

League of Women Voters of North Carolina: Litigation as a Tool for Action, 2011-2020

INTRODUCTION

Democracy wins today. Voters win today. This decision is the latest in a string of major federal rulings that send a clear message: Politicians have no business standing in the way of our right to vote.
-- Mary Klenz, co-president of LWVNC, 7/29/2016

July 29, 2016 was a good day for the League of Women Voters and North Carolina, as a federal appeals court struck down North Carolina's Voter Identification law saying its provisions, "target African-Americans with almost surgical precision".¹ As Klenz implied, this outcome was years in the making but, the League of Women Voters has proven to be a persistent advocate no matter how long it takes.

The woman suffrage movement struggled and fought for seventy-two years before women won the right to vote through the Nineteenth Amendment to the US Constitution in 1920. To maintain the momentum of the woman suffrage movement, Carrie Catt launched the *League of Women Voters* (LWV) at the final convention of the National American Woman Suffrage Association on February 14, 1920, six months before the passage of the Nineteenth Amendment. On that day in Chicago, Illinois, Catt described her vision:

"The League of Women Voters is not to dissolve any present organization but to unite all existing organizations of women who believe in its principles. It is not to lure women from partisanship but to combine them in an effort for legislation which will protect coming movements, which we cannot even foretell, from suffering the untoward conditions which have hindered for so long the coming of equal suffrage. Are the women of the United States big enough to see their opportunity?"²

The passage of the Nineteenth Amendment was, however, an incomplete victory. Racial discrimination in voting persisted and no substantial progress was made in voting rights for Native Americans until 1962 and for African Americans until 1965; and even landmark voting legislation would be subject to future debilitation. Carrie Catt's anticipation of the need for protection from future conditions that hinder equal suffrage was unfortunately prophetic, as evidenced in North Carolina.

Women in North Carolina were also active participants in the struggle for woman suffrage. Gertrude Weil was president of the North Carolina Equal Suffrage League in 1920. Although the North Carolina General Assembly failed to ratify the Nineteenth Amendment, Tennessee rose to the occasion and their ratification became the last vote needed for the amendment to become law in August 1920. Weil became the first president of the League of

Women Voters of North Carolina (LWVNC) at its founding in 1920. The League's primary purpose at the time was to educate women on their newly acquired voting rights.³ Over the years, the League's purpose expanded to include advocacy for key issues and even litigation when threats to our democracy demanded legal remedies. While some League members were hesitant to move beyond the realm of education and traditional advocacy, stepping up to the role of plaintiff was essential when principles of our democracy were at stake.

PATH TO ROLE OF PLAINTIFF

Though LWVNC worked to educate voters and advocate for issues that were important to North Carolina voters, the League also served as friend of the court in cases which dealt with issues they strongly supported. In 1970, LWV Charlotte Mecklenburg, LWV of the United States (LWVUS), and LWVNC submitted amicus curiae briefs in *James E. Swann v. Charlotte-Mecklenburg*. LWVUS President, Lucy Wilson Benson, appearing before a House Judiciary subcommittee considering anti-desegregation amendments stated, LWV "believes that every citizen should have access to free public education which provides equal opportunity for all . . . we affirm that integration is an integral part of educational excellence. Furthermore, we support any reasonable method for reaching this goal."⁴ In 1974, the League waded deeper into litigation as an action tool. Under the leadership of Betty Wiser (LWVNC President, 1973-1975), LWVNC served as plaintiff in several environmental cases and sued the NC State Board of Elections for misleading wording on the ballot for a Revenue Bond Referendum.⁵ In the last decade, as legislation to suppress voting rights and to gerrymander districts became even more egregious, LWVNC again embraced the role of plaintiff as a tool for advocacy.

