

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

COMMON CAUSE, *et al.*,)
)
Plaintiffs,)
)
v.)
)
ROBERT A. RUCHO, in his official)
capacity as Chairman of the North)
Carolina Senate Redistricting Committee)
for the 2016 Extra Session and Co-)
Chairman of the Joint Select Committee)
on Congressional Redistricting, *et al.*,)
)
Defendants.)

CIVIL ACTION
No. 1:16-CV-1026-WO-JEP

THREE-JUDGE COURT

League of Women Voters of North)
Carolina, *et al.*,)
)
Plaintiffs,)
)
v.)
)
Robert A. Rucho, in his official capacity)
as Chairman of the North Carolina)
Senate Redistricting Committee for the)
2016 Extra Session and Co-Chairman of)
the 2016 Joint Select Committee on)
Congressional Redistricting, *et al.*,)
)
Defendants.)

CIVIL ACTION
No. 1:16-CV-1164-WO-JEP

THREE JUDGE PANEL

**DEFENDANTS' ANSWER TO AMENDED COMPLAINT FILED BY LEAGUE
OF WOMEN VOTERS OF NORTH CAROLINA ("LWVNC") PLAINTIFFS IN
CASE NO. 1:16-CV-1164**

FIRST DEFENSE

Plaintiffs' claims are non-justiciable and their amended complaint should be dismissed pursuant to Rule 12(b)(1), Fed. R. Civ. P.

SECOND DEFENSE

Plaintiffs' amended complaint filed in Civil Action No. 1:16-CV-1164 fails to state a claim upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), Fed. R. Civ. P.

THIRD DEFENSE

The claims alleged by plaintiff L WVNC should be dismissed because as an organization it does not have standing to challenge any congressional district. In the alternative, should this Court conclude that these organizations have standing because of their members, the court should enter an order binding all L WVNC members to any judgment entered in this action.

FOURTH DEFENSE

None of the individual plaintiffs have standing to challenge the 2016 Congressional Plan and instead may only challenge the district in which they reside.

FIFTH DEFENSE

Plaintiffs William Collins, Elliott Feldman, Carol Faulkner Fox, Annette Love, Maria Palmer, Gunther Peck, Jane Smith Sumpter, Elizabeth Torres Evans, and Willis Williams cannot state a claim for vote dilution for themselves or Democratic voters because Democratic candidates were elected in the districts of their alleged residence.

SIXTH DEFENSE

Plaintiffs' claims for relief are precluded by Article I, Sections 2 and 4 of the United States Constitution which give Congress and the states, not federal courts, the authority to prescribe the times, places, and manner of holding elections for members of the United States House of Representatives.

SEVENTH DEFENSE

The Tenth Amendment to the United States Constitution precludes this court from adopting plaintiffs' legal arguments as valid claims for relief against the defendants.

EIGHTH DEFENSE

Plaintiffs are asking this court to adopt a theory of recovery developed by law professors and scholars that has no foundation in the text of the United States Constitution or any prior decision by the United States Supreme Court. In so doing plaintiffs are asking this single three-judge court to amend the United States Constitution in violation of Article V of the United States Constitution.

NINTH DEFENSE

Recognizing a cause of action based upon proportional comparisons of alleged "wasted votes" or requiring states to enact districts based upon the proportion of state-wide vote for either party in prior elections violates 2 U.S.C. § 2c.

TENTH DEFENSE

Defendants answer the specific allegations of the amended complaint in Civil Action No. 1:16-CV-1026 as follows:

“INTRODUCTION”

1. Defendants admit that plaintiffs are seeking a declaratory judgment. In all other respects, defendants deny the allegations of paragraph 1.

2. Defendants admit that the criteria followed by the General Assembly when it ratified the 2016 Congressional Plan speaks for itself. In all other respects, defendants deny the allegations of paragraph 2.

3. Defendants deny the allegations of paragraph 3.

4. Defendants deny the allegations of paragraph 4.

5. Defendants deny the allegations of paragraph 5.

6. Defendants deny the allegations of paragraph 6.

7. Defendants deny the allegations of paragraph 7.

8. Defendants deny the allegations of paragraph 8.

9. Defendants deny the allegations of paragraph 9.

10. Defendants deny the allegations of paragraph 10.

11. Defendants deny the allegations of paragraph 11.

“JURISDICTION AND VENUE”

12. Defendants admit the allegations of paragraph 12.

13. Defendants admit that the statutes cited by plaintiffs speak for themselves.

In all other respects, defendants deny the allegations of paragraph 13.

14. Defendants admit the allegations of paragraph 14.

15. Defendants deny the allegations of paragraph 15.

“PARTIES”

16. Defendants deny that LWVNC is a non-partisan organization. In all other respects, defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 16.

