

SUPREME COURT OF NORTH CAROLINA

COMMUNITY SUCCESS)	
INITIATIVE, et al.,)	
)	
<i>Plaintiffs,</i>)	
v.)	<u>From Wake County</u>
)	
TIMOTHY K. MOORE, <i>in his</i>)	No. 19 CVS 15941
<i>official capacity as Speaker of the</i>)	
<i>North Carolina House of</i>)	
<i>Representatives, et al.,</i>)	
)	
<i>Defendants.</i>)	
)	

**LEGISLATIVE DEFENDANTS' RESPONSE IN OPPOSITION
TO PLAINTIFFS' MOTION FOR EXPEDITION
AND CROSS-MOTION FOR EXTENDED BRIEFING SCHEDULE**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Defendants Timothy K. Moore and Phillip E. Berger, in their official capacities (“Legislative Defendants”), oppose Plaintiffs’ request for an unnecessarily expedited briefing and argument schedule. For good cause, Legislative Defendants also move for an extended briefing and argument schedule. In support, Legislative Defendants state as follows:

1. This is an appeal from a divided Wake County Superior Court's order enjoining enforcement of N.C.G.S. § 13-1, which restores voting rights to convicted felons who have been unconditionally discharged from their sentences.

2. Legislative Defendants filed the settled record on appeal on June 16, 2022. Under the North Carolina Appellate Rules, Legislative Defendants have thirty days from that date to file their opening brief; Plaintiffs have thirty days thereafter to file their response brief; and Legislative Defendants have fourteen days thereafter to file a reply brief. *See* N.C. R. APP. P. 13(a)(1), 28(h).

3. Without seeking Legislative Defendants' position as required by Appellate Rule 37(c), Plaintiffs have asked the Court to shorten the standard deadlines considerably. Under Plaintiffs' proposed schedule, Legislative Defendants would have until July 7 (only twenty-one days after June 16) to file their opening brief, Plaintiffs until July 28 to file their response brief, and Legislative Defendants until August 8 to file their reply. Plaintiffs also ask the Court to set oral argument as soon as possible after briefing is complete.

4. This expedited schedule is wholly unnecessary. Even under Plaintiffs' proposed schedule, the *briefing* will not be complete until August 8, after the operative stay will expire.

5. Nor would a more compressed schedule be any more appropriate. It is infeasible for the many important questions in this appeal to be fully briefed, argued, and decided by next month. And even if Plaintiffs could prevail on any of those questions—which they cannot—they would be in the same position they are in now,

because in no scenario would the State Board have adequate time to implement such a profound change to the North Carolina election system before the July 26 elections, certainly not without causing widespread voter confusion.

6. Plaintiffs' schedule would also prejudice Legislative Defendants' ability to present their case, particularly in light of counsels' obligations in other time-intensive matters. These include, but are not limited to, oral argument in the U.S. District Court for the District of Minnesota on June 17, oral argument in New York state court on July 18, oral argument in the U.S. District Court for the Northern District of California on August 25, depositions in a matter before the U.S. District Court for the Southern District of New York throughout July, briefing on class certification and on a motion for preliminary injunction due on July 1 and July 8, summary-judgment briefing due on August 4, and an answer to a 509-paragraph complaint due on August 8. In addition, one of Legislative Defendants' attorneys will be out of the country from June 19 through August 2, and another will be out of the country from June 23 through June 29.

7. Although counsel have worked diligently to balance these and other obligations with their obligations in this matter, these conflicts provide good cause for an extended briefing schedule, as outlined below. But there is no cause at all for an expedited schedule. Even the standard briefing schedule could not prejudice Plaintiffs, given that they will begin to receive their requested (though unwarranted) relief before briefing would be complete.

8. Indeed, Plaintiffs barely attempt to establish cause for their schedule. That this case “has been pending for over 2.5 years” is entirely normal. Pls.’ Mot. ¶ 10 (June 10, 2022).

9. Legislative Defendants respectfully request that, in light of counsels’ above-listed conflicts, the Court extend the briefing deadlines as follows:

Opening brief: August 1, 2022 (45 days after the filing of the record on appeal on June 16, 2022).

Response brief(s): September 15, 2022 (45 days after the deadline to file the opening brief).

Reply brief: October 6, 2022 (21 days after the deadline to file response briefs).

10. The Court could then hold argument and issue its decision in the normal course. An extended briefing schedule could not prejudice Plaintiffs. After July 26, the Superior Court’s injunction will be in place unless and until this Court reverses it.

11. Plaintiffs oppose Legislative Defendants’ requested briefing schedule. The State Board Defendants do not oppose.

WHEREFORE, Legislative Defendants request that the Court deny Plaintiffs’ Motion for Expedited Briefing and Argument, grant Legislative Defendants’ Cross-Motion for Extended Briefing Schedule, and enter the briefing schedule above.

Respectfully submitted this 17th day of June, 2022.

/s/Electronically Submitted
Nicole J. Moss (State Bar No. 31958)
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 220-9600
Fax: (202) 220-9601
nmoss@cooperkirk.com

N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys listed
below have authorized me to list their
names on this document as if they had
personally signed it.

David H. Thompson*
Peter A. Patterson*
Joseph O. Masterman*
William V. Bergstrom*
COOPER & KIRK, PLLC
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 220-9600
Fax: (202) 220-9601
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
jmasterman@cooperkirk.com
wbergstrom@cooperkirk.com

Nathan A. Huff (State Bar No. 40626)
K&L GATES
430 Davis Drive
Suite 400
Morrisville, NC 27560
Telephone: (919) 314-5636
Fax: (919) 516-2045
nate.huff@klgates.com

*Appearing *pro hac vice*

Counsel for Legislative Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on the parties to this action via email to counsel at the following addresses:

For the Plaintiffs:

FORWARD JUSTICE
400 Main Street, Suite 203
Durham, NC 27701
Telephone: (984) 260-6602
Daryl Atkinson
daryl@forwardjustice.org
Caitlin Swain
cswain@forwardjustice.org
Whitley Carpenter
wcarpenter@forwardjustice.org
Kathleen Roblez
kroblez@forwardjustice.org
Ashley Mitchell
amitchell@forwardjustice.org

ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Avenue NW
Washington, DC 20001
Telephone: (202) 942-5000
Elisabeth Theodore
elisabeth.theodore@arnoldporter.com
R. Stanton Jones
stanton.jones@arnoldporter.com

PROTECT DEMOCRACY PROJECT
2120 University Avenue
Berkeley, CA 94704
Telephone: (858) 361-6867
Farbod K. Faraji
farbod.faraji@protectdemocracy.org

This the 17th day of June, 2022.

For the State Board Defendants:

NORTH CAROLINA
DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-0185
Terence Steed
tsteed@ncdoj.gov
Mary Carla Babb
mcbabb@ncdoj.gov

/s/Electronically Submitted
Nicole Jo Moss
*Counsel for Legislative
Defendants*