Since its inception, LWVNC has fulfilled its mission by registering voters, hosting candidate debates, publishing voter guides, and advocating for issues within its carefully studied set of policy positions. However, when democracy itself is threatened, stronger action is a moral imperative. The League's move into the litigation arena was a result of collaboration with partners on both national and local levels. Lloyd Leonard, Strategic Advisor of LWVUS from 1977-2017, helped draft and pass the *Help America Vote Act* of 2002 (HAVA). Congress passed this bipartisan measure in the aftermath of the 2000 election. HAVA's purpose was to reform facets of the voting process and to increase voter education and turnout by establishing provisional balloting, requirements for updating voting systems, and the Election Assistance Commission. It was engagement in this work that led to the acquaintance of Leonard with Anita Earls who was Director of the Voting Rights Project at the Lawyers' Committee for Civil Rights Under Law from 2000-2003. LWVUS continuously looked for opportunities to protect voter rights and that included filing briefs in state courts where applicable.⁶

In 2007, Earls founded the Southern Coalition of Social Justice (SCSJ) in Durham, North Carolina. Its mission was to defend and advance the political, social, and economic rights of communities of color and economically disadvantaged communities in the South.⁷ From its inception, the quintessence of SCSJ was akin to LWVNC. The Southern Coalition of Social Justice was founded with assistance from women philanthropists and was committed to base-

building in the South. Both women-led organizations use whatever tactics meet the moment in their pursuit of justice and democracy.⁸

LWVNC began its association with SCSJ in 2008 through its involvement in the *Public Advocacy for Voter Protection Project* (PAVP) – LWVNC received a grant from LWVUS to combat voter suppression through advocacy, grassroots organizing, legal action, and public education.⁹ LWVNC was involved in this project at a grassroots level along with the Sunshine Center of the NC Open Government Coalition, Democracy NC, and SCSJ. “The Southern Coalition of Social Justice was therefore aware that the League was doing voter protection work,” said Kathleen Balogh (LWVNC President, 2009-2011).¹⁰ This was the beginning of a collaborative partnership and SCJC would represent LWVNC in multiple voter suppression and redistricting cases over the next decade. (Anita Earls was elected North Carolina Supreme Court Associate Justice in 2019.) Voter suppression and gerrymandered districts are two of the most egregiously effective ways to deny citizens’ right to participate in democracy. Many challenges were ahead for North Carolina voters and LWVNC.

VOTER SUPPRESSION

The years from 2011 to 2014 saw renewed and flagrant efforts to suppress voters across the United States. North Carolina was among thirteen states that passed more restrictive voter ID laws and, of those, NC was among nine states that passed strict voter photo ID requirements.

In 2011, Kathleen Balogh testified before a legislative committee considering a voter ID bill, HB 351, *Restore Confidence in Government*. LWVUS estimated, at the time, that of 318,000 registered NC voters, one third were African American and lacked a government-issued ID. Fortunately, this bill was vetoed by Governor Beverly Perdue. LWVNC continued to actively monitor potential voter suppression and on March 13, 2013, Jo Nicholas (LWVNC President, 2011-2013), testified before the Elections Committee in the NC Legislature. A pivotal event in 2013, however, opened the door for increased voter suppression.

The Voting Rights Act of 1965, reauthorized for 25 years in 1982 and 2006, had served as a safeguard, “putting the power of federal government intervention behind Constitutional guarantees against voter discrimination.”¹¹ But the Supreme Court of the United States (SCOTUS) ruling in *Shelby County v. Holder* drastically reduced those protections. In June 2013, SCOTUS ruled that Section 4 of the Voting Rights Act was outdated, arbitrary, and unconstitutional. Section 4 defines the “coverage formula” or the list of counties, states, and other jurisdictions that had to submit plans for any election change for approval under Section 5’s preclearance requirement. The Supreme Court struck down the “preclearance list” as unconstitutional. This “ended a requirement that nine states with histories of discrimination, including North Carolina, get federal approval before altering their election laws.”¹² The late Congressman and civil rights icon, John Lewis, reacted to the SCOTUS ruling by writing, “. . . it gutted the most powerful tool this nation has ever had to stop discriminatory voting practices.”¹³

The NC Legislature immediately sprinted through the door opened by SCOTUS and crafted the omnibus HB 589, *Voter Information Verification Act*. This bill required voters to show a valid, government-issued ID before casting a ballot. Other provisions included elimination of seven days of early voting, the elimination of same-day registration during early voting, elimination of a pre-registration program for sixteen and seventeen year olds, and the prohibition against counting provisional ballots that are cast when a voter shows up at the wrong polling place. This bill was enacted on July 23, 2013 and Governor Pat McCrory signed it into law on August 12, 2013. The bill was to be effective in 2016.¹⁴ LWFNC acted quickly to challenge the photo ID requirement in state court and all the other provisions in federal court.

