

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

COMMON CAUSE INDIANA;)
NATIONAL ASSOCIATION for the)
ADVANCEMENT OF COLORED PEOPLE,)
by its Greater Indianapolis Branch 3053)
and on behalf of its individual members;)
DORIS A. McDOUGAL; and)
JOHN WINDLE,)
)
Plaintiffs,)
)
v.) CAUSE NO.:1:17-cv-1388
)
MARION COUNTY ELECTION BOARD;)
KEITH JOHNSON, MAURA HOFF, and)
MYRA A. ELDRIDGE, each in their official)
capacities as members of the MARION)
COUNTY ELECTION BOARD; and)
CONNIE LAWSON, in her official capacity)
as the Indiana Secretary of State,)
)
Defendants.)

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, for their complaint against Defendants, allege and state as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear Plaintiffs' claims pursuant to 28 U.S.C. §§ 1331, 1343(a) (3), and 1357, and 42 U.S.C. §§ 1983 and 1988, and Plaintiffs' claim under the Indiana Constitution pursuant to 28 U.S.C. § 1367(a) because it is part of the same case and is based on the same facts, statutes and circumstances as the federal claims.

2. This Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202.

3. Venue in this district is proper under 28 U.S.C. § 1391 (b) because all of the events or omissions giving rise to the claims occurred in this judicial district.

PARTIES

4. Plaintiff Common Cause Indiana has long worked to expand voter registration and the equal access to voting. Common Cause Indiana has approximately 2,500 members who live and vote in Marion County, many of whom desire to and would take advantage of early voting opportunities because of work, family and/or school obligations but for the refusal of Defendants as alleged herein to remove the substantial burdens imposed upon Marion County voters who desire to take advantage of the statutory right to cast an early in-person absentee ballot. Its members thus have been injured in fact by Defendants' actions and inactions, and they could have brought suit in their own right.

5. Common Cause Indiana has organizational standing to bring this suit because the MCEB's refusal to authorize satellite voting has forced and will continue to force Common Cause Indiana to devote resources to getting its members to the polls on Election Day who, but for the MCEB's actions and inactions in failing to authorize satellite locations for early voting and the burdens associated with not having more than a single location for early voting in Marion County, would otherwise have cast an early in-person absentee ballot.

6. Plaintiff National Association for the Advancement of Colored People, by its Greater Indianapolis Branch 3053 ("NAACP"), was established in 1912 as a not-for-profit organization of citizens of Indianapolis whose purpose was and remains that of assisting African-American citizens to achieve equality and gain rights guaranteed them under the United States Constitution. In the 1920s it took the lead in resisting the growing threats of segregation and of

the Ku Klux Klan. Throughout its history the Indianapolis NAACP Branch has led and continues to lead the fight for civil rights, voting rights and economic justice for African-American residents of Indianapolis and Marion County. Currently the Indianapolis NAACP branch has approximately seven hundred (700) members, nearly all of whom are regular voters who are active in all aspects of the political process in Marion County, and many of whom would cast an early in-person absentee ballot rather than waiting to vote until Election Day if early voting were more readily available and less burdensome. Its members have thus suffered an injury in fact as a result of the Defendants' actions and inactions as alleged herein, and they could have brought this suit in their own right.

7. Plaintiff, John Windle, is a resident of and registered voter in Lawrence Township, Marion County, who is a member of Common Cause Indiana. He is a full-time employee of the United States Postal Service. Because he works until 6:00 p.m., it is important for him to vote prior to Election Day to avoid the risk of losing his opportunity to vote as a result of unforeseen family or work emergencies on Election Day. In 2008 he voted early at the satellite voting center located at North Central High School.

8. Plaintiff, Doris A. McDougal, is an African-American citizen who resides in Washington Township, Marion County, who is a member of the NAACP. Ms. McDougal was born in 1948. She lives alone and has difficulty ambulating due to her age and state of health. She uses a cane as an assistive device when walking. She is employed by Ivy Tech as an academic advisor, working from 11:00 a.m. until 9:00 p.m. five (5) days a week. Ms. McDougal is also the primary caregiver of her 95-year old mother who resides in Rushville, Indiana. She also has served as secretary of the Indiana NAACP and in that capacity, as well as from her own

experiences, is a fervent believer in the importance of the right to vote and is well acquainted with the difficulties and burdens many African Americans in Marion County face when seeking to cast an early in-person absentee ballot.

