

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 1:18-cv-01034-LCB-LPA

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP, et al.,

Plaintiffs,

v.

ALAN HIRSCH, in his official capacity as
Chairmen of the North Carolina State Board
of Elections, et al.,

Defendants,

and

PHILIP BERGER, in his official capacity as
President of the North Carolina Senate, et
al.,

Intervenor-Defendants.

**STATE BOARD DEFENDANTS’
RESPONSE TO PLAINTIFFS’
MOTION TO SET A TRIAL
DATE**

NOW COME Defendants Alan Hirsch, Jeff Carmon, III, Stacy “Four” Eggers, IV, Kevin N. Lewis, and Siobhan O’Duffy Millen in their official capacities as Members of the State Board of Elections (collectively “State Board Defendants”) to respond to Plaintiffs’ Motion to Set a Trial Date. [D.E. 215].

State Board Defendants do not oppose the Court setting a date for trial. However, State Board Defendants agree with Legislative Defendants that this Court should first resolve Plaintiffs’ pending objection to the magistrate judge’s order denying their request to reopen discovery. [D.E. 218, pp. 1-2]. Moreover, assuming the objection is overruled,

State Board Defendants' motion for summary judgment remains pending, and a ruling on that motion could negate the need for a trial at all. [D.E. 177; *see also* D.E. 218, pp. 2-3]. Although the motion was not timely filed, State Board Defendants respectfully submit that it can be reached prior to trial without causing delay to the proceedings. *See* August 25, 2021 Text Only Order; *see also* Local R. 56.1(g).

Finally, for scheduling purposes, State Board Defendants would also like to raise several challenges that would likely result if the trial were scheduled for early February and to generally set forth the elections calendar for 2024.

In early February, State Board staff will be exceptionally busy preparing for the March 5, 2024 Presidential Primary. Absentee voting for the primary begins on January 12, 2024 and continues until primary election day on March 5, 2024, while in-person early voting begins on February 15, 2024 and continues to March 2, 2024. N.C. Sess. Law 2023-140, sec. 27(c), § 163-166.40; N.C.G.S. § 163-227.10(a).¹ Following the primary election, county boards of election must conduct the county canvass on March 15, 2024, followed by the State Board's statewide canvass on March 26, 2024. N.C.G.S. §§ 163-182.5(b) and (c). Canvass is the process of determining that the votes have been counted and tabulated correctly. *Id.*, -182.5(a).

¹ Under N.C.G.S. § 163-227.10(a), the date when county boards of elections must begin distributing absentee ballots for the primary is Monday, January 15, 2024. But because that day is the Martin Luther King, Jr. holiday, the county boards will need to begin distributing absentee ballots on the prior Friday, January 12, 2024, unless the State Board authorizes ballots to go out five days after the presumptive deadline, pursuant to N.C.G.S. § 163-22(k).

In addition to the usual heightened level of work required of elections staff during voting for an ongoing election, State Board staff will also be implementing the photo ID law at issue in this action for the first time in a presidential primary and implementing a series of changes to election procedures arising from recently enacted legislation. *See* N.C. Sess. Law 2023-140. As a result, it would be difficult for State Board staff to prepare for and participate in a trial beginning on the proposed date of February 5, 2024.

With respect to the remainder of the election calendar for 2024, if one of the March 2024 primary contests do not result in a candidate receiving a substantial plurality of the vote, a second primary may be required. *See* N.C.G.S. § 163-111. Under North Carolina law, this takes place on May 14, 2023. *Id.*, § 111(e), as amended by N.C. Sess. Law 2023-140, sec. 16.5. If a second primary is necessary, then absentee voting would begin as quickly as possible after the ballot information for the second primary has been determined, in-person early voting would begin on April 25, 2024, and the second primary election would take place on May 14, 2024. N.C. Sess. Law 2023-140, sec. 27(c), § 163-166.40; N.C.G.S. §§ 163-111(e), -227.10(b). Canvass would be completed by the county boards of elections on May 24, 2024 and by the State Board on June 4, 2024. N.C.G.S. § 163-182.5(b) and (c).

For the November 5, 2024 general election, absentee voting begins on September 6, 2024, with in-person early voting taking place from October 17, 2024 to November 2, 2024. N.C. Sess. Law 2023-140, sec. 27(c), § 163-166.40; N.C.G.S. § 163-227.10. Canvass is completed by the county boards on November 15, 2024, and by the State Board on November 26, 2024. N.C.G.S. § 163-182.5(b) and (c).

Given the election timeline for 2024, the only months without voting taking place are June, July, and December, and possibly April or May if there is no second primary.

The State Board is providing the above scheduling information for the Court's information only, understands that the Court has significant scheduling considerations of its own to manage, and therefore, leaves the scheduling of a trial date to the sound discretion of the Court.

CONCLUSION

State Board Defendants have no objection to setting a trial date. However, for the reasons stated above, they respectfully request that all pending motions be resolved ahead of trial and otherwise leave the scheduling to the sound discretion of the Court.

Respectfully submitted this 2nd day of November, 2024.

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CERTIFICATE OF WORD COUNT

I hereby certify that pursuant to Local Rule 7.3(d)(1), the foregoing has a word count of less than 6,250 words, and less than ten pages as ordered by the Court, not including the caption, signature block, and certification of word count. This document was prepared in Microsoft Word, from which the word count is generated.

This the 2nd day of November, 2024.

/s/ Terence Steed
Terence Steed
Special Deputy Attorney General

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