

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS _____

2018 FEB 21 A 11:10

NORTH CAROLINA WAKE STATE C.S.C.
CONFERENCE OF NAACP BRANCHES;
LEAGUE OF WOMEN VOTERS OF
NORTH CAROLINA, DEMOCRACY
NORTH CAROLINA; A. PHILLIP
RANDOLPH INSTITUTE OF NORTH
CAROLINA; ELAINE OKAL; RETTA
RIORDAN; CHERYL TUNG; and
CANDACE BLACKLEY,
Plaintiffs,

**MOTION FOR PRELIMINARY
INJUNCTION**

vs.

DAVID R. LEWIS *in his official capacity as Senior Chairman of the North Carolina House of Representatives Select Committee on Redistricting for the 2017-2018 Session;* RALPH E. HISE *in his official capacity as Chairman of the North Carolina Senate Committee on Redistricting for the 2017-2018 Legislative Session;* TIMOTHY K. MOORE *in his official capacity as Speaker of the North Carolina House of Representatives;* and PHILLIP E. BERGER, *in his official capacity as President Pro Tempore of the North Carolina Senate;* THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS,
Defendants.

NOW COME Plaintiffs, by and through counsel, and respectfully move this Court, pursuant to Rule 7(b) and Rule 65 of the North Carolina Rules of Civil Procedure, for entry of an order granting a Preliminary Injunction. Plaintiffs show the Court as follows:

1. This is an action for declaratory and injunctive relief to prevent Defendants from conducting elections under a redistricting plan that was enacted in violation of the plain meaning of the North Carolina Constitution's limitations on the power of the General

Assembly to re-draw election districts, in a manner not required by federal law and to the detriment of the voters of Wake County.

2. The Complaint in this action has been filed contemporaneously with this Motion on this day February 21, 2018.
3. Plaintiffs have standing to bring this action and to assert the legal claims therein.
4. Plaintiffs seek to enjoin Defendant from relying on, enforcing, or conducting elections in Wake County House electoral districts 36, 37, 40, and 41 as they were redrawn and adopted by the General Assembly on August 31, 2017.
5. Plaintiffs ask that this Court restore the 2011 configurations of these districts for the purposes of the 2018 elections and oversee the immediate implementation of a map of Wake County State House Districts that restores the configurations of House Districts 36, 37, 40 and 41, continues to correct the racial gerrymandering found in the 2011 versions of House Districts 33 and 38, and direct that the candidate filing and the 2018 election shall take place pursuant to that system.
6. Under the election schedule currently in place for elections to North Carolina legislative offices, filing for those seats opened Monday, February 12, 2018, and the filing period closes on Wednesday, February 28, 2018.
7. In order to prevent irreparable harm to the Plaintiffs during the pendency of this litigation, it is feasible and necessary to alter the 2018 primary schedule slightly in order to accommodate the relief sought and ensure the 2018 general elections are conducted pursuant to a constitutional redistricting scheme.
8. Plaintiffs have submitted an attachment to this Motion laying out a schedule by which this Court could, if it moved quickly, order an interim plan in place for the 2018 elections

and still keep the revised, legal districts on the May 8, 2018, primary ballot. *See Ex. A.* If the Court finds, however, that the proposed schedule is too compressed, there still remains ample opportunity for Plaintiffs' rights to be preserved and their irreparable harm avoided by the conducting of a special primary for House Districts in Wake County this summer. This is exactly what occurred in 2016 when a federal court ordered the North Carolina General Assembly to redraw racially gerrymandered congressional districts nearly two months after the close of the filing period, and less than one month before the regularly scheduled primary. *See Harris v. McCrory*, 159 F. Supp. 3d 600 (M.D.N.C. 2016); *see also* 2016 N.C. Sess. Laws 2 (establishing a special primary to be held June 7, 2016 for the United State House of Representatives, with a filing period in March).

9. Plaintiffs are likely to succeed in demonstrating that House Districts 36, 37, 40 and 41 were unnecessarily altered in contravention Art. II, §5(4) of the North Carolina Constitution, which bars any changes to state legislative districts, absent a court order demanding a remedial district be drawn to remedy a constitutional violation, until the return of the next decennial census.
10. Absent a preliminary injunction, Plaintiffs are likely to suffer irreparable harm as a result of Defendants' constitutional violation that has infringed their constitutional right to remain in an unaltered State House district for the entire decade, free from the mid-decade gerrymandering of the districts they use to elect their representatives.
11. Plaintiffs ask that this Court order any delay in the current primary schedule as necessary to effectuate this relief.

12. Once the requested three- judge panel is appointed, Plaintiffs intend to promptly submit a memorandum in support of this motion, exhibits in support of the motion, and a proposed order.

WHEREFORE Plaintiffs respectfully request that this Court grant their motion for Preliminary Injunction enjoining Defendants from relying on, enforcing, or conducting elections in the aforementioned Wake County electoral districts as redrawn by the General Assembly in 2017 and schedule a hearing on the matter as soon as is feasible.

Respectfully submitted this the 21st day of February, 2018.



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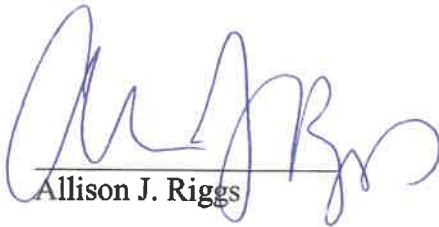
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day submitted a copy of the foregoing Motion for Preliminary Injunction in the above titled action with the Clerk of Superior Court in Wake County, and served the document by mail and electronic mail to the following parties:

Alexander McC. Peters
NC Department of Justice
P.O. Box 629
Raleigh, NC 27602
apeters@ncdoj.gov

This the 21st day of February, 2018.



Allison J. Riggs

Exhibit A – Plaintiffs’ Illustrative Remedial Schedule for Avoiding a Special Primary

Friday, March 9, 2018	Date by which Court orders interim map for Wake County House Districts for the 2018 elections
Monday, March 12, 2018 – Friday, March 16, 2018	Wake County Board of Elections Geocodes New Districts and Candidate Filing Period – run concurrently - applicable only to altered Wake County districts (2011 configuration of challenged districts have been geocoded before) – 5 days
Saturday, March 17, 2018 – Thursday, March 22, 2018	Ballot prep and proofing – ballots only have to be altered for a small number of Wake County State House Districts – 6 days
Friday, March 23, 2018 – Wednesday, April 4, 2018	Burning media and L&A testing – 13 days – running concurrently with absentee voting since this part of election preparation is only necessary for in person voting
Friday, March 23, 2018 – Tuesday, May 8, 2018	47 day absentee voting period (UOCAVA requires 45 days where a federal election is on the ballot. State law requires 50 days where there is a statewide election on the ballot, but there is no statewide election because the General Assembly cancelled the judicial primaries for Court of Appeals and Supreme Court races)
Thursday, April 19, 2018 – Saturday, May 5, 2018	Early voting period for primary election – 17 days
Tuesday, May 8, 2018	Primary election for state legislative and congressional seats