State Action

LWFNC challenged the strict photo ID requirement as a violation of the North Carolina Constitution because it was an “added qualification” on the right to vote. The North Carolina Constitution lists the qualifications required to vote and states that the legislature cannot add any other qualifications. NC Superior Court Judge Michael Morgan ruled that the case move forward for a full hearing.¹⁵ The court date was set for July of 2015, but NC legislators eased the mandate in HB 836, *Election Modifications*, on June 22, 2015 and because of this action, US District Court Judge Thomas Schroeder set aside the legal fight over NC’s photo identification requirement.

Federal Action

On August 12, 2013, LWFNC filed a lawsuit in US District Court for the Middle District of NC arguing that the new Voter Information Verification Act unduly burdens the right to vote and discriminates, particularly against African Americans.¹⁶

Other groups filed similar suits to stop NC’s new voter ID law. The NAACP filed *North Carolina NAACP v. McCrory* in September 2013; the U.S. Department of Justice (DOJ) filed a lawsuit charging that the state was “willfully discriminatory” when it passed the law. DOJ also sought to have NC put back on the “preclearance” list that requires the federal government to approve changes to voter laws.¹⁷

LWFNC’s original case (*LWFNC et al. v. North Carolina*) and those of the NAACP and DOJ were consolidated and tried as one federal lawsuit. Many interim appeals and rulings transpired before the final decision on July 29, 2016 in which the U.S. Court of Appeals for the 4th Circuit struck down North Carolina’s Voter Identification law saying its provisions, “target African-Americans with almost surgical precision” in an effort to depress black turnout at the polls. They ruled the law had discriminatory intent and restored preregistration week of early voting, same-day registration, and out-of-precinct provisional voting.

Absentee Ballot Protection

On May 22, 2020, LWFNC joined with Democracy NC and individual plaintiffs to file suit against the NC State Board of Elections. They argued that the Board of Elections violated the First and Fourteenth Amendments and Title 11 of the Americans with Disabilities Act in not altering its statutory electoral processes to allow for safe and accessible voting during the Covid-19 pandemic.¹⁸ Though the US District Court did not rule in the League's favor on all challenges, the Federal Judge ruled that the NC State Board of Elections must provide a notice and cure process for absentee ballots marked for rejection. This decision ensured that thousands of additional absentee ballots would be counted. Jo Nicholas (LWFNC President, 2019-2021) responded, "Now even amidst the uncertainty that the pandemic brings, voters can have assurance that their safely cast ballots will be counted in November."¹⁹

REDISTRICTING REFORM

The gerrymandering of legislative and congressional maps is another means of restricting voters' constitutional rights. With gerrymandered maps, legislators essentially choose their voters rather than the voters choosing their legislators. This subversion of democracy led LWFNC to serve as plaintiff in racial and partisan gerrymandering cases over the last decade and to advocate for redistricting reform in North Carolina.

