

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
Civil Action No. 4:23-cv-193-D

RODNEY D. PIERCE, et al.,)	
)	
Plaintiffs,)	STATE BOARD
v.)	DEFENDANTS' RESPONSE TO
)	PLAINTIFFS' MOTION FOR
NORTH CAROLINA STATE BOARD OF)	PRELIMINARY INJUNCTION
ELECTIONS, et al.,)	
)	
Defendants.)	

Defendants, the North Carolina State Board of Elections, and Alan Hirsch, Jeff Carmon, III, Stacy Eggers, IV, Kevin N. Lewis, and Siobhan O'Duffy Millen, named in their official capacities ("State Board Defendants"), hereby respond to Plaintiffs' Motion for Preliminary Injunction. [D.E. 16].

State Board Defendants take no position on the merits of Plaintiffs' claims. Rather, this response is provided to inform the Court and the parties about the schedule for the upcoming 2024 elections and related administrative considerations. In addition to the information below, State Board Defendants stand ready to provide the Court with any additional information the Court requires at the request of the Court or at a hearing on Plaintiffs' motion, should one occur.

SCHEDULE FOR THE 2024 ELECTIONS

Candidate filing for the March 5, 2024, statewide primary election began at noon on December 4, 2023, and ended at noon on December 15, 2023. *See* N.C.G.S. § 163-106.2(a). Contests on the ballot include the U.S. President, U.S. House of Representatives, the Governor and all other Council of State Members, the N.C. General Assembly, state judicial contests at all levels, district attorneys, clerks of court, and county offices. *See* North Carolina State Board of Elections webpage, "Upcoming Election | NCSBE", <https://www.ncsbe.gov/voting/upcoming->

[election](#), last visited December 11, 2023. Absentee ballots will be distributed on January 19, 2024, and in-person early voting begins on February 15, 2024. *Id.*; N.C.G.S. § 163-22(k) and 227.10(a); *see also* N.C. State Bd. of Elections, Resolution on Absentee Ballot Distribution for the March 2024 Primary (Nov. 28, 2023),¹ and *see* 52 U.S.C. § 20302(a)(8)(A); N.C. Sess. Laws 2023-140, sec. 27(b), § 163-166.40.

The State Board is currently working with the county boards of elections to meet these deadlines. The assignment of voters to their correct State Senate, State House, and Congressional districts, following the enactment of those districts by the General Assembly in October 2023, has been completed as of this filing. *See* North Carolina State Board of Elections webpage, Voting Maps/Redistricting, <https://www.ncsbe.gov/results-data/voting-maps-redistricting/>, last visited December 11, 2023; *see also* the Declaration of Karen Brinson Bell, ¶ 5. As soon as the candidate filing period was completed on December 15, numerous tasks began that are necessary to prepare and proof the official ballots, to have certified vendors print and deliver those ballots to the county board offices, and to have county board staff create outgoing absentee ballot packages for each eligible absentee ballot requester. *See* N.C.G.S. §§ 163-165.3, -229, -230.1(a1) & (c); *see also* 08 NCAC 06B .0103; *see also* Bell Decl., ¶ 6.

Originally, these processes needed to be accomplished by January 12, 2024, to comply with state law. N.C.G.S. § 163-227.10 (requiring absentee ballots to be mailed 50 days prior to election day); *see also* Bell Decl., ¶¶ 7, 8. Under that schedule, the Board would have had 16 business days to complete the tasks set forth above after the candidate-filing window closed on

¹ Available at https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf, last visited December 12, 2023.

December 15. However, the Board was concerned that 16 business days was not enough time to complete the necessary tasks, especially given the many state holidays occurring between the end of candidate filing and January 12.² Bell Decl., ¶ 9. Thus, the State Board voted on November 28, 2023, to extend the deadline for distributing absentee ballots by 5 days, the maximum possible extension it could grant itself under state law while still remaining compliant with the federal law deadline for absentee-ballot distribution.³ *Id.*; see 52 U.S.C. § 20302(a)(8)(A) (requiring absentee ballots to be mailed 45 days prior to election day). This shifted the absentee-ballot distribution deadline from January 12 to January 19 and gave the State Board 20 business days to accomplish the necessary tasks. See Bell Decl., ¶ 9.

