

No. _____

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)

**APPELLANTS' EMERGENCY MOTION TO
EXPEDITE BRIEFING AND DECISION**

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LOCAL RULE 27(a) STATEMENT

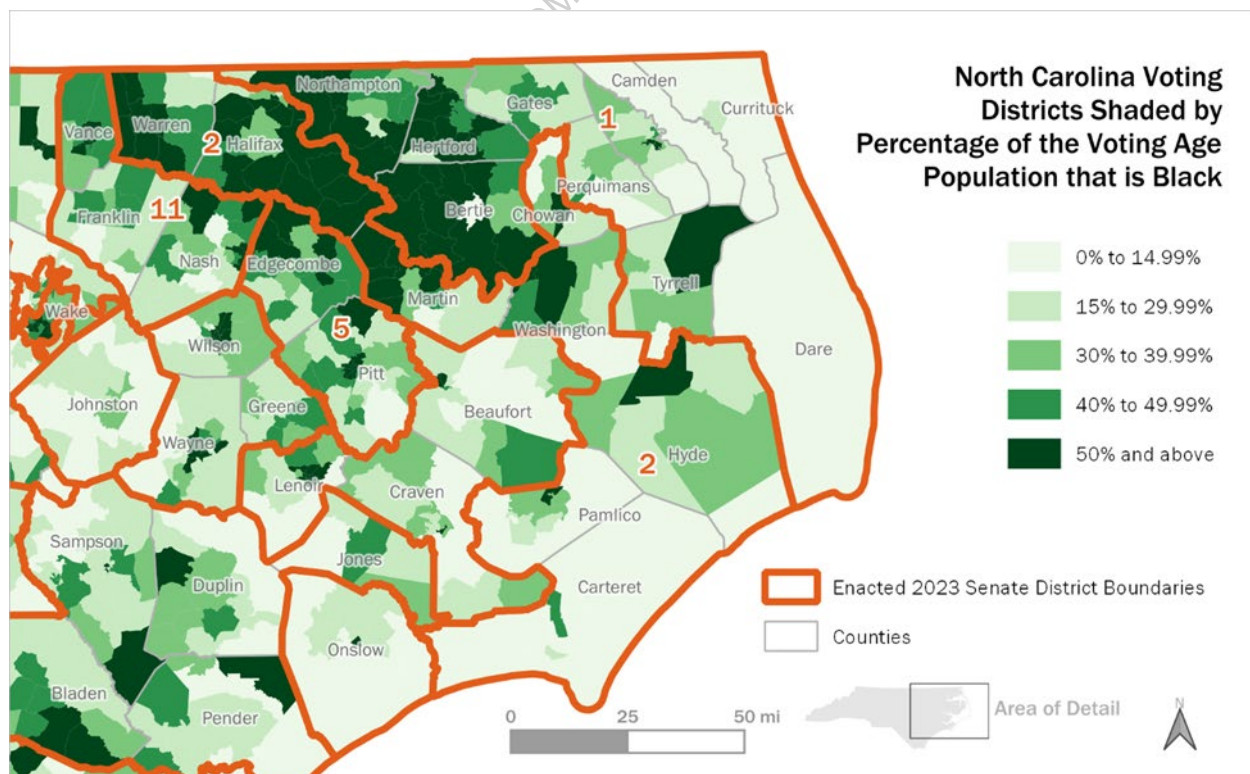
Pursuant to Local Rule 27(a), counsel for Appellees have been informed of Appellants' intent to seek the relief requested in this motion. Counsel for the Legislative Defendant Appellees advised that they do not consent to the motion and intend to file a response. Counsel for the State Board Defendant Appellees state that they take no position on the motion and do not currently intend to file a response, but cannot say for certain until reviewing the full motion.

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Plaintiffs-Appellants Rodney Pierce and Moses Mathews respectfully request that the Court expedite briefing and decision in this appeal, stating as follows:

1. This action challenges two districts in North Carolina's 2023 enacted Senate map on the ground that they dilute Black voting power in violation of Section 2 of the Voting Rights Act. Plaintiffs filed the suit on November 20, and filed an Amended Complaint and a motion for preliminary injunction on November 22.

2. As explained more fully in Plaintiffs' motion for a limited injunction pending appeal, the VRA violation in this case is egregious and entirely clear-cut. The 2023 Senate map surgically cracks northeastern North Carolina's Black Belt counties right down the middle, between Senate Districts 1 and 2, ensuring that Black voters will not be able to elect their candidates of choice in either district:



3. Legislative Defendants waited until the eleventh hour to enact the 2023 Senate plan in an effort to prevent relief for the 2024 elections and hold one election using districts in northeastern North Carolina that patently violate federal law.

