

FILED

STATE OF NORTH CAROLINA

2020 DEC 11 PM 3: 54

WAKE COUNTY

WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

NO.: 20 CVS 500110

NORTH CAROLINA STATE CONFERENCE )  
OF THE NAACP, DISABILITY RIGHTS )  
NORTH CAROLINA, AMERICAN CIVIL )  
LIBERTIES UNION OF NORTH CAROLINA )  
LEGAL FOUNDATION, KIM T. CALDWELL, )  
JOHN E. STURDIVANT, SANDARA KAY )  
DOWELL, and CHRISTINA RHODES, )

Plaintiff-Petitioners, )

v. )

ROY COOPER, Governor of the State of North )  
Carolina, ERIK HOOKS in his official capacity as )  
Secretary of the North Carolina Department of )  
Public Safety, and BILL FOWLER, ERIC )  
MONTGOMERY, ANGELA BRYANT, and )  
GRAHAM ATKINSON, in their official )  
capacities as Post-Release Supervision and )  
Parole Commissioners, )

Defendant-Respondents. )

ORDER APPOINTING  
THOMAS MAHER  
AS LIAISON

This matter remains within the pre-trial phase of litigation following this Court's July 10 order granting Defendants' Motion to Reconsider. This Court had ordered Defendants to provide and supplement various plans and procedures that are due to the Court on dates ranging from July 27 to August 7, 2020. In addition and on this Court's order, Defendants continue to submit weekly reports to assist this Court in its duties. In its earlier Orders, this Court also disclosed its intention to appoint a Court Liaison to facilitate and oversee the disclosure of, discussion of, and objections to Defendants' plans , procedures, and continuing reports.

This Court has continued to address the submission of documentation and discovery related to this matter. Over the past several months, this Court positively notes Defendants' increased

compliance with and responsiveness to this Court's orders by providing prompt information and by more directly complying with this ordered injunctive relief. This Court notes with concern the continued spread of COVID-19 through this state's population of incarcerated individuals and remains concerned by the increased number of COVID related deaths.

In particular, this Court is further concerned by the large numbers of individuals awaiting consideration for early release programs including but not limited to the ELC program. Based on the data submitted by the parties, both through weekly mandated reports and in response to this Honor's questions in Court, this Court notes that early release programs are limited by the current resources available to Defendants. This Court notes that North Carolina Prison Legal Services is specially suited to assess the specific issues discussed by Defendants, including but not limited to time, financial resources, and manpower needed to swiftly determine eligibility, respond to questions, and effectuate the timely and responsible release of eligible individuals. This Court finds it necessary, based on the pernicious and present dangers associated with the COVID-19 pandemic, particularly through the lens of the additional risk to incarcerated individuals as illustrated by the closure of prison facilities and increase of positive cases and pandemic-related deaths, to allow for early release of eligible individuals to the greatest and safest extent possible.

Given the novelty of this immediate pandemic and the substantial risk to this state's population of incarcerated individuals, this Court finds the circumstances ripe for the responsible utilization of a court liaison.

This Court entered a Preliminary Injunction on June 16 to bind the parties until a full determination of the merits of the claims in the action, unless otherwise expressly superseded by a subsequent order of this Court. In order to respond to pertinent and time-sensitive facts that prospectively remain outside the record, this Court requires the assistance of a Court Liaison to

assist with analyzing continued filings and identifying prospective concerns in the practices, procedures, and policies underlying Defendants' compliance with the prohibition against cruel or unusual punishment contained in Article I § 27 of the North Carolina Constitution.

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The prospective need for a Court Liaison position was first considered by this Court in response to initial filings in May 2020. On this Court's invitation, both parties submitted the names and qualifications of recommended court liaisons, then called special masters. This Court has carefully considered those qualifications and candidates.

After a careful and thorough consideration of each candidate, and under its discretion in N.C. Gen. Stat. § 1A-1, Rule 53, this Court HEREBY NOTIFIES the parties that this Court will name Director Thomas Maher as Court's Liaison in this matter to independently examine any and all filings; communicate with parties where necessary; and advise the Court on the parties compliance with those Constitutional provisions at issue in the immediate case.

At the time of filing, Director Maher serves as the director of the Wilson Center for Science and Justice at Duke University, where he also works as a senior lecturing fellow. Before his time at Duke, Director Maher served as the executive director of North Carolina Indigent Defense Services, director of the Center for Death Penalty Litigation, and worked in private practice. He will soon be returning to work in the private sector. Director Maher earned his undergraduate degree from Northwestern University and his law degree from the University of North Carolina at Chapel Hill before clerking for the United States Court of Appeals for the Seventh Circuit. Most recently, Director Maher was presented with the Friend of the Court Award by Chief Justice Cheri Beasley; this is the highest award that the Supreme Court of North Carolina presents.

This Court is satisfied that Director Maher has the requisite qualifications and experience to serve as Court's Liaison in this matter. Director Maher will also have access to resources that



will continue to be made available through the Wilson Center for Science and Justice following his departure. Director Maher has agreed to serve as the Court Liaison in this matter and has further agreed to so serve without direct pay or compensation from the Court or the parties unless otherwise ordered at a later time.

Therefore, the Court, on its own motion, in its discretion, and pursuant to Rule 53 of the North Carolina Rules of Civil Procedure, hereby ORDERS that:

1. Director Thomas Maher is appointed as the Court's Expert in this matter to independently examine any and all filings, communicate with parties where necessary, and advise the Court on the parties' compliance with those Constitutional provisions at issue in the immediate case. Particularly, Director Maher will assist this court with the processing of individuals who are eligible or being reviewed for ELC or other release programs.
2. Director Maher is authorized to engage in casual and *ex parte* conversations with litigants within the immediate action. Director Maher's conversations with litigants will not be subject to any privilege or confidentiality as against any other party in the immediate matter. However, Director Maher is bound by any confidentiality components of the case, whether already implemented or implemented in the future, regarding any information, plans, procedures, or filings offered for in camera review, or under an attorneys' eyes only designation, as against any party, individual, or organization outside the current case. While Director Maher may disclose portions of conversations with this Court, litigants should not treat conversations with Director Maher as conversations with this Court. Litigants are not to ask Attorney Director Maher to carry *ex parte* messages or argue on behalf of litigants to this Court.

3. Director Maher is authorized to communicate with DPS personnel and staff as necessary , in order to ensure appropriate compliance with this Court's order. Director Maher is authorized to view Defendants' weekly reports and other information submitted to this Court for purposes of assessing compliance with this Court's orders and conducting analysis of the logistical and practical implications of data and procedure trends as they relate to the immediate case before this Court.
4. Director Maher will analyze the current practices and procedures of Defendants for determining who is available for, and logistically effectuating the process of, early release programs, including but not limited to ELC. Director Maher is authorized to use North Carolina Prisoner Legal Services as a resource where appropriate to facilitate the effective and timely implementation of early release programs for eligible persons. Director Maher and, if necessary, Prisoner Legal Services are to assist, rather than overtake, early release programs.
5. Director Maher is authorized to examine whether the re-consideration of ELC-eligible facilities previously ordered by this Court progress at a proper pace such that there is, to the greatest extent possible, no logistical limit on Defendants' ability to effectuate early release of eligible individuals.
6. Director Maher is further authorized to schedule and conduct conversations, mediations, and conferences with both Parties or each party individually, in his discretion, as the litigation continues. In addition, Director Maher is authorized to produce and distribute written questions for counsel to complete if there appear to be logical, mathematical, logistical, or factual inconsistencies, errors, or omissions, or concerns, in filed plans and procedures.

7. Director Maher's role as Court's Liaison will continue until the conclusion of the case at bar or until such a time as this Court, in its discretion and based on the conduct of parties and counsel, finds that the position of Court's Expert is no longer necessary for the accurate disposition of justice.
8. Director Maher's conduct and scope will at all times comply with the procedures set forth in Rule 53 of the North Carolina Rules of Civil Procedure. More particularly, Director Maher will disclose the written form of all findings to the parties and shall be available for direct and cross examination at the time of trial.
9. This Court retains exclusive jurisdiction over determining the fundamental issues of law and fact and retains the authority to exercise management and control of the case. This Court reserves the right to discuss pertinent issues and concerns with Director Maher, and to hold hearings if required. This Court also reserves the right to modify the scope and duties of Director Maher's position as Court Liaison.
10. The court reserves the right to provide financial resources to Director Maher that may be the result of any fine, fee or penalty imposed on any of the parties for actions taken as a part of this matter. No additional cost is currently attributed to either party in the immediate action.

SO ORDERED this 11<sup>th</sup> day of December 2020.

A handwritten signature in blue ink, appearing to read 'W. Rozier', is written over a horizontal line.

THE HONORABLE WINSTON ROZIER, JR.  
SUPERIOR COURT JUDGE PRESIDING

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated

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below via e-mail transmission addressed as follows:

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This the 11<sup>th</sup> day of December 2020.



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