9. Defendant Keith Johnson, Maura Hoff and Myla A. Eldridge are members of the Marion County Election Board (“MCEB”), which is comprised of the circuit court clerk and two persons appointed by the circuit court clerk, one (1) from each of the major political parties. Ind. Code § 3-6-5-2. Eldridge is the Marion Circuit Court Clerk, the Democratic Party’s member of the MCEB is Keith Johnson, and the Republican Party’s member is Maura J. Hoff. Each is sued in his or her official capacity.

10. Hoff’s refusal to approve resolutions to establish early satellite voting locations in 2016, together with similar decisions of her Republican predecessors in 2010, 2012, and 2014, has resulted in no satellite voting locations being approved for use in Marion County in every federal election cycle this decade due to the unanimity requirement of I. C. § 3-11-10-26.3.

11. Defendant Connie Lawson is the Indiana Secretary of State and in that capacity is the chief election official of the State of Indiana. I.C. § 3-6-3.7-1. She is also charged with performing all ministerial duties related to the administration of elections by the State. I.C. § 3-6-4.2-2(a). Lawson is sued in her official capacity.

FACTUAL ALLEGATIONS

12. I.C. § 3-11-10-26 provides that a voter is legally entitled to cast an absentee ballot before an absentee voter board at the office of the circuit court clerk or at a satellite office established under I. C. § 3-11-10-26.3. A voter may vote before an absentee voter board not more than twenty-eight (28) days nor later than noon on the day before Election Day and, except

for counties with a population of less than twenty thousand (20,000), the absentee voter board must permit voters to cast absentee ballots at the office of the circuit court clerk for at least seven (7) hours on each of the two (2) Saturdays preceding election day. I. C. § 3-11-10-26 (e), (g) and (h).

13. I.C. § 3-11-10-26.3 provides that a county election board may adopt a resolution to authorize the circuit court clerk to establish satellite offices in the county where voters may cast in-person absentee ballots before an absentee voter board. That statute requires that the resolution be adopted by a unanimous rather than majority vote of the board's entire membership. The statute provides no guidelines, standards or factors for the members of a county election board to use in deciding whether or not to approve such a resolution and thus leaves the decision to the unfettered discretion of partisan-appointed members of county election boards.

14. The MCEB has a brief history of approving satellite locations for early in-person voting.

15. In 2008, the MCEB approved a resolution to establish satellite voting sites in an effort to create opportunities for Marion County voters to vote in person prior to election day at locations in addition to the circuit court clerk's office in the City-County Building. That resolution approved satellite voting sites at North Central High School in Washington Township, and another at Southport Community Center in Perry Township.

16. The establishment of those satellite sites proved to be a huge success and was extremely popular. As a result of the greater access and convenience those satellite sites offered to Marion County voters, during the 2008 general election 73,549 voters in Marion County cast

early absentee votes, representing 19.3% of all Marion County citizens who voted in the 2008 general election.

17. Beginning in 2010 and continuing to date the MCEB ceased approving satellite voting sites for use in federal elections. In every instance resolutions to approve satellite voting sites were rejected by the Republican member of the MCEB, which according to I.C. § 3-11-10-26.3(b) resulted in their disapproval.

18. Prior to the 2012 federal election, the MCEB considered Resolution 08-12, which would have established two (2) satellite sites, one at the Beech Grove Technology Center and the other at the Washington Township Trustee's Office. That resolution was defeated despite the support of the other two members of the MCEB after Hoff's predecessor, Patrick Dietrick, cast his vote against it. A similar resolution was rejected in 2014 when Dietrick's successor voted to reject the resolution despite its support from a majority of the MCEB.

19. Prior to the 2016 general election the MCEB considered Resolution 01-16 to establish two (2) satellite voting locations to provide greater convenience, access and opportunity for early voting for Marion County's voters. That resolution failed after Defendant Hoff, without explanation or comment, refused to support it.

