

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

NORTH CAROLINA A. PHILIP)
RANDOLPH INSTITUTE, *et al.*,)
)
Plaintiffs,)
)
v.)
)
THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS, *et al.*,)
)
Defendants.)
)
)

1:20-cv-876

ORDER

This matter came before the Court on Plaintiffs’ Motion to Expedite Consideration of their Motion for Summary Judgment and Request for Permanent Injunction and to Set a Hearing Before the District Court. (ECF No. 98.) The motion was filed on August 31, 2023, and by Order of the Court, Defendants were to respond no later than September 7, 2023, (ECF No. 99.) On September 20, 2023, the Court held a telephone conference in open Court and heard arguments from counsel for the Plaintiffs and Defendants. Attorneys Jonathan K. Youngwood, Mitchell D. Brown, and Jeffrey Loperfido represented the Plaintiffs, attorney Mary Carla Babb represented the North Carolina State Board of Elections Defendants, and attorney Elizabeth Curran O’Brien represented the District Attorney Defendants. The Court, having heard the arguments and having read the filings related hereto, concludes that Plaintiffs’ motion to expedite and proceed as requested will be denied for the reasons outlined below.

I. BACKGROUND AND PARTIES' ARGUMENTS

Plaintiffs commenced this action in September 2020 challenging the constitutionality of N.C. Gen. Stat. § 163- 275(5) alleging that the law is “a racially discriminatory relic of the nineteenth century that imposes stringent criminal penalties on voting by North Carolina residents who are on parole, probation or post-release supervision for a felony conviction—*even if those individuals mistakenly believe they are eligible to vote.*” (ECF No. 1 at 3) (emphasis in original). Plaintiffs simultaneously moved for a preliminary injunction when filing the complaint, which was denied in part due to the then upcoming election and voter registration deadlines. (*See* ECF Nos. 34; 24 at 20.) In the order denying the preliminary injunction, the court recognized that “Plaintiffs delayed filing this action and request for injunctive relief until September 24, 2020, mere weeks before the North Carolina voter registration deadlines and the 2020 election.” (ECF No. 24 at 20.)

Now at the summary judgment stage, the Court again must determine whether Plaintiffs’ new request for expedited review is appropriate considering the ongoing North Carolina municipal elections. In their current motion, Plaintiffs move the Court to “(i) expedite consideration of Plaintiffs’ motion for summary judgment and request for permanent injunction (ECF No. 85); (ii) schedule a hearing on Plaintiffs’ motion for summary judgment before District Judge Biggs at the Court’s earliest convenience; and (iii) set an abbreviated briefing schedule for the present motion to expedite.” (ECF No. 98 at 1.)

With respect to the motion to expedite the summary judgment determination, Plaintiffs argue that “[r]esolving the [summary judgment] motion on an expedited basis would prevent the risk of voter confusion in the current election cycle and permanently remove from North Carolina’s general statutes a shameful remnant of the Jim Crow era.” (ECF No. 98 at 2.)

Plaintiffs recognize that the North Carolina legislature’s “SB 747,” should it become law, would amend N.C. Gen. Stat. § 163- 275(5) by adding a knowledge requirement, and therefore would “potentially resolv[e] certain aspects of this litigation beginning next year.” (ECF No. 98 at 4.) Plaintiffs argue, however, that even if the relevant portions of S.B. 747 become effective next year and amend the “Strict Liability Voting Law,” the current law would still apply to the municipal elections on September 12, October 10, and November 7, 2023. (*Id.*) Accordingly, Plaintiffs argue that only the judicial process can correct the law for this ongoing election cycle.

Although Plaintiffs have known about the North Carolina municipal elections that are now underway, (ECF No. 92 at 3), Plaintiffs assert that they brought this motion at this late stage for two reasons. First, Plaintiffs argue that it only recently became clear based on Defendants’ response to their summary judgement motion, filed on July 31, 2023, that “there are no disputes about the key elements of Plaintiffs’ challenge to the Strict Liability Voting Law,” (ECF No. 98 at 2, 5), and thus according to Plaintiffs, all that remains for the Court to rule in Plaintiffs’ favor are straightforward, narrow legal issues that could be resolved by this Court quickly. Second, Plaintiffs argue that it has only recently become clear that the “Strict Liability Voting Law” would not be remedied before the municipal elections due to the Governor’s August 24, 2023, veto of SB 747 and the lack of legislative action since the veto. (ECF No. 98 at 3–4.)

Defendants respond that “Plaintiffs’ desire to obtain a rushed final judgment on the merits before their claims become moot is not sufficient cause to expedite summary judgment.” (ECF No. 100 at 1.) Defendants contend that overturning N.C. Gen. Stat. § 163- 275(5) in the middle of municipal elections, would not reduce voter confusion, (ECF No. 100

at 5), as Plaintiffs argue and would be “contrary to well-established principles of law governing considerations of election-law cases in federal court.” (ECF No. 100 at 4.) Furthermore, Defendants highlight that Plaintiffs knew “that the currently existing law would be in effect for the 2023 municipal elections, yet they took no action to expedite the case” even “[a]fter the introduction of S.B. 747.” (*Id.* at 5.)

