No. 16-1468 (L), 16-1469, 16-1474, & 16-1529

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NORTH CAROLINA STATE CONF. OF NAACP, *et al.*,
Plaintiffs – Appellants,

v.

PATRICK MCCRORY, *et al.*,
Defendants – Appellees.

On Appeal from the U.S. District Court for the Middle District of North Carolina, Case Nos. 1:13-cv-00660 (TDS-JEP), 1:13-cv-00658 (TDS-JEP), 1:13-cv-00861 (TDS-JEP).

AMICUS CURIAE BRIEF OF JUDICIAL WATCH, INC. AND ALLIED EDUCATIONAL FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMATION

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June 16, 2016

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IDENTITY AND INTERESTS OF THE *AMICI* [1]

Judicial Watch is a non-partisan, public interest organization headquartered in Washington, DC. Founded in 1994, Judicial Watch seeks to promote accountability, transparency and integrity in government and fidelity to the rule of law. In furtherance of these goals, Judicial Watch regularly files *amicus curiae* briefs, and prosecutes lawsuits as well as *amicus curiae* briefs relating to election integrity and voting.

The Allied Educational Foundation ("AEF") is a nonprofit charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study, including electoral law. AEF regularly files *amicus curiae* briefs as a means to advance its purposes, and has previously filed *amicus curiae* briefs in election law matters before federal courts.

Judicial Watch and AEF appeared in 2014 in this case before this Court, filing an *amicus curiae* brief supporting the North Carolina Appellees and

[1] Undersigned counsel contacted all parties for their consent to this *amici curiae* brief, and all parties have given their consent.

opposing preliminary injunction on September 17, 2014. This brief is submitted pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure.[2]

Amici's interest in this case is to ensure North Carolina's elections are conducted with integrity and to ensure that all citizens have confidence in the legitimacy of election results. *Amici* are concerned that the relief requested by Plaintiffs-Appellants in this case, if granted, would have a chilling effect on voter confidence in the integrity of elections, both in North Carolina and nationwide. If North Carolina is prohibited from requiring voter ID and compelled to reinstate same-day registration, extend the early voting period, and permit out-of-precinct provisional ballots, many North Carolina citizens could have their votes diluted by unlawful ballots cast in the names of false or duplicate registrations. Furthermore, Plaintiffs-Appellants' requested relief will undermine the confidence in integrity of elections among citizens. As the Supreme Court has noted, public confidence in the integrity of the electoral process encourages citizen participation in the democratic process. *Crawford v. Marion County Election Board*, 553 US 181, 197 (2008). Conversely, a lack of integrity undermines confidence in the electoral system and discourages citizen participation in democracy.

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[2] No party's counsel authored the brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person other than the *amici curiae* or their counsel contributed money that was intended to fund preparing or submitting the brief.

SUMMARY OF ARGUMENT

The fundamental purpose of the Voting Rights Act of 1965 ("VRA"), 52 U.S.C. § 10301 *et seq.*, is to guarantee effective exercise of the electoral franchise for minorities. *Beer v. United States*, 425 U.S. 130 (1976). It is not meant to specially protect minorities from the usual burdens of voting. *Crawford*, 553 U.S. at 198. Protections provided by Section 2 of the VRA, 52 U.S.C. § 10301 ("Section 2"), provide assurance that a rule or practice shall not burden minorities more than other voters, regardless of whether the rule or practice slightly impairs the ability to register or vote. *See Crawford*, 553 U.S. at 198.

A Section 2 violation must show that the "disproportionate impact results from the interaction of the voting practice with the effects of the past or present discrimination and is not merely a product of chance." *Frank v. Walker,* 17 F. Supp. 3d 837, 877 (E.D. Wis. 2014). As the Seventh Circuit recently noted, "[i]t would be implausible to read Section 2 as sweeping away almost all registration and voting rules. It is better to understand §2(b) as an equal treatment requirement (which is how it reads) than as an equal-outcome command (which is how the district court took it)." *Frank v. Walker*, 768 F. 3d 744, 754 (7th Cir. 2014).

