

SUPREME COURT OF NORTH CAROLINA

REBECCA HARPER; AMY CLARE)
OSEROFF; DONALD RUMPH;)
JOHN ANTHONY BALLA;)
RICHARD R. CREWS; LILY)
NICOLE QUICK; GETTYS COHEN,)
JR.; SHAWN RUSH; JACKSON)
THOMAS DUNN, JR.; MARK S.)
PETERS; KATHLEEN BARNES;)
VIRGINIA WALTERS BRIEN; and)
DAVID DWIGHT BROWN)
)
Plaintiffs,)
)
v.)
)
REPRESENTATIVE DESTIN)
HALL, in his official capacity as)
Chair of the House Standing)
Committee on Redistricting;)
SENATOR WARREN DANIEL, in)
his official capacity as Co-Chair of)
the Senate Standing Committee on)
Redistricting and Elections;)
SENATOR RALPH HISE, in his)
official capacity as Co-Chair of the)
Senate Standing Committee on)
Redistricting and Elections;)
SENATOR PAUL NEWTON, in his)
official capacity as Co-Chair of the)
Senate Standing Committee on)
Redistricting and Elections;)
SPEAKER OF THE NORTH)
CAROLINA HOUSE OF)
REPRESENTATIVES, TIMOTHY K.)
MOORE; PRESIDENT PRO)
TEMPORE OF THE NORTH)
CAROLINA SENATE, PHILIP E.)
BERGER; THE NORTH CAROLINA)

STATE BOARD OF ELECTIONS;)
and DAMON CIRCOSTA, in his)
official capacity)
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Defendants.)
)
NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC.;)
HENRY M. MICHAUX, JR.;)
DANDRIELLE LEWIS; TIMOTHY)
CHARTIER; TALIA FERNOS;)
KATHERINE NEWHALL; R.)
JASON PARSLEY; EDNA SCOTT;)
ROBERTA SCOTT; YVETTE)
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REGINALD WELLS; YARBROUGH)
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 BELL, in her official capacity as)
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 Defendants.)

MOTION BY THE NORTH CAROLINA SHERIFFS' ASSOCIATION,
THE NORTH CAROLINA DISTRICT ATTORNEYS ASSOCIATION,
AND THE NORTH CAROLINA ASSOCIATION OF CLERKS OF
SUPERIOR COURT TO INTERVENE AS PARTIES AND TO SEEK
RECONSIDERATION OF THIS COURT'S 8 DECEMBER 2021
ORDER STAYING THE CANDIDATE FILING PERIOD

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

NOW COME the North Carolina Sheriffs' Association, on behalf of all 100 North Carolina Sheriffs, the North Carolina District Attorneys Association, on behalf of the North Carolina District Attorneys, and the North Carolina Association of Clerks of Superior Court, on behalf of all 100 North Carolina Clerks of Superior Court ("Proposed Intervenors"), pursuant to Rule 24 of the North Carolina Rules of Civil Procedure and Rule 37 of the North Carolina Rules of Appellate Procedure, respectfully moving this Court to intervene as Parties in the above-captioned case for the limited purpose of requesting that this Court reconsider its 8 December 2021 Order staying the candidate filing period for all candidates for non-statewide local elected offices throughout North Carolina, including for the elected Offices of Sheriff, District Attorney and Clerk of Superior Court, who will not be affected by the underlying lawsuits.

As set forth in the accompanying brief filed in support of this Motion, the Proposed Intervenors request that this Court grant their Motion to Intervene to reconsider this Court's 8 December 2021 Order staying the filing period because this stay has caused unnecessary upheaval for candidates for public office whose elections will not be affected by this Court's rulings on the merits in the underlying lawsuits.

The Proposed Intervenors request that this Court immediately open

the filing period for candidates for non-statewide local elected offices in North Carolina not affected by this case, or in the alternative for the elected Offices of Sheriff, District Attorney and Clerk of Superior Court, for a period of eight days in order to conclude the ten day filing period that began on 6 December 2021 that was interrupted by this Court's Order, or, in the alternative, to immediately institute a new two week candidate filing period.

Respectfully submitted this 29th day of December, 2021.

