

SUPREME COURT OF NORTH CAROLINA

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NORTH CAROLINA LEAGUE OF )  
CONSERVATION VOTERS, INC., et al., )

Plaintiff-Appellants, )

REBECCA HARPER, et al., )

Plaintiff-Appellants, and )

COMMON CAUSE, )

Plaintiff-Intervenor-Appellant, )

v. )

REPRESENTATIVE DESTIN HALL, in his )  
official capacity as Chair of the House )  
Standing Committee on Redistricting, et al., )

Defendant-Appellees.

From Wake County

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LEGISLATIVE DEFENDANTS' OBJECTION TO SUSPENDING THE  
RULES UNDER APPELLATE RULE 2

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Legislative Defendants object to Plaintiff-Intervenor-Appellant Common Cause's request to suspend the Rules of Appellate Procedure and expedite this case in its current posture. Because the redistricting plans at issue are, and have been, established for the November 2022 election cycle, there is no pressing public need to argue and decide this case in a hastened fashion. To the contrary, arguing this highly publicized case at the same time citizens are voting for their congressional and state representatives will undoubtedly confuse voters as to whom they are voting for and whether this Court will change the districts they are currently in.

This Court already established a lightning-fast trial, appellate review, remedial phase in the trial court (which is under review), and an expedited stay review of the trial court's order. That appellate review was already done pursuant to Appellate Rule 2 with the primary focus of determining which legislative and congressional districts North Carolinians would be voting in for the 2022 elections. We now have that information. It is settled for 2022.

Nothing in this appeal will impact any election before those set to take place in 2024. Therefore, even if briefing will be complete in September, oral argument and a final decision by this Court at the earliest possible opportunity—as Common Cause desires—is simply not necessary and certainly not in the public interest.

To the contrary, “[n]ot later than 60 days before the statewide general election in even-numbered years . . . the county board of elections shall transmit a ballot and balloting materials to all covered voters who *by that date* submit a valid military-overseas ballot application . . . .” N.C.G.S. § 163-258.9(a); *see also* N.C.G.S. § 163-

227.10(a) (ballots must be ready for absentee voters 60 days before the general election). Thus, as of 9 September 2022, North Carolina will have begun voting under the present-day congressional and legislative district maps. *See, e.g.,* <https://www.ncsbe.gov/voting/upcoming-election>. As the timeframe to election day in November draws closer, more people will be casting their votes. It will create confusion for voters going to the polls with one set of maps while at the same time this Court hears Plaintiffs' arguments about alleged legal concerns with those very maps. Expediting a final decision on the remedial maps during an election conducted under those maps will create even more confusion and risk discouraging voters from potentially coming out at all (in particular given the few statewide races). Convenience to the parties is certainly not a reason to create these risks of voter confusion and discouragement. *See Purcell v. Gonzales*, 591 U.S. 1, 4–5 (2006) (per curiam) (describing “voter confusion” and disincentivizing effects when changes are made close to an election).

There is also no legitimate indication that a decision in this case needs to be rushed to avoid Common Cause's forecast of calamities on further remediation. The redistricting process in 2021 was truncated in North Carolina and elsewhere, in large part, because of the delayed receipt of the 2020 census data. That is no longer an issue even for the congressional districts that the trial court held needed to be redrawn prior to the 2024 election.

In short, the “considerations” that weighed favorably on this Court expediting review of the state's redistricting plans for the 2022 election, (Plaintiff-Appellant

Common Cause’s Motion, p.2) do not still support expediting a decision on what will control elections nearly twenty-nine months from now. “[P]recedent cannot create an automatic right to review via Rule 2.” *State v. Bursell*, 372 N.C. 196, 201, 827 S.E.2d 302, 306 (2019). Just because this Court has treated prior aspects of this case as exceptional from an appellate rules standpoint does not mean when the need for the exigency has waned, that further decisions and processes in the same case do not need to follow the appellate rules. A key component of invoking Rule 2 is the need to go faster than the normal process, not simply that the subject matter of the case is of public interest. *Compare* N.C. App. R. 15(a) (incorporating grounds for discretionary review under N.C.G.S. § 7A-31(b)(1) and (c)(1), which states that review (even prior to the Court of Appeals) could occur when the “subject matter of the appeal has significant public interest”) *with* N.C. App. R. 2 (“To prevent manifest injustice, or to *expedite* decision in the public interest . . . .). Common Cause appears to ask for expedited review simply because the case is of public interest. But that is not the standard. Here, there is no public interest for going faster than the Rules<sup>1</sup> require—in particular when doing so this close to an election risks voter confusion.

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<sup>1</sup> Common Cause’s motion does not cite which appellate rules need to be suspended or varied under Rule 2 considering that Common Cause is not seeking an expedited briefing schedule and has, before this motion, joined in the normal record settling and briefing process. Rule 29 regarding sessions of court, and in particular Rule 29(a) seems to be the likely appellate rule Common Cause would prefer to circumvent. Pursuant to Rule 29(a)(1) appeals in this Court “will be heard in accordance with a schedule promulgated by the Chief Justice.” Presumptively this motion asks the Court as a whole to vote on scheduling, instead of leaving the decision to the Chief Justice as the Rules of Appellate Procedure would otherwise require.

Respectfully submitted, this the 7<sup>th</sup> day of July, 2022.

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Electronically submitted

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The undersigned hereby certifies that on this date the foregoing Legislative Defendants' Opposition to Suspending the Rules Under Appellate Rule 2 was served upon the following by electronic email addressed as set forth below:

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