carolina. This complaint names such Defendants in both his individual/personal and official capacity. Such Defendant will be serviced by the U.S. Marshals Service through the office of the State Attorney General.

IV. GENERAL ALLEGATIONS

4.1 At approximately 6:00 pm., on Monday February 28, 2011 Mayor O'Geary called to order a work session after a regular short meeting of the Henderson City Council⁴ and then inquired if any members of council knew of any real or perceived conflict of interest concerning that night's Agenda. See Minutes, February 28, 2011, Exhibit C.

4.2 No member or other person present offered any comment.

4.3 Item *f*) on the Agenda is described as: "Information Relative to 2010 Census Redistricting and Potential Impact on 2011 Elections (*CAF 11-53*) [*See Notebook Tab# 13*]" . *Id.* Exh. C.

4.4 Although that item was placed on the Agenda, there was no public discussion of the matter on the record as no one brought the question to the floor.

4.5 At that time, the City Council, the Mayor, City Manager or the City Attorney was aware of no specific census information which would effect the upcoming 2011 elections.

4.6 In the two preceding council meetings held on March 1, and March 14, 2011, Item *f*) was not discussed or place on any subsequent Agenda.

4.7 However, citing Attorney/Client Privilege, Council held its March 1, 2011 meeting in close sessions.

4.8 At approximately 6:00 pm., on Monday March 28, 2011 Mayor O'Geary, called to order a regular meeting of the Henderson City Council⁵ and then inquired regarding if any members of council knew of any real or perceived conflicts of interest concerning that night's Agenda. See [relevant portion of] Minutes, March 28, 2011, Exhibit D.

4.9 No member or other person present offered any comment.

4.10 Item "*c*) Consideration of Resolution 11-32, Setting Public Notice for delay of Municipal Elections from October 2011 to May 2012. (*CAF 11-55*) [*See Notebook Tab# 4*]" . *Id.* Exh. D.

4.11 The Agenda item [Item *c*)] does not specifies the scheduling of a Public Hearing to consider why a delay or cancellation, [depending upon one's viewpoint,] of the Municipal

⁴Because of the recent demise of one of the Council Members, only 7 Council Members were present.

⁵(7) seven of the (8) eight Councilmen/persons named in this action were present at this meeting. Councilmember Inscoe was absent.

Elections would be necessary or lawful.

4.12 Nor does the '*agenda item*' specify or make any mention of redistricting or redefining the City's four political wards or a change to the City Charter.

4.13 The item was brought to the floor by City Manager Griffin who stated that the issue had been discussed by council at an earlier meeting.

4.14 However, there is no record of any other discussion at any previous City Council Meeting of the issue of delaying/canceling the regular Municipal Election scheduled for October, 2011.

4.15 Mr. Griffin then turned the meeting over to City Attorney Zollicoffer.

4.16 Mr. Zollicoffer told the public that the "delay was advised due to the perceived imbalance in the current ward boundaries and that it would be impossible to redefine the wards, hold the required public hearings and meet the deadlines set by the Department of Justice to hold the elections in October." (Exhibit D., p.5,¶ 3).

4.17 Of note, Mr. Zollicoffer is informing the public that at this time, March 28, 2011, he has no definitive evidence that the wards' populations are out of balance as he states there is a "perceived imbalance". *Id.*

4.18 Also at this time, Mr. Zollicoffer acknowledges that state law requires that the City of Henderson must conduct public hearings before delaying the election.

4.19 The state law Mr. Zollicoffer is speaking of is North Carolina General Statute §160A-123.1.

4.20 Also at this time, Mr. Zollicoffer acknowledges that federal law requires that the City of Henderson must obtain approval from the United States Department of Justice before delaying the election.

4.21 The federal law Mr. Zollicoffer is speaking of is the Voting Rights Act of 1965, 42 U.S.C. §1973 *et seq.*

4.22 Mayor O' Geary asked the City Attorney if he knew which areas of the City were affected and the City Attorney Zollicoffer stated "it would probably be in the eastern sections where populations seems to have decreased." (Exhibit D., p.5,¶4).

4.23 Council Member Kearney asked if it could wait until the census review was complete, [seemingly implying that census information was available but needed to be reviewed]. (Exhibit D., p.5,¶5).

4.24 "Mr. Griffin replied that race, voting age and population needed to be reviewed and if Ward X is found to be X% out of balance with the other wards, changes would need to be implemented." (Exhibit D., p.5,¶5).

4.25 Again expressing a lack of certainty if there was an actual need to redefine the wards.

4.26 Council Member Rainey asked who has the final say and the City Attorney told them that they do. He added that the Department of Justice could overrule them. (Exhibit D., p.5,¶6).

4.27 Council Member Daeke asked what would be the ramification if at the public hearing, the public was against delaying the election. (Exhibit D., p.5,¶6).

