

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

**FILED**  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2020 MAY 19 P 2:59

WAKE CO., C.S.C. CASE NO. 20 CVS 05615

MICHAEL STRINGER; SARAH  
FELLMAN, DR. LAURA SINAI,  
PATRICIA MATOS AGUILERA, DR.  
MARGARET CURTIS, and ANN  
BUTZNER,

PLAINTIFFS,

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 . . . .”); *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. Since 2001, North Carolina has adopted “no-excuse” absentee voting, allowing any qualified citizen to vote by mail without justification. That said, the State has also mandated that voters wishing to vote with an absentee ballot must follow certain procedures in doing so. Three of those requirements are pertinent here.

4. First, the State requires that all voters casting absentee ballots must mark their ballot in the presence of two qualified individuals who are at least 18 years old or a public notary, place the ballots in a sealed envelope, certify that they are qualified to vote, and then have either the witnesses or a notary sign the envelope.

5. Second, to request an absentee ballot, a voter must complete an application, which must be delivered to the local county board of elections through one of the following methods: in person by the voter, by the voter’s near relative or legal guardian, by a member of the bipartisan assistance team trained and authorized by the county board of elections; or through the United States Postal Service or another authorized delivery service. These same options are available for the submission of absentee ballots themselves. Should the voter choose to mail an application or ballot, the voter is responsible for the cost of postage.

6. Third, under State law an absentee ballot is timely only: (1) if received by no later than 5:00 P.M. on Election Day, unless federal law independently requires election officials to accept the ballot, or (2) the ballot envelope is postmarked by Election Day and the ballot is received by no later than 5:00 P.M. on the third day after the election.

7. Prompted by the COVID-19 pandemic, Plaintiffs filed the present action on May 4, 2020, challenging the legality of each of these absentee-voting requirements. In addition, Plaintiffs further challenge what they allege is the practice of certain county election officials to verify whether the signature on an absentee ballot in fact belongs to the voter by comparing the signature on the envelope to the voter’s signature on file with the election office. All told, Plaintiffs allege that “the challenged absentee ballot restrictions will act individually and in concert to make voting by mail, at minimum, unduly burdensome, and, at worst, downright inaccessible for many eligible voters during this pandemic.” Compl. ¶ 69.

8. 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 the foregoing laws and practices are “unconstitutional and invalid because they violate the rights of Plaintiffs and all North Carolina voters under the Free Elections Clause, Art. I, § 10, and the Equal Protection and Law of the Land Clauses, Art. I, §§ 12, 14, and 19.” Compl. at 29; *see also id.* (seeking an additional declaratory judgment “that the State’s failure to provide pre-paid postage for the return of all absentee ballots and applications for the November 2020 election is unconstitutional and invalid” under the same constitutional provisions). 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 acts of the General Assembly.” Compl. ¶ 24.

9. Plaintiffs’ action unquestionably calls into doubt the compatibility of certain portions North Carolina election law 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).

10. 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.”

11. 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

 For:

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Respectfully submitted,



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*\*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:

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This 19th day of May, 2020.



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