

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
DURHAM DIVISION  
Civil Action No. 1:13-CV-00949

DAVID HARRIS and CHRISTINE	)
BOWSER,	)
	)
Plaintiffs,	)
	)
v.	)
	)
PATRICK MCCRORY, in his capacity	)
as Governor of North Carolina; NORTH	)
CAROLINA STATE BOARD OF	)
ELECTIONS; and A. GRANT	)
WHITNEY, JR., in his capacity as	)
Chairman of the North Carolina State	)
Board of Elections,	)
	)
Defendants.	)

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**DEFENDANTS’ EMERGENCY MOTION TO STAY FINAL JUDGMENT AND  
TO MODIFY INJUNCTION PENDING SUPREME COURT REVIEW**

Defendants respectfully move this Court to stay its Final Judgment ordering the North Carolina General Assembly to redraw a new congressional plan by February 19, 2016 and enjoining the State from conducting any elections for the office of U.S. House of Representatives until a new redistricting plan is in place. [D.E. 143] Because of the exigent nature of the circumstances, including that the 2016 primary election is already underway, and that the North Carolina General Assembly is not currently in session, Defendants request a ruling on this motion today so that Defendants can immediately seek relief in the United States Supreme Court if necessary. In support of this motion, Defendants show the Court:

1. On July 28, 2011, following the 2010 Census, the North Carolina General Assembly enacted a congressional district plan (the “Enacted Plan”) for North Carolina. *See* Session Law 2011-403 (July 28, 2011) *as amended by* Session Law 2011-414 (Nov. 7, 2011)). The Enacted Plan has already been used in two previous election cycles.

2. After the Enacted Plan became law, two groups of plaintiffs, including the North Carolina State Conference of the NAACP—a group of which both Plaintiffs here are members—challenged the Enacted Plan under the same legal theory asserted by the Plaintiffs here. *See Dickson v. Rucho*, Nos. 11 CVS 16896 and 11 CVS 16940 (consolidated) (July 8, 2013) (“*Dickson*”). A three-judge panel unanimously rejected the *Dickson* plaintiffs’ claims and the North Carolina Supreme Court twice affirmed the panel’s decision, most recently on December 18, 2015. *See Dickson v. Rucho*, \_\_\_ S.E.2d \_\_\_, 2015 WL 9261836, at \*38 (N.C. Dec. 18, 2015). The *Dickson* Plaintiffs have filed a petition for rehearing with the North Carolina Supreme Court which remains pending. If the petition for rehearing is denied, the *Dickson* Plaintiffs will then have 90 days to file a petition for writ of certiorari with the United States Supreme Court. Rule 13(3), U.S. S.Ct.

3. Candidate filing for the 2016 Elections Cycle, including the districts in the Enacted Plan, ran from noon on December 1, 2015, to noon on December 21, 2015 and elections officials began moving forward with the process of preparing for the primary election which is scheduled to occur on Tuesday, March 15, 2016. On January 18, 2016, county elections officials began issuing mail-in absentee ballots to civilian voters and those qualifying under the Uniformed and Overseas Citizens Absentee Voting Act

("UOCAVA"), which requires transmittal of ballots no later than 45 days before an election for a federal office. State Board of Elections data indicates that county elections officials have mailed 8,621 ballots to voters, 903 of whom are located outside the United States. Hundreds of those ballots have already been voted and returned.

4. Along with this Motion, Defendants have filed with this Court a Notice of Appeal to the United States Supreme Court of this Court's Order Addressing Objections [D.E. 141], Memorandum Opinion [D.E. 142], and Final Judgment [D.E. 143]. Because voting has already started in North Carolina, unless it is stayed, this Court's order requiring the General Assembly to redraw a congressional plan by February 19, 2016 and enjoining the State from conducting any elections for the office of U.S. House of Representatives until a new redistricting plan is in place is likely to cause significant voter confusion and irreparable harm to the citizens of North Carolina and the election process that is already underway. Particulars of the harm that will be caused to North Carolina's citizens and election process absent a stay are set forth in detail in the Declaration of Kimberly Westbrook Strach, which is attached to this Motion as Exhibit 1.

5. Given that two different three-judge panels have reviewed substantially the same record yet reached opposite conclusion on the merits of the same claims involving the same congressional districts and because Defendants are entitled to an appeal as of right to the United States Supreme Court of this Court's Final Judgment and related orders, this Court should stay its Final Judgment and modify the injunction contained within it to allow North Carolina to proceed with conducting elections for the U.S. House of Representatives under the Enacted Plan until the United States Supreme Court has an

opportunity to rule upon the legality of the two congressional districts at issue in this action.

