

No. 23-2317

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

RODNEY D. PIERCE and MOSES MATTHEWS,

Plaintiffs-Appellants,

v.

THE NORTH CAROLINA STATE BOARD OF ELECTIONS, ALAN HIRSCH, in his official capacity as Chair of the North Carolina State Board of Elections, JEFF CARMON III in his official capacity as Secretary of the North Carolina State Board of Elections, STACY “FOUR” EGGERS IV in his official capacity as a member of the North Carolina State Board of Elections, KEVIN N. LEWIS in his official capacity as a member of the North Carolina State Board of Elections, SIOBHAN O’DUFFY MILLEN in her official capacity as a member of the North Carolina State Board of Elections, PHILIP E. BERGER in his official capacity as President Pro Tem of the North Carolina Senate, and TIMOTHY K. MOORE in his official capacity as Speaker of the North Carolina House of Representatives,

Defendants-Appellees.

From the United States District Court for
the Eastern District of North Carolina
The Honorable James E. Dever III (No. 4:23-cv-193-D-RN)

**APPELLANTS’ MOTION TO
IMMEDIATELY ISSUE MANDATE**

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LOCAL RULE 27(a) STATEMENT

Pursuant to Local Rule 27(a), counsel for Appellees have been informed of Appellants' intent to seek the relief requested in this motion. Counsel for the Legislative Defendant Appellees advised that they do not consent to the motion and intend to file a response. Counsel for the State Board Defendant Appellees state that they take no position on the motion.

Plaintiffs-Appellants Rodney Pierce and Moses Matthews respectfully request that the Court immediately issue its mandate in this appeal, stating as follows:

1. This action challenges two districts in North Carolina's 2023 enacted Senate map on the ground that they dilute Black voting power in violation of Section 2 of the Voting Rights Act. Plaintiffs filed the suit on November 20, and filed an Amended Complaint and a motion for preliminary injunction on November 22.

2. The same day they filed suit, Plaintiffs moved to expedite briefing and decision on the preliminary injunction motion to enable the adoption of two remedial districts without moving North Carolina's March 5, 2024 primaries for those districts. The district court denied the motion to expedite, granted defendants an extension of time to respond to the preliminary injunction motion, and set a hearing for January 10, 2024.

3. Plaintiffs filed an appeal contending that the district court had constructively denied their preliminary injunction motion.

4. On January 9, the Court issued an Order dismissing the appeal, and an accompanying Judgment. CA4 Doc. 44, 45-2. The Order directed that the district court should "be mindful of the time-sensitive nature of the VRA suits as it proceeds." CA4 Doc. 44 at 1-2.

5. The district court held a hearing on the preliminary injunction this

morning, January 10, but noted that this Court had not yet issued its mandate restoring jurisdiction. Issuing the mandate would allow him to issue a decision.

6. The Court's Judgment states that it will take effect upon issuance of the Court's mandate. CA4 Doc. 45-2. The accompanying Notice of Judgment provides that the mandate shall issue 7 days after expiration of the time for filing a petition for rehearing. CA4 Doc. 45-1 at 2. Per Federal Rule of Appellate Procedure 40(a)(1) and Local Rule 40(c), a petition for panel or en banc rehearing is due 14 days after the entry of judgment. Accordingly, any petition would be due in this appeal on January 23 and the mandate would issue on January 30 absent a petition.

7. Plaintiffs do not intend to petition for panel or en banc rehearing of the Court's January 9 Judgment, nor do Defendants have any basis to do so given that the Judgment granted their motion to dismiss the appeal. Accordingly, there is no reason for the Court to delay issuance of the mandate until the end of January.

8. The Court should instead issue the mandate immediately. The district court already held a hearing on Plaintiffs' preliminary injunction motion this morning; to facilitate a prompt ruling and avoid any unnecessary delay, and consistent with the direction in the Court's Order about the time-sensitive nature of this case, the Court should issue its mandate as soon as possible.

9. Legislative Defendants indicate that they intend to oppose the motion. Because the ordinary response deadline of 10 days would largely defeat the relief

requested in this motion of issuance of the mandate immediately, Plaintiffs respectfully request that the Court order an earlier response deadline.

CONCLUSION

For the foregoing reasons, the Court should immediately issue the mandate for its January 9 Judgment dismissing this appeal.

Dated: January 10, 2024

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(2)(A) and 32(g)(1) because it contains 523 words.

2. This motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

Dated: January 10, 2024

/s/ R. Stanton Jones

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CERTIFICATE OF SERVICE

I hereby certify that on January 10, 2024, the foregoing was electronically filed with the Court via the appellate CM/ECF system, and that copies were served on counsel of record by operation of the CM/ECF system on the same date.

/s/ R. Stanton Jones

R. Stanton Jones