

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No. 1:20-cv-876-LCB-JLW

NORTH CAROLINA A. PHILIP )  
RANDOLPH INSTITUTE, and ACTION, )  
NC, )  
 )  
Plaintiffs, )  
v. )  
 )  
THE NORTH CAROLINA STATE )  
BOARD OF ELECTIONS; et al., )  
 )  
Defendants. )

**JOINT MOTION FOR  
EXTENSION OF TIME TO FILE  
RESPONSE TO PLAINTIFFS’  
MOTION FOR SUMMARY  
JUDGMENT  
[D.E. 85, 86]**

Fed. R. Civ. P. 6(b)

**NOW COME** State Board Defendants and DA Defendants, through undersigned counsel, pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, to jointly request a thirty-day extension of the deadline within which to respond to Plaintiffs’ motion for summary judgment from July 17, 2023 to August 17, 2023. Good cause exists for this request based upon recent legislative action at the North Carolina General Assembly that has the potential to moot this case entirely, or at minimum, fundamentally alter the claims and defenses to the point that further briefing with respect to Plaintiffs’ recently filed motion for summary judgment would be a waste of resources for the parties and the Court. Further good cause exists based upon undersigned counsels’ obligations in other matters.

In support, Defendants state the following:

1. Plaintiffs filed their initial Complaint on September 24, 2020 alleging that N.C.G.S. § 163-275(5), a statute penalizing voting by a felony prior to the restoration of their rights as a felony, violates the First and Fourteenth Amendment rights to Equal Protection and Due Process. [D.E. 1]. The lack of a mens rea element in statute, and the

lack of any amendment to it, served as a factual and legal foundation for both claims. *Id.*, ¶¶ 2, 3, 28, 39, 41 44, 51, 54, 70, 83, 99, 104, 108, 110, 111, 113. It is such a fundamental feature of Plaintiffs' claims that the shorthand adopted by Plaintiffs throughout the case for N.C.G.S. § 163-275(5) is the "Strict Liability Voting Law." *Id.*

2. Simultaneously, Plaintiffs' filed a motion for preliminary injunction. [D.E. 2]. State Board Defendants responded and, after a hearing, the Court issued an opinion denying the preliminary injunction. [D.E. 16, 23, 24, and 34].

3. On February 23, 2021, Plaintiffs filed an Amended Complaint adding every District Attorney in the State of North Carolina. [D.E. 36]. Other than adding these new Defendants, the Amended Complaint was substantively the same as the initial Complaint. [*Compare* D.E. 1 to D.E. 36].

4. On March 9, 2021, State Board Defendants filed an Answer to the Amended Complaint. [D.E. 39].

5. On April 19, 2021, DA Defendants filed a motion to dismiss, to which Plaintiffs responded, and which the Court ultimately denied on March 28, 2022. [D.E. 46, 48, 60, and 66].

6. On June 17, 2022, DA Defendants filed an Answer to the Amended Complaint. [D.E. 75].

7. On November 9, 2022, the parties submitted a Joint Proposed Discovery Plan. [D.E. 76]. On the same date, the Court entered an order approving the discovery plan and further ordered that the parties shall not anticipate an extension of discovery deadlines or the deadline for filing dispositive motions. [D.E. 77].

8. Discovery proceeded for the next six months, closing on May 15, 2023.

9. On June 1, 2023, Senate Bill 747 (“SB747”) was filed in the North Carolina Senate. Entitled “An Act to Make Various Changes Regarding Elections Law,” SB74 contains multiple provisions altering several aspects of election law in North Carolina. Relevant to this action, section 21.1 of the bill as originally filed amended N.C.G.S. § 163-275(5) as follows:

**PART XXI. REQUIRE KNOWING VIOLATION/VOTING WITHOUT RIGHTS OF CITIZENSHIP RESTORED**

**SECTION 21.1.** G.S. 163-275(5) reads as rewritten:

"(5) For any person convicted of a crime which excludes the person from the right of suffrage, to knowingly vote at any primary or election without having been restored to the right of citizenship in due course and by the method provided by law."

**SECTION 21.2.** This Part is effective when it becomes law and applies to violations occurring on or after that date.

See N.C. Gen. Assembly, Legislative History for Senate Bill 747, <https://www.ncleg.gov/BillLookup/2023/S747>, last visited June 21, 2023.

10. On June 5, 2023, SB747 passed First Reading in the Senate chamber. *Id.*

11. On June 5, 2023, in anticipation of the passage and eventual enactment of the section of SB747 amending N.C.G.S. § 163-275(5), undersigned counsel for Defendants proposed to Plaintiffs that all parties jointly seek an extension of the deadline to file a motion for summary judgment. Defense counsel believed the proposed extension would allow all parties to judge whether SB747 would be enacted. Plaintiffs rejected that proposal.

