

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 14-1856

(1:13-cv-00660-TDS-JEP)

(1:13-cv-00658-TDS-JEP)

(1:13-cv-00861-TDS-JEP)

NORTH CAROLINA STATE CONFERENCE OF BRANCHES OF THE NAACP; ROSANELL EATON; EMMANUEL BAPTIST CHURCH; BETHEL A. BAPTIST CHURCH; COVENANT PRESBYTERIAN CHURCH; CLINTON TABERNACLE AME ZION CHURCH; BARBEE'S CHAPEL MISSIONARY BAPTIST CHURCH, INC.; ARMENTA EATON; CAROLYN COLEMAN; JOCELYN FERGUSON-KELLY; FAITH JACKSON; MARY PERRY; MARIA TERESA UNGER PALMER

Plaintiffs - Appellants
and

NEW OXLEY HILL BAPTIST CHURCH; BAHEEYAH MADANY; JOHN DOE 1; JANE DOE 1; JOHN DOE 2; JANE DOE 2; JOHN DOE 3; JANE DOE 3

Plaintiffs
v.

PATRICK L. MCCRORY, in his official capacity as Governor of the 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

Defendants – Appellees.

**APPELLANTS' MOTION TO EXPEDITE APPEAL;
TO PROCEED ON THE ORIGINAL RECORD OR TO DEFER
FILING OF JOINT APPENDIX; AND TO SHORTEN RESPONSE
DEADLINES**

Appellants North Carolina State Conference Of Branches Of The NAACP; Rosanell Eaton; Emmanuel Baptist Church; Bethel A. Baptist Church; Covenant Presbyterian Church; Clinton Tabernacle Ame Zion Church; Barbee's Chapel Missionary Baptist Church, Inc.; Armenta Eaton; Carolyn Coleman; Jocelyn Ferguson-Kelly; Faith Jackson; Mary Perry; and Maria Teresa Unger Palmer move the Court as follows:

1. To expedite their appeal in the above-captioned matter and to adopt their proposed briefing schedule pursuant to 28 U.S.C. § 1657, Federal Rule of Appellate Procedure (“FRAP”) 31(a)(2), and Fourth Circuit Local Rule 12(c);
2. To order that this appeal may proceed on the original record pursuant to FRAP 30(f) and Local Rule 30(d), or in the alternative, to order that preparation of the joint appendix may be deferred until after the parties’ briefs have been filed, pursuant to FRAP 30(c);
3. To shorten Appellees’ time period to respond to this Motion from the default time period of 10 days, to a shortened response deadline of 3 days, pursuant to FRAP 27(a)(3)(A); and
4. To the extent necessary to give effect to the above-requested relief, to suspend the rules pursuant to FRAP 2.

In support whereof, Appellants state as follows:

STATEMENT OF FACTS

This appeal arises from the enactment and implementation of N.C.S.L. 2013-381 (hereinafter “HB 589”), which made sweeping changes to North Carolina’s election laws. Among other things, HB 589 significantly shortened the early-voting period, eliminated same-day voter registration, prohibited the counting of out-of-precinct provisional ballots, implemented a strict voter identification requirement, eliminated pre-registration for 16 and 17 year olds, expanded the number of poll observers and ballots challengers, and removed discretion from poll workers to keep polling locations open an extra hour on election day.

The very day that HB 589 was signed into law—August 12, 2013—Appellants brought suit arguing that various provisions of HB 589 violated Section 2 of the Voting Rights Act of 1965 and the Fourteenth and Fifteenth Amendments to the United States Constitution. The lower court scheduled a trial on the merits for the Summer of 2015. Because Appellants’ challenges to HB 589 would not be fully resolved before the November 4, 2014 general election,

Appellants sought a preliminary injunction to prevent Appellees from implementing the challenged provisions during the pendency of the litigation. The lower court held a hearing on Appellants' preliminary injunction motion from July 7 to July 10, 2014. On August 8, 2014, United States District Judge Thomas D. Schroeder of the Middle District of North Carolina entered an Order denying Appellants' motion for preliminary injunction.

The District Court's Order permits Appellees to implement the challenged provisions of HB 589 during the upcoming November 4, 2014 general election. If implemented, those provisions will abridge or outright deny the voting rights of large numbers of North Carolina citizens.

ARGUMENT

I. THE COURT SHOULD EXPEDITE THIS APPEAL AND ADOPT APPELLANTS' PROPOSED SCHEDULE

The reasons for expediting consideration of this appeal are straightforward. The State of North Carolina will conduct a general election on November 4, 2014. As things currently stand, Appellees are free to implement the challenged provisions of HB 589 during that

election, which Appellants believe will have the effect of denying or abridging the right to vote for large numbers of North Carolina citizens. If the Court does not expedite this appeal in order to review the denial of Appellants' motion for a preliminary injunction, the November 4 general election will proceed without appellate review of Appellants' requested relief and the Court will foreclose the possibility of any meaningful review of the trial court's August 8, 2014 Order.