In *Crawford*, the Supreme Court emphasized that the inconvenience associated with obtaining a voter identification card does not qualify as a

significant increase over the usual burdens of voting. 553 U.S. at 198. Section 2, indeed, forbids discrimination by "race or color," but it does not require states to overcome societal effects of private discrimination that affect income or wealth of potential voters. *Frank*, 768 F.3d at 753. There is no denial or abridgment unless the restriction imposes a burden more than usual. *Crawford*, 553 U.S. at 198.

The Seventh Circuit's finding of no Section 2 violation in *Frank* upheld Wisconsin's voter ID requirement. The Court determined that Wisconsin's voter identification requirement did not draw any racial lines, nor was there any finding that racial minorities had less "opportunity" than whites to obtain a valid photo identification. *Frank*, 768 F.3d at 753. Instead, *Frank* concluded that because minorities are more impoverished, they are less likely to use that opportunity. *Id*. But there is no less *opportunity* available to them than anyone else. *Id*. The court in *Frank* concluded that a mere disparate impact does not show a "denial" of anything by the state, which, of course, is required by Section 2. *Id*. The Wisconsin voter ID requirement extends to every citizen an equal opportunity to get a photo ID.

Similarly, the changes to the voting laws in North Carolina extend an equal opportunity to register and cast a ballot to everyone. If individuals are able to reach voting places but *choose* not to, it is wholly inaccurate to describe the

requirement to travel to the polls as a legal obstacle causing disenfranchisement. *See Frank*, 768 F. 3d at 749.

The essential inquiry in this appeal is whether the political process is equally open to all. If a law or practice does not hinder equal access for minority voters, even if it imposes a slight burden, there is no Section 2 violation. Unless a state has made it "needlessly hard" to register and vote, it has denied nothing to any voter. *Frank*, 768 F.3d at 744. The ruling in *Frank* strongly supports the ruling by the District Court in this appeal.

Furthermore, statistical evidence showing that a law bears more heavily on minorities does not necessarily violate Section 2. *See Smith v. Salt River Project Agric. Improvement & Power Dist.*, 109 F.3d 586, 595 (9th Cir. 1997). The inquiry must continue to determine whether the disproportionate impact results in denying or abridging minorities' right to vote. As the District Court correctly found, the answer to this question is no.

ARGUMENT

I. To Show a Violation of Section 2 of the Voting Rights Act, Appellants Are Required to Satisfy a Robust Causation Requirement.

Section 2 of the Voting Rights Act forbids a State from imposing or applying voting qualifications, practices, or procedures "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…" 52 U.S. C. § 10301. This means that a challenged practice must have *caused* the result prohibited by the statute. 52 U.S.C. § 10301; *see also Thornburg v. Gingles*, 478 U.S. 30, 47 (1986).

Section 2 does not proscribe practices that merely *affect* voting. The statute sets a much higher liability standard. A violation occurs only where voters in a protected class have less opportunity than other voters "to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301. Establishing a violation of Section 2 requires more than showing that a law or practice results in a disparate impact. *Frank*, 768 F.3d at 753. It requires an additional showing that any disparate impact is causally connected to the denial of an equal opportunity to participate in elections and to elect representatives of choice. *Id.*

A minor inconvenience that affects one racial group more than another is insufficient to show the necessary discriminatory result. *Crawford*, 553 U.S. at 183. There must be a competent showing that minorities face a needlessly difficult burden to conform to the changes. *See Gingles*, 478 U.S. at 47. As the statutory language makes clear, the particular "result" that Section 2 prohibits consists of two elements, each of which must be established. More specifically, "[t]he plain text of § 10301 and the cases applying it require § 2 plaintiffs to prove both

unequal access *and* an inability to elect representatives of their choice." *Mark Wandering Med. v. McCulloch*, 906 F. Supp. 2d 1083, 1088 (D. Mont. 2012), *vacated as moot on other grounds*, 544 F. App'x 699 (9th Cir. 2013) (citing, *inter alia*, *Chisom v. Roemer*, 501 U.S. 380, 397-98 (1991)) (plaintiff's burden is to show "that its members had less opportunity . . . to participate in the political processes *and* to elect legislators of their choice") (emphasis added in *Chisom*); accord *White v. Regester*, 412 U.S. 755, 766 (1973).

