

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
CIVIL ACTION NO: 1:22-cv-00611-WO-JLW

COMMON CAUSE, ELIZABETH )  
MARION SMITH, SETH EFFRON, )  
JAMES M. HORTON, TYLER C. )  
DAYE, and SABRA J. FAIRES, )  
 )  
Plaintiffs, )  
v. )  
 )  
TIMOTHY K. MOORE, Speaker, )  
North Carolina House of )  
Representatives; and PHILLIP E. )  
BERGER, President Pro Tempore, )  
North Carolina Senate, )  
 )  
Defendants. )

DEFENDANTS'  
MOTION TO DISMISS  
(12(b)(1) & 12(b)(6))

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**MOTION TO DISMISS**

Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, as well as L.R. 7.3, hereby move this Court to dismiss Plaintiffs' action.

As to Defendants' motion to dismiss under Rule 12(b)(1) for lack of subject matter jurisdiction, Plaintiffs lack Article III standing to prosecute their claims in this action. Further, Plaintiffs' claims against Defendants are barred under the Eleventh Amendment.

As to Defendants' motion to dismiss under Rule 12(b)(6) for failure to state a claim, Plaintiffs' Amended Complaint fails to establish the necessary elements of a claim for a violation of the Equal Protection Clause of the Fourteenth Amendment or the First Amendment of the United States Constitution.

Defendants contemporaneously submit a Memorandum in support of this Motion to Dismiss and incorporate all arguments and grounds to dismiss Plaintiffs' Complaint contained therein by reference.

WHEREFORE, Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House, respectfully request that this Court grant this Motion to Dismiss, enter an order dismissing Plaintiffs' action with prejudice, and grant such other and further relief as it deems proper.

Respectfully submitted this 14<sup>th</sup> day of October, 2022.

/s/ Phillip J. Strach

D. Martin Warf

N.C. State Bar No. 32982

Phillip J. Strach

N.C. State Bar No. 29456

Nelson Mullins Riley & Scarborough, LLP

4140 Parklake Avenue, Suite 200

Raleigh, NC 27612

Phone: (919) 329-3800

Fax: (919) 329-3799

[martin.warf@nelsonmullins.com](mailto:martin.warf@nelsonmullins.com)

[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)

*Counsel for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such to the following:

Edwin M. Speas, Jr.  
Caroline P. Mackie  
Poyner Spruill LLP  
P. O. Box 1801  
Raleigh, NC 27602-1801

Michael Crowell  
1011 Brace Lane  
Chapel Hill, NC 27516

*Attorneys for Plaintiff*

/s/ Phillip J. Strach

D. Martin Warf  
N.C. State Bar No. 32982  
Phillip J. Strach  
N.C. State Bar No. 29456  
Nelson Mullins Riley & Scarborough, LLP  
4140 Parklake Avenue, Suite 200  
Raleigh, NC 27612  
Phone: (919) 329-3800  
Fax: (919) 329-3799  
[martin.warf@nelsonmullins.com](mailto:martin.warf@nelsonmullins.com)  
[phil.strach@nelsonmullins.com](mailto:phil.strach@nelsonmullins.com)  
*Counsel for Defendants*