

FILED

2021 DEC -3 PM 3: 35

STATE OF NORTH CAROLINA WAKE CO., C.S. IN THE GENERAL COURT OF JUSTICE
COUNTY OF WAKE BY _____ SUPERIOR COURT DIVISION
21-CVS-014476

NORTH CAROLINA STATE
CONFERENCE OF THE NAACP,
COMMON CAUSE, MARILYN HARRIS,
GARY GRANT, JOYAH BULLUCK,
and THOMASINA WILLIAMS,

Plaintiffs,

vs.

PHILLIP E. BERGER in his official
capacity as President Pro Tempore of the
North Carolina Senate; TIMOTHY K.
MOORE in his official capacity as Speaker
of the North Carolina House of
Representatives; RALPH E. HISE, JR.,
WARREN DANIEL, PAUL NEWTON, in
their official capacities as Co-Chairmen of
the Senate Committee on Redistricting
and Elections; DESTIN HALL, in his
official capacity as Chairman of the House
Standing Committee on Redistricting;
THE STATE OF NORTH CAROLINA;
THE NORTH CAROLINA STATE
BOARD OF ELECTIONS; DAMON
CIRCOSTA, in his official capacity as
Chair of the State Board of Elections;
STELLA ANDERSON, in her official
capacity as Secretary of the State Board of
Elections; STACY EGGERS IV, in his
official capacity as Member of the State
Board of Elections; JEFF CARMON III, in
his official capacity as Member of the State
Board of Elections; TOMMY TUCKER, in
his official capacity as Member of the State
Board of Elections; KAREN BRINSON
BELL, in her official capacity as Executive
Director of the State Board of Elections,

Defendants.

**ORDER DENYING MOTION FOR
PRELIMINARY INJUNCTION AND
GRANTING MOTION TO DISMISS**

FILED FROM DEMOCRACYDOCKET.COM

THIS MATTER came on to be heard before the undersigned upon Plaintiffs' Motion for Preliminary Injunction, filed on October 29, 2021; and Defendants Phillip E. Berger, Timothy K. Moore, Ralph E. Hise, Jr., Warren Daniel, Paul Newton, and Destin Hall's (together "Legislative Defendants") Motion to Dismiss filed on November 10, 2021.

Plaintiffs' motion requests that Legislative Defendants be enjoined from undertaking a redistricting process that departs from the requirements of the North Carolina Constitution laid out in the *Stephenson v. Bartlett* line of cases. Since the filing of Plaintiffs' motion and complaint, the General Assembly has completed their redistricting process and enacted new state legislative and congressional districts. See S.L. 2021-173 (North Carolina Senate districts); S.L. 2021-174 (United States House of Representatives districts); S.L. 2021-175 (North Carolina House of Representatives districts). Accordingly, this motion is now moot. Additionally, this request essentially asks this Court to reverse actions which have already been taken by Legislative Defendants rather than prohibit Legislative Defendants from performing some action in the future. This does not form the proper basis for a preliminary injunction.

Plaintiffs' motion also requests that the State Defendants (The State of North Carolina, North Carolina State Board of Elections, Damon Circosta, Stella Anderson, Stacy Eggers IV, Jeff Carmon II, Tommy Tucker, and Karen Brinson Bell) be enjoined from administering the scheduled 2022 elections before May 3, 2022. Plaintiffs' complaint does not challenge the enacted districts as unconstitutional or violative of federal law. The enacted maps are presumed to be constitutional. See *Jenkins v. State Bd. of Elections*, 180 N.C. 169, 170, 104 S.E. 346, 347 (1920) (holding that it is well-settled, "both upon principle and authority. . . that legislative enactments are presumed to be constitutional until the contrary is shown.") As such, Plaintiffs have argued no basis for the requested relief of

enjoining the 2022 elections that are scheduled to be conducted under the since-enacted and presumptively constitutional districts.

Legislative Defendants' Motion to Dismiss should be granted. The enactment of new legislative and congressional districts renders Plaintiffs' claims moot. Additionally, judicial intervention in the legislative process in the manner contemplated and requested by plaintiffs in this case would violate the principle of separation of powers pursuant to Article I, Section 6 of the North Carolina Constitution, and such a violation necessarily divests this Court of jurisdiction over the subject matter of Plaintiffs' complaint.

IT IS THEREFORE ORDERED that Plaintiffs' motion for preliminary injunction be DENIED as moot and Defendants' motion to dismiss be GRANTED for mootness and lack of subject matter jurisdiction.

This 3rd day of December, 2021.


A. Graham Shirley, Superior Court Judge

RETRIEVED FROM DEMOCRACYDOCKET.COM

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

Allison J. Riggs
Hilary H. Klein
Mitchell Brown
Katelin Kaiser
SOUTHERN COALITION FOR
SOCIAL JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
hilaryklein@scsj.org
mitchellbrown@scsj.org
katelin@scsj.org
Counsel for Plaintiffs

Phillip J. Strach
Thomas A. Farr
Alyssa M. Riggins
NELSON MULLINS RILEY &
SCARBOROUGH LLP
4140 Parklake Avenue, Suite 200
Raleigh, NC 27612
Phillip.strach@nelsonmullins.com
Tom.farr@nelsonmullins.com
Alyssa.riggins@nelsonmullins.com
*Counsel for Defendants Phillip E. Berger,
Timothy K. Moore, Ralph E. Hise, Jr., Warren
Daniel, Paul Newton, And Destin Hall*

Terence Steed
Amar Majmundar
Stephanie A. Brennan
NORTH CAROLINA DEPARTMENT
OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
tsteed@ncdoj.org
amajmundar@ncdoj.org
sbrennan@ncdoj.org
*Counsel for Defendants State of North Carolina,
North Carolina State Board of Elections, Damon
Circosta, Stella Anderson, Stacy Eggers IV, Jeff
Carmon III, Tommy Tucker, and Karen Brinson
Bell*

Service is made upon local counsel for all attorneys who have been granted pro hac vice admission, with the same effect as if personally made on a foreign attorney within this state.

This the 3rd day of December 2021.


B. Davis Cooper, Judicial Assistant
Bettye.D.Cooper@nccourts.org