4.28 City Attorney Zollicoffer advised Council and the public that individuals losing the election could sue the City. (Exhibit D., p.5,¶6).

4.29 As there was no more questions at that regular council meeting, the Mayor put the matter of "*Setting Public Notice for Delay of Municipal Elections from October 2011 to May of 2012*" to the floor for a vote. (Exhibit D., p.5,¶7).

4.30 Arguably, at this point, the City of Henderson takes the first step to administering NCGS §160A-23.1.⁶

4.31 The measure was passed unanimously and a Notice was published in the Henderson Daily Dispatch stating the October 2011 Elections would be delayed until May of 2012.

4.32 Such Notice, published on March 31, 2011, effectively gave notice to municipal elections candidates, the majority of whom were African American, that the regularly scheduled municipal elections have been canceled.

4.33 That the city's current governing body would remain in power until an alternatively scheduled election could be organized.

4.34 Two such African American Mayoral candidates are Juanita Summerville and Deryl von-Williams.

4.35 The Mayoral Election allows for all voters of the city at large to participate. Therefore, the need for redistricting, or not, would have not affect on that election.

4.36 Notwithstanding the above, no regularly scheduled Mayoral Election was held in October, 2011 and the then Mayor/Defendant remained in office unelected.⁷

4.37 Also of the March 28, 2011 Council Meeting, Resolution 11-32 was passed by a unanimous vote. See attached Resolution, Exhibit E.

⁶Other evidence support that this turning point occurred one month earlier. In any event, preapproval to administer NCGS §160A-23.1 had not been requested or approved by the United States DOJ pursuant to the Voting Rights Act of 1965.

⁷Imagine a similar scenario occurring in Wake County, particularly when considering the contentious School Board Elections.

4.38 Resolution 11-32 is entitled “A RESOLUTION TO HOLD A PUBLIC HEARING ON A PROPOSEAL TO DELAY THE 2011 MUNICIPAL ELECTIONS PURSUANT TO N.C.G.S. §160A-23.1” Exhibit E.

4.39 The Resolution states the 2010 Census redistricting data providing block by block counts, and counts broken down by race has been recently released, but is not yet “snapped” onto the City's GIS system and may not be in usable form by the City of Henderson for days or weeks.

4.40 And, that the City is unable to determine the respective populations in its various electoral districts and thus compare the populations of the various districts (necessary to comply with the “one-person one vote” requirement).

4.41 The related Notices were published in the Henderson Daily Dispatch on March 31, 2011 and April 7, 2011, setting the date for a Public Hearing on April 11, 2011⁸. See attached Notices, Exhibit F. Of note, the actual notice is dated March 25, 2011, 3 days before Resolution 11-32 was ever voted on.

4.42 At the April 11, 2011 Council Meeting, the matter of delaying/canceling the 2011 election was put on the agenda for a Public Hearing⁹, but was called at a portion of the meeting set aside for specific agenda items which did not include the delay of the 2011 Municipal Elections.

4.43 Council rules/guidelines only permit comments on listed agenda items by persons who have signed in on a form provided by the City Clerk before the start of the meeting. Guideline number 7 of the 'Citizen Comment Guidelines' state: “Citizen should not expect specific Council action, deliberation and/or comment on subject matter brought up during public comment section unless and until it has been scheduled as a business item on a future meeting agenda.” Id. See April 11, 2011, Agenda, Exhibit G.

4.44 The same defeating any notion of the Public Hearing required by law.

4.45 The issue was called to the floor by City Manager Griffin and asked the City Attorney to review “the purpose for the delay of the elections.” [emphases on the past tense].

4.46 The City Attorney told the public that “according to the 2010 Census there seems to have been a decrease in the population within the City and perhaps a population shift from the East to the West. These changes may place the City Wards out of balance and it is impossible to review all the data before the required July deadline.” (Exhibit F, p.4, ¶2). [emphases on the hypothetical nature of the City Attorney's explanation].

4.47 North Carolina law does not allow for the canceling or delaying of an election based upon speculation of a possible population imbalance within a City's political wards. See NCGS §160A-23.1.

⁸NCGS §143-112 requires that Notice of a Public Hearing must be first published at least 7 days before the date of the hearing.

⁹Council rules/guidelines governing Public Hearings allows anyone wishing to comment to do so without requiring that person to sign in before the start of the Meeting.

4.48 The Mayor opened the so called hearing and asked if anyone wanted to speak up in favor of delaying the elections. No one came forward.

4.49 The Mayor asked if anyone wanted to speak up against delaying the elections. No one came forward.

4.50 The matter was then put to a vote and was approved unanimously by the full Council. See resulting Resolution 11-37, attached at Exhibit H.