20. Early absentee voting turnout dropped dramatically after the Republican member began refusing to approve satellite voting locations for early in-person voting. In 2012, only 39,189 voters in Marion County cast absentee in-person votes (10.8% of the total number of votes cast) and in 2016 only 46,995 voters in Marion County cast absentee in-person votes (12.7% of the total votes cast).

21. Because of the unanimity requirement of I. C. § 3-11-10-26.3 (b) and the refusal of the Republican-appointed member of the MCEB to approve resolutions authorizing satellite voting locations, Indiana's most populous county, and the one with the largest minority population, has exponentially the highest number of registered voters per early voting location in Indiana.

22. Marion County had 699,709 registered voters in 2016 but because of the MCEB's refusal to approve satellite voting locations, it had but a single early voting location due to the MCEB's failure this decade to approve a resolution establishing satellite sites for early voting, a ratio of one (1) early voting site to 699,709 registered voters.

23. By contrast, Hamilton County had 230,786 registered voters in 2016. Its election officials unanimously approved two satellite voting locations in addition to the office of the circuit court clerk, a ratio of one early site for every 76,929 registered voters.

24. Hendricks County had 109,903 registered voters in 2016. Its election officials approved three (3) satellite voting locations in addition to the office of the circuit court clerk, a ratio of one early voting site for every 27,476 registered voters.

25. Johnson County had 107,546 registered voters in 2016. Its election officials approved five (5) early voting sites in addition to the office of the circuit court clerk, a ratio of one early voting site for every 17,924 registered voters.

26. By giving a single member of the MCEB unfettered and standardless discretion to disapprove a resolution establishing satellite sites for early voting, the operation and effect of I. C. § 3-11-10-26.3 arbitrarily, capriciously and without justification treats voters differently based on where they live, and its application in Marion County has resulted and will, unless enjoined

by this Court, continue to result in Marion County voters being unnecessarily burdened with regard to their statutory right to cast an early in-person absentee vote.

27. The application of I. C. § 3-11-10-26.3 in Marion County has caused and, unless enjoined by this Court, will continue to cause long lines and wait times for early voting at the office of the circuit court clerk in Indianapolis, as it did during the 2016 election. The MCEB's refusal to approve satellite voting sites has also resulted in a dramatic decrease in the number of voters who cast an early in-person absentee vote in 2012 and 2016 as compared to the numbers of voters who voted early in 2008 when satellite locations were approved and used, which has the further effect of causing a higher percentage of Marion County voters to cast an in-person ballot on Election Day, thus resulting in increased lines and wait times at precinct polling places.

28. Moreover, because Marion County has the highest percentage (28%) of African-Americans in Indiana, and because African-American voters are more likely than other voters to utilize early voting, the MCEB's refusal to approve multiple satellite locations for early in-person absentee voting as permitted by Indiana law has disproportionately resulted in the denial or abridgement of the right of African-American voters to cast an early in-person absentee ballot.

29. The MCEB's refusal to approve satellite locations for early in-person absentee voting has also contributed to the decline in overall voter participation in Marion County. In the 2008 general federal election, 381,759 persons voted in Marion County when satellite sites were approved and used. In 2012 when they were not, that number dropped to 361,278, and in 2016 to 370,498.

30. By contrast, voter turnout in each county contiguous to Marion County where satellite sites have been approved has steadily increased. For example, in Hamilton County

130,829 persons voted in the 2008 general election, 138,252 in the 2012 general election, and 158,205 in the 2016 general election, or 69% of all registered voters in that county. In Hendricks County 65,930 persons voted in the 2008 general election, 67,538 in the 2012 general election, and 77,182 in the 2016 general election, or 70% of all registered voters in that County. That same pattern of increased participation is evident in every other county contiguous to Marion County where satellite voting locations were approved.

