

**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,<sup>1</sup> Defendants Andy Penry,<sup>2</sup> in his official capacity as Chairman of the North Carolina State Board of Elections (the “Board of Elections”);<sup>3</sup> 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 11<sup>th</sup> day of July, 2018.

---

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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

## General Information

<b>Court</b>	United States District Court for the Middle District of North Carolina; United States District Court for the Middle District of North Carolina
<b>Federal Nature of Suit</b>	State Reapportionment[400]
<b>Docket Number</b>	1:16-cv-01026