

NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 24CV003534-910

BEVERLEY BARD, RICHARD LEVY,  
SUSAN KING COPE, ALLEN  
WELLONS, LINDA MINOR, THOMAS  
W. ROSS, SR., MARIE GORDON,  
SARAH KATHERINE SCHULTZ,  
JOSEPH J. COCCIA, TIMOTHY S.  
EMERY, and JAMES G. ROWE,

Plaintiffs,

v.

NORTH CAROLINA STATE BOARD  
OF ELECTIONS, ALAN HIRSCH, in  
his official capacity as Chair of the  
North Carolina State Board of  
Elections, JEFF CARMON III in his  
official capacity as Secretary of the  
North Carolina States Board of  
Elections, STACY "FOUR" EGGERS in  
his official capacity as a member of the  
North Carolina State Board of  
Elections, SIOBHAN O'DUFFY  
MILLEN in her official capacity as a  
member of the North Carolina State  
Board of Elections, KEVIN N. LEWIS  
in his official capacity as a member of  
the North Carolina State Board of  
Elections, PHILIP E. BERGER in his  
official capacity as President Pro Tem  
of the North Carolina Senate, and  
TIMOTHY K. MOORE in his official  
capacity as Speaker of the North  
Carolina House of Representatives,

Defendants.

**ORDER GRANTING LEGISLATIVE  
DEFENDANTS' MOTION TO  
DISMISS**

THIS MATTER came on to be heard and was heard before the undersigned Three-Judge Panel (the “Panel”) upon Legislative Defendants’ Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure, filed on March 6, 2024. After considering the Motion, briefs, and arguments and authorities cited by the parties therein, the Panel hereby determines as follows:

#### Procedural History

On October 25, 2023, the General Assembly ratified Senate Bill 757 (Session Law 2023-145), Senate Bill 758 (Session Law 2023-146), and House Bill 898 (Session Law 2023-149).

On January 31, 2024, Plaintiffs filed this lawsuit alleging that Senate Bill 757 (Session Law 2023-145), Senate Bill 758 (Session Law 2023-146), and House Bill 898 (Session Law 2023-149) violated the “unenumerated right to fair elections” implied in Article I, § 36 of the North Carolina Constitution. Plaintiffs’ Complaint sought declaratory judgments pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and Rule 57 of the North Carolina Rules of Civil Procedure and a permanent injunction pursuant to Rule 65 of the North Carolina Rules of Civil Procedure.

On February 6, 2024, pursuant to N.C. Gen. Stat. § 1-267.1(b2), the Honorable Judge Paul C. Ridgeway requested a Three-Judge Panel of the Superior Court of Wake County to preside over this matter.

On February 19, 2024, the Honorable Chief Justice Paul Newby assigned this matter to the undersigned Panel for a determination as to the constitutionality of

Senate Bill 757 (Session Law 2023-145), Senate Bill 758 (Session Law 2023-146), and House Bill 898 (Session Law 2023-149).

On March 6, 2024, in lieu of filing an Answer, Legislative Defendants filed the present Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the North Carolina Rules of Civil Procedure.

On March 12, 2024, State Defendants filed an Answer to Plaintiffs' Complaint.

The Panel scheduled a hearing for Legislative Defendants' Motion to Dismiss on May 22, 2024, at 10:00 a.m. and a briefing deadline for all parties of April 26, 2024, at 11:59 p.m.

On April 8, 2024, Legislative Defendants filed a Motion to Continue Hearing and Extend Briefing Deadline pursuant to Local Rule 8 of the Local Rules for Superior Court Tenth Judicial District North Carolina and Rule 6 of the North Carolina Rules of Civil Procedure.

On April 30, 2024, the Panel entered an Order granting Legislative Defendants' Motion to Continue Hearing and Extend Briefing Deadline. The parties were provided up to and including May 10, 2024, to submit briefs, and the Motion to Dismiss hearing was continued to June 13, 2024, at 10:00 a.m. The parties timely submitted their briefs.