31. The MCEB's refusal to approve satellite locations for early in-person absentee voting burdens the rights of all Marion County voters to exercise their statutory right to cast an early in-person absentee ballot. Because those burdens interact with the ongoing effects of Indiana's history of discrimination against African Americans in housing, education, employment, criminal justice, and other areas, they operate to disproportionately abridge, deny, and disadvantage African-American voters, thus denying them an equal opportunity to participate in the political process.

32. The failure of the MCEB to approve early satellite voting stands in stark contrast to the actions of voting officials in the counties contiguous to Marion County, which are predominantly white.

33. For example, in Hendricks County, where election officials approved satellite voter locations in Avon, Brownsburg, and Plainfield in addition to early walk-in absentee voting at the Hendricks County Government Center in Danville, 32.3 % of voters cast an early in-person absentee ballot in the 2016 general election.

34. In Hamilton County, where election officials approved satellite voting sites for early voting in Carmel and Fishers in addition to early walk-in absentee voting at the Hamilton

County Judicial Center in Noblesville, 26.6 % of voters cast an early in-person absentee ballot in the 2016 general election.

35. In Johnson County, where election officials approved satellite voting sites for early voting at two locations in Greenwood, one in Edinburgh, one in Trafalgar, and one in Franklin, in addition to early in-person absentee voting at the Johnson County Courthouse in Franklin, 51.6 % of voters cast an early in-person absentee in-person ballot in the 2016 general election.

36. In Boone County, where election officials approved satellite sites for early in-person voting, 61.1 % of voters cast an early in-person absentee ballot in the 2016 general election.

37. In Hancock County, where election officials approved satellite sites for early in-person voting, 65.1 % of voters cast an early in-person absentee ballot in the 2016 general election.

38. In Morgan County, where election officials approved satellite sites for early in-person voting, 44.4 % of voters cast an early in-person absentee ballot in the 2016 general election.

39. In the second most populous county in Indiana, Lake County, where election officials approved multiple satellite locations for early voting in East Chicago, Hammond, Schererville, Highland, Gary, Hobart, Munster, St. John and Winfield, in addition to the office of the circuit court clerk in Crown Point, 22.5 % of voters cast an early in-person absentee in the 2016 general election.

40. In the third most populous county in Indiana, Allen County, where election officials approved satellite locations for early voting at five (5) locations in Fort Wayne in addition to the office of the Circuit Court Clerk in downtown Fort Wayne, 21.2 % of voters cast an early in-person absentee ballot in the 2016 general election.

41. Similar patterns were evident in other of Indiana's most populous counties where election officials approved satellite locations to facilitate early voting. For example, in Monroe County 45.2 % of all voters in that county who cast votes in the 2016 general election cast an in-person absentee ballot, in Tippecanoe County 45 % did so, in Vanderburgh County 42 % did so, and in Vigo County 52.3 % did so.

42. Plaintiff Windle voted early in 2008 and wished to do so again in 2016 because of his concern that his work hours might make it difficult or even impossible for him to vote on Election Day. He made four or five trips to the City-County Building in an attempt to early vote in the 2016 general election. On each occasion he attempted to locate parking in one of the free parking areas provided for voters desiring to vote early at the City-County Building, one being at 355 E. Pearl Street, and the other along Delaware Street. On each occasion he was unable to locate a free parking spot. He is aware that other voters who attempted to use the few free parking spots also gave up because they were unable to locate a free parking spot and did not wish to pay exorbitant downtown private parking rates, and/or because of long lines of persons waiting to vote at the City-County Building.

43. Plaintiff McDougal, because of her work hours, disabilities and responsibilities to care for her mother, also desired to cast an early in-person absentee ballot in the 2016 general election. She made at least two attempts to vote early at the City-County Building in October of

2016, but on each occasion she was unable to find free parking near and thus easily accessible to the west entry to the City-County Building near where early voting was being conducted. She was also deterred by the extremely long lines of voters she observed at the City-County Building waiting to cast an early in-person absentee ballot.

44. Because of her unsuccessful attempts to vote early at the City-County Building, Ms. McDougal voted in person on November 8, 2016, before going to work. It was raining when she arrived at her polling place at the Friends Church on Kessler Boulevard just south of Glendale Mall at approximately 10:00 a.m. Upon her arrival she observed a very long line of persons waiting in the rain to vote, a line which extended outside the church and snaked around the church parking lot. But for the fact that election officials allowed her to go to the head of the long line of persons waiting to vote, it is unlikely she would have made it to work when her shift began at 11:00 a.m.