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N.C. R. App. 33(b) Certification:

I hereby certify that all of the attorneys listed have authorized me to list their names on this document as if they personally signed it

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Pursuant to North Carolina Rule of Appellate Procedure 26, I hereby certify that I have this day served a copy of the foregoing by email to the following:

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BRIEF BY THE NORTH CAROLINA SHERIFFS' ASSOCIATION,
THE NORTH CAROLINA DISTRICT ATTORNEYS ASSOCIATION,
AND THE NORTH CAROLINA ASSOCIATION OF CLERKS OF
SUPERIOR COURT TO INTERVENE AS PARTIES AND TO SEEK
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I. INTRODUCTION

These suits, *Harper v. Hall*, No. 21 CVS 50085 (N.C. Super. Ct.), and *North Carolina League of Conservation Voters v. Hall*, No. 21 CVS 015426 (N.C. Super. Ct.), are consolidated actions brought by Plaintiffs who allege that the use of North Carolina's 2021 Congressional and legislative Maps (the "2021 Plan") in the 2022 primary and general elections for United States Congress and for the North Carolina General Assembly (Senate and House elections) violate the North Carolina Constitution. No members of the Proposed Intervenor - the North Carolina Sheriffs' Association, North Carolina District Attorneys Association, and the North Carolina Association of Clerks of Superior Court - are parties to these lawsuits. In addition, no candidates for the Office of Sheriff, Office of District Attorney, or Office of Clerk of Superior Court will be affected by this Court's ruling on the constitutionality of the 2021 Plan.

On 30 November 2021, Plaintiffs moved for a preliminary injunction to bar the use of the 2021 Plan before a three - judge panel assigned to preside over the lawsuits. The three - judge panel denied this motion on 3 December 2021.

On 6 December 2021, the candidate filing for the 2022 primary elections began at noon and was scheduled to end at noon on 17 December 2021. N.C.G.S. § 163-106.2(a). On the same day as candidate filing began, Plaintiffs filed Petitions for Discretionary Review Prior to Determination by the Court of Appeals, and motions to suspend Appellate Rules to expedite a decision, and to suspend Appellate Rules and expedite a schedule.

Finally, neither the Plaintiffs, Defendants, nor the North Carolina State Board of Elections petitioned this Court to stay the filing period for elective offices throughout the State that are not affected by this lawsuit.

II. THIS COURT'S 8 DECEMBER 2021 ORDER STAYING THE FILING PERIOD UPENDED ALL RACES FOR ELECTIVE OFFICES IN NORTH CAROLINA NOT AFFECTED BY THIS LAWSUIT AND THE 2021 PLAN

Two days after the filing period began, this Court issued an order on Plaintiffs' Petition affecting all federal, State, and local elections, even candidates for offices that will not be affected by any ruling on the constitutionality of the 2021 Plan. In addition to enjoining the Defendants from conducting elections for any public offices on 8 March 2022, this Court issued a sweeping order affecting the filing period for all candidates for all North Carolina elections, including ones who are not Defendants in the underlying suits, and whose elections will not be affected by this Court's ruling on the 2021 Plan. Specifically, this Court temporarily stayed "the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs' claims, including any appeals, is entered and a remedy, if any is required, has been ordered." 8 December 2021 Order, p. 3.

The Proposed Intervenor are not seeking to intervene to ask this Court to reconsider its ruling enjoining the Defendants from conducting elections on 8 March 2022. In addition, the Proposed Intervenor are not asking for two separate primary election dates and do not challenge the Court's Order

setting the primary elections on 17 May 2022. The Proposed Intervenors are simply seeking to intervene to request that this Court reconsider its order suspending the filing period for non-statewide local elected offices not part of the underlying litigation, or in the alternative for the elected Offices of Sheriff, District Attorney and Clerk of Superior Court, because staying the filing period has caused undue upheaval for candidates for public offices whose elections are not impacted by the 2021 Plan.

III. ARGUMENT

A. THE NORTH CAROLINA SHERIFFS' ASSOCIATION, THE NORTH CAROLINA DISTRICT ATTORNEYS ASSOCIATION AND THE NORTH CAROLINA ASSOCIATION OF CLERKS OF SUPERIOR COURT HAVE STANDING AND SIGNIFICANT INTERESTS ALLOWING THEM TO INTERVENE AS OF RIGHT IN THIS CASE

The North Carolina Sheriffs' Association ("NCSA") was founded in 1922 and is a voluntary, non-profit, statewide organization of the 100 sheriffs in North Carolina. Through the NCSA, the State's sheriffs work to strengthen the law enforcement services their offices provide to the people of North Carolina. The NCSA's responsibilities include monitoring actions by courts that affect law enforcement and the criminal justice system and serving as an advocate and statewide voice for the interests of sheriffs, law-abiding citizens, and the victims of crime. The NCSA is widely recognized as the leading advocate on issues affecting sheriffs in North Carolina.