4.51 Resolution 11-37 goes on to reiterate previously asserted, false claims such as: (1) NCGS § 160A-23.1 provides a special rule for redistricting¹⁰; (2) that seeking preclearance from the Department of Justice at that time would result in a lengthy delay before approval,¹¹ due to an “overwhelming number of Section 5 preclearance submissions immediately following the release of census redistricting information”; (3) That the Department of Justice has 90 days to reply after the submission has been received¹²; (4) That one-person one-vote or some other law requires that the City of Henderson to cancel it's regularly scheduled elections to allow them the opportunity to assess the need to redistrict¹³; That the census data was not currently in usable form.

4.52 As of March 2, 2011, the City of Henderson, North Carolina has been in receipt of official 2010 U.S. Census information regarding the populations of the four political wards of the City of Henderson.

4.53 This information was specifically prepared by the Geographic Data Division, of the U.S. Census Bureau for official purposes of determining matters regarding the need for redistricting. See attached Map and population block level cart broken down by race, age and political wards, Exhibit I. (*seen below, second table showing persons over 18*).

¹⁰Other than the section's title, the enactment provides rules for delaying an election after the U.S. Census reveals a *bona fide* population imbalance so severe that the election could not be lawful held under such circumstances.

¹¹Once a §5 Submission has been made under the Voting Rights Act, the DOJ must respond within 60 days or the request is assumed to be granted.

¹²Again the DOJ has 60 days not 90 days.

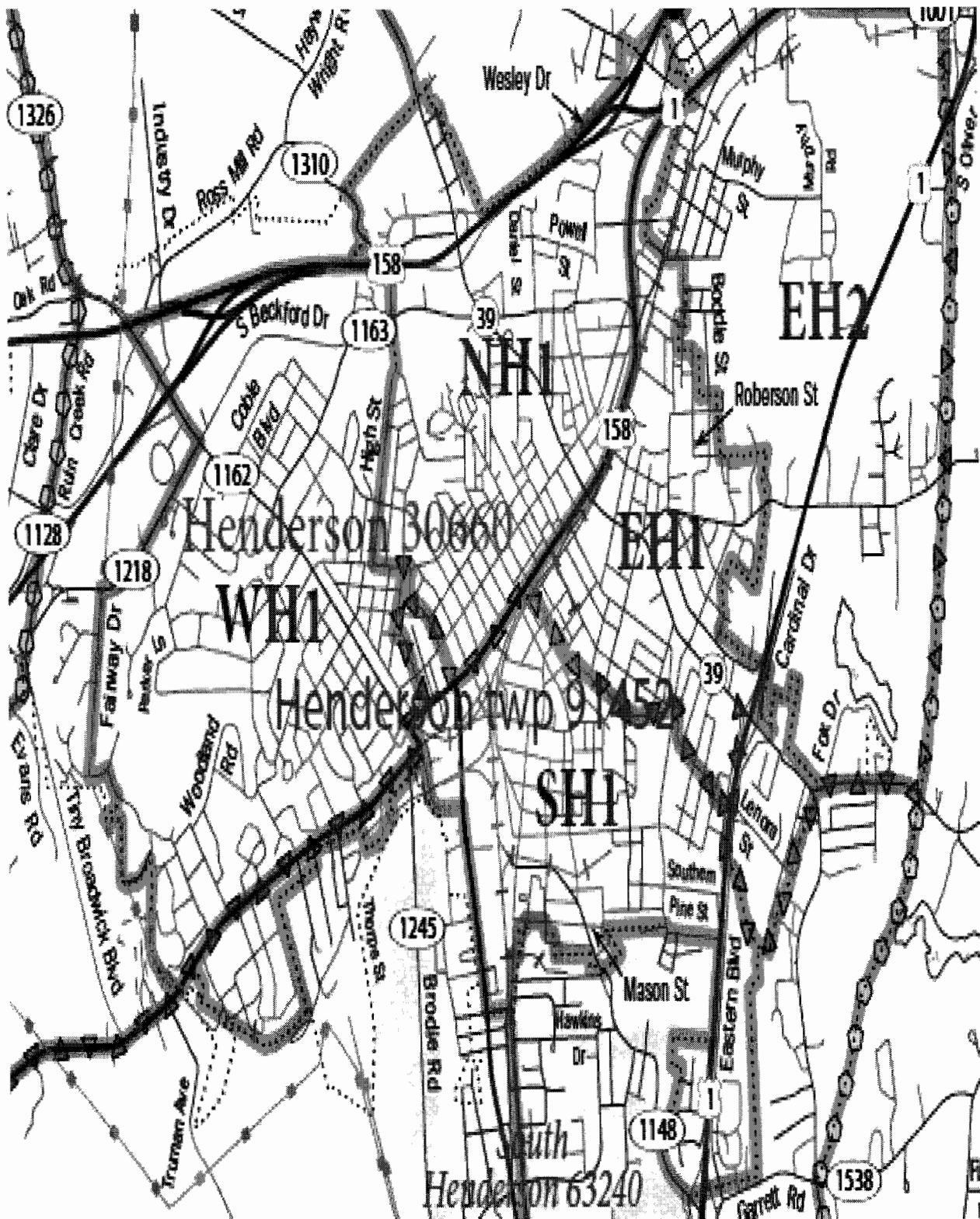
¹³The one-person one-vote does not require a formula or mechanisms to refine the ward boundaries each time there appears to be a small population shift. NCGS 160A-23.1 allows for a delay in the election only after census data shows a population imbalance, at this time the City Attorney and City Manager is claiming they don't know if there is a need to redistrict.