Racial Gerrymandering

Following the 2010 Decennial Census, the General Assembly of North Carolina enacted redistricting maps for the North Carolina Senate and House of Representatives, and for the North Carolina districts for the United States House of Representatives.²⁰

In November 2011, LWFNC joined other plaintiffs in *Dickson et al. v. NC et al.* which challenged that thirty of the new districts violated federal and state law by racially gerrymandering districts, splitting counties, and disregarding traditional redistricting principles. In 2013, the NC trial court ruled that twenty six of the thirty districts were drawn predominantly based on race but that they were constitutional because the state was attempting to avoid Voting Rights Act liability. The case went through several appeals and the final ruling in 2018 determined that the maps were unconstitutional, but no further remedy was needed because the maps had already been redrawn.²¹

Gerrymandering continued when the NC House of Representatives developed "remedial" maps in four legislative districts. This was in response to the invalidation of certain 2011 state districts as racial gerrymanders. On February 21, 2018, LWFNC joined other plaintiffs in *NC-NAACP v. Lewis* to challenge the four districts on the basis that the alteration was not necessary to comply with the court order and violated the NC Constitution's ban on mid-decade redistricting. Wake County Superior Court ordered the NC General Assembly to revise the plan for use in the 2020 general election.²²

Partisan Gerrymandering

In developing the 2016 redistricting maps, former Representative David Lewis and former Senator Bob Rucho, had instructed GOP mapmaker Tom Hofeller to draw a congressional map “to create as many districts as possible in which GOP candidates would be able to successfully compete for office.”²³ Mary Klenz consulted with the Southern Coalition for Social Justice on the possibility of LWNVC filing suit. After consideration with L WVUS and the LWNVC board, it was decided to move forward.²⁴ On September 22, 2016, LWNVC filed suit against North Carolina (*Rucho v. LWNVC*) challenging that NC’s 2016 redistricting maps were a partisan gerrymander and violated the First and Fourteenth Amendments. In March 2017, a three-judge panel denied the state’s motion to dismiss and consolidated the case with *Rucho v. Common Cause*.²⁵

On January 9, 2018, a federal court struck down the 2016 map as an unconstitutional gerrymander and ordered the state not to hold an election until a remedy is enacted. This was the first time a federal court had blocked the use of a congressional map because of an unconstitutional partisan gerrymander.²⁶

The case went through numerous trials and appeals and finally was appealed to the Supreme Court of the United States. Allison Riggs, Senior Voting Rights Attorney for the Southern Coalition of Social Justice and attorney for LWNVC, gave oral arguments on March 26, 2019. League members from across North Carolina as well as L WVUS and Leagues in neighboring states were in attendance that day on the steps of the Supreme Court. On June 27, 2019, the Court ruled that partisan gerrymandering claims are nonjusticiable. Chief Justice Roberts wrote for the majority that though “excessive partisanship leads to results that reasonably seem unjust,” these issues should be addressed by Congress and not the courts.²⁷ Justice Elena Kagan wrote in dissent that political gerrymandering is “anti-democratic in the most profound sense” and “Of all times to abandon the Court’s duty to declare the law, this was not the one. The practices challenged in these cases imperil our system of government. Part of the Court’s role in that system is to defend its foundations. None is more important than free and fair elections. With respect but deep sadness, I dissent.”²⁸

The League would have to go elsewhere for a remedy. As Janet Hoy (LWNVC co-president, 2017-2019) said, “While we were hopeful that the Court would set a standard to address extreme gerrymandering cases like ours, we will continue to work on getting fair maps for North Carolinians through action right here in North Carolina.”²⁹

CONCLUSION

What has the League learned from this decade of active participation in litigation for voter protection and redistricting reform? Is litigation an appropriate tool for League advocacy? There are positive and negative aspects to engaging in litigation. One negative is some legislators’ misperception that the League is partisan. As a result of suits LWNVC filed against the state of NC, the majority party tended to think the League was partisan and many legislators declined to participate in L WV-sponsored candidate debates and ignored requests for candidate

information for the LWV voter guide. Unfortunately, voters were the losers in this situation because they were denied valuable information and insight on which to base their votes. The perception of partisanship is not based on fact, however, because the League of Women Voters maintains a long-held policy of neither supporting nor opposing any political party or candidate.

Though legislators and even some League members may question the League's active participation in litigation, some issues rise to the top and require more than the traditional advocacy. Whether legal cases in which the League participates are dismissed, lost, or won, the public awareness that results from the legal process is usually well worth the time and energy invested and serves the LWV mission of empowering voters and protecting democracy.

