

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 14-1845 (L)
(1:13-cv-00660-TDS-JEP)
(1:13-cv-00658-TDS-JEP)
(1:13-cv-00861-TDS-JEP)

LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA; A. PHILIP
RANDOLPH INSTITUTE; UNIFOUR ONESTOP COLLABORATIVE;
COMMON CAUSE NORTH CAROLINA; GOLDIE WELLS; KAY BRANDON;
OCTAVIA RAINEY; SARA STOHLER; HUGH STOHLER

Plaintiffs

and

LOUIS M. DUKE; CHARLES M. GRAY; ASGOD BARRANTES; JOSUE E.
BERDUO; BRIAN M. MILLER; NANCY J. LUND; BECKY HURLEY MOCK;
MARY-WREN RITCHIE; LYNNE M. WALTER; EBONY N. WEST

Intervenors/Plaintiffs – Appellants

v.

STATE OF NORTH CAROLINA; JOSHUA B. HOWARD, in his official
capacity as a member of the State Board of Elections; RHONDA K. AMOROSO,
in her official capacity as a member of the State Board of Elections; JOSHUA D.
MALCOLM, in his official capacity as a member of the State Board of Elections;
PAUL J. FOLEY, in his official capacity as a member of the State Board of
Elections; MAJA KRICKER, in her official capacity as a member of the State
Board of Elections; PATRICK L. MCCRORY, in his official capacity as Governor
of the state of North Carolina

Defendants – Appellees

APPELLANTS' PETITION FOR WRIT OF MANDAMUS

Appellants respectfully petition this Court to enter an injunction effectuating the order and mandate issued by this Court on October 1, 2014, or in the alternative, to remand the case to another Judge of the United States District Court for the Middle District of North Carolina to execute immediately the mandate entered. This Court was unequivocal in its direction to the court below in the instant case, ordering on October 1, 2014, that the District Court enter an injunction as quickly as possible. This Court also denied the Appellees' October 1 request to stay the mandate. However, the District Court has yet to enter the preliminary injunction.

On October 1, 2014, this Court instructed the District Court "to enter as swiftly as possible a preliminary injunction" granting specific relief related to Same Day Registration and Out-of-Precinct Voting. That evening, the State moved for a recall and stay of this Court's mandate, and that motion was denied on October 2. Then, later on October 2, 2014, the District Court requested a telephonic status conference at 9 A.M. on October 3, 2014, to discuss "the court's authority to enter an injunction." Shortly after that conference was scheduled, Mr. Farr, attorney for the State, emailed the District Court's clerk and all counsel to inform the Court that Defendants had filed an emergency stay application with the

Supreme Court, and that responses were due on Sunday, October 5, at 5 P.M. At 8:46 A.M. today, the District Court then cancelled the conference, and asked the parties to “keep it informed of any appellate filings that may affect its authority to act as to these cases.” It is clear that the District Court does not intend to follow the direction of this Court.

The party seeking a writ of mandamus must demonstrate each and every one of the following requirements: (1) he has a clear and indisputable right to the relief sought; (2) the responding party has a clear duty to do the specific act requested; (3) the act requested is an official act or duty; (4) there are no other adequate means to attain the relief he desires; and (5) the issuance of the writ will effect right and justice in the circumstances. *Earley v. Braxton (In re Braxton)*, 258 F.3d 250, 261 (4th Cir. 2001).

Appellants are entitled to the immediate relief established by this Court’s order and mandate. “Once a case has been decided on appeal and a mandate issued, the lower court may not ‘vary it [the mandate] or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.’” *Stamper v. Baskerville*, 724 F.2d 1106, 1107 (4th Cir. 1984) (quoting *In re Sanford Fork & Tool Co.*, 160 U.S. 247,

255–56, 16 S.Ct. 291, 293, 40 L.Ed. 414 (1895)); *see also*, *Doe v. Chao*, 511 F.3d 461 (4th Cir. 2007); *Redic v. Gary H. Watts Realty Co.*, 862 F.2d 314 (4th Cir. 1988).

Not only must the district court follow the express terms of the mandate, the court must also implement the spirit of the mandate. “When this court remands for further proceedings, a district court must, except in rare circumstances, implement both the letter and spirit of the mandate, taking into account our opinion and the circumstances it embraces.” *United States v. Pileggi*, 703 F.3d 675, 679 (4th Cir. 2013) (internal alteration, quotation marks, and citation omitted).

It is clear that a district court in the Fourth Circuit does not have the authority to, in effect, stay the Fourth Circuit’s ruling pending Supreme Court review. In *United States v. Lentz*, 352 F. Supp. 2d 718, 726-27 (E.D. Va. 2005), it was noted that, “a stay of this case pending filing of Lentz’s certiorari petition would violate the “mandate rule,” as it would contravene the spirit of the Fourth Circuit’s mandate in this case. Significantly, Lentz already requested that the Fourth Circuit stay its mandate pending the filing of his certiorari petition, which request was denied.” *Id.* at 727. The court in *Lentz* held that it had no jurisdiction to stay the 4th Circuit’s mandate to enable the defendant to file cert, reasoning that, because 28 U.S.C. § 2101(f) grants that authority to “a judge of the court rendering

the judgment or decree or . . . a justice of the Supreme Court,” that authority clearly doesn’t belong to the district courts. *Id.* at 725.

Thus, in light of this Court’s detailed order, Appellants respectfully request that the Fourth Circuit enter an injunction consistent with its Opinion on October 1, or, in the alternative, the case be remanded to another Judge of the United States District Court for the Middle District of North Carolina to enter the injunction ordered by the Fourth Circuit.

Dated: October 3, 2014

Respectfully submitted,

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Dated: October 2, 2014

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on October 3, 2014, I served a copy of the foregoing Petition for Mandamus, with service to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action, namely:

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