

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

**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.**

**PLAINTIFFS' OPPOSITION TO  
MOTION FOR EXTENSION OF TIME**

**PLAINTIFFS' OPPOSITION TO MOTION FOR EXTENSION OF TIME TO  
RESPOND TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs David Harris, Christine Bowser, and Samuel Love ("Plaintiffs"), by and through undersigned counsel, respond as follows to Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Preliminary Injunction:

1. On December 24, 2013, Plaintiffs filed a Motion for Preliminary Injunction (Dkt. #18).
2. Under the current briefing schedule, Defendants' response is due on January 17, 2014; Plaintiffs' reply is due no later than February 3, 2014.

3. North Carolina's congressional filing period runs from February 10-28, 2014. N.C. Gen. Stat. Ann. § 163-106(c). The primary election is scheduled for May 6, 2014. N.C. Gen. Stat. Ann. § 163-1(b). The general election is scheduled for November 4, 2014. See <http://www.ncsbe.gov/content2fc6.html?id=61>.
4. Plaintiffs filed suit less than four months after the Supreme Court issued its decision in *Shelby County v. Holder*, 133 S.Ct. 2612 (2013), and shortly after it became apparent that the ongoing state court litigation would not be resolved prior to the February 2014 candidate filing deadline. Plaintiffs then filed their Motion for Preliminary Injunction promptly after filing suit.
5. In their Memorandum in Support of their Motion for Preliminary Injunction (Dkt. #19-1), Plaintiffs make clear that they will suffer irreparable harm if preliminary relief is not granted and an election is held based on unconstitutional district lines.
6. When counsel for Defendants requested Plaintiffs' consent to an extension of time to file Defendants' Response to Plaintiffs' Motion for Preliminary Injunction, the undersigned counsel emphasized that Plaintiffs' main concern was the upcoming congressional filing deadline, and that Plaintiffs could only consent to a briefing extension if Defendants would agree to a stay of the congressional filing period pending the Court's consideration of Plaintiffs' Motion for Preliminary Injunction. Counsel for Defendants rejected that proposal.
7. In light of the upcoming congressional filing deadline, it is critical that the Court consider Plaintiffs' Motion for Preliminary Injunction as soon as possible so that

the Court may grant appropriate relief in the event Plaintiffs prevail on their Motion, including ordering a delay of the congressional filing period.

8. Defendants point to the volume of the declaration accompanying Plaintiff's Motion as a reason warranting a continuance, Dkt. #25 at 2, but this evidence is, in large part, derived directly from the pending case of *Dickson, et al. v. Rucho*, Consolidated Case Nos. 11-CVS-16896 and 11-CVS 16940 (Wake County, NC). Defendants have been actively involved in the related state court case, and thus are familiar with the facts and issues presented in Plaintiffs' Motion for Preliminary Injunction. Not only does the evidence submitted by Plaintiffs not constitute a reason for delay, but Defendants' familiarity with the basic facts and law underlying Plaintiffs' lawsuit is a reason why no briefing extension is required.
9. Plaintiffs agree that "[t]he issues raised by Plaintiffs' Motion are matters of significant public concern." Dkt. #25 at 3. This weighs in favor of expedited consideration of Plaintiffs' Motion. As Plaintiffs have set forth in their Memorandum in Support of their Motion for Preliminary Injunction, any burden Defendants claim pales in comparison to the deprivation of Plaintiffs' core constitutional rights. *See Cannon v. North Carolina State Bd. of Elections*, 917 F. Supp. 387, 391 (E.D.N.C. 1996) ("The balance of hardships in this case decidedly favors the plaintiffs. Should the election proceed under the current plan, plaintiffs' constitutional rights would be placed in great jeopardy, and the likelihood of irreparable harm would thus be quite high. Delaying the . . . election, or conducting it under the standard five at-large member plan, would cost little when

compared to the damage otherwise risked by plaintiffs and all those similarly situated in being deprived of their Constitutional rights.”). Defendants incorrectly contend that Plaintiffs’ Motion fails to address the burden and expense Defendants would face if Plaintiffs prevail on their Motion. On the contrary, Plaintiffs’ Memorandum in Support of their Motion for Preliminary Injunction anticipate Defendants’ arguments regarding costs, burdens, and harm to the public interest, and specifically refutes those arguments. *See* Dkt. #19-1 at 31-34. Because the balance of the harms weighs in favor of granting Plaintiffs’ Motion, and doing so as soon as possible, the constitutional issues at stake in this case weigh heavily against Defendants’ efforts to delay the Court’s consideration of Plaintiffs’ Motion.

For all of the foregoing reasons, Plaintiffs respectfully request that the Court deny Defendants’ request for an extension of time to respond to Plaintiffs’ Motion for Preliminary Injunction, at least absent a continuance of the congressional filing deadline.

Respectfully submitted, this the 10th day of January, 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 **PLAINTIFFS' OPPOSITION TO MOTION FOR EXTENSION OF TIME** 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 10th day of January, 2014.

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