

No. 23-2317

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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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.*

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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)

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**REPLY IN SUPPORT OF APPELLANTS’ MOTION TO  
IMMEDIATELY ISSUE MANDATE**

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Plaintiffs-Appellants Rodney Pierce and Moses Matthews respectfully submit this reply in support of their motion for the Court to issue its mandate in this appeal forthwith.

Legislative Defendants offer no legitimate reason to delay issuance of the mandate. They do not intend to pursue any relief in this Court, and they do not suggest that retaining jurisdiction would serve any purpose other than preventing the district court from issuing a decision on Plaintiffs' November 22 preliminary injunction motion—which is a reason to issue the mandate, not to withhold it.

Legislative Defendants essentially contend that the Court should withhold issuing the mandate to punish Plaintiffs for pursuing this appeal. That is not a rational basis for withholding issuance of the mandate. The mandate typically issues after the deadline for a party to seek rehearing to enable a party to seek rehearing before the case is returned to district court. That purpose has no application here because Plaintiffs have not requested rehearing by the panel or en banc and will not do so. Moreover, while the Court dismissed the appeal and concluded that the test for constructive denial was not satisfied, the fact that Plaintiffs' request for relief was denied does not mean Plaintiffs deserve to be penalized for requesting it.

Furthermore, this Court acknowledged in its dismissal order the “time-sensitive nature” of Plaintiffs' preliminary injunction motion, noting its confidence that the district court will “be mindful of the time-sensitive nature of the VRA suits

as it proceeds.” CA4 Doc. 44 at 1-2. Legislative Defendants’ effort to delay the district court’s ability to decide the preliminary injunction motion, while the case sits dormant in this Court, is at odds with the Court’s observation. Also, while Legislative Defendants now say that the district court lacked jurisdiction to conduct the January 10 preliminary injunction hearing, they told the court at that hearing that they had no objection to the hearing going forward, but that the court could not issue an actual decision on the preliminary injunction motion until the mandate issued.

Finally, Legislative Defendants’ claim that Plaintiffs somehow delayed in filing the instant motion, 24 hours after this Court issued its dismissal order, is puzzling. As Legislative Defendants’ own filing states (at 3), Plaintiffs’ counsel contacted opposing counsel the day of this Court’s order to request their consent to this motion. Plaintiffs were surprised to learn of Legislative Defendants’ opposition, but then prepared an opposed motion and filed it at 1 p.m. the next day.

### **CONCLUSION**

For the foregoing reasons, the Court should immediately issue the mandate for its January 9 Judgment dismissing this appeal.

Dated: January 16, 2024

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Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

1. This reply complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(C) and 32(g)(1) because it contains 432 words.

2. This filing 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: January 16, 2024

/s/ R. Stanton Jones

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 16, 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*

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R. Stanton Jones