The urgency is amplified by the fact that the last day for voters to register pursuant to HB 589 is October 10, 2014,¹ and that early voting would begin on October 16, 2014, under the relief requested. Thus, as a practical matter, an expedited decision from this Court by early October is necessary if it is to have any meaningful effect on the upcoming general elections and provide Appellants with any meaningful review of the District Court's Order.

Indeed, this case presents precisely the kind of circumstance in which expedited review is mandated by statute, *see* 28 U.S.C. § 1657 (“[E]ach court of the United States shall ... expedite the consideration of

¹ If the Court enjoins the implementation of S.L. 2013-381, North Carolina citizens will be able to register until the day before Election Day (nearly one month later).

any action for temporary or preliminary injunctive relief,” including cases implicating “a right under the Constitution of the United States or a Federal Statute”), and expressly permitted by the FRAP and this Court’s local rules, *see* FRAP 31(a)(2) (providing that an appellate court “may shorten the time to serve and file briefs”); Fourth Circuit Local Rule 12(c) (providing that the Court “may expedite an appeal for briefing and oral argument”).

To that end, Appellants propose the following schedule for briefing and oral argument:

August 28, 2014	Appellees’ shortened deadline (discussed in Section III, <i>infra</i>) to respond to this Motion
September 2, 2014	Appellants’ Brief due
September 9, 2014	Appellees’ Brief due
September 12, 2014	Appellants’ Reply Brief due
September 19, 2014	Oral argument

Although this proposed schedule is highly expedited, it is not unreasonable in light of the fact that the District Court’s decision (and therefore any possible decision by this Court) will directly affect every

registered voter in North Carolina who casts a ballot in the November 2014 general election. Indeed, this Court has previously expedited a voting-law-related appeal in advance of an upcoming election. *See, e.g., Lytle v. Commissioners of Election of Union County*, 541 F.2d 421, 423 (4th Cir. 1976) (“Hearing the case on expedited appeal, we affirmed the holding of the district court that the residency requirements of the election plan in Union County were unconstitutional.”). This Court has also previously recognized that the results of an election, once conducted, cannot easily (if at all) be undone. *See Republican Party v. N.C. State Bd. of Elections*, Nos. 94-1057 and 94-1113, 1994 U.S. App. LEXIS 14961, *6 (4th Cir. 1994) (“[W]ithout preliminary relief, [the political party] would suffer irreparable harm of constitutional magnitude through the degradation of its position in the electoral process during the November 1994 elections.”).

Appellants are more than willing to comply with—and capable of complying with—the proposed briefing and argument schedule. Appellants respectfully submit that such expedited review is critical in a case of this importance. For these reasons, Appellants urge the Court

to expedite the schedule for briefing and oral argument in this appeal and to issue a decision in early October 2014.

II. THE COURT SHOULD ORDER THAT THIS APPEAL MAY PROCEED ON THE ORIGINAL RECORD, OR IN THE ALTERNATIVE, SHOULD ORDER THAT PREPARATION OF THE APPENDIX MAY BE DEFERRED UNTIL AFTER BRIEFS HAVE BEEN FILED

Rule 30(f) of the Federal Rules of Appellate Procedure provides that the Court may “dispense with the appendix and permit an appeal to proceed on the original record with any copies of the record, or relevant parts, that the [C]ourt may order the parties to file.” *See also* Fourth Circuit Local Rule 30(d) (stating that an appendix may be significantly abbreviated when a case is expedited).

The parties would likely encounter substantial difficulties in assembling an agreed-upon joint appendix in accordance with Appellants’ proposed expedited schedule. For this reason, Appellants request that the Court dispense with the requirement of a joint appendix (except for the abbreviated requirements set forth in Local Rule 30(d)) and allow this appeal to proceed on the original record. In the alternative, Appellants request that the Court permit the filing of

any joint appendix to be deferred until after the parties shall have filed their briefs in this appeal.

III. THE COURT SHOULD SHORTEN APPELLEES' DEADLINE TO A PERIOD OF THREE DAYS TO RESPOND TO APPELLANTS' MOTIONS

Rule 27(a)(3)(A) of the Federal Rules of Appellate Procedure provides that responses to motions “must be filed within 10 days after service of the motion unless the [C]ourt shortens or extends the time.” In light of the extensive briefing and discussion that the issues involved in this case have already received in the District Court below, Appellees should not need 10 days to respond to this Motion. For this reason, Appellants request that the Court shorten Appellees’ deadline to a period of three days.

**STATEMENT PURSUANT TO FOURTH CIRCUIT LOCAL
RULE 27(a)**

Counsel for Appellees have been notified of the intended filing of this Motion. Counsel for Appellees have informed Appellants that they oppose all of the relief sought in this motion.

WHEREFORE, Appellants pray that the Court grant the relief requested in this Motion and award such other and further relief as the Court may deem appropriate.

Respectfully submitted, this the 25th day of August, 2014.

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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of August, 2014, I caused a copy of the foregoing to be served by electronic mail upon the following counsel for Appellees:

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