

SUPREME COURT OF NORTH CAROLINA

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

Plaintiffs-Appellees,

v.

TIMOTHY K. MOORE in his official
capacity as Speaker of the North
Carolina House of Representatives;
PHILIP 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,

Defendants-Appellants.

From Wake County

STATE DEFENDANTS' SUPPLEMENTAL BRIEF

NOW COME State Defendants to provide the instant supplemental brief in response to the Court's 3 February 2023 Order allowing Legislative Defendants' petition for rehearing.

RESPONSE TO THIS COURT'S INQUIRY
IN THE REHEARING ORDER

State Defendants did not request rehearing or take a position on Legislative Defendants' rehearing petition. However, in the 3 February 2023 rehearing order entered in this case, the Court ordered all parties, including State Defendants, to address the following:

1. The issues raised in the petition for rehearing; and
2. Whether the operation of the challenged statute is impacted by the pending legal challenge to N.C. Const. Art. VI, § 3(2), addressed by this Court in *N.C. State Conf. of the NAACP v. Moore*, 382 N.C. 129, 876 S.E.2d 513 (2022) ("*Moore*").

Holmes, et al. v. Moore, et al., No. 342PA19-2, Reh'g Order p. 3 (N.C. Feb. 3, 2023). The Court also gave the parties the option to address in their supplemental briefs any other issues raised in Plaintiffs' previously filed petition for discretionary review prior to determination by the Court of Appeals. *Id.*

Response to Inquiry Number 1

State Defendants submitted an opening Appellants' Brief on 7 February

2022 and a Reply Brief on 28 March 2022. For the reasons explained in those filings, State Defendants' position is that the photo voter-ID law is constitutional. (State Defs.' Br. pp. 28-55; State Defs.' Reply Br. pp. 4-19) The content of those filings is incorporated herein by reference.

Response to Inquiry Number 2

The operation of the photo voter-id law is not impacted by this Court's decision in *NAACP v. Moore*, 382 N.C. 129, 876 S.E.2d 513.

Relevant to the present case, at issue in *Moore* was the photo voter-ID constitutional amendment proposed by the General Assembly and enacted by popular ratification during the November 2018 election. *See id.*; *see also* N.C. Const. art. VI, §§ 2(4), 3(2); N.C. Session Law 2018-128, House Bill 1092. That same General Assembly would go on to enact the photo voter-ID law at issue in this case. *See* N.C. Session Law 2018-144, Senate Bill 824.

While the ruling in *Moore* calls into question the validity of the voter-ID constitutional amendment, the validity of the voter-ID *statute* at issue in this case is not impacted by that decision. The General Assembly was at liberty to enact a voter-ID law, with or without the constitutional amendment, so long as that law complied with the state and federal constitutions.

This Court's decision in *Moore* did not cast doubt on the constitutionality of ordinary legislation. This is because, as this Court explained in *Moore*, the "de facto officer" doctrine dictates that "ordinary legislative enactments"—even those passed by legislators elected due to unconstitutional racial gerrymandering—are shielded from "ex post facto collateral attack[s]" that are predicated upon the illegitimate composition of the legislative body. *Moore*, 382 N.C. at 160, 876 S.E.2d at 536.

The Court went on to hold, however, that the doctrine did not compel the same result for legislative enactments proposing state constitutional amendments, including the legislative enactment that proposed the voter-ID constitutional amendment. *Id.* at 161, 876 S.E.2d at 536.

It follows from *Moore* that because the General Assembly passed the voter-ID law as an "ordinary legislative enactment," not a proposed constitutional amendment, the law cannot be invalidated on the ground that it was enacted by an unconstitutionally gerrymandered legislature.

Of course, the voter-ID law is still "subject to judicial review" to determine whether it "comport[s] with the North Carolina Constitution." *Id.* at 161, 876 S.E.2d at 536. And that review is what the Court did in this case. As

the State Defendants explained in their previous briefing in this case, the voter-ID law comports with our state Constitution, with or without regard to the constitutional amendment. This Court's decision in *Moore* therefore does not affect the proper disposition of this case.

Additional Issue

In the rehearing order, this Court also gave the parties the option to address any issues raised in Plaintiffs' petition for discretionary review prior to determination by the Court of Appeals.

In responding to Plaintiffs' petition, State Defendants addressed the timing of the case's resolution as it related to the administration of the State's elections and the implementation of the voter-ID law. (State Defs' PDR Resp. pp. 2-3) As detailed in that response, all Defendants agree that implementation of the law will require significant lead time. (*Id.*) Specifically, the State Board and its partners will need to engage in outreach efforts to raise public awareness about the law and its requirements, conduct trainings, develop software changes to the election information management system, and engage in rulemaking. (*Id.*) State Defendants respectfully request that this Court take these logistical necessities into account in its resolution of this

case.

State Defendants stand ready to provide further information or answer any questions the Court may have regarding these issues.

Respectfully submitted this the 17th day of February, 2023.

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing SUPPLEMENTAL BRIEF upon the parties to this action by electronic mail, addressed as follows:

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Respectfully submitted this the 17th day of February, 2023.

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