

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

MARGARET DICKSON, *et al.*,

*Plaintiffs*

v.

ROBERT RUCHO, *et al.*,

*Defendants.*

Civil Action No. 11 CVS 16896

NORTH CAROLINA STATE  
CONFERENCE OF BRANCHES OF THE  
NAACP, *et al.*,

*Plaintiffs,*

v.

THE STATE OF NORTH CAROLINA, *et al.*,

*Defendants.*

Civil Action No. 11 CVS 16940

*(Consolidated)*

**JOINT MOTION FOR PRELIMINARY INJUNCTION**

**N.C. R. Civ. P. 65**

NOW COME Plaintiffs Margaret Dixon, *et al.*, and the North Carolina State Conference of Branches of the NAACP, *et al.*, and move this Court for an Order enjoining the Defendants from conducting elections under the three redistricting laws that are the subject of the Amended Complaints herein until such time as the Plaintiffs' claims have been fully adjudicated on the merits and in support of this motion, show the Court the following:

1. These are actions for declaratory and injunctive relief to prevent the State of North Carolina from conducting elections pursuant to redistricting plans that were enacted with the intent to discriminate against African-American voters, that have the effect of denying equal protection of the laws to hundreds of thousands of voters, that violate the North Carolina State Constitution's limitations on the power of the General Assembly to re-draw election districts in ways that disadvantage certain citizens and privilege others, and that unnecessarily split precincts in violation of binding state law.

2. The Complaints in these actions were filed on November 3<sup>rd</sup> and 4<sup>th</sup> 2011, and Amended Complaints were filed on December 9<sup>th</sup> and 12<sup>th</sup>, in each instance within two business days of the redistricting plans becoming legally enforceable by virtue of being precleared under Section 5 of the Voting Rights Act.

3. Under the election schedule currently in place for elections to North Carolina legislative and congressional offices, the candidate filing period begins on February 13, 2012. (Affidavit of Gary O. Bartlett ¶5, Dec. 15, 2011) A delay in the 2012 election schedule is feasible and required to preserve the status quo pending the outcome of this litigation and to avoid irreparable harm to the plaintiffs.

4. Plaintiffs have this day filed a Notice of Filing attaching Affidavits and Exhibits in support of this motion.

5. Plaintiffs in these consolidated cases have standing to bring this action and to assert the legal claims herein.

6. The Plaintiffs are likely to succeed on their claim that numerous districts in the 2011 state house and state senate redistricting plans were drawn in such a way that racial

considerations predominated over all other redistricting criteria without a compelling governmental interest and in a manner that was not narrowly tailored.

7. The Plaintiffs are likely to succeed in demonstrating that Districts 1 and 12 in the 2011 Congressional redistricting plans were drawn in such a way that racial considerations predominated over all other redistricting criteria without a compelling governmental interest and in a manner that was not narrowly tailored.

8. The Plaintiffs are likely to succeed on their claim that all three 2011 redistricting plans were intentionally racially discriminatory in violation of the equal protection guarantees of the North Carolina Constitution.

9. The Plaintiffs are likely to succeed on their claims that the 2011 legislative redistricting plans contain excessively non-compact districts, unnecessarily divide political subdivisions including precincts, and disregard communities of interest in violation of numerous provisions of the North Carolina Constitution.

10. The Plaintiffs are likely to succeed in demonstrating that Congressional Districts 4 and 10 are non-compact and disregard communities of interest in violation of numerous provisions of the North Carolina Constitution.

11. The Plaintiffs are likely to succeed on their claim that the 2011 house and senate redistricting plans violate the Whole County provisions of the North Carolina Constitution because they divide counties more than is necessary to comply with federal law.

12. Plaintiffs will suffer irreparable harm if elections are allowed to proceed under plans that are significantly and grossly unconstitutional, as more fully detailed in the affidavits filed herewith. The harms plaintiffs will incur, that cannot be adequately remedied by monetary damages include the injury of participating in a political system and elections process tainted by

discrimination on the basis of race, participating in elections on an unequal standing from other voters in the state who will not have to contend with the confusion and disenfranchisement that will result from split precincts, incurring the risk that split precincts with small numbers of voters in any one precinct for any one election will reveal the nature of their vote and destroy the secrecy of their ballot, and the problems of trying to be engaged in the political process when it is extremely difficult to know election district boundaries. Once elections take place under an unconstitutional system, it is impossible to go back and restore plaintiffs, voters, candidates and elected officials back to the place where they would have been if elections did not occur. Moreover, policy choices are made that can never be rescinded and the legitimacy of those holding office is weakened when their districts are subsequently found to be unconstitutional. These are all specific representational harms to voters that cannot be compensated by monetary damages.

13. There is sufficient time for trial, a decision on the merits, and appellate review in this case if the election schedule is altered to postpone the opening of the filing period and to delay the primary election. Even additional time is possible if a second primary is eliminated.

14. While any order changing the election schedule and implementing new election districts would need to be precleared by the U.S. Department of Justice under Section 5 of the Voting Rights Act, expedited review is possible. Preclearance of injunctions postponing elections and of new redistricting plans in the face of imminent elections was accomplished within a few days of the orders being submitted during the 2002 election cycle.

