

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:23-cv-193-D

RODNEY D. PIERCE, et al.,)	
)	
Plaintiffs,)	STATE BOARD
v.)	DEFENDANTS' RESPONSE TO
)	PLAINTIFFS' MOTION FOR
NORTH CAROLINA STATE BOARD OF)	PRELIMINARY INJUNCTION
ELECTIONS, et al.,)	
)	
Defendants.)	

Defendants, the North Carolina State Board of Elections, and Alan Hirsch, Jeff Carmon, III, Stacy Eggers, IV, Kevin N. Lewis, and Siobhan O'Duffy Millen, named in their official capacities ("State Board Defendants"), hereby respond to Plaintiffs' Motion for Preliminary Injunction. [D.E. 16].

State Board Defendants take no position on the merits of Plaintiffs' claims. Rather, this response is provided to inform the Court and the parties about the schedule for the upcoming 2024 elections and related administrative considerations. In addition to the information below, State Board Defendants stand ready to provide the Court with any additional information the Court requires at the request of the Court or at a hearing on Plaintiffs' motion, should one occur.

SCHEDULE FOR THE 2024 ELECTIONS

Candidate filing for the March 5, 2024, statewide primary election began at noon on December 4, 2023, and ended at noon on December 15, 2023. *See* N.C.G.S. § 163-106.2(a). Contests on the ballot include the U.S. President, U.S. House of Representatives, the Governor and all other Council of State Members, the N.C. General Assembly, state judicial contests at all levels, district attorneys, clerks of court, and county offices. *See* North Carolina State Board of Elections webpage, "Upcoming Election | NCSBE", <https://www.ncsbe.gov/voting/upcoming->

[election](#), last visited December 11, 2023. Absentee ballots will be distributed on January 19, 2024, and in-person early voting begins on February 15, 2024. *Id.*; N.C.G.S. § 163-22(k) and 227.10(a); *see also* N.C. State Bd. of Elections, Resolution on Absentee Ballot Distribution for the March 2024 Primary (Nov. 28, 2023);¹ and *see* 52 U.S.C. § 20302(a)(8)(A); N.C. Sess. Laws 2023-140, sec. 27(b), § 163-166.40.

The State Board is currently working with the county boards of elections to meet these deadlines. The assignment of voters to their correct State Senate, State House, and Congressional districts, following the enactment of those districts by the General Assembly in October 2023, has been completed as of this filing. *See* North Carolina State Board of Elections webpage, Voting Maps/Redistricting, <https://www.ncsbe.gov/results-data/voting-maps-redistricting/>, last visited December 11, 2023; *see also* the Declaration of Karen Brinson Bell, ¶ 5. As soon as the candidate filing period was completed on December 15, numerous tasks began 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(a) & (c); *see also* 08 NCAC 06B .0103; *see also* Bell Decl., ¶ 6.

Originally, these processes needed to be accomplished by January 12, 2024, to comply with state law. N.C.G.S. § 163-227.10 (requiring absentee ballots to be mailed 50 days prior to election day); *see also* Bell Decl., ¶¶ 7, 8. Under that schedule, the Board would have had 16 business days to complete the tasks set forth above after the candidate-filing window closed on

¹ Available at https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf, last visited December 12, 2023.

December 15. However, the Board was concerned that 16 business days was not enough time to complete the necessary tasks, especially given the many state holidays occurring between the end of candidate filing and January 12.² Bell Decl., ¶ 9. Thus, the State Board voted on November 28, 2023, to extend the deadline for distributing absentee ballots by 5 days, the maximum possible extension it could grant itself under state law while still remaining compliant with the federal law deadline for absentee-ballot distribution.³ *Id.*; see 52 U.S.C. § 20302(a)(8)(A) (requiring absentee ballots to be mailed 45 days prior to election day). This shifted the absentee-ballot distribution deadline from January 12 to January 19 and gave the State Board 20 business days to accomplish the necessary tasks. See Bell Decl., ¶ 9.

IMPACT OF THIS LITIGATION ON THE ELECTIONS CALENDAR

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

To start, to accommodate a new map without moving the dates for any elections contests, the State Board would need to receive the new map in sufficient time for candidate filing for the affected districts to begin during the first week of January. *Id.*, ¶¶ 10-14. The length of the candidate-filing period would depend on the court order, but the filing period could conclude no later than January 10 for the State Board and county boards to complete ballot preparation by the January 19 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.*, ¶ 11. After candidate

² December 25, 2023, December 26, 2023, December 27, 2023, January 1, 2024, and January 15, 2024 are state holidays falling within this time period. See <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>.

³

https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf.

filing, the boards would need to complete the same essential tasks set forth above—preparing and proofing the ballots, printing and delivering the ballots, and creating the absentee ballot packages. *Id.*, ¶ 12. That process is obviously ongoing for all other contests for the March primary. As noted above, if candidate filing for any affected districts concluded by the middle of the second week of January, there would still be enough time (7 business days) to revise the ballots and get them ready for distribution before the absentee-ballot distribution deadline, assuming the court-ordered remedy affected only a limited number of state senate districts. *Id.*

If a new map is needed but is not ordered by the time described above,⁴ the State Board recommends moving the affected election contests to May 14, 2024, the date currently set for a second primary (i.e., runoffs for any primary contests that do not surpass the requisite threshold). N.C.G.S. § 163-111; *see* Bell Decl., ¶ 13. To make this timeline work, candidate filing for any remedial districts would need to be complete before canvass of the March primary on March 15, 2024. This would leave 9 business days for the State Board and county boards to prepare ballots before the absentee-ballot distribution deadline for the second primary (March 28, 2024). *See* Bell Decl., ¶ 14. If a remedial map were not provided in sufficient time for candidate filing to occur in early March, mailing absentee ballots by March 28—and, thus, holding the contests for the affected State Senate districts on May 14, 2024⁵—would not be administratively possible.

Id.

⁴ If voting in certain contests were enjoined after ballots are printed for the March primary, the State Board would recommend an order prohibiting the State and county boards from reporting any results from those contests, similar to a remedy that was in place during the primary election in 2016. *See* Numbered Memo 2016-03, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered_Memo_2016-03.pdf, last visited December 20, 2023.

⁵ Again, this is because the law requires a 45-day absentee-voting period. The State Board could attempt to narrow the absentee-voting window, but if there are any federal contests on the ballot, that would require a waiver from the federal government.

Finally, if a new map is provided after the aforementioned deadlines, the affected races could be held on some date after the canvass is completed for any May 14, 2024 second primaries that are needed. The State and county boards would need to ensure that they could begin distributing ballots at least 45 days in advance, and that they had 5 to 10 business days for candidate filing and at least 9 business days for ballot preparation before that. Given these necessities, the best option would likely be July 23, 2024, ten weeks after the May 14 primary. *Id.*, ¶ 15.

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, as would likely be the case on July 23, 2024. However, moving the date for a limited number of contests is administratively feasible, and has been done with some frequency in North Carolina in recent years.⁶

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 administrative considerations.

⁶ 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 December 20, 2023; *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 December 22, 2023.

Respectfully submitted this the 22nd day of December, 2023.

N.C. DEPARTMENT OF JUSTICE

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