

NO. _____

TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

STELLA ANDERSON, PAM
WILLIAMSON, MARIANNE
CLAWSON, ALAINA DOYLE,
LAUREN LARUE JOYNER, IAN
O’KEEFE, AND DAVID SABBAGH,

From Wake County
14 CVS 12648

Petitioners,

v.

THE NORTH CAROLINA STATE
BOARD OF ELECTIONS,

Respondent.

**PETITION BY THE NORTH CAROLINA STATE BOARD
OF ELECTIONS FOR DISCRETIONARY REVIEW OF
ITS EMERGENCY MOTION FOR TEMPORARY STAY
PENDING APPEAL, PETITION FOR WRIT OF SUPERSEDEAS,
AND MOTION FOR EXPEDITED RESPONSE**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to Rule 15(a) of the North Carolina Rules of Appellate Procedure, Respondent the North Carolina State Board of Elections (the “State Board”) respectfully requests that this Court certify for discretionary review the Emergency Motion for Temporary Stay Pending Appeal, Petition for Writ of Supersedeas, and Motion for Expedited Response, which was filed in the North Carolina Court of Appeals on this date. A copy of the filing made in the North Carolina Court of Appeals is attached hereto. The filings in the North Carolina Court of Appeals seek to stay enforcement of the judgment of the Honorable Donald W. Stephens, Judge Presiding, Wake County Superior Court, dated 13 October 2014.

The State Board seeks a stay pending appellate review of the trial court’s order denying the State Board’s motion to dismiss a purported petition for judicial review and remanding the matter to the State Board for adoption of an early voting plan for Watauga County which has at least one early voting site on the Appalachian State University campus. The trial court’s order was issued ten days before the start of early voting. If not stayed by this Court, the order, which is *ultra vires*, threatens the orderly operation of the election while infringing on the statutorily conferred discretion of the State Board.

In support of this petition for discretionary review, the State Board shows as

follows:

1. Pursuant to N.C. Gen. Stat. § 163-227.2(g), if a county board of elections considers one or more early voting plans and is unable to reach unanimity in favor of a plan, any member of the county board may petition the State Board to adopt a plan for it.
2. Upon receiving a petition from a county board of elections, the State Board of Elections “may adopt a plan for that county. The State Board, in that plan, shall take into consideration factor including geographic, demographic, and partisan interests of that county.” Id.
3. The Board of Elections of Watauga County was unable to unanimously agree on an early voting plan, and the minority member petitioned the State Board to adopt a plan for Watauga County.
4. On 21 August 2014, the State Board held a meeting at which it considered nonunanimous plans from fourteen counties, and conducted other business. At the meeting, the State Board adopted an early voting plan for Watauga County.
5. On 19 September 2014, seven registered voters in Watauga County (“Petitioners”) filed a “petition for judicial review” in Wake County Superior Court, purporting to seek review of the State Board’s adoption of

the early voting plan for Watauga County. The only respondent named by Petitioners was the State Board. As part of their requested relief, Petitioners asked the trial court to “direct Respondent to adopt a Plan [for Watauga County] that does not erect unnecessary barriers in voting or otherwise discriminate against voters aged 18-25 in violation of Article I, Section 19, of the North Carolina Constitution.”

6. The State Board moved to dismiss the petition for judicial review on several grounds, including (1) there was no right to judicial review of the particular action of the State Board; (2) Petitioners did not have standing to challenge by petition for judicial review an action to which they were not parties; and (3) even if judicial review of this particular decision were authorized, the constitutional rights of Petitioners was not an issue that could be resolved on judicial review.
7. The superior court denied the State Board’s motion to dismiss and entered an order remanding the matter to the State Board to “adopt an early voting plan for Watauga County for the 2014 November general election that includes at least one voting site on the ASU campus.”
8. The order was entered on 13 October 2014. Early voting begins on 23 October 2014. See N.C. Gen. Stat. § 163-227.2(b) (early voting begins

on the second Thursday before the election).

