

No. 25-2180

In the United States Court of Appeals for the Fourth Circuit

RODNEY D. PIERCE and MOSES MATTHEWS,

Plaintiff-Appellants,

v.

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

Defendant-Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina, James E. Dever, III, District Judge
No. 4:23-cv-193-D-RN

**STATE BOARD DEFENDANTS' RESPONSE TO PETITION FOR INITIAL,
EXPEDITED HEARING EN BANC, AND TO EXPEDITE
CONSIDERATION OF THIS PETITION**

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Defendant-Appellees State Board Defendants

Defendant-Appellees The North Carolina State Board of Elections, and Francis X. De Luca, Stacy "Four" Eggers, Robert Rucho, Jeff Carmon, and Siobhan O'Duffy Millen, all in their official capacities (collectively "State Board Defendants"), file this response pursuant to the Court's October 8, 2025 order. [D.E. 6.]

State Board Defendants take no position on Plaintiff-Appellants' Petition for Initial, Expedited Hearing En Banc, and to Expedite Consideration of the Petition [D.E. 3] or the merits of Plaintiff-Appellants' claims. Rather, this response is provided to inform the Court and the parties about the schedule for the upcoming 2026 elections and related administrative considerations. This Response is supported by the Declaration of Sam Hayes, Executive Director for the State Board, which is submitted with this Response.

SCHEDULE FOR THE 2026 ELECTIONS

Candidate filing for the March 3, 2026, statewide primary election begins at noon on December 1, 2025, and ends at noon on December 19, 2025. N.C.G.S. § 163-106.2(a); *See* Hayes Decl. ¶ 3; North Carolina State Board of Elections webpage, "Upcoming Candidate Filing Periods," <https://www.ncsbe.gov/candidates/running-office> (last visited October 14, 2025). The schedule for 2026 elections will not be finalized until next month.

The 2026 primary contests on the ballot may include U.S. Senate, U.S. House of Representatives, the N.C. General Assembly, statewide and district-level judicial contests, county offices, and other local offices. Absentee ballots will be distributed beginning January 12, 2026. Hayes Decl. ¶ 3; N.C.G.S. §§ 163-227.10 and -258.9(a). In-person early voting begins on Thursday, February 12, 2026. *Id.*, § 163-166.40(b).

Once the candidate filing period is completed on December 19, numerous tasks begin that are necessary to prepare and proof the official ballots, to have certified vendors print and deliver those ballots to the county board offices, and to have county board staff create outgoing absentee ballot packages for each eligible absentee ballot requester. *See* N.C.G.S. §§ 163-165.3, -229, -230.1(a1) & (c), -258.9; *see also* 08 NCAC 06B .0103.

To comply with state law, these processes need to be accomplished by January 12, 2026. *See* Hayes Decl. ¶ 8; N.C.G.S. §§ 163-227.10 and -258.9(a) (requiring absentee ballots to be mailed 50 days prior to election day). Under the current schedule, the Board will have 11 business days to complete the tasks set forth above after the candidate-filing window closes on December

19.¹ Even including holidays and weekends, there are only 23 calendar days between the close of candidate filing and the absentee ballot distribution deadline. This is already a very busy period for the State Board and county boards, and any disruption to it could delay the start of absentee voting for the March 2026 primary. Hayes Decl. ¶ 13.

If it deems extra time is necessary and the primary ballots have not yet been printed, the State Board is permitted under state law to reduce the deadline for distributing absentee ballots from 50 days to 45 days before the primary election. N.C.G.S. § 163-22(k). Reducing the deadline from 50 to 45 days is the only extension the State Board could grant itself under state law to have additional time for ballot preparation; if that reduction occurs, the distribution of absentee ballots would still comply with the federal law deadline for absentee-ballot distribution. *See* 52 U.S.C. § 20302(a)(8)(A) (requiring absentee ballots to be mailed 45 days prior to election day). Such a reduction in the deadline would shift the absentee-ballot distribution

¹ December 24, 25, 26, 2025, and January 1, 2026 are state holidays falling within this time period. *See*, <https://oshr.nc.gov/2025-holiday-schedule/open>. last checked October 14, 2025.

deadline from January 12 to January 16² and give the State Board a few extra days to accomplish the necessary tasks. See Hayes Decl., ¶¶ 7, 8.

IMPACT OF THIS LITIGATION ON THE ELECTIONS CALENDAR

If this Court (or any other)³ orders new State Senate districts to be drawn, the impact on the elections calendar will depend on the timing and scope of that order.

