

SUPREME COURT OF NORTH CAROLINA

COMMUNITY SUCCESS INITIATIVE,
et al.,

Plaintiffs,

v.

TIMOTHY K. MOORE, et al.,

Defendants.

From Wake County
No. 19 CVS 15941

**STATE BOARD DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION FOR EXPEDITED
BRIEFING AND ARGUMENT**

**TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE
JUSTICES OF THE SUPREME COURT OF NORTH
CAROLINA.**

The North Carolina State Board of Elections and its members (“State Board Defendants”) submit this response to Plaintiffs’ motion for expedited briefing and argument, filed 10 June 2022. While State Board Defendants recognize that it is in the public interest for the issues in this case to be finally resolved as expeditiously as practicable, they oppose Plaintiffs’ motion to the

extent it seeks a ruling from this Court prior to the 8 November 2022 general election, because of the administrative uncertainty and public confusion that could result from additional changes in voter eligibility in the run-up to the election.

Effective July 27, 2022, individuals on probation, parole, and post-release supervision for felony convictions may, if otherwise qualified,¹ register and vote in the 8 November 2022 general election and all subsequent elections unless and until this Court alters the status quo.

The superior court's 28 March 2022 final order, which is the subject of the appeal pending in this Court, included a provision enjoining the State Board "from preventing any person convicted of a felony from registering to vote or voting due to probation, parole, or post-release supervision." (R p.1132) Legislative Defendants noticed a timely appeal of that final order to the Court of Appeals. (R pp. 1139-41)

Legislative Defendants later petitioned the Court of Appeals for a writ of supersedeas, requesting that the court stay the superior court's above-noted final order. *See Community Serv. Initiative v. Moore*, No. P22-153, Docket Entry 1 (filed Apr. 1, 2022). The Court of Appeals entered an order on 26 April

¹ Qualifications unrelated to felon status include residency, age, and citizenship. *See generally* Article 6 and 7A of Chapter 163 of the North Carolina General Statutes.

2022 granting in part and denying in part the supersedeas petition. *See id.*, Order (Apr. 26, 2022). Specifically, the Court of Appeals stayed the superior court’s final order for the first and second primary elections, which occurred on 17 May 2022 and will occur on 26 July 2022, respectively. *Id.* It further ordered, however, that after the 26 July 2022 election, the State Board of Elections was “to take actions to implement the ‘Final Judgment and Order’ for subsequent elections,” which includes the general election occurring on 8 November 2022. *Id.*

This Court has since granted discretionary review of the superior court’s 28 March 2022 final order prior to a determination by the Court of Appeals. No party has challenged the Court of Appeals’ 26 April 2022 order in this Court. The Record on Appeal was filed in this Court on 16 June 2022.

Plaintiffs now request in their motion that this Court expedite briefing, providing a proposed schedule in which briefing will conclude on 8 August 2022. Plaintiffs further request oral argument “at the earliest convenient date following the completion of briefing, in August if possible.” (Plns.’ Mot. p. 4) Plaintiffs assert good cause exists to grant their request, contending in support that the present case is one “of extraordinary public importance involving the voting rights of over 56,000 North Carolinians living in communities across the State,” which “has been pending for over 2.5 years.” (*Id.*) Plaintiffs neglected

to consult all parties as required by Rule 37(c) of the North Carolina Rules of Appellate Procedure.

To the extent Plaintiffs' motion seeks a ruling from this Court prior to the 8 November 2022 general election, good cause does not exist to grant the motion. The status quo established by the Court of Appeals' 26 April 2022 order already allows the affected North Carolinians to vote in the 8 November 2022 general election. That being the case, expedited consideration, presumably to facilitate a decision prior to that election and, more specifically, to facilitate a decision affirming the status quo, is not necessary.

