

SUPREME COURT OF NORTH CAROLINA

NORTH CAROLINA LEAGUE OF
CONSERVATION VOTERS, INC. et
al.,

REBECCA HARPER, et al.,

COMMON CAUSE,

Plaintiffs,

v.

REPRESENTATIVE DESTIN HALL, in
his official capacity as Chair of the
House Standing Committee on
Redistricting, et al.

Defendants.

From Wake County

No. 21 CVS 015426

No. 21 CVS 500085

**STATE DEFENDANTS' RESPONSE TO
MOTIONS TO INTERVENE AND RECONSIDERATION
OF THE COURT'S DECEMBER 8, 2021 ORDER**

The State of North Carolina, the North Carolina State Board of Elections, its Members, and its Executive Director (“State Board” and collectively, the “State Defendants”), provide this response to the motion to intervene and motion to reconsider the Court’s December 8, 2021 Order filed by the North Carolina Sheriffs’ Association, the North Carolina District Attorneys Association, and the North Carolina Association of Clerks of Superior Court (“Proposed Intervenors”).

State Board Defendants’ Position

State Defendants take no position on the intervention request. Although State Defendants also take no position on whether the filing period should be reopened for contests not affected by the pending litigation in this matter, they oppose the immediate reopening of filing as requested by Proposed Intervenors. This is based on the administrative considerations outlined below.

As an initial matter, on January 6, 2022, the State Defendants filed a motion with the trial court to set a date certain for the resumption of all candidate filing in advance of the May 17, 2022 elections. The State Defendants requested that candidate filing resume on February 24, 2022 at 8:00 A.M. and continue to March 4, 2022 at noon. Legislative Defendants alternatively suggested the resumption of filing on January 18, 2022, which would not be administratively feasible for the State Board for the same

reasons stated below. This motion is still pending before the trial court.

While the resumption of candidate filing for Sheriffs, District Attorneys, and Clerks of Court (or the larger request for all non-statewide races not challenged in the instant matter), would impose an administrative burden for the State and county boards of elections, it is not an insurmountable burden to do so, but only if there is sufficient lead time to prepare for the resumption of filing.

An immediate resumption of candidate filing would likely be impossible for the State Board because the State Board's office is inadequate to ensure the health and safety of staff and candidates during candidate filing in the midst of the current rise in COVID-19 cases. As a result, an alternative filing site for candidates who file with the State Board would likely need to be identified and secured, which the State Board estimates would take at least three weeks.

Additionally, the State Board and county boards of elections may need to institute additional protocols necessary to protect staff and candidates during candidate filing, in light of the recent rise in COVID-19 infections. This will take some advance preparation.

Finally, in order to ensure that the public and candidates alike are aware of candidate filing periods, the State and county boards of election are in the practice of issuing notices to the public two to three weeks in advance

of the beginning of the filing period. Public notice would be especially important if there were two separate filing periods. There is no statutory requirement that this occur, but considering that the candidate filing period was suspended for this election cycle, it is important that this practice be carried out in advance of the resumption of candidate filing. For certain smaller counties, this is accomplished through notices published in the local papers, some of which publish only once a week, therefore requiring advance coordination by the county board.

Accordingly, should this Court be inclined to grant the proposed relief, State Defendants would request that a minimum period of three weeks be provided to accomplish the logistical and pandemic-related preparations necessary to resume candidate filing throughout the state. If, however, candidate filing was resumed at the end of February, as requested by the State Defendants to the trial court, an orderly filing period would be ensured.

Apart from the timing considerations, State Defendants share Legislative Defendants' concern that allowing certain candidates to file for office piecemeal could encourage other candidate groups to request similar relief, thereby increasing the administrative burden on the State and county boards and increasing confusion for candidates and the public alike. Consideration should also be given to the uncertainty that separate filing periods could generate for certain candidates and the voting public.

In the experience of election administrators, candidates are often deciding among multiple offices for which they may wish to file. With separate filing periods, candidates may be encouraged to file for more than one office in the same primary election, which is only possible under state law where the two offices a candidate files for have different filing periods. *See* N.C.G.S. § 163-106.6. After the first filing period closes, there is no provision allowing such a candidate to withdraw from that first contest. As a result, if that candidate filed for a second contest during the second filing period, that candidate would appear in multiple contests on the same primary ballot, and votes for that candidate must be counted in each contest. *See id.* § 163-106.4. This would generate confusion among candidates and voters. It would also introduce uncertainty regarding which party nominee will appear on the general election ballot, in the event that a candidate wins multiple primary contests because a candidate may not appear for two separate offices on the same general election ballot unless it is for the remainder of the unexpired term for an office. *See id.* § 163-124.

The State Defendants are sympathetic to the Proposed Intervenors, and other candidates, who have had their election plans and preparations disrupted by the ongoing litigation, and whose plans may be further disrupted by having to wait until that litigation is resolved. The State Board nonetheless respectfully submits that a single candidate filing period in late

February presents the least administrative burden. However, if the Court is inclined to grant the motion, the State Board requests a minimum of three weeks of notice to allow election administrators to address the administrative concerns expressed in this response.

CONCLUSION

State Defendants respectfully request that the Court consider the administrative issues explained above. Should the Court require further information, the State Board is prepared to provide supplemental filings as needed.

Respectfully submitted this 11th day of January, 2022.

N.C. DEPARTMENT OF JUSTICE

Electronically Submitted

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CERTIFICATE OF SERVICE

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This the 11th day of January, 2022.

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