To start, if the new districts are provided before the start of candidate filing established in state law, December 1, 2025, see N.C.G.S. § 163-106.2, then there would be no need to provide for a different candidate filing period, and if the districts are provided approximately a week before the start of the filing period then it is likely that the necessary reassignment of voters could be completed before filing begins. See Hayes Decl., ¶ 9. Under that timeline,

² January 17 is a Saturday, such that even if ballots were not required to be distributed until 45 days before the primary, any additional preparation work would have to be completed so the ballots can be distributed by the prior business day, Friday, January 16, 2026.

³ This could include a decision in the consolidated cases *Williams v. Hall*, 1:23-cv-01057-TDS-JLW and *NAACP v. Hall*, 23-CV-1104 currently pending in the United States District Court for the Middle District of North Carolina, in which Plaintiffs have challenged the North Carolina General Assembly's 2023 redistricting plan.

there should not be a delay of any administrative dates or deadlines for ballot preparation and distribution for the March 2026 primary.

If new districts are received after candidate filing has begun, then to accommodate a new map without moving the dates for any election contests, the State Board would need to receive the new map in sufficient time for an administrable candidate filing period, which the State Board would consider to be at least 5 business days, that would conclude no later than December 19. *See Hayes Decl.*, ¶ 10. Doing so would ensure the State Board and county boards can complete all necessary ballot preparation tasks by the January 12 deadline. In that scenario, the State Board and relevant county boards would need to reassign voters to the new districts simultaneous with candidate filing. *Id.*

If new districts are received after candidate filing ends, a reopened candidate filing period would be required. The State Board and the county boards would then need to incorporate those new candidates into the already ongoing ballot preparation tasks on an expedited basis. *Id.*, ¶¶ 10, 11. Assuming the court-ordered remedy affected only a limited number of state senate districts, the State Board and county boards would still need to know the

candidates for the ballot at least 7 business days before the absentee ballot distribution deadline to complete the ballot creation and proofing tasks and other tasks necessary to reassign voters, create absentee ballot packages, and distribute those absentee ballots by the absentee ballot distribution deadline.

Id. ¶ 11. And because there are only 11 business days between the close of filing on December 19, 2025, and the current absentee ballot distribution deadline on January 12, 2026, the State Board would have to reduce the ballot distribution deadline to 45 days to make this feasible.

If a new map is needed but is not ordered in time to complete the above-described tasks by the deadline for distribution of absentee ballots, administrative infeasibility would require moving the affected election contests to May 12, 2026—the date set by state law for a second primary in the event one is demanded by a candidate eligible to do so after the March 3 primary. N.C.G.S. § 163-111; see Hayes Decl., ¶ 14. If a remedial map was not provided in sufficient time for candidate filing for the affected contests to occur in early March, holding the contests for the affected State Senate

districts on May 12, 2026⁴—would not be administratively possible. *Id.*

Holding delayed elections is not without costs, most of which are borne by the county boards of elections. These costs can be particularly significant if a court-ordered remedy requires the State and county boards to hold a special election that otherwise would not occur. However, moving the date for a limited number of contests is administratively feasible, and has been done in North Carolina in recent years.⁵

CONCLUSION

As stated above, the State Board Defendants take no position on the merits but stand ready to provide any and all additional information required by the Court regarding the election schedule, relevant deadlines, and practical

⁴ Again, this is because state law requires the same 50-day absentee-voting period in a second primary as was provided in the first primary. N.C.G.S. § 163-111(e) (“the second primary shall be held under the laws, rules, and regulations provided for the first primary”); see N.C.G.S. §§ 16-227.10 and -258.9.

⁵ For example, this occurred in 2016 and 2022. See Numbered Memo 2016-03, <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered Memo 2016-03.pdf>, last visited October 10, 2025; see also the February 9, 2022 North Carolina State Board of Elections Press Release, “Candidate Filing for 2022 Elections to Resume on February 24,” <https://www.ncsbe.gov/news/press-releases/2022/02/09/candidate-filing-2022-elections-resume-february-24>, last visited October 10, 2025.

administrative considerations.

Respectfully submitted, this the 14th day of October, 2025.

N.C. DEPARTMENT OF JUSTICE

/s/ Electronically Submitted

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CERTIFICATE OF COMPLIANCE

I certify that this Notice complies with the length requirements of Fed. R. App. P. 27(d)(2)(A) because it contains 1441 words. This response also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface: 14-point Constantia font.

Respectfully submitted, this the 14th day of October, 2025.

/s/ Electronically submitted

Mary L. Lucasse