While denying the motion presents no prejudice to any parties, granting the request for expedited consideration which results in a ruling prior to the general election could introduce significant voter confusion and administrative difficulties. This is especially true if the Court were to decide the superior court was incorrect in determining the affected persons should be allowed to vote. At the earliest and under the most generous estimate, the expedited schedule proposed by Plaintiffs would allow for a decision in late August or early September. Even if the Court were to also expedite issuance of the mandate, that would reverse the status quo, about which affected voters have been on

notice since 26 April 2022, and it would do so on the eve of voting for the 8 November 2022 general election.²

As shown by the State Board's prior filings in this Court, in particular its response to Plaintiffs' bypass petition for discretionary review and the affidavit supporting that response, myriad preparations are needed for an election, many of which will have already taken place in anticipation of the 8 November 2022 general election by late August, including the printing of absentee ballot envelopes. Those also include, of course, preparations to ensure the people affected by the superior court's final order are given the opportunity to vote.

More significantly, impacted people have been on notice that they will be eligible to vote, and have thus expected to have the opportunity to vote, in the general election since the Court of Appeals issued its 26 April 2022 order, which no party has challenged since this Court granted discretionary review. Opening the door to a potential reversal of the status quo so close to the election would create a significant risk of confusion for impacted people about their eligibility to vote in the 8 November 2022 election.

² Absentee ballots will be distributed on 9 September 2022 for the general election. See <https://www.ncsbe.gov/news/events/mailing-absentee-ballots-2022-statewide-general-election> (last visited June 16, 2022).

Issues with election administration and, more importantly, voter confusion, counsel against granting Plaintiffs' request to expedite these proceedings, to the extent it seeks a ruling prior to the 8 November 2022 general election. Even if the Court expedited briefing and argument, these same issues would still counsel against issuance of an opinion or the mandate for an opinion affecting the status quo prior to the November 2022 general election. *Cf. Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam) ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase."); *accord Republican Nat'l Comm. v. Democratic Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam). Thus, granting expedited consideration to facilitate a decision prior to the general election is not necessary, and Plaintiffs' motion should be denied to the extent it seeks such a decision.

CONCLUSION

For these reasons, State Board Defendants respectfully request that Plaintiffs' Motion for Expedited Briefing and Argument be denied to the extent it seeks a ruling from this Court prior to the 8 November 2022 general election.

Electronically submitted this the 17th day of June, 2022.

JOSHUA H. STEIN
ATTORNEY GENERAL

Electronically Submitted

Terence Steed
Special Deputy Attorney General
N.C. State Bar No. 52809
Email: tsteed@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Phone: (919) 716-6400

N.C. R. App. P. 33(b) Certification:
I certify that the attorney listed
below has authorized me to list his
name on this document as if he had
personally signed it.

Mary Carla Babb
Special Deputy Attorney General
N.C. State Bar No. 25731
Email: mcbabb@ncdoj.gov

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing document was served on the parties to this action via email and was addressed to the following counsel:

FORWARD JUSTICE
400 Main Street, Suite 203
Durham, NC 27701
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
Elisabeth Theodore
elisabeth.theodore@arnoldporter.com
R. Stanton Jones
stanton.jones@arnoldporter.com

PROTECT DEMOCRACY PROJECT
2120 University Avenue
Berkeley, CA 94704
Farbod K. Faraji
farbod.faraji@protectdemocracy.org

Counsel for Plaintiffs

COOPER & KIRK, PLLC
1523 New Hampshire Avenue, NW
Washington, DC 20036
Nicole Jo Moss
nmoss@cooperkirk.com
William V. Bergstrom
wbergstrom@cooperkirk.com
Joseph O. Masterman
jmasterman@cooperkirk.com
Peter Patterson
ppatterson@cooperkirk.com
David H. Thompson
dthompson@cooperkirk.com

K&L GATES, LLP
430 Davis Drive, Suite 400
Morrisville, NC 27560
Nathan A. Huff
Nate.Huff@klgates.com

Counsel for Legislative Defendants

Electronically submitted this the 17th day of June, 2022.

Electronically Submitted

Terence Steed

Special Deputy Attorney General

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