IMPACT OF THIS LITIGATION ON THE ELECTIONS CALENDAR

If this Court (or any other) orders new State Senate districts to be drawn, the impact on the elections calendar will depend on the timing of that order.

To start, to accommodate a new map without moving the dates for any elections contests, the State Board would need to receive the new map in sufficient time for candidate filing for the affected districts to begin during the first week of January. *Id.*, ¶¶ 10-14. The length of the candidate-filing period would depend on the court order, but the filing period could conclude no later than January 10 for the State Board and county boards to complete ballot preparation by the January 19 deadline. In that scenario, the State Board and relevant county boards would need to reassign voters to the new districts simultaneous with candidate filing. *Id.*, ¶ 11. After candidate

² December 25, 2023, December 26, 2023, December 27, 2023, January 1, 2024, and January 15, 2024 are state holidays falling within this time period. See <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>.

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https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf.

filing, the boards would need to complete the same essential tasks set forth above—preparing and proofing the ballots, printing and delivering the ballots, and creating the absentee ballot packages. *Id.*, ¶ 12. That process is obviously ongoing for all other contests for the March primary. As noted above, if candidate filing for any affected districts concluded by the middle of the second week of January, there would still be enough time (7 business days) to revise the ballots and get them ready for distribution before the absentee-ballot distribution deadline, assuming the court-ordered remedy affected only a limited number of state senate districts. *Id.*

If a new map is needed but is not ordered by the time described above,⁴ the State Board recommends moving the affected election contests to May 14, 2024, the date currently set for a second primary (i.e., runoffs for any primary contests that do not surpass the requisite threshold). N.C.G.S. § 163-111; *see* Bell Decl., ¶ 13. To make this timeline work, candidate filing for any remedial districts would need to be complete before canvass of the March primary on March 15, 2024. This would leave 9 business days for the State Board and county boards to prepare ballots before the absentee-ballot distribution deadline for the second primary (March 28, 2024). *See* Bell Decl., ¶ 14. If a remedial map were not provided in sufficient time for candidate filing to occur in early March, mailing absentee ballots by March 28—and, thus, holding the contests for the affected State Senate districts on May 14, 2024⁵—would not be administratively possible.

Id.

⁴ If voting in certain contests were enjoined after ballots are printed for the March primary, the State Board would recommend an order prohibiting the State and county boards from reporting any results from those contests, similar to a remedy that was in place during the primary election in 2016. *See* Numbered Memo 2016-03, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered_Memo_2016-03.pdf, last visited December 20, 2023.

⁵ Again, this is because the law requires a 45-day absentee-voting period. The State Board could attempt to narrow the absentee-voting window, but if there are any federal contests on the ballot, that would require a waiver from the federal government.

Finally, if a new map is provided after the aforementioned deadlines, the affected races could be held on some date after the canvass is completed for any May 14, 2024 second primaries that are needed. The State and county boards would need to ensure that they could begin distributing ballots at least 45 days in advance, and that they had 5 to 10 business days for candidate filing and at least 9 business days for ballot preparation before that. Given these necessities, the best option would likely be July 23, 2024, ten weeks after the May 14 primary. *Id.*, ¶ 15.

Holding delayed elections is not without costs, most of which are borne by the county boards of elections. These costs can be particularly significant if a court-ordered remedy requires the State and county boards to hold a special election that otherwise would not occur, as would likely be the case on July 23, 2024. However, moving the date for a limited number of contests is administratively feasible, and has been done with some frequency in North Carolina in recent years.⁶

CONCLUSION

As stated above, the State Board Defendants take no position on the merits but stand ready to provide any and all additional information required by the Court regarding the election schedule, relevant deadlines, and practical administrative considerations.

⁶ For example, this occurred in 2016 and 2022. *See* Numbered Memo 2016-03, https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/Numbered_Memo_2016-03.pdf, last visited December 20, 2023; *see also* the February 9, 2022 North Carolina State Board of Elections Press Release, “Candidate Filing for 2022 Elections to Resume on February 24,” <https://www.ncsbe.gov/news/press-releases/2022/02/09/candidate-filing-2022-elections-resume-february-24>, last visited December 22, 2023.

