

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

<b>AMERICAN CIVIL LIBERTIES</b>	)	
<b>UNION OF NORTH</b>	)	
<b>CAROLINA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Civil Action No. 1:23-cv-302</b>
<b>v.</b>	)	
	)	
<b>JOSH STEIN, et al.</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

**PLAINTIFF’S MOTION FOR CERTIFICATION  
OF A DEFENDANT CLASS**

Plaintiff American Civil Liberties Union of North Carolina respectfully moves the Court, pursuant to Rule 23(a), (b)(1)(A), and (b)(1)(B) of the Federal Rules of Civil Procedure, for certification of a defendant class. In support of this Motion, Plaintiff states as follows:

1. Plaintiff filed this case on April 10, 2023, asserting that N.C. Gen. Stat. § 14-288.2 (the “Anti-Riot Act” or “Act”), as recently amended and expanded by House Bill 40, North Carolina Session Law 2023-6, violates the First and Fourteenth Amendments to the United States Constitution and article I, sections 12, 14, and 19 of the North Carolina Constitution. Plaintiff seeks declaratory and injunctive relief against Attorney General Joshua Stein

and a class of North Carolina district attorneys represented by District Attorneys Satana Deberry, Avery Crump, and Lorrin Freeman, in their official capacities.

2. Plaintiff moves for certification of a class referred to as the Defendant District Attorney Class, to be defined as follows:

All elected District Attorneys in North Carolina in their official capacities.

3. Certification is appropriate under Rule 23(a)(1) because joinder is impracticable. The proposed class is comprised of approximately 43 elected district attorneys. Further, putative class members are spread across the entire state. Judicial economy is served by resolving the facial constitutionality of a statute that is enforceable statewide in a single proceeding.

4. Certification is appropriate under Rule 23(a)(2) because every putative class member has the same constitutional and statutory authority to enforce North Carolina's criminal laws within their respective prosecutorial districts, and all putative class members' ability to enforce the Anti-Riot Act depends upon this Court's resolution of a central legal question: whether the Act is facially unconstitutional in violation of the First and Fourteenth Amendments to the United States Constitution and article I, sections 12, 14, and 19 of the North Carolina Constitution.

5. Certification is appropriate under Rule 23(a)(3) because Defendant Deberry's, Crump's, and Freeman's defenses are typical of the putative class members. Because Plaintiff brings a facial constitutional challenge to the Anti-Riot Act, every putative class member's defense will necessarily focus on the legality of the Act, not on factual circumstances specific to their own enforcement of the Act.

6. Certification is appropriate under Rule 23(a)(4) because Defendants Deberry, Crump, and Freeman can adequately represent the class and are represented by competent counsel. The named defendants are all experienced prosecutors with the same interest in (and responsibility for) enforcing duly enacted criminal laws within their respective jurisdictions as every other district attorney in the state.

7. Named Defendants' counsel—Special Deputy Attorney General Kathryn H. Shields—is an experienced litigator who has defended North Carolina governmental entities in civil rights and constitutional matters in state and federal court on numerous occasions. Moreover, the North Carolina Department of Justice routinely defends district attorneys in litigation and has the resources to fully litigate this matter.

8. Certification is appropriate under Rule 23(b)(1)(A) because litigating the facial constitutionality of the Act in individual cases brought

against individual district attorneys would risk inconsistent adjudications and likely establish incompatible standards of conduct for Plaintiff, its members, its employees, defendant class members, and all North Carolinians throughout the state.

9. Certification is appropriate under Rule 23(b)(1)(B) because litigating the facial constitutionality of the Act in individual cases brought against individual district attorneys risks inconsistent adjudications that would impair the rights of other members of the putative class.

WHEREFORE, Plaintiff respectfully requests that this Court grant this Motion.

Respectfully submitted this 8th day of May 2023 by:

**ACLU OF NORTH CAROLINA  
LEGAL FOUNDATION**

/s/ Samuel J Davis

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this **MOTION FOR CLASS CERTIFICATION** was this day filed in in the Middle District of North Carolina using the Clerk's CM/ECF system, which will send notification of this filing to the parties. In addition, I will serve counsel for Defendants Deberry, Crump, and Freeman by email and first-class U.S. mail at the address listed below:

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**ACLU OF NORTH CAROLINA  
LEGAL FOUNDATION**

/s/ Samuel J Davis