Shedding light on inequities such as voter photo-ID and racial gerrymandering resulted in legislators easing the photo-ID mandate and redrawing maps prior to the trials' completion.

The Supreme Court ruling that partisan gerrymandering is an issue for Congress to resolve rather than the Court was disappointing, but Justice Kagan's dissent may have influenced a later NC State Court's ruling against gerrymandered maps. The nation was watching, and redistricting reform advocates have taken up the fight through heightened LWV efforts such as *Fair Districts NC* at the state level and *People Powered Fair Maps* at the national level.

An outright win in court is, of course, the League's desired outcome for empowering voters and protecting democracy. Striking down NC's Voter Identification law restored many voter protections. Over 300,000 women, voters of color, and elderly voters without a photo ID were able to vote in North Carolina. Since 2016, millions of voters have used early voting and same-day registration. The win also focused attention on North Carolina's continuous attempts to suppress voting rights. Following the court's eloquent ruling that lawmakers intended to "target African-Americans with almost surgical precision," this phrase became part of the collective consciousness, and has been illustrative in our current national reckoning with racism in this country. In polarized and uncertain times, voting rights and fair districts in North Carolina take on even greater importance. Allison Riggs said the League's years of commitment of nonpartisan commentary has been a "stabilizing influence" and a trusted force for voter equity.³⁰

LWVNC's litigation activities have proven to be an appropriate and effective tool for League advocacy. We have learned over the years that successful litigation can lead to voter protections and even unsuccessful efforts raise public awareness of critical issues. The League mission of empowering voters and protecting democracy often requires taking unpopular positions and actions but, our charge to raise awareness of threats to our democracy is an invaluable gift to the citizens of North Carolina and beyond.

Karen Bean
League of Women Voters of Charlotte Mecklenburg
December 29, 2020

Notes

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- 2 <https://www.loc.gov/collections/national-american-woman-suffrage-association/about-this-collection/>.
- 3 Jaime Huaman, Government and Heritage Library, 2010.
- 4 Lucy Wilson Benson, Statement on H.J.Res. 620 and other Anti-segregation amendments before the House Judiciary Subcommittee No. 5. March 2, 1972.
- 5 A *Quarter Century of Political Participation in North Carolina 1951-1976: A History of the League of Women Voters of North Carolina*.
- 6 Lloyd Leonard interview, December 5, 2017.
- 7 <https://www.southerncoalition.org/>.
- 8 Allison Riggs interview, November 9, 2020.
- 9 LWWUS.org.
- 10 Kathleen Balogh interview, November 9, 2017.
- 11 Democracy NC flyer, “Voting Rights Act, the Fight Continues.”
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- 13 John Lewis, “John Lewis and Others React to the Supreme Court’s Voting Rights Act Ruling,” *Washington Post* (June 25, 2013).
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- 20 <https://caselaw.findlaw.com/nc-supreme-court/1721242.html>.
- 21 <https://www.brennancenter.org/our-work/court-cases/dickson-v-rucho>.
- 22 <https://www.brennancenter.org/our-work/court-cases/north-carolina-state-conference-naacp-branches-v-lewis>
- 23 Melissa Boughton, ncpolicywatch (January 10, 2018).
- 24 Mary Klenz interview, September 11, 2020.
- 25 <https://www.brennancenter.org/our-work/court-cases/rucho-v-league-women-voters-north-carolina>.
- 26 Melissa Boughton, ncpolicywatch (January 10, 2018).
- 27 Gene R. Nichol, *Indecent Assembly: The North Carolina Legislature’s Blueprint for the War on Democracy and Equality*. Blair/Carolina Wren Press. 2020, p. 130.
- 28 https://www.supremecourt.gov/opinions/18pdf/18-422_9oll.pdf.
- 29 LWWNC press release, June 28, 2019.
- 30 Allison Riggs, webinar: “And Now We Rise - The Next 100 years of the League of Women Voters in North Carolina,” September 25, 2020.