45. Though because of her age she could have voted absentee by mail, Ms. McDougal is highly distrustful of voting by mail because the process is cumbersome and she believes it is less than completely secure, and because she believes that there is less likelihood that her vote will be counted were she to vote by mail due to the lack of any Indiana laws which even require her to be notified if for any reason her mail-in absentee ballot is not counted.

46. Parking near the City-County Building was particularly problematic in the Fall of 2016 because of the number of new construction sites nearby. For instance, the construction of the new Cummins headquarters just east of the City-County Building significantly impacted the number of parking spaces. Further, voters who attempted to find parking on the Saturday prior to Election Day, November 5, found that the free parking spaces on Pearl and Delaware Streets had

been all occupied by runners participating in the Monumental Marathon who had paid for those spots months ago, and by fans downtown to attend an Indiana Pacers basketball game in the evening.

47. Plaintiffs expect that the MCEB will next consider a resolution to establish satellite sites for early, in-person absentee voting in early 2018, prior to the 2018 federal off-year elections, and based on recent history that such resolution will be defeated by the opposition of Defendant Hoff or her Republican-appointed successor, despite such resolution being supported by the MCEB's other two members.

COUNT I

FOURTEENTH AMENDMENT EQUAL PROTECTION VIOLATION

48. Plaintiffs restate as if fully set forth herein each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 47 of this Complaint.

49. Defendants, acting under color of state law, have maintained and are continuing to maintain an unequal system of early voting that unnecessarily and disproportionately burdens Marion County voters and thus denies them equal access to their statutory right under Indiana law to cast an early in-person absentee ballot.

50. Because of the vast disparity in the number of registered voters per early voting site in Marion County, Plaintiffs, their respective members, and other Marion County voters are treated less favorably than voters in every other county in Indiana with respect to early in-person absentee voting, especially voters in contiguous counties and in other urban, more heavily populated counties. This discriminatory treatment is solely by virtue of their residence in Marion County. This discriminatory treatment serves no compelling governmental interest, lacks any

substantial relationship to any important governmental interest, and is not rationally related to any legitimate governmental interest.

51. As compared to other Indiana voters, Marion County voters are especially harmed by unnecessary burdens on their right to vote because they disproportionately lack the resources, transportation, or flexible work schedules. The only location authorized for early voting: the office of the Marion County Circuit Court Clerk, is located in the heart of downtown Indianapolis in the City-County Building with little to no free parking. For some voters in the outlying townships, a trip downtown can be more than a 20-mile round trip and takes well over an hour by private vehicle, and two or more hours by public transportation.

52. Many Marion County voters, and especially those of color, also experience disadvantages in education, income, employment, and access to transportation which, when compounded by complications caused by jobs, childcare responsibilities and/or class schedules, make it extremely difficult if not impossible for them to vote on Election Day. These disadvantages interact with other pre-existing election laws, including the earliest Election Day poll closing time in the nation (6:00 p.m.), the absence of an Indiana statute requiring employers to give employees time off to vote, and the absence of no-fault mail-in absentee voting for able-bodied voters under the age of 65, to further exacerbate the burdens on Marion County voters by the arbitrary limitation of early in-person absentee voting to a single location.

53. By denying Marion County voters anything close to approximating equal access to a statutory right they already have under I. C. § 3-11-10-26, Defendants are unnecessarily and unequally burdening the right of Plaintiffs and their members' right to cast an early in-person

absentee ballot in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

54. Marion County voters have a constitutionally-protected right to participate in federal elections on an equal basis as other citizens in Indiana, and by consistently refusing to approve satellite locations for early in-person absentee voting, Defendants are abridging, impeding and unnecessarily burdening the right to vote of voters who reside in Marion County.

55. Because the State of Indiana has chosen to give nearly all of its registered voters the right to cast an early in-person absentee vote, that right must be administered evenhandedly and in a non-discriminatory manner regardless of a voter's residence.