Generalized studies addressing social and historical conditions are not enough to shed light on whether particular changes deprive minorities of the opportunity to participate in the franchise. *See Gingles* 478 U.S. at 36-37. While disparities might make it more burdensome for voters in some circumstances, simple disparities are not necessarily the result of discrimination. As the District Court observed, "[h]istorical discrimination is an unpersuasive basis for claiming that any witnesses needed or wanted to use same day registration," and in this case, voters' race played no role in their failure to vote. (Op. 353, 355).

A. Heightened Causation Requirement

Vote-denial claims – like those at issue here – require sufficient showings regarding causation and injury. Several courts of appeal have emphasized that a vote-denial claim requires proof that a challenged practice *caused* the harm

proscribed by Section 2. These same courts repeatedly have stressed that it is not enough merely to show that a challenged practice had a disproportionate impact on a particular race. *See Gonzalez v. Arizona*, 677 F.3d 383, 406 (9th Cir. 2012) (en banc), *aff'd sub nom., Arizona v. Inter Tribal Council of Ariz., Inc.*, 133 S. Ct. 2247 (2013) (even though "Latinos had suffered a history of discrimination . . ., socioeconomic disparities [and] racially polarized voting," there was "no proof of a causal relationship between [the challenged] Proposition 200 and any alleged discriminatory impact on Latinos."); *Smith*, 109 F.3d at 595 ("a bare statistical showing of disproportionate *impact* on a racial minority does not satisfy the § 2 'results' inquiry"); *Ortiz v. City of Phila. Office of the City Comm'rs* 28 F.3d 306, 308 (3d Cir.1994) (although "African-American and Latino voters are purged at disproportionately higher rates than their white counterparts," plaintiff "failed to prove that the purge statute caused" this disparity).

In short, "Section 2 plaintiffs must show a causal connection between the challenged voting practice and the prohibited discriminatory result." *Ortiz,* 28 F.3d at 312. Overcoming this substantial legal hurdle is possible only if the plaintiff can show that the right to vote is being impaired "because of," or "on account of," race. *See Univ. of Tex. Southwestern Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2527 (2013).

B. Substantial Injury Standard

In cases that have granted relief for vote denial, the harm caused by the challenged voting practice is almost invariably substantial. For example, in *Brooks v. Gant*, No. 12-5003, 2012 U.S. Dist. LEXIS 139070 at *23 (D.S.D. Sept. 27, 2012), the residents of Shannon County, who were predominantly Native Americans, had to travel one to three hours to another county to engage in early voting. The court found this opportunity "was substantially different from the voting opportunities afforded to the residents of other counties in South Dakota and to the majority of white voters." *See also Spirit Lake Tribe v. Benson County*, No. 2:10-cv-095, 2010 U.S. Dist. LEXIS 116827 at *9 (D.N.D. Oct. 21, 2010) (closure of 7 of 8 polling sites in a single county with a large Native American population will "have a disparate impact on members of the Spirit Lake Tribe because a significant percentage of the population will be unable" to get to the remaining location); *Brown v. Detzner*, 895 F. Supp. 2d 1236, 1249-50 (M.D. Fla. 2012) (vote denial is based on a denial of "*meaningful* access" to the polls) (emphasis added) (citing, *inter alia*, *Osburn v. Cox*, 369 F.3d 1283, 1289 (11th Cir. 2004)).

The important factor in Section 2 cases is whether challenged practice imposes a burden greater than the usual burden of voting. *See Crawford*, 553 U.S.

at 209 (burden of voter identification does not rise above the "usual burdens of voting").

C. Causation and Injury Elements Needed to Support a Violation of Section 2 are not Shown Here.

The injuries that have given rise to findings of Section 2 "results" violations are different in kind from the inconveniences imposed by the voting practices challenged in this lawsuit. The difference may be expressed in terms of two primary dimensions: the *significance* of a requirement faced by voters, and the *control* the voters have over whether they comply with the voting requirement at issue.

For example, in a traditional vote dilution case, a community of voters may have no practical chance to elect even a single member of a legislature. The affected voters in the minority community, moreover, have no control over this situation. They cannot modify their own behavior in a way that allows them to elect a preferred candidate, as long as they are a minority of the age-eligible voters in a jurisdiction with at-large voting.[3]

[3] A classic example is *United States v. Blaine County*, 157 F. Supp. 2d 1145 (D. Mont. 2001), *aff'd*, 363 F.3d 897 (9th Cir. 2004). The County Commission there relied on at-large elections and staggered terms of office. 363 F.3d at 900. Despite a Native American population of 45.2%, *id.*, "no Native American [had] served as a County Commissioner in the eighty-six year history of Blaine County." 157 F. Supp. 2d at 1147.