17. Defendants deny the allegations of paragraph 17.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 18.

19. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 19.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 20.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 21.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 23.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 24.

25. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 25.

26. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 26.

27. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 27.

28. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 28.

29. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 29.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations of paragraph 30.

31. Defendants admit the allegations of paragraph 31.

32. Defendants admit the allegations of paragraph 32.

33. Defendants admit the allegations of paragraph 33.

34. Defendants admit the allegations of paragraph 34.

35. Defendants admit the allegations of paragraph 35.

36. Defendants admit the allegations of paragraph 36.

37. Defendants admit the allegations of paragraph 37.

“STATEMENT OF FACTS
The 2016 Plan was Enacted with the Intent of Discriminating Against Democrats”

38. Defendants admit the allegations of paragraph 38.

39. Defendants admit that state-wide vote totals for congressional elections are matters of public record that speak for themselves. In all other respects, defendants deny the allegations of paragraph 39.

40. Defendants admit that the decision by the district court in the *Harris* case cited by plaintiffs speaks for itself. In all other respects, defendants deny the allegations of paragraph 40.

41. Defendants admit that the state-wide vote totals for congressional elections in 2012 and 2014 speak for themselves. In all other respects, defendants deny the allegations of paragraph 41.

42. Defendants deny plaintiffs' allegation that the Republican leadership in the legislature appointed a Joint Select Committee on Redistricting ("Committee") "after the 2011 Plan was invalidated in *Harris*." In all other respects, defendants deny the allegations of paragraph 42.

43. Defendants admit the allegations of paragraph 43.

44. Defendants admit the allegations of paragraph 44.

45. Defendants admit that the criteria adopted by the Committee speak for themselves and that the official transcript of the February 16, 2016 Committee hearing is accurate. In all other respects, defendants deny the allegations of paragraph 45.

46. Defendants admit that the official transcript of the February 16, 2016 Committee hearing is accurate. In all other respects, defendants deny the allegations of paragraph 46.

47. Defendants admit that the Committee voted on the criteria on February 16, 2016, the same day it was presented to the Committee. In all other respects, defendants deny the allegations of paragraph 47.

48. Defendants admit that the Committee met on February 17, 2016, to consider and approve a congressional plan presented by Senator Rucho and Representative Lewis and that the Committee approved the plan based on a straight party line vote. In all other respects, defendants deny the allegations of paragraph 48.

49. Defendants admit the allegations of paragraph 49.

50. Defendants admit the allegations of paragraph 50.

“The 2016 Plan Has the Effect of Discrimination Against Democrats

The Efficiency Gap Captures the Extent of Partisan Gerrymandering”

51. The allegations of paragraph 51 constitute legal argument to which no response is required. Defendants admit that the court decision cited by plaintiffs speaks for itself. In all other respects, defendants deny the allegations of paragraph 51.

52. The allegations of paragraph 52 constitute legal argument to which no response is required. Defendants admit that the court decision cited by plaintiffs speaks for itself. In all other respects, defendants deny the allegations of paragraph 52.

53. The allegations of paragraph 53 constitute legal argument to which no response is required. Defendants admit that the court decision cited by plaintiffs speaks for itself. In all other respects, defendants deny the allegations of paragraph 53.

54. The allegations of paragraph 54 constitute legal argument to which no response is required. Defendants admit that the articles cited by plaintiffs speak for themselves. In all other respects, defendants deny the allegations of paragraph 54.

55. The allegations of paragraph 59 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 55.

56. The allegations of paragraph 56 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 56.

57. The allegations of paragraph 57 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 57.

58. The allegations of paragraph 58 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 58.

“The 2016 Plan is an Outlier by the State and National Standards”

59. The allegations of paragraph 59 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 59.

60. The allegations of paragraph 60 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 60.

61. The allegations of paragraph 61 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 61.

62. The allegations of paragraph 62 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 62.

63. The allegations of paragraph 63 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 63.

64. The allegations of paragraph 64 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 64.

“The 2016 Plan’s Partisan Asymmetry is Highly Durable”

65. The allegations of paragraph 65 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 65.

66. The allegations of paragraph 66 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 66.

“The 2016 Plan’s Partisan Asymmetry Cannot Be Justified”

67. The allegations of paragraph 67 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 67.

68. The allegations of paragraph 68 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 68.

“FIRST CLAIM FOR RELIEF”

(Denial of Equal Protection under the Fourteenth Amendment
of the U.S. Constitution Pursuant to 42 U.S.C. § 1983)”

