

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 14001

COMMON CAUSE, et al.,

Plaintiffs,

v.

REPRESENTATIVE DAVID LEWIS in his
official capacity as Senior Chairman of the House
Select Committee on Redistricting; et al.,

Defendants.

STATE DEFENDANTS'
MEMORANDUM ON ELECTION
ADMINISTRATION AND DEADLINES

Defendants the North Carolina State Board of Elections and its members (collectively, the “State Defendants”) hereby submit this memorandum on administrative limitations and deadlines related to the 2020 primary elections, as ordered by the Court on September 17, 2019.

The affidavit of State Board Executive Director Karen Brinson Bell (“Bell Aff.”), which has been filed contemporaneous with the service of this brief, provides a detailed discussion of the relevant administrative processes that the State Board and county boards carry out in preparation for an election. It identifies the amount of time required to accomplish each process that occurs after the State Board receives district shapefiles, and before absentee ballots are distributed. *See* Bell Aff. ¶¶ 4–13. Time estimates are provided as ranges due to unknown contingencies, as explained in the affidavit. The affidavit further explains the administrative processes and deadlines that would be triggered if a separate primary were ordered, *see id.* ¶¶ 14–18, a potential remedial option that the Court identified in decretal paragraph 18 of its Judgment of September 3, 2019.

Rather than restate the contents of Ms. Bell’s affidavit, State Defendants highlight below the top-line conclusions of the affidavit that are most relevant to the Court’s deliberations during the remedial phase of this action:

- Under the current statutory deadline for distributing absentee ballots for the March 2020 primary, the State Board would need to receive shapefiles for the legislative districts at issue between now and December 2–10, 2019. *Id.* ¶ 10.
- If the deadline to distribute absentee ballots were extended by five days—which the State Board could authorize by majority vote, *see* N.C.G.S. § 163-227.10(a), or the Court could order—the State Board would need to receive shapefiles for the legislative districts at issue between now and December 7–15, 2019. *Bell Aff.* ¶ 10.
- There are provisions in the law that would permit the State Board to delay distribution of absentee ballots for the March 2020 primary by more than five days, *id.* ¶ 9; but given the procedures that must take place between ballot distribution and early voting, moving the absentee ballot deadline by more than five days is unlikely to change the date by which shapefiles would need to be provided to the State Board, *id.* ¶¶ 11–13.
- If the Court were to order a separate primary involving the legislative districts at issue, it would take the State Board approximately 63 to 71 days to prepare before early voting in that separate primary could begin, and that preparation likely could not begin until March 14, 2020, for technical reasons. *Id.* ¶¶ 15, 17. If this remedy were contemplated, State Defendants recommend that the Court consider whether any second primaries that may be required, in any event, for contests that were not resolved in the March primary, *see* N.C.G.S. §§ 163-111(b), (e), should be aligned with the dates for any primaries this Court sets after the currently scheduled March primary. This would require a court order. If the Court were to consider such a

course, the State Defendants are ready and willing to provide the Court with any additional information that could be helpful to the Court.

State Defendants and staff from the State Board are available to answer any further questions from the Court or its referee regarding administrative considerations relevant to the Court's remedial decisions.

Respectfully submitted this ^{4th} ___ day of October, 2019.

N.C. DEPARTMENT OF JUSTICE



Amar Majmundar
Senior Deputy Attorney General
State Bar No. 24668

Stephanie A. Brennan
Special Deputy Attorney General
State Bar No. 35955

Paul M. Cox
Special Deputy Attorney General
State Bar No. 49146

North Carolina Dept. of Justice
Post Office Box 629
Raleigh, N.C. 27602
Emails: amajmundar@ncdoj.gov
sbrennan@ncdoj.gov
pcox@ncdoj.gov
Tel: (919) 716-6900
Fax: (919) 716-6763

Attorneys for State Defendants

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing document in the above titled action upon all parties to this cause by depositing a copy by email and addressed as follows:

Edwin M. Speas, Jr.
espeas@poynerspruill.com
Caroline P. Mackie
cmackie@poynerspruill.com
Poyner Spruill LLP
P.O. Box 1801
Raleigh NC 27602-1801
*Counsel for Common Cause,
the North Carolina Democratic Party,
and the Individual Plaintiffs*

R. Stanton Jones
stanton.jones@arnoldporter.com
David P. Gersch
David.gersch@arnoldporter.com
Elisabeth S. Theodore
Elisabeth_theodore@arnoldporter.com
Daniel F. Jacobson
Daniel.jacobson@arnoldporter.com
Arnold & Porter Kaye Scholer, LLP
601 Massachusetts Ave. NW
Washington DC 20001-3743
*Counsel for Common Cause
and the Individual Plaintiffs*

Mark E. Braden mbraden@bakerlaw.com
Richard Raile rraile@bakerlaw.com
Trevor Stanley tstanley@bakerlaw.com
Baker & Hostetler, LLP Washington Square,
Suite 1100 1050 Connecticut Ave., NW
Washington, DC 20036-5403
Counsel for Legislative Defendants

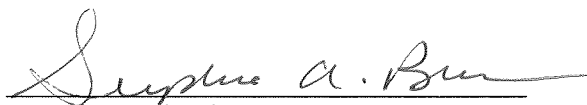
Marc E. Elias melias@perkinscoie.com
Aria C. Branch abranche@perkinscoie.com
Perkins Coie, LLP
700 13th Street NW
Washington DC 20005-3960
*Counsel for Common Cause and the
Individual Plaintiffs*

Abha Khanna akhanna@percinscoie.com
Perkins Coie, LLP
1201 Third Ave.
Suite 4900
Seattle WA 89101-3099
*Counsel for Common Cause and the
Individual Plaintiffs*

Phillip J. Strach Phillip.strach@ogletree.com
Michael McKnight
Michael.mcknight@ogletree.com
Alyssa Riggins
Alyssa.riggins@ogletree.com
Ogletree, Deakins et al.
4208 Six Forks Rd., St. 1100
Raleigh, NC 27609
Counsel for Legislative Defendants

John E. Branch, III
jbranch@shanahanmcdougal.com
H. Denton Worrell
dworrell@shanahanmcdougal.com
Nathaniel J. Pencoek
npencoek@shanahanmcdougal.com
Shanahan McDougal, PLLC
128 E. Hargett Street, Suite 300
Raleigh, NC 27601
Attorneys for Defendant-Intervenors

This the 4th day of October, 2019.

A handwritten signature in cursive script, reading "Stephanie A. Brennan", written over a horizontal line.

Stephanie A. Brennan
Special Deputy Attorney General