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/pl94-171.pdf>

NOTE: Change to the California, Connecticut, Mississippi, New Hampshire, Virginia, and Washington P.L. 94-171 Summary Files as delivered.

	Henderson city (part), Henderson township (part), Voting District EH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District IH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District SH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District WH1, Vance County, North Carolina
Total	3,184	3,561	3,605	3,664
Population of one race:	3,151	3,496	3,558	3,624
White alone	362	430	954	2,298
Black or African American alone	2,597	3,016	2,309	1,210
American Indian and Alaska Native alone	12	5	13	13
Asian alone	2	16	7	65
Native Hawaiian and Other Pacific Islander alone	0	0	0	0
Some Other Race alone	178	29	275	38
Two or More Races:	33	65	47	40
Population of two races:	30	57	44	37
White; Black or African American	10	30	16	8
White; American Indian and Alaska Native	2	2	6	8
White; Asian	1	1	0	6
White; Native Hawaiian and Other Pacific Islander	0	0	0	0
White; Some Other Race	7	1	1	3
Black or African American; American Indian and Alaska Native	6	20	11	5

	Henderson city (part), Henderson township (part), Voting District EH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District IH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District SH1, Vance County, North Carolina	Henderson city (part), Henderson township (part), Voting District WH1, Vance County, North Carolina
Total	2,298	2,565	2,583	2,930
Population of one race:	2,281	2,523	2,560	2,906
White alone	281	359	770	1,989
Black or African American alone	1,872	2,128	1,607	844
American Indian and Alaska Native alone	7	5	11	8
Asian alone	2	11	6	40
Native Hawaiian and Other Pacific Islander alone	0	0	0	0
Some Other Race alone	119	20	166	25
Two or More Races:	17	42	23	24
Population of two races:	15	35	20	22
White; Black or African American	2	14	1	4
White; American Indian and Alaska Native	2	1	5	6
White; Asian	0	0	0	4
White; Native Hawaiian and Other Pacific Islander	0	0	0	0
White; Some Other Race	4	0	0	0
Black or African American; American Indian and Alaska Native	5	18	6	4
Black or African American; Asian	0	0	4	0
Black or African American; Native Hawaiian and Other Pacific Islander	0	1	0	0
Black or African American; Some Other Race	2	0	2	2



4.54 Mr. Zollicoffer acknowledges that they were in fact, as of March 28, 2011, in receipt of block level 2010 Census information broken down by the wards.

4.55 Instead of accepting this information, as shown below, the City Manager informed the public that the law required that they do their own independent population analysis and estimate which would not be complete until after July 20, 2011.

4.56 That this analysis and estimate would be prepared by Community Development Director, Erris Dunston utilizing her own Geographic Information System and a so called house by house count.¹⁴

4.57 North Carolina General Statute §160A-23 requires that a municipality such as Henderson must establish as a addendum to its Charter, a map and an instrument containing the legal description of the City's political subdivisions reflecting such boundaries within its City Limits.

4.58 The U.S. Census data by ward is based upon geographical information supplied by the City of Henderson.

4.59 The U.S. Census data shows the ward populations by race and age.

4.60 This information is the result of a geographical information systems (GIS) block level filter overlay, prepared by the U.S. Census Bureau and is the official block data for the City of Henderson for purposes of informing the City regarding possible redistricting.

4.61 The U.S. Census map shows Henderson's four wards which corresponds to Ward 1 as NH 1, Ward 2 as WH 1, Ward 3 as SH 1 and Ward 4 as EH 1. See attached maps prepared by the City of Henderson, Exhibits I.

4.62 Of note, the City's population declined by somewhere between 700 and 1300 persons between the 2000 and 2010. U.S. Census.

4.63 The political subdivision known as South Henderson is not actually a subdivision of the City of Henderson, NC, but lies outside the City Limits.

4.64 When adding the official population total taken from data prepared by the U.S. Census Bureau for the 2010 Census of all four wards of the City of Henderson, and dividing that total by 4, the average Ward would come out to 3,500, to be 100% balanced with the three other Wards.

4.65 The 4 Wards, according to 2010 U.S. Census Bureau data, were in the following approximate compliance: Ward 1 being 1.5% above average; Ward 2 being 4.5% above average; Ward 3 being 3% above average and Ward 4 being just under 9% below average.

