

NORTH CAROLINA SUPREME COURT

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

PLAINTIFFS' MOTION TO SET ORAL ARGUMENT

Plaintiffs-Respondents respectfully request that the Court set this case for oral argument as soon as feasible. While the Court previously declined to expedite briefing and argument in this appeal, as of Monday, 19 September 2022, briefing is complete in this case and good cause now exists to schedule oral argument promptly in order to ensure that Legislative Defendants' threats of criminal prosecution do

not improperly intimidate and deter lawful North Carolina voters from registering and voting. In support of this motion, Plaintiffs state as follows:

1. As the Court is aware, this is an appeal from the three-judge trial court's 28 March 2022 Final Judgment and Order invalidating and permanently enjoining as unconstitutional N.C.G.S. § 13-1's denial of the franchise to over 56,000 North Carolinians who are currently on probation, parole, or post-release supervision for a felony conviction ("felony supervision").

2. Pursuant to the Court of Appeals' 26 April 2022 temporary stay order, the trial court's Final Judgment and Order took effect on 27 July 2022, enabling the 56,000-plus affected individuals—disproportionately African Americans—to lawfully register and vote, including in the upcoming November 2022 elections.

3. Consistent with the Court of Appeals' order, the State Board of Elections publicly announced that individuals on felony supervision could now lawfully register and vote as of 27 July 2022. NCSCBO, "North Carolinians Serving Felony Sentences, Who Are Not in Jail or Prison, May Register to Vote Starting July 27" (July 26, 2022), <https://www.ncsbe.gov/news/press-releases/2022/07/26/north-carolinians-serving-felony-sentences-who-are-not-jail-or-prison-may-register-vote-starting>. Since then, organizational Plaintiffs, state agencies, and others have worked proactively to inform individuals on felony supervision of their right to register and vote, and to help such individuals register.

4. As noted above, on 10 June 2022, Plaintiffs moved to expedite briefing and argument in this appeal on the grounds that the case had been pending for over

2.5 years and presented an issue of exceptional public importance. On 17 June 2022, Legislative Defendants opposed the motion, asserting that there was no reason to expedite briefing or argument in part because the Court of Appeals' temporary stay order would expire on 27 July 2022, and Plaintiffs would "receive their requested ... relief"—i.e., affected individuals would be permitted to register and vote—as of that date, even absent expedition. On 27 June 2022, this Court denied Plaintiffs' prior motion to expedite.

5. Circumstances have changed, however, and good cause now exists to schedule oral argument promptly in order to eliminate any specter of criminal prosecutions raised by Legislative Defendants in their briefs to this Court. Specifically, Legislative Defendants have argued that individuals on felony supervision can be *criminally prosecuted* for *unlawfully* registering and voting notwithstanding the trial court's injunction allowing those individuals to *lawfully* register and vote. LD Br. 10-11. In their opening brief, Legislative Defendants assert that the trial court's injunction—contrary to its plain text—somehow "results in all felons with incomplete sentences remaining disenfranchised" and thus "*invites* lawbreaking by felons who mistakenly believe that" they may now register and vote pursuant to that injunction. *Id.* at 11 (emphasis in original). Based on this theory that individuals on felony supervision cannot lawfully register and vote despite the trial court's injunction, Legislative Defendants posit that "the effect of the court's order can only be to induce *violations* of § 163-275(5) [which makes it a felony offense to register or vote before rights restoration] *and to subject violators to*

prosecution” brought by “local law enforcement officials.” *Id.* (emphases added).

Under this specious view, individuals on felony supervision who register and vote in November 2022 pursuant to the trial court’s injunction, and clear guidance from the State Board of Elections that they are legally eligible to vote, can be criminally prosecuted for the felony offense of unlawfully registering and voting.

6. Even after Plaintiffs’ brief explained that this argument is baseless and risks intimidating lawful voters, Legislative Defendants’ reply brief doubled down on their assertion that affected individuals who register and vote this year could face “prosecutions under N.C.G.S. § 163-275(5)” brought by “enforcement officials who are not bound by the Superior Court’s injunction.” LD Reply Br. 5-6.

