

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

NORTH CAROLINA A. PHILIP RANDOLPH
INSTITUTE and ACTION NC,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

Civil Action No.
1:20-cv-00876

**ORAL ARGUMENT
REQUESTED**

**MOTION TO EXPEDITE CONSIDERATION OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT AND REQUEST FOR PERMANENT INJUNCTION
AND TO SET A HEARING BEFORE THE DISTRICT COURT**

Pursuant to Rule 6(c)(1)(C) of the Federal Rules of Civil Procedure and Local Rule 7.3, Plaintiffs hereby move the Court to (i) expedite consideration of Plaintiffs' motion for summary judgment and request for permanent injunction (ECF No. 85); (ii) schedule a hearing on Plaintiffs' motion for summary judgment before District Judge Biggs at the Court's earliest convenience; and (iii) set an abbreviated briefing schedule for the present motion to expedite.

Good cause exists for this request because Plaintiffs' motion for summary judgment concerns the validity of a state election law, N.C.G.S. § 163-275(5) (the "Strict Liability Voting Law" or the "Law"), and its enforceability in connection with the upcoming municipal elections this Fall. As demonstrated in Plaintiffs' summary

judgment motion, there are no disputes about the key elements of Plaintiffs' challenge to the Strict Liability Voting Law. Defendants concede both that the Law was originally enacted with racially discriminatory intent in 1877 and the Law continues to disproportionately impact Black voters. The Law therefore violates the Equal Protection Clause. Resolving the motion on an expedited basis would prevent the risk of voter confusion in the current election cycle and permanently remove from North Carolina's general statutes a shameful remnant of the Jim Crow era.

In addition, good cause exists based upon recent legislative action by the North Carolina General Assembly that, while potentially addressing certain of Plaintiffs' claims for elections held on or after January 1, 2024, does nothing to remedy the ongoing harmful effects of the Strict Liability Voting Law in the current election cycle.

In support of this motion, Plaintiffs state the following:

1. On September 24, 2020, before the last Presidential election, Plaintiffs commenced this case by filing a Complaint and motion for preliminary injunction barring enforcement of the Strict Liability Law. *See* ECF Nos. 1-2. The Law criminalizes voting on a strict liability basis by North Carolina residents who are on parole, probation or post-release supervision for a felony conviction, even if they mistakenly believe they are eligible to vote. *See* N.C.G.S. § 163-275(5). On November 4, 2020, Plaintiffs' motion for preliminary injunction was denied. *See* ECF Nos. 24, 34.
2. Plaintiffs have diligently proceeded with this case through defeating a motion to dismiss and a motion to stay, obtaining necessary discovery, and moving for

summary judgment. On June 15, 2023, Plaintiffs filed their motion for summary judgment, and briefing was completed on August 14, 2023. *See* ECF Nos. 85-97.

3. On June 21, 2023, the North Carolina Senate passed Senate Bill 747 (“SB 747”). Among other amendments, SB 747 contained the following proposed change to N.C.G.S. § 163-275(5):

It shall be unlawful:

...

For any person convicted of a crime which excludes the person from the right of suffrage, to vote at in any primary or election ~~without having been restored to~~ knowing the right of citizenship has not been restored in due course and by the method provided by law.¹

4. At the time Plaintiffs filed their summary judgment motion, and throughout the briefing period, the potential timing and scope of SB 747 remained unclear.

5. On August 16, 2023, after briefing was completed, the North Carolina House of Representatives passed SB 747 in substantially the same form as the version passed by the Senate. In relevant part, the proposed language amending N.C.G.S. § 163-275(5) remained unchanged. By its terms, this amendment will become effective on January 1, 2024 and applies only to elections held on or after that date.² The bill was subsequently sent to the North Carolina Governor for his signature.

¹ *See* Senate Bill 747-Third Edition, 2023-2024 Session, <https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v3.pdf> (last accessed June 29, 2023).

