

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
Case No. 19 CVS 12667

REBECCA HARPER, *et al.*

Plaintiffs,

v.

REPRESENTATIVE DAVID R. LEWIS , *et al.*

Defendants.

**LEGISLATIVE DEFENDANTS' MOTION TO EXPEDITE PLAINTIFFS' RESPONSE
TO LEGISLATIVE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND
FOR AN EXPEDITED RULING ON LEGISLATIVE DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

On November 15, 2019 the North Carolina General Assembly enacted a new congressional plan to ensure an uninterrupted 2020 election cycle. As explained more fully in Legislative Defendants' Motion for Summary Judgment filed on November 15, 2019, enactment of the new congressional plan renders the current action moot. To ensure no disruption to the current lawful filing period and election cycle, the Court should order an expedited response to Legislative Defendants' Motion for Summary Judgment and expedite its resolution of this case.

RELEVANT PROCEDURAL BACKGROUND

Plaintiffs filed this action on September 27, 2019 in Wake County Superior Court seeking to enjoin as unconstitutional the congressional districts enacted by the General Assembly in 2016. On October 28, 2019, the Court granted Plaintiffs' preliminary injunction motion and stated that it would enter a further order to "provide for an expedited schedule so that Plaintiffs' dispositive motion may be heard prior to the close of the filing period of the 2020 primary election." (Order on Injunctive Relief, p. 16 (Oct. 28, 2019)). On November 1, 2019, the Court entered an order

setting an expedited schedule for the filing, briefing, and hearing of summary judgment motions. (Order, p.2 (Nov. 1, 2019)).

In its order granting Plaintiffs' preliminary injunction motion, the Court stated that it did not "presume, at this early stage of this litigation, to have any authority to compel the General Assembly to commence a process of enacting new Congressional districts," but expressed concerns about potential disruptions to the 2020 elections process and noted that "these disruptions to the election process *need not occur, nor may an expedited schedule for summary judgment or trial even be needed*, should the General Assembly, on its own initiative, act immediately and with all due haste to enact new congressional districts." (*Id.* at p. 17) (emphasis added).

As intimated by the Court in its November 1, 2019 order, the General Assembly, on its own initiative, enacted a new congressional plan on November 15, 2019 fully replacing the enjoined 2016 congressional plan.

ARGUMENT

In light of the enactment of new congressional districts on November 15, 2019, this Court should now hold true to its statements that in such an event, "disruptions to the election process need not occur, nor may an expedited schedule for summary judgment or trial even be needed." There are at least two good reasons for doing so: avoiding unnecessary disruption to the election cycle and the interests of judicial economy and efficiency.

First, now that a new map has been duly enacted by the legislature, the Court should take all steps necessary to avoid undue disruption to the election cycle. When courts award or withhold immediate relief in an apportionment or redistricting case, a court "should consider the proximity of a forthcoming election and the mechanics and complexities of state elections laws, and should act and rely upon general equitable principles." *Pender County v. Bartlett*, 361 N.C. 491, 510, 649

S.E.2d 364, 376 (2007) *quoting Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Further, a court can “endeavor to avoid a disruption of the election process which might result from requiring precipitate changes” that could unduly burden the State. *Id.* Here, the legally mandated filing period for congressional offices begins December 2, 2019. If this Court promptly enters an order dismissing this action as moot, elections officials, candidates, and the general public can be prepared for the filing period without disruption or delay. Under the scheduling order currently in place, the Court will not even hear dispositive motions until December 2, 2019, the first day of the lawful filing period. In that event, the filing period and the election cycle will be inevitably delayed along with the confusion and disruption that attend such circumstances. The Court should instead avoid any disruption of the election process by ordering an expedited briefing schedule and expediting resolution of the summary judgment motion.

Second, there is no reason for the Court to consider any motions related to the 2016 congressional plan—the plan challenged by Plaintiffs in this action—as that plan has been erased by the legislature and any challenge to it is obviously moot. Thus, there is no reason for the Court to continue to adhere to a schedule in which summary judgment responses regarding the 2016 plan are filed and heard on the prior case management schedule as all such activity is legally meaningless and will only waste judicial resources. In light of the enactment of the new congressional plan, the Court should instead devote its time and resources to recognizing the mootness of the prior claims and providing certainty and stability to the 2020 election cycle.

Accordingly, Legislative Defendants’ propose the following timetable for briefing and ruling upon their Motion for Summary Judgment based on mootness:

November 20, 2019: Plaintiffs file any Response to Legislative Defendants’ Motion for Summary Judgment Based on Mootness

November 22, 2019: Hearing on Legislative Defendants' Motion for Summary Judgment

Based on Mootness


Any hearing on the motion could be conducted telephonically to facilitate participation by the Court and the parties. A hearing on or before November 22, 2019 would allow the Court sufficient time to rule on the matter and allow the normal election cycle to go forward without delay. In light of the General Assembly's voluntary recognition of this Court's advice in enacting a new plan, it would also obviate the need for any further briefing, argument, or hearings on the 2016 congressional plan. The Court should therefore act without delay to determine the mootness of this action and provide stability and certainty to the citizens of North Carolina.

CONCLUSION

Legislative Defendants respectfully request that the Court expedite Plaintiffs' response to Legislative Defendants' Motion for Summary Judgment and expedite its resolution of this case as described above. A proposed order is attached hereto.

Respectfully submitted, this the 15th day of November, 2019.

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CERTIFICATE OF SERVICE

It is hereby certified that the foregoing document was served upon the parties via electronic mail:

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This the 15th day of November, 2019

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