

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
No. 4:23-CV-00193-D**

RODNEY D. PIERCE and MOSES)
MATTHEWS,)

Plaintiffs,)

v.)

THE NORTH CAROLINA STATE BOARD)
OF ELECTIONS, ALAN HIRSCH, in his)
official capacity as Chair of the North Carolina)
State Board of Elections, JEFF CARMON III in)
his official capacity as Secretary of the North)
Carolina State Board of Elections, STACY)
“FOUR” EGGERS IV in his official capacity)
as a member of the North Carolina State Board)
of Elections, KEVIN N. LEWIS in his official)
capacity as a member of the North Carolina)
State Board of Elections, SIOBHAN O’DUFFY)
MILLEN in her official capacity as a member)
of the North Carolina State Board of Elections,)
PHILIP E. BERGER in his official capacity as)
President Pro Tem of the North Carolina)
Senate, and TIMOTHY K. MOORE in his)
official capacity as Speaker of the North)
Carolina House of Representatives,)

Defendants.)

**ANSWER OF LEGISLATIVE
DEFENDANTS TO PLAINTIFFS’
FIRST AMENDED COMPLAINT**

Defendants Philip E. Berger and Timothy K. Moore (“Legislative Defendants”)

answer the specific allegations of Plaintiffs’ First Amended Complaint as follows:

“FIRST AMENDED COMPLAINT FOR DECLATORY RELIEF”

1. Legislative Defendants admit that the statutes cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 1.

2. Legislative Defendants admit that SB 758 was ratified on October 25, 2023. In all other respects, Legislative Defendants deny the allegations of paragraph 2.

3. Legislative Defendants deny the allegations of paragraph 3.

4. Legislative Defendants admit the geography of Senate District 2 speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 4.

5. Legislative Defendants admit that Plaintiffs are seeking the relief stated in paragraph 5, but specifically deny that Plaintiffs are entitled to any relief whatsoever. In all other respects, Legislative Defendants deny the allegations of paragraph 5.

“JURISDICTION AND VENUE”

6. Legislative Defendants admit that the statutes cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 6.

7. Legislative Defendants admit that the statutes cited by Plaintiffs speak for themselves and that the Court has jurisdiction. In all other respects, Legislative Defendants deny the allegations of paragraph 7.

8. Legislative Defendants admit the allegations of paragraph 8.

9. Legislative Defendants admit that the court has the authority to grant declarator or injunctive relief, but specifically deny that any such relief is appropriate here. In all other respects, Legislative Defendants deny the allegations of paragraph 9.

“PARTIES”

10. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 10.

11. Legislative Defendants deny that black voters in Senate District 2 lack an opportunity to elect their preferred candidates of choice. In all other respects, Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 11.

12. Legislative Defendants deny that black voters in Senate District 2 lack an opportunity to elect their preferred candidate of choice. In all other respects Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 12.

13. Legislative Defendants admit the allegations of paragraph 13.

14. Legislative Defendants admit the allegations of paragraph 14.

15. Legislative Defendants admit the allegations of paragraph 15.

16. Legislative Defendants admit the allegations of paragraph 16.

17. Legislative Defendants admit the allegations of paragraph 17.

18. Legislative Defendants admit the allegations of paragraph 18.

19. Legislative Defendants deny the allegations of paragraph 19.

20. Legislative Defendants deny the allegations of paragraph 20.

“LEGAL BACKGROUND”

21. Legislative Defendants admit that the statutes and case cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 21.

22. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 22.

23. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 23.

24. Legislative Defendants admit that the statute and senate report cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 24.

25. Legislative Defendants admit that the “Senate factors” cited in the Senate report speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 25.

26. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 26.

27. Legislative Defendants admit that Section 2 of the Voting Rights Act (“Section 2”), sections of the North Carolina Constitution, and the decision in *Stephenson v. Bartlett*, 562 S.E.2d 377 (N.C. 2002) (“*Stephenson I*”) cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 27.

28. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 28.

“FACTUAL ALLEGATIONS

A. North Carolina’s 2023 Redistricting Process”

29. Legislative Defendants admit that the 2021 redistricting process is a matter of public record and speaks for itself. Legislative Defendants also admit that the *Harper* litigation and the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 29.

