



## NORTH CAROLINA GENERAL ASSEMBLY

NORTH CAROLINA SENATE

### *Moore v. Circosta* Fact Sheet

October 22, 2020

#### **Main Question in Controversy**

Should an unelected state panel be able to change election laws after voting has already started? We say no, because doing so: 1) violates the U.S. Constitution's Equal Protection Clause by changing the election rules after ballots had already been cast, and 2) violates the U.S. Constitution's Elections Clause which grants exclusive authority for setting the "time, place, and manner" of elections to the state legislature.

#### **Key Facts/Timeline**

- In June 2020, after weeks of negotiations, bipartisan supermajorities in the N.C. General Assembly settled on the [law](#) governing this election.
- Over the summer, Democratic Party lawyer Marc Elias filed multiple lawsuits seeking to overturn several facets of the election law, including:
  - The requirement for one witness to sign an absentee ballot, and
  - The Nov. 6 deadline for county Boards of Elections to receive absentee ballots in order for the ballots to count.
- On Aug. 4, 2020, Federal Judge William Osteen upheld the requirement for one witness to sign an absentee ballot and declined to extend the ballot receipt deadline.
- On Aug. 21, 2020, the N.C. State Board of Elections, which is controlled 3-2 by Democratic Party appointees, issued rules in compliance with Judge Osteen's order.
- Between Aug. 21, 2020 and Sept. 22, 2020, the Board of Elections and Marc Elias negotiated in secret\* to reach a "settlement" undoing the witness requirement and extending the absentee ballot receipt deadline to Nov. 12.
  - \*We know the negotiations took place in secret because Sen. Berger and House Speaker Tim Moore are *co-defendants* in the case, and they were not informed of any talks, much less a settlement agreement, until the agreement was made public.
- On Sept. 4, 2020 absentee balloting began in North Carolina. The election was officially underway and voters started casting ballots.
- On Sept. 22, 2020, as a result of the secretive settlement with Marc Elias, the Board of Elections issued a new set of guidelines contravening its Aug. 21 rules. The new guidelines eliminated the witness requirement and extended the ballot receipt deadline to Nov. 12.
- Sen. Berger and Speaker Moore immediately filed suit in federal court.

- On Oct. 3, 2020, Federal Judge James Dever issued a temporary restraining order [blocking](#) the Board of Elections' mid-election rule changes (“At bottom, the [Board of Elections] has ignored the statutory scheme and arbitrarily created multiple, disparate regimes under which North Carolina voters cast absentee ballots...”, page 15).
- On Oct. 14, 2020, Federal Judge William Osteen permanently [blocked](#) the Board of Elections' attempt to eliminate the absentee ballot witness requirement (“In all candor, this court cannot conceive of a more problematic conflict with the provisions of [the law]...”, pages 89-90)
- Also on Oct. 14, 2020, Judge Osteen called the Board's attempt to extend the ballot receipt deadline “likely unconstitutional” (page 69) and said it “should be enjoined,” (page 90) but concluded he didn't have the power to do so.
- On Oct. 16, 2020 legislative leaders [acted](#) on Judge Osteen's determination regarding the ballot receipt deadline and requested an injunction from the 4<sup>th</sup> Circuit Court of Appeals.
- On Oct. 20, 2020 in an explosive [dissent](#), federal judges on the 4<sup>th</sup> Circuit revealed the legislative leaders won their requested injunction in a three-judge panel, but “the work of the panel was hastily preempted by an en banc vote requested by the panel's dissenter after the panel majority had shared its views but before those views could be published.”
- The judges urged legislative leaders to “take this case up to the Supreme Court immediately. Not tomorrow. Not the next day. Now.” (Page 23)
- On Oct. 22, 2020, legislative leaders took that advice and sought relief from the U.S. Supreme Court.

### **Attorneys Involved**

- Legislative leaders are represented by Cooper & Kirk. The lead attorney is David Thompson.
- The N.C. State Board of Elections is represented by North Carolina Attorney General Josh Stein, a Democrat who is on the ballot this year in a very tight race.