On June 13, 2024, the Panel heard argument from Legislative Defendants and Plaintiffs on Legislative Defendants' Motion to Dismiss. The State Board of Elections Defendants waived oral argument.

After argument, the parties consented to the Panel's ruling being issued out of session and out of county. The Panel took the matter under advisement.

### Analysis

In this action, Plaintiffs allege that the North Carolina General Assembly violated the unenumerated right to a "fair election" implicit in Article I, § 36 of the North Carolina Constitution when it redistricted the following legislative districts: Congressional district NC 6, Congressional district NC 13, Congressional district NC 14, Congressional district NC 12, State Senate district 7, State House district 105, and Congressional district NC 11.

Plaintiffs ask this Panel to consider two issues:

- I. Is there an unenumerated right to "fair elections" within Article I, § 36 of the North Carolina Constitution?
- II. If such a Right exists, has it been violated by the Legislature through their re-drawing of the voting districts at issue?

Prior to answering the issues above, however, the Panel must address a preliminary issue raised by Legislative Defendants. Pursuant to Article II, §§ 3, 5, as interpreted by the North Carolina Supreme Court decision in *Harper v. Hall*, 384 N.C. 292 (2023)<sup>1</sup>: do the issues raised by Plaintiffs present non-justiciable political questions not appropriate for resolution by the courts?

In *Harper*, our Supreme Court went to great lengths to provide a history of the treatment of political questions by the courts, and to establish the constitutional basis

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<sup>1</sup> The *Harper* decision is more prominently known as "*Harper III*" due to prior iterations of that litigation that made their way through the courts. This decision will refer to the case simply as "Harper".

for the non-justiciability of political questions when undertaking redistricting matters. *Harper*, 384 N.C. at 326–331. “A matter is non-justiciable if the constitution expressly assigns responsibility to one branch of government, or there is not a judicially discoverable or manageable standard by which to decide it, or it requires courts to make policy determinations that are better suited for the policymaking branch of government.” *Id.* at 350.

In its decision, the *Harper* Court reaffirmed the exclusive role of the Legislature as the body tasked with redistricting in North Carolina. “Under the North Carolina Constitution, redistricting is explicitly and exclusively committed to the General Assembly by the text of the Constitution.” *Id.* at 326. “[O]ur constitution and the General Statutes expressly insulate the redistricting power from intrusion by the executive and judicial branches.” *Id.* at 331.

In the instant case, the issues raised by Plaintiffs are clearly of a political nature. There is not a judicially discoverable or manageable standard by which to decide them, and resolution by the Panel would require us to make policy determinations that are better suited for the policymaking branch of government, namely, the General Assembly.

Plaintiffs, in their arguments to the Panel, urge us to find that the holdings in *Harper* do not apply to the facts and issues present in this case, but rather to Article I, § 10, Free Elections Clause claims. We do not find these arguments persuasive. This case deals with the same underlying issue that was addressed in *Harper*: the redrawing of districts from which representatives to the Legislature will be elected.

Conclusion

Having considered the briefs and arguments of counsel, as well as the pleadings and filings, the Panel finds that the issues raised by Plaintiffs are non-justiciable political questions, and as such these claims are not appropriate for redress by this Court. Accordingly, the Panel need not reach the two issues posed by Plaintiffs.

THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED THAT:

1. Legislative Defendants' Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) is hereby GRANTED as to all claims with prejudice.
2. Plaintiff's Request for Permanent Injunctive relief pursuant to Rule 65 is DENIED.
3. The costs of this action shall be taxed against the Plaintiffs.
4. Each party shall pay their own attorney fees.

6/27/2024 5:04:09 PM

SO ORDERED, this the 27<sup>th</sup> day of June, 2024.



Honorable Jeffery B. Foster



Honorable Angela B. Puckett



Honorable C. Ashley Gore