

STATE OF NORTH CAROLINA FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2019 JAN 22 PM 1:03

COUNTY OF WAKE

WAKE COUNTY, C.S.C. : CASE NO. 18 CVS 15292

JABARI HOLMES, FRED CULP,
DANIEL E. SMITH, BRENDON
JADEN PEAY, SHAKOYA CARRIE
BROWN, AND PAUL KEARNEY, SR.,

PLAINTIFFS,

vs.

TIMOTHY K. MOORE *in his official*
capacity as Speaker of the North Carolina
House of Representatives; PHILIP E.
BERGER *in his official capacity as*
President Pro Tempore of the North
Carolina Senate; DAVID R. LEWIS,
in his official capacity as Chairman of
the House Select Committee on Elections
for the 2018 Third Extra Session; RALPH
E. HISE, *in his official capacity as*
Chairman of the Senate Select Committee
on Elections for the 2018 Third Extra
Session; THE STATE OF NORTH
CAROLINA; and THE NORTH
CAROLINA STATE BOARD OF
ELECTIONS,

DEFENDANTS.

LEGISLATIVE DEFENDANTS' MOTION
TO DISMISS THE COMPLAINT
N.C. R. Civ. P. 12(b)(1), (b)(6)

Defendants Berger, Moore, Lewis, and Hise (the “Legislative Defendants”), by and through their undersigned counsel, file this Motion to Dismiss the Complaint under Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure. In support of this motion, Legislative Defendants show that Defendants are entitled to judgment in their favor on all claims alleged in Plaintiffs’ Complaint as follows:

1. Defendants are entitled to dismissal with respect to Plaintiffs’ first claim for relief because S.B. 824 does not violate Article I, § 19 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6). Defendants are also independently entitled to dismissal of the portion of the first claim for relief that purports to state a claim on behalf of Native Americans because this Court does not have subject matter jurisdiction over this claim. N.C. R. Civ. P. 12(b)(1).
2. Defendants are entitled to dismissal with respect to Plaintiffs’ second claim for relief because S.B. 824 does not violate Article I, § 19 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6). Defendants are also independently entitled to dismissal of the portion of the second claim for relief that purports to state a claim on the basis of speculative allegations about potential delays and resulting disenfranchisement in future elections because this Court does not have subject matter jurisdiction over this claim. N.C. R. Civ. P. 12(b)(1).
3. Defendants are entitled to dismissal with respect to Plaintiffs’ third claim for relief because S.B. 824 does not violate Article I, § 19 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be

granted. N.C. R. Civ. P. 12(b)(6). Defendants are also independently entitled to dismissal of the portion of the third claim for relief that purports to state a claim on behalf of “young voters,” Compl. ¶ 187, because this Court does not have subject matter jurisdiction over this claim. N.C. R. Civ. P. 12(b)(1).

4. Defendants are entitled to dismissal with respect to Plaintiffs’ fourth claim for relief because S.B. 824 does not violate Article I, § 10 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6). Article I, § 10 of the North Carolina Constitution does not mandate that a voter will never incur incidental costs when exercising their right to vote.
5. Defendants are entitled to dismissal with respect to Plaintiffs’ fifth claim for relief because S.B. 824 does not violate Article I, § 10 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6). To the extent that Plaintiffs’ fifth claim for relief intends to rely on Article I, § 11 of the North Carolina Constitution, S.B. 824 likewise does not violate that provision in any respect; S.B. 824 does not impose a property qualification on the right to vote, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6).
6. Defendants are entitled to dismissal with respect to Plaintiffs’ sixth claim for relief because S.B. 824 does not violate Article I, §§ 12, 14 of the North Carolina Constitution in any respect, and thus Plaintiffs have failed to state a claim upon which relief can be granted. N.C. R. Civ. P. 12(b)(6).

WHEREFORE, the Legislative Defendants request that this Court grant their Motion to Dismiss the Complaint, that all claims alleged in Plaintiffs' Complaint be dismissed with prejudice, and that Plaintiffs' Motion for a Preliminary Injunction be denied as moot.

Dated: January 22, 2019



COOPER & KIRK, PLLC

Michael W. Kirk*

David H. Thompson*

Peter A. Patterson*

Nicole J. Moss (State Bar No. 31958)

Nicole Frazer Reaves*

1523 New Hampshire Avenue, N.W.

Washington, D.C. 20036

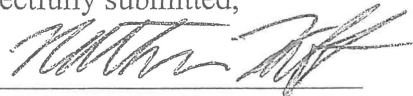
Telephone: (202) 220-9600

Fax: (202) 220-9601

nmoss@cooperkirk.com

Counsel for Legislative Defendants

Respectfully submitted,



Nathan A. Huff

PHELPS DUNBAR LLP

4140 ParkLake Avenue, Suite 100

Raleigh, North Carolina 27612

Telephone: (919) 789-5300

Fax: (919) 789-5301

nathan.huff@phelps.com

State Bar No. 40626

**Motion for Admission Pro Hac Vice Forthcoming*

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 22nd day of January, 2019, served a copy of the foregoing Legislative Defendants' Motion to Dismiss the Complaint, by United States mail, postage prepaid, to counsel for Plaintiffs and Defendants at the following addresses:

Allison J. Riggs
Jaclyn A. Maffetore
Jeffrey Loperfido
Gregory Moss
Southern Coalition for Social Justice
1415 W. Highway 54, Suite 101
Durham, NC 27707

Andrew J. Ehrlich
Richard Ingram
Apeksha Vora
Patrick Kessock
Paul, Weiss, Rifkind, Wharton & Garrison, LLP
1285 Avenue of the Americas
New York, NY 10019
Attorneys for Plaintiffs

Olga Vysotskaya
Stephanie Brennan
Amar Majmundar
North Carolina Department of Justice
114 W. Edenton St.
Raleigh, NC 27603
Attorneys for Defendants State of North
Carolina and the North Carolina State Board of
Elections

This 22nd day of January, 2019.



PHELPS DUNBAR LLP
4140 ParkLake Avenue, Suite 100
Raleigh, North Carolina 27612
Telephone: (919) 789-5300
Fax: (919) 789-5301
nathan.huff@phelps.com
State Bar No. 40626

*Counsel for Legislative
Defendants*