

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
CIVIL ACTION NO. 5:13-CV-607-BO

CALLA WRIGHT, WILLIE J. BETHEL,)
AMY T. LEE, AMYGAYLE L. WOMBLE,)
BARBARA VANDENBERGH, JOHN G.)
VANDENBERGH, AJAMU G.)
DILLAHUNT, ELAINE E. DILLAHUNT,)
LUCINDA H. MACKETHAN, WILLIAM B.)
CLIFFORD, ANN LONG CAMPBELL,)
GREG FLYNN, BEVERLEY S. CLARK,)
CONCERNED CITIZENS FOR AFRICAN-)
AMERICAN CHILDREN, and the RALEIGH)
WAKE CITIZENS ASSOCIATION,)

Plaintiffs,)

vs.)

THE STATE OF NORTH CAROLINA, and)
THE WAKE COUNTY BOARD OF)
ELECTIONS,)

Defendants.)

STATE OF NORTH CAROLINA'S
MOTION TO DISMISS
(FED. R. CIV. P. 12(b))

Now Comes the State of North Carolina, by and through undersigned counsel, and, for the reasons stated more fully in the Memorandum in support of this motion filed jointly with the Wake County Board of Elections, moves the Court pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss this action on the grounds that:

1. The State of North Carolina has immunity under the Eleventh Amendment to the United States Constitution;
2. Plaintiffs have failed to state a claim for which relief can be granted in that plaintiffs have failed to state a claim cognizable under applicable law.

Further support for this motion is as set forth in Defendants' Joint Memorandum of Law in Support of Their Respective Motions to Dismiss [D.E. 27] filed on this same date and incorporated herein by reference as though fully set forth.

WHEREFORE, the State of North Carolina respectfully prays that this Court dismiss this action or, if the action is not completely dismissed, dismiss it as a defendant.

Respectfully submitted, this the 4th day of November, 2013.

ROY COOPER
ATTORNEY GENERAL

/s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General
State Bar No. 13654
apeters@ncdoj.gov
North Carolina Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: 919.716.6900
Facsimile: 919.716.6763

CERTIFICATE OF SERVICE

I hereby certify that I have this day, November 4, 2013, electronically filed the foregoing **STATE OF NORTH CAROLINA'S MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Anita S. Earls
Allison Riggs
Clare R. Barnett
Southern Coalition for Social Justice
1415 Highway 54, Suite 101
Durham NC 27707
anita@southerncoalition.org

Counsel for All Plaintiffs

Roger A. Askew
Deputy Wake County Attorney
Scott W. Warren
Wake County Attorney
Kenneth R. Murphy, III
Assistant Wake County Attorney
Office of the Wake County Attorney
P.O. Box 550
Raleigh NC 27602
Roger.Askew@wakegov.com
swarren@wakegov.com
Kenneth.Murphy@wakegov.com

*Counsel for Wake County Board of
Elections*

This the 4th day of November, 2013.

/s/ Alexander McC. Peters
Alexander McC. Peters
Senior Deputy Attorney General