

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 015426

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, et al.,

REBECCA HARPER, et al.,

Plaintiffs,

vs.

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

Defendants.

Consolidated with
21 CVS 500085

**RESPONSE TO MOTION FOR CLARIFICATION
OF THE ELECTION SCHEDULE**

NOW COME President *Pro Tempore* Philip E. Berger, Senator Warren Daniel, Senator Ralph E. Hise, Senator Paul Newton, Speaker Timothy K. Moore, and Representative Destin Hall (collective, “Legislative Defendants”), by and through undersigned counsel, and hereby respond to the Motion for Clarification of the Election Schedule filed by the State Board of Elections, its Members, and its Executive Director (“SBE Defendants”), as follows:

A. Response to Request to Set Filing Period to Open on February 24, 2022.

There is no need for the Court to address the candidate filing prior to issuing a final written ruling on the merits of Plaintiffs’ claims in this case; SBE Defendants’ request is premature and should be denied.

The Supreme Court’s 8 December 2021 Order (“Supreme Court Order”) “stays the candidate-filing period for the 2022 election for all offices until such time as a final judgment on

the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered." This Court has not yet issued a "final judgment on the merits of plaintiffs' claims," nor has any party appealed it.

Weighing the merits of rescheduling the filing period, however, requires knowing the substance and effect of this Court's imminent merits ruling, how the parties will react to it, and the resulting effects of those choices on the election calendar. For example, presume Plaintiffs prevail, Legislative Defendants (in lieu of appealing) immediately set about the process mandated by N.C. Gen. Stat § 120-2.4, and no party appeals the redrawn plans; in such a situation, there is no need to wait until February 24, 2022 to reopening filing. On the other hand, assume a scenario in which Legislative Defendants prevail and Plaintiffs appeal. Then the Supreme Court will necessarily address this question of election administration as part of the merits appeal.

SBE Defendants' Motion ignores these considerations, requesting a date certain to reopen filing despite ongoing developments that may soon make February 24 inappropriate, too. Indeed, the timing of SBE Defendants' Motion is curious given the imminence of this Court's final written ruling. The Motion seems premised on an assumption that an appeal of this Court's decision is inevitable, which it is not, of course. Less than three years ago, the General Assembly elected not to appeal orders by the three-judge panel in *Common Cause v. Lewis* and *Harper v. Lewis*, which invalidated redistricting plans. *See* 2019 N.C. Super. LEXIS 56 (N.C. Super. Ct. Sept. 3, 2019); 2019 N.C. Super. LEXIS 122 (N.C. Super. Ct. Oct. 28, 2019).

Simply put, this Court has no good basis upon which to evaluate SBE Defendants' proposed relief before issuing a final written decision. And given the impending deadline for this Court's written ruling, there is no rush either. Accordingly, Legislative Defendants oppose as

premature the SBE Defendants' Motion in so far as it requests that this Court reopen the filing period on February 24, 2022.

That said, SBE Defendants' desire for clarity on the filing period highlights a pressing concern of great importance for candidates, election officials, and North Carolina voters, statewide. As such, Legislative Defendants contend that this Court, pursuant to its authority under Paragraph 1 of the Supreme Court Order, should set a date for opening the filing period within the final merits ruling it issues under Paragraph 3 of the Supreme Court Order. If the Court rules in favor of Legislative Defendants, its order should provide for the candidate filing period to reopen on January 18, 2022 at 8:00 A.M. so as to avoid any further unnecessary delay and disruption to the 2022 election cycle. Such date will ensure a timely resumption of the 2022 election cycle and allow candidates and election officials time to prepare following this Court's decision. At the same time, a reopen date of January 18 will also provide sufficient time for the parties to appeal pursuant to Paragraph 4 of the Supreme Court Order, and for the Supreme Court to craft any further relief it deems appropriate.

B. Response in Opposition to Moving Certain Municipal Elections.

Legislative Defendants oppose the SBE Defendants' Motion with respect to setting a date certain for the second municipal election in this absence of a second primary.

Setting election law for the state of North Carolina is a responsibility delegated to the General Assembly. It was the General Assembly that passed N.C. Session Law 2021-56, and it is the General Assembly that can craft further statutory relief needed due to the Supreme Court's Order. Notably, the SBE Defendants have not shown this Court any effort they have made to raise this issue with the General Assembly. Nor have they shown the Court that the General Assembly is unaware or somehow unable or unwilling to act in the same way it did in enacting Session Law

2021-56 in the first place. The General Assembly remains in session and leadership in both chambers have already identified this issue as one to be addressed in the coming weeks. Therefore, this Court need not act on the issue of municipal election dates, as that issue should be handled in the first instance by the body delegated that power by the Constitution. The Court should deny this part of SBE's Motion.

WHEREFORE, for the foregoing reasons, Legislative Defendants oppose SBE Defendant's Motion, but join their request insofar as Legislative Defendants believe that the Court should provide for the reopening of the 2022 filing period in conjunction with issuing its final decision on the merits in this matter.

Respectfully submitted, this the 7th day of January, 2022.

/s/ Phillip J. Strach

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CERTIFICATE OF SERVICE

It is hereby certified that on this the 7th day of January, 2022, the foregoing was served on the individuals below by email:

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