

FILED

STATE OF NORTH CAROLINA 2018 AUG 20 04:17:00 IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE WAKE CO., C.S.C. 18 CVS 9805

ROY A. COOPER, III, in his official capacity
as GOVERNOR OF THE STATE OF
NORTH CAROLINA,

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity
as PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE;
TIMOTHY K. MOORE, in his official
capacity as SPEAKER OF THE
NORTH CAROLINA HOUSE OF
REPRESENTATIVES;
NORTH CAROLINA BIPARTISAN STATE
BOARD OF ELECTIONS AND ETHICS
ENFORCEMENT; and
JAMES A. ("ANDY") PENRY, in his official
capacity as CHAIR OF THE NORTH
CAROLINA BIPARTISAN STATE BOARD
OF ELECTIONS AND ETHICS
ENFORCEMENT,

Defendants.

ORDER ON TEMPORARY MEASURES

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR DIVISION
18 CVS 9806

NORTH CAROLINA STATE CONFERENCE
OF THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE; and CLEAN AIR CAROLINA,

Plaintiffs,

v.

TIM MOORE, in his official capacity;
PHILIP BERGER, in his official capacity;
THE NORTH CAROLINA BIPARTISAN
STATE BOARD OF ELECTIONS AND
ETHICS ENFORCEMENT; ANDREW
PENRY, in his official capacity; JOSHUA
MALCOLM, in his official capacity; KEN
RAYMOND, in his official capacity; STELLA
ANDERSON, in her official capacity;
DAMON CIRCOSTA, in his official
capacity; STACY EGGERS IV, in his official
capacity; JAY HEMPHILL, in his official
capacity; VALERIE JOHNSON, in her
official capacity; JOHN LEWIS, in his
official capacity,

Defendants.

ORDER ON TEMPORARY MEASURES

THIS MATTER came on for hearing on August 15, 2018, before the undersigned three-judge panel on the Motion for Temporary Restraining Order and Preliminary Injunction of Plaintiff Governor Roy A. Cooper, III and the Motion for Temporary Restraining Order and Preliminary Injunction of Defendants-Crossclaimants the North Carolina Bipartisan State Board of Elections and Ethics Enforcement and J. Anthony (Andy) Penry (collectively the Board), regarding the inclusion on the November 2018 general election ballot of two ballot questions concerning proposed amendments to the North Carolina Constitution. Also before the Court are the Motion for Temporary Restraining Order and Preliminary Injunction and Request for an Expedited Hearing of the North Carolina State Conference of the National Association for the Advancement of Colored People and Clean Air Carolina regarding the inclusion on the November 2018 general election ballot of four ballot questions concerning proposed amendments to the

North Carolina Constitution. Also before the Court are Governor Cooper's and the Board's Unopposed Joint Notice and Request for Hearing on Motions for Preliminary Injunction, as well as Governor Cooper's Motion to Shorten Time for Filing and Service of Affidavit in Support of Governor Cooper's Motion for Temporary Restraining Order and Preliminary Injunction. All parties had notice and were represented at the hearing. The Court has considered all matters of record, including the pleadings and motions, the parties' briefs, the affidavits on file, and the arguments of counsel. The Court FINDS and CONCLUDES as follows:

1. Under North Carolina law, for a general election in an even-numbered year, the Board must make absentee ballots available to voters 60 days before the election— here, September 7. *See* N.C. Gen. Stat. § 163A-1305(a) (2017). Before these ballots can be made available, the Board must prepare and print the ballots and conduct testing on them. The Board has represented to the Court that this preparation, printing, and testing takes at least 21 days. Thus, under the circumstances of this year's election, in the absence of a court order to the contrary, the Board would expect to begin preparing, printing, and testing ballots on August 17.

2. The Court intends to enter its ultimate order on the parties' motions as soon as possible, but in view of the complexity of these cases and the shortness of time, the Court might not enter an order by August 17.

