

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
NO. 1:13-CV-00949**

**DAVID HARRIS and CHRISTINE  
BOWSER,**

**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.**

**MEMORANDUM IN SUPPORT OF  
PLAINTIFFS' PROPOSED CASE  
SCHEDULE**

**I. INTRODUCTION**

In a telephonic conference on March 14, 2014, the Court requested that the parties confer and report back on (1) a proposed schedule for briefing on motions for summary judgment, and (2) proposed dates for trial this coming June or July. The parties have conferred and have been unable to reach agreement on either issue and, accordingly, are submitting briefs on their competing proposals. The parties respectfully ask the Court to convene another conference as soon as possible to resolve these scheduling issues.

For the reasons explained below, Plaintiffs David Harris and Christine Bowser (“Plaintiffs”) respectfully request that the Court:

- (1) Hear oral argument on Plaintiffs' pending Motion for Preliminary Injunction (the "PI Motion") (Dkt. 36) on the first date that the Court's schedule permits. If the Court's schedule does not permit oral argument, Plaintiffs ask that the Court rule on the PI motion based on the briefs and supporting materials the parties have already filed.
- (2) Adopt Plaintiffs' proposed schedule for briefing on motions for summary judgment, under which Plaintiffs must file a motion for summary judgment no later than April 7, with Defendants' response due by May 7, and the reply no later than May 19. This schedule is consistent with the Court's desire, as expressed in the March 14 conference, to resolve some or all of the issues presented in this case prior to trial.
- (3) Set trial for the Court's first available trial date, which Plaintiffs understand to be in June.

Defendants propose a much more leisurely schedule that seems designed to preclude Plaintiffs from obtaining relief in time for the November elections. Under Defendants' proposal, the deadline for filing summary judgment motions would be June 2, with responses due on June 23, and replies filed no later than July 3. The Court would not consider the PI Motion until July (approximately seven months after it was filed), and the trial would not take place until August or September.

The nature of Plaintiffs' claims warrants the timely and expeditious resolution that Plaintiffs' proposed schedule would provide. Plaintiffs request declaratory and injunctive relief precluding the State of North Carolina from conducting elections for the United States House of Representatives under an unconstitutional, racially gerrymandered redistricting plan. Specifically, Plaintiffs assert that the State has packed African-

American voters into Congressional Districts 1 and 12 (“CD 1” and “CD 12,” respectively), that race was the predominant factor in drawing those districts, and that the State had no compelling interest in drawing race-based districts. Plaintiffs’ claims implicate their core constitutional rights, and those of hundreds of thousands of other North Carolinians. Plaintiffs thus seek to have a lawful voting map adopted quickly so that the 2014 elections may proceed as scheduled. Prompt resolution of Plaintiffs’ claims is thus in the best interests of the public and all parties to this lawsuit.

## **II. ARGUMENT**

### **A. The Court Should Set the Earliest Possible Dates To Consider the Pending Motion for Preliminary Injunction, Dispositive Motions, And For Trial**

Plaintiffs request that the Court set a hearing date for Plaintiffs’ PI Motion as soon as is feasible. Alternatively, if the Court is unable to schedule a hearing date, Plaintiffs ask the Court to rule on the PI Motion based on the briefs and supporting materials already submitted. Prompt relief is necessary to cure ongoing constitutional violations and to prevent an unconstitutional election from occurring this coming November.

“It is beyond cavil that voting is of the most fundamental significance under our constitutional structure.” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (internal quotation marks and citation omitted). As the Supreme Court has explained, “[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined.” *Wesberry v. Sanders*, 376 U.S. 1,

17-18 (1964). An abridgment of voting rights constitutes an irreparable injury. *See Dixon v. Md. State Admin. Bd. of Election Laws*, 878 F.2d 776, 782 (4th Cir. 1989) (denial of voting rights is “injury of great magnitude”); *Cannon v. N.C. St. Bd. of Educ.*, 917 F. Supp. 387, 391 (E.D.N.C. 1996) (denial of voting rights is “irreparable harm”). Thus, courts routinely grant preliminary injunctive relief where plaintiffs allege serious voting rights violations. *See id.* (granting preliminary injunctive relief in racial gerrymandering case because otherwise “plaintiffs’ constitutional rights would be placed in great jeopardy, and the likelihood of irreparable harm would thus be quite high”); *Republican Party of N.C. v. Hunt*, 841 F. Supp. 722, 727-28 (E.D.N.C. 1994) (granting preliminary injunctive relief; reasoning that “should the 1994 elections . . . take place under the present system, the likelihood of irreparable harm to plaintiffs is significant”); *Johnson v. Miller*, 929 F. Supp. 1529, 1560 (S.D. Ga. 1996) (“We find irreparable harm in its purest sense will be occasioned by denying this preliminary injunction and by permitting use of a [districting] plan violating Plaintiffs’ equal protection rights. Plaintiffs, indeed all citizens of Georgia, should not be denied their right to a constitutional districting plan.”).