4.66 By comparison, when adding the official population total taken from data prepared by the U.S. Census Bureau for the 2000 Census of all four Wards of the City of Henderson, and dividing that total by 4, the average ward would come out to 3,850 to be 100% balanced with the

¹⁴Mr. Zollicoffer informed Mr. Pitts that the city had done a house by house count and found some variations between its count and the count done by the U.S. Census, citing that one shown by the census had 200 people. When going house to house, that block showed much less.

three other Wards.

4.67 The 4 Wards, according to 2000 U.S. Census Bureau data, were in the following approximate compliance: Ward 1 being 3.4% above average; Ward 2 being 9.9% below average; Ward 3 being 4% above average and Ward 4 being 2.5% above average.

4.68 The population by ward were essentially within the same balance in 2010 as was the case in 2000 according to the respective Census data. See attached 2000 Census data, Exhibit J.

4.69 Plaintiffs makes the following point in response to to the City Manager's statement to the public on March 28, 2011 that "[i]n 2000 a house by house count had recently been conducted and it was felt the wards were not out of balance, therefore the 2001 elections were not delayed. However, due to the lost of population it is important the figures be reviewed before the election. (Exhibit D, p.5, ¶4.).

4.70 One notable exception between the Ward data from the 2000 Census and the data from the 2010 Census; although the balances by percentages are slightly less balanced in 2000 as in 2010, the one ward which was shown to be 9.9% under in population, [Ward 2] was in 2000 predominately white and the ward shown in 2010 to be 9% under in population, [Ward 4] was predominately African-American.

4.71 The City of Henderson found no need in 2000 to redefined Ward 2 to balance the population with the other wards, which all but certainly would had involved diluting the ratio of white residences to the Ward's population.

4.72 In 2011 the City of Henderson, without cause, and while perpetrating a fraud against the public, took the opposite approach and politically gerrymandered Wards 1 and 3 by taking 2 areas of predominately white residents from Ward 2 and adding them to Wards 1 and 3.

4.73 A third area was taken from Ward 3 and added to Ward 4, raising the obvious question as to why redefine Ward 3 to add area when it was already above the average ward population.

4.74 As the result of political gerrymandering, the African American vote has been diluted.

4.75 By the City's own estimate [which Plaintiffs contend overestimates the City's population be over 1000 residents] which is given as evidence of a need or justification to redefine the City's 4 existing Wards, the average Ward is 4,102.025. See p. 3 of the September 29, 2011 §5 Submission to DOJ, Exhibit K.

4.76 This estimate shows absolutely no necessity for redefining the City's Wards and that the only explanation for redistricting at this point was political as Ward 1 at 4,066 is less than 1% under average; Ward 2 at 4,103 is less than 2 residents over average; Ward 3 at 4,143 is exactly 1% over average, and Ward 4 at 4,097 is 5 persons under average, according to the City's then estimate, therefore, making it hard to imagine 4 political subdivision being more balanced.

4.77 By comparison, the State's 13 U.S. Congressional Districts vary in populations by as

many as 200,000 persons.

4.78 Underscoring the unofficial nature of the City's estimate, the City's estimate shows Ward 2 as having more registered African American Voters, 931, than African-Americans, 832. *See* pp. 3-4 of the September 29, 2011 §5 Submission to DOJ, Exhibit K.

4.79 As a result of delaying/canceling the regularly scheduled Municipal Election, African-American voters were not able to cast their votes allowing unelected parties to remain in power against the will of the people.

4.80 That the City of Henderson and its then leadership unnecessarily postponed a regularly scheduled election for reasons that may or may not become apparent through the course of this litigation, however, not out of necessity.

4.81 On or about April 27, 2011, after postponing the 2011 Municipal Election without preapproval, the United States Department of Justice received from the City of Henderson a §5 Submission to change its election laws permitting the “[p]ostponement of 2011 Municipal Elections (for approximately 7 months) pursuant to the North Carolina General Statutes (due to a delay in the receipt of the 2010 block-by-block census information in usable form needed for any redistricting required.” *See* p. 1 of the April 15, 2011 §5 Submission to DOJ, Exhibit L.

4.82 The State of North Carolina was free to enact and administer NCGS 160A-23.1 *et seq.* But the City of Henderson North Carolina and Vance County North Carolina was not and is not free to administer NCGS 160A-23.1 *et seq.* without pre-approval from the United States DOJ.

4.83 Furthermore, prior to the regularly scheduled 2011 election and after the 2009 election, the City of Henderson amended its City Charter to extend the terms of elected officials from two year terms to four years. In the case of City Council Members Seats, future elections for four of the council seats would stagger with the other four. However, two year terms would not be phased out completely until 2013.

4.84 To accomplish this result, in this particular election cycle the City of Henderson developed in private sessions a process [to which the Vance County Board of Elections is unaware of its terms] to determine which four City Council Member would be running for two year terms and which four seats would be elected on a four year basis.

