

**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) CIVIL ACTION
capacity as Chairman of the North) NO. 1:16-CV-1026-WO-JEP
Carolina Senate Redistricting)
Committee for the 2016 Extra Session) THREE-JUDGE COURT
and Co-Chairman of the Joint Select)
Committee on Congressional)
Redistricting, *et al.*,)
)
Defendants.)

League of Women Voters of North)
Carolina, *et al.*,)
)
Plaintiffs,)
)
v.)
)
Robert A. Rucho, in his official capacity) CIVIL ACTION
as Chairman of the North Carolina) NO. 1:16-CV-1164-WO-JEP
Senate Redistricting Committee for the)
2016 Extra Session and Co-Chairman of) THREE JUDGE COURT
the 2016 Joint Select Committee on)
Congressional Redistricting, *et al.*,)
)
Defendants.)

RESPONSE OF THE STATE DEFENDANTS TO THE JUNE 27, 2018 ORDER

Pursuant to the Court’s June 27, 2018 Order, ECF No. 125,¹ Defendants Andy Penry,² in his official capacity as Chairman of the North Carolina State Board of Elections (the “Board of Elections”);³ the Board of Elections; and the State of North Carolina (collectively, “State Defendants,”) hereby respond to the court’s invitation to submit briefing on the four issues posited by the Court.

The State Defendants take no position on the application of *Gill v. Whitford*, No. 16-1161, 585 U.S. --- (2018) to this matter, whether the existing factual record is adequate, or whether additional factual development is needed. The State Defendants stand ready and willing to assist the Court by providing any information the Court finds necessary or helpful, including the elections process, deadlines and requirements.

Respectfully submitted, this 11th day of July, 2018.

¹ Citations to ECF document numbers herein refer to the document numbers in *Common Cause et al. v. Rucho et al.*, No. 1:16-CV-1026.

² The former Chairman, A. Grant Whitney, Jr., was sued only his official capacity. Under Session Law 2017-6, sec. 4(c), the Bipartisan State Board of Elections and Ethics Enforcement has replaced the State Board of Elections. On March 16, 2018, Governor Roy Cooper appointed eight members to the State Board, including Andy Penry. Mr. Penry was sworn in on March 21, 2018 and selected as Chairman. Because Mr. Whitney Jr was sued only in his official capacity, Penry, upon being sworn in, was automatically substituted as a defendant. *See* Rule 25(d) of the Federal Rules of Civil Procedure.

³ Under a recently enacted state statute, the Bipartisan State Board of Elections and Ethics Enforcement has replaced the State Board of Elections. *See* 2017 N.C. SESS. LAW 6, sec. 4(c).

NORTH CAROLINA DEPARTMENT OF
JUSTICE

By: /s/ James Bernier, Jr.
James Bernier, Jr.
Special Deputy Attorney General
N.C. State Bar No. 45869
jbernier@ncdoj.gov

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

CERTIFICATE OF SERVICE

I, James Bernier, Jr., hereby certify that I have this day electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will provide electronic notification of the same to the following:

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 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 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 Plaintiffs

Phillip J. Strach
Michael D. McKnight
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609
phil.strach@ogletreedeakins.com
michael.mcknight@ogletreedeakins.com
Attorneys for Legislative Defendants

Dated: July 11, 2018

/s/ James Bernier, Jr.
James Bernier, Jr.
Special Deputy Attorney General
North Carolina State Bar No.45869
North Carolina Department of Justice
P.O. Box 629
Raleigh, NC 27602
Tel: (919) 716-6900
Fax: (919) 716-6763
jbernier@ncdoj.gov