² *See* Senate Bill 747, Ratified Bill, 2023-2024 Session, <https://www.ncleg.gov/Sessions/2023/Bills/Senate/PDF/S747v5.pdf>

6. On August 24, 2023, Governor Cooper vetoed SB 747.³ The Governor's veto can only be overridden by a supermajority of representatives from the House and Senate.⁴ In 2023 alone, the Governor's veto has been overridden 14 times by the House and Senate.⁵ While neither chamber has announced when it may schedule a veto override vote, press reports from legislative leaders have indicated that such a vote may be held shortly after Labor Day.⁶

7. SB 747, while potentially resolving certain aspects of this litigation beginning next year,⁷ does not change the status quo under the existing Law.

8. Before the relevant portions of SB 747 may become effective, municipal elections will be held on September 12, October 10, and November 7.⁸ Early voting has

³ See "Governor Cooper to Veto Election Bill that Makes it Harder to Vote and for Votes to Count," NC GOVERNOR ROY COOPER, (<https://governor.nc.gov/news/press-releases/2023/08/24/governor-cooper-veto-election-bill-makes-it-harder-vote-and-votes-count>) (last accessed August 31, 2023).

⁴ See N.C. Const. Art. II Sec. 22.

⁵ See N.C. Legislative Library, "North Carolina Veto History and Statistics 1997-2023," <https://sites.ncleg.gov/library/wp-content/uploads/sites/5/2023/05/VetoStats.pdf>

⁶ See Steve Doyle, "North Carolina Gov. Roy Cooper Vetoes One Bill That Changes Election Law, promises to Veto Another," FOX 8 (Aug. 24, 2023), <https://myfox8.com/news/north-carolina/north-carolina-gov-roy-cooper-vetoes-one-bill-that-changes-election-law-promises-to-veto-another/>

⁷ Plaintiffs have not fully analyzed the potential implications of SB 747, if finally enacted, on their claims, and reserve all rights in this respect.

⁸ See "Upcoming Election," NCSBE (<https://www.ncsbe.gov/voting/upcoming-election>) (last accessed August 31, 2023)

already begun for September partisan primaries as of August 24, 2023.⁹

9. As briefing on Plaintiffs' motion for summary judgment has demonstrated, the central facts establishing that the Strict Liability Voting Law is unconstitutional under the Equal Protection Clause are undisputed. Defendants concede that the Law was enacted in 1877 and reenacted in 1899 with racially discriminatory intent. And Defendants concede that the Law continues to have a disproportionate impact on Black citizens. Defendants' only argument in opposition is that a 1971 state constitutional amendment that did not mention the Law somehow indirectly cleansed the Law's racist history and impact. This argument is unsupported and unprecedented. The Law also violates the Due Process Clause because it does not explain when a voter has been "unconditionally discharged" such that the voter has regained his or her right to vote. *See generally* Pls.' Summary Judgment Reply Br. (ECF No. 96).

10. Briefing on Plaintiffs' motion for summary judgment has further demonstrated the already significant risks of voter confusion among North Carolina citizens with respect to how and when the right to vote is restored, and the resulting deterrence among prospective voters that Plaintiffs and other voting rights organizations operating in the state routinely observe. *See* ECF Nos. 89-20, 89-21, 89-22. As this Court previously noted in rejecting Defendants' stay motion, given the nature of this case, there is significant risk of "prejudice to Plaintiffs and the public interest . . . if this

⁹ *See id.*

case were to persist through [multiple] election cycles.” 10/24/22 Text Order (citing *League of Women Voters of Michigan v. Johnson*, 2018 WL 10483912, at *1 (E.D. Mich. Mar. 14, 2018)).

11. Federal courts in North Carolina have granted motions to expedite in similar circumstances in view of upcoming election deadlines. *See, e.g., Disability Rights N.C. v. N.C. State Bd. of Elections*, No. 5:21-cv-361-BO (E.D.N.C. July 10, 2022) (granting motion to expedite consideration of motion for summary judgment); *Taliaferro v. N.C. State Bd. of Elections*, No. 5:20-cv-411-BO (E.D.N.C. June 7, 2021) (granting motion to expedite consideration of motion for judgment on the pleadings).