4.85 The public was not advised as to which seats would be a four years term and which seat would be for two year term.

4.86 The City of Henderson did not seek or receive DOJ preapproval to administer the process of determining which seats would be elected for two years and which seat for four years.

4.87 Vance County, the political subdivision responsible for holding the rescheduled Henderson Municipal Election, did not request or receive permission from the DOJ to administer NCGS 160A-123.1 *et seq.* on behalf of the City of Henderson or otherwise organize the Municipal Election in consolidation with the County Elections.

4.88 The Vance County Board of Election published 3 Notices of the Municipal Election in the Daily Dispatch, Sunday March 11-25, 2012 which announced the election as a Non-partisan Primary¹⁵ when in fact Henderson Municipal Elections are plurality elections. See attached Notice, Exhibit M.

4.89 Mr. Pitts brought this matter to the attention of the Vance County Board of Elections, but no corrections were made.

4.90 This, faulty notification to the public, factored with the off-scheduling of the election, confused African-American voters and result in an extremely low voter turn out.

4.91 Additionally, the City of Henderson misinforms the Federal Government in its §5 Submission to DOJ: The City Attorney advised that North Carolina General Statute permits a postponement of a the election due to a delay in the receipt of the block-by-block census information in usable form. See p. 1 of the April 15, 2011 §5 Submission to DOJ, Exhibit L.

4.92 The City of Henderson does not specify the Statute for which the City is seeking preapproval of, as well as North Carolina General Statute does not provide for a postponement of an election based upon a delay in the receipt of 2010 Census data.

4.93 The statute allows a postponement of an election where US Census information has established a current need for redistricting, not a possible or future need for redistricting.

4.94 The City of Henderson did not meet the state law requirement, to postpone a Municipal Election.

4.95 There was no delay in the receipt of 2010 Census information, and had there been a need for redistricting, it could had been done in plenty of time to complete before three days prior to the July 20, 2011 filing deadline.

4.96 The City of Henderson did not meet the federal law requirement, to postpone a Municipal Election.

4.97 Additionally, the City of Henderson does not inform the Federal Government in its §5 Submission to DOJ that none of the City's elected official ran on the prospect of an extended term of possibly an addition year. See p. 1 of the April 15, 2011 §5 Submission to DOJ, Exhibit L.

4.98 Additionally, the City of Henderson does not inform the Federal Government in its §5 Submission to DOJ that postponing the regularly schedule election would result in the reduction of any newly elected official terms and or otherwise permit an incumbent to serve a portion of the newly elected official's term without a mandate. See p. 1 of the April 15, 2011 §5 Submission to DOJ, Exhibit L.

¹⁵Leaving one to conclude that the results of such "primary" would not be final or determinative of an end result. Id.

4.99 The City of Henderson misinforms the Federal Government in its §5 Submission to DOJ in that the City Attorney cites as the basis for his suspension that the wards were out of balance was the claim that an official estimate of the City's population was 16,409 in August, 2010 and that an earlier preliminarily count (not for official use) showed 15,777. See p. 1 of the April 15, 2011 §5 Submission to DOJ, Exhibit L.

4.100 There is no official 2010 population estimate showing the City's population at 16,409.

4.101 16,409 conforms exactly to the 2000 Census for the City of Henderson, including South Henderson which is actually outside the City Limit.

4.102 The City of Henderson did not meet the state law requirement, to redefine the City's 4 political ward boundaries.

4.103 That the City of Henderson misinforms the Public at the so called Public Hearing the "Ward 4 was 16% short of the obligatory norm, which is approximately 3,842 individuals[.]" See p. Relevant Portions of September 12, 2011 Council Meeting, Exhibit N.

4.104 The City of Henderson misinforms the Federal Government in its September 29, 2011 §5 Submission to DOJ, in that it advises the government that "there being variances in excess of 16% deficit from the mean in Ward 4[.]" See p. 1 of the September 29, 2011 §5 Submission to DOJ, Exhibit K.

4.105 There exist no official block by block, 2010 Census data which shows any of the Wards being 16% out of balance either plus or minus.

4.106 That the determination of the need to redistrict was based upon the City's independent population estimate and not the 2010 U.S. Census data as required by North Carolina General Statute §160A-23. See attached Statute, Exhibit O.

4.107 That City Attorney Zollicoffer advised Mr. Pitts that the City of Henderson when out and did a house by house count.

4.108 That the City Attorney took exception when Mr. Pitts described his house by house count as an independent population estimate. He replied that it was no estimate, that we when house to house because we knew the Census information was no right.

4.109 He then cited as an example that the 2010 Census data showed one block that was more than 200 people, that when they when out there, there was nowhere near that amount of people in that particular block. [Paraphrasing conversation between Mr. Pitts and Mr. Zollicoffer.]

