

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

SANDRA LITTLE COVINGTON, et al.,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, et al.,

Defendants.

No. 1:15-cv-00399

**MOTION TO EXPEDITE CONSIDERATION OF PLAINTIFFS'
MOTION TO SET DEADLINES FOR REMEDIAL PLAN AND PLAINTIFFS'
MOTION FOR EXPEDITED EVIDENTIARY HEARING**

Pursuant to Federal Rule of Civil Procedure 6(c)(1)(C), Plaintiffs respectfully move this Court to expedite any necessary briefing and the consideration of Plaintiffs' two motions filed today: Plaintiffs' Motion to Set Deadlines for Remedial Plan (Doc. 150), and Plaintiffs' Motion for Expedited Evidentiary Hearing (Doc. 151).

BACKGROUND

Plaintiffs filed the instant action on May 19, 2015. (Doc. 1.) This Court denied Plaintiffs' Motion for Preliminary Injunction on November 25, 2015. (Doc. 39.) After a weeklong trial in April of 2016, though, this Court unanimously ruled for Plaintiffs on August 11, 2016, finding that each of the districts challenged by Plaintiffs was an unconstitutional gerrymander. (Doc. 123.) The Supreme Court summarily affirmed that decision in a per curiam order issued June 5, 2017. (*See* Doc. 149 at 1 & note.)

Plaintiffs are now entitled to relief, and have sought to quickly obtain such relief by the filing of two motions: a Motion to Set Deadlines for Remedial Plan, and a Motion for Expedited Evidentiary Hearing. With the former motion, Plaintiffs seek to establish a prompt schedule for development of a remedial plan, with the State being given the first opportunity to draw a remedial plan, and a schedule by which the parties provide data and objections to any such General Assembly-developed plan. That schedule would also allow Plaintiffs to file a proposed redistricting plan should the State fail to redistrict by the set deadline.

With the latter Motion, Plaintiffs seek to promptly be heard by the Court on the evidentiary issues the Supreme Court indicated would be relevant to weigh in deciding to order a special election in the unconstitutional districts before the 2018 general election.

ARGUMENT

Because timely resolution of the remedial stages of this litigation are necessary to both ensuring that a remedial plan is entered pursuant to the Court's order on August 11, 2016, requiring the "North Carolina General Assembly to draw remedial districts in their next legislative session to correct the constitutional deficiencies in the Enacted Plan," Mem. Op. 163, and to ensuring that the parties may be heard on the equities of ordering a special election before the 2018 general elections, it is critical that Plaintiffs' pending motions be briefed (if necessary) and ruled upon by this Court in all haste. Expediting the briefing and consideration of the motions will ensure that the Court's remedial orders are entered while the legislature is still in session. Plaintiffs understand that the

legislature currently plans to adjourn by early July. *See NC Legislature Aims to Leave Town by Early July*, News & Observer (May 5, 2017), <http://www.newsobserver.com/news/politics-government/politics-columns-blogs/under-the-dome/article148796669.html>. Also, on June 7, 2017, the Governor of North Carolina called, by Proclamation, pursuant to Article III, Section 5(7) of the North Carolina Constitution, an extra session of the North Carolina General Assembly commencing Thursday, June 8, 2017 at 2 PM, “which shall continue until a new plan is enacted or for a period of two weeks, whichever is earlier, for the purpose of enacting new House and Senate district plans for the General Assembly that remedy the legislative districts ruled unconstitutional.” Proclamation, June 7, 2017, attached as Exhibit A. On June 8, 2017, the House and Senate separately acted to formally disregard the governor’s proclamation. *See* Laura Leslie, *Lawmakers Disqualify Cooper’s Session Call*, WRAL (June 8, 2017), <http://www.wral.com/lawmakers-disqualify-cooper-s-session-call/16750466>. Nevertheless, the Court must rule on Plaintiffs’ Motion to Set Deadlines for Remedial Plan promptly if the General Assembly is to develop a remedial plan while currently in session.

Likewise, prompt resolution of Plaintiffs’ Motion for Expedited Evidentiary Hearing is both necessary and warranted. Plaintiffs believe that the evidence they intend to present to this Court will indicate that a proper balancing of the equities still demands a special election be conducted before the 2018 general election, but if an unnecessary amount of time passes before the Court can weigh those equities, the harder it may

become to implement that much-needed election. That is, because the balancing of equities may change as time passes, it is critical that the Court perform that balancing as soon as possible. Thus, Plaintiffs in their motion respectfully request a hearing next week.