With respect to Plaintiffs’ request for a hearing on the summary judgment motion before the undersigned District Judge, Plaintiffs argue that proceeding with a recommendation from the Magistrate Judge on the summary judgment motion and then a period for objections before the District Judge makes a determination, as outlined in this Court’s Standing Order 30, would cause “unnecessary delay” in light of the municipal elections. (ECF No. 98 at 6.)

Defendants highlight the contradiction in Plaintiffs’ request both for expedited consideration of the motion for summary judgment and for a hearing, (ECF No. 100 at 9), which is a deviation from this Court’s practices, *see* L.R. 7.3(c)(1) (“Motions shall be considered and decided by the Court on the pleadings, admissible evidence in the official court file, and motion papers and briefs, without hearing or oral argument, unless otherwise ordered by the Court. Special considerations thought by counsel sufficient to warrant a hearing or oral argument may be brought to the Court’s attention in the motion or response.”). Defendants also argue that the Plaintiffs anticipated in June, when they opposed Defendants’ motion for an extension of time to respond to the summary judgment motion, that the summary judgment determination would proceed with a recommendation from the Magistrate Judge followed by a period for any objections. (*See* ECF No. 22) (notifying the parties of the case assignment to the Magistrate Judge and the Standing Order 30 procedures); (*see also* ECF No. 92 at 6) (Plaintiffs stating that their summary judgment “motion will first be considered by Magistrate

Judge Webster, after which another round of briefing may follow on objections to Magistrate Judge Webster’s report and recommendation.”) Finally, Defendants argue that the summary judgment determination “is not a ruling that should be rushed, so that one party has the opportunity to obtain a final judgment in its favor before the case becomes moot.” (ECF No. 100 at 10.)

II. DISCUSSION

Considering the timing of the motion, the Supreme Court precedent regarding federal courts enjoining state election laws, the risk of voter confusion, judicial economy, and the special considerations raised by the Parties, the Court will deny Plaintiffs’ motion.

First considering the timing of the motion, Plaintiffs request goes against Supreme Court precedent and should have been brought prior to the eve of the municipal elections, which are now underway. Assuming that the case could be resolved on summary judgment and that such judgment would be in Plaintiffs’ favor, that determination would invalidate a longstanding voting law—even though potentially unconstitutional—not only on the eve of but during the ongoing municipal elections. Such a decision would not leave the North Carolina State Board of Elections adequate time to notify and educate the public and would likely lead to voter confusion. Furthermore, such a decision could be characterized as “[l]ate judicial tinkering with election laws” that the Supreme Court has cautioned federal courts to avoid. *Merrill v. Milligan*, 142 S. Ct. 879, 881 (2022) (Kavanaugh, J., concurring) (agreeing with the Supreme Court’s stay of the District Court’s injunction). *See Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 140 S. Ct. 1205, 1207 (2020) (“This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.”) It is well settled that “federal district courts ordinarily should not enjoin state

election laws in the period close to an election.” *Merrill*, 142 S. Ct. at 879 (citing *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam)). This Court will not disregard these longstanding principles.

Moreover, Plaintiffs had ample opportunities to move to expedite summary judgment in this case, including when they filed the motion and when Defendants moved for an extension of time to respond to the summary judgment motion. However, Plaintiffs waited until mere weeks before the regularly scheduled municipal elections to bring this motion to expedite.

In addition, proceeding in the manner that Plaintiffs request would not promote judicial economy. On August 15, 2023, prior to Plaintiffs filing the motion to expedite, the undersigned referred the summary judgment motion to the Magistrate Judge. The Magistrate has been involved with all aspects of the case and therefore is intimately familiar with the case, the historical background, and the legal issues. (*See generally* ECF No. 24.) Plaintiffs argue that one primary issue remains to be resolved in the case and describe it as a straightforward, narrow legal issue that could be resolved by this Court quickly. Defendants contend, however, that the legislative history relevant to resolving this issue could create factual disputes, such that summary judgment would not be appropriate. Furthermore, Defendants argue that analysis of the remaining legal issues “will require the Court to review historical records, legal precedents, and legislative history dating back 150 years.” (ECF No. 100 at 9.) The Court agrees with Defendants. This Court is obligated to thoroughly consider all matters before it. Without good cause, and none is found here, the Court cannot adopt the timeline that Plaintiffs request because it would not further judicial economy or ensure meaningful review.

The special considerations that Plaintiffs have raised with the Court do not warrant the requested deviations from this Court's procedures. Based on the arguments in the briefing and at the telephone conference, the Court does not find that there is good cause (1) to expedite consideration of the summary judgment motion or (2) to withdraw this Court's referral of that motion away from Magistrate Judge or (3) to conduct a hearing, in order to rule on a state election law in the midst of the ongoing municipal elections.

IT IS THEREFORE ORDERED that the Motion to Expedite Consideration of Plaintiffs' Motion for Summary Judgment and Request for Permanent Injunction and to Set a Hearing Before the District Court, (ECF No. 98), is **DENIED** without prejudice.

This, the 25th day September 2023.

/s/ Loretta C. Biggs
United States District Judge