

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS 15426

NORTH CAROLINA LEAGUE OF  
CONSERVATION VOTERS, INC. et al.,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in his  
official capacity as Chair of the House Standing  
Committee on Redistricting, et al.

Defendants.

**STATE BOARD DEFENDANTS'  
RESPONSE TO PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

**NOW COME** Defendants the North Carolina State Board of Elections and its members (collectively, the "State Board" or "State Board Defendants"), by and through the undersigned counsel, to hereby submit this response to Plaintiffs' motion for preliminary injunction.

**INTRODUCTION**

State Board Defendants take no position on the merits of Plaintiffs' claims.

Rather, this response is provided to inform the Court and the parties of the State Board's administrative considerations and concerns. Should the Court reach consideration of granting the requested relief, the State Board Defendants note that while such relief would impose a significant burden on the State Board's and county boards' administration of the upcoming elections, moving the election schedule as requested to allow time for redistricting issues to be decided would not be insurmountable or impossible if the considerations outlined below by the State Board regarding relevant limitations and deadlines are taken into account.

## FACTUAL BACKGROUND

### A. Current Election Schedule

On March 8, 2022, North Carolina is scheduled to hold its 2022 statewide primary election. *See* Affidavit of Karen Brinson Bell, ¶ 3. Contests on the ballot include the U.S. Senate and House of Representatives, the N.C. General Assembly, state judicial contests at all levels, district attorneys, county offices, and some municipal offices. *Id.* For the non-municipal contests, if no candidate reaches the vote share necessary to become the party nominee after the first primary (at least 30% of the vote plus one), a second primary may be held on April 26, or May 17 if a federal office is involved. *See* N.C.G.S. § 163-111. For some municipal contests, a second election will occur on the date of the second primary. Bell Aff., ¶3.

### B. State Board Implementation Considerations

In our state, the county boards of elections administer elections in each county, including, among other things, providing for the distribution of voting systems, ballots, and pollbooks, training elections officials, conducting absentee and in-person voting, and tabulation and canvassing of results. *Id.*, ¶4. The State Board is responsible for development and enhancement of our Statewide Elections Information Management System (“SEIMS”), which includes managing functions that assign voters to their relevant voting districts, a process known as “geocoding.” *Id.*

The geocoding process starts as soon as the State Board receives legislative district shapefiles, which include geographic data setting the boundaries for legislative districts. *Id.*, ¶ 5. The State Board’s staff then works with county board staff to use the shapefiles to update the voting jurisdictions that are assigned to particular addresses in SEIMS. *Id.* The State Board estimates that geocoding would likely take at least 21 days (including holidays and weekends)

for the districts at issue in the 2022 primary. *Id.*, ¶ 6.

Ballot preparation and proofing can begin only after geocoding is complete and candidate filing closes. *Id.*, ¶ 7. For the 2022 primary elections, candidate filing occurs between noon on December 6, 2021, and noon on December 17, 2021. *See* N.C.G.S. § 163-106.2(a). Generating and proofing ballots is complex and involves multiple technical systems and quality-control checkpoints that precede ballot printing and the coding of voting machines. *Id.* This includes proofing each ballot style for content and accuracy, ballot printing, and delivery of all ballot materials to county boards. *Id.* Based on prior experience, the State Board estimates that ballot preparation and proofing would likely take between 17 and 21 days (including holidays and weekends) for the 2022 primary, depending on the number of ballot styles to prepare, which largely depends on the degree of change to intra-county district lines, and the number of contested nominations. *Id.*

While not ideal, geocoding and candidate filing may occur concurrently. *Id.*, ¶ 8. However, geocoding and ballot preparation must occur consecutively. *Id.*, ¶ 9. Ballots cannot be prepared until the proper geographical boundaries for voting districts are set in SEIMS and the candidates are known after the candidate-filing period closes. *Id.* Therefore, the total time required for geocoding and ballot preparation is likely between 38 and 42 days (including holidays and weekends). *Id.* This work must be completed before the beginning of the absentee by mail voting period.

