

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

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

Plaintiffs,

v.

ALAN HIRSCH, in his official capacity
as Chair of the North Carolina State
Board of Elections, *et al.*,

Defendants.

No. 1:18-cv-01034

PLAINTIFFS' MOTION TO LIFT THE STAY AND
FOR A STATUS CONFERENCE

Plaintiffs North Carolina State Conference of the NAACP, Chapel Hill-Carrboro NAACP, Greensboro NAACP, High Point NAACP, Moore County NAACP, Stokes County Branch of the NAACP and Winston-Salem Forsyth County NAACP (“Plaintiffs”) file this Motion to lift the stay in this case issued on December 30, 2021, and to request that the Court hold a Status Conference.¹ In support of this motion, Plaintiffs state that:

1. On December 20, 2018, Plaintiffs filed their complaint challenging North Carolina Senate Bill 824 (“S.B. 824”), which requires North Carolina residents to present a photographic ID to vote, on the basis that it violates Section 2 of the Voting Rights Act and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

¹ Counsel for Plaintiffs has conferred with counsel for Defendants about this motion. The State Board Defendants consent to this motion, and the Legislative Defendants do not oppose this motion.

2. Defendants Alan Hirsch, Siobhan Millen, Kevin Lewis, Jeff Carmon and Stacy Eggers IV are the Chair, Secretary, and members of the North Carolina Board of Elections (together, the “State Board Defendants”).²
3. Philip Berger, President Pro Tempore of the North Carolina Senate, and Timothy Moore, Speaker of the North Carolina House of Representatives (together, the “proposed Legislative Defendants”), moved to intervene on behalf of the North Carolina General Assembly to oppose Plaintiffs’ challenges. This Court denied the proposed Legislative Defendants’ motion to intervene on June 3, 2019. On July 19, 2019, the proposed Legislative Defendants renewed their motion to intervene, which was also denied.
4. On December 31, 2019, this Court granted Plaintiffs’ motion for a preliminary injunction. Defendants appealed this Court’s decision to the Fourth Circuit.
5. While the appeal was pending, on February 20, 2020, this Court issued a Notice of Hearing, setting a bench trial in this case for January 4, 2021.
6. On December 2, 2020, the Fourth Circuit reversed this Court’s decision preliminarily enjoining S.B. 824. *N.C. State Conf. of NAACP v. Raymond*, 981 F.3d 295 (4th Cir. 2020). En banc review of this decision was denied on February 8, 2021, and the mandate issued on February 16, 2021.
7. After the mandate issued in the appeal of the preliminary injunction, on March 23, 2021, this Court scheduled trial for the January 2022 Civil Master Calendar Term.

² Mr. Hirsch, Ms. Millen and Mr. Lewis were automatically substituted as parties to this action, in place of former State Board of Elections Chair Damon Circosta and members Tommy Tucker and Stella Anderson, pursuant to Federal Rule of Civil Procedure 25(d).

8. On November 24, 2021, the U.S. Supreme Court granted certiorari in this case to decide whether Legislative Defendants are entitled to intervene as of right in this litigation.
9. On December 30, 2021, this Court ordered that this case is stayed, “including the trial set to begin on January 24, 2022, pending the resolution of the grant of certiorari by the U.S. Supreme Court or until further Order of this Court.”
10. On June 23, 2022, the U.S. Supreme Court vacated the Fourth Circuit’s en banc decision and held that the proposed Legislative Defendants are entitled to intervene in this case.
11. On July 26, 2022, this case was remanded to this court for further proceedings and the mandate was issued.
12. At that time, in a separate challenge to S.B. 824 brought in state court, *Holmes v. Moore*, No. 18-CVS-15292, the law had been permanently enjoined by the Wake County Superior Court following a full trial on the merits; and was pending further appellate review.
13. On October 3, 2022, the North Carolina Supreme Court heard oral arguments in *Holmes v. Moore*. On December 16, 2022, the North Carolina Supreme Court ruled 4-3 in favor of Plaintiffs in *Holmes v. Moore*, finding that S.B. 824 was unconstitutional and passed with illegal racial intent, permanently enjoining the challenged law.

14. On January 20, 2023, Legislative Defendants filed a Petition for Rehearing in *Holmes v. Moore*. On February 3, 2023, the North Carolina Supreme Court granted the motion and scheduled oral argument.
15. On April 28, 2023, the North Carolina Supreme Court issued a decision reversing its previous decision and sent *Holmes v. Moore* back to the trial court to be dismissed.
16. Immediately following the *Holmes* decision, the North Carolina State Board of Elections announced that it would implement S.B. 824 starting with the municipal elections in September, October and November 2023; and has begun issuing guidance, communications, and proposed administrative rules.³
17. In a letter to the North Carolina General Assembly delivered May 12, 2023, SBOE Director Karen Brinson Bell requested \$6.5 million in funding over the next two years to allow the State Board of Elections to implement S.B. 824's photo voter ID requirements in the upcoming municipal elections of 2023 and the 2024 General Election.⁴
18. On May 18, 2023, the mandate issued in *Holmes v. Moore*, and dismissal of the case is anticipated.

³ <https://www.ncsbe.gov/news/press-releases/2023/05/17/10-facts-about-ncs-photo-id-requirement-voting>; <https://www.ncsbe.gov/voting/voter-id>; <https://www.ncsbe.gov/news/press-releases/2023/06/02/state-board-opens-public-comment-period-proposed-rules-voter-photo-id>

⁴ <https://www.facingsouth.org/2023/05/nc-supreme-court-sets-tight-timeline-implement-voter-id>

CONCLUSION

In conclusion, the writ of certiorari pending before the U.S. Supreme Court has been resolved, as has the state court challenge to S.B. 824. In light of the efforts by the State Board Defendants to implement S.B. 824, Plaintiffs believe the stay should be lifted so that the federal claims concerning the legality of S.B. 824 can be adjudicated.

For the aforementioned reasons, Plaintiffs respectfully request that this Court lift the stay in the above captioned matter and schedule a status conference. In particular, Plaintiffs would like to discuss a schedule to have these claims adjudicated, including a brief period of time in which the record can be reopened to update discovery previously provided by the Defendants and take discovery from newly-admitted Intervenor-Legislative Defendants. Such discovery is likely highly relevant to Plaintiffs' *Arlington Heights* and Section 2 claims.

Respectfully submitted this 9th day of June 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing PLAINTIFFS' MOTION TO LIFT THE STAY AND FOR A STATUS CONFERENCE with the Clerk of Court using the CM/ECF system which will send notification of such to all counsel of record in this matter.

This, the 9th day of June 2023.

/s/ Kathleen E. Roblez
Kathleen E. Roblez

CERTIFICATE OF WORD COUNT

The undersigned counsel hereby certifies that pursuant to Local Rule 7.3(d)(1), the foregoing has a word count of less than 6,250 words not including the caption, signature block and certification of word count. This document was prepared in Microsoft Word, from which the word count is generated.

Dated this 9th day of June 2023.

/s/ Kathleen E. Roblez
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