4.110 The City Attorney does not deny these facts, in fact the City of Henderson, speaking through their attorney, informs the Federal Government in its September 29, 2011 §5 Submission to DOJ, that "[b]elow is a chart indicating the City's population broken down by race (using adjusted 2010 U.S. Census data aforesaid) showing the population by wards as they presently exist pursuant to the proposed redistricting[.]" See p.3 of the September 29, 2011 §5 Submission

to DOJ, Exhibit K.

4.111 The chart claims that the population of Henderson as of September 29, 2011 to be 16,409 according to the City's estimate. See p.3 of the September 29, 2011 §5 Submission to DOJ, Exhibit K.

4.112 Inexplicably the chart reflects that the existing population of Henderson's 4 Wards, as of September 29, 2011 being within 1% with each other according to the City's estimate. See p.3 of the September 29, 2011 §5 Submission to DOJ, Exhibit K.

4.113 The City of Henderson did not meet the federal law requirements to redefine the City's 4 political ward boundaries.

4.114 That the process of redefining the ward boundaries had already been completed when the §5 Submission to the DOJ was made on or about September 29, 2011. See DOJ Response, dated November 29, 2011, Exhibit S.

4.115 That when a response was received from the DOJ, non of the ex officials claiming lawful authority possessed jurisdiction to ratify the approval given by virtue of the fact that the DOJ has imposed no objection.

4.115 That the Ordinance to do the same had already been past. See Ordinance, Exhibit Q.

4.116 That the Resolution of Intent was past before a Public Hearing on August 8, 2011. See attached copy of the Resolution 11-74, Exhibit P.

4.117 Finally, the conclusion is most obvious, that the postponement of the municipal election and the amendment to the city charter was not done of necessity but done to complete some political or financial result. Possibly, in violation of criminal law.

V. SPECIAL ALLEGATIONS

A. COUNT ONE

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. §1983

5.1 While re-alleging the above, and while acting under color of official right and state law, Defendants Vance County Board of Elections, including all unnamed and named individuals, did or attempted to do, and/or conspired to do, in some way or degree, violated the rights of the citizen of Henderson North Carolina by failure to assure and supervise the holding of a 2011 Municipal Election for the City of Henderson, which is situated in Vance County. This conduct being committed by persons acting in both their official and personal capacity in violate the 14th and 15th right to vote.

The same in violation of 42 U.S.C. §§1983 and 1985.

B. COUNT TWO

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. §1983

5.2 While re-alleging the above, and while acting under color of official right and state law, Defendants named above and referred to as elected Henderson City Officials and Appointees, including all unnamed and named individuals, did or attempted to do, and/or conspired to do, in some way or degree, violated the rights of the citizen of Henderson North Carolina by failure to organize and approve holding of a 2011 Municipal Election for the City of Henderson, which is situated in Vance County. This conduct being committed by persons acting in both their official and personal capacity in violate the 14th and 15th right to vote.

The same in violation of 42 U.S.C. §§1983 and 1985.

C. COUNT THREE

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. §1983

5.3 While re-alleging the above, and while acting under color of official right and state law, Defendants State Board of Elections, including all unnamed and named individuals, did or attempted to do, and/or conspired to do, in some way or degree, violated the rights of the citizen of Henderson North Carolina by failure to assure and supervise the holding of a 2011 Municipal Election for the City of Henderson, which is situated in Vance County in the state of North Carolina. This conduct being committed by persons acting in both their official and personal capacity in violate the 14th and 15th right to vote.

The same in violation of 42 U.S.C. §§1983 and 1985.

D. COUNT FOUR

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. §1983

5.4 While re-alleging the above, and while acting under color of official right and state law, Defendants the General Assembly for the State of North Carolina, including all unnamed representatives, did do, in regular sessions of State Congress enacted a statute, [codified at NCGS §160A-23.1] which in its particular subsection (d) reads: “If the council adopts the resolution provided for in subsection (a) of this section and does not adopt the changes, or does adopt the changes, but approval under the Voting Rights Act of 1965, as amended, is required, and notice of such approval is not received, by the end of the third day before the opening of the filing period, the municipal election shall be rescheduled as provided in this subsection and current officeholders shall hold over until their successors are elected and qualified[.]” *Id.* undermines the §5 preclearance requirement contained in the Voting Rights Act of 1965. This conduct being committed by persons acting in both their official and personal capacity in violate the 14th and 15th right to vote.

The same in violation of 42 U.S.C. §§1983 and 1985.

E. COUNT FIVE

VOTING RIGHTS ACT OF 1965, 42 U.S.C. §1973

5.5 While re-alleging the above, and while acting under color of official right and state law, Defendants Vance County Board of Elections, including all unnamed and named individuals, did administer and/or conspired to do so, changes in the its elections laws and the election laws of the City of Henderson without preclearance under §5 of the Voting Rights Act of 1965. To wit: Such changes being the administering of NCGS §160A-23.1 which provides special procedures allowing for the postponement of a municipal election under exceptional circumstances, the same in violated the Voting Rights Act of 1965.

