

SUPREME COURT OF NORTH CAROLINA

JABARI HOLMES, FRED CULP,)
DANIEL E. SMITH, BRENDON)
JADEN PEAY, AND PAUL)
KEARNEY, SR.,)

Plaintiffs-Petitioners,)

v.)

TIMOTHY 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 Elections for)
the 2018 Third Extra Session; THE)
STATE OF NORTH CAROLINA;)
and THE NORTH CAROLINA)
STATE BOARD OF ELECTIONS,)

Defendants-Respondents.)

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

LEGISLATIVE DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR EXPEDITED HEARING AND CONSIDERATION

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Defendants Timothy K. Moore, Philip E. Berger and Ralph E. Hise, each in their respective official capacities (“Legislative Defendants”),¹ oppose Plaintiffs’ request to unnecessarily expedite the hearing and consideration of this matter. In opposing Plaintiffs’ motion, Legislative Defendants state as follows:

1. This is an appeal from a divided Wake County Superior Court’s final judgment permanently enjoining enforcement of 2018 N.C. Sess. Laws 144 (“S.B. 824”). S.B. 824 was enacted on a bipartisan basis to meet the North Carolina Constitution’s mandate for voter ID, while promising that “[a]ll registered voters will be allowed to vote with or without a photo ID card.” 2018 N.C. Sess. Laws 144, § 1.5(a)(10).

2. The Superior Court entered its final judgment on September 17, 2021. Legislative Defendants filed their notice of appeal on September 24, 2021, and State Defendants filed their notice of appeal on September 27, 2021. The record on appeal was filed on January 7, 2022. Plaintiffs sought to bypass the Court of Appeals with their Petition for Discretionary Review in this Court on January 14, 2022. This Court granted review on March 2, 2022.

3. After the passage of nearly ten months from the Superior Court’s final judgment, Plaintiffs now ask this Court to expedite the hearing and consideration of the merits of this case. *See* Pls-Appellees’ Mot. for Expedited Hr’g and Consideration

¹ David R. Lewis, a previously named defendant in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session, is no longer in office and therefore no longer a party to this litigation.

(July 11, 2022) (“Mot.”). According to Plaintiffs, they would prefer this Court vary its usual practice, *see* N.C. R. APP. P. 29(b), and give this case unusual treatment either through a specially scheduled session in September or by skipping the line for a calendared hearing in October. *See* Mot. at 3.

4. This Court should deny Plaintiffs’ motion because a motion to expedite the hearing and consideration of the merits is wholly unnecessary.

5. In the nearly ten months from the Superior Court’s judgment, and the several months since Plaintiffs sought this Court’s review, Plaintiffs have *at no time* asked to expedite. And Plaintiffs’ new motion fails to offer *any* recent or emergent cause to grant such a motion now. After all, Plaintiffs could have sought expedition of the merits in January if not earlier, but they did no such thing. *See* Pls-Appellees’ Pet. for Discretionary Review Prior to Determination By the Court of Appeals (Jan. 14, 2022) (containing no request to expedite the hearing and consideration of the merits) (“Pet.”); *see also* Pls-Appellees’ Mot. for Expedited Consideration of Pet. for Discretionary Review (Jan. 28, 2022) (seeking expediting of whether to grant *the petition*, but not seeking expedition of the hearing and consideration of *the merits*).

6. Plaintiffs argue that the significance of the issues presented by this case is a reason to expedite the hearing and consideration of the merits. As the merits have remained *unchanged* since the Superior Court’s divided judgment in September 2021, the issues presented are neither a cause to expedite nor an excuse for Plaintiffs failing to seek expedition earlier. In all events, the significance of the issues in this case, if anything, is a further reason for this Court to take its standard and fulsome

review. This is especially so because this Court does not have the benefit of the Court of Appeals' considered views.

7. In a most telling omission, Plaintiffs do not argue that this Court's standard practice would cause them even the slightest risk of prejudice. The Superior Court's permanent injunction remains in effect; S.B. 824 is not currently being enforced. Thus, expedited consideration will not give Plaintiffs any relief (however unwarranted) that they do not currently enjoy, namely voting without the constitutionally mandated requirements of S.B. 824.

8. Plaintiffs claim that this Court should hear this case in September or October to allow "the State and its voters to prepare for future elections without the risk of voter confusion" and to provide "certainty." *See* Mot. at 2–3. This would place the Court's consideration in the middle of the election. Plaintiffs do not square their newfound desire for a court decision in the midst of the upcoming election with their past representations to this Court. Plaintiffs have previously asserted to this Court that any decision upholding the constitutionality of S.B. 824 will require the State to expend "substantial time and effort . . . sufficiently in advance of upcoming elections to minimize the risk of voter confusion and disenfranchisement." Pet. at 18. Thus, in January, Plaintiffs allegedly sought to avoid this voter confusion with a decision by this Court sufficiently removed from an election. In July, Plaintiffs apparently want rushed consideration right before an impending election, tossing aside their prior concerns. Plaintiffs fail to explain how (or why) they now seek consideration of this case in the weeks leading up to an impending election, during mail-in and early

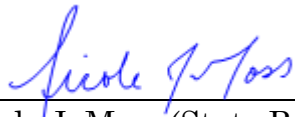
voting, when the risk of “judicially created [voter] confusion” is highest. *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (per curiam).

9. An unusual and expedited review by this Court during election season, according to the Plaintiffs’ own past representations, would be more likely to cause voter confusion, not less. This Court should not endorse Plaintiffs’ transparent and unnecessary scheduling gamesmanship. With no valid reason to speed these proceedings to a hasty resolution, this Court should continue to hear and consider the merits of this case in the normal course. In other words, in just the manner that Plaintiffs requested in January.

WHEREFORE, Legislative Defendants request that this Court deny Plaintiffs’ Motion for Expedited Hearing and Consideration.

Respectfully submitted this 13th day of July, 2022.

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/s/ 
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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.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 13th day of July, 2022 the foregoing was served on the parties to this action via email to counsel at the following addresses:

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