

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 15292

JABARI HOLMES, FRED CULP,
DANIEL E. SMITH, BRENDON
JADEN PEAY, and PAUL
KEARNEY, SR.,

Plaintiffs,

v.

TIMOTHY K. MOORE *in his official*
capacity as Speaker of the North
Carolina House of Representatives;
PHILIP E. BERGER *in his official*
capacity as President Pro Tempore
of the North Carolina Senate;
DAVID R. LEWIS *in his official*
capacity as Chairman of the House
Select Committee on Elections for
the 2018 Third Extra Session;
RALPH E. HISE *in his official*
capacity as Chairman of the Senate
Select Committee on Elections for the
2018 Third Extra Session; THE
STATE OF NORTH CAROLINA; and
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Defendants.

**ORDER STAYING
PROCEEDINGS**

This matter comes before the undersigned three-judge panel upon its own motion.

On June 28, 2019, the parties to this matter appeared for hearing before the panel to address Legislative Defendants' Motion to Dismiss, State Defendants'

Motion to Dismiss, and Plaintiffs' Motion for Preliminary Injunction. In an order issued on July 19, 2019, this panel granted Legislative Defendants' Motion to dismiss as to all but one claim, preserving Plaintiffs' claim that Senate Bill 824 violates the Equal Protection Clause of the North Carolina Constitution by discriminating against voters on the basis of race. The panel also found that Plaintiffs did not show a likelihood of success on the remaining claim and thereby denied the motion for preliminary injunction.

On July 24, 2019, Plaintiffs filed their Notice of Appeal from the Panel's July 2019 Order. Plaintiffs' appeal is pending in the appellate division as of the date of this order. Since the filing of Plaintiffs' Notice of Appeal, the parties have submitted for the panel's consideration a Joint Scheduling Request which includes a proposed trial date for Plaintiffs' remaining claim.

Applicable Legal Standards

"As a general rule, once a party gives notice of appeal, such appeal divests the trial court of its jurisdiction, and the trial judge becomes *functus officio*. It follows from the principle of *functus officio* that if a party appeals an immediately appealable interlocutory order, the trial court has no authority, pending the appeal, to proceed." *France v. France*, 209 N.C. App. 406, 410-11, 705 S.E.2d 399, 404 (2011). Pursuant to N.C.G.S. § 1-294, the trial court retains jurisdiction to proceed on matters that are included in the action and not affected by the judgment appealed from. It is within the authority of the trial court to determine whether "an attempted appeal is of a nonappealable interlocutory order and to decide whether the trial court has

jurisdiction to proceed once an appeal has been noticed.” *Plasman v. Decca Furniture (USA), Inc.*, 253 N.C. App. 484, 494, 800 S.E.2d 761, 768 (2017).

This panel finds that the Order granting in part and denying in part the Motions to Dismiss and Motion for Preliminary Injunction is an immediately appealable interlocutory order, affecting Plaintiffs’ substantial rights. The panel further finds that many of the factual and legal issues involved in all of Plaintiffs’ claims are similar in nature and that in the interests of justice and judicial economy, should a trial be necessary in this case, any and all of Plaintiffs’ claims could and should be tried together rather than separately.

For the foregoing reasons, the undersigned panel on its own motion hereby ORDERS that any trial in this matter is STAYED until such time as the appeal in this case is resolved by the appellate division; and it is

FURTHER ORDERED that this order staying the trial of this matter is not intended to prohibit or limit the panel’s ability to rule on other necessary matters which need to be addressed during the pendency of the appeal.

This the 25 day of September, 2019.



Nathaniel J. Poovey, Superior Court Judge

/s/ Michael J. O’Foghludha
Michael J. O’Foghludha, Superior Court Judge

/s/ Vince M. Rozier, Jr.
Vince M. Rozier, Jr., Superior Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served on the following persons by depositing a copy of the same in the United States mail, postage prepaid, and properly addressed, as follows:

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This the 26th day of September, 2019.



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