12. Plaintiffs also respectfully request that a hearing on their motion for summary judgment be scheduled before District Judge Biggs. While Plaintiffs’ motion for summary judgment was referred to Magistrate Judge Webster per the Court’s order on August 15, 2023, Plaintiffs believe that prompt consideration of the motion by the District Court would advance the interests of justice and avoid unnecessary delay in view of the impending election deadlines. Plaintiffs submit that they have strong grounds for summary judgment and a permanent injunction and anticipate that Defendants would appeal any adverse rulings by Magistrate Judge Webster to the District Court, delaying resolution of the important Constitutional issues raised. Under these circumstances, having Magistrate Judge Webster issue a report and recommendation followed by Defendants’ objections would prejudicially delay the resolution of a voting rights case that has been pending since before the Presidential election in 2020. *See* Local Rule

7.3(c) (“Motions shall be considered and decided by the Court . . . without hearing or oral argument, unless otherwise ordered by the Court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court’s attention in the motion or response.”).

13. In addition, pursuant to Local Rule 7.3(f), Plaintiffs respectfully move for an abbreviated motion schedule. Good cause exists for this request in view of the impending election deadlines. *See* Local Rule 7.3(f) (“For good cause appearing therefor, a respondent may be required to file any response and supporting documents, including brief, within such shorter period of time as the Court may specify.”). Plaintiffs request that Defendants’ response, if any, to Plaintiffs’ motion be filed within seven (7) days of the date of this motion.

14. Plaintiffs have conferred with Defendants on this Motion. The State Board Defendants indicated that they oppose the motion to expedite but do not oppose Plaintiffs’ proposed briefing schedule. The DA Defendants indicated that they oppose the Motion in full.

WHEREFORE, Plaintiffs respectfully request that the Court grant the foregoing motion for expedited consideration of Plaintiffs’ motion for summary judgment and permanent injunction, schedule a hearing before the District Court on Plaintiffs’ motion for summary judgment, and issue a briefing schedule providing that Defendants shall have until September 7, 2023 to respond to this motion.

Dated: August 31, 2023

By: /s/ Jeffrey Loperfido

SIMPSON THACHER & BARTLETT
LLP

Jonathan K. Youngwood (*specially appearing*)
David Elbaum (*specially appearing*)
Nihara K. Choudhri (*specially appearing*)
Jacob Lundqvist (*specially appearing*)
425 Lexington Avenue
New York, NY 10017
Tel: (212) 455-2000
Fax: (212) 455-2502
jyoungwood@stblaw.com
delbaum@stblaw.com
nchoudhri@stblaw.com
jacob.lundqvist@stblaw.com

SOUTHERN COALITION FOR SOCIAL
JUSTICE

Jacob H. Sussman (State Bar No. 31821)
Jeffrey Loperfido (State Bar No. 52939)
Mitchell D. Brown (State Bar No. 56122)
1415 West Highway 54, Suite 101
Durham, NC 27707
Tel: (919) 323-3380
Fax: (919) 323-3942
jsussman@scsj.org
jeffloperfido@scsj.org
mitchellbrown@scsj.org

Attorneys for Plaintiffs

CERTIFICATE OF WORD COUNT

Pursuant to Local Rules 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Motion for Expedited Consideration contains 1,589 words (including headings and footnotes) as measured by Microsoft Word.

/s/ Jeffrey Loperfido
Jeffrey Loperfido

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I certify that on the 31st day of August, 2023, the foregoing Motion for Expedited Consideration was served through the ECF system to all counsel of record, with consent of all counsel to accept service in this manner.

/s/ Jeffrey Loperfido
Jeffrey Loperfido

RETRIEVED FROM DEMOCRACYDOCKET.COM