

Nos. 18-1150 (L) and 18-1151

**In The United States Court of Appeals
For The Fourth Circuit**

North Carolina Democratic Party; Cumberland County Democratic Party; Durham County Democratic Party; Forsyth County Democratic Party; Guilford County Democratic Party; Mecklenburg County Democratic Party; Orange County Democratic Party; And Wake County Democratic Party,

Plaintiffs-Appellees,

v.

Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate; Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives; the State of North Carolina; the North Carolina Bipartisan State Board of Elections and Ethics Enforcement; and Kimberly Strach, in her official capacity as Executive Director of the North Carolina Bipartisan State Board of Elections and Ethics Enforcement,

Defendants-Appellants.

On Appeal from the United States District Court
for the Middle District of North Carolina
No. 1:17-CV-1113-CCE-JEP — Hon. Catherine C. Eagles

**EMERGENCY MOTION FOR STAY OF PRELIMINARY INJUNCTION
BY THE HON. PHILIP E. BERGER AND THE HON. TIMOTHY K. MOORE**

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MOTION FOR STAY PENDING APPEAL¹

In December 2017, Plaintiff-Appellees (the “Democratic Party”) initiated this facial attack on Section 4(a) of North Carolina Session Law 2017-214 (the “Act”), which eliminated primaries for local and statewide judicial elections in 2018 and set the filing date for notice of candidacy for those offices for June 2018. The United States District Court for the Middle District of North Carolina enjoined the enforcement of Section 4(a) as it relates to appellate judicial races only, effectively re-instituting primary elections for four appellate positions and requiring candidates for those races to file their notice of candidacy beginning February 12, 2018. The Preliminary Injunction does not affect local judges.

The court below has created a confusing, bifurcated system of judicial elections on the eve of the election cycle. To avoid this confusion, President Pro Tempore of the North Carolina Senate Philip E. Berger and Speaker of the North Carolina House Timothy K. Moore (collectively, the “Legislative Leadership”) move this Court on an emergency basis under Rules 8 and 27(a)(3) of the Federal Rules of Appellate Procedure and Local Rules 8 and 27(e) to stay the Preliminary Injunction. The time constraints of this case present the Court with the quintessential

¹ All counsel have been informed of the intended filing of this motion. The Democratic Party intends to file responses in opposition. *See* Local Rule 27(a).

irreparable harm to mandate a stay; the lower court's ruling, coming just a dozen days (now just five days) before candidates for appellate judicial offices must file their notices of candidacy, is simply not enough time for the State to educate potential candidates, for candidates to prepare to run, or for the State to prepare for the court-imposed, two-tier system for electing their judges in 2018.

Accordingly, the Court should stay the district court's Preliminary Injunction pending resolution of an expedited appeal.²

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FACTUAL AND PROCEDURAL BACKGROUND

I. Passage of Session Law 2017-214

In October 2017, as the General Assembly was beginning to consider additional changes to judicial elections, it passed Senate Bill 656, which was ratified over the Governor's veto. 2017 N.C. Sess. Laws 214. In Section 4(a) of the Act, the General Assembly eliminated primaries for judicial candidates seeking election to the district courts, superior courts, and the appellate courts. (App'x at 100A.) For those judicial offices, candidates would only run in the general election, 2017 N.C. Sess. Laws 214, § 4(a), and would need only a plurality of the vote to win the race,

² Because of the time constraints, they ask the Court to order an expedited response and reply to this motion and respectfully request that a decision be made prior to or on Friday, February 9, 2018, which is the last business day before the election cycle would begin under the Preliminary Injunction for statewide judicial elections. The Legislative Leadership also anticipates filing a Motion to Dispense with the Appendix and to Expedite Briefing and Appeal. *See* Local Rules 12(c) and 30(d).

id., § 4(k). This change applies for the 2018 elections only, *see* 2017 N.C. Sess. Laws 214, § 4(a), and affects roughly four appellate court races and 140 trial court races. (App'x at 100A, 103A.)

