

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA  
Civil Action No.1:22-cv-611-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; )  
PHILLIP E. BERGER, President Pro )  
Tempore, North Carolina Senate; and ROY )  
A. COOPER, III, Governor of North )  
Carolina, )

*(all in their official capacity only)* )

Defendants. )

**GOVERNOR COOPER’S  
MOTION TO DISMISS**

[Fed. R. Civ. P. 12(b)(1)  
and 12(b)(6)]

NOW COMES Defendant ROY A. COOPER, III, Governor of North Carolina, in his official capacity (herein after as “Governor Cooper”), by and through undersigned counsel, and respectfully moves the Court to dismiss Plaintiffs’ Second Amended Complaint against Governor Cooper in the above-captioned matter pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), as well as L.R. 7.3.

Plaintiffs’ Second Amended Complaint should be dismissed for lack of subject matter jurisdiction because Plaintiffs lack Article III standing to prosecute their claims in this action. Plaintiffs’ Second Amended Complaint also should be dismissed for failure to state a claim because Plaintiffs’ Second Amended Complaint fails to establish the

necessary elements of a claim for a violation of the First Amendment of the United States Constitution and fails to establish a violation of the Equal Protection Clause of the Fourteenth Amendment.

In support of this motion, Governor Cooper relies on the factual grounds, arguments and legal authorities set forth in the accompanying brief.

WHEREFORE, Governor Cooper respectfully requests 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 9<sup>th</sup> day of May, 2023.

JOSHUA H. STEIN  
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