

No. 25-2180

In the United States Court of Appeals for the Fourth Circuit

RODNEY D. PIERCE and MOSES MATTHEWS,

Plaintiff-Appellants,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, et al.,

Defendant-Appellees.

On Appeal from the United States District Court
for the Eastern District of North Carolina, James E. Dever, III, District Judge
No. 4:23-cv-193-D-RN

**STATE BOARD DEFENDANTS' RESPONSE TO PETITION FOR INITIAL,
EXPEDITED HEARING EN BANC, AND TO EXPEDITE
CONSIDERATION OF THIS PETITION**

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Defendant-Appellees State Board Defendants

Defendant-Appellees The North Carolina State Board of Elections, and Francis X. De Luca, Stacy "Four" Eggers, Robert Rucho, Jeff Carmon, and Siobhan O'Duffy Millen, all in their official capacities (collectively "State Board Defendants"), file this response pursuant to the Court's October 8, 2025 order. [D.E. 6.]

State Board Defendants take no position on Plaintiff-Appellants' Petition for Initial, Expedited Hearing En Banc, and to Expedite Consideration of the Petition [D.E. 3] or the merits of Plaintiff-Appellants' claims. Rather, this response is provided to inform the Court and the parties about the schedule for the upcoming 2026 elections and related administrative considerations. This Response is supported by the Declaration of Sam Hayes, Executive Director for the State Board, which is submitted with this Response.

SCHEDULE FOR THE 2026 ELECTIONS

Candidate filing for the March 3, 2026, statewide primary election begins at noon on December 1, 2025, and ends at noon on December 19, 2025. N.C.G.S. § 163-106.2(a); *See* Hayes Decl. ¶ 3; North Carolina State Board of Elections webpage, "Upcoming Candidate Filing Periods," <https://www.ncsbe.gov/candidates/running-office> (last visited October 14, 2025). The schedule for 2026 elections will not be finalized until next month.

The 2026 primary contests on the ballot may include U.S. Senate, U.S. House of Representatives, the N.C. General Assembly, statewide and district-level judicial contests, county offices, and other local offices. Absentee ballots will be distributed beginning January 12, 2026. Hayes Decl. ¶ 3; N.C.G.S. §§ 163-227.10 and -258.9(a). In-person early voting begins on Thursday, February 12, 2026. *Id.*, § 163-166.40(b).

Once the candidate filing period is completed on December 19, numerous tasks begin 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), -258.9; *see also* 08 NCAC 06B .0103.

To comply with state law, these processes need to be accomplished by January 12, 2026. *See* Hayes Decl. ¶ 8; N.C.G.S. §§ 163-227.10 and -258.9(a) (requiring absentee ballots to be mailed 50 days prior to election day). Under the current schedule, the Board will have 11 business days to complete the tasks set forth above after the candidate-filing window closes on December

19.¹ Even including holidays and weekends, there are only 23 calendar days between the close of candidate filing and the absentee ballot distribution deadline. This is already a very busy period for the State Board and county boards, and any disruption to it could delay the start of absentee voting for the March 2026 primary. Hayes Decl. ¶ 13.

If it deems extra time is necessary and the primary ballots have not yet been printed, the State Board is permitted under state law to reduce the deadline for distributing absentee ballots from 50 days to 45 days before the primary election. N.C.G.S. § 163-22(k). Reducing the deadline from 50 to 45 days is the only extension the State Board could grant itself under state law to have additional time for ballot preparation; if that reduction occurs, the distribution of absentee ballots would still comply with the federal law deadline for absentee-ballot distribution. *See* 52 U.S.C. § 20302(a)(8)(A) (requiring absentee ballots to be mailed 45 days prior to election day). Such a reduction in the deadline would shift the absentee-ballot distribution

¹ December 24, 25, 26, 2025, and January 1, 2026 are state holidays falling within this time period. *See*, <https://oshr.nc.gov/2025-holiday-schedule/open>. last checked October 14, 2025.

deadline from January 12 to January 16² and give the State Board a few extra days to accomplish the necessary tasks. See Hayes Decl., ¶¶ 7, 8.

IMPACT OF THIS LITIGATION ON THE ELECTIONS CALENDAR

If this Court (or any other)³ orders new State Senate districts to be drawn, the impact on the elections calendar will depend on the timing and scope of that order.