69. Defendants incorporate by reference their responses to paragraphs 1-68.

70. The allegations of paragraph 70 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 70.

71. The allegations of paragraph 71 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 71.

72. The allegations of paragraph 72 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 72.

73. The allegations of paragraph 73 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 73.

74. The allegations of paragraph 74 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 74.

75. The allegations of paragraph 75 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 75.

76. The allegations of paragraph 76 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 76.

77. The allegations of paragraph 77 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 77.

78. The allegations of paragraph 78 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 78.

79. The allegations of paragraph 79 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 79.

80. The allegations of paragraph 80 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 80.

“SECOND CLAIM FOR RELIEF
(Violation of First Amendment Right to Freedom of Speech
and Association pursuant to 42 U.S.C. § 1983)”

81. Defendants incorporate by reference their responses to paragraphs 1-80.

82. The allegations of paragraph 82 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 82.

83. The allegations of paragraph 83 constitute legal argument to which no response is required. In all other respects, defendants deny the allegations of paragraph 83.

PRAYER FOR RELIEF

Wherefore defendants respectfully pray that the court grant an order:

1. dismissing plaintiffs’ complaint with prejudice;
2. awarding defendants their attorney’s fees and costs;
3. awarding defendants such other relief as may be appropriate.

Respectfully submitted, this the 3rd day of March, 2017.

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ Alexander McC. Peters

Alexander McC. Peters
Senior Deputy Attorney General
N.C. State Bar No. 13654
apeters@ncdoj.gov

James Bernier, Jr.
Assistant Attorney General
N.C. State Bar No. 45869
jbernier@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, NC 27602
Telephone: (919) 716-6900
Facsimile: (919) 716-6763
Counsel for Defendants

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

Thomas A. Farr
N.C. State Bar No. 10871
Phillip J. Strach
N.C. State Bar No. 29456
Michael D. McKnight
N.C. State Bar No. 36932
thomas.farr@ogletreedeakins.com
phil.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
Telephone: (919) 787-9700
Facsimile: (919) 783-9412
Co-counsel for Defendants

CERTIFICATE OF SERVICE

I, Thomas A. Farr, hereby certify that I have this day electronically filed the foregoing **DEFENDANTS' ANSWER TO AMENDED COMPLAINT FILED BY LEAGUE OF WOMEN VOTERS ("LWV") PLAINTIFFS IN CASE NO. 1:16-CV-1164** with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

Emily E. Seawell
Anita S. Earls
SOUTHERN COALITION FOR SOCIAL JUSTICE
1415 W. HWY. 54, STE. 101
DURHAM, NC 27707
Email: emily@southerncoalition.org
Email: anita@southerncoalition.org
Attorneys for League of Women Voters of North Carolina Plaintiffs

Danielle M. Lang
CAMPAIGN LEGAL CENTER
1411 K STREET NW
SUITE 1400
WASHINGTON, DC 20005
202-736-2200
Fax: 202-736-2222
Email: dlang@campaignlegalcenter.org
Attorneys for League of Women Voters of North Carolina Plaintiffs

Annabelle E. Harless
Ruth M. Greenwood
CAMPAIGN LEGAL CENTER
73 W. MONROE ST., STE. 322
CHICAGO, IL 60603
312-561-5508
Fax: 202-736-2222
Email: aharless@campaignlegalcenter.org
Attorneys for League of Women Voters of North Carolina Plaintiffs

Nicholas O. Stephanopoulos
UNIVERSITY OF CHICAGO LAW SCHOOL
1111 E 60TH STREET
CHICAGO, IL 60637
773-702-4226
Email: nsteph@uchicago.edu
Attorneys for League of Women Voters of North Carolina Plaintiffs

Edwin M. Speas, Jr.
Carolina P. Mackie
Poyner Spruill LLP
P.O. Box 1801 (27602-1801)
301 Fayetteville St., Suite 1900
Raleigh, NC 27601
espeas@poynerspruill.com
cmackie@poymerspruill.com
Attorneys for Common Cause Plaintiffs

Gregory L. Diskant
Susan Millenky
Patterson Belknap Webb & Tyler LLP
1133 Avenue of the Americas
New York, New York 10036
gldiskant@pbwt.com
smillenky@pbwt.com
Attorneys for Common Cause Plaintiffs

Emmet J. Bondurant
Jason J. Carter
Benjamin W. Thorpe
Bondurant, Mixson & Elmore, LLP
1201 W. Peachtree Street, NW, Suite 3900
Atlanta, Georgia 30309
bondurant@bmelaw.com
carter@bmelaw.com
bthorpe@bmelaw.com
Attorneys for Common Cause Plaintiffs

This the 3rd day of March, 2017.

OGLETREE, DEAKINS, NASH
SMOAK & STEWART, P.C.

/s/ Thomas A. Farr

28757946.1