

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CV029308-910

ROY A. COOPER, III, in his  
capacity as GOVERNOR OF THE  
STATE OF NORTH CAROLINA

Plaintiff,

vs.

PHILIP E. BERGER, in his official  
capacity as PRESIDENT PRO  
TEMPORE OF THE NORTH  
CAROLINA SENATE; TIMOTHY K.  
MOORE, in his official capacity as  
SPEAKER OF THE NORTH  
CAROLINA HOUSE OF  
REPRESENTATIVES; and THE  
STATE OF NORTH CAROLINA,

Defendants.

**LEGISLATIVE DEFENDANTS’  
MOTION TO DISMISS AND,  
ALTERNATIVELY, MOTION FOR  
JUDGMENT ON THE PLEADINGS  
12(b)(1) & 12(c)**

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, through undersigned counsel, and pursuant to Rules 12(b)(1) and 12(c) of the North Carolina Rules of Civil Procedure, move to dismiss Plaintiff’s complaint and request for declaratory relief in his favor. Defendants have served a Memorandum in support of this Motion laying out the specific grounds and bases of each Motion.

But generally, Plaintiff’s claims are the kind of claims our Supreme Court has held to be political questions and non-justiciable. Justiciability is a part of the courts’

subject matter jurisdiction over a particular claim and because Plaintiff's claims are non-justiciable, this Court should dismiss them pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction.

If, however, this Court should determine that it does have jurisdiction to hear Plaintiff's claims, Defendants move for judgment on the pleadings, pursuant to Rule 12(c), because there is no issue of material fact and Defendants are entitled to final judgment as a matter of law.

Respectfully submitted, this the 9th day of February, 2024.

NELSON MULLINS RILEY &  
SCARBOROUGH LLP

By: /s/ D. Martin Warf

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*ATTORNEYS FOR 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 of Representatives*

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motions to Dismiss was served upon the persons indicated below via electronic mail addressed as follows:

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This the 9th day of February, 2024.

By: /s/ D. Martin Warf  
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