

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV031557-910

TELIA KIVETT; WANDA NELSON
FOWLER; the REPUBLICAN
NATIONAL COMMITTEE; and the
NORTH CAROLINA REPUBLICAN
PARTY,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD
OF ELECTIONS; KAREN BRINSON
BELL, in her official capacity as
Executive Director of 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, in
his official capacity as Secretary of the
North Carolina State Board of
Elections; STACY EGGERS IV, KEVIN
N. LEWIS, and SIOBHAN O'DUFFY
MILLEN, in their official capacities as
members of the North Carolina State
Board of Elections,

Defendants,

and

DEMOCRATIC NATIONAL
COMMITTEE,

Intervenor-Defendant.

**MOTION TO DISMISS, ANSWER,
AND AFFIRMATIVE DEFENSES OF
INTERVENOR-DEFENDANT
DEMOCRATIC NATIONAL
COMMITTEE**

Intervenor-Defendant the Democratic National Committee (“DNC”), pursuant to Rules 8 and 12 of the North Carolina Rules of Civil Procedure, submits the following motion to dismiss, answer to, and affirmative defenses to the complaint in this case.

MOTION TO DISMISS

The DNC moves to dismiss Plaintiffs’ complaint for failure to state a claim upon which relief can be granted pursuant to Rules 12(b)(1), 12(b)(6), and 12(b)(7) of the North Carolina Rules of Civil Procedure.

Dismissal is warranted under Rule 12(b)(1) as to Plaintiffs Telia Kivett and Wanda Nelson Fowler (the “Individual Plaintiffs”) because they each lack standing. The Individual Plaintiffs’ claim that their votes will be “diluted” by others casting ballots is not a cognizable injury under North Carolina law, which requires only that “each vote must have the same weight,” *Harper v. Hall*, 384 N.C. 292, 364–365, 886 S.E.2d 393, 439–440 (2023).

Dismissal is warranted under Rule 12(b)(6) because, among other reasons, (1) the General Assembly may reduce the time-of-residency requirement for presidential elections pursuant to North Carolina Constitution article VI, § 2(2); (2) N.C. Gen. Stat. § 163-258.11 expressly entitles Uniform Military and Overseas Voters Act (“UMOVA”) voters to use Uniformed and Overseas Citizens Absentee Voting Act absentee ballots; (3) the relief Plaintiffs seek is preempted by federal law and barred by the North Carolina Constitution; (4) the relief sought by Plaintiffs is barred by laches, the applicable statute of limitations, and/or the U.S. Supreme Court’s *Purcell*

doctrine barring last-minute changes to state election law; and (5) Plaintiffs' Complaint is an improper attempt to avoid the administrative procedures set by statute to challenge the eligibility of voters, which procedures include giving notice and adequate due process to the challenged voters.

Dismissal is warranted under Rule 12(b)(7) both because Plaintiffs have failed to join the Speaker of the House of Representatives and the President Pro Tempore of the Senate, as required by Rule 19(d) of the North Carolina Rules of Civil Procedure, and because Plaintiffs have failed to join the UMCVA voters they seek to disenfranchise, as required by Rule 19 of the North Carolina Rules of Civil Procedure and N.C. Gen. Stat. § 1-260.

ANSWER AND GENERAL DENIAL

The DNC, by and through undersigned counsel, answers the complaint as follows: The complaint is replete with legal conclusions to which no response is required. As to the well-pleaded factual allegations, the DNC admits only paragraphs 11, 13, 18–24, the last sentence of paragraph 27, and the first sentence of paragraph 30. The documents referenced in paragraphs 43 n.2, 48 & n.3, 50 & n.4, and 64–72 speak for themselves as a matter of fact and law and are the best evidence of their contents. Except as expressly admitted, the DNC generally denies all factual allegations in the complaint in their entirety and demands strict proof of the same.

AFFIRMATIVE OR ADDITIONAL DEFENSES

Having fully answered the complaint, the DNC pleads the following defenses and/or affirmative defenses, without waiving any arguments that it may be entitled

to assert regarding the burden of proof, legal presumptions, or other legal characterizations. The DNC expressly reserves the right to plead additional defenses and other matters of defense to the complaint by way of amendment after further discovery and investigation.

FIRST DEFENSE

The Individual Plaintiffs each lack standing to the extent their purported injury is “dilution” of their votes.

SECOND DEFENSE

Plaintiffs fail to state a claim upon which relief can be granted.

THIRD DEFENSE

Plaintiffs failed to join necessary parties in this action, including the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the UMOVA voters whose fundamental right to vote Plaintiffs seek to deny.

FOURTH DEFENSE

Plaintiffs’ claims are barred by the Fourteenth Amendment to the United States Constitution and Article I, §§ 1, 10, and 19 of the North Carolina Constitution.

FIFTH DEFENSE

Plaintiffs’ claims are preempted, in whole or in part, by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301, *et seq.*

SIXTH DEFENSE

Plaintiffs’ claims do not meet any of the requirements for the issuance of an injunction.

SEVENTH DEFENSE

Plaintiffs' requested relief is barred, in whole or in part, by the doctrine of laches.

EIGHTH DEFENSE

Plaintiffs' requested relief is barred, in whole or in part, by the statute of limitations.

NINTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the National Voter Registration Act, 52 U.S.C. § 20507, *et seq.*

TENTH DEFENSE

Plaintiffs' requested relief is barred by the doctrines of ratification and unclean hands.

PRAYER FOR RELIEF

The DNC, having moved to dismiss, answered, and otherwise responded to the complaint, prays unto the Court:

1. That Plaintiffs' claims be dismissed with prejudice;
2. For a trial by jury on all issues so triable;
3. To tax the costs of this action against Plaintiffs; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted, this 21st day of October, 2024.

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CERTIFICATE OF SERVICE

The foregoing document was served by electronic mail upon the following:

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This 21st day of October, 2024.

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