4. The challenged districts violate the VRA, and obviously so. It is easy to draw a reasonably configured majority-Black district satisfying *Gingles* One, and Plaintiffs offered two such districts; Legislative Defendants do not dispute that *Gingles* Two is satisfied; and Legislative Defendants' own expert's analysis confirms that white voters usually vote as a bloc in the relevant region to defeat Black-preferred candidates, satisfying *Gingles* Three. *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). The remedy here is also simple and would change only the boundary between Districts 1 and 2, leaving wholly untouched the 48 other districts.

5. The same day they filed suit, Plaintiffs moved to expedite briefing and decision on the preliminary injunction motion to enable the adoption of two remedial districts without moving North Carolina's March 5, 2024 primaries for those districts. As more fully described in Plaintiffs' concurrently filed motion for a limited injunction pending appeal, the district court refused to expedite proceedings, then granted Legislative Defendants, over Plaintiffs' objection, an extension of time to file their opposition. Even so, Plaintiffs advised in their reply that the court could still grant relief without altering the primary date if it decided the preliminary injunction by December 28. The court this morning issued an order setting a hearing

for January 10, making clear that it will not decide the motion in time to stop absentee and UOCAVA ballots from being mailed to voters on January 19 listing primary candidates for the challenged districts.

6. There is still time to correct this egregious VRA violation and avoid irreparable harm to Black voters in northeastern North Carolina. Today, Plaintiffs filed a notice of appeal based on the district court's constructive denial of their preliminary injunction motion. *Pierce et al. v. North Carolina State Board of Elections et al.*, No. 4:23-cv-193-D (Dec. 29, 2023), ECF 44. Plaintiffs are also filing in this Court today a motion for a limited injunction pending appeal to bar the State Board of Elections from proceeding with elections using the two challenged districts, including by enjoining the State Board from listing primary candidates for the two challenged districts on the absentee and UOCAVA ballots being mailed to voters in those districts on January 19.

7. The State Board confirmed in a filing below that it is administratively feasible to hold primary elections in two new districts on May 14, the date already scheduled for runoff primaries. *Pierce*, ECF 41 at 5.

8. Plaintiffs respectfully request that this Court expedite this appeal to enable a decision in time for the adoption of new districts for May 14 primaries.

9. Based on the State Board's submission below, if the challenged districts are invalidated, primary elections in two new districts can be held on May 14 as long

as candidate filing is complete before March 15. *Pierce*, ECF 41 at 5. To allow a week of candidate filing from March 6 to 13, remedial districts would need to be adopted by March 4.

10. Plaintiffs suggest that a liability decision from this Court by February 2 will allow sufficient time for remedial proceedings, including (a) giving the General Assembly a week to enact two remedial districts, (b) allowing the parties to brief objections to any such enacted remedial districts, and (c) allowing the district court and potentially this Court to resolve those objections.

11. To facilitate a decision on the merits of this appeal by February 2, Plaintiffs respectfully request the following briefing schedule:

- Plaintiffs' opening brief due January 8 (or earlier)
- Defendants' responses due January 17
- Plaintiffs' reply due January 19
- Oral argument, if the Court wishes, the week of January 22-26

12. If the Court issues a decision finding a VRA violation by February 2, it could give the General Assembly until February 9 to enact two remedial districts. The parties could then submit objections or proposed alternative remedial districts by February 13, and the Court could direct the district court to adopt remedial districts by February 15, which would allow either side to appeal and this Court to enter a final decision adopting remedial districts by March 4. Candidate filing could

then be held from March 6 through 13, enabling primary elections on May 14.

13. This expedited schedule is reasonable in light of the stakes: whether Black voters in northeast North Carolina's Black Belt counties will have an opportunity to vote in lawful districts in the 2024 elections. Plaintiffs and other Black voters in the Black Belt counties will face irreparable harm if they are forced to vote in the challenged districts in even one election. Legislative Defendants should not be rewarded for their intentional decision to wait until the eleventh hour to enact a map that they knew violated federal law based on the cynical expectation that waiting would enable them to thwart relief in time for the 2024 elections.

CONCLUSION

For the foregoing reasons, the Court should expedite this appeal and order Plaintiffs to file their opening brief by January 8 (or earlier, if the Court prefers), Defendants to file their responsive brief by January 17, and Plaintiffs to reply by January 19. If the Court chooses to hold oral argument, Plaintiffs request that it do so the week of January 22 and issue a liability ruling by February 2.

Dated: December 29, 2023

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1) because it contains 1054 words.

2. This motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: December 29, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2023, I caused to be emailed a copy of the foregoing to the Clerk of the Court for the United States Court of Appeals for the Fourth Circuit at 4cca-filing@ca4.uscourts.gov, copying the following counsel for Appellees:

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