

No. _____

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

BRIAN L. BLANKENSHIP,)
THOMAS J. DIMMOCK, and FRANK)
D. JOHNSON,)
Appellees/Petitioners,)

v.)

From Wake County
No. 05 CVS 016827

GARY BARTLETT, as Executive)
Director of the State Board of)
Elections; ROY COOPER, as Attorney)
General of the State of North Carolina;)
and NORTH CAROLINA STATE)
BOARD OF ELECTIONS,)
Appellants/Respondents.)

**RESPONDENTS' RESPONSE TO PETITIONERS'
PETITION FOR DISCRETIONARY REVIEW
PRIOR TO DETERMINATION BY THE
NORTH CAROLINA COURT OF APPEALS
(N.C. GEN. STAT. § 7A-31 and N.C. R. App. P. 15)**

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Now COME defendants Gary Bartlett, Roy Cooper and the North Carolina State Board of Elections and respectfully respond to petitioners' Petition for Discretionary Review Prior to Determination by the North Carolina Court of Appeals. Without opposing or supporting the Petition, the respondents, pursuant to

Rule 15(d) of the North Carolina Rules of Appellant Procedure, point out to the Court the following matters relevant to its consideration of the Petition:

1. Petitioners argue that the subject matter of this appeal has significant public interest and is of major significance to the jurisprudence of this State. While undoubtedly the issues presented by this action are significant and affect the public interest, the same could be said of most if not all cases considered by this Court. Petitioners have demonstrated neither why this case is so extraordinary that it should be exempt from normal appellate procedure nor how the significance and public interest attendant to this matter warrants departing from the normal and established process of allowing issues to percolate through and be refined by the Court of Appeals prior to consideration by this Court. Indeed, the significance of and public interest in the issues presented by this matter suggest that the normal appellate process, which allows for full consideration and distillation of the issues by a three-judge panel of the Court of Appeals prior to consideration by this Court, would be the more appropriate way for this case to be handled.

2. Petitioners argue that certification for discretionary review prior to a decision of the Court of Appeals is necessary because “it is likely that other superior court elections will take place prior to a determination by this Court.” (Pet. at 10) However, the next regularly-scheduled election for a resident superior court judge in

Wake County (District 10-B) will not take place until 2008; after that, no elections are scheduled for resident superior court judges in Wake County until 2012, when both seats in District 10-A and the seat in District 10-D are scheduled to be on the ballot. (*See* Stips. 29-32, R p. 72; February 8, 2006, Judgment and Order, Finding of Fact 23, R p. 92; N.C. CONST. art. IV, §16) There is ample time for this matter to proceed through the normal appellate process in an orderly fashion. If necessary, an appropriate court could enter appropriate interim orders prior to the 2008 election. Accordingly, no substantial harm will result if certification prior to consideration by the Court of Appeals is denied.

3. Respondents believe that petitioners have, in general, adequately characterized the questions that will be presented. In addition to the four questions noted by petitioners, respondents would present the following additional questions:

5. Whether the trial court erred by not treating materials submitted by the Administrative Office of the Courts to the United States Department of Justice in furtherance of preclearance of 1993 Sess. Laws 321 under the federal Voting Rights Act of 1965, as amended, as a record of regularly conducted activity or a public record or report, which was thus admissible in full as an exception to the prohibition of hearsay evidence pursuant to N.C. GEN. STAT. § 8C-1, Rule 803(6) and (8).

6. Whether the trial court erred in denying respondents' motion to dismiss Roy Cooper as a defendant on the grounds that Roy Cooper has no supervisory authority or power concerning acceptance of notices of candidacy or the holding of elections.

Additionally, respondents reserve the right to present any and all arguments supported by respondents' assignments of error. (R pp. 114-25)

CONCLUSION

WHEREFORE, respondents neither support nor oppose the Petition For Discretionary Review Prior To Determination By North Carolina Court Of Appeals filed by petitioners before this Court and stand ready to prosecute this appeal in whichever Court it is heard.

This the 5th day of September, 2006.

ROY COOPER
Attorney General

Electronically Submitted
Alexander McC. Peters
Special Deputy Attorney General
State Bar No. 13654
apeters@ncdoj.com

Susan K. Nichols
Special Deputy Attorney General
N.C. State Bar No. 9904
snichols@ncdoj.com

Karen E. Long
Special Deputy Attorney General
State Bar No. 8874
klong@ncdoj.com

N.C. Department of Justice
Post Office Box 629
Raleigh NC 27602
Telephone: 919.716.6900

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **RESPONDENTS' RESPONSE TO PETITIONERS' SECOND PETITION FOR WRIT OF SUPERSEDEAS** 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;
- Transmitting a copy hereof to each said party via facsimile transmittal; or
- Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

Donald G. Hunt. Jr.
Jamie L. Vavonese
AKINS, HUNT & FEARON, P.C.
134 N. Main St.
P.O. Box 266
Fuquay-Varina, North Carolina 27526

Counsel for Plaintiffs

This the 5th day of September, 2006.

Electronically Submitted
Alexander M.C. Peters
Special Deputy Attorney General