

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

JOHN P. MIALL, JR., ROBYN HITE,  
DAVID SHAW, DANIE JOHNSON, and  
WILLA GRANT,

Plaintiffs,

v.

CITY OF ASHEVILLE,  
DEBRA CAMPBELL, in her official  
capacity as City Manager of the City of  
Asheville, and  
ESTHER MANHEIMER, in her official  
capacity as Mayor of the City of Asheville,

Defendants.

Civil Action No. 1:23-cv-00259-MR-WCM

**PLAINTIFFS' EMERGENCY  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Pursuant to Rule 65(a) of the Federal Rules of Civil Procedure, Plaintiffs John P. Miall, Jr., Robyn Hite, David Shaw, Danie Johnson, and Willa Grant, individually and on behalf of a class of similarly situated persons, hereby respectfully move for a temporary restraining order and preliminary injunction on an emergency basis and expedited briefing schedule, to enjoin Defendants City of Asheville, Debra Campbell, in her official capacity as City Manager of the City of Asheville, Esther Manheimer, in her official capacity as Mayor of the City of Asheville, and their agents from doing the following:

1) Appointing members to the Human Relations Commission of Asheville (HRCA) under the race-based appointment preferences set forth in in the Asheville Code of Ordinances, Chapter II, Article III, Division 14, Sec. 2-185.25, and any other policy, practice, or procedure in existence or being proposed that provides race-based appointment preferences to applicants to the HRCA, and

2) Otherwise discriminating on the basis of race in making appointments to the HRCA.

Defendants are scheduled to appoint members to the HRCA at the Asheville City Council meeting on October 10, 2023, so Plaintiffs respectfully request that the Court issue an injunction effective on or before that date.

In support thereof, Plaintiffs refer to the Memorandum in Support of the Motion for Temporary Restraining Order and Preliminary Injunction filed in conjunction with this Motion. In short, the City of Asheville's ordinance requires the City Council to favor or prefer minority applicants seeking appointment to the HRCA. The City must specifically favor applicants who are Black or African American, Latino/a or Hispanic individuals, Native American and Indigenous people, and Asian Americans. These race-based preferences violate the guarantee of Equal Protection in the United States Constitution because they disadvantage applicants that are not racial minorities. Plaintiffs are applicants to the HRCA that are white and are thus disadvantaged by these preferences.

Defendants' use of these race-based appointment preferences do not satisfy strict scrutiny. As such, and as fully set forth in the accompanying Memorandum, the Court should grant the requested temporary restraining order and preliminary injunction because Plaintiffs will likely prevail on the merits of their equal protection claim. Further, Plaintiffs will suffer irreparable harm without an injunction because Defendants are violating Plaintiffs' fundamental rights under the Equal Protection Clause, and Plaintiffs may not be able to seek appointment to the HRCA until June 2024, when additional vacancies will appear after the terms of current members of the HRCA are set to expire. Additionally, the balance of harms weighs in Plaintiffs' favor, and enjoining Defendants from violating the right to equal protection is in the public's interest.

To ensure that Plaintiffs have an equal opportunity to be considered for appointment to the HRCA, the Court should grant the requested temporary restraining order and preliminary injunction.

DATED: September 27, 2023.

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Respectfully submitted,

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*\*Pro Hac Vice motion submitted*

**CERTIFICATE OF CONFERRAL PURSUANT TO LOCAL RULE 7.1(b)**

Undersigned counsel certifies that counsel for Plaintiffs met and conferred in good faith with counsel for Defendants to resolve or narrow the issue.

/s/ Jessica L. Thompson  
Jessica L. Thompson

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2023, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following:

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