

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:17-cv-53

NATIONAL ASSOCIATION FOR
RATIONAL SEXUAL OFFENSE
LAWS; NC RSOL; and JOHN DOES
#'s 1 and 2,

Plaintiffs,

v.

JOSHUA STEIN, Attorney General of
the State of North Carolina;

ERIK A. HOOKS, Secretary of the
North Carolina Department of Public
Safety;

DISTRICT ATTORNEYS

Andy Womble (District 01), Seth
Edward (District 02), Kimberly Robb
(District 03A) Scott Thomas (District
03B), Ernie Lee (District 04), Ben
David (District 05), Valerie Asbell
(District 06), Robert Evans (District
07), Matt Delbridge (District 08), Mike
Waters (District 09), Wallace Bradsher
(District 09A), Lorrin Freeman (District
10), Vernon Stewart (District 11A),
Susan Doyle (District 11B), Billy West
(District 12), Jon David (District 13),
Roger Echols (District 14), Pat
Nadolski (District 15A), Jim Woodall
(District 15B), Kristy Newton (District
16A), Johnson Britt (District 16B),
Reece Saunders (16C), Craig Blitzer
(District 17A)

**MOTION TO DISMISS ON BEHALF OF
ALL STATE DEFENDANTS**

Ricky Bowman (District 17B), Doug Henderson (District 18), Roxann Vaneekhoven (District 19A), Andy Gregson (District 19B), Brandy Cook (District 19C), Maureen Krueger (District 19D), Lynn Clodfelter (District 20A), Trey Robison (District 20B), Jim O'Neill (District 21), Sarah Kirkman (District 22A), Garry Frank (District 22B), Tom Horner (District 23), Seth Banks (District 24), David Learner (District 25), Andrew Murray (District 26), Locke Bell (District 27A), Mike Miller (District 27B), Todd Williams (District 28), Ted Bell (District 29A), Greg Newman (District 29B), Ashley Welch (District 30);

Defendants.

NOW COME all named State Defendants, by and through Special Deputy Attorney General Lauren M. Clