

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

RODNEY D. PIERCE and
MOSES MATTHEWS,

Plaintiffs,

v.

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

Defendants.

Case No. 4:23-cv-193-D

**OPPOSITION TO LEGISLATIVE DEFENDANTS’ MOTION FOR EXTENSION OF
TIME TO RESPOND TO PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs respectfully submit this opposition to Legislative Defendants’ motion for an extension of time to respond to Plaintiffs’ motion for preliminary injunction, D.E. 25. In response to the motion, Plaintiffs state as follows:

1. No good cause exists for the requested extension. Local Civ. R. 6.1(a). First, this Court already directed the parties to brief Plaintiffs’ preliminary injunction motion on the normal schedule, D.E. 23 at 4. There is no basis for elongating that schedule. Plaintiffs’ claim under § 2 of the VRA is simple, involving only a single boundary between two Senate districts. Legislative Defendants assert that they must respond to “nearly 400 pages of ... sophisticated expert analysis” (Mot. ¶ 5), but Plaintiffs’ expert reports total only 54 pages, pages that include numerous pictures and charts. The “nearly 400” figure appears to include all attachments to those reports, which are principally made up of expert CVs and basic statistical reports, including well over 150 pages of “StatPacks” that are simply downloaded from the legislature’s website.

2. Moreover, the reports’ conclusions are straightforward and indisputable. Mr. Esselstyn’s report, D.E. 17-1, relies on public census and demographic data to draw two

demonstrative districts to establish the first *Gingles* precondition, one of which also serves as Plaintiffs’ proposed remedial district. Legislative Defendants have both the pictures of those demonstrative districts and the underlying block assignment files, and there can be no dispute that it is possible for those districts to be drawn. Dr. Barreto’s report, D.E. 17-2, uses publicly available election result data to show that there is overwhelmingly racially polarized voting in northeastern North Carolina, satisfying the second and third *Gingles* factors. And Dr. Burch’s report on the Senate factors is based on publicly available information and resources published over the last several decades. Legislative Defendants’ assertion that they need their experts to perform “extensive” analyses of “sophisticated” data presented by Plaintiffs’ experts falls flat. Mot. ¶ 5.

3. Moreover, Legislative Defendants have been on notice that the 2023 enacted Senate map unlawfully cracks Black voters in the Black Belt counties at least since October 22, 2023, when they received an analysis highlighting grave Voting Rights Act concerns with the map. *See* D.E. 17 at 5. Legislative Defendants thus had ample opportunity (and indeed a legal obligation under the VRA), well before this action was filed, to address the issues raised by Plaintiffs’ motion.

4. The requested extension would prejudice Plaintiffs. Presuming that Legislative Defendants will argue that the *Purcell* doctrine bars preliminary injunctive relief in this case because the next election is impending, *see Purcell v. Gonzalez*, 549 U.S. 1 (2006), it is plainly prejudicial for Legislative Defendants to take extensions of time to oppose Plaintiffs’ relief. Any such extension would be impermissible self-help or bootstrapping for Legislative Defendants’ forthcoming *Purcell* arguments.

5. Moreover, the Court has already indicated in its order denying Plaintiffs’ motion to expedite that Defendants may respond to Plaintiffs’ motion “in accordance with this court’s local rules,” i.e., in 21 days. D.E. 23 at 4. Legislative Defendants should not be permitted to evade relief

through unilateral and unwarranted delay.

6. If the extension is denied, and the opposition to the preliminary injunction motion remains due on December 13, Plaintiffs intend to file their reply early, no later than December 18.

The Court should deny Legislative Defendants' motion.

Dated: December 7, 2023

Respectfully submitted,

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**Notices of Special Appearance forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel and parties registered in said system, and that I served the foregoing via email as follows.

Dated: December 7, 2023

/s/ Edwin M. Speas, Jr. _____
Edwin M. Speas, Jr.