Unlike candidates for other political offices who must register from February 12–28, 2018, *see* N.C. Gen. Stat. § 163A-974, the Act requires judicial candidates to file their notice of candidacy in June 2018, *see* 2017 N.C. Sess. Laws 214, § 4(a). The Act eliminated the May 8, 2018, primary and instead scheduled the general election for all judicial races for November 6, 2018. *Id.*

II. The District Court's Preliminary Injunction

Plaintiffs waited until December 12, 2017, to bring this facial challenge to the Act. (App'x. at 1–26A, 96–123A.) After expedited briefing, a hearing, and supplemental briefing, the Court granted the Democratic Party's motion in part, enjoining Section 4(a) only as it applies to four appellate judicial elections open in 2018. (App'x at 100A, 122A.) Those races now must have a primary on May 8, 2018. The Preliminary Injunction also expedited the timeline for candidates to file to join the race. While candidates seeking statewide judicial office previously did not need to file their Notice of Candidacy until June 2018, the Preliminary Injunction now requires those candidates to file their Notice of Candidacy beginning in just five calendar days. N.C. Gen. Stat. § 163A-974.

The Legislative Leadership agrees with the district court that it is not appropriate to enjoin the enforcement of the Act for elections of the State's approximately 140 open trial court positions. However, it was error to enjoin Section 4(a)'s application to appellate races. Through this error, the district court has bifurcated the 2018 judicial elections, severing appellate races from trial-court races for the purposes of declaring candidacy and for the election process itself.

III. The District Court's Denial of Stay Pending Appeal

Two days after the district court's ruling, the Legislative Leadership filed its Notice of Appeal, (App'x. at 123A), and an Emergency Motion for Stay or Modification of Preliminary Injunction Pending Appeal, (App'x at 126A.) The State, the North Carolina Bipartisan State Board of Elections and Ethics Enforcement, and the Board's Executive Director, Kimberly Strach, consented to the motion. (App'x at 153A.) Following a response from the Democratic Party (App'x at 157), the district court denied the motion at 12:19 p.m. on Wednesday, February 7, 2018, (App'x at 173A.)

This emergency motion followed at approximately 4:30 p.m. on Wednesday, February 7, 2018.³

³ As required by Fed. R. App. P. 8(a)(2)(B) and Local Rule 8, the Legislative Leadership files an appendix containing the relevant excerpts from the record and district court briefing regarding the stay, excluding the transcript of the preliminary injunction hearing, which is not yet available.

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ARGUMENT

Courts apply a four-factor test to motions seeking a stay pending appeal: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).⁴

The Legislative Leadership is likely to succeed on the merits of this appeal because the First Amendment does not protect the right to association through partisan primaries. Failure to stay the Preliminary Injunction during that appeal would result in irreparable injury. The Democratic Party cannot identify any potential injury from a stay. Public policy would support the stay. Accordingly, the Legislative Leadership is entitled to a stay of the Preliminary Injunction pending an expedited appeal.

I. The Legislative Leadership is likely to succeed on appeal because of the numerous errors of the court below.

As the district court recognizes, the Democratic Party’s entitlement to a preliminary injunction—or any relief at all—hinges on its constitutional right to

⁴ The proper balancing for a stay pending appeal is uncertain. *Compare The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342 (4th Cir. 2009), with *Long v. Robinson*, 432 F.2d 977, 979 (4th Cir. 1970). Regardless, a stay is warranted here.

associate with a particular candidate *through a partisan primary*. (App’x at 108A (“The plaintiffs contend that [the Act] infringes on their associational rights in a number of different ways, all of which are related to the abolishment of the primary election in what are now partisan races.”).) Because no such constitutional right exists, the Legislative Leadership is likely to succeed on the merits of their appeal. If some constitutionally-protected right exists, any burden of that right is properly supported by a sufficient governmental interest. Thus, an emergency stay of the district court’s Preliminary Injunction is warranted.

A. In this facial challenge to the Act, the district court erred by relying on speculation and conjecture.

Because the present suit is a facial challenge, courts must be careful not to rely on conjecture to enjoin the Act. The district court erred here by doing just that.

Under *United States v. Salerno*, a plaintiff asserting a facial challenge to the constitutionality of an act must “establish that no set of circumstances exists under which the Act would be valid . . .” 481 U.S. 739, 745 (1987). Courts disfavor facial challenges for three reasons: (1) they raise the risk of “premature interpretation of statutes on the basis of factually barebones records”; (2) they “run contrary to the fundamental principle of judicial restraint that courts should neither ‘anticipate a question of constitutional law in advance of the necessity of deciding it’ nor ‘formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied’”; and (3) they “threaten to short circuit the democratic

process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.” *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450–51 (2008); *see also Richmond Med. Ctr. For Women v. Herring*, 570 F.3d 165, 172–73 (4th Cir. 2009) (discussing distinction between facial and as-applied challenges).

