

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

DAVID HARRIS; CHRISTINE)
BOWSER; and SAMUEL LOVE,)

Plaintiffs,)

v.)

PATRICK MCCRORY, in his capacity)
as Governor of North Carolina; NORTH)
CAROLINA STATE BOARD OF)
ELECTIONS; and JOSHUA HOWARD,)
in his capacity as Chairman of the North)
Carolina State Board of Elections,)

Defendants.)

**MOTION FOR EXTENSION OF
TIME TO RESPOND TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
Fed. R. Civ. P. 6(b) and L.R. 6.1**

Defendants Patrick McCrory, North Carolina State Board of Elections, and Joshua Howard (collectively "Defendants") hereby move the Court pursuant to Fed. R. Civ. P. 6(b) and Local Civil Rule 6.1 for a fourteen (14) day extension of time until and including January 31, 2014 to respond to Plaintiffs' Motion for Preliminary Injunction. In support of this Motion, Defendants respectfully show the Court the following:

1. Plaintiffs filed their Motion for Preliminary Injunction on December 24, 2013. [Dkt. 18].
2. Defendants' response is currently due on January 17, 2014.
3. Defendants' counsel requires additional time to prepare a response to the Plaintiffs' Motion for the following reasons:

- a. Plaintiffs filed their Motion and the voluminous supporting materials on Christmas Eve and the intervening holidays have delayed preparation of a response.
- b. At the same time, Defendants' counsel is actively litigating three other complex voting rights actions in the Middle District of North Carolina. Defendants' counsel also argued a case before the North Carolina Supreme Court addressing the same issues presented by this case on January 6, 2014.
- c. Plaintiffs' Motion includes a 38-page expert report. Defendants need a reasonable amount of time to review this report and, if deemed necessary, to engage an expert to prepare a report in opposition.
- d. Plaintiffs' Motion contains a 235-page declaration by Plaintiffs' counsel. Plaintiffs' counsel purports to recite the history of the First and Twelfth Congressional districts, the Defendants' preclearance submission in support of the enacted 2011 congressional districts, and certain testimony from the pending case of *Dickson, et al v. Rucho*, Consolidated Case Nos. 11-CVS-16896 and 11-CVS-16940 (Wake County, NC). In *Dickson v. Rucho*, a three-judge panel of the Superior Court of Wake County considered and ruled upon claims identical to the claims made by Plaintiffs. The *Rucho* plaintiffs argued that the First and Twelfth Congressional Districts are racial gerrymanders and that the decision of the Supreme Court in *Shelby County v. Holder*, ___ U.S. ___, 133 S.Ct. 2612 (2013), deprives the State of the ability to claim that compliance with Section 5 of

the Voting Rights Act, 42 U.S.C. § 1973c, constitutes a compelling state interest for the enactment of the challenged plan. The three-judge court unanimously ruled against the *Dickson* plaintiffs and made detailed findings of fact in support of its ruling. The *Dickson* plaintiffs appealed the ruling of the three-judge court, and oral argument on this appeal was heard by the North Carolina Supreme Court on January 6, 2014. Defendants need a reasonable amount of time to review the declaration of Plaintiffs' counsel and to gather other information from the proceeding in *Dickson v. Rucho* that is relevant to whether a preliminary injunction should be issued in this case.

- e. There is no urgent need for Plaintiffs' requested preliminary injunction. The redistricting plans Plaintiffs challenge were enacted in July of 2011, and Plaintiffs have delayed filing their Motion for Preliminary Injunction for over two-and-a-half years. Plaintiffs' Complaint also relies in part on *Shelby County v. Holder* which the Supreme Court decided in June 2013. *See Shelby County v. Holder*, ___ U.S. ___, 133 S.Ct. 2612 (2013).
- f. The issues raised by Plaintiffs' Motion are matters of significant public concern. First, Plaintiffs' Motion runs contrary to the strong presumption that statutes passed by the legislature are constitutional. Next, Plaintiffs' Motion fails to address the significant harm and expense to the State of North Carolina, to North Carolina voters, and to candidates for the First and Twelfth Districts that will arise from any preliminary injunction effecting

elections at this late date. Given the fact that the issues presented in this litigation are of significant public concern and that the injunctive relief requested by Plaintiffs would have a far-reaching impact on the 2014 election cycle in North Carolina, Defendants should be permitted adequate time to respond.

4. This Motion is made for good cause and not for the purpose of undue delay and is being submitted well in advance of the expiration of the current deadline for Defendants to respond to Plaintiffs' Motion for Preliminary Injunction.

5. Granting this Motion will not delay or affect the candidate filing period. Pursuant to N.C. Gen. Stat. § 163-106(c), candidates who wish to run for public office in North Carolina may not file until February 10, 2014. The filing period ends on February 28, 2014. Even with the requested extension, Defendants' response will be filed prior to the start of the filing period.

6. Defendants have not previously filed a motion to extend time to respond to Plaintiffs' Motion for Preliminary Injunction.

7. The undersigned counsel requested from Plaintiffs' counsel a 20-day and a 10-day extension of time to respond to the Motion for Preliminary Injunction. Plaintiffs' counsel denied consent to both of these requests.

8. A proposed order is attached.

Based on the foregoing, Defendants respectfully request an extension of time to and including January 31, 2014 to respond to Plaintiffs' Motion for Preliminary Injunction.

Respectfully submitted, this the 8th day of January, 2014.

ROY COOPER
ATTORNEY GENERAL OF NORTH
CAROLINA

By: /s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov
N.C. Department of Justice
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
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
*Co-counsel for Defendants North Carolina
State Board of Elections and Joshua Howard,
in his capacity as Chairman of the North
Carolina State Board of Elections*

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing MOTION FOR EXTENSION OF TIME with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

PERKINS COIE LLP
John M. Devaney
jdevaney@perkinscoie.com
Marc E. Elias
melias@perkinscoie.com
Kevin J. Hamilton
khamilton@perkinscoie.com
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
MElias@perkinscoie.com
Attorneys for Plaintiff

POYNER SPRUILL LLP
Edwin M. Speas, Jr.
espeas@poynerspruill.com
John W. O'Hale
johale@poynerspruill.com
Carolina P. Mackie
cmackie@poynerspruill.com
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
Local Rule 83.1 Attorney for Plaintiffs

This, the 8th day of January, 2014.

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

/s/ Thomas A. Farr
Thomas A. Farr
N.C. State Bar No. 10871
4208 Six Forks Road, Suite 1100
Raleigh, NC 27609
Telephone: 919.787.9700
Facsimile: 919.783.9412
thomas.farr@odnss.com

*Co-Counsel for Defendants North Carolina
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ORDER

The Court, having considered Defendants Patrick McCrory, North Carolina State Board of Elections, and Joshua Howard's (collectively "Defendants") Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction and it appearing to the Court that the Motion is supported by good cause, it is therefore ORDERED that Defendants' time to serve a response to Plaintiffs' Motion for Preliminary Injunction is extended to and including January 31, 2014.

This the ____ day of January, 2014.