

STATE OF NORTH CAROLINA
COUNTY OF WAKE

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2020 MAY 19 P 2:58

CASE NO. 20 CVS 2965

ADVANCE NORTH CAROLINA,

WAKE CO., C.S.C.

PLAINTIFF,

BY

v.

THE STATE OF NORTH CAROLINA,
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS, *and*
DAMON CIRCOSTA, *in his official
capacity as Chair of the North Carolina
State Board of Elections,*

DEFENDANTS, *and*

PHILIP E. BERGER *in his official
capacity as President Pro Tempore of
the North Carolina Senate, and*
TIMOTHY K. MOORE *in his official
capacity as Speaker of the North
Carolina House of Representatives,*

PROPOSED
INTERVENOR-
DEFENDANTS.

**NOTICE OF INTERVENTION AS OF
RIGHT**
N.C. R. Civ. P. 24(c)

Proposed Intervenor-Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, hereby give notice of their intervention in this matter under N.C. GEN. STAT. ANN. § 1-72.2(b) and N.C. Rule of Civil Procedure 24(c).

In support of this notice, President Pro Tempore Berger and Speaker Moore show that they are entitled to intervene as of right as follows:

1. “It is the public policy of the State of North Carolina that any action in any North Carolina State court in which the validity or constitutionality of an act of the General Assembly is challenged . . . the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch of the State of North Carolina and the Governor constitutes the executive branch of the State of North Carolina, and when the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina.” N.C. GEN. STAT. ANN. § 1-72.2(a).

2. In light of this public policy, the N.C. Rules of Civil Procedure state that “[t]he Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, must be joined as defendants in any civil action challenging the validity of a North Carolina statute or provision of the North Carolina Constitution under State or federal law.” *Id.* § 1A-1, R. 19(d); *see also id.* § 120-32.6 (“Whenever the validity or constitutionality of an act of the General Assembly or a provision of the Constitution of North Carolina is the subject of an action in any State or federal court, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, shall be necessary parties . . .”). As described below, this is just such an action.

3. In November 2019, the General Assembly enacted Senate Bill 683 (“SB 683”). Among other things, SB 683 made two pertinent changes to North Carolina law. SB 683 passed the North Carolina Senate by a vote of 49-0 and the North Carolina House of Representatives by a vote of 111-1, and was signed into law by Governor Roy Cooper.

4. First, SB 683 requires that voters’ absentee ballot requests be completed only by the voters themselves, their near relatives or verifiable legal guardians, or a member of a multipartisan team trained and authorized by the county board of elections. If voters requesting the absentee ballot require assistance in completing the request form due to blindness, disability, or illiteracy, however, and there are no near relatives or legal guardians available to assist, then they may request that others give assistance, so long as they disclose their name and address on the request form.

5. Second, SB 683 requires that all completed absentee ballot request forms be delivered to the county board of elections only by either voters themselves, their near relatives or verifiable legal guardian, or a member of a multipartisan team trained and authorized by the county board of elections.

6. Plaintiff filed the present action on March 4, 2020, challenging the legality of both these aspects of SB 683. Plaintiff alleges that “[b]y restricting Plaintiff’s and other organizations’ ability to assist voters in obtaining absentee ballots, [SB 683] inhibits constitutionally protected political activity and obstructs the will of North Carolina voters by making it harder for them to participate in the political process.” Compl. ¶ 9.

7. Plaintiff here has ignored the clear command of N.C. Rule of Civil Procedure 19(d) because it “challeng[es] the validity of a North Carolina statute . . . under State . . . law,” *id.*, and yet failed to join President Pro Tempore Berger and Speaker Moore, as agents of the State on

behalf of the General Assembly. *See also* N.C. GEN. STAT. ANN. § 120-32.6. As Plaintiff's prayer for relief states, it seeks "a declaratory judgment . . . that [SB 683] is unconstitutional and invalid because it violates the rights of Plaintiff and North Carolina voters under the North Carolina Constitution's Equal Protection and Law of the Land Clauses, Art. I, § 19; Free Elections Clause, Art. I, § 10; and Freedom of Speech and Freedom of Assembly Clauses, Art. I, §§ 12 & 14." Compl. at 18. Further, Plaintiffs have requested the appointment of a three-judge panel to hear this case pursuant to N.C. GEN. STAT. ANN. § 1-81.1(a1) "because this action involves a determination as to the facial validity of an act of the General Assembly." Compl. ¶ 7.

8. Plaintiff's action unquestionably calls into doubt the compatibility of certain portions of SB 683 with the State's Constitution. Plaintiff was thus required under Rule 19(d) and Section 120-32.6 to join President Pro Tempore Berger and Speaker More as defendants. North Carolina law anticipates such failures and allows the General Assembly to represent its interests nonetheless: "The Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, by and through counsel of their choice, including private counsel, shall jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution." N.C. GEN. STAT. ANN. § 1-72.2(b).

9. Because Plaintiff did not join President Pro Tempore Berger and Speaker Moore as defendants to this action, Proposed Intervenor-Defendants now exercise their right under Section 1-72.2(b) "to intervene on behalf of the General Assembly as a party in [this] judicial proceeding challenging a North Carolina statute."

10. North Carolina law dictates that President Pro Tempore Berger and Speaker Moore's intervention "shall be effected upon the filing of a notice of intervention of right in the

trial . . . court in which the matter is pending.” N.C. GEN. STAT. ANN. § 1-72.2(b); *see id.* § 1A-1, R. 24(c). Through this filing, Proposed Intervenor-Defendants hereby give the Court notice of their intervention as of right.

WHEREFORE, Proposed Intervenor-Defendants request that this Court give effect to their notice of intervention as of right.

Dated: May 19, 2020

 *Foc;*

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Respectfully submitted,



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Counsel for Proposed Intervenor-Defendants

**Motion for Admission Pro Hac Vice Forthcoming*

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 19th day of May, 2020, served a copy of the foregoing Proposed Intervenor-Defendants' Notice of Intervention as of Right, by United States mail, postage prepaid, to counsel for Plaintiff and Defendants at the following addresses:

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This 19th day of May, 2020.



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