

**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.

**PLAINTIFFS' MOTION
FOR EXPEDITED
EVIDENTIARY HEARING**

Pursuant to the U.S. Supreme Court's Order of June 5, 2017 (Doc. 149) vacating the District Court's remedial order of November 29, 2016 (Doc. 140) and remanding for further proceedings, Plaintiffs respectfully move this Court for an expedited hearing to receive supplemental evidence and hear the arguments of counsel concerning the equities of Plaintiffs' Motion for Additional Relief (Doc. 132). Plaintiffs request that the Court expeditiously consider and order the relief requested herein upon receipt of the Supreme Court's certified judgment or mandate in this case.

In support of this Motion Plaintiffs show the court the following:

1. This action was filed on May 19, 2015. (Doc. 1.) Plaintiffs sought a preliminary injunction, which was denied. (Doc. 39.) Following the trial of this action on April 11 – 15, 2016, Plaintiffs sought an order requiring the North Carolina General Assembly to immediately redraw the unconstitutional districts before the 2016 elections. (Doc. 115.)
2. In this Court's Memorandum Opinion dated August 11, 2016 (Doc. 123), holding that the twenty-eight districts challenged in this case are unconstitutional, on the question

of an appropriate remedy, the Court stated: “Therefore we hereby order the North Carolina General Assembly to draw remedial districts in their next legislative session to correct the constitutional deficiencies in the Enacted Plans.” Mem. Op. 163.

3. In the Order and Judgment entered August 15, 2016 (Doc. 125), the Court granted Plaintiffs’ request for permanent injunctive relief, ordered the State of North Carolina to draw new House and Senate district plans; and enjoined the State from conducting any elections for State House and State Senate offices after November 8, 2016 until a new redistricting plan is in place. Order & Judgment 1. The Court also retained jurisdiction “to enter such orders as may be necessary to enforce this Judgement and to timely remedy the constitutional violation.” This Order was summarily affirmed by the U.S. Supreme Court on June 5, 2017. (*See* Doc. 149 at 1 & note.)

4. Thus, Defendants are under an existing and binding legal obligation not to use the 2011 plans for any other election and to enact new plans before this legislative session ends. In the event Defendants fail to meet their obligation to enact new plans before the end of this legislative session, that responsibility will fall to the Court.

5. This Court permitted Plaintiffs to file a Motion for Additional Relief, with supporting affidavits, which was fully briefed by all parties. (Doc. 132, 133, 136, 139.) On November 29, 2016 the Court entered an Order directing the Defendants to file new maps with the Court within seven days of passage, and directing the State of North Carolina to hold special primary and general elections in the fall of 2017. (Doc. 140.)

This Order was stayed pending appeal by the U.S. Supreme Court on January 10, 2017. *North Carolina v. Covington*, No. 16-1023 (U.S. Jan. 10, 2017).

6. On June 5, 2017, the U.S. Supreme Court vacated the remedial order and remanded for “further proceedings consistent with this opinion.” (*See* Doc. 149 at 3.) Plaintiffs have moved in the Supreme Court for a special order directing that the Supreme Court’s issue a formal mandate forthwith. *North Carolina v. Covington*, Nos. 16-649 & 16-1023 (U.S. June 6, 2017).

7. On June 7, 2017, the Governor of North Carolina called, by Proclamation, pursuant to Article III, Section 5(7) of the North Carolina State 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>. The General Assembly, which is currently in session, has indicated that it intends to adjourn for the remainder of 2017 by early July.

8. Plaintiffs are now entitled to present to this Court their evidence and contentions regarding the equitable factors identified by the U.S. Supreme Court as relevant to the question of whether special elections in 2017 are appropriate.

9. The Supreme Court identified the following considerations as “among those matters a court would generally be expected to consider”:

- a. “the severity and nature of the particular constitutional violation”;
- b. “the extent of the likely disruption to the ordinary processes of governance if early elections are imposed”; and
- c. “the need to act with proper judicial restraint when intruding on state sovereignty.”

(Doc. 149 at 3.)

10. Expedited consideration of Plaintiffs’ renewed motions for additional relief is warranted to ensure that the mere passage of time does not prevent a fair consideration of these factors.

11. The additional relief Plaintiffs seek is within the equitable powers of this Court and justified by the facts and well-established redistricting jurisprudence.

12. Plaintiffs’ counsel has conferred with Defendants’ counsel on the relief requested in this motion. Legislative Defendants indicated that they oppose this Motion. The State Board of Elections Defendant takes no position on this Motion, 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.

Plaintiffs respectfully move this court to enter an Order scheduling an evidentiary hearing as soon as possible, and no later than next week, to receive evidence and the submissions of counsel regarding the need for, and feasibility of, special elections prior to the 2018 elections.

This 8th day of June, 2017.

POYNER SPRUILL LLP

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CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

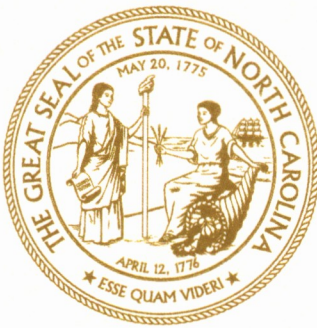
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This 8th day of June, 2017.

/s/ Anita S. Earls



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.

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Plaintiffs,

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

Defendants.

**[PROPOSED] ORDER ON
PLAINTIFFS' MOTION
FOR EXPEDITED
EVIDENTIARY HEARING**

Upon this Court's thorough review of Plaintiffs' Motion to Set Deadlines for Remedial Plan, 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. An evidentiary hearing is scheduled for

_____, 2017 at ____:____ __.m., to receive

evidence and the submissions of counsel regarding the need for, and feasibility of, special elections prior to the 2018 elections.

So ordered.

Date

For the Court