

SUPREME COURT OF NORTH CAROLINA

COMMUNITY SUCCESS
INITIATIVE,
et al.,

Plaintiffs,

v.

TIMOTHY K. MOORE, IN HIS
OFFICIAL CAPACITY OF
SPEAKER OF THE NORTH
CAROLINA HOUSE OF
REPRESENTATIVES, et al.,

Defendants.

From Wake County
No. 19 CVS 15941
From Court of Appeals
P22-153

**MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION
FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY
THE COURT OF APPEALS AND MOTION TO SUSPEND
APPELLATE RULES**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiffs Community Success Initiative, Wash Away
Unemployment, Justice Served NC Inc., the North Carolina State

Conference of the NAACP, Susan Marion, Henry Harrison, Timothy Locklear and Shakita Norman (hereafter “Plaintiffs”) respectfully request leave to file a reply to respond to arguments raised in Legislative Defendants’ Opposition to Plaintiffs’ Petition for Discretionary Review.

Plaintiffs submit that their short reply brief will aid the Court’s consideration of the urgency and necessity for discretionary review in this case by addressing arguments purported in Legislative Defendants’ response.

Plaintiffs’ proposed reply brief is filed contemporaneously as an attachment to this motion.

Respectfully submitted this 24th day of April 2022.

FORWARD JUSTICE

/s/ Daryl Atkinson

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I certify that all of the attorneys
listed below have authorized me to
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P22-153

**REPLY IN SUPPORT OF PETITION FOR DISCRETIONARY
REVIEW PRIOR TO DETERMINATION BY THE COURT OF
APPEALS AND MOTION TO SUSPEND APPELLATE RULES**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiffs Community Success Initiative, Justice Served NC Inc,
Wash Away Unemployment, the North Carolina State Conference of the

NAACP, Timothy Locklear, Susan Marion, Henry Harrison, and Shakita Norman (“Plaintiffs”) respectfully file this reply brief in support of their petition for this Court to certify for discretionary review, prior to determination by the Court of Appeals, the Final Judgment and Order of the three-judge panel entered on March 28, 2022, in *Community Success Initiative v. Moore*, No. 19 CVS 15941.

Plaintiffs seek discretionary review from this Court given the exceptional importance and urgency of the appeal, and the fact that Legislative Defendants’ Response in Opposition to Plaintiffs’ Petition for Discretionary Review (“LD Br.”) offered no justification for further delaying final adjudication of this important matter. In fact, “Legislative Defendants do not contest that this case is significant, raising issues of importance to the public and the jurisprudence of the State.” LD Br. at 9.

Stunningly, they assert instead that, despite the “significance of the issues in dispute here,” the case should “proceed in the ordinary course” because “this Court cannot provide the finality Plaintiffs seek before the May primary and November general elections.” LD Br. at 1.¹ They

¹ The Legislative Defendants also argue that this case cannot be considered by the Supreme Court because the underlying appeal has not been fully “docketed” with the Court of Appeals because the Legislative Defendants have not yet paid their docketing fee or filed a Record on Appeal. However,

erroneously argue that this Court “almost certainly” cannot move swiftly enough to make a final determination in this case before the November 2022 General Election, ignoring both significant precedent of this court’s practice to the contrary²— and the *actual* election administration timetables outlined by the State Board Defendants. *See* LD Br. at 15; *see also* State Board Defendants’ Response to Plaintiffs’ Petition for Discretionary Review (Apr. 13, 2022) (“State Board Br.”), Declaration of Karen Brinson Bell at 4 (stating that the State Board only needs eight business days before the start of Early Voting in order to implement the Superior Court’s injunction within their SEIMS system). Most revealing, Legislative Defendants broadcast their belief that their own delays in the intermediate Court of Appeals can—and indeed should—mechanically deprive this Court of its jurisdiction over this matter prior to the 2022 General election. That cannot be so, and Legislative Defendants’ decision

they fail to mention that the related case of COA No. 22-136 already has a full 1,045 page Record on Appeal, which is current as of February 16, 2022; or that they could pay this fee and file an updated Record on Appeal under this docket number *at any time*. In fact, they must file with the court or serve on Plaintiffs a proposed Record on Appeal by May 14, 2022 at the very latest. *See* N.C. R. App. 11(a)-(b).

² In fact, in *Harper v. Hall*, a final decision was rendered only 68 days after the case came before this Court. 22-NCSC-17 (certified for discretionary review on Dec. 8, 2021, and with a final order entered on February 14, 2022).

to openly seek to deprive Plaintiffs of resolution prior to the General election reinforces the need for urgent action by this Court.

Legislative Defendants also argue that public interest weighs in favor of denying over 56,000 individuals the right to vote for the May, July and November 2022 elections because this law “has been in effect in its current form for nearly half a century” and it does not affect “the whole electorate.” LD Br. at 12. The fact that this relic of Jim Crow has denied the franchise to tens of thousands of North Carolinians each year living on felony community supervision dating back to the 1800’s is no reason to continue enforcing it. This is particularly so when the Superior Court held unequivocally that the law was passed with *racially discriminatory intent* and continues to have a *racially discriminatory impact* to this day.

Finally, Legislative Defendants fail to acknowledge the central reason for this Court to act: regardless of what the earliest election cycle is in which the permanent injunction is fully effectively implementable, granting discretionary review would give certainty to this class of affected individuals, and it would do so far sooner than if this case proceeded first through the Court of Appeals. It has now been over two years since the Complaint was filed, and all parties recognize that this

case implicates the fundamental rights of tens of thousands of North Carolinians and the state's democracy.³ Individuals on community supervision have already been told twice during this litigation that they regained the right to register and vote, only to be told the opposite. Only immediate review by this Court will bring final resolution and give certainty to the over 56,000 individuals currently on felony community supervision who are seeking to vote in upcoming elections, and the Legislative Defendants have not offered any adequate justification for continued denial of the franchise to these individuals.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court allow discretionary review prior to determination by the Court of Appeals, assume immediate jurisdiction over the appeal in this case, including any and all motions, petitions, remedial proceedings, or other matters stemming from that appeal or the underlying order, and suspend the appellate rules as necessary.

Respectfully submitted this 24th day of April 2022.

³ State Board Defendants, too, explicitly recognized "the importance of preventing substantial harm to any individual's right to exercise the franchise." State Board Br. at 1.

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CERTIFICATE OF SERVICE

Pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, I hereby certify that a copy of this document has been duly served upon the following counsel of record by email:

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This the 24th day of April 2022.

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