Respectfully submitted this the 22nd day of December, 2023.

N.C. DEPARTMENT OF JUSTICE

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Plaintiffs,

V.

NORTH CAROLINA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

I, Karen Brinson Bell, declare under penalty of perjury, that the following information is true to the best of my knowledge and state as follows:

1. I am over 18 years old. I am competent to give this declaration, and have personal knowledge of the facts set forth herein. I have consulted with senior staff at the State Board in the preparation of this declaration.

2. I currently serve as the Executive Director of the North Carolina State Board of Elections (the “State Board”). I became Executive Director of the State Board effective June 1, 2019. My statutory duties as Executive Director include staffing, administration, and execution of the State Board’s decisions and orders. I am also the Chief State Elections Official for the State of North Carolina under the National Voter Registration Act of 1993 and N.C.G.S. § 163-27. As Executive Director, I am responsible for the administration of elections in the State of North Carolina. The State Board has supervisory responsibilities for the 100 county boards of elections, and as Executive Director, I provide guidance to the directors of the county boards.

3. Candidate filing for the March 5, 2024, statewide primary election began at noon on December 4, 2023, and ended at noon on December 15, 2023. *See* N.C.G.S. § 163-106.2(a). Absentee ballots will be distributed on January 19, 2024, and in-person early voting begins on

February 15, 2024. *Id.*; N.C.G.S. § 163-22(k) and 227.10(a); *see also* N.C. State Bd. of Elections, Resolution on Absentee Ballot Distribution for the March 2024 Primary (Nov. 28, 2023);¹ and *see* 52 U.S.C. § 20302(a)(8)(A); N.C. Sess. Laws 2023-140, sec. 27(b), § 163-166.40.

4. In our state, the county boards of elections administer elections in each county, which includes, 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. The State Board is responsible for development and enhancement of our State Elections Information Management System (“SEIMS”), which includes managing functions that assign voters to their relevant voting districts, a process known as “geocoding.” The State Board also supports the county boards and their vendors in the preparation and proofing of ballots.

5. County board staff, with assistance from State Board staff, have completed the geocoding process of assigning voters to their correct State Senate, State House, and Congressional districts following redistricting this fall. For North Carolina electoral districts, the geocoding process starts when the State Board receives district shapefiles from the legislature, which include geographic data setting the boundaries for legislative districts. 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. State Board staff and county board staff perform multiple audits of the geocoding to ensure its accuracy before ballot preparation. The

¹ Available at https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf, last visited December 12, 2023.

amount of time required for geocoding generally corresponds with the number of district boundaries that are redrawn within the counties and, especially, the number of voting districts that split precinct lines.

6. The process of 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. This includes the preparation and proofing of official ballots, certified vendors printing and delivering those ballots to the county board offices, and county board staff creating outgoing absentee ballot packages for each eligible absentee ballot requester. *See* N.C.G.S. §§ 163-165.3, -229, -230.1(a1) & (c); *see also* 08 NCAC 06B .0103. All of this must be completed prior to the absentee distribution deadline.

7. Under N.C.G.S. § 163-227.10(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless the State Board authorizes a reduction to 45 days or there is “an appeal before the State Board or the courts not concluded, in which case the board shall provide the ballots as quickly as possible upon the conclusion of such an appeal.” The federal Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) requires that absentee ballots that include elections for federal office be made available by 45 days before a primary election, *see* 52 U.S.C. § 20302(a)(8)(A), unless I 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). The state requesting a waiver must present a comprehensive plan that provides absentee UOCAVA voters sufficient time to receive and submit absentee ballots they have requested in time to be counted in the federal election.²

² https://www.fvap.gov/uploads/FVAP/EO/2012_waiver_guidance.pdf.

8. Based on the primary date of March 5, 2023, 50 days before the primary election falls on January 15, 2023; but because that day is a holiday, the county boards would need to be prepared to begin distributing absentee ballots on the prior business day, which is January 12, 2023. The 45-day federal deadline falls on January 20, 2023, but because that is a weekend day, the county boards would need to be prepared to begin distributing absentee ballot on the prior business day, which is January 19, 2023.

