

No. 23-2317

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RODNEY D. PIERCE and MOSES MATTHEWS,

Plaintiffs-Appellants,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, JEFF CARMON III in his official capacity as Secretary of the North Carolina State Board of Elections, STACY "FOUR" EGGERS IV in his official capacity as a member of the North Carolina State Board of Elections, KEVIN N. LEWIS in his official capacity as a member of the North Carolina State Board of Elections, SIOBHAN O'DUFFY MILLEN in her official capacity as a member of the North Carolina State Board of Elections, PHILIP E. BERGER in his official capacity as President Pro Tem of the North Carolina Senate, and TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives,

Defendants-Appellees.

From the United States District Court for
the Eastern District of North Carolina
The Honorable James E. Dever III (No. 4:23-cv-193-D-RN)

**NOTICE OF WITHDRAWAL OF EMERGENCY
MOTION FOR LIMITED INJUNCTION PENDING APPEAL**

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Plaintiffs hereby withdraw their Motion for Limited Injunction Pending Appeal, filed December 29, 2023, stating as follows:

1. Plaintiffs filed the motion for limited injunction on December 29 in light of the State Board's December 22 submission in the district court, which indicated that, absent injunctive relief by January 9, 2024, UOCAVA and absentee ballots would be mailed to voters in the challenged Senate districts on January 19 listing primary candidates. Plaintiffs also separately filed a motion to expedite their appeal.

2. On December 29, this Court ordered parties to respond to Plaintiffs' motions by January 3.

3. Per the attached emails, the State Board's counsel advised all parties today that, "[i]n reviewing whether we needed to respond to Plaintiffs' motion to the Fourth Circuit, we learned important information that we thought we should share." In particular, counsel advised that they learned that there will not be any primaries in the two challenged districts because no more than one candidate from each party filed to run in each district. *See also* N.C. State Board of Elections, 2024 Primary List by Candidate (updated Jan. 2, 2024 10:01 p.m.).¹

4. Counsel further advised today that, because there will be no primaries

¹ https://s3.amazonaws.com/dl.ncsbe.gov/Elections/2024/CandidateFiling/2024_Primary_Election_Candidate_PDFs/2024_primary_candidate_list_by_contest.pdf

in those two districts, the ballots mailed to voters in those districts starting January 19 will not identify any Senate candidates.

5. In light of this new information, the State Board's counsel represented—and Plaintiffs agree—that the requested limited injunction is moot. Plaintiffs sought only to enjoin preparations for primary elections in the two challenged districts, including to stop the mailing of ballots on January 19 listing primary candidates for those districts. That is not necessary now.

6. While an injunction pending appeal relating to the January 19 ballots is no longer needed at this time, Plaintiffs are not withdrawing their separate motion to expedite briefing and decision on this appeal. That motion remains live and the relief requested remains urgent.

7. As explained in that motion, a decision of this Court by February 2 would enable an orderly remedial process and the adoption of two remedial districts in time to hold primaries in those districts (if necessary) on May 14, as the State Board recommended in its December 22 submission below. Per the attached emails, the State Board's counsel confirmed today that all of the dates and deadlines referenced in Plaintiffs' motion to expedite are accurate and are not affected by the absence of primaries in enacted SD1 and SD2.

8. After reviewing any responses to the motion to expedite the appeal, Plaintiffs intend to reply in further support of their motion by January 5 at 12 p.m.

as ordered by the Court.

Dated: January 3, 2024

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 3, 2024, the foregoing was electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

/s/ R. Stanton Jones

R. Stanton Jones

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