

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:

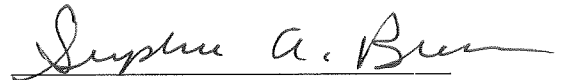
- Under the current statutory deadline for distributing absentee ballots for the March 2020 primary, the State Board would need to receive shapefiles for the legislative districts at issue between now and December 2–10, 2019. *Id.* ¶ 10.
- If the deadline to distribute absentee ballots were extended 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



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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:

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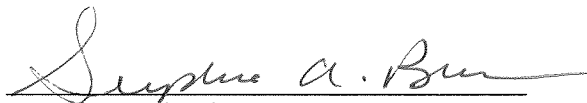
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This the 4th day of October, 2019.

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

Stephanie A. Brennan
Special Deputy Attorney General