9. On November 28, 2023, the State Board voted to move the absentee ballot distribution deadline from 50 to 45 days, because the 50-day deadline would have made it difficult to complete these tasks, especially given the holidays between the end of candidate filing and the distribution deadline.^{3,4} The 16 business days between the end of candidate filing and the absentee distribution deadline may have been possible, but it would have placed a considerable strain on staff. Accordingly, the State Board altered the distribution deadline in order to provide staff with 20 business days for this work to occur. While this is an adequate amount of time for these tasks, it still requires staff to work overtime and on non-business days.

10. If the State Board needed to implement new State Senate districts, per a court order, staff would need to reassign voters to the new districts and reopen candidate filing for the affected districts. Typically, candidate filing occurs over a period of 10 business days, but a shorter period such as 5 business days, is administrable. The work of reassigning voters into new districts can be accomplished at the same time as any candidate filing period.

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https://s3.amazonaws.com/dl.ncsbe.gov/State_Board_Meeting_Docs/Orders/Resolutions/20231128%20Resolution%20for%2045-day%20absentee%20distribution.pdf.

⁴ December 25, 2023, December 26, 2023, December 27, 2023, January 1, 2024, and January 15, 2024 are state holidays falling within this time period. See <https://oshr.nc.gov/state-employee-resources/benefits/leave/holidays>.

11. Following candidate filing and assignment of voters, the ballot preparation process must begin. If only State Senate ballot items are being prepared, this reduces the initial ballot preparation and proofing time, but not the printing and delivery time, or the preparation of ballot packages at the county board office. State Board staff estimates the overall ballot preparation for any court-ordered State Senate districts for the 18 counties at issue would take approximately 9 business days following the close of candidate filing, if this were occurring for a separate election for State Senate districts. If a remedial map involved more counties that could add time to ballot preparation. However, if ballot preparation is already ongoing for other contests, as it is now for the March primary, any new State Senate candidates could be folded into ongoing ballot preparation, as long as such candidates are known 7 business days prior to the absentee ballot distribution deadline.

12. Thus, if any court-ordered remedial map only affected two state senate districts, and candidate filing was completed by January 10, State Board staff estimates that the agency and affected counties could incorporate new candidates for the affected districts into ongoing ballot preparation work, in time to meet the current absentee distribution deadline of January 19, 2024.

13. If a new map is needed but is not ordered in time to complete the tasks above before January 19, the affected election contests would need to be moved to May 14, 2024, the date currently set for a second primary (i.e., runoffs for any primary contests that do not surpass the requisite threshold). N.C.G.S. § 163-111.

14. To make this timeline work, candidate filing for any remedial districts would need to be complete before canvass of the March primary on March 15, 2024, leaving 9 business days to prepare ballots before distributing absentee ballots by March 28, 2024. If a court-ordered

remedial map were not provided in sufficient time for candidate filing to occur in early March, holding the contests for the affected State Senate districts on May 14, 2024, would not be administratively possible, unless the absentee voting period were reduced to fewer than 45 days, which state law would permit but, if there are any federal contests on the ballot on May 14, federal law would not permit this absent a waiver from the federal government.

15. Finally, if a court-ordered map is provided after the aforementioned deadlines, the affected races could be held on some date after the canvass is completed for any May 14, 2024, second primaries that are needed. The State and county boards would need to ensure that they could begin distributing ballots at least 45 days in advance, and that they had at least 5 business days for candidate filing and at least 9 business days for ballot preparation before that. Given these necessities, the best option would likely be July 23, 2024, ten weeks after the May 14 primary. Holding an election at any time later than August 6, 2024, would make it difficult to canvass the election and prepare ballots in advance of the general election ballot distribution date of September 6, 2024. *See* N.C.G.S. § 163-227.10(a).

This concludes my declaration.

Pursuant to 28 U.S.C. § 1746(2), I verify under penalty of perjury that the foregoing Affidavit is true and correct in substance and in fact to the best of my knowledge and belief.

This the 22nd day of December, 2023.


Karen Brinson Bell, Executive Director
N.C. State Board of Elections