By contrast, the changes made by SL 2013-381 apply equally throughout the state to every voter and, therefore, the demands are simply not burdensome. Under the challenged law, North Carolina voters must (1) register 25 days before an election; (2) forgo same-day registration (which most states do not even have and which North Carolina only instituted in 2007); (3) "early vote" during the adjusted ten-day period; and (4) vote in their own precinct. The voters in North Carolina are in complete control of these outcomes. They can adjust to the new law by changing their own voting behaviors. As the turnout from the primary and general elections held after the enactment of SL 2013-381 demonstrate emphatically, that is exactly what North Carolina's voters, including African American voters, did.

It is beyond serious dispute that the changes in the voting laws in North Carolina do not interact with current conditions and historical discrimination to result in an inequality of opportunity for African Americans to exercise their right to vote in violation of Section 2. Despite the elimination of same-day registration and out-of-precinct voting, and despite the reduction of the days available for early voting, registration and voting – including registration and voting by minority voters – in the primary and general election increased in 2014 as compared to 2010. The District Court found that "African Americans did not need the eliminated mechanisms" and that they are "adaptable" to the many remaining easy

ways for North Carolinians to register and vote. (Op. 349, 374, and 376,). There is no showing that African Americans lack an opportunity to register and vote otherwise. That some minority voters may prefer to use same-day registration, early voting, and out-of-precinct voting over other available methods does not mean that without each of these options minority voters lack equal opportunity.

II. Appellants' Theory of Liability Improperly Imports Section 5 Standards into a Section 2 Analysis.

Section 5 of the VRA, which was rendered unenforceable by the Supreme Court ruling in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), had a retrogression standard. Violation of Section 5 could be found by showing the status of a minority had retrogressed or grown worse when compared to the status quo before the changes under challenge were made. *See Beer*, 425 U.S. at 130; *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320 (2000). However, claiming that there is a statistical impact upon minority voters greater than the impact under the previous voting practices does not mean there is a Section 2 violation. Unlike Section 5, Section 2 does not contain a retrogression standard. *See Holder v. Hall*, 512 U.S. 874, 883-84 (1994) ("retrogression is not the inquiry in Section 2 dilution cases … unlike in Section 5 cases … a benchmark does not exist by definition in Section 2 dilution cases.").

Quite simply, the inquiry under Section 2 is *not* whether elimination of practices or changes will worsen the position of minorities compared to preexisting voting standard, practice, or procedure. The Appellants, however, essentially argue that a Section 2 violation is established *by* the racially disparate preference of minority voters for modes of voting changed by SL 2013-381. Perhaps because they know that they cannot make the requisite showing, the Appellants make no effort to demonstrate, as would comport with Section 2's core requirement, that members of a protected class "have less opportunity than other [voters] to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301.

Failing to acknowledge this requirement, the Appellants contend that, once any racial disparity is shown to affect voters' preferences regarding (e.g., same-day registration), a Section 2 violation has been established. But the Appellants' focus is too narrow. Showing that there is such a disparity, even one shaped by an interaction with history, is not the same as making the mandated showing that minority voters cannot participate equally in the political process and elect candidates of their choice.

Disregarding the increase in black turnout and registration in November 2014, which was higher than white turnout and registration under the challenged

provisions of SL 2013-381, Appellants contend that Section 2 is still violated because more black voters than white voters prefer same-day registration, early voting, and out-of-precinct voting. They insist the best evidence for determining whether SL 2013-381 has racially disparate effects is not the actual turnout data regarding minority voters, but the fact that African Americans disproportionately relied on the eliminated practices for multiple election cycles. Appellants argue, in other words, that the disparate use of same-day registration, early voting, and out-of-precinct voting is determinative of their claim and that actual registration and turnout data are not.

This is simply backwards. The only reason to assess racially disparate use of "modes" of voting is to determine whether factors that vary by race will, at some point, depress a metric of political participation like turnout or registration. Actual results are more significant than predictions. Elections since the enactment of SL 2013-381 have provided real life proof that the challenged provisions of SL 2013-381 do not cause any discernible disadvantage to minority voters. Rather, both black and white voters adapt to the new rules and continue to turn out to vote at rates higher than under the former voting rules changed by SL 2013-381.