12. On June 13, 2023, Defendants followed up to confer telephonically with Plaintiffs to discuss this topic further or in the alternative an extension of the deadline for

Defendants to respond to the motion for summary judgment. Plaintiffs again indicated that they intended to proceed with their motion for summary judgment, but would consider a request by Defendants for an extension if and when Defendants chose to make such a request to the Court.

13. On June 15, 2023, a committee substitute was introduced and adopted by the Senate Redistricting and Elections Committee. *Id.* The relevant section amending N.C.G.S. § 163-275(5) moved to Section 29 and was amended as follows:

**SECTION 29.** G.S. 163-275(a)(5), as amended by this act, reads as rewritten:

"(5) For any person convicted of a crime which excludes the person from the right of suffrage, to vote ~~at~~ in any primary or election ~~without having been restored to~~ knowing the right of citizenship has not been restored in due course and by the method provided by law."

*Id.* On June 16, 2023, the committee reported the bill favorably out of committee. *Id.*

14. On June 15, 2023, Plaintiffs filed their motion for summary judgment. [D.E. 85, 86]. Consistent with the Complaint and Amended Complaint, Plaintiffs' memorandum in support of summary judgment repeats the same factual and legal foundation built upon the lack of a mens rea in N.C.G.S. § 163-275(5) and the lack of any amendment to the challenged law. [D.E. 86, pp. 7-8, 10, 12-19, 21-24, 26-30]. Similarly, the reliance upon the lack of a mens rea in the current law is reflected in Plaintiffs' use of "Strict Liability Voting Law" throughout the memorandum. [D.E. 86].

15. On June 21, 2023, SB747 was introduced on the floor of the Senate. *Id.* Ten amendments were proposed, three were adopted, and seven were tabled. *Id.* None amended or sought to amend the section regarding N.C.G.S. § 163-275(5). *Id.* Ultimately, SB747 passed its Second and Third Readings and was sent to the North Carolina House

for consideration. *Id.*

16. On June 21, 2023, after the North Carolina Senate passed SB747, Defendants notified Plaintiffs that they would be filing this motion and requested their position on this motion for an extension given the passage by the N.C. Senate. On June 26, 2023, Plaintiffs responded that they will oppose the 30-day extension of the response deadline.

17. On June 26, 2023, undersigned counsel for Defendants responded and notified Plaintiffs that defense counsels' schedules, deadlines, and the June 25, 2023 COVID-19 diagnosis of counsel for DA Defendants would also provide a basis for the requested extension. Plaintiffs responded that as a professional courtesy, they would consent to a ten-day extension, but beyond that, they intend to oppose the request.

18. For these reasons, Defendants respectfully request that this Court extend the deadline within which to respond to Plaintiffs' motion for summary judgment by thirty days from July 17, 2023 to August 17, 2023.

19. As the above discussion indicates, the enactment of SB747 will fundamentally alter the course of this case. At maximum, it could moot the case entirely, and at minimum, it would fundamentally change the analysis and arguments for each claim. Under either outcome, it would be wasteful for the parties and the Court to proceed with briefing under these circumstances. Specifically, if Defendants are required to respond to the pending summary judgment motion while SB747 is being considered, all effort and resources expended will ultimately be wasted if the amendment to N.C.G.S. § 163-275(5) is ultimately enacted.

20. Given that twenty-one days elapsed between filing and passage in the North

Carolina Senate, it is respectfully submitted that a thirty-day extension will allow sufficient time to determine whether SB747 will be passed in the House of Representatives, and ultimately be enacted.

21. It is also respectfully submitted that a thirty-day extension will not delay the trial date set for the April 1, 2024 Calendar Term or consideration by this Court of Plaintiffs' motion in advance of that date. [D.E. 90]. If the requested extension is granted, Plaintiffs' Reply, if any, would be due no later than August 31, 2023, thus allowing for submission of the motion to the Court seven months in advance of trial, and six months in advance of the first pretrial disclosures and filings. *Id.*; *see also* L. Civ. R. 7.3(h).

22. Additionally, undersigned counsel for the State Board Defendants have had and continue to have obligations in other matters during this period, including but not limited to the following:

- a. Preparation and filing of a motion to dismiss, a motion to seal agency records, a proposed order, and an answer, as well as preparing the redacted agency record in the matter of *Allman v. North Carolina State Board of Elections, et al.*; North Carolina Superior Court of Wake County (23 CVS 7462);
- b. Preparation and appearance for a hearing on Respondent's motion to dismiss on June 29, 2023 in the matter of *Gallimore v. North Carolina State Board of Elections*; North Carolina Office of Administrative Hearings (23 BOE 1997);
- c. Preparation and submission of various filings in other matters pending in the Office of Administrative Hearings;
- d. Preparation and submission of a brief on July 6, 2023, and an appearance for a hearing on Petitioner's Petition for Judicial Review on July 10, 2023 in the matter of *North Carolina State Board of Elections v. Farley*; North Carolina Superior Court of Brunswick County (23 CVS 158);
- e. Preparation and filing of an appellate brief on July 19, 2023 in the matter of *State v. Keller*; North Carolina Court of Appeals (COA23-230);
- f. Preparation and appearance for a hearing on Plaintiff's Petition for Judicial Review on July 24, 2023 in the matter of *North Carolina State Board of Elections v. N.C. Constitution Party*; North Carolina Superior Court of Chatham County (23 CVS 99); and

- g. Preparation, review, response, and production of significant written and documentary discovery in the matter of *Green, et al. v. Bell, et al.*; Western District of North Carolina (21-cv-493).

23. Undersigned counsel for the DA Defendants has had and continues to have obligations in other matters during this period, including but not limited to the following:

- a. Preparation and filing an answer or other responsive pleading in the matter of *Courthouse News Services v. Boyce, et al.*, Eastern District of North Carolina (5:23-cv-00028);
- b. Preparation and filing an answer or other responsive pleading in the matter of *Ussery v. Cooper, et al.*, Eastern District of North Carolina (5:23-cv-00219);
- c. Preparation and filing an answer or other responsive pleading, responding to motion for preliminary injunction, and motion for class certification in the matter of *ACLU v. Stein, et al.*, Middle District of North Carolina (1:23-cv-00077);
- d. Preparation and filing an answer or other responsive pleading in *Leech v. State of North Carolina, et al.*, North Carolina Superior Court of Person County (23 CVS 396);
- e. Preparation and filing an answer or other responsive pleading in *Asanov, et al. v. Sukeena, et al.*, Eastern District of North Carolina (5:23-cv-00310);
- f. Preparation and filing an answer or other responsive pleading, as well as assessing a motion for temporary restraining order, in *Planned Parenthood, et al. v. Stein, et al.*, Middle District of North Carolina (1:23-cv-480);
- g. Preparation and filing a response to a Rule 60(b) motion in *Stuart, et al v. Kilpatrick, et al.*, Middle District of North Carolina (1:11-cv-804);
- h. Preparation and filing an answer or other responsive pleading in *Barcelo v. Welch, et al.*, Western District of North Carolina, 1:23-cv-137;
- i. Preparation of response to subpoena issued in *Durham County v. AmerisourceBergen Drug Corporation, et. al.*, Northern District of Ohio, (1:19-op-45346);
- j. Preparation and filing an answer or other responsive pleading in *Quintano v. State of North Carolina, et al.*, North Carolina Superior Court of Washington County (23 CVS 61);
- k. Preparation and filing an answer or other responsive pleading in *Nasiri v. Gregory, et al.*, North Carolina Superior Court of Cumberland County (23 CVS 3386);

24. Although there are two career NCDOJ attorneys assigned to represent the Judicial Department of North Carolina in civil litigation, which includes District Attorneys, one of the attorneys accepted a new job and departed NCDOJ on June 1, 2023. As a result,

the Judicial Department's workload is in staffing transition and undersigned counsel is the only attorney in that role until a replacement attorney is found. In addition to the above litigation, undersigned counsel for DA Defendants is also carrying an active litigation caseload of approximately 25 additional matters, and tasked with responding to subpoenas issued to Judicial Branch officers and employees in both state and federal litigation, EEOC litigation, and responding to multiple complaints filed by sovereign citizens in various North Carolina small claims court.

25. Additionally, undersigned counsel for DA Defendants was diagnosed with COVID-19 on June 25, 2023 and is experiencing symptoms and under quarantine for at least five days.

26. It is respectfully submitted that a thirty-day extension will allow sufficient time for undersigned counsel to meet their obligations in other matters and work on opposition to the Plaintiffs' motion for summary judgment so as to have a response prepared for filing by August 17, 2023 in the event that SB747 is not enacted.

27. This is the first request for an extension of the summary judgment response deadline by either State Board Defendants or DA Defendants. The motion is being made within the current deadline and is not being made for any improper purpose.

28. The parties have agreed to an expedited briefing schedule for this motion, so that the Plaintiffs' response is to be filed by Thursday, June 29, 2023, with a Reply, if any, to be filed by Friday, June 30, 2023.

WHEREFORE, the State Board Defendants respectfully request that the Court grant a thirty-day extension of the time for Defendants to respond to Plaintiffs' motion for



summary judgment by thirty days, from July 17, 2023 to August 17, 2023.

Respectfully submitted this the 26th day of June 2023.

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This the 26th day of June, 2023.

/s/ Terence Steed  
Terence Steed  
Special Deputy Attorney General