

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 DENYING PLAINTIFFS'
MOTION FOR RECONSIDERATION
OF ORDER STAYING
PROCEEDINGS

This matter comes before the undersigned three-judge panel upon Plaintiffs' Motion for Reconsideration of Order Staying Proceedings, filed on September 30, 2019, and Legislative Defendants' Response in Opposition to Motion for Reconsideration of Order Staying Proceedings, filed on September 30, 2019.

On September 26, 2019, this panel entered an order staying proceedings pending the outcome of Plaintiffs' appeal. Entry of the stay was based in part upon our finding that the July 2019 order is an immediately appealable interlocutory order which affects Plaintiffs' substantial rights. Plaintiffs request that this panel dissolve the stay because Plaintiffs' proposed issues on appeal are limited solely to consideration of the denial of Plaintiffs' Motion for Preliminary Injunction. However, the scope of appeal is not determined by the proposed issues listed in the record on appeal.

Rule of Appellate Procedure 10(b) provides that "[p]roposed issues on appeal are to facilitate the preparation of the record on appeal and shall not limit the scope of the issues presented on appeal in an appellant's brief." The scope of the Court of Appeals' jurisdiction on appeal is defined by "the judgment or order from which appeal is taken," as designated by the appellant in the notice of appeal. N.C. R. App. P. 3(d).

Plaintiffs' Notice of Appeal from this Panel's July 19, 2019 order does not contain any language limiting the scope of Plaintiffs' appeal to the denial of preliminary injunctive relief; therefore, all matters contained within the order, including the dismissal of Plaintiffs' Claims II-VI, are subject to review by the Court of Appeals. To proceed with trial on Plaintiffs' remaining Claim I would require this panel to consider factual and legal issues that are the subject matter of appeal. Pursuant to N.C.G.S. § 1-294, this panel is divested of jurisdiction to proceed on matters embraced in the judgment appealed.

For the foregoing reasons, the undersigned panel hereby ORDERS that Plaintiffs' Motion for Reconsideration of Order Staying Proceedings is DENIED.

This the 9th day of October, 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:

Allison J. Riggs
Jaclyn A. Maffetore
Jeffrey Loperfido
Gregory Moss
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
jaclyn@southerncoalition.org
jeff@southerncoalition.org
greg@southerncoalition.org

Counsel for Plaintiffs

Andrew J. Ehrlich
Apeksha Vora
Patrick Kessock
Paul D. Brachman
PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064
aehrich@paulweiss.com
avora@paulweiss.com
pkessock@paulweiss.com
pbrachman@paulweiss.com

Counsel for Plaintiffs

Nicole Moss
David Thompson
COOPER & KIRK, PLLC
1523 New Hampshire Avenue NW
Washington, DC 20036
nmoss@cooperkirk.com
dthompson@cooperkirk.com

Counsel for Legislative Defendants


Nathan A. Huff
PHELPS DUNBAR LLP
GlenLake One
4140 ParkLake Avenue, Suite 100
Raleigh, NC 27612
nathan.huff@phelps.com

Counsel for Legislative Defendants

Amar Majmundar
Olga E. Vysotskaya de Brito
Paul M. Cox
N.C. DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, NC 27602
amajmundar@ncdoj.gov
ovysotskaya@ncdoj.gov
pcox@ncdoj.gov

Counsel for the State and State Board Defendants

This the 9th day of October, 2019.



Kellie Z. Myers
Trial Court Administrator
10th Judicial District
kellie.z.myers@nccourts.org