7. Plaintiffs are hesitant to do anything that could amplify Legislative Defendants’ frivolous contention that people on felony supervision who are following the law could be subject to criminal prosecutions for unlawfully registering and voting despite the trial court’s injunction explicitly allowing them to register and vote lawfully. To be clear, Legislative Defendants’ “prosecutions” argument has zero merit; there is no basis to prosecute a person who lawfully registers and votes pursuant to a court order, and any such prosecution would itself be not only improper, but unlawful. In fact, the Attorney General’s Office, on behalf of *all* elected District Attorneys in North Carolina, has already said that, “beginning with the fall primary election, *all* felon voters living in the community will be eligible to vote, and the *only* individuals subject to prosecution under N.C.G.S. § 163-275(5) are incarcerated individuals serving active felony sentences in prison or jail who

vote while incarcerated.” DA Defendants’ Reply to Plaintiffs’ Response in Opposition to The DA Defendants’ Motion to Stay, *North Carolina A. Philip Randolph Institute et al. v. The North Carolina State Board of Elections et al.*, No. 1:20-cv-00876, Dkt. No. 74 at 4 (M.D.N.C. May 18, 2022).

8. But, for obvious reasons, the mere *possibility* of being threatened with criminal prosecution, no matter how absurd and remote, risks intimidating and deterring affected individuals from registering and voting in upcoming elections as the trial court’s injunction explicitly allows them to do.

9. Accordingly, despite their desire to avoid amplifying Legislative Defendants’ baseless threat, Plaintiffs are filing this motion to schedule this case for oral argument as soon as feasible in October or November if possible. A decision by this Court would resolve this matter and conclusively eliminate the cloud that Legislative Defendants have attempted to raise over registration and voting by individuals on felony supervision. Until this Court resolves this appeal, Legislative Defendants’ statements to this Court could lead individuals on felony supervision to incorrectly fear that they may face felony criminal prosecution if they register and vote in the upcoming November elections.

10. Scheduling oral argument promptly will not prejudice Legislative Defendants. Indeed, Legislative Defendants cannot reasonably oppose prompt resolution of this appeal while arguing that over 56,000 individuals on felony supervision—disproportionately African Americans—could face felony criminal prosecutions for registering and voting pursuant to the trial court’s injunction.

11. Plaintiffs would be amenable to an even more expedited schedule if the Court prefers.

12. Plaintiffs have consulted with counsel for the State Board Defendants and Legislative Defendants about this motion. Legislative Defendants oppose this motion and intend to file a response. State Board Defendants take no position on this motion.

Respectfully submitted this 21st day of September 2022

Electronically submitted

/s/ Daryl V. Atkinson

Daryl V. Atkinson

FORWARD JUSTICE

N.C. State Bar No. 39030

P.O. Box 1932

Durham, NC 27702

(984) 260-6602

daryl@forwardjustice.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.

Caitlin Swain

N.C. State Bar No. 57042

Kathleen Roblez

N.C. State Bar No. 57039

Whitley Carpenter

N.C. State Bar No. 49657

Ashley Mitchell

N.C. State Bar No. 56889

FORWARD JUSTICE

P.O. Box 1932

Durham, NC 27702

(984) 260-6602
daryl@forwardjustice.org
wcarpenter@forwardjustice.org
cswain@forwardjustice.org
kroblez@forwardjustice.org
amitchell@forwardjustice.org

R. Stanton Jones*
Elisabeth Theodore*
ARNOLD & PORTER
KAYE SCHOLER LLP
601 Massachusetts Ave NW
Washington, DC 20001-3743
(202) 942-5000
Stanton.jones@arnoldporter.com
Elisabeth.theodore@arnoldporter.com

Farbod K. Faraji*
PROTECT DEMOCRACY PROJECT
2120 University Ave
Berkeley, CA 94704
(202) 579-4582
farbod.faraji@protectdemocracy.org

Counsel for Plaintiffs

**Admitted pro hac vice*

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CERTIFICATE OF SERVICE

I do hereby certify that I have served a copy of the foregoing Motion and [Proposed] Order with the Clerk of the North Carolina Supreme Court and will send notification of such filing by electronic mail, on the following parties at the following addresses:

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

Nicole Moss
Cooper & Kirk, PLLC
1523 New Hampshire Ave NW
Washington, D.C. 20036
nmoss@cooperkirk.com

*Counsel for Legislative
Defendants*

Terence Steed
Mary Carla Babb
N.C. Department of Justice
114 W. Edenton St.
Raleigh, NC 27603
tsteed@ncdoj.gov
mcbabb@ncdoj.gov

*Counsel for State Board
Defendants*

This 21st day of September 2022.

/s/ Daryl Atkinson
Daryl Atkinson

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' MOTION TO
SCHEDULE ORAL ARGUMENT**

The Court hereby Grants Plaintiffs' Motion to Schedule Oral Argument, and directs the Clerk to set oral argument in this case for the first available date following the completion of briefing.

So Ordered this ___ day of _____ 2022.

Justice, North Carolina Supreme Court