

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23 CVS 18892-910

MIKE URBEN, *et al.*

*Plaintiffs,*

v.

THE NORTH CAROLINA REPUBLICAN  
PARTY

*Defendant.*

**DEFENDANT'S OBJECTION TO  
HEARING ON PLAINTIFFS' MOTION  
FOR PRELIMINARY INJUNCTION**

NOW COMES Defendant, The North Carolina Republican Party, by and through undersigned counsel, and without waiving any motions or defenses not set out herein, respectfully submits its objection to and requests the Court, in an exercise of its discretion and in the interest of judicial economy, stay any hearing on Plaintiffs' Motion for Preliminary Injunction in relation to their Complaint in the above-captioned matter, pending a ruling on Defendant's Motion to Dismiss. In support of its Motion, Defendant shows the Court as follows:

On July 17, 2023, Plaintiff filed a motion for Preliminary Injunction with this Court. On August 02, 2023, Plaintiff filed a calendar request with the clerk's office, requesting a hearing on the Preliminary Injunction for the Superior Court session beginning September 04, 2023, while also noting on the request that counsel for Defendant had not yet noticed their appearance in the matter. On August 14, 2023, counsel for Defendant filed their notices of appearance. Two days later, August 16, 2023, counsel for Plaintiffs provided copies of the aforementioned Motion for Preliminary Injunction and hearing calendar request. That same day, Defendant filed their Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6). Defendant was served with Plaintiffs' Notice of Hearing on their Motion for Preliminary Injunction on August 22, 2023.

While counsel for Defendant will make every effort to have its hearing on the Motion to Dismiss heard before Plaintiffs' Motion for Preliminary Injunction, Defendant files this objection out of an abundance of caution. Defendant urges the Court, in its sole discretion, to delay hearing Plaintiffs' Motion for Preliminary Injunction until such time as a ruling on Defendant's Motion to Dismiss is heard. Indeed, resolution of Defendant's Motion to Dismiss in Defendant's favor would necessarily dispose of Plaintiffs' Complaint in its entirety, thus making any subsequent hearings unnecessary. *See Beau Rivage Homeowners Ass'n v. Billy Earl, L.L.C.*, 163 N.C. App. 325, 329, 593 S.E.2d 120, 123 (2004) (citing *A.E.P. Industries v. McClure*, 308 N.C. 393, 400, 302 S.E.2d 754, 759 (1983)) (noting that the purpose of seeking a preliminary injunction assumes the matter will be fully resolved after an evidentiary hearing thereafter).

If for nothing more than judicial economy, delaying Plaintiffs' hearing on their Motion for Preliminary Injunction until Defendant's Motion to Dismiss is decided allows this Court the opportunity to fully resolve the matter before it even confronts the questions presented by the Preliminary Injunction and the evidentiary hearings which would follow. *See Smith v. Beck*, 195 N.C. App. 785, 2009 WL 677918, at \*3 (2009) (reaffirming the trial court's discretion to hear a motion to dismiss before a motion for preliminary injunction as a matter of efficiency and collecting cases stating that granting a motion to dismiss necessarily moots a motion for preliminary injunction); *see also N. Carolina Acupuncture Licensing Bd. v. N. Carolina Bd. of Physical Therapy Examiners*, No. 15 CVS 12012, 2016 WL 1643025, at \*10 (N.C. Super. Apr. 26, 2016) (deciding defendants' motion to dismiss prior to a hearing on plaintiffs' motion for preliminary injunction and, after ruling in defendants' favor, cancelling the hearing on the motion for preliminary injunction).

Additionally, Defendants maintain that a hearing on Plaintiffs' Motion for Preliminary Injunction is premature as reciprocal discovery has yet to commence, deadlines for preliminary discovery will have not yet run prior to the hearing date, and Plaintiffs have not sought or otherwise shown the good cause necessary for expedited discovery here. *See, e.g. Corwin v. Brit. Am. Tobacco PLC*, No. 14 CVS 8130, 2015 WL 222751, at \*4 (N.C. Super. Jan. 8, 2015) (citing *Dimension Data N. Am., Inc. v. NetStar-1, Inc.*, 226 F.R.D. 528, 531 (E.D.N.C.2005)).

Further, as will be shown in the hearing on Defendant's Motion to Dismiss, Plaintiffs both lack standing to bring their Complaint and the Complaint, on its face, fails to allege any colorable grounds for relief. When these considerations are coupled, the propriety of delaying the Preliminary Injunction hearing until a decision on Defendant's Motion to Dismiss is rendered, is further reaffirmed.

Therefore, Defendant respectfully requests this Court stay or otherwise decline to hold a hearing on Plaintiffs' Motion for Preliminary Injunction until a ruling on Defendant's Motion to Dismiss is rendered.

This, the 23 day of August 2023.

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**CERTIFICATE OF SERVICE**

It is hereby certified that the foregoing document was served upon the parties by electronic filing and by mailing a copy through the United States Mail, first class, postage prepaid to the address and individuals listed below.

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This the 23 day of August 2023.

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