

North Carolina Sheriffs' Association

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Special Legislative Report

January 20, 2022

The General Assembly has been very quiet since adjourning in November. As both chambers indicated, neither has held voting sessions since adjourning late last year. However, both chambers also promised they would come back to vote on any bills necessary to deal with redistricting issues. This week, they have had to do just that as the lawsuit surrounding that very issue has played out in the courts.

The lawsuit alleges the redistricting maps drawn by the General Assembly and enacted into law in 2021 are unconstitutional. The following brief procedural history of the redistricting lawsuit will assist in your understanding of the bill summarized below in this Special Legislative Report.

On December 8, 2021, two days after the opening of the candidate filing period for the 2022 primary elections began, the Supreme Court of North Carolina (Supreme Court) temporarily stayed “the candidate-filing period for the 2022 elections for all offices until such time as a final judgment on the merits of plaintiffs’ claims, including any appeals” has been entered. The stay entered on December 8, 2021 was at the request of the plaintiffs who petitioned the Supreme Court for the stay.

On December 29, 2021, the North Carolina Sheriffs’ Association filed in the Supreme Court a Motion to Intervene as Parties and for Reconsideration of the Court’s December 8, 2021 Order to request that the Supreme Court reconsider its Order staying the filing period for non-statewide local elected offices not part of the underlying lawsuit. The Motion filed by the North Carolina Sheriffs’ Association has not been ruled on yet by the Supreme Court.

By special statute, a three-judge panel in Wake County Superior Court (the Trial Court) considered the redistricting lawsuit, and on January 11, 2022, issued a Judgment allowing the legislative and congressional maps to stand. That Judgment was immediately appealed to the Supreme Court.

The Supreme Court will now hear oral argument in the case appealing the trial court’s Judgment allowing the legislative and congressional maps to stand on February 2, 2022. While there is no specific deadline for the Supreme Court to issue its opinion, we anticipate that one will be issued one or two weeks after oral argument. The opinion may, or may not, establish the dates of a new filing period for elections, including elections for the Office of Sheriff.

As previously mentioned, the General Assembly took action this week stepping into the election fray. The General Assembly passed [HOUSE BILL 605, 2022 Primary Date](#), which among other things designates a later date for the 2022 primary election than the May 17, 2022 date that was ordered by the Supreme Court in its December 8, 2021 Order. According to statements from

certain legislators, this was done out of concern that there will not be sufficient time to redraw the district maps in the event the Supreme Court invalidates them.

If [HOUSE BILL 605](#) is signed into law by Governor Roy Cooper, the primary election will be scheduled for June 7, 2022 and the candidate filing period will run from March 24, 2022 at 8:00 AM until April 1, 2022 at 5:00 PM, allowing more time for district maps to be redrawn by the General Assembly if they are struck down by the Supreme Court. However, if enacted into law, a legal challenge to [HOUSE BILL 605](#) will likely occur and it is uncertain how these issues will ultimately be resolved.

If Governor Roy Cooper vetoes [HOUSE BILL 605](#), which is likely based on a recent statement from the Governor, then the candidate filing period will remain stayed unless ordered otherwise by the Supreme Court and the primary election will be held on May 17, 2022 as previously ordered by the Supreme Court. It is unlikely the General Assembly will be able to override a veto of this bill.

Finally, there is currently no definitive answer specifying when the candidate filing period will re-open for election to the Office of Sheriff. There will likely not be a definitive answer until a further ruling is issued by the Supreme Court of North Carolina.

BILL STATUS

[HOUSE BILL 605](#), 2022 Primary Date, has been retitled and amended to reschedule the 2022 primary, general, and municipal elections. The bill has been approved by the General Assembly and sent to Governor Roy Cooper for his signature. The bill, as amended, would:

1. Set the date of the 2022 primary election on June 7, 2022.

Currently, the Supreme Court's December 8, 2021 Order directs the 2022 primary election to be held on May 17, 2022.

2. Set the candidate filing period for all offices on the 2022 ballot to begin at 8:00 AM on March 24, 2022 and close at 5:00 PM on April 1, 2022.

The January 11, 2022 Judgment issued by the Trial Court set the candidate filing period to resume at 8:00 AM on February 24, 2022 and to close at 12:00 noon on March 4, 2022. However, the candidate filing period currently remains stayed because the Trial Court Judgment was immediately appealed to the Supreme Court.

3. Deem any person who filed a notice of candidacy during the original filing period in December 2021 and who did not withdraw their candidacy to have filed in the new filing period set under the bill.

Currently, the Supreme Court's December 8, 2021 Order provides that any individuals who filed to run for public office in 2022 and whose filings were accepted by the appropriate board of elections are deemed to have filed for the same office for the May 17, 2022 primary unless they provided timely notice of withdrawal of their candidacy to the appropriate board of elections during the newly-established filing period.

4. Grant the North Carolina State Board of Elections authority to issue temporary rules amending any statute in Chapter 163 of the General Statutes and any rule contained within Title 8 of the North Carolina Administrative Code to accommodate the new scheduling of the 2022 primary. Any temporary rules enacted would be effective only for the 2022 primary and general elections, would be subject to the Administrative Procedure Act, and would become void 10 days after the certification of all 2022 elections.
5. Exempt any bond referendum held on the date of the 2022 statewide primary from the statutory time limitations for publishing notice of a bond referendum. The bill would, instead, allow the North Carolina State Board of Elections to establish the time limitations for publishing notice by temporary rule.

The North Carolina Sheriffs' Association will continue to provide updates on the status of [HOUSE BILL 605](#) and further orders issued by the Supreme Court related to the redistricting lawsuit.

The **Special Legislative Report** is provided at no charge as a service to the sheriffs, criminal justice community and citizens of North Carolina.

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