

SUPREME COURT OF NORTH CAROLINA

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.

From Wake County
 No. 21 CVS 015426

REBECCA HARPER. et al.,

Plaintiffs,

v.

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

Defendants.

From Wake County
 No. 21 CVS 500085

STATE BOARD DEFENDANTS' RESPONSE TO
PETITIONS FOR DISCRETIONARY REVIEW
AND MOTION FOR TEMPORARY STAY

The North Carolina State Board of Elections and its members (collectively, the “State Board” or “State Board Defendants”), provide this response to the petition for discretionary review filed by Plaintiff-Appellants in the matter of *Harper, et al. v. Hall, et al.* (“Harper Plaintiffs”), and the petition for discretionary review and motion for temporary stay filed by Plaintiff-Appellants in the matter of *North Carolina League of Conservation Voters, et al. v. Hall, et al.* (“NC LCV Plaintiffs”). The State Board Defendants respectfully urge the Court to give due attention to the need for an expeditious and authoritative resolution of the requests made in the petitions, given the preparations under way for the upcoming elections.

INTRODUCTION

State Board Defendants take no position on the merits of either of Plaintiff-Appellants’ claims or the petitions for discretionary review.

Rather, the State Board provides this response only to highlight several of its administrative considerations, and to explain how allowing the requested temporary stay, or other injunctive relief, could impact the administration of the 17 December 2021 candidate filing deadline and the 8 March 2022 primary election.

First, if this Court determines that a temporary stay should be granted to suspend candidate filing for the challenged contests (congressional and state legislative races), but ultimately lifts that stay in order for candidate

filing to resume by early next week, then the State Board anticipates that no extension of the 17 December 2021 candidate filing deadline would be necessary.

Second, if the Court determines that it is necessary for a temporary stay to remain in effect beyond early next week, then the State Board expects it would be administratively necessary to extend the candidate filing period for the challenged contests. Any additional filing days should conclude no later than Wednesday, 22 December 2021, in order to accomplish all necessary administrative tasks to maintain the 8 March 2022 primary date.

Third, if the proceedings before this Court result in it becoming necessary to extend or stay the candidate filing period beyond 22 December 2021, then the State Board, and particularly the county boards of election, will likely encounter administrative burdens that would impact their ability to meet the ballot-distribution deadline and complete preparations for in-person voting for the 8 March 2022 primary date for the challenged contests. If this Court then determines that it is necessary to delay the March 8 primary for the challenged contests, as noted in the State Board's submissions to the trial court (*see Harper Pls.' App. pp. 480-504*), then the State Board highly recommends delaying all primaries, to avoid significant administrative burdens that could impact the general election.

State Board Defendants' Position

The State Board Defendants take no position on the relief requested by the Plaintiff-Appellants and defer to the Court's discretion. The State Board Defendants do, however, wish to make known the administrative concerns and considerations the State Board would face should any further direction come from this Court.

A. Current Election Schedule

On 8 March 2022, North Carolina is scheduled to hold its 2022 statewide primary election. *See* Affidavit of Karen Brinson Bell, ¶ 3, attached to the Harper Plaintiffs' Appendix at 480-483. The candidate filing period for the primary opened at noon on Monday, 6 December 2021, and closes at noon on Friday, 17 December 2021. *See* N.C.G.S. § 163-106.2(a). As of the filing of this response, candidate filing remains open to all contests on the ballot.

Those contests 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. Bell Aff., ¶ 3. 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 26 April 2022, or 17 May 2022 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 Administrative 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 estimates that geocoding takes 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. Based on prior experience, the State Board estimates that ballot preparation and proofing takes between 17 and 21 days (including holidays and weekends) for the 2022 primary. *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). However, under appropriate circumstances the Executive Director of the State Board may request 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. Accordingly, the current deadline by which county boards must be prepared to begin distributing absentee ballots is 14 January 2022, or 21 January 2022 if the period is shortened as provided above. *Id.* In order to maintain the current deadlines for the 8 March 2022 primary, the State Board's assessment is that it must receive map shapefiles for geocoding and ballot preparation no later than 3-7 December 2021, or 10-14 December 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 17 February 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 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 whether the absentee ballot distribution deadline falls on 14 January 2022 or 21 January 2022, the State Board estimates that ballots must still be prepared by 18 January 2022, 29 days in advance of the start of in-person early voting on 17 February 2022. *Id.*, ¶ 14.

Taking into account official holidays in December,¹ the State Board estimates that all candidate filing would need to be completed by 22 December 2021 in order to allow State and county board staff the necessary 17 to 21 days to prepare ballots ahead of the date on which absentee ballots must be mailed (14 January 2022 or 21 January 2022), and the date on which

¹ 23 December 2021, 24 December 2021, 27 December 2021, and 31 December 2021 are state holidays falling within this time period. See <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>.

administrative preparations must begin for in-person early voting (18 January 2022). The State Board has only a few employees who manage geocoding and ballot preparation, and many of the county boards consist of only a small handful of paid staff members in total. So added work around the holidays presents potentially insurmountable staffing issues, especially when many county boards are involved in an election process.

Finally, State Board staff's assessment is that the delay of any contest currently scheduled for the 8 March 2022 primary, would, as a practical matter, necessitate the delay of all contests scheduled for that date. *Id.*, ¶¶ 15-21. The State Board calculates that if only the challenged contests were delayed, it would result in a series of administrative complications that result in Tuesday, 12 July 2022 being the earliest date possible for a separate primary for the challenged contests. *Id.* This late date presents further complications if a second primary is required, which in turn would overrun administrative and statutory early voting deadlines for the general election. *Id.* To the extent this Court reaches consideration of a stay that would necessitate delay of the primaries for the challenged contests, these administrative issues are more thoroughly explained in the Affidavit of Executive Director Bell. *Id.*

In closing, State Board Defendants wish to highlight the three key administrative issues relevant to the Court's consideration of Plaintiff-Appellants' motion for a temporary stay.

- If candidate filing is allowed to proceed, or any temporary stay is lifted by Wednesday, 15 December 2022, the State Board anticipates the current filing deadline of 17 December 2022 would remain viable.
- If any temporary stay remains in effect beyond 15 December 2022, but it is subsequently lifted, the State Board anticipates that candidate filing would need to be completed by 22 December 2022 in order to maintain the statutory deadlines for the 8 March 2022 primary for the challenged contests.
- If the Court decides that any contests scheduled for the 8 March 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 and county boards, could create significant voter confusion, and could impact the deadlines required to carry out the general election in the fall of 2022.

Bell Aff., ¶ 22.

CONCLUSION

State Board Defendants respectfully requested that the Court consider the administrative issues explained above. Should the Court require further information, the State Board is prepared to provide supplemental filings as needed.

Respectfully submitted this 8th day of December, 2021.

N.C. DEPARTMENT OF JUSTICE



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CERTIFICATE OF SERVICE

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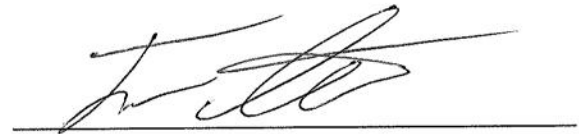
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This the 8th day of December, 2021.



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