

No. 24-1095

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

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.

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)

**REPLY IN SUPPORT OF PLAINTIFFS-APPELLANTS’ EMERGENCY
MOTION TO EXPEDITE BRIEFING AND DECISION**

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Plaintiffs respectfully submit this reply in support of their motion to expedite briefing and decision in this appeal.

First, Legislative Defendants spend much of their opposition arguing the merits of the appeal, but they do not deny that the district court found that *Gingles 2* was satisfied, assumed that *Gingles 1* was satisfied, and found only that *Gingles 3* was not satisfied. That last finding is obviously wrong and rests on multiple legal errors, and Legislative Defendants' attempt to defend it misses the forest for the trees. Make no mistake: Black-preferred candidates have no chance of winning in either of the challenged districts. Legislative Defendants' *own expert* stated in his report that his own conclusions about racially polarized voting were "substantively similar" to Dr. Barreto's. There were no discrepancies between the analysis in Dr. Barreto's original report and his supplemental declaration and in any event the supplemental declaration related to how Senate District 2 would perform using the results of just one election. Even if the district court believed that Senate District 2 would elect a Black-preferred candidate using the results of that one election (which it plainly wouldn't, as Plaintiffs' brief will explain), it is still legal error to conclude that *Gingles 3* is not satisfied when the *undisputed* evidence shows that in dozens of other elections, Senate District 2 does not perform for Black-preferred candidates. *Gingles 3* asks whether white bloc voting "usually" defeats Black-preferred candidates. Legislative Defendants' suggestion that white cross-over voting might

enable Black-preferred candidates to win in these districts is also facially preposterous, as both common sense and the expert analysis confirm.

Second, Legislative Defendants' contention that a remedy in this case would require a statewide redraw of the Senate map is flatly incorrect. Plaintiffs proposed a straightforward remedy that changes only the boundary between enacted Senate Districts 1 and 2, leaving wholly untouched the other 48 districts. Plaintiffs' proposed remedy labeled Demonstration District B-1 is proper because it creates a district in which Black voters in the Black Belt counties have an opportunity to elect candidates of their choice.

Third, Legislative Defendants' arguments that a remedy now would upend ongoing elections is likewise wrong. As Legislative Defendants acknowledge, there are no primary elections presently in either of the challenged districts. And Legislative Defendants do not deny that even in remedial districts, the next election may be the general election in November, over nine months from now. *Purcell* is therefore no bar to relief for the 2024 elections.

Black voters in the Black Belt counties are entitled to a district that complies with the Voting Rights Act, and there is still time to give it to them, as the State Board Defendants' submission below confirms. State Board Defs.' Resp. to Pls.'

Mot. for Preliminary Injunction at 5, *Pierce v. N.C. State Bd. of Elections*, No. 4:23-cv-193 (Dec. 22, 2023), ECF 40.¹

CONCLUSION

For the foregoing reasons, the Court should expedite this appeal.

Dated: January 29, 2024

Respectfully submitted,

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¹ Plaintiffs have not violated any rules relating to the timing of ordering a transcript. *See* Fed. R. App. P. 10(b)(1). The transcript, moreover, is just an argument transcript, not an evidentiary hearing.

CERTIFICATE OF COMPLIANCE

1. This reply complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1) because it contains 487 words.

2. This reply 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 29, 2024

/s/ R. Stanton Jones

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 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

R. Stanton Jones