Under Appellants' theory, Section 2 would stretch beyond proscribing electoral practices that significantly burden or disadvantage voters on the basis of

their race. Rather, any electoral practice that a racial group of voters prefers and that has any differential impact on different races will be subject to a Section 2 challenge. Ultimately, Appellants' theory would authorize courts to use Section 2 "results" claims as a vehicle to advance, if not to maximize, the political fortunes of particular minority groups. As one foreseeable consequence, state and local governments might conclude that it is unwise to make *any* changes to their existing electoral laws for fear that any subsequent change would lead to Section 2 litigation.

Another effect of Appellants' approach to Section 2 "results" claims is to elevate the electoral preferences of minority voters to unassailable rights. As the District Court properly noted:

> Plaintiffs themselves acknowledge that the removed mechanisms were "conveniences" and "fail-safes" to the ordinary rules for voting. By definition, therefore, any repeal or modification results in a marginal reduction or modification in options for those who preferred them.

(Op. 469). Appellants' theory holds that as long as minority voters take advantage of procedures like same-day registration, early voting, or out-of-precinct voting at rates higher than white voters, those procedures cannot be repealed or amended without violating Section 2. Again, this improperly reads a retrogression standard into Section 2 of the VRA.

If it prevailed, Appellants' theory of Section 2 liability would effectively reinstitute something highly similar to the statutory standard under Section 5 that existed prior to *Shelby*, 133 S. Ct. 2612. Appellants' approach to this litigation appears to favor such an outcome because they argue that, while the *absence* of same-day registration, extended early voting, and out-of-precinct voting would not violate Section 2, the *repeal* of these provisions does. However, it is inappropriate to use Section 2 as a surrogate for Section 5, as the statutes have very different purposes. *See Bartlett v. Strickland*, 556 U.S. 1, 24-25 (2009); *Georgia v. Ashcroft*, 539 U.S. 461, 478 (2003); *Lowery v. Deal*, 850 F. Supp. 2d 1326, 1334 (N.D. Ga. 2012).

As a practical matter, if Appellants' Section 2 claims are upheld, the ruling could have the effect of altogether freezing state and local electoral laws in place. Any repeal of existing laws could lead to a challenge like the one before this Court. As noted earlier, States would also be discouraged from experimenting with new electoral laws because they would know that such laws may become impossible to repeal. They would logically conclude that the best course of action is simply to stop changing voting laws altogether. Judicial acceptance of Appellants' position would deter experimentation and change at the state and local level in an area of

the law where experimentation must be encouraged. Such an unwarranted end is not required by Section 2 and should be avoided.

III. The District Court Appropriately Applied the Causation Requirement under Section 2.

The District Court appropriately undertook a case-specific analysis to determine whether changes to North Carolina's voting laws deny minorities a fair and reasonable opportunity to vote. Such analysis requires consideration of any competent evidence that the changes make it needlessly difficult to comply with registration and other voting requirements. The District Court found no evidence showing real disenfranchisement of minority voters.

The District Court demonstrated at length in its opinion that the provisions of SL 2013-381, considered in the larger context of North Carolina's electoral system, do not impose burdens on voters that warrant Section 2 relief. Discussing same-day registration, the District Court noted that the Appellants' own experts confirmed that black registration in North Carolina exceeds that of white. (Op. 158, 470). In addition, the Appellants failed to show that black voters currently lack an equal opportunity to easily register to vote, given the alternative possibility of registering by mail, the extensive voter registration services offered by numerous State agencies, the lenient laws concerning voter registration drives, and the option of updating certain registrations within the 25-day cut-off. (Op. 165).

Because of all of this evidence, the lack of same-day registration was not an actionable burden. As the District Court correctly determined, "minorities enjoy equal and constitutionally-compliant opportunity to participate in the electoral process." (Op. 471).

The District Court's broad approach, which considers all available facts within the context of a "totality of circumstances" analysis, is the proper one for a Section 2 claim. It contrasts sharply with the unduly restrictive and thus incorrect approach advanced by Appellants.