To start, if the new districts are provided before the start of candidate filing established in state law, December 1, 2025, see N.C.G.S. § 163-106.2, then there would be no need to provide for a different candidate filing period, and if the districts are provided approximately a week before the start of the filing period then it is likely that the necessary reassignment of voters could be completed before filing begins. See Hayes Decl., ¶ 9. Under that timeline,

² January 17 is a Saturday, such that even if ballots were not required to be distributed until 45 days before the primary, any additional preparation work would have to be completed so the ballots can be distributed by the prior business day, Friday, January 16, 2026.

³ This could include a decision in the consolidated cases *Williams v. Hall*, 1:23-cv-01057-TDS-JLW and *NAACP v. Hall*, 23-CV-1104 currently pending in the United States District Court for the Middle District of North Carolina, in which Plaintiffs have challenged the North Carolina General Assembly's 2023 redistricting plan.

there should not be a delay of any administrative dates or deadlines for ballot preparation and distribution for the March 2026 primary.

If new districts are received after candidate filing has begun, then to accommodate a new map without moving the dates for any election contests, the State Board would need to receive the new map in sufficient time for an administrable candidate filing period, which the State Board would consider to be at least 5 business days, that would conclude no later than December 19. *See Hayes Decl.*, ¶ 10. Doing so would ensure the State Board and county boards can complete all necessary ballot preparation tasks by the January 12 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.*

If new districts are received after candidate filing ends, a reopened candidate filing period would be required. The State Board and the county boards would then need to incorporate those new candidates into the already ongoing ballot preparation tasks on an expedited basis. *Id.*, ¶¶ 10, 11. Assuming the court-ordered remedy affected only a limited number of state senate districts, the State Board and county boards would still need to know the

candidates for the ballot at least 7 business days before the absentee ballot distribution deadline to complete the ballot creation and proofing tasks and other tasks necessary to reassign voters, create absentee ballot packages, and distribute those absentee ballots by the absentee ballot distribution deadline. *Id.* ¶ 11. And because there are only 11 business days between the close of filing on December 19, 2025, and the current absentee ballot distribution deadline on January 12, 2026, the State Board would have to reduce the ballot distribution deadline to 45 days to make this feasible.

If a new map is needed but is not ordered in time to complete the above-described tasks by the deadline for distribution of absentee ballots, administrative infeasibility would require moving the affected election contests to May 12, 2026--the date set by state law for a second primary in the event one is demanded by a candidate eligible to do so after the March 3 primary. N.C.G.S. § 163-111; *see* Hayes Decl., ¶ 14. If a remedial map was not provided in sufficient time for candidate filing for the affected contests to occur in early March, holding the contests for the affected State Senate

districts on May 12, 2026⁴—would not be administratively possible. *Id.*

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. However, moving the date for a limited number of contests is administratively feasible, and has been done in North Carolina in recent years.⁵

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

⁴ Again, this is because state law requires the same 50-day absentee-voting period in a second primary as was provided in the first primary. N.C.G.S. § 163-111(e) (“the second primary shall be held under the laws, rules, and regulations provided for the first primary”); see N.C.G.S. §§ 16-227.10 and -258.9.

⁵ For example, this occurred in 2016 and 2022. See Numbered Memo 2016-03, <https://s3.amazonaws.com/dl.ncsbe.gov/sboe/numbermemo/2016/NumberedMemo2016-03.pdf>, last visited October 10, 2025; 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 October 10, 2025.

administrative considerations.

Respectfully submitted, this the 14th day of October, 2025.

N.C. DEPARTMENT OF JUSTICE

/s/ Electronically Submitted

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State Board Defendants

CERTIFICATE OF COMPLIANCE

I certify that this Notice complies with the length requirements of Fed. R. App. P. 27(d)(2)(A) because it contains 1441 words. This response also complies with the typeface and type-style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface: 14-point Constantia font.

Respectfully submitted, this the 14th day of October, 2025.

/s/ Electronically submitted
Mary L. Lucasse

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DECLARATION OF SAM HAYES

I, Sam Hayes, 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 North Carolina State Board of Elections (the “State Board”) in the preparation of this declaration.

2. I currently serve as the Executive Director of the State Board. I

became Executive Director of the State Board effective May 15, 2025. 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 3, 2026, statewide primary election begins at noon on December 1, 2025, and ends at noon on December 19, 2025. See N.C.G.S. § 163-106.2(a). The 2026 primary contests on the ballot may include U.S. Senate, U.S. House of Representatives, the N.C. General Assembly, statewide and district-level judicial contests, county offices, and other local offices. Absentee ballots will be distributed beginning January 12, 2026, and in-person early voting begins on February 12, 2026. N.C.G.S. §§ 163-227.10 and -258.9(a); -166.40(b).