3. It would not serve the public interest for the Board to begin preparing, printing, and testing the ballots before this Court enters its ultimate order on the parties' motions. If the Board began preparing the ballots, then the Court later entered an order

that affected the content of the ballot, the Board would be required to restart its process, wasting the public resources that had been spent on the process before that time.

4. After the Court enters its ultimate order on the parties' motions, it would serve the public interest for the present order to remain in effect for three business days after the entry of the ultimate order. That short continuation of the present order would prevent confusion and a possible waste of public resources while any appellants from the ultimate order seek a stay of the ultimate order from the appellate courts.

5. The Court concludes that the parties have satisfied any requirement to ask this Court to stay, pending any appeal, the Court's ultimate order on the parties' motions. See N.C. Gen. Stat. § 1A-1, Rule 62(c); N.C. R. App. P. 8(a), 23(a)(1).

In view of the above findings and conclusions, the Court, in the exercise of its discretion and for good cause shown, hereby ORDERS as follows:


A. While this order is in effect, the Board, its officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them, shall not take any action to authorize or approve any language to be placed on the official ballot for the November 2018 general election.

B. While this order is in effect, the Board, its officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them, shall not prepare ballots, print ballots, or authorize any person or entity to prepare or print ballots for the November 2018 general election.

C. The relief provided by decretal paragraphs A and B of this order automatically expires on whichever of the following dates and events occurs first:

1. 11:59 p.m. Eastern Daylight Time on Friday, August 31, 2018.
2. 11:59 p.m. Eastern Daylight Time on the third non-weekend day after the entry of the Court's ultimate order on the parties' motions for preliminary injunction. For purposes of calculating this expiration date, the day of entry of the Court's ultimate order does not count as the first of the three business days allowed.
3. Any other expiration date that is explicitly stated in a later order of this Court or in an order of an appellate court.

SO ORDERED, this the 17th day of August 2018 at 5:30 p.m.



Forrest D. Bridges
Superior Court Judge Presiding

Signed on Behalf of and with Consent of:
Thomas H. Lock, Superior Court Judge Presiding
Jeffrey K. Carpenter, Superior Court Judge Presiding

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served on the following persons by depositing a copy of the same in the United States mail, postage prepaid, and properly addressed, as follows:

John R. Wester
J. Dickson Phillips, III
Adam K. Doerr
Erik R. Zimmerman
Morgan P. Abbott
ROBINSON BRADSHAW & HINSON, PA
101 N. Tryon Street, Suite 1900
Charlotte, NC 28246
jwester@robinsonbradshaw.com
dphillips@robinsonbradshaw.com
adoerr@robinsonbradshaw.com
ezimmerman@robinsonbradshaw.com
mabbott@robinsonbradshaw.com

Kimberly Hunter
Derb Carter
SOUTHERN ENVIRONMENTAL LAW
CENTER
601 W. Rosemary Street, Suite 220
Chapel Hill, NC 27516-2356
khunter@selcnc.org
derbc@selcnc.org

Noah H. Huffstetler
Martin Warf
NELSON MULLINS RILEY & SCARBOROUGH, LLP
GlenLake One, Suite 200
4140 Parklake Avenue
Raleigh, NC 27612
noah.huffstetler@nelsonmullins.com
martin.warf@nelsonmullins.com

Irving Joyner
PO Box 374
Cary, NC 27512
ijoyner@nccu.edu

Alexander McC. Peters
Matthew W. Sawchak
Office of the Attorney General
NC DEPARTMENT OF JUSTICE
PO Box 629
Raleigh, NC 27602
apeters@ncdoj.gov
msawchak@ncdoj.gov

Daryl V. Atkinson
Leah J. Kang
FORWARD JUSTICE
400 W. Main Street, Suite 203
Durham, NC 27701
daryl@forwardjustice.org
lkang@forwardjustice.org

This the 20th day of August, 2018.



Kellie Z. Myers
Trial Court Administrator, 10th Judicial District
kellie.z.myers@nccourts.org