

No. 22-1251

IN THE
United States Court of Appeals

FOR THE FOURTH CIRCUIT

MADISON CAWTHORN, an individual,

Plaintiff-Appellee,

v.

MR. DAMON CIRCOSTA, in his official capacity as Chair of the North Carolina State Board of Elections, MS. STELLA ANDERSON, in her official capacity as a member of the North Carolina State Board of Elections, MR. JEFF CARMON, in his official capacity as a member of the North Carolina State Board of Elections, MR. STACY EGGERS IV, in his official capacity as a member of the North Carolina State Board of Elections, MR. TOMMY TUCKER, in his official capacity as a member of the North Carolina State Board of Elections, MS. KAREN BRINSON BELL, in her official capacity as the Executive Director of the North Carolina State Board of Elections,

Defendants, and

LAUREL ASHTON, MICHAEL “MIKE” HAWKINS, MELINDA LOWRANCE, ELLEN BETH RICHARD, and TERRY LEE NEAL,

Defendant-Intervenor-Appellants.

On Appeal from the United States District Court for the Eastern District of North Carolina

**DEFENDANT-INTERVENOR-APPELLANTS’
MOTION TO EXPEDITE APPEAL**

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Defendant-Intervenor-Appellants Laurel Ashton, Michael “Mike” Hawkins, Melinda Lowrance, Ellen Beth Richard, and Terry Lee Neal (“Appellants”) move the Court, in the event that their Motion to Stay is denied, to expedite their appeal in the above-captioned matter and to adopt their proposed briefing schedule pursuant to 28 U.S.C. § 1657, Federal Rule of Appellate Procedure 31(a)(2), and Fourth Circuit Local Rule 12(c).

In support of this Motion, Appellants show the Court as follows:

STATEMENT OF FACTS

This appeal arises from the district court’s permanent injunction which bars Appellants’ candidacy challenge to Plaintiff-Appellee Madison Cawthorn’s qualifications under Section 3 of the Amendment and Section 163.127.1, *et seq.*, of the North Carolina General Statutes on the ground that Cawthorn engaged in insurrection or rebellion against the United States in connection with his actions leading up to the attack on the United States Capitol on January 6, 2021 and his action on that day.

The district court’s injunction, if not addressed on appeal on an expedited basis, will allow Cawthorn to appear on the primary and general election ballots for North Carolina’s 11th Congressional district, and, if he is re-elected, to take up his seat again in Congress without an opportunity for appellate review.

ARGUMENT

THE COURT SHOULD EXPEDITE THIS APPEAL AND ADOPT APPELLANTS' PROPOSED BRIEFING SCHEDULE

The reasons for expediting consideration of this appeal are straightforward. The State of North Carolina will conduct a primary election on May 17, 2022, and a general election on November 8, 2022. On January 3, 2023, the 118th United States Congress will be sworn in. As things currently stand, Cawthorn will be able to participate in both elections, and, if he is successful, be sworn in again as a member of Congress without appellate review of the decision which holds that the North Carolina candidacy challenge statute is unconstitutional as to him because the 42nd Congress, by statute, effectively repealed section 3 of the Fourteenth Amendment in 1872.

This case presents precisely the kind of circumstance in which expedited review is mandated by statute, see 28 U.S.C. § 1657 (“[E]ach court of the United States shall ... expedite the consideration of any action,” implicating “a right under the Constitution of the United States or a Federal Statute”), and expressly permitted by the FRAP and this Court’s local rules, see FRAP 31(a)(2) (providing that an appellate court “may shorten the time to serve and file briefs”); Fourth Circuit Local Rule 12(c) (providing that the Court “may expedite an appeal for briefing and oral argument”).

To that end, Appellants propose the following schedule for briefing and oral argument:

April 14, 2022	Appellants' Brief due
April 21, 2022	Appellee's Brief due
April 28, 2022	Appellants' Reply Brief due
May 5, 2022	Oral argument

Although this proposed schedule is expedited, it is not unreasonable in light of the fact that the district court's injunction (and therefore any possible decision by this Court) will directly affect every registered voter in North Carolina's 11th Congressional district who casts a ballot in the 2022 elections. Indeed, this Court has previously expedited voting-related appeals in advance of an upcoming election. *See, e.g., Lytle v. Commissioners of Election of Union County*, 541 F.2d 421, 423 (4th Cir. 1976) ("Hearing the case on expedited appeal, we affirmed the holding of the district court that the residency requirements of the election plan in Union County were unconstitutional."). This Court has also previously recognized that the results of an election, once conducted, cannot easily (if at all) be undone. *See Republican Party v. N.C. State Bd. of Elections*, Nos. 94-1057 and 94-1113, 1994 U.S. App. LEXIS 14961, *6 (4th Cir. 1994) ("[W]ithout preliminary relief, [the political party] would suffer irreparable harm of constitutional magnitude through the degradation of its position in the electoral process during the November 1994 elections.").

Appellants, moreover, are more than willing to comply and capable of complying with the proposed schedule, and since Cawthorn successfully sought an “Emergency Motion to Expedite” in the court below, see ECF Nos. 3, 8, he can hardly be heard to object to defending the appeal on an expedited schedule.

CONCLUSION

For these reasons, in the event Appellants’ stay motion is denied, Appellants urge the Court to expedite the schedule for briefing and oral argument in this appeal and to issue a decision in May 2022.

This the 4th day of April, 2022.

Respectfully submitted,

/s/ Pressly M. Millen

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LOCAL RULE 27(a) STATEMENT

Pursuant to Local Rule 27(a), counsel for all parties have been informed of the intended filing of this motion. Plaintiff does not consent and has indicated his intent to file a response to the motion. Defendants have not yet determined their position on the relief sought by this motion.

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains fewer than 5,200 words, excluding the parts of the motion exempted by Fed. R. App. P. 27(d)(2) and Fed. R. App. P. 27(a)(2)(B).

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point font.

April 4, 2022

/s/ Pressly M. Millen

Pressly M. Millen

CERTIFICATE OF SERVICE

I certify that today, April 4, 2022, I caused to be electronically filed the foregoing motion with the Clerk of the Court for the U.S. Court of Appeals for the Fourth Circuit using the appellate CM/ECF system. In addition, the following were served and provided notice by first-class mail and email:

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