F. COUNT SIX

VOTING RIGHTS ACT OF 1965, 42 U.S.C. §1973

5.6 While re-alleging the above, and while acting under color of official right and state law, Defendants named above and referred to as elected Henderson City Officials and Appointees, including all unnamed and named individuals, did or attempted to do, and/or conspired to do, in some way or degree, violated the rights of the citizen of Henderson North Carolina, including all unnamed and named individuals, did administer and/or conspired to do so, changes in the its elections laws and the election laws of the City of Henderson without preclearance under §5 of the Voting Rights Act of 1965. To wit: Such changes being (1) the administering of NCGS §160A-23.1 which provides special procedures allowing for the postponement of a municipal election under exceptional circumstances, [circumstance which Plaintiffs allege were never met by either the City of Henderson or Vance County], (2) Redefining the City 4 Political Wards without preclearance or necessity and (3) developing and administering a non-transparent selection process to determine which of the 4 City Council Seats would run for two year terms and which 4 seats would be elected on a four year basis. This being done with no authority under state law and without preclearance under §5 of the Voting Rights Act of 1965. The same in violated the Voting Rights Act of 1965.

G. COUNT SEVEN

CIVIL RIGHTS VIOLATION UNDER 42 U.S.C. §1983

5.7 While re-alleging the above, and while acting under color of official right and state law, Defendants named above and referred to as elected Henderson City Officials and Appointees, including all unnamed and named individuals, did or attempted to do, and/or conspired to do, in some way or degree, violated the rights of the citizen of Henderson North Carolina by gerrymandering the City's 4 Political Wards for purposes of partisan gains did so in violation of NCGS §160A-23 requiring that any redefining of political district must be based upon official U.S. Census Data and not any other or independent population estimates. This conduct being

committed by persons acting in both their official and personal capacity in violate the 14th and 15th right to vote.

The same in violation of 42 U.S.C. §§1983 and 1985.

VI. DEMAND FOR DAMAGES

Petitioners seek the following:

6.1 Cost of the Action.

6.2 Punitive Damages.

6.3 Emergency/Preliminary Injunction Declaratory Relief as Follows:

6.4 Declaring that the elective terms of each named Henderson appointees and elected officials had expired as of November, 2011.

6.5 Declaring that each named elected official violated their *Oath of Office* to uphold the law and support the State and Federal Constitution.

6.6 That said named appointees and elected official failed to arrange for the next regularly scheduled Municipal Elections election before their terms in office had expires.

6.7 That said Defendants and Defendants Vance County Board of Elections failed to give adequate notice of the proposed May 8, 2012, falsely advertising that such election was a non-partisan primary.

6.8 A Declaration invalidating any change in election law administered by either Vance County or the City of Henderson without preclearance of §5 of the Voting Rights Act of 1965.

6.9 A Declaration or Finding that the election held under the above circumstances was in fact unlawful.

6.10 A Declaration and or Order enjoining the qualification or swearing in of persons elected under the circumstances cited above.

6.11 A Declaration invalidating or an Order enjoining any election results achieved while in violation of the Voting Rights Act of 1965.

6.12 Establish a Declaration to be submitted to the Department of Justice for §5 preapproval of a plan to conduct an alternative special election to fill seats made vacant by the law suit.

6.13 Declaring that there was no legal necessity to either delay the Municipal Election or redefine the boundaries of City's 4 political boundaries.

6.14 A Declaration disqualifying said officials from holding future elective office in the City of Henderson, North Carolina and;

6.15 Enjoining the Municipal Elections or the certification of the result of May 8, 2012 and the enforcement of any use of politically gerrymandered ward boundaries.

6.16 Enjoining the enforcement of any spending, budget, agreements, planning undertaken by ex-City Official at a time after their individual terms have expired and an additional declaration rendering such ex-officials responsible for any debt incurred by acts taken without authority.

6.15 Three Judge Court


6.16 Appointment of Counsel.

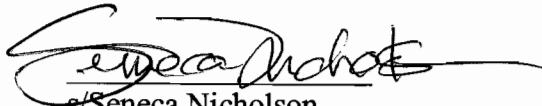
6.17 Class Action Certification.

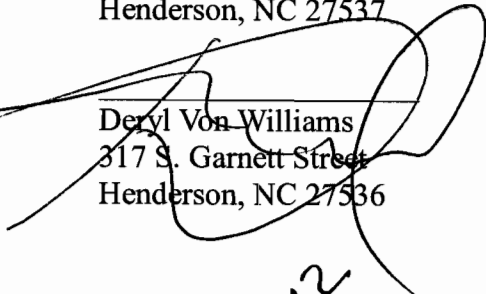
6.18 Where evidence is shown of criminal involvement by Defendants or other parties, referral to the Department of Justice Department.

6.19 Appointment of an DOJ Civil Rights Division Observer.

Wherefore Plaintiffs pray for just and equitable relief.


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