

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

RODNEY D. PIERCE; *et al.*,

Plaintiffs,

v.

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

Defendants.

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

**LEGISLATIVE DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION
FOR EXTENSION OF TIME TO RESPOND**

Philip 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 Reply to Plaintiffs' Opposition to Legislative Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction, D.E. 26. In response to Plaintiffs' opposition, Defendants state as follows:

1. U.S. Supreme Court precedent calls for "a flexible, fact-intensive" inquiry entailing "an intensely local appraisal of the design and impact of the contested electoral mechanisms." *Thornburg v. Gingles*, 478 U.S. 30, 46, 78 (1986) (quotation marks omitted). Section 2 rejects any "single-minded" rule in favor of "a more refined approach." *Allen v. Milligan*, 599 U.S. 1, 26 (2023). This, of course, takes time.

2. Legislative Defendants continue to work diligently on their response to Plaintiffs' Motion for Preliminary Injunction. The requested extension is the time that Legislative

Defendants' experts have represented is needed, at a minimum, to complete a preliminary analysis. Legislative Defendants do not take a request for extension lightly and have made their request in compliance with the Local Rules, which allow for such a request. Legislative Defendants could have sought a more customary period of time for extension, such as 14 days, but instead narrowly tailored the request to the specific needs of this matter.

3. Plaintiffs insist Legislative Defendants are not entitled to seek a short briefing extension and, in the same case, raise the *Purcell* doctrine as a defense. But *Purcell* found error in a lower court moving proceedings along too quickly and demanded that no injunction issue given "the inadequate time" for fair adjudication before an election. *Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (per curiam). *Purcell* does not hold that election timelines justify shortchanging consideration of claims on the merits. If Plaintiffs believe a nine-day extension makes a difference under *Purcell*, that is a concession that it is already too late for an injunction. Plaintiffs submitted voluminous materials with their memorandum in support of their Motion for Preliminary Injunction. This includes several expert reports, with numerous attachments that Legislative Defendants' experts are required to examine. In light of the three expert reports submitted, and the complexity of the claims brought, Legislative Defendants' request is more than reasonable.

4. Moreover, Plaintiffs' retort that Legislative Defendants were somehow "on notice" falls flat, as neither Plaintiffs nor any of the experts retained by Plaintiffs submitted anything in response to the General Assembly's call for comments on the maps. Plaintiffs also seek a different remedy than the single group that expressed a VRA concern over the map during the public comment period.

5. Legislative Defendants reiterate that this request for a short extension is not made for the purposes of delay, but rather to ensure that Legislative Defendants' experts have time to present enough preliminary evidence necessary to defend S.B. 758.

As such, the Court should grant Legislative Defendants' motion.

Respectfully submitted, this the 7th day of December, 2023.

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By: /s/ Phillip J. Strach

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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.

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