9. The State Board filed a Notice of Appeal of the trial court's order on 16 October 2014. The trial court denied the State Board's motion for a stay pending the appeal on 16 October 2014.
10. Pursuant to Rules 8 and 23 of the North Carolina Rules of Appellate Procedure, the State Board has filed an emergency motion for temporary stay pending appeal and a petition for writ of supersedeas in the North Carolina Court of Appeals.
11. The State Board has included a Motion for Expedited Response in its filings with the North Carolina Court of Appeals, asking the Court to order that any response to the Emergency Motion for Temporary Stay Pending Appeal and Petition for Writ of Supersedeas be filed no later than 5:00 p.m. on Monday, 20 October 2014.
12. Pursuant to Rule 15(a) of the North Carolina Rules of Appellate Procedure, the State Board respectfully requests that this Court certify the Emergency Motion for Temporary Stay Pending Appeal, Petition for Writ of Supersedeas, and Motion for Expedited Response for discretionary review by this Court in the first instance.
13. The State Board requests review by this Court before determination by the

Court of Appeals because (1) the subject matter has significant public interest; (2) it involves legal principles of major significance to the jurisprudence of the State; and (3) delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm. N.C. Gen. Stat. §7A-31(b).

14. The trial court's order commands the State Board to adopt an early voting plan for Watauga County that includes at least one early voting site on the ASU campus. This order purportedly remedies an allegedly unconstitutional action taken by the Watauga County Board of Elections, which was not a party before the trial court, and ratified by the State Board, which did not have that issue before it. The trial court's order is *ultra vires* and purports to remedy a constitutional violation that has never been proven.

15. A stay will maintain order in the conduct of early voting. Directing the State Board only ten days prior to the start of early voting to adopt a new early voting plan for a county, which plan includes an early voting site on the property of a third party, is unreasonable, especially when neither the county nor the third party are parties to the action. Indeed, the United States Supreme Court has noted that judicial decisions changing the way in

which an election is conducted on the eve of that election can “result in voter confusion and consequent incentive to remain away from the polls.”

Purcell v. Gonzalez, 549 U.S. 1, 4-5 (2006).

16. Should the Court of Appeals deny the State Board’s motion for temporary stay and petition for writ of supersedeas, the State Board would appeal that denial to this Court. The State Board anticipates that should the Court of Appeals grant the motion for temporary stay and petition for writ of supersedeas, Petitioner would appeal that grant to this Court. In the interest of time, given that early voting begins in one week, the State Board respectfully requests that this Court decide the question in the first instance.

WHEREFORE, the State Board respectfully prays that this Court certify for review the Emergency Motion for Temporary Stay Pending Appeal, Petition for Writ of Supersedeas, and Motion for Expedited Response, filed in the North Carolina Court of Appeals on 16 October 2014; issue a temporary stay of the enforcement of the trial court’s 13 October 2014 order pending this Court’s ruling on the State Board’s petition for writ of supersedeas; issue its writ of supersedeas to the Wake County Superior Court, staying enforcement of its order, pending determination of the appeal now pending; issue an order requiring that any response

to this motion and petition be filed no later than 5:00 p.m. on Friday, 20 October 2014; and that the State Board have such other relief as the Court may deem proper.

Respectfully submitted, this 16th day of October, 2014.

ROY COOPER
Attorney General

Electronically Submitted
Katherine A. Murphy
Special Deputy Attorney General
N.C. State Bar No. 26572
E-mail: kmurphy@ncdoj.gov

N.C. App. R. 33(b) Certification: I certify that the attorney listed below has authorized me to list his name on this petition as if he had personally signed.

Electronically Submitted
Alexander McC. Peters
Senior Deputy Attorney General
State Bar No. 13654
E-mail: apeters@ncdoj.gov
North Carolina Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602-0629
Tel: (919) 716-6900
Fax: (919) 716-6763

Counsel for Respondent

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **Petition by the North Carolina State Board of Elections for Discretionary Review of Its Emergency Motion for Temporary Stay Pending Appeal, Petition for Writ of Supersedeas, and Motion for Expedited Response** in the above titled action upon all other parties to this cause by:

- [] Hand delivering a copy hereof to each said party or to the attorney thereof;
- [X] Transmitting a copy hereof to each said party via email; or
- [X] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

William R. Gilkeson, Jr.
Sabra J. Faires
Larry Reeves
Michael L. Weisel
BAILEY & DIXON, LLP
434 Fayetteville St., Suite 2500
P.O. Box 1351
Raleigh NC 27602
Counsel for Petitioners

This, the 16th day of October, 2014.

Electronically Submitted
Katherine A. Murphy
Special Deputy Attorney General