Plaintiffs have conferred with Defendants on this Motion and the other pending motions, and Legislative Defendants indicated that they oppose the Motion. The State Board of Elections Defendant takes no position on any of the pending motions, and the State of North Carolina Defendant agrees that the public interest calls for a prompt decision on the possibility of a special election in 2017.

CONCLUSION

For all the foregoing reasons, the Court should expedite the consideration of Plaintiffs' Motion to Set Deadlines for Remedial Plan and Plaintiffs' Motion for Expedited Evidentiary Hearing and any associated briefing, if necessary.

Respectfully submitted this 8th day of June, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing Motion to Expedite, with service to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an email address of record, who have appeared and consent to electronic service in this action.

This the 8th day of June, 2017.

/s/ Anita S. Earls

Anita S. Earls

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Southern Coalition for Social Justice

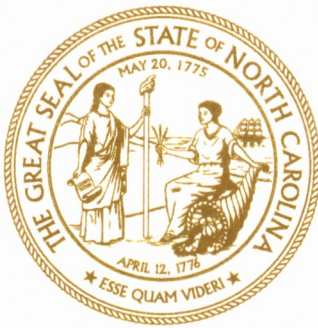
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State of North Carolina

ROY COOPER
GOVERNOR

EXTRA SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY

2017

BY THE GOVERNOR OF THE STATE OF NORTH CAROLINA

A PROCLAMATION

WHEREAS, all North Carolinians have a fundamental right to have their laws enacted by a legislature composed of members elected from valid and lawful districts; and

WHEREAS, on June 5, 2017, the Supreme Court of the United States in Covington v. North Carolina, No. 16-1023, 581 U.S. ____ (Jun. 5, 2017) affirmed without dissent the unanimous decision of three federal district court judges that the General Assembly violated the United States Constitution and misinterpreted federal law in establishing twenty-eight state legislative districts in 2011; and

WHEREAS, the General Assembly had no valid justification for dividing numerous counties in 2011 contrary to the requirement of the North Carolina Constitution that counties be kept whole in the formation of state Senate and House districts to the extent possible; and

WHEREAS, it is imperative that the General Assembly immediately remedy the violation of the fundamental right of all North Carolinians to have their legislature composed of members elected from valid and lawful districts; and

WHEREAS, these circumstances are extraordinary and require the North Carolina General Assembly to convene in an extra session; and

WHEREAS, the Governor of the State of North Carolina has a constitutional duty to take care that the laws be faithfully executed and uphold the Constitution and laws of the United States and of the State of North Carolina;

NOW, THEREFORE, I, Roy Cooper, Governor of the State of North Carolina, pursuant to Article III, Section 5(7) of the North Carolina State Constitution, do hereby proclaim an “**EXTRA SESSION OF THE NORTH CAROLINA GENERAL ASSEMBLY**” commencing Thursday, June 8, 2017 at two o’clock in the afternoon, which shall continue until a new plan is enacted or for a period of two weeks, whichever is earlier, for the purpose of enacting new House and Senate district plans for the General Assembly that remedy the legislative districts ruled unconstitutional.



RECEIVED

JUN 07 2017

5:35pm

James White

Roy Cooper

Roy Cooper
Governor

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh this the seventh day of June in the year of our Lord two thousand and seventeen and of the Independence of the United States of America the two hundred and forty-first.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399-TDS-JEP**

SANDRA LITTLE COVINGTON, *et al.*,

Plaintiffs,

v.

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

Defendants.

**[PROPOSED] ORDER
ON PLAINTIFFS' MOTION
TO EXPEDITE CONSIDERATION
OF PLAINTIFFS' MOTION
TO SET DEADLINES FOR
REMEDIAL PLAN AND
PLAINTIFFS' MOTION
FOR EXPEDITED
EVIDENTIARY HEARING**

Upon this Court's thorough review of Plaintiffs' Motion to Expedite Consideration of Plaintiffs' Motion to Set Deadlines for Remedial Plan and Plaintiffs' Motion for Expedited Evidentiary Hearing, and after full consideration of all matters brought before the Court regarding the Motion, for good cause shown it is hereby ordered that:

1. The Motion is GRANTED.
2. Responses to Plaintiffs' Motion to Set Deadlines for Remedial Plan (Doc. 150) are due on or before Monday, June 12. Replies are due within one day of the filing of the response.
3. Responses to Plaintiffs' Motion for Expedited Evidentiary Hearing (Doc. 151) are due on or before Monday, June 12. Replies are due within one day of the filing of the response.

So ordered.

Date

For the Court