6. While Defendants believe this Court's Judgment will be reversed by the United States Supreme Court on appeal, mandatory injunctions of statewide election laws, including redistricting plans, issued by lower courts at the later stages of an election cycle have consistently been stayed. *See, e.g., Hunt v. Cromartie*, 529 U. S. 1014 (2000); *Voinovich v. Quilter*, 503 U.S. 979 (1992); *Wetherell v. DeGrandy*, 505 U.S. 1232 (1992); *Louisiana v. Hays*, 512 U.S. 1273 (1994); *Miller v. Johnson*, 512 U.S. 1283 (1994). The United States Supreme Court has also affirmed decisions by lower courts to permit elections under plans declared unlawful because they were not invalidated until late in the election cycle. *Watkins v. Mabus*, 502 U.S. 952 (1991) (summarily affirming in relevant part *Watkins v. Mabus*, 771 F. Supp. 789, 801, 802-805 (S.D. Miss. 1991) (three judge court)); *Republican Party of Shelby County v. Dixon*, 429 U.S. 934 (1976) (summarily affirming *Dixon v. Hassler*, 412 F. Supp. 1036, 1038 (W.D. Tenn. 1976) (three-judge court)); *Grove v. Emison*, 507 U.S. 25, 35 (1993) (noting that elections must often be held under a legislatively enacted plan prior to any appellate review of that plan).

WHEREFORE, the Court should stay its Final Judgment in this case pending Supreme Court review and modify the injunction contained within it to allow North Carolina to conduct the 2016 congressional elections under the Enacted Plan.

Respectfully submitted this 8<sup>th</sup> day of February, 2016.

NORTH CAROLINA DEPARTMENT OF  
JUSTICE

By: /s/ Alexander McC. Peters  
Alexander McC. Peters  
Senior Deputy Attorney General  
N.C. State Bar No. 13654  
apeters@ncdoj.gov  
P.O. Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6900  
Facsimile: (919) 716-6763  
*Counsel for Defendants*

OGLETREE, DEAKINS, NASH  
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr  
Thomas A. Farr  
N.C. State Bar No. 10871  
Phillip J. Strach  
N.C. State Bar No. 29456  
Michael D. McKnight  
N.C. State Bar No. 36932  
thomas.farr@ogletreedeakins.com  
phil.stach@ogletreedeakins.com  
michael.mcknight@ogletreedeakins.com  
4208 Six Forks Road, Suite 1100  
Raleigh, North Carolina 27609  
Telephone: (919) 787-9700  
Facsimile: (919) 783-9412  
*Co-counsel for Defendants*

**CERTIFICATE OF SERVICE**

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' MOTION TO STAY FINAL JUDGMENT AND TO MODIFY INJUNCTION PENDING SUPREME COURT REVIEW** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

**PERKINS COIE LLP**

Kevin J. Hamilton  
Washington Bar No. 15648  
Khamilton@perkinscoie.com  
William B. Stafford  
Washington Bar No. 39849  
Wstafford@perkinscoie.com  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Telephone: (206) 359-8741  
Facsimile: (206) 359-9741

John M. Devaney  
D.C. Bar No. 375465  
JDevaney@perkinscoie.com  
Marc E. Elias  
D.C. Bar No. 442007  
MElias@perkinscoie.com  
Bruce V. Spiva  
D.C. Bar No. 443754  
BSpiva@perkinscoie.com  
700 Thirteenth Street, N.W., Suite 600  
Washington, D.C. 20005-3960  
Telephone: (202) 654-6200  
Facsimile: (202) 654-6211

*Attorneys for Plaintiffs*

**POYNER SPRUILL LLP**

Edwin M. Speas, Jr.  
N.C. State Bar No. 4112  
espeas@poynerspruill.com  
John W. O'Hale  
N.C. State Bar No. 35895  
johale@poynerspruill.com  
Caroline P. Mackie  
N.C. State Bar No. 41512  
cmackie@poynerspruill.com  
P.O. Box 1801 (27602-1801)  
301 Fayetteville St., Suite 1900  
Raleigh, NC 27601  
Telephone: (919) 783-6400  
Facsimile: (919) 783-1075

*Local Rule 83.1  
Attorneys for Plaintiffs*

This the 8<sup>th</sup> day of February, 2016.

OGLETREE, DEAKINS, NASH  
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr (N.C. Bar No. 10871)

4208 Six Forks Road, Suite 1100

Raleigh, NC 27609

Telephone: 919.787.9700

Facsimile: 919.783.9412

thomas.farr@odnss.com

*Counsel for Defendants*

23764205.1