The North Carolina District Attorneys Association ("NCDAA") was

founded to assist in improving the administration of justice in North Carolina by coordinating the prosecution efforts of the District Attorneys, and their assistants, by assisting them in the administration of their offices, and by cooperating with the Administrative Office of the Courts and The University of North Carolina at Chapel Hill School of Government concerning education and training programs for prosecutors and their staff. The NCDAA is widely recognized as the leading advocate on issues affecting prosecutors in North Carolina.

The North Carolina Association of Clerks of Superior Court (“NCACSC”) was founded to provide an opportunity to exchange ideas and techniques used in the performance of the Clerks’ duties, to obtain information about the operation of the respective clerks’ offices in the 100 counties of the State, to obtain knowledge on existing and new federal and State programs and laws affecting county government, to keep abreast of new trends implemented in and by county governments in the State and to promote, create and improve efficiency in the operations and record keeping of the Clerks’ office throughout the State of North Carolina. The NCACSC is widely recognized as the leading advocate on issues affecting clerks in North Carolina.

All Proposed Intervenors have standing to file this Motion because their individual members would otherwise have standing to bring the Motion and the interests that the Proposed Intervenors are seeking to

protect are integral to the missions of the NCSA, NCDAA and NCACSC. In addition, the sole relief requested, reconsideration of the 8 December 2021 stay of the filing period, does not require the participation of the individual members of the Proposed Intervenors. “To have standing the complaining association or one of its members must suffer some immediate or threatened injury.” *Willomere Cmty. Ass’n. v. City of Charlotte*, 370 NC 553, 557, 809 S.E.2d. 558, 561 (2018).

B. THE PROPOSED INTERVENORS’ MOTION TO INTERVENE AS PARTIES AND TO SEEK RECONSIDERATION OF THIS COURT’S 8 DECEMBER 2021 ORDER SHOULD BE GRANTED

Intervention is proper under North Carolina Rule of Civil Procedure 24 which allows, upon “timely application,” “anyone to intervene in an action” when the proposed intervenor shows that:

(1) it has a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties.

Virmani v. Presbyterian Health Servs. Corp., 350 N.C. 449, 459, 515 S.E.2d 675, 683 (1999) (cleaned up).

Certainly, this motion to intervene is timely. Neither the Sheriffs, District Attorneys, nor the Clerks of Superior Court are parties to these lawsuits. Indeed, prior to 8 December 2021, no candidates for the Office of Sheriff, Office of District Attorney, or Office of Clerk of Superior Court were

affected by any rulings in this lawsuit because all are elected by voters of a single county or group of counties (District Attorneys), not by voters whose districts are determined by the General Assembly. This motion has been filed shortly after this Court's overbroad Order created upheaval to the filing period for offices which will not be affected by any rulings on the 2021 Plan.

The Proposed Intervenors also have direct and immediate interests in this Court's ruling, and denying intervention would impair those interests. Since the beginning of 2021, candidates for the Office of Sheriff, Office of District Attorney, and Office of Clerk of Superior Court across the State have relied upon N.C.G.S. § 163-106.2(a) as setting the candidate filing period from 6 December 2021 to 17 December 2021. Unlike the nationwide support and money which typically pours into congressional campaigns and the statewide political party and political action committee (PAC) funding for legislative campaigns, campaigns for Sheriffs, District Attorneys, and Clerks of Superior Court are quintessentially local. Particularly in smaller counties in the State, a candidate filing is accompanied by much fanfare from the local populace and the local news media.

Prior to 8 December 2021, candidates could rely on the certainty of a two - week filing period for planning. Local campaigns throughout the State relied upon these deadlines for fundraising, ordering campaign signs, scheduling, attending public engagements, implementing election strategy, and filing for election. One of the hallmarks of democracy is an orderly

process for elections. Local boards of elections have historically been equipped and prepared to conduct candidate filing periods well before this Court issued its sweeping Order halting the candidate filing period for all elections for elective office not affected by this lawsuit. Restoration of the candidate filing period does not impose additional duties or burdens on local boards of elections.