56. The United States Supreme Court has ruled that the right to vote is protected not just in the initial allocation of the franchise, but also to the manner of its exercise.

57. The Court has also observed that location and accessibility of polling places have a direct effect on a person's ability to exercise his or her right to vote.

58. The arbitrary and/or discriminatory decisions made by the MCEB not to approve early satellite voting locations in 2010, 2012, 2014 and 2016 has resulted in the abridgement, impairment and unnecessary burdening of the statutory right of Marion County registered voters to cast an early in-person absentee ballot under I. C. § 3-11-10-26, and those decisions have thus denied Marion County voters the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

59. As it has been applied in Marion County in and after 2010, I.C. § 3-11-10-26.3 (b) burdens and impairs Plaintiffs' voting rights.

60. I. C. § 3-11-10-26.3, as it has been applied in Marion County beginning in 2010 and continuously thereafter, and insofar as it allows a single member of the MCEB without any justification or reason to arbitrarily and/or discriminatorily refuse to approve satellite early voting locations, limits voters' access to polling places at which voters may vote early and thereby abridges the ability of Marion County voters to cast an early in-person ballot.

61. Particularly when considered along with other pre-existing obstacles to voting in Indiana, including but not necessarily limited to Indiana's earliest in the nation (6 p.m.) poll closing time on Election Day, the absence of a statute requiring employers to give paid time off work to vote, and the absence of no-fault mail-in absentee voting, the MCEB's refusal to approve satellite voting locations imposes unnecessary burdens on Plaintiffs and their members, and indeed on all Marion County voters.

62. Unless enjoined by this Court the MCEB will continue to refuse to approve the establishment of satellite sites for early in-person absentee voting.

63. Plaintiffs have no adequate remedy at law.

64. Plaintiffs will suffer irreparable harm if a preliminary injunction prohibiting Defendants from blocking or refusing to approve early satellite voting locations for the 2018 federal elections and beyond is not granted, while Defendants will suffer no harm whatsoever if preliminary relief is granted.

65. Plaintiffs are likely to succeed on the merits of their constitutional and statutory claims.

66. The public interest favors the granting of preliminary injunctive relief.

COUNT II

FOURTEENTH AMENDMENT DUE PROCESS VIOLATION

67. Plaintiffs restate as if fully set forth herein the allegations in Paragraph 1 through 66 of this Complaint.

68. I.C. § 3-11-10-26.3 contains no standards for county election boards to follow in determining whether or not to approve the establishment of satellite voting offices.

69. As a result, I.C. § 3-11-10-26.3 has operated and been applied by the MCEB in an arbitrary and discriminatory manner so as to unnecessarily burden the right of Plaintiffs, their respective members, and all Marion County voters of their right under Indiana law to cast an early in-person absentee ballot.

COUNT III

VIOLATION OF SECTION 2 OF THE VOTING RIGHTS ACT

70. Plaintiffs restate as if fully set forth herein each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 69 of this Complaint.

71. Marion County and the State of Indiana have a long history of discriminating against African Americans that has substantially hindered their ability to participate in the political process.

72. African Americans in Marion County have historically participated in the electoral process at lower levels than has the population as a whole.

73. African Americans in Marion County have suffered from the effects of discrimination in housing, education, employment, health, criminal justice, and other areas that have further hindered their ability to participate in the political process.

74. Discrimination in education against African Americans in Marion County has been particularly pronounced. Disparities in graduation rates between African Americans and whites are the result of years of official discrimination in Marion County that continued well after the Supreme Court banned school segregation in *Brown v. Board of Education*, 347 U.S. 483 (1954). This discrimination is evidenced by a finding of the federal courts that the Indianapolis school board deliberately operated a *de jure* dual, racially-segregated school system in Marion County until the federal courts ordered an end to that system in 1971. *United States v. Bd. of School Comm'rs*, 332 F.Supp. 655 (S.D. Ind. 1971), *aff'd* 474 F.2d 81 (7th Cir.), *cert. denied* 413 U.S. 920 (1973).

