

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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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
D. Martin Warf