

SUPREME COURT OF NORTH CAROLINA

JABARI HOLMES, FRED CULP,
DANIEL E. SMITH,
BRENDON JADEN PEAY,¹ and
PAUL KEARNEY, SR.,

Appellees,

v.

From Wake County
18-CVS-15292
No. COA 22-16

TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;*
PHILLIP E. BERGER *in his official capacity as President Pro Tempore of the North Carolina Senate;*
DAVID R. LEWIS, *in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session;*
RALPH E. HISE, *in his official capacity as Chairman of the Senate Select Committee on Election for the 2018 Third Extra Session;* THE STATE OF NORTH CAROLINA; *and* THE NORTH CAROLINA STATE BOARD OF ELECTIONS,

Appellants.

MOTION FOR EXPEDITED HEARING AND CONSIDERATION

¹ Plaintiffs-Appellants have separately moved to dismiss Brendon Jaden Peay from this appeal. That motion is currently pending before this Court.

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiffs-Appellees Jabari Holmes, Fred Culp, Daniel E. Smith, Brendon Jaden Peay, and Paul Kearney, Sr., by and through their undersigned counsel and pursuant to North Carolina Rule of Appellate Procedure 2 and 29, move this Court for an order expediting the hearing and consideration of this matter on appeal. In support of this motion Plaintiffs-Appellees state as follows:

1. Plaintiffs-Appellees brought this action against Defendants-Appellants on 19 December 2018 challenging the constitutionality of Senate Bill 824 (2018 N.C. Sess. Law 144) (“S.B. 824”). On 17 September 2021, following a three-week trial, a majority of the three-judge panel below entered its final judgement in favor of Plaintiffs-Appellees, finding that S.B. 824 violated the Equal Protection Clause of the North Carolina Constitution because it was enacted with the intent to discriminate against African American voters.

2. On 24 September 2021 and 27 September 2021, Defendants-Appellants filed notices of appeal seeking review of the three-judge panel’s final judgment; on 7 January 2022, Defendants-Appellants filed the Record on Appeal with the Court of Appeals.

3. On 14 January 2022, Plaintiffs-Appellees filed a Petition for Discretionary Review with this Court, which this Court allowed on 2 March 2022.

4. Merits briefing on this appeal was completed on 28 March 2022.

5. To date, no hearing for oral argument has been calendared.

6. Rule 29(b) of the North Carolina Rules of Appellate Procedure provides, in relevant part, that “appeals will be calendared for hearing in the order which they are docketed, but the court may vary the order for any cause deemed appropriate.” Similarly, Rule 2 provides that the Court may suspend or vary its rules in a particular case to prevent manifest injustice or to expedite decisions in the public interest.

7. This matter is appropriate for expedited consideration because, as discussed in Plaintiffs-Appellees’ Petition for Discretionary Review, it involves matters of the highest public interest, including questions about the validity and constitutionality of the State’s election laws. All parties agree this case is significant and raises issues of importance to the public and the jurisprudence of the State. *See* State Defendants-Respondents’ Response to Plaintiffs-Appellees’ Petition for Discretionary Review (“State’s Br.”) at 2; Legislative Defendants-Respondents’ Response to Petition for Discretionary Review Prior to Determination by the Court of Appeals (“Legislators’ Br.”) at 16. This Court recognized the significance of this matter when it granted Plaintiffs-Appellees’ request for certification before determination by the Court of Appeals, which is appropriate if a matter is of “significant public interest,” involves “legal principles of major significance to the jurisprudence of the State,” and/or requires prompt final adjudication to avoid “substantial harm.” *See* N.C.G.S. § 7A-31(b).

8. Timely resolution of this matter is necessary to allow the State and its voters to prepare for future elections without the risk of voter confusion and disenfranchisement. It has now been more than three years since S.B. 824 was enacted.

And the legislature's inability thus far to craft a voter ID law that does not intentionally discriminate against African American voters has resulted in nearly ten years of confusing, on-again-off-again messaging to voters and election officials alike, as first H.B. 589 and now S.B. 824 have wound their way through the courts. North Carolina's voters and election officials deserve the certainty that only this Court's review can provide.

9. Prompt resolution of Plaintiffs-Appellees' constitutional challenges to S.B. 824 by this Court may also obviate the need for further litigation in parallel cases involving S.B. 824, namely the federal challenge to S.B. 824, *N.C. State Conf. of the NAACP, et al. v. Cooper, et al.*, 18-cv-01034 (MDNC), which had been stayed on 30 December 2021 pending the resolution of a grant of certiorari by the U.S. Supreme Court and will soon be remanded back to the trial court for further proceedings in light of the U.S. Supreme Court's recent decision in *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. __ (2022).

10. Accordingly, and in light of the recent release of the Supreme Court's Calendar of Arguments for August, Plaintiffs-Appellees request that the Court schedule this matter for oral argument at the earliest possible date, either in a special session scheduled for September or, in the alternative, as part of the October oral argument calendar.

11. Plaintiffs-Appellees have conferred with counsel for Defendants-Appellants regarding this motion for expedited hearing and consideration. State Defendants-Appellants take no position on the motion. Legislative Defendants-Appellants oppose the motion.

WHEREFORE, Plaintiffs-Appellees respectfully request that the Court grant this motion and enter an order setting this matter for argument.

Respectfully submitted this the 11th day of July, 2022.

SOUTHERN COALITION FOR
SOCIAL JUSTICE

/s/ Jeffrey Loperfido
Jeffrey Loperfido
State Bar No. 52939
jeff@southerncoalition.org

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.

Allison J. Riggs
State Bar No. 40028
allison@southerncoalition.org
Hillary Harris Klein
State Bar No. 53711
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3909
Facsimile: 919-323-3942

PAUL, WEISS, RIFKIND, WHARTON &
GARRISON LLP

Andrew J. Ehrlich
(pro hac vice forthcoming)
aehrlich@paulweiss.com

1285 Avenue of the Americas
New York, NY 10019-6064
Telephone: 212-373-3000
Facsimile: 212-757-3990

Jane B. O'Brien
(pro hac vice forthcoming)
jobrien@paulweiss.com

Paul D. Brachman
(pro hac vice forthcoming)
pbrachman@paulweiss.com

2001 K Street NW
Washington, DC 20006-1047
Telephone: 202-223-7300
Facsimile: 202-223-7420

Counsel for Plaintiffs-Appellees

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon all parties by electronic mail addressed to the following:

Nicole J. Moss
David Thompson
Peter Patterson
Haley N. Proctor
Joseph Masterson
John Tienken
Nicholas Varone
COOPER & KIRK, PLLC
1523 New Hampshire Ave., N.W.
Washington, DC 20036
nmoss@cooperkirk.com
dthompson@cooperkirk.com
ppatterson@cooperkirk.com
hproctor@cooperkirk.com
jmasterman@cooperkirk.com
jtienken@cooperkirk.com
nvarone@cooperkirk.com

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

Counsel for Legislative Defendants-Appellants

Terence Steed
Assistant Attorney General
Laura H. McHenry
Special Deputy Attorney General
Mary Carla Babb
Special Deputy Attorney General

NC DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
tsteed@ncdoj.gov
lmchenry@ncdoj.gov
mcbabb@ncdoj.gov

Counsel for the State Defendants-Appellants

Respectfully submitted this the 11th day of July, 2022.

/s/ Jeffrey Loperfido
Jeffrey Loperfido
Southern Coalition for Social Justice