As explained in Plaintiffs’ PI Motion, preliminary injunctive relief is warranted here. Plaintiffs have identified substantial evidence showing that CD 1 and CD 12 are unconstitutional because they were drawn based on race and are not supported by the type of compelling justification required to uphold racially motivated redistricting. *See*

PI Mot. at 5-38 (Dkt. 36). The State has already forced its citizens to vote under an unlawful map in the 2012 congressional elections; it should not be permitted to violate its citizens' rights yet again. "Constitutional violations, once apparent, should not be permitted to fester; they should be cured at the earliest practicable date." *Desena v. Maine*, 793 F. Supp. 2d 456, 462 (D. Me. 2011) (requiring reapportionment in time for 2012 elections). Plaintiffs are therefore entitled to preliminary injunctive relief to cure past and potential violations of North Carolinians' voting rights.<sup>1</sup>

Plaintiffs filed their PI motion more than three months ago; it was fully briefed a month-and-a-half ago, on February 7. The primary election is set for May 6, 2014. The Court should therefore decide Plaintiffs' PI Motion as quickly as possible, either with or without oral argument. In the absence of prompt preliminary injunctive relief, the 2014 elections will proceed under an unlawful voting map, causing irreparable injury to Plaintiffs and similarly situated voters.

The same considerations that support Plaintiffs' request for preliminary injunctive relief also support Plaintiffs' request that the Court set a schedule for expeditious briefing of summary judgment motions and set trial for the earliest possible date. If the Court does not set Plaintiffs' PI motion for hearing or denies the motion, swift resolution of Plaintiffs' claims on the merits will be necessary to vindicate Plaintiffs' constitutional rights and minimize the disruption to the State's election apparatus. If the Court rules for

---

<sup>1</sup> The State's map also violates the Constitution because, by unlawfully classifying voters by race, it "threaten[s] to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility." *Shaw v. Reno*, 509 U.S. 630, 643 (1993).

Plaintiffs on the merits after the primary election in May, it will be necessary to craft appropriate relief in advance of the general election in November. The sooner the merits of Plaintiffs' claims are resolved, the more time will remain for the Court to oversee an orderly remedial stage of this litigation, and for the State to implement a remedy in advance of upcoming election deadlines.

**B. Defendants' Proposed Case Schedule Would Prejudice Plaintiffs And Result In Undue Delay and Additional Expense**

The same considerations discussed above also militate against adoption of Defendants' proposed case schedule, which would set a hearing for the PI Motion and dispositive motions in July and trial in August or September. Defendants would accomplish effective denial of the PI Motion through case scheduling, as they contemplate a hearing *after* the primary election (and *five months* after the PI Motion was fully briefed). Defendants' proposed summary judgment briefing schedule and trial date are equally problematic. If the Court does not resolve the merits of Plaintiffs' claims until Fall 2014, the State will then undoubtedly argue that it is "too late" for the Court to afford Plaintiffs any relief in advance of the General Election—even though Plaintiffs would have filed this lawsuit over a *year* before the 2014 General Election. The lackadaisical pace at which Defendants would try this case is at odds with the seriousness of the issues it raises and the rights that are at stake.

### III. CONCLUSION

For the reasons stated above, Plaintiffs respectfully ask the Court to adopt Plaintiffs' proposed case schedule.

Respectfully submitted, this the 25th day of March, 2014.

#### PERKINS COIE LLP

/s/ John M. Devaney  
John M. Devaney  
D.C. Bar No. 375465  
JDevaney@perkinscoie.com  
/s/ Marc E. Elias  
Marc E. Elias  
D.C. Bar No. 442007  
MElias@perkinscoie.com  
700 Thirteenth Street, N.W., Suite 600  
Washington, D.C. 20005-3960  
Telephone: (202) 654-6200  
Facsimile: (202) 654-6211

/s/ Kevin J. Hamilton  
Kevin J. Hamilton  
Washington Bar No. 15648  
khamilton@perkinscoie.com  
1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
Telephone: (206) 359-8741  
Facsimile: (206) 359-9741

*Attorneys for Plaintiffs*

#### POYNER SPRUILL LLP

/s/ Edwin M. Speas, Jr.  
Edwin M. Speas, Jr.  
N.C. State Bar No. 4112  
espeas@poynerspruill.com  
John W. O'Hale  
N.C. State Bar No. 35895  
johale@poynerspruill.com  
Caroline P. Mackie  
N.C. State Bar No. 41512  
cmackie@poynerspruill.com  
P.O. Box 1801 (27602-1801)  
301 Fayetteville St., Suite 1900  
Raleigh, NC 27601  
Telephone: (919) 783-6400  
Facsimile: (919) 783-1075

*Local Rule 83.1  
Attorneys for Plaintiffs*

## CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFFS' PROPOSED CASE SCHEDULE** 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 e-mail address of record, who have appeared and consent to electronic service in this action.

This the 25th day of March, 2014.

/s/ Edwin M. Speas, Jr.  
Edwin M. Speas, Jr.