4. In our state, the county boards of elections administer elections

in each county, which includes, among other things, registering voters and assigning them to their voting jurisdictions, 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 are used to 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. For state legislative and congressional 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 preparation of the ballots. The 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. Additionally, the number of different “ballot styles” of official ballots which must be prepared and proofed for each county depends on the alignment and overlap of different districts. *See* N.C.G.S. § 165(3) (“ ‘Ballot style’ means the version of a ballot within a jurisdiction that an individual voter is eligible to vote. . . . The different versions of the county’s official ballot containing only those district ballot items one individual voter may vote are the county’s different ballot styles.”). For recent statewide primaries in even years, there have been well over 3,000 ballot styles. And ballots must

go through the proofing process twice—once for printed ballots, and once for ballots made available to military and overseas voters and visually-impaired voters through the State Board’s absentee ballot portal. See <https://votebymail.ncsbe.gov/app/home>, last visited October 13, 2025. All of this must be completed prior to the absentee ballot distribution deadline.

7. Under N.C.G.S. §§ 163-227.10(a) and -258.9(a), the State Board must begin mailing absentee ballots 50 days prior to the primary election day, unless before the primary ballots have been printed the State Board exercises its authority under N.C.G.S. § 163-22(k) to reduce that deadline 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.

8. Based on the primary date of March 3, 2026, 50 days before the primary election falls on Monday, January 12, 2026. The 45-day federal deadline falls on January 17, 2026, but because that is a weekend day, the county boards would need to be prepared to begin distributing absentee ballots on the prior business day, which is January 16, 2026, if the State Board reduced the state law deadline to 45 days before the primary election day.

9. If the State Board needs to implement new State Senate districts, per a court order, staff would need to reassign voters to the new districts and allow time for candidates to file for the affected districts. If the new districts are provided before the start of candidate filing established in state law, December 1, 2025, *see* N.C.G.S. § 163-106.2, then there would be no need to provide for a different candidate filing period, and if the districts are provided approximately a week before the start of the filing period then it is likely that the necessary reassignment of voters in these limited number of districts could be completed before filing begins. This would mean there

should not be a delay of any administrative dates or deadlines for ballot preparation and distribution for the March 2026 primary.

10. If the new districts are provided after the start of the candidate filing period, however, then a candidate filing period for the affected contests would need to be provided. The candidate filing period provided by state law is 15 business days, N.C.G.S. § 163-106.2(a), but a shorter period such as 5 business days, is administrable. The work of reassigning voters into new districts, while not ideal, can be accomplished at the same time as any candidate filing period.

11. Following candidate filing and assignment of voters, the ballot preparation process must begin. If only a limited number of 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, any new State Senate candidates could be folded into ongoing ballot preparation, as long as such candidates are known at least 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 December 19, 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 12, 2026.

13. Under the current schedule set by state law, the Board will have only 11 business days to complete the tasks set forth above after the candidate-filing window closed on December 19. Even including holidays and weekends, there are only 23 calendar days between the close of candidate filing and the absentee ballot distribution deadline. This is already a very busy period for the State Board and county boards, with staff already likely to need to work overtime hours to complete the necessary work. Moreover, the State Board does not currently have an employee on staff

primarily tasked with geocoding work, which could impact the amount of time it takes to complete geocoding of new districts, as well as only a limited number of field specialists available to assist county boards with the ballot preparation work. Accordingly, any disruption to this time period could delay the start of absentee voting for the March 2026 primary.


14. If a new map is needed but is not ordered in time to complete the tasks above before the ballot distribution deadline, affected election contests would need to be moved to May 12, 2026, the date currently set for a second primary. N.C.G.S. § 163-111. To make this timeline work, candidate filing for any remedial districts would need to be complete before the county canvass of the March primary on or about March 13, 2026, leaving 10 days, including weekends, to prepare ballots before distributing absentee ballots by March 23, 2026, which is 50 days before a May 12, 2026, election. 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 12, 2026, would not be administratively possible, particularly if there is also a federal contest on the second primary ballot.

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 12, 2026, 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 21, 2026, ten weeks after the May 12 primary. Holding an election at any time later than August 4, 2026, would make it difficult to canvass the election and prepare ballots in advance of the general election ballot distribution date of September 4, 2026. 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 Declaration is true and correct in substance and in fact to the best of my knowledge and belief.

This the 14th day of October, 2025.


Sam Hayes, Executive Director
N.C. State Board of Elections