The State Board is required by statute to begin mailing absentee ballots 50 days prior to the primary election day or 45 days under limited exceptions pursuant to N.C.G.S. § 163-227.10(a). *Id.*, ¶ 10. The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires mailing 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A),

unless Executive Director Bell requests a waiver of this requirement based on a legal contest delaying the preparation of ballots (or another enumerated hardship), and that waiver is granted by the federal official designated to administer UOCAVA, *see id.* § 20302(g). Bell Aff., ¶ 10. As a result, the current deadline by which county boards must be prepared to begin distributing absentee ballots is January 14, 2022, or January 21, 2022 if the period is shortened as provided above. *Id.* In order to maintain the current deadlines for the March 8, 2022 primary, the State Board's assessment is that it must receive map shapefiles for geocoding and ballot preparation no later than December 3–7, 2021, or December 10–14, 2021, if the absentee mailing period is shortened. *Id.*, ¶ 11.

If the absentee mailing period were shortened, the State Board would then need to take into account the impact on preparations for in-person voting. Currently, in-person early voting is set to begin on February 17, 2022 for the 2022 primary. *Id.*, ¶ 12. Before in-person voting occurs, the State Board must work with county boards to prepare voting tabulation machines, and the county boards must conduct logic and accuracy testing of the equipment. *Id.*, ¶ 13. The State Board estimates that this would likely take the counties 14 days. *Id.* Then the State Board and county boards conduct a mock election day followed by two weeks to remedy any technical problems identified during the mock election. *Id.* Accordingly, regardless of when the absentee ballot distribution deadline falls, the State Board estimates it would require 29 days after ballots have been prepared in order for staff to prepare for in-person election voting. *Id.*, ¶ 14.

Finally, for reasons more thoroughly explained in the Affidavit of Executive Director Bell, the delay of any contest currently scheduled for the March 8, 2022 primary, would, as a practical matter, necessitate the delay of all contests scheduled for that date. *Id.*, ¶ 15-21. For instance, if only the contests subject to legislative redistricting were delayed, this would create a

different set of administrative requirements caused by blackout periods in which the geocoding process must be halted for 30 days while in-person voting is occurring and county boards canvass results in the other contests that do not involve redistricting. *Id.*, ¶¶ 16-17. In order to accommodate the second primary for the other contests allowed to proceed on March 8, 2022 (including certain municipal contests that are certain to occur), this would create a second blackout period further disrupting preparation for the delayed races. *Id.*, ¶ 17. This represents an interruption in geocoding of another 30 days, resulting in the work of geocoding and ballot preparation not being completed until approximately May 26-30, 2022, at the earliest. *Id.*

When the blackout periods are combined with the need to have absentee ballots prepared for distribution 50 days (or 45 if shortened) before the election date pursuant to N.C.G.S. § 163-227.10(a), the earliest that a separate primary could occur is 45 days later, which would result in a primary election day of Tuesday, July 12, 2022. *Id.*, ¶¶ 17-18.

The absentee distribution deadline is not the only consideration. One-stop early voting is required to begin 20 days before the primary election day under N.C.G.S. § 163-227.2(b). Accordingly, all of the administrative processes that must occur before in-person voting begins (geocoding, ballot preparation, burning media, preparing touch-screen ballots, logic and accuracy testing, mock election, and technical fix period, among other things), which are estimated by State Board staff to take between 67 and 71 days total, would need to occur between March 19, 2022, and 20 days before the date of the separate primary. *Bell Aff.*, ¶19. A second primary in the unchallenged contests will cause this period to be extended by an additional 30 day delay caused by the second blackout period as described above. *Id.*, ¶¶ 16-17. Therefore, even putting aside absentee ballot distribution deadlines, and only accounting for the in-person voting timelines, the earliest that separate first primary for the challenged contests could occur is, again,

Tuesday, July 12, 2022. *Id.*, ¶ 19.

Such a late date for a first primary would make any second primary infeasible if triggered and requested under N.C.G.S. § 163-111. *Id.*, ¶ 20. If that occurs, a second primary under this scenario would occur on either August 30, 2022 or September 20, 2022 (*i.e.*, 7 or 10 weeks after the initial primary, depending on whether there was a federal contest involved) pursuant to N.C.G.S. § 163-111(e). *Id.* This would interfere with the August 19 to August 23 deadline to begin preparing ballots for the general election because absentee ballots must be mailed out for the general election on September 9, 2022 pursuant to N.C.G.S. § 163-227.10(a), and staff require 17-21 days to prepare those ballots. *Id.*

Separate primaries also incur more practical administrative challenges for counties, including added difficulty recruiting poll workers, securing voting locations, and associated costs. *Id.*, ¶ 21.

