

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA STATE
CONFERENCE OF NAACP BRANCHES,
et al.;

Plaintiffs,

vs.

DAVID R. LEWIS, *et al.*;

Defendants.

FILED
2018 MAY -1
WAKE CO. C.S.C.
BY

P 4: 32

Case No. 18 CVS 2322

Before Three-Judge Panel
Pursuant to N.C. Gen. Stat. § 1-267.1

**PLAINTIFFS' CALENDAR REQUEST
AND MOTION FOR
SCHEDULING ORDER**

NOW COME Plaintiffs North Carolina State Conference of NAACP Branches, League of Women Voters of North Carolina, Democracy North Carolina, A. Philip Randolph Institute of North Carolina, Elaine Okal, Retta Riordan, Cheryl Tung, and Candace Blackley (hereinafter referred to as "Plaintiffs"), by and through counsel and pursuant to Rule 22 of the General Rules of Practice and Rule 7.3 of the Local Rules for Civil Superior Court, Tenth Judicial District, and hereby move this court issue a calendar order for expedited proceedings on Plaintiffs' Motion for Summary Judgment, which has been filed concomitantly with this motion, and set the calendar for discovery and trial, if determined to be necessary. In support of this motion, Plaintiffs state:

1. This case concerns the North Carolina General Assembly's violations of Article II, § 5 of the North Carolina Constitution when it redrew unnecessarily in 2017 the State House districts for Wake County following a federal court order requiring it to remedy only two of the eleven 2011 Wake County State House districts determined to be unconstitutional racial gerrymanders.

2. Pursuant to this Court's denial of Plaintiffs' Motion for a Preliminary Injunction, the unconstitutional Wake County districts will stay in place for the May 2018 primary and November 2018 general elections. The remaining elections to be conducted before the new decennial census are (1) the 2020 primary, and (2) the 2020 general election. If Plaintiffs prevail

on the merits without a resolution of this case that results in a final, enforceable order requiring the General Assembly to correct the unconstitutional districts in time for at least the 2020 general election, the citizens of Wake County would achieve only a hollow acknowledgement of right to vote in districts drawn in compliance with the North Carolina Constitution.

3. Plaintiffs believe that this case is appropriately resolved on their Motion for Summary Judgment. Much like the *Stephenson I* Court was able to interpret the state constitutional Whole County Provision on a motion for summary judgment, *Stephenson v. Bartlett*, 355 N.C. 354, 358-60, 562 S.E.2d 377, 382-83 (2002), this case also presents a straightforward question of state law with very few material facts, none of which are disputed. Indeed, counsel for Defendants acknowledged at the preliminary injunction hearing that it was possible to keep the four districts at issue here unchanged. That should end the factual inquiry in the case and resolve for this Court that it simply needs to make a determination as to what the State Constitution requires.

4. Timing is of the essence in establishing a scheduling order for final resolution of this case. In their arguments opposing a preliminary injunction, Defendants argued that, under *Pender Cnty. v. Bartlett*, 361 N.C. 491, 649 S.E.2d 364 (2007), this Court could not order a redrawing of districts four months before an election, and that *Pender County* stood for the proposition that changes to state legislative districts were barred as a matter of law fifteen months prior to a general election. (Leg. Defs.' Resp. to Pls.' Mot. for Prelim. Inj., pp 11-12). According to Defendants' logic, this rule would require a final judgment – after any appeals – by August of 2019 to allow for remedial redistricting prior to the 2020 general election.

5. Defendants' interpretation of *Pender County* is plainly incorrect, as a decision to stay a remedy based on the equities is a fact- and case-specific determination. *Roberts v. Madison Cnty. Realtors Ass'n*, 344 N.C. 394, 399-401, 474 S.E.2d 783, 787-88 (1996). However, Plaintiffs ask

this Court to take Defendants' position on the timeframe for relief into account in scheduling this case both for a hearing on Plaintiffs' Motion for Summary Judgment and, if necessary, for trial.

6. Because the North Carolina General Assembly repealed N.C. Gen. Stat. § 120-2.5 on December 16, 2016, parties no longer enjoy a right of appeal directly to the North Carolina Supreme Court. 2016 N.C. Sess. Laws 125, §§ 22.(f), 26. Thus, it would be prudent to impose a schedule that allows approximately one year for the appeals process to complete.

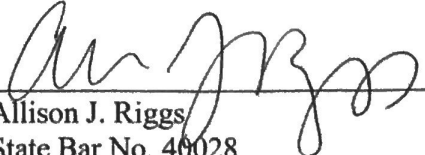
7. Plaintiffs' respectfully request the following calendar for proceedings in this case:

- Plaintiffs' Brief in Support of Motion for Summary Judgment – Due 5/30/2018
- Defendant's Brief in Opposition – Due 7/2/2018
- Plaintiffs' Reply Brief – Due 7/9/18
- Hearing on Motion for Summary Judgment – 7/16/18

8. Plaintiffs do not believe any further discovery is necessary, nor a trial, but if the Court is inclined to schedule a period of discovery, Plaintiffs believe that it should last no longer than one month and should be strictly limited in scope. Because Plaintiffs believe this matter should be resolved by summary judgment, they are not requesting that a trial be scheduled at this time unless the Court believes it prudent to block out a period of time for a trial. Should that be the case, Plaintiffs request that trial be scheduled as early as possible.

WHEREFORE, Plaintiffs respectfully request that this Court issue the requested calendar order as set forth above.

Respectfully submitted, this, the 1st day of May, 2018.


Allison J. Riggs
State Bar No. 40028

allison@southerncoalition.org
Jaclyn A. Maffetore
State Bar No. 50849
jaclyn@southerncoalition.org
Ivy Johnson
State Bar No. 52228
ivy@southerncoalition.org
John F. Carella
State Bar No. 42729
johncarella@scsj.org
Southern Coalition for Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707
Telephone: 919-323-3380
Facsimile: 919-323-3942

Counsel for Plaintiffs

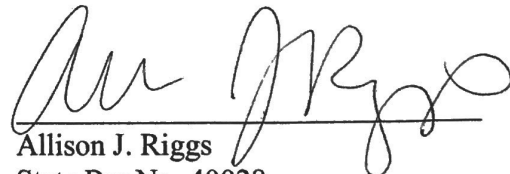
CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served upon all parties by electronic mail and by depositing the same in the custody of the United States Postal Service, postage prepaid, addressed as follow:

Alexander McC. Peters
James Bernier, Jr.
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
jbernier@ncdoj.gov

Phillip J. Strach
Michael McKnight
Brodie D. Erwin
Ogletree, Deakins, Nash, Smoak & Stewart, PC
4208 Six Forks Road, Suite 1100
Raleigh, NC 27622
phil.strach@ogletree.com
michael.mcknight@ogletree.com
brodie.erwin@ogletree.com

This, the 1st day of May, 2018.



Allison J. Riggs
State Bar No. 40028

Counsel for Plaintiffs