

No. 14-1329

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

**CALLA WRIGHT; WILLIE J. BETHEL; AMY T. LEE; AMYGAYLE L.
WOMBLE; JOHN G. VANDENBERGH; BARBARA 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, d/b/a Coalition of Concerned Citizens for African-American Children;
and the RALEIGH WAKE CITIZENS ASSOCIATION,**

Plaintiffs-Appellants,

v.

**STATE OF NORTH CAROLINA; and
WAKE COUNTY BOARD OF ELECTIONS,**

Defendants-Appellees.

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA AT**

**STATE OF NORTH CAROLINA'S RESPONSE TO
DEFENDANT-APPELLEE WAKE COUNTY BOARD OF ELECTIONS'
PETITION FOR REHEARING *EN BANC***

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Pursuant to this Court's June 17, 2015 Order, the State of North Carolina ("the State") respectfully submits this Response to Defendant-Appellee's petition for rehearing *en banc*.

The State was dismissed as a party from this action by the District Court and that ruling was not challenged by Plaintiffs-Appellants. Slip Op. 7n.2. Additionally, the panel decision affirmed the District Court's determination that Plaintiffs-Appellants' motion to amend their complaint to substitute the Governor, the Senate President *Pro Tempore* and the Speaker of the House of Representatives as parties-defendants would be futile. Slip Op. 12.

Even though it is no longer a party, the State has a continuing interest in the legal issues presented in this case, which include important principles regarding the presumption of constitutionality afforded electoral districting plans. Additionally, should the Court grant the petition for rehearing *en banc*, the panel's opinion will be vacated as provided for in Local Rule 35(c).

The Petition asserts two bases for rehearing *en banc*. First, that the panel majority applied a Rule 12 dismissal standard that is inconsistent with the Supreme Court's decision in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Second, that the panel majority holding conflicts with the decision that political gerrymandering claims are nonjusticiable as set forth in *Vieth v. Jubeliler*, 541 U.S. 267 (2004). The State believes that this matter meets the standards set out in Federal Rule of Appellate Procedure 35(a) that *en*

banc consideration is necessary to maintain uniformity of the Court's decisions and that the proceeding involves a question of exceptional importance.

The petition for rehearing *en banc* should be granted.

Respectfully submitted, this the 29th day of June, 2015.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, June 29, 2015, electronically filed the foregoing **STATE OF NORTH CAROLINA'S RESPONSE TO DEFENDANT-APPELLEE WAKE COUNTY BOARD OF ELECTIONS' PETITION FOR REHEARING *EN BANC*** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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This the 29th day of June, 2015.

s/ Melissa L. Trippe
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