

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Civil Action No.: 1:23-CV-00259**

**JOHN MIALL, ROBYN HITE,)
DAVID SHAW, DANIE)
JOHNSON and WILLA GRANT,)
)
Plaintiffs,)
)
v.)
)
CITY OF ASHEVILLE; DEBRA)
CAMPBELL, individually and in)
her official capacity as City)
Manager of the City of Asheville,)
and ESTHER MANHEIMER,)
individually and in her official)
capacity as Mayor of the City of)
Asheville,)
Defendants.)
_____)**

MOTION TO DISMISS

NOW COME Defendants, the City of Asheville, (hereinafter the “City”), Debra Campbell, and Esther Manheimer, by and through counsel, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, and hereby move the Court for entry of an Order dismissing the Plaintiffs’ claims in their entirety. In support of this Motion, Defendants relies on the Memorandum of Law submitted contemporaneously herewith, and upon the following:

FACTS RELEVANT TO RIPENESS

1. As set forth in the Affidavit of Magdalen S. Burleson, submitted contemporaneously herewith, all five of the Plaintiffs' applications for appointment to the Human Relations Commission of Asheville (hereinafter "HRCA") are still pending with the City. Burleson Affidavit, ¶ 5.

2. Applicants for advisory boards, like HRCA, are expressly told at the time of their applications that they will remain listed as active applicants for consideration for appointment for a period of one year after the date of their application. Burleson Affidavit, ¶ 6.

3. It is anticipated that the City Council for the City of Asheville will fill the current vacancies on the HRCA at its meeting on October 10, 2023. Burleson Affidavit, ¶ 5.

4. The City Ordinance pertaining to the composition of the HRCA, Section 2-185.25, was heavily modified on two occasions, first in 2022 to remove any minimum level of diversity among the HRCA's membership, and again in 2023 to reduce the number of HRCA members from 15 to 9. Burleson Affidavit, ¶ 8.

5. None of the Plaintiffs ever applied for appointment to the HRCA prior to the passing of the 2022 and 2023 revisions to Section 2-185.25 of the City Code. Burleson Affidavit, ¶ 4.

6. While there was formerly an additional “Human Relations Commission Application” form used by the City in the course of receiving applications for HRCA membership, the City ceased needing to rely on that form after the 2022 amendment to Section 2-185.25 of the City Code. While it appears from the allegations in the Complaint that the Plaintiffs may have been asked to complete this supplemental form in error, the City can conclusively state that these additional forms will not be supplied to the City of Asheville City Council for consideration when it meets, likely on October 10, 2023, to consider whether to appoint any of the Plaintiffs to the HRCA. Burleson Affidavit, ¶¶ 9 and 10.

DISCUSSION

7. None of the Plaintiffs have standing to challenge the versions of Section 2-185.25 that were in effect prior to their applying for membership on the HRCA. Moreover, their challenges to the current version of Section 2-185.25 are not ripe, insofar as their applications remain pending for review, with the expectation being that the City Council for the City of Asheville will determine whether to appoint any of the Plaintiffs to the HRCA at its meeting on October 10, 2023.

8. The Plaintiffs’ Complaint should be dismissed in its entirety pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure on the basis that their claims are not sufficiently ripe to allow for judicial review.

9. Further, the Plaintiffs' Complaint should be dismissed in its entirety pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, insofar as it lacks factual allegations sufficient to state a claim upon which relief may be granted, either pursuant to Title VI, or under the Equal Protection Clause.

10. Finally, the claims asserted against Defendants Campbell and Manheimer must be dismissed based on the Plaintiffs' failure to state legally cognizable claims against such Defendants. Specifically, the allegations in the Complaint affirmatively disclose that neither Defendant Campbell nor Defendant Manheimer possessed any authority to deprive the Plaintiffs of their civil rights in the manner claimed by the Complaint, and that both Defendant Campbell and Defendant Manheimer are entitled to qualified and legislative immunities.

WHEREFORE the City respectfully requests the Court enter an Order dismissing the Plaintiffs' Claims in their entirety pursuant to Rule 12(b)(1) for want of subject matter jurisdiction, and Rule 12(b)(6) for failure to state a claim upon which relief may be granted.

Respectfully submitted this the 14th day of September, 2023,

s/ Eric P. Edgerton
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CERTIFICATE OF SERVICE

This is to certify that the foregoing Motion to Dismiss has been duly served by electronically filing via the Electronic Filing System to the following:

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This the 14th day of September, 2023.

s/ Eric P. Edgerton
Eric P. Edgerton