75. The application of I. C. § 3-11-10-26.3 (b), and Defendants' failure and/or refusal to approve satellite locations for early voting interacts with the ongoing effects of Marion County's history of discrimination against African Americans disproportionately abridges, denies, and/or burdens the constitutional and statutory right to vote of Marion County African Americans.

76. African Americans in Marion County and elsewhere are more likely than other voters to utilize early voting. Yet, because of Defendants' failure and/or refusal to approve satellite voting sites for early voting, the early voting rate in Marion County, the county with Indiana's largest African-American population and which has a greater percentage of African American residents than Indiana as a whole, lags far behind nearly every other Indiana county in early voting turnout.

77. This disproportionate burden on African American voters is compounded by the cost of voting, such as the increased wait time at polling places on Election Day and at Marion County's only early voting location.

78. Defendants' failure and/or refusal to approve satellite locations for early voting has depressed turnout among racial minorities, who make up a disproportionate percentage of Marion County residents living in poverty, and long wait times to vote burden poor individuals in particular because they are less able than wealthier individuals to expend time because they tend to have less flexible job schedules, and less access to convenient means of transportation.

79. Based on the totality of the circumstances, the disproportionate burdens imposed on African-American voters in Marion County from Defendants' failure and/or refusal to approve early satellite voting locations, along with other pre-existing obstacles to voting, has resulted and will, unless enjoined by this Court, continue to result in African-American voters in Marion County having unequal access to the polls and less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

80. Section 2 of the Voting Rights Act of 1965 provides in part that "[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State...in a manner which results in a denial or abridgement of the right of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a).

81. The interaction of Defendants' failure and/or refusal to approve satellite early voting sites in Marion County with the ongoing and lingering effects of historical race discrimination in Marion County has caused and will continue to cause an inequality in the

opportunity of African Americans to vote and to elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

COUNT IV

VIOLATION OF INDIANA CONSTITUTION

82. Plaintiffs restate as if fully set forth herein each and every claim, assertion, and allegation set forth in the foregoing Paragraphs 1 through 81 of this Complaint.

83. Article 2, Section 1 of the Indiana Constitution states that “[a]ll elections shall be free and equal.”

84. As a statute dealing with the right to vote, I. C. § 3-11-10-26.3 must be interpreted in accordance with the requirement of Article 2, Section 1 of the Indiana Constitution, that all elections “shall be free and equal,” which is, among other things, to assure that every voter’s opportunity to vote is equal regardless of the county in which they reside.

85. By giving a single member of the MCEB the authority to reject any proposed resolution satellite voting offices, which authority has been exercised in every election by the MCEB’s Republican-appointed predecessors from 2010 through and including 2016, I. C. § 3-11-10-26.3 has resulted in substantially lesser opportunities, and higher costs, for Marion County voters to vote, thus violating the command of the Indiana Constitution that the opportunity to cast a ballot in elections be “free and equal” irrespective of the county in which a particular voter resides.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court grant them the following relief against the Defendants:

A. An order declaring that Defendants' failure and/or refusal to approve satellite voting locations for early in-person absentee voting in Marion County since 2010 violated the Fourteenth Amendment of the United States Constitution; Section 2 of the Voting Rights Act; and Article 2, Section 1 of the Indiana Constitution;

B. An order enjoining Defendants, their respective agents, officers, employees, successors, and all persons acting in concert with each or any of them, from continuing to obstruct, interfere with and block the establishment of at least two satellite voting locations in Marion County for the federal elections in 2018 and beyond;

C. An order awarding Plaintiffs their costs, disbursements, and reasonable attorney's fees pursuant to 42 U.S.C. §§ 1988 and 1973l (e); and

D. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/William R. Groth
William R. Groth

/s/Daniel P. Bowman
Daniel P. Bowman
Attorneys for Plaintiffs

FILLENWARTH DENNERLINE GROTH & TOWE, LLP
Suite 200, 429 East Vermont Street
Indianapolis, IN 46202
Telephone: (317) 353-9363
Fax: (317) 351-7232
E-mail: wgroth@fdglaborlaw.com
dbowman@fdglaborlaw.com