This Court's stay of the filing period for an indefinite time two days after the filing period started has created unnecessary upheaval on candidates and prospective candidates for offices which will never be impacted by any of the Court's rulings on the 2021 Plan.

While this Motion to Intervene is only brought by the Proposed Intervenors, additional elective offices impacted by the Court's 8 December 2021 Order also include, but are not limited to, elections for boards of education, city council, county commission, and judicial seats. None of these elections are impacted by any of the Court's ruling on the 2021 Plan, yet the Court's Order is expansive and extremely disruptive to these local elective offices.

A perfect illustration of the dysfunction caused by this Court's order is demonstrated by the quagmire candidates for the Office of Sheriff now face when dealing with State mandated disclosure requirements. Session Law 2021-107 enacted into law on 16 August 2021, requires any candidate filing

to run for the Office of Sheriff to first obtain a “disclosure statement” from the North Carolina Sheriffs’ Education and Training Standards Commission (“Commission”). Disclosure statements are only valid for 90 days from the date on which they are issued by the Commission. To obtain the necessary disclosure statement, the prospective candidate must submit a packet of information to the Commission, which includes a statement regarding criminal history in addition to a full set of fingerprints. Once the Commission is in receipt of all necessary paperwork and signatures, State and federal criminal history checks are conducted and the Commission must verify through the Administrative Office of the Courts confidential expungement files that the prospective candidate has no prior expungement of any felony offense.

Once a prospective candidate obtains the disclosure statement, they may file with the local board of elections to run for the Office of Sheriff. The local board of elections is not authorized to accept a filing for candidacy for the Office of Sheriff unless a disclosure statement is provided at the time of filing. The Court’s 8 December 2021 Order creates additional upheaval unique to candidates seeking the Office of Sheriff who have obtained disclosure statements but were unable to file for candidacy during the first two days of filing. The disclosure statements these prospective candidates obtained will expire after 90 days and the process will have to be repeated for those candidates with expired disclosure statements. There is no

automatic renewal of disclosure statements under current law.

Without intervention, the Proposed Intervenor's rights to an orderly election process will not be protected. Indeed, this is underscored by the fact that the Court's 8 December 2021 Order impacts candidates throughout North Carolina who were not parties to this litigation and who will not and could not ever be affected by this Court's ruling on the 2021 Plan.

Finally, the relief sought by the Proposed Intervenor's does not advantage either the Plaintiffs or the Defendants in this litigation. Similarly, the relief sought by the Proposed Intervenor's does not disadvantage either the Plaintiffs or the Defendants in this litigation. This is because the above-captioned litigation has no impact whatsoever on the local election filing period that is the subject of the Proposed Intervenor's request for relief. Furthermore, neither incumbent candidates nor challenger candidates, regardless of their political affiliation, are either advantaged or disadvantaged by the relief sought by the Proposed Intervenor's. Given the complete lack of any relevance the claims brought in the above-captioned lawsuit have on the filing period that is the subject of the Proposed Intervenor's request for relief, this Court should grant the relief sought by the Proposed Intervenor's.

IV. CONCLUSION

An orderly democracy requires certainty. This Court's 8 December 2021 Order has unintentionally caused upheaval in elections which should

not have been affected. The Proposed Intervenors respectfully request that this Court reconsider its 8 December 2021 Order staying the candidate filing period for candidates for non-statewide local elected offices not affected by this case, or in the alternative for the Offices of Sheriff, District Attorney and Clerk of Superior Court, which will not be affected by the underlying lawsuits.

The Proposed Intervenors request that this Court immediately open up the filing period for candidates for non-statewide local elected offices not affected by this case, or in the alternative for the Offices of Sheriff, District Attorney and Clerk of Superior Court, for a period of eight days to conclude the ten - day filing period that began on 6 December that was interrupted by this Court's Order, or, alternatively, to immediately institute a new two - week candidate filing period.

Respectfully submitted this 29TH day of December, 2021.

Electronically submitted

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N.C. R. App. 33(b) Certification:

I hereby certify that all of the attorneys listed have authorized me to list their names on this document as if they

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CERTIFICATE OF SERVICE

Pursuant to North Carolina Rule of Appellate Procedure 26, I hereby certify that I have this day served a copy of the foregoing by email to the following:

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