15. The current 2012 election schedule provides for these deadlines:

February 13	Candidate filing opens
February 29	Candidate filing closes
March 19	Absentee ballots must be ready

May 8	Primary
June 26	Second primary (if necessary)
September 7	Absentee ballots must be ready
November 6	General election

16. If a second primary is necessary, it must be held 7 weeks after the first primary. Bartlett Aff. ¶ 10. The court can eliminate second primary. Bartlett Aff. ¶ 15. The candidate filing period could be shortened to 8 days. *See id.* ¶ 18. The schedule below operates under the assumption that this can be done.

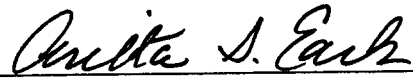
17. The Court can impose the following election schedule after a trial, ruling on the merits and appellate review of this case:

Apr. 27	Candidate filing opens
May 7	Candidate filing closes
May 25	Absentee ballots must be ready for primary
July 10	Primary
Aug 28	Second primary (if necessary)
Sept 7	Absentee ballots must be ready for general election
November 6	General election

18. The election schedule could be delayed even further, and, if a second primary is eliminated, the first primary could be held on August 28<sup>th</sup> 2012.

WHEREFORE, Plaintiffs respectfully request this Court grant a preliminary injunction preserving the status quo, restraining the Defendants from conducting elections using the 2011 legislative and congressional redistricting plans until such after a judgment on the merits in this case, and delaying the 2012 election schedule as specified in paragraph seventeen above.

This 6<sup>th</sup> day of January, 2012.



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Anita S. Earls (State Bar # 15597)  
Clare Barnett (State Bar # 42678)  
Allison Riggs (State Bar # 40028)  
Southern Coalition for Social Justice  
1415 Highway 54, Suite 101  
Durham, NC 27707  
Telephone: 919-323-3380 ext. 115  
Facsimile: 919-323-3942  
E-mail: [anita@southerncoalition.org](mailto:anita@southerncoalition.org)

Adam Stein (State Bar # 4145)  
Ferguson Stein Chambers Gresham &  
Sumter, P.A.  
312 West Franklin Street, Chapel Hill NC  
27516  
Telephone: 919.933.5300 Ext 133  
Fax: 919.933.6182  
Email: [astein@fergusonstein.com](mailto:astein@fergusonstein.com)

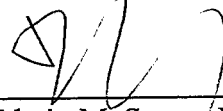
*Attorneys for Plaintiffs*

Irving Joyner (State Bar # 7830)  
Jennifer Watson Marsh (State Bar # 39884)  
North Carolina NAACP  
P.O. Box 335  
Durham, NC 27702  
Telephone: 919-682-4700  
Fax: 919-682-4711  
Email: [jwmarsh1@gmail.com](mailto:jwmarsh1@gmail.com)

Victor L. Goode  
Assistant General Counsel  
NAACP  
4805 Mt. Hope Drive  
Baltimore, MD 21215-3297  
Telephone: 410-580-5120  
Fax: 410-358-9359  
Email: [vgoode@naacpnet.org](mailto:vgoode@naacpnet.org)

*Attorneys for Plaintiffs NC NAACP and  
Davis, Hightower, Gardenhight, Rivers,  
Murphy, White, Lewis, Albert, Brown and  
Lanier.*

POYNER SPRUILL LLP



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Edwin M. Speas, Jr.

N.C. State Bar No. 4112

[espeas@poynerspruill.com](mailto:espeas@poynerspruill.com)

John W. O'Hale

N.C. State Bar No. 35895

[johale@poynerspruill.com](mailto:johale@poynerspruill.com)

Caroline P. Mackie

N.C. State Bar No. 41512

[cmackie@poynerspruill.com](mailto:cmackie@poynerspruill.com)

Post Office Box 1801

Raleigh, NC 27602-1801

Telephone: (919) 783-6400

Facsimile: (919) 783-1075

Attorneys for *Dickson* Plaintiffs

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing Joint Motion for Preliminary Injunction in the above titled action upon all other parties in this consolidated cause by:

- Hand delivering a copy hereof to each said party or to the attorney thereof;
- Transmitting a copy hereof to each said party via facsimile transmittal;
- By email transmittal to the email addresses indicated below;
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Alexander McC. Peters  
Susan K. Nichols  
NC Department of Justice  
P. O. Box 629  
Raleigh, NC 27602  
apeters@ncdoj.gov  
snichols@ncdoj.gov

Thomas A. Farr  
Philip J. Strach  
Ogletree, Deakins, Nash, Smoak & Stewart, PC  
4208 Six Forks Road, Suite 1100  
Raleigh, NC 27622  
thomas.farr@ogletreedeakins.com  
Phil.Strach@ogletreedeakins.com

*Counsel for Defendants*

This the 6<sup>th</sup> day of January, 2012

  
\_\_\_\_\_  
Anita S. Earls





cause shown, pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, the Motion is ALLOWED and the Defendants are enjoined from conducting elections using the 2011 redistricting plans for elections to the North Carolina General Assembly and Congress until a final ruling on the merits of Plaintiffs' claims herein.

FURTHER, the Defendants are directed to adjust the 2012 election schedule for elections to the North Carolina General Assembly and Congress to reflect the following deadlines:

Apr. 27	Candidate filing opens
May 7	Candidate filing closes
May 25	Absentee ballots must be ready for primary
July 10	Primary
Aug 28	Second primary (if necessary)
Sept 7	Absentee ballots must be ready for general election
November 6	General election

This the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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Paul C. Ridgeway, Superior Court Judge

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Joseph N. Crosswhite, Superior Court Judge

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Alma L. Hinton, Superior Court Judge