Thus, enjoining and delaying only the challenged primary contests would result in significantly greater administrative burden on the boards of election, could result in significant voter confusion, and could potentially lead to an administratively infeasible timeline in late summer. *Id.*, ¶ 22. In contrast, if all currently scheduled contests set for March 8, 2022 were moved to a later date, this would still raise significant administrative burdens, but it would be more feasible to implement. This is because geocoding of any new shapefiles can begin immediately upon receipt by the State Board, without blackout interruptions, and voters would not need to keep track of multiple primary dates for the 2022 elections. *Id.*

Under those circumstances, keeping in mind all of the estimates of time needed to prepare for the elections outlined above, and backtracking from the earliest relevant deadline for the general election—the ballot preparation deadline of August 19 to August 23—the State

Board staff's assessment is that the second primary would need to occur no later than Tuesday, July 26, 2022, and the first primary by no later than Tuesday, May 17, 2022. That, in turn, would require that the State Board be provided with any new shapefiles no later than February 14 to 18, 2022. *Id.*, ¶ 23, and Fn 3-6.

## LEGAL ARGUMENT

### Legal Standard

In considering a motion for preliminary injunction, the Court must “engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant[s] if injunctive relief is granted.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978). “A preliminary injunction should not be granted if a serious question exists in respect of the defendant’s right to do what the plaintiffs seek to restrain and the granting thereof would work greater injury to the defendant than is reasonably necessary for the protection *Pendente lite* of the plaintiffs’ rights.” *Setzer v. Annas*, 286 N.C. 534, 540, 212 S.E.2d 154, 157–58 (1975).

#### **I. Administrative Burdens, Considerations, and Important Deadlines.**

Should this Court choose to grant the relief requested by Plaintiffs, and delay the March 8, 2022 to a date in May of 2022, it would impose significant burdens on the State Board, but it would be administratively feasible so long as certain considerations and deadlines are set.

The affidavit of State Board Executive Director Karen Brinson Bell, which has been filed contemporaneously with the service of this brief, provides a detailed discussion of the relevant administrative processes that the State Board and county boards carry out in preparation for an election. It identifies the amount of time required to accomplish each process that occurs after the State Board receives map shapefiles, and before absentee ballots are distributed and in-person

voting can begin. *See* Bell Aff. ¶¶ 4-14. Certain time estimates are provided as ranges due to certain contingencies, as explained in the affidavit. *Id.* The affidavit further explains the administrative difficulties that would be triggered if a separate primary were ordered for only the races challenged in this action and why that is likely not administratively feasible. *Id.*, ¶¶ 15-21.

Rather than restate the contents of Ms. Bell's affidavit, which appear above in detail in the facts section of this response, State Defendants highlight the two primary issues most relevant to the Court's consideration of Plaintiffs' requested relief.

First, if the Court decides that any contests scheduled for the March 8, 2022 primary should be delayed, then all contests scheduled for that date should be delayed. Delaying a portion of the contests would result in significantly greater administrative burdens for the State Board, could create significant voter confusion, and could impact the deadlines required to carry out the general election in the fall of 2022. *Id.*, ¶ 22.

Second, if all races are delayed from the March 8, 2022 to latest date deemed practicable by the State Board, May 17, 2022, and new maps are ordered by this Court, then the new shapefiles must be received by the State Board no later than February 14-18, 2022 in order for them to be implemented ahead of that delayed primary. *Id.*, ¶ 23. It should be noted that the State Board's assessment is that these are dates of last resort that provide the maximum amount of time to resolve any redistricting issues the Court determines to address, before the burden would likely become administratively infeasible for the State Board to conduct orderly elections in 2022.

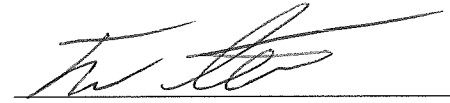


## CONCLUSION

State Board Defendants ask that the Court consider the administrative issues above. State Board staff are available to answer any further questions from the Court regarding administrative considerations relevant to the Court's determination of the motion.

Respectfully submitted this 2<sup>nd</sup> day of December, 2021.

N.C. DEPARTMENT OF JUSTICE



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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by via email and addressed as follows:

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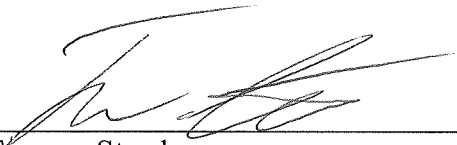
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This the 2<sup>nd</sup> day of December, 2021.



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