

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action No. 1:20-cv-457

DEMOCRACY NORTH CAROLINA, *et al.*,
 Plaintiffs,
 v.
 THE NORTH CAROLINA STATE
 BOARD OF ELECTIONS; *et al.*,
 Defendants,
 and
 PHILIP E. BERGER, etc., *et al.*,
 Intervenors.

**STATE DEFENDANTS’ RESPONSE
 TO AND POSITION STATEMENT
 REGARDING LEGISLATIVE
 DEFENDANTS’ MOTION TO
 STRIKE PLAINTIFFS’ JULY 2nd
 DECLARATIONS
 [DE 77]**

NOW COME defendants—the North Carolina State Board of Elections; Damon Circosta, in his official capacity as Chair of the State Board of Elections; Stella Anderson, in her official capacity as Secretary of the State Board of Elections; Ken Raymond, Jeff Carmon III, and David C. Black, in their official capacities as Members of the State Board of Elections; Karen Brinson Bell, in her official capacity as Executive Director of the State Board of Elections; the North Carolina Department of Transportation; J. Eric Boyette, in his official capacity as Transportation Secretary; the North Carolina Department of Health and Human Services; Mandy Cohen, in her official capacity as Secretary of Health and Human Services (“the State defendants”)—and hereby respond to the Motion to Strike Plaintiffs’ July 2nd Declarations filed by Defendant-Intervenors Philip E. Berger, President

Pro Tempore of the North Carolina Senate, and Timothy K. Moore, Speaker of the North Carolina House of Representatives (“the Legislative defendants”) on 6 July 2020. [DE 77]

STATEMENT OF THE FACTS

The facts are as set forth in the Statement of Facts contained in the Corrected State Defendants’ Response to Motion for Preliminary Injunction [DE 58, pp. 3–10], which is incorporated herein by reference as though fully set forth. Additional facts are as follows:

On 26 June 2020, the Legislative defendants filed their Response in Opposition to Plaintiffs’ Amended Motion for Preliminary Injunction. [DE 51] With that response, the Legislative Defendants filed seven (7) declarations. [DE 51-2 through 51-8] These declarations included a declaration offering expert database analysis testimony [DE 51-2], expert political science testimony [DE-51-3], expert medical and biological testimony [DE 51-6 and 58-7], and three declarations of county elections officials in North Carolina. [DE 58-4, 58-5 and 58-8]

On 1 July 2020, plaintiffs filed nine (9) “reply declarations” [DE 73-1 through 73-9] in support of Plaintiffs’ Reply in Support of Their Amended Motion for Preliminary Injunction, filed 2 July 2020. [DE 74] These nine declarations included seven (7) declarations from plaintiffs or others who provided declarations in support of plaintiffs’ original Motion for Preliminary Injunction [DE 9] and Amended Motion for Preliminary Injunction [DE 31]. [DE 73-1 through 73-7] Also included were two declarations provided by witnesses who had not previously provided declarations—one from Kenya Myers, the Voting Rights Advocate at Disability Rights North Carolina [DE 73-8], and

one from Jake Quinn, a county elections official in North Carolina. [DE 73-9]

ARGUMENT AND POSITION OF THE STATE DEFENDANTS

The State defendants believe that some of the evidence that has been submitted by the other parties in this matter is objectionable or otherwise appropriately subject to further factual development. However, the State defendants' understanding throughout the pendency of this matter, particularly with regard to the preliminary injunction motion, has been that the Court and the parties understandably desire to move as expeditiously as possible. To oblige and accommodate that desire, the State defendants have been willing to address these issues during oral argument, rather than through discovery or an evidentiary hearing.

If the Court, however, feels that a more searching factual inquiry would aid it in deciding the issues raised in plaintiffs' motion, the State defendants would appreciate an opportunity to address these issues either through cross-examination or through appropriate methods of discovery. The State defendants are open and willing to do both cross-examination and discovery remotely.

CONCLUSION

For the foregoing reasons, if the Court finds that further factual development would be helpful, the State defendants would appreciate the opportunity to participate by cross-examining witnesses during the hearing on plaintiffs' Amended Motion for Preliminary Injunction or by conducting depositions before the hearing.

Respectfully submitted, this the 7th day of July, 2020.

JOSHUA H. STEIN
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CERTIFICATE OF WORD COUNT

Pursuant to Local Rule 7.3(d)(1), the undersigned counsel hereby certifies that the foregoing Response, including body, headings, and footnotes, contains 610 words as measured by Microsoft Word.

This the 7th day of July, 2020.

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