

No. 24-1095

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In the United States Court of Appeals  
for the Fourth Circuit

RODNEY D. PIERCE and MOSES MATTHEWS,  
*Plaintiffs-Appellants,*

v.

NORTH CAROLINA STATE BOARD OF ELECTIONS, *et al.*,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Eastern District of North Carolina

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**MOTION FOR LEAVE TO FILE AMICUS BRIEF OF  
GOVERNOR ROY A. COOPER, III AND  
ATTORNEY GENERAL JOSHUA H. STEIN  
IN SUPPORT OF PLAINTIFFS-APPELLANTS**

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Under Federal Rule of Appellate Procedure 29, North Carolina Governor Roy A. Cooper, III and Attorney General Joshua H. Stein respectfully request leave to file the accompanying amicus brief in support of Plaintiff-Appellants.<sup>1</sup>

This motion and brief are being filed on the same day as Plaintiff-Appellants' principal brief and are therefore timely. Fed. R. App. P. 29(a)(6). Proposed amici have consulted counsel for the parties in regard to this motion. Plaintiffs and the State Board Defendants consent. The Legislative Defendants have authorized the undersigned to represent their position as follows: "Legislative Defendants do not consent to the Governor and the Attorney General filing an amicus brief, but do not intend to file a response in opposition to the motion."

### **Interests of Amici Curiae**

This Court should grant leave to file an amicus brief because the Governor and Attorney General have a strong interest in being heard on Plaintiffs' claims. This interest arises from their central roles in state government and their duties to the people of North Carolina.

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<sup>1</sup> The Attorney General has recused himself from representing the North Carolina State Board of Elections, its members, or any of the other defendants in this case.

The Governor and Attorney General are elected statewide to serve all the people of North Carolina. N.C. Const. art. III, §§ 2(1), 7(1). The Governor is North Carolina's chief executive officer. *Id.* § 1. He bears primary responsibility for enforcing the State's laws. *Id.* § 5(4). The Attorney General is, in turn, North Carolina's chief legal officer. *See Tice v. Dep't of Transp.*, 312 S.E.2d 241, 244 (N.C. Ct. App. 1984); N.C. Gen. Stat. § 114-1.1. He is charged with defending the State, its constitution, and the rights guaranteed to North Carolinians. *Id.* § 114-2; *see also Martin v. Thornburg*, 359 S.E.2d 472, 479 (N.C. 1987).

Given these roles, the Governor and Attorney General have a strong interest in ensuring that the State complies with the federal laws that secure the voting rights of its citizens. In 1868, when North Carolina was readmitted to the Union after the Civil War, the people of North Carolina amended their constitution to underscore that federal law is supreme over state law, mandating that "no law or ordinance of the State in contravention or subversion [of federal law] can have any binding force." N.C. Const. art. I, § 5. In keeping with this guarantee protecting North Carolinians' federal rights, the North Carolina Supreme Court has recognized that when the General Assembly draws

legislative districts, it must first draw districts required by the Voting Rights Act before applying state-law requirements. *Stephenson v. Bartlett*, 562 S.E.2d 377, 396-97 (N.C. 2002).

Here, however, as shown in the accompanying amicus brief, the General Assembly failed to comply with the Voting Rights Act when it enacted new state senate districts. Given this failure, the Governor and Attorney General have a strong interest in being heard to fulfill their constitutional duties to protect North Carolinians' federal rights.

### **Why an Amicus Brief is Desirable and Relevant**

This Court should grant the motion for leave because hearing from the Governor and Attorney General concerning the important issues in this case will assist the Court. Both officials represent all the people of North Carolina, including the voters who have been harmed by the State's failure to comply with the Voting Rights Act. Also, given their status as state constitutional officers, both officials have a special understanding of the need to ensure a state government that is representative of all North Carolinians, as well as the crucial role that the Voting Rights Act plays in securing such a government.

Granting the motion is also appropriate because elections cases commonly lend themselves to amicus participation. *See, e.g., N.C. State Conf. of NAACP v. Raymond*, 981 F.3d 295 (4th Cir. 2020) (listing several amici); *N.C. State Conf. of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016) (same); *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224 (4th Cir. 2014) (same). Elections cases like this one have broad importance for the entire public, making the views of interested non-parties helpful for the courts hearing them.

### **Conclusion**

For these reasons, Governor Cooper and Attorney General Stein respectfully request that this Court grant leave to file the accompanying amicus brief in support of Plaintiff-Appellants.

Respectfully submitted,

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February 5, 2024

**CERTIFICATE OF SERVICE**

I certify that on this 5th day of February, 2024, I filed the foregoing motion with the Clerk of Court using the CM/ECF system, which will automatically serve electronic copies on all counsel of record.

/s/ Ryan Y. Park  
Ryan Y. Park

## **CERTIFICATE OF COMPLIANCE**

I certify that this motion complies with the type-volume limitations of Fed. R. App. P. 27(d)(2)(A) because it contains 713 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f).

This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a 14-point, proportionally spaced typeface.