

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

DEMOCRACY NORTH CAROLINA, THE
LEAGUE OF WOMEN VOTERS OF NORTH
CAROLINA, JOHN P. CLARK, LELIA
BENTLEY, REGINA WHITNEY EDWARDS,
ROBERT K. PRIDDY II, WALTER
HUTCHINS, AND SUSAN SCHAFFER,

Plaintiffs,

vs.

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, in his
official capacity as CHAIR OF THE
STATE BOARD OF ELECTIONS; STELLA
ANDERSON, in her official capacity
as SECRETARY OF THE STATE BOARD OF
ELECTIONS; KEN RAYMOND, in his
official capacity as MEMBER OF THE
STATE BOARD OF ELECTIONS; JEFF
CARMON III, in his official
capacity as MEMBER OF THE STATE
BOARD OF ELECTIONS; DAVID C.
BLACK, in his official capacity as
MEMBER OF THE STATE BOARD OF
ELECTIONS; KAREN BRINSON BELL, in
her official capacity as EXECUTIVE
DIRECTOR OF THE STATE BOARD OF
ELECTIONS; THE NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION; J.
ERIC BOYETTE, in his official
capacity as TRANSPORTATION
SECRETARY; THE NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; MANDY COHEN, in her
official capacity as SECRETARY OF
HEALTH AND HUMAN SERVICES,

Defendants,

Civil Action No. 20-cv-457

**CONSENT MOTION TO
VOLUNTARILY DISMISS FIRST
CAUSE OF ACTION**

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,

Defendant-

Intervenors.

Pursuant to Federal Rule of Civil Procedure 15, Plaintiffs Democracy North Carolina, the League of Women Voters of North Carolina, John P. Clark, Lelia Bentley, Regina Whitney Edwards, Robert K. Priddy II, and Susan Schaffer hereby file this Consent Motion to Voluntarily Dismiss Count One of the Fourth Amended Complaint. In support of this motion, Plaintiffs state as follows:

Relevant Procedural Background

1. Plaintiffs originally filed this action on May 22, 2020, Doc. 1. Defendant-Intervenors filed a Motion to Intervene on June 10, 2020, Doc. 16, which was granted by this Court by text order on June 12, 2020. *See also* Doc. 26.
2. On July 6, 2021, this Court granted Plaintiffs' Motion for Leave to File a Fourth Amended Complaint, Doc. 205,

and Plaintiffs filed the Fourth Amended Complaint on July 7, 2021. Doc. 208. Count One of the Fourth Amended Complaint alleged a violation of Plaintiffs' rights of free speech and association due to restrictions on assisting voters with completing and returning mail-in absentee ballot request forms under N.C. Gen. Stat. § 163-230.2. *Id.* at ¶¶ 37-40.

3. The State Defendants and the Legislative Defendants filed motions to dismiss on August 5, 2021, Docs. 209 & 210, which were denied in part and granted in part on March 10, 2022. Doc. 224. In its Order on the Motions to Dismiss, this Court granted the motions as to Count Two, but denied the motions as to Counts One and Three. *Id.* On March 30, 2022, Plaintiffs moved for reconsideration or, in the alternative, for Rule 54(b) certification as to the dismissal of Count Two. Doc. 229. The Motion for Reconsideration is still under consideration with the Court.
4. On March 15, 2022, Plaintiffs filed a Statement Noting Death notifying this Court and the parties of the recent passing of Plaintiff Walt Hutchins. Doc. 225. Defendants

filed an Unopposed Motion to Dismiss Count Three of Plaintiffs' Fourth Amended Complaint and Brief in Support on March 21, 2022. Doc. 226. This Motion is still under consideration with the Court.

5. Defendants filed answers to the Fourth Amended Complaint on March 24, 2022. Docs. 227, 228.
6. On July 10, the U.S. District Court for the Eastern District of North Carolina held on summary judgment (as relevant here) that the restrictions on assistance to voters with completing and delivering absentee ballot request forms under N.C. Gen. Stat. § 163-230.2, as applied to voters with disabilities, "conflict[s] with federal law and [is] preempted by the Voting Rights Act" and enjoined the North Carolina State Board of Elections from enforcing those provisions against voters with disabilities in North Carolina. *Disability Rights N.C. v. N.C. State Bd. of Elections*, No. 5:21-CV-361-BO, 2022 U.S. Dist. LEXIS 121307, at *19 (E.D.N.C. July 10, 2022). Upon information and belief, the time for appeal of that decision has passed as of the date of this filing, and no appeal has been filed. See Fed. R. Civ. P. 4.

MOTION FOR LEAVE TO VOLUNTARILY DISMISS COUNT ONE OF THE
FOURTH AMENDED COMPLAINT

1. Plaintiffs request leave of this Court to voluntarily dismiss Count One of the Fourth Amended Complaint. This claim can be considered struck from the complaint or, if the Court prefers, Plaintiffs can file a version of the Fourth Amended Complaint with the paragraphs of Count One (37 through 40), and related Prayer for Relief ((b)) removed.
2. "Rule 15 is technically the proper vehicle to accomplish a partial dismissal." *White v. Rawl Sales & Processing Co.*, Nos. 2:05-0965, 2:05-0966, 2:05-0987, 2:05-1132, 2:05-1151, 2:05-1154, 2006 U.S. Dist. LEXIS 96731, at *9 (S.D. W. Va. May 8, 2006) (quoting *Skinner v. First Am. Bank of Va.* 64 F.3d 659 (4th Cir. 1995) (unpublished)). "[I]n the absence of undue delay or bad faith, courts should grant" such motions. *Id.*, at *10.
3. Plaintiffs' motion is made in good faith and in consideration of judicial economy and to allow for dismissal of this claim before any discovery is undertaken as to this Count. Plaintiffs have not unduly

delayed seeking voluntary dismissal of this claim, as their request for leave to do so is based upon information only recently available to Plaintiffs, including the March 2022 Order on Defendants' Motion to Dismiss, new information regarding current voter behavior as indicated by the recent May 2022 primary elections, the passing of Plaintiff Walt Hutchins in March 2022, and the July 2022 Order in *Disability Rights* and decision of defendants in that matter not to appeal that decision in August 2022.

4. This motion, if granted, will not cause any undue delay and will further the timely and orderly disposition of this matter by eliminating the need for discovery by the parties as to Count One. Accordingly, under the liberal standard afforded such motions, the motion should be granted. See *White*, 2006 U.S. Dist. LEXIS 96731, at *10 ("[I]n the absence of undue delay or bad faith, courts should grant motions to amend.").
5. Legislative Defendants and the State Defendants consent to the motion for voluntary dismissal under the condition that the dismissal is with prejudice.

Dated: August 18, 2022.

Respectfully submitted,

/s/ Hilary Harris Klein

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WORD CERTIFICATION

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the word count for the above Motion is 850 words. The word count excludes the case caption, signature lines, cover page, and required certificates of counsel. In making this certification, the undersigned has relied upon the word count of Microsoft Word, which was used to prepare the brief.

/s/ Hilary Harris Klein
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