

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2020 MAY 19 P 2:58

CASE NO. 19 CVS 14688

WAKE CO., C.S.C.

NORTH CAROLINA DEMOCRATIC
PARTY, DSCC *a/k/a* DEMOCRATIC
SENATORIAL CAMPAIGN
COMMITTEE, *and* DCCC *a/k/a*
DEMOCRATIC CONGRESSIONAL
CAMPAIGN COMMITTEE,

PLAINTIFFS,

**NOTICE OF INTERVENTION AS OF
RIGHT**

N.C. R. Civ. P. 24(c)

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.

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. The State provides voters with the option of using “one-stop early voting” to cast their ballots in elections. One-stop early voting allows registered voters to cast an absentee ballot at any one-stop absentee voting site in the county on certain days prior to Election Day.

4. In June 2018, the General Assembly enacted into law Senate Bill 325 (“SB 325”). The effect of that law was simple: It established State-wide or county-wide uniform requirements for early one-stop early voting, including requiring (1) that every one-stop site across the county be open at that same location during the entire early-voting period; (2) that every one-stop site be opened across the county if any one of those sites is open; (3) that weekday one-stop early voting take place between 7:00 AM and 7:00 PM across the State until the Friday before Election Day; and (4) that any Saturday or Sunday early voting in any county take place during the same hours at every site throughout the county. The next month, the General Assembly amended SB 325 by enacting House Bill 335 (“HB 335”), which specified that the early voting period for elections held in 2018 would extend to 1:00 P.M. on the last Saturday before that election, although county boards of election maintained discretion to conduct one-stop early voting until 5:00 P.M. on that Saturday. This portion of HB 335 expired at the beginning of 2019.

5. In November 2019, the General Assembly passed Senate Bill 683 (“SB 683”) which, among other things, made two permanent changes to one-stop early voting. First, SB 683 reinstated early voting between 8:00 A.M. and 3:00 P.M. on the last Saturday before an election. Second, SB 683 adjusted the hours of weekday early voting from 7:00 AM to 7:00 PM to 8:00 A.M. to 7:30 P.M.

6. Plaintiffs filed the present action on October 28, 2019, the primary challenge of which focused on the lack of any “last Saturday” voting in the 2020 elections. However, SB 683, described above, permanently reinstated “last Saturday” voting. So Plaintiffs’ remaining challenge

is leveled only at SB 325's requirement (modified by SB 683) that each satellite polling location must remain open from 8:00 A.M. to 7:30 P.M. every weekday of the early voting period.

7. Plaintiffs here have ignored the clear command of N.C. Rule of Civil Procedure 19(d) because they “challeng[e] 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 Plaintiffs' prayer for relief states, they seek “a declaratory judgment . . . that SB 325 is unconstitutional and invalid because it violates the rights of Plaintiffs 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 20. 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. ¶ 16.


8. Plaintiffs' action unquestionably calls into doubt the compatibility of SB 325 and SB 683 with the State's Constitution. Plaintiffs were 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 Plaintiffs 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.

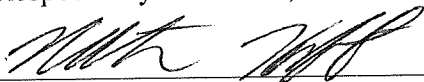
WHEREFORE, Proposed Intervenor-Defendants request that this Court give effect to their notice of intervention as of right.

Dated: May 19, 2020


COOPER & KIRK, PLLC
Michael W. Kirk*
David H. Thompson*
Peter A. Patterson*
Nicole J. Moss (State Bar No. 31958)
Steven J. Lindsay*
1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036
Telephone: (202) 220-9600
Fax: (202) 220-9601
nmoss@cooperkirk.com

Counsel for Proposed Intervenor-Defendants

Respectfully submitted,


PHELPS DUNBAR LLP
Nathan Huff, Esq.
4140 ParkLake Avenue, Suite 100
Raleigh, N.C. 27612
Telephone: (919) 789-5300
Fax: (919) 789-5301
nathan.huff@phelps.com
State Bar No. 40626

**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 Plaintiffs and Defendants at the following addresses:

For the Plaintiffs:

Marc E. Elias
Uzoma N. Nkwonta
Alexander G. Tischenko
Christopher J. Bryant
PERKINS COIE LLP
700 Thirteenth St., N.W., Suite 600
Washington, D.C. 20005-3960

Burton Craige, State Bar No. 9180
Narendra K. Ghosh, State Bar No. 37649
Paul E. Smith, State Bar No. 45014
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, N.C. 27517

For the State Defendants:

Olga E. Vysotskaya de Brito
Paul M. Cox
Amar Majmundar
NORTH CAROLINA DEPARTMENT OF JUSTICE
114 W. Edenton St.
Raleigh, N.C. 27603

Katelyn Love
North Carolina State Board of Elections
430 N. Salisbury Street, 3rd floor
Raleigh, NC 27603
Attorneys for North Carolina State Board of Elections

This 19th day of May, 2020.



PHELPS DUNBAR LLP
Nathan Huff, Esq.
4140 ParkLake Avenue, Suite 100
Raleigh, North Carolina 27612
Telephone: (919) 789-5300
Fax: (919) 789-5301
nathan.huff@phelps.com
State Bar No. 40626

*Counsel for Proposed
Intervenor-Defendants*