

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
CASE NO. 18-CVS-009806-910

NORTH CAROLINA STATE  
CONFERENCE OF THE  
NATIONAL ASSOCIATION FOR  
THE ADVANCEMENT OF  
COLORED PEOPLE,

Plaintiff,

v.

TIM MOORE, in his official  
capacity, PHILIP BERGER, in his  
official capacity,

Defendants.

**AMENDED MOTION FOR  
DISPOSITIVE RULING**

Defendants Tim Moore and Philip Berger, both in their official capacities, by and through undersigned counsel, and generally pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure, hereby move this Court for an Order entering judgment in favor of Defendants on all claims asserted in Plaintiff's Second Amended Complaint filed on September 19, 2018. In support of this Motion, Defendants state as follows:

Plaintiff cannot meet the new test espoused by the North Carolina Supreme Court in this case under any set of circumstances and Defendants are entitled to judgment as a matter of law in this facial challenge to N.C. Sess. Laws 2018-128 and 2018-119. *See N.C. State Conf. of the NAACP v. Moore*, 382 N.C. 129, 133, 876 S.E.2d

513, 519 (2022) (articulating new test<sup>1</sup>). Specifically, as a matter of law (1) there is not a substantial risk that the Voter ID (N.C. Sess. Law. 2018-128) and Tax Cap (N.C. Sess. Law 2018-119) Amendments would immunize legislators elected due to unconstitutional gerrymanders from democratic accountability; (2) there is not a substantial risk that the Voter ID (N.C. Sess. Law. 2018-128) and Tax Cap (N.C. Sess. Law 2018-119) Amendments would perpetuate the continued exclusion of a category of voters from the democratic process; and (3) there is not a substantial risk that the Voter ID (N.C. Sess. Law. 2018-128) and Tax Cap (N.C. Sess. Law 2018-119) Amendments would constitute intentional discrimination against the same category of voters discriminated against in *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017). *See id.*

Defendants intend to file a memorandum outlining the law and judicially noticeable evidence in support of this Motion in compliance with N.C. R. Civ. P. 12(c), the Wake County Local Rules, and any case management orders of this Court. Defendants hereby give notice of their intent to rely on this briefing in support of their Motion for Summary Judgment.

Respectfully submitted, this the 18th day of July, 2024.

**NELSON MULLINS RILEY & SCARBOROUGH LLP**

By: /s/ D. Martin Warf

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<sup>1</sup> Legislative Defendants specifically preserve for appellate review, and do not intend to raise to this Court, the issue that the North Carolina Supreme Court's determination of justiciability in *Moore* was wrongly decided, as generally articulated by the dissenting opinion and Court of Appeals majority. That said, for the purposes of this Motion, Legislative Defendants will show that even if the test in *Moore* was correctly decided, Plaintiffs cannot prevail as a matter of law. Nothing in Legislative Defendants' Motion or briefing should be construed as an express or implied waiver of whether *Moore* was wrongly decided.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 18th, 2024, a copy of the foregoing was served upon the parties listed below by email at the addresses indicated below:

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/s/ D. Martin Warf  
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