

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

RODNEY D. PIERCE and MOSES
MATTHEWS,

Plaintiffs,

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, KAREN BRINSON BELL in her official, PHILLIP 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.

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

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

Fed. R. Civ. P. 6(b)

Phillip E. Berger, in his official capacity as President pro tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as the Speaker of the North Carolina House of Representatives, (collectively, the “Legislative Defendants”) submit this Motion for Extension of Time to Respond to Plaintiffs’ Motion for Preliminary Injunction pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and LR 6.1(a) and 77.2(b), respectfully requesting a nine-day extension of time to respond to Plaintiffs’ Motion for Preliminary Injunction [D.E. 16], up to and

including December 22, 2023. In support of this Motion, Legislative Defendants show the following:

1. On November 20, 2023, Plaintiffs filed their Complaint [D.E. 1], as well as an emergency motion for expedited briefing and decision on their forthcoming motion for preliminary injunction [D.E. 5].

2. Two days later, on November 22, 2023, Plaintiffs filed both an Amended Complaint [D.E. 13] and their Motion for Preliminary Injunction [D.E. 16]. Plaintiffs' Amended Complaint alleges a vote dilution violation of Section 2 of the Voting Rights Act (the "VRA"), under 52 U.S.C. § 10301(a) and 42 U.S.C. § 1983.

3. On November 22, 2023, Legislative Defendants responded in opposition to Plaintiffs' emergency motion for expedited briefing, [D.E. 12], to which Plaintiffs replied, [D.E. 20]. On November 27, 2023, the Court entered an Order denying Plaintiffs' emergency motion for expedited briefing. [D.E. 23].

4. In their memorandum in support of their Motion for Preliminary Injunction, Plaintiffs submitted five exhibits, including three expert reports. Plaintiffs submitted an expert report by Blake Esselstyn examining "whether there is an area in northeastern North Carolina where the Black population is 'sufficiently large and geographically compact' to enable the creation of a majority-Black State Senate district that adheres to redistricting criteria such as population deviation, contiguity, compactness, and minimizing traversals of counties and election precincts," as well as "whether it is possible to determine whether to create a majority-Black State Senate district which adheres to the [*Gingles*] criteria . . . and is entirely contained within the area occupied by District 1 and 2 in the enacted State Senate redistricting plan," and included two alternative district configurations as part of his analysis, [D.E. 17-1 at 2-3, 7]. Plaintiffs also

submitted an expert report by Dr. Matt Barreto examining “voting patterns in North Carolina to determine if Black and white voters exhibit racially polarized voting,” [D.E. 17-2 at 2] in an attempt to satisfy *Gingles* prongs II and III, and an expert report by Dr. Traci Burch examining ‘the passage of SB758 with respect to information relevant for evaluating the totality of the circumstances as it relates to Section 2 of the Voting Rights Act,” [D.E. 17-3 at 3].

5. The current deadline for Legislative Defendants’ response to Plaintiffs’ Motion for Preliminary Injunction is December 13, 2023. Legislative Defendants have worked diligently on their response from the time Plaintiffs’ Motion for Preliminary of Injunction was filed. However, due to the nearly 400 pages of evidence submitted by Plaintiffs, most of which was sophisticated expert analysis, Legislative Defendants need more time to retain experts and for any retained experts to analyze the opinions in Plaintiffs’ expert reports, as well as the data underlying those expert reports, and to issue their own opinions, which themselves will be extensive in light of the Plaintiffs’ submissions.

6. Therefore, Legislative Defendants respectfully request a nine-day extension of time to respond to Plaintiffs’ motion, up to and including December 22, 2023.¹ This limited extension of time is necessary in order for Legislative Defendants to prepare a response that addresses Plaintiffs’ arguments regarding the three *Gingles* preconditions, the totality of the circumstances, and whether Plaintiffs will likely prevail on the merits of their claim.

¹ Legislative Defendants are aware of the Eighth Circuit’s recent opinion holding there is no private right of action under Section 2. See *Arkansas State Conference NAACP v. Arkansas Board of Apportionment*, No. 22-1395, 2023 WL 8011300, at *1 (8th Cir. Nov. 20, 2023). A request to extend the time to file a Petition for En Banc Rehearing in that matter was granted, and Petitions are now due on December 11, 2023. Additionally, the State of Louisiana filed a Petition for En Banc Rehearing with the Fifth Circuit, requesting a determination of whether Section 2 of the VRA confers a private right of action in *Robinson v. Ardoin*, No. 22-30333, (5th Cir. Dec. 1, 2023), D.E. 353. On Monday, December 4, 2023, the Fifth Circuit directed the appellees to respond to the petition within seven days, by December 11, 2023. *Id.* at D.E. 355. Legislative Defendants are monitoring these cases and may seek to stay this case based on the forthcoming analysis on this issue.

7. This Motion is made in good faith and not for the purpose of delay.

8. Pursuant to Local Rule 6.1(a), Legislative Defendants consulted in good faith with Plaintiffs and counsel for the NCSBE. Plaintiffs oppose the relief requested in this Motion. NCSBE Defendants take no position on the relief requested in this Motion.

WHEREFORE, for the foregoing reasons, Legislative Defendants respectfully request that this Court enter an order extending the deadline for Legislative Defendants to respond to Plaintiffs' Motion for Preliminary Injunction by nine days, up to and including December 22, 2023.

Respectfully, submitted this the 6th day of December, 2023.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach

Phillip J. Strach
North Carolina State Bar no. 29456
Thomas A. Farr
North Carolina State Bar no. 10871
Alyssa M. Riggins
North Carolina State Bar no. 52366
Cassie A. Holt
North Carolina State Bar no. 56505
Alexandra M. Bradley
North Carolina Stat Bar no. 54872
301 Hillsborough Street, Suite 1400
Raleigh, North Carolina 27603
Ph: (919) 329-3800
phil.strach@nelsonmullins.com
tom.farr@nelsonmullins.com
alyssa.riggins@nelsonmullins.com
cassie.holt@nelsonmullins.com
alex.bradley@nelsonmullins.com

CERTIFICATE OF SERVICE

I hereby certify that I filed the forgoing document using the Court's CM/ECF System which will send notification to all counsel of record.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

By: /s/ Phillip J. Strach
Phillip J. Strach
North Carolina State Bar no. 29456

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Defendants.

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**[PROPOSED] ORDER ON
LEGISLATIVE DEFENDANTS’
MOTION FOR EXTENSION OF TIME TO
RESPOND TO PLAINTIFFS’ MOTION
FOR PRELIMINARY INJUNCTION**

Fed. R. Civ. P. 6(b)

This matter is before the Court on Motion of Phillip E. Berger, in his official capacity as President pro tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as the Speaker of the North Carolina House of Representatives, (collectively, the “Legislative Defendants”) for an extension of time to respond to Plaintiffs’ Motion for Preliminary Injunction pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and LR 6.1(a) and 77.2(b). The Court has reviewed the Motion and the record in this matter and finds there is good cause to allow the Motion.

It is therefore ORDERED that Legislative Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction shall be and hereby is allowed, and Legislative Defendants shall have until and including December 22, 2023, to respond to Plaintiffs' Motion for Preliminary Injunction [D.E. 16].

This the ____ day of _____, 2023.
