

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.

**MOTION FOR SUMMARY
JUDGMENT**

Defendants Tim Moore and Philip Berger, both in their official capacities, by and through undersigned counsel, and pursuant to Rule 56 of the North Carolina Rules of Civil Procedure, hereby move this Court for an Order entering Summary 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 test¹). Specifically, there is no genuine issue of material fact and 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 and any evidence in support of this Motion in compliance with N.C. R. Civ. P. 56, 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 and evidence in support of their Motion for Summary Judgment.

Respectfully submitted, this the 2nd day of July, 2024.

¹ 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 summary judgment, 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' summary judgment 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 2nd, 2024, a copy of the foregoing was served upon the parties listed below by email at the addresses indicated below:

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