

FILED

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE CO., 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 MOTION
TO REFRAIN FROM
ENTERING OR,
ALTERNATIVELY,
DISSOLVE THE
PRELIMINARY INJUNCTION**

THIS CAUSE coming before the undersigned three-judge panel upon the Motion to Refrain from Entering or, Alternatively, Dissolve the Preliminary Injunction, filed by Legislative Defendants on July 9, 2020, pursuant to Rules 7 and 54(b) of the North Carolina Rules of Civil Procedure. The parties have fully briefed their respective positions on Legislative Defendants' Motion, and the matter is now ripe for resolution by the Court.

Rule 54 of the North Carolina Rules of Civil Procedure provides that “in the absence of entry of . . . a final judgment, any order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” N.C.G.S. § 1A-1, Rule 54(b). Whether “to dissolve a temporary injunction is addressed to the discretion of the trial court.” *Barr-Mullin, Inc. v. Browning*, 108 N.C. App. 590, 598, 424 S.E.2d 226, 231 (1993).

On August 10, 2020, this Court entered a preliminary injunction in accordance with the North Carolina Court of Appeals February 18, 2020, opinion in which the Court of Appeals held that Plaintiffs have shown a clear likelihood of success on the merits of their discriminatory-intent claim, and absent an injunction, Plaintiffs are likely to suffer irreparable harm. Defendants are therefore presently enjoined from implementing or enforcing the voter-ID provisions of Session Law 2018-144 (“S.L. 2018-144”), specifically including Parts I and IV, until Plaintiffs’ facial challenge has been ruled upon on the merits. As a result, Legislative Defendants’ motion to refrain from entering the preliminary injunction is now moot.

Legislative Defendants have alternatively moved to dissolve the preliminary injunction, contending the enactment of North Carolina Session Law 2020-17 (House Bill 1169) necessitates a conclusion that Plaintiffs are now unlikely to succeed on the merits of their discriminatory-intent claim challenging the voter-ID provisions of S.L. 2018-144. Session Law 2020-17 (“S.L. 2020-17”) amends N.C.G.S. § 163-166.16(a) to include identification cards “issued by a department, agency, or entity of the United

States government or this State for a government program of public assistance.” 2020 N.C. Sess. Laws 17 § 10.

Plaintiffs, however, contend the enactment of S.L. 2020-17 does not support the dissolution of the preliminary injunction because the recently-enacted session law does not serve to invalidate or repeal S.L. 2018-144 or otherwise cure the discriminatory intent in S.L. 2018-144—principally because S.L. 2020-17 in effect does not add a new form of identification that contains a photograph of a registered voter. Additionally, State Defendants have asserted that even if the preliminary injunction is dissolved, implementation of the voter-ID provisions of S.L. 2018-144 is infeasible for the upcoming 2020 general election for reasons relating to the submission of absentee ballots under normal circumstances, a bevy of complications in election administration—including implementation and enforcement of the mandates of S.L. 2018-144—during the ongoing COVID-19 pandemic, and a federal court’s still-in-effect injunction of the voter-ID provisions of S.L. 2018-144.

The Court, having considered the motion, the parties’ briefs and submitted materials, and the record established thus far, concludes that the mere enactment of S.L. 2020-17, particularly under the current circumstances, is not sufficient to support a dissolution of the preliminary injunction enjoining the implementation and enforcement of the voter-ID provisions of S.L. 2018-144. Accordingly, the preliminary injunction entered by this Court in accordance with the Court of Appeals February 18, 2020, opinion will, in the Court’s discretion, remain unaltered and in effect.

WHEREFORE, in the Court's discretion and for the reasons stated herein, it is hereby ORDERED that Legislative Defendants' Motion to Refrain from Entering or, alternatively, Dissolve the Preliminary Injunction is DENIED.

This the 12th day of August, 2020.



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 persons indicated below

via e-mail transmission addressed as follows:

Allison J. Riggs
Jeffrey Loperfido
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
jeff@southerncoalition.org

Counsel for Plaintiffs

Andrew J. Ehrlich
Apeksha Vora
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
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 12th day of August 2020.



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