At the District Court, the Appellants relied on a theory of Section 2 liability that is contrary to the governing law. The basic premise of the Appellants' case is that a greater proportion of black voters use same-day registration, early voting, and out-of-precinct voting. But *Gingles* did not hold that *any* inequality will support a Section 2 claim. Rather, the *Gingles* Court's language makes clear that the inequality must implicate Section 2's core requirement that members of a protected class "have less opportunity than other [voters] to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301.

The District Court properly held that the slight inconveniences imposed by SL 2013-381 (such as voting within a ten-day rather than a seventeen-day period) do not give rise to a Section 2 "results" claim. Otherwise, there would be no

practical or principled limit to the reach of the statute. Again, Section 2 requires an additional showing that any disparate impact is *causally connected* to the denial of an *equal opportunity to participate* in elections and to elect representatives of choice.

In its well-reasoned opinion, the District Court carefully examined the pertinent questions regarding trade-offs, alternatives, and mitigating factors – as is necessary under a totality of circumstances analysis – in its determination that the changes to North Carolina's voting laws imposed by SL 2013-381 do not cause racial minorities to be deprived of the opportunity to participate equally in the political process. There is, accordingly, no sound basis for disturbing the District Court's opinion.

CONCLUSION

For the foregoing reasons, *amici* respectfully urge the Court to affirm the District Court's Judgment entered in favor of Defendants-Appellees.

Dated: June 16, 2016 Respectfully submitted,

s/ Bradley J. Schlozman Bradley J. Schlozman HINKLE LAW FIRM LLC 301 North Main Street, Suite 2000 Wichita, KS 67202-4820 (316) 660-6296	Chris Fedeli Lauren M. Burke JUDICIAL WATCH, INC. 425 Third Street SW, Suite 800 Washington, DC 20024 (202) 646-5172 H. Christopher Coates LAW OFFICE OF H. CHRISTOPHER COATES 934 Compass Point Charleston, South Carolina 29412 (843) 609-7080

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I hereby certify, pursuant to Fed. R. App. P. 25(d)(2), that I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. I certify that the parties in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF service.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPEARANCE OF COUNSEL FORM

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COUNSEL FOR: Judicial Watch, Inc. and Allied Educational Foundation

_____ as the
(party name)

☐ appellant(s) ☐ appellee(s) ☐ petitioner(s) ☐ respondent(s) ☑ amicus curiae ☐ intervenor(s) ☐ movant(s)

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I certify that on June 16, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 16-1468 Caption: NC State Conference of Branches of NAACP et al. v. McCrory et al.

Pursuant to FRAP 26.1 and Local Rule 26.1,

Judicial Watch, Inc.
(name of party/amicus)

who is amicus, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(b))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

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Signature: _____ Date: June 16, 2016

Counsel for: Judicial Watch, Inc.

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If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: _____ Date: June 16, 2016

Counsel for: Allied Educational Foundation

CERTIFICATE OF SERVICE

****

I certify that on June 16, 2016 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

_____ June 16, 2016
(signature) (date)

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. _____ **Caption:** _____

CERTIFICATE OF COMPLIANCE WITH RULE 28.1(e) or 32(a)
Type-Volume Limitation, Typeface Requirements, and Type Style Requirements

1. **Type-Volume Limitation:** Appellant's Opening Brief, Appellee's Response Brief, and Appellant's Response/Reply Brief may not exceed 14,000 words or 1,300 lines. Appellee's Opening/Response Brief may not exceed 16,500 words or 1,500 lines. Any Reply or Amicus Brief may not exceed 7,000 words or 650 lines. Counsel may rely on the word or line count of the word processing program used to prepare the document. The word-processing program must be set to include footnotes in the count. Line count is used only with monospaced type.

   This brief complies with the type-volume limitation of Fed. R. App. P. 28.1(e)(2) or 32(a)(7)(B) because:

   [ ] this brief contains _____ [*state number of*] words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii), *or*

   [ ] this brief uses a monospaced typeface and contains _____ [*state number of*] lines of text, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. **Typeface and Type Style Requirements:** A proportionally spaced typeface (such as Times New Roman) must include serifs and must be 14-point or larger. A monospaced typeface (such as Courier New) must be 12-point or larger (at least 10½ characters per inch).

   This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

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(s) _____

Attorney for _____

Dated: _____