The Democratic Party’s challenge to the Act mirrors that of the facial challenge mounted by the Plaintiffs in *Washington State Grange*, 552 U.S. at 450. There, the Supreme Court concluded that the plaintiffs’ claim that Washington’s primary system was unconstitutional was a facial attack, reasoning that the state “had no opportunity to implement [the act], and its courts have had no occasion to construe the law in the context of actual disputes arising from the electoral context, or to accord the law a limiting construction to avoid constitutional questions.” *Id.*

Here, the Democratic Party filed this action before the effective date of the Act and before the election of any judges. It seeks not just a ruling as applied to a specific factual scenario, but rather a declaratory judgment that the State must hold primaries for all judicial offices. In its Complaint, the Democratic Party alleges that the cancelation of the primary denies political parties the right to select its candidates and, simply, there is “no compelling or important regulatory interest” for doing so. (App’x at 9–10A, ¶¶ 35, 36, 38.) This is a facial challenge to the Act. The Motion

for Preliminary Injunction also mandates such a conclusion: the Democratic Party seeks an order enjoining the Act “as enacted.” (App’x at 28A.)

Where a party mounts a facial challenge to a statute, it must meet a higher burden and cannot simply rely on conjecture. *Washington State Grange*, 552 U.S. at 449–50. Agreeing in part with the Democratic Party, the district court concluded that the State has no legitimate interest in conducting statewide judicial elections without a primary by relying on: (1) the floor speech of the Honorable Representative David Lewis, the Act’s sponsor; (2) an affidavit from the Honorable Representative Marcia Morey, a Democratic representative for the 30th District; and (3) an affidavit from the Honorable Donald Stephens, a former Superior Court judge. (App’x at 102A, 112–13A, 116A.)

“The remarks of a single legislator, even the sponsor, are not controlling in analyzing legislative history.” *Chrysler Corp. v. Brown*, 441 U.S. 281, 311 (1979); accord *Roy v. County of Lexington, South Carolina*, 141 F.3d 533, 539 (4th Cir. 1998); see also *Styers v. Phillips*, 178 S.E.2d 583, 590 (1971) (“The Supreme Court of North Carolina has stated that ‘the intention of the legislature cannot be shown by the testimony of a member.’”).

Relying on the remarks of a single member would “be essentially to permit a single member of one House to alter the meaning of the bill, and effectively to deprive the House that acted first of any real voice in the final meaning of the

enactment. That is plainly improper.” *United Mine Workers of America v. Federal Mine Safety and Health Review Comm’n*, 671 F.2d 615, 622 (D.C. Cir. 1982); *Schiaffo v. Helstoski*, 492 F.2d 413, 428 (3d Cir. 1974) (“Unless a dispute as to the meaning of the words of a statute exists, a court has little reason to search elsewhere. . . . Rarely should a statement by an individual legislator be taken as final.”).

Here, the district court placed great weight on an excerpt of the House floor speech of Act’s sponsor, where he stated that cancelling primaries would allow the legislature to “take our time” when reviewing the other changes to the selection of judges. (App’x at 102A.) Doing so caused the district court to focus only on redistricting as the sole motivation for the Act. The court erred by relying on these sources--and completely discounting the important state reasons offered by Legislative Leadership in oral argument and its briefing--to come to this restrictive determination as to the purpose of the Act.

B. The district court erred by concluding that the Democratic Party has a Constitutional right to a primary for state elections.

Though it is generally accepted that a State may regulate its elections, *see Tashjian v. Republican Party*, 479 U.S. 208, 217 (1986), the Democratic Party claims that the State’s regulatory authority must always yield to its right to associate with a particular candidate. It also claims that its right of association requires primaries as a forum for associating or disassociating with its candidate-of-choice.

To support this claim, the Democratic Party cites *California Democratic Party v. Jones*, 530 U.S. 567, 570 (2000); *Tashjian*, 479 U.S. at 210–11; *Democratic Party of United States v. Wisconsin*, 450 U.S. 107 (1981); and *Eu v. San Francisco County Democratic Central Commission*, 489 U.S. 214 (1981). (App’x at 159A.) Its interpretation of those cases is misplaced. As the Supreme Court noted in *Tashjian*, the decision “whether or not to have a primary system at all” is entirely up to the States. 479 U.S. at 218; *see also Jones*, 530 U.S. at 572 (“We have considered it ‘too plain for argument,’ for example, that a State *may* require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion.”) (emphasis added).

The cases the Democratic Party cites are also inapposite to the facts before the court. To begin, each of these cases deals with a challenge to a primary, rather than general election system. The plaintiffs were attacking particular aspects of a state’s primary system, not the state’s implementation of a primary system itself. *See Jones*, 530 U.S. at 570; *Tashjian*, 479 U.S. at 210–11; *Democratic Party of the United States*, 450 U.S. at 107; *Eu*, 489 U.S. at 216.

Here, the Democratic Party directly challenges North Carolina’s decision to hold general, rather than primary elections for its judicial officers. In *American Party of Texas v. White*, the Supreme Court concluded that a State may require political parties to select their nominees with primary elections. 415 U.S. 767, 781 (1974).

Since *White*, the Supreme Court has “considered it ‘too plain for argument,’ for example, that a State *may* require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion.” *California Democratic Party v. Jones*, 530 U.S. 567, 572 (2000) (emphasis added); *Tashjian*, 479 U.S. at 218 (“whether or not to have a primary system at all” is entirely up to the States); *Jones*, 530 U.S. at 572 (“We have recognized, of course, that States have a major role to play in structuring and monitoring the election process.”). Though the Supreme Court has sanctioned the primary process, it has not mandated it. So too has the Court stopped short of mandating that an election must be decided by a majority vote. For example, in *City of Monroe v. United States*, the Court concluded that a municipal election code amendment adopting a majority, instead of plurality system did not violate the Voting Rights Act. 522 U.S. 34, 38–39 (1997) (discussing that both plurality and majority voting are permitted).

The district court recognized as much, explaining that no direct authority to support the Democratic Party’s position exists. (App’x at 109–10A.) The district court even recognized “that a primary election is not the only way a state can constitutionally reduce the number of candidates for the general election and, thus, that political parties cannot demand that states choose the winnowing-down method that the political parties prefer.” (App’x at 111A.) But the district court ultimately concluded that the State must somehow reduce the number of candidates for

statewide judicial office by applying *Jones*, 530 U.S. at 447–59, *Washington State Grange*, 552 U.S. at 450–51, and *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 563 (1997) to this novel theory. (App’x at 110–11A.) The district court’s chosen method for narrowing the field aligned with the request of the State Democratic Primary, which is why the Preliminary Injunction mandates that North Carolina hold primary elections for statewide judicial office in 2018. Doing so was in error.

It is instead likely this Court, on an expedited appeal, would conclude that the Democratic Party is not constitutionally entitled to a primary for the election of state court judges. This is especially true where a facial challenge seeks the extraordinary remedy of a preliminary injunction to enjoin an act passed by a state legislature based on a novel theory of law. *Washington State Grange*, 552 U.S. at 450–51. Therefore, the Legislative Leadership is likely to succeed on the merits of its appeal.

C. The district court erred by dismissing the reason for holding a single, general election for judicial offices—consistency.

Because the district court determined that eliminating primaries for judicial office poses only a minimal burden on the Democratic Party, the Act need only be supported by important regulatory interests. The Act satisfies this minimal burden, though the district court failed to consider these potential reasons. This error would require reversal on appeal.

“If a statute imposes only modest burdens, however, then ‘the State’s important regulatory interests are generally sufficient to justify reasonable,

nondiscriminatory restrictions’ on election procedures. ‘Accordingly, we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls.’” *Washington State Grange*, 552 U.S. at 452 (quoting *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983)).

Here, the district court concluded that the only potential reason for the Act—as it relates to local and statewide elections—was redistricting of the local judicial districts. (App’x at 115–16A.) Two other potential reasons for a unified general election as contemplated by the Act include: (1) consistency in judicial elections in 2018; (2) preparation for a transition away from popular elections for judges in North Carolina.⁵ Both of these potential reasons satisfy the standard explained in *Washington State Grange*, 552 U.S. at 452, yet the district court failed to consider them, instead choosing to focus only on one legislator’s statements during debate on the Act. Doing so was error, which requires reversal on appeal sufficient to necessitate a stay pending appeal.

II. The Preliminary Injunction causes irreparable harm because of its proximity to the start of the election cycle.

For over fifty years the Supreme Court has instructed courts to consider the disruption their injunctions can have on an election: “In awarding or withholding

⁵ Even the Governor’s veto explains that a transition away from popular elections could be a motivating factor for the Act. (App’x at 14A.) The Court may take judicial notice of the Governor’s reason for vetoing the Act. *See* Fed. R. Evid. 201.

immediate relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles.” *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Since *Reynolds*, the Supreme Court has given great weight to the harm caused to an imminent election cycle by an injunction. *See, e.g., Purcell v. Gonzalez*, 549 U.S. 1, 5 (2006) (relying on the “imminence of the election and the inadequate time to resolve the factual disputes”).

The district court has mandated a policy shift that is both confusing and unprecedented. Because of the timing of the Court’s ruling, the candidates for judicial offices will be subject to irreparable injury by the Court’s ruling. Prior to the Court’s policy decision, candidates for judicial office at the trial and appellate levels had until June 18, 2018, to decide whether to declare their candidacy—no small undertaking of time, energy, and resources. Now, however, candidates for appellate positions must hastily determine whether to declare their candidacy and comply with the necessary prerequisites for doing so. *See* N.C. Gen. Stat. § 163A-1422 (requiring campaign finance documentation); N.C. Gen. Stat. § 163A-187 (disclosure of economic interests); N.C. Gen. Stat. § 163A-979 (requiring filing fee). This is especially true for candidates who were contemplating running for a judicial seat before the Court’s Preliminary Injunction and believed they had until June 18, 2018, to make that decision. The Court’s order works a direct hardship on these potential

candidates and, if a candidate cannot comply within the next 5 days, would impose an irreparable harm on that candidate.

The Preliminary Injunction also harms the State's sovereign interests. Despite its recognition of the State's broad power to regulate elections, the district court requires the State to hold a partisan primary. Such a judicial mandate is itself an irreparable injury: "Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301 (2012) (Roberts, C.J., in chambers); *Veasey v. Perry*, 769 F.3d 890, 895–96 (5th Cir. 2014) ("When a statute is enjoined, the State necessarily suffers the irreparable harm of denying the public interest in the enforcement of its laws. If the district court judgment is ultimately reversed, the State cannot run the election over again, this time applying [the statute].").

Moreover, a stay is the only judicial remedy that can avoid mootness this appeal on the eve of the election cycle. Because of the Democratic Party's delay in filing this action and its motion for preliminary injunction, which necessitated the filing of the district court's Preliminary Injunction on January 31, 2018, there is little chance for the Court to resolve the merits of the Legislative Leadership's appeal prior to the primaries scheduled for May 8, 2018. Indeed, the Court has only one term, March 20–22, 2018, prior to that primary election. The converse is not true. Were the Court to stay the case and then decide it during the May 2018, term, all candidates for

judicial office could still file their notice of candidacy in June 2018 as required by the Act. They could then proceed in the November 2018 general election. Or, should the Court affirm on the merits following a stay, a special primary election could be held between the Court's May 2018 term and general election.

The Legislative Leadership has established that pervasive and irreparable injury will result if the Preliminary Injunction is not stayed during the pendency of the appeal and, therefore, the Court should grant the motion.

III. Any speculative harm to the Democratic Party is minimal compared to the irreparable harm caused by the Preliminary Injunction.

The Democratic Party cannot identify a particularized injury related to the Act's elimination of primaries for appellate judge positions. To the extent there is a burden on its interests—which the Legislative Leadership does not concede—it is minimal, as the district court recognized. (App'x at 114A.) Thus, a balancing of the lack of harm against the irreparable harm to the Legislative Leadership and North Carolina voters weighs for granting a stay pending appeal.

Any harm to the Democratic Party can be avoided by a special primary election for the four statewide judicial positions at issue. While a special primary would not be without its own costs, a special primary for four judicial positions would not impose sufficient burden to outweigh the substantial, irreparable harm caused by the preliminary injunction. The district court's accusation that the Legislative Leadership is merely offering the possibility of a special primary as a

means to obtain a stay with no intention of actually seeking a prompt resolution of this dispute is entirely speculative. (App'x at 182A). Indeed, the Legislative Leadership intends to request that this appeal be expedited.

The determination by the district that such a special election should be avoided because of the possibility of low voter turnout is also speculative. (App'x 117A.) Nothing in the record suggests that a special primary for statewide judges and justices would not garner the attention and turnout those important positions deserve. The opposite could as easily be true. Without partisan primaries for local judges to concentrate on, the State's political parties could focus their attention on the four judicial positions in any special primary, helping to actually *increase* voter turnout.

For these reasons, the balance of the hardships militates in favor of the Legislative Leadership, warranting a stay.

IV. Public policy supports deferring to the North Carolina General Assembly's decision to eliminate judicial primaries in 2018.

The United States is founded upon the concept of federalism, a policy embodied by the Constitution itself. *See Gregory v. Ashcroft*, 501 U.S. 452, 457–59 (1991) (declining to preempt state law regarding the qualifications of its state court judges). The Supreme Court has “frequently recognized that individual States have broad latitude in experimenting with possible solutions to problems of vital local concern,” and has recognized “a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to

the rest of the country.” *Whalen v. Roe*, 429 U.S. 589, 597 (1977) (quoting *New State Ice v. Liebmann*, 285 U.S. 262 (1932) (Brandeis, J. dissenting)).

As such a laboratory of democracy, North Carolina moved the Act through the legislative process. It was through this legislative process that the policy-making branch determined that the public policy for the State, at least for the 2018 judicial elections, would be best promoted by a single, general election of judges.

The district court has disagreed with this policy decision, instead determining, under a novel theory of law and based on conjecture in an under-developed record, that the court’s policy of requiring primaries would be superior. To impose this new policy determination, the district court cites to the absence of evidence of “another state that elects officials using only a general election regardless of the number of candidates.” (App’x at 109A.) Without support, the district court determined the reason for the absence of similar election methods: “No doubt this is because states have decided that limiting the number of candidates on the general election ballot better serves the public good” (*Id.*) It further classified North Carolina’s decision as “highly unusual,” calling into question whether it was “good practice to have general election ballots with multiple statewide and local races with multiple candidates from each party” (*Id.*)

By relying on its observations about the way other States structure their elections to restrict the way the State may conduct its 2018 judicial elections, the

district court ignored the freedom and flexibility that federalism guarantees to a state in structuring its election systems. Under the district court's approach, a single courageous state may not explore a new system of judicial elections once other states have established their own methods. This cannot be the case.

A stay in this action would support public policy by reinforcing North Carolina's Constitutional mandate to act as a laboratory for democracy. It would also support public policy by preserving a steady and consistent election cycle, free of last-minute changes. *See Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Courts have previously come to the same conclusion, consistently staying injunctions on the eve of an election cycle. *See, e.g., Hunt v. Cromartie*, 529 U. S. 1014 (2000); *Voinovich v. Quilter*, 503 U.S. 979 (1992); *Wetherell v. DeGrandy*, 505 U.S. 1232 (1992); *Louisiana v. Hays*, 512 U.S. 1273 (1994); *Miller v. Johnson*, 512 U.S. 1283 (1994).

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CONCLUSION

The Act is a constitutional exercise of the State's broad power to regulate its elections. While the Democratic Party may disagree with the policy determination made by the State to eliminate primaries, they have no protected constitutional right to such a primary. The Democratic Party's claim is nothing more than a policy difference masquerading as Constitutional violation. It is more suited for the floor of the General Assembly than the federal courts. Nonetheless, the district court incorrectly determined that the extraordinary remedy of a preliminary injunction was

warranted based on speculative evidence and despite the irreparable harm to the Legislative Leadership, the potential candidates, and the electorate.

Therefore, for the foregoing reasons, the Legislative Leadership respectfully request that this Court grant this emergency motion for a stay of the Preliminary Injunction pending an expedited appeal. Given the impending February 12, 2018, start to the election cycle for appellate judges under the Preliminary Injunction, the Legislative Leadership further requests that, if possible, the Court rule on this motion by Friday, February 9, 2018.

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I certify that on the date set forth below, the foregoing document was served on counsel of record for all parties to the appeal through the CM/ECF system.

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