30. Legislative Defendants admit the cited cases speak for themselves. Legislative Defendants also admit that remedial North Carolina House and Senate districts imposed by a court were used for the 2022 elections. In all other respects, Legislative Defendants deny the allegations of paragraph 30.

31. Legislative Defendants admit the cited case speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 31.

32. Legislative Defendants admit the cited case speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 32.

33. Legislative Defendants admit the cited case and statutes speak for themselves and that the 2023 districting plans were enacted in October 2023. In all other respects, Legislative Defendants deny the allegations of paragraph 33.

34. Legislative Defendants admit the allegations of paragraph 34.

35. Legislative Defendants admit the allegations of paragraph 35.

“B. The 2023 State Senate Redistricting Plan”

36. Legislative Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 36.

37. Legislative Defendants lack knowledge or information sufficient to form a belief about which counties are located within the so-called “Black Belt.” Legislative Defendants admit that the Black voting age population (“BVAP”) for the counties listed by Plaintiffs and the State of North Carolina are a matter of public record which speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 37.

38. Legislative Defendants admit that it received the 2020 census data for the State of North Carolina and a letter received from the Southern Coalition for Social Justice (“SCSJ”) which speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 38.

39. Legislative Defendants admit that the results of the 2022 elections for the 2022 versions of Senate Districts 3 and 4 were and are a matter of public record and that they speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 39.

40. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 40.

41. Legislative Defendants deny the allegations of paragraph 41.

42. Legislative Defendants deny the allegations of paragraph 42.

43. Legislative Defendants admit the allegations of paragraph 43.

44. Legislative Defendants deny the allegations of paragraph 44.

“C. Black North Carolinians in the Black Belt Counties Are Sufficiently Numerous and Geographically Compact to Constitute a Majority-Minority District”

45. Legislative Defendants deny the allegations of paragraph 45.

46. Legislative Defendants deny the allegations of paragraph 46.

47. Legislative Defendants deny the allegations of paragraph 47.

48. Legislative Defendants deny the allegations of paragraph 48.

49. Legislative Defendants deny the allegations of paragraph 49.

50. Legislative Defendants admit that Plaintiffs Demonstrative Districts B-1 and B-2 include all of the counties included in the 2023 versions of Senate Districts 1 and 2. In all other respects, Legislative Defendants deny the allegations of paragraph 50.

“D. Voting in the Relevant Area is Racially Polarized”

51. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 51.

52. Legislative Defendants deny the allegations of paragraph 52.

53. Legislative Defendants admit that the counties included in the 2022 version of Senate District 3 and the racial composition of these counties are matters of public record. In all other respects, Legislative Defendants deny the allegations of paragraph 53.

54. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 54.

55. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 55.

56. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 56.

57. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 57.

“E. The Totality of the Circumstances Establishes That the Enacted Plan Has the Effect of Denying Black Voters an Equal Opportunity To Participate in the Political Process and To Elect Candidates of Their Choice”

58. Legislative Defendants deny the allegations of paragraph 58.

“1. North Carolina’s History of Racial Discrimination”

59. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 59.

60. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 60.

61. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 61.

62. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 62.

63. Legislative Defendants admit that the cases cited by Plaintiffs speaks for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 63.

64. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 64.

65. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 65.

66. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 66.

67. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 67.

“2. North Carolina’s History of Unlawful Race-Based Redistricting”

68. Legislative Defendants deny the allegations of paragraph 68.

69. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 69.

70. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 70.

71. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 71.

72. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 72.

“3. Ongoing Effects of North Carolina’s History of Discrimination”

73. Legislative Defendants admit that the cases cited by Plaintiffs speak for themselves. In all other respects, Legislative Defendants deny the allegations of paragraph 73.

74. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 74.

75. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 75.

76. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 76.

77. Legislative Defendants deny the allegations of paragraph 77.

“4. History of Racial Appeals in North Carolina Political Campaign

78. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 78.

79. Legislative Defendants admit that the case cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 79.

80. Legislative Defendants deny the allegations of paragraph 80.

81. Legislative Defendants deny the allegations of paragraph 81.

82. Legislative Defendants deny the allegations of paragraph 82.

83. Legislative Defendants deny the allegations of paragraph 83.

“CLAIMS FOR RELIEF

COUNT I

**Violation of Section 2 of the Voting Rights Act—Vote Dilution
52 U.S.C.”**

84. Legislative Defendants incorporate their responses to paragraphs 1-83 of Plaintiffs’ First Amended Complaint as if set forth fully herein.

85. Legislative Defendants admit that the statute cited by Plaintiffs speaks for itself. In all other respects, Legislative Defendants deny the allegations of paragraph 85.

86. Legislative Defendants deny the allegations of paragraph 86.

87. Legislative Defendants deny the allegations of paragraph 87.

88. Legislative Defendants deny the allegations of paragraph 88.

89. Legislative Defendants deny the allegations of paragraph 89.

90. Legislative Defendants deny the allegations of paragraph 90.

“COUNT II

**Violation of Section 2 of the Voting Rights Act—Vote Dilution
42 U.S.C. § 1983”**

91. Legislative Defendants incorporate their responses to paragraphs 1-90 of Plaintiffs’ First Amended Complaint as if set forth fully herein.

92. Legislative Defendants deny the allegations of paragraph 92.

93. Legislative Defendants deny the allegations of paragraph 93.

94. Legislative Defendants deny the allegations of paragraph 94.

95. Legislative Defendants deny the allegations of paragraph 95.
96. Legislative Defendants deny the allegations of paragraph 96.
97. Legislative Defendants deny the allegations of paragraph 97.
98. Legislative Defendants deny the allegations of paragraph 98.

“PRAYER FOR RELIEF”

No response is required to the allegations in the Prayer for Relief. To the extent this Court requires a response, Legislative Defendants deny the allegations in the Prayer for Relief and deny Plaintiffs are entitled to any of the relief sought in the Complaint, including those items listed in paragraphs A-D of the Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiffs Complaint, in whole or in part, fails state a claim upon which relief can be granted.

SECOND DEFENSE

The relief sought by Plaintiffs would involve unconstitutional racial gerrymanders because they request districts in which racial considerations predominate over traditional districting criteria.

THIRD DEFENSE

It would be inequitable to afford Plaintiffs relief so soon before the 2024 elections.

FOURTH DEFENSE

Section 2, properly construed, does not support a claim for vote dilution based on a challenge to a districting plan.

FIFTH DEFENSE

To the extent that Section 2 requires North Carolina to draw districts with predominate considerations of race, Section 2 is unconstitutional.

SIXTH DEFENSE

Plaintiffs' claims should be dismissed because the districts they propose are racial gerrymanders that are illegal under the Fourteenth Amendment to the United States Constitution

SEVENTH DEFENSE

Plaintiffs' claims should be dismissed because the districts they propose do not satisfy the *Gingles* criteria.

EIGHTH DEFENSE

Plaintiffs' claims should be dismissed because the districts they propose violate the Whole County Provisions of the North Carolina Constitution.

NINTH DEFENSE

Any allegations in paragraphs 1-98 of the Complaint not specifically admitted are denied.

TENTH DEFENSE

Race did not predominate in the drawing of any district.

ELEVENTH DEFENSE

The General Assembly did not “crack” or “pack” minority voters in its Senate districting plan.

TWELFTH DEFENSE

The demonstrative districts proposed by Plaintiffs are inconsistent with traditional districting criteria and fail to properly defer to the North Carolina General Assembly’s primary role in the redistricting process.

PRAYER FOR RELIEF

WHEREFORE, Legislative Defendants respectfully request that the court enter an order dismissing Plaintiffs’ claims with prejudice, and that Legislative Defendants be awarded their costs and attorneys’ fees and such other relief as may be just and proper.

Respectfully submitted this 19th day of January, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

/s/ Phillip J. Strach

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Counsel for Legislative Defendants
** Notice of Special Appearance filed*

CERTIFICATE OF SERVICE

I, Phillip J. Strach, hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification to counsel of record.

This the 19th day of January, 2024.

**NELSON MULLINS RILEY &
SCARBOROUGH LLP**

/s/ Phillip J. Strach

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