

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.)

**DEFENDANTS’ RESPONSE TO
PLAINTIFF’S SECOND
RENEWED MOTION FOR ORAL
ARGUMENT AND EXPEDITED
CONSIDERATION OF MOTION
FOR PRELIMINARY
INJUNCTION AND FURTHER
PROCEEDINGS**

Defendants file this response to Plaintiff’s Memorandum of Law in Support of their Second Renewed Motion for Oral Argument and Renewed Motion for Expedited Consideration of Motion for Preliminary Injunction and Further Proceedings (“Plaintiff’s Renewed Motion to Expedite”) (D.E. 63) and show the Court as follows:

1. As Plaintiffs state in their Renewed Motion to Expedite, on May 6, 2014, primary elections were held in each of North Carolina’s 13 congressional districts, including the First and Twelfth Congressional Districts that are at issue in this action. (D.E. 63, p. 2).

2. In their Renewed Motion to Expedite, Plaintiffs ask the Court to expedite consideration of their motion for a preliminary injunction and cite language from *Grove v. Emison*, 507 U.S. 25, 36 (1993) in support of this contention. But Plaintiffs’ reliance

upon *Growe* is misplaced since an entire election cycle in the challenged districts was completed in 2012 and the primary elections for 2014 were completed earlier this month. Plaintiffs have cited no case—*Growe* included—in which a court has enjoined districts on the grounds that the contested districts were a racial gerrymander as they claim with respect to the First and Twelfth Congressional Districts in this action. Nor have Plaintiffs cited any case in which a court has enjoined the use of districts at this stage of an election cycle. To the contrary, in their response to the last motion Plaintiffs filed of this same nature (D.E. 48-49), Defendants cited several cases in which courts either declined to grant a preliminary injunction at earlier stages of an election cycle or in which an appellate court stayed an injunction issued by a district court that would have disrupted an election cycle already in process. (*See* D.E. 50, pp.5-8.)

3. In addition to the fact that it is too late to enjoin the use of any congressional district during the 2014 election cycle, Plaintiffs have not offered any proposed alternative congressional district maps that could be used to remedy any of the alleged violations described in their complaint while also achieving the legislature's legitimate political goals. *Easley v. Cromartie*, 532 U.S. 234, 258 (2001).

4. Because it is too late to enter a preliminary or permanent injunction prohibiting the use of the contested congressional districts during the 2014 election cycle, there is no reason for this Court to conduct a trial before the North Carolina Supreme Court issues its decision. Therefore, Defendants respectfully request that a hearing on Plaintiffs' motion for a preliminary injunction and any summary judgment motions that are filed in this matter be set for the week of August 4, 2014, the date on which the Court

has currently scheduled this trial in this matter. Doing so will allow the North Carolina Supreme Court additional time to issue its decision in the *State Redistricting Cases* before these motions are heard by the Court.¹ Moreover, additional time will allow the Court the benefit of considering all briefing on the stay, deferral, and abstention issues well before it is determined whether a trial is necessary.

This the 22nd day of May, 2014.

ROY COOPER
ATTORNEY GENERAL OF NORTH
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¹In accordance with their motion to stay, defer, or abstain (D.E. 43), Defendants believe that the Court should abstain from taking *any* further action in this case until the proceedings in the *State Redistricting Cases* have been concluded.

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CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **Defendant's Response to Plaintiff's Memorandum of Law in Support of their Second Renewed Motion for Oral Argument and Renewed Motion for Expedited Consideration of Motion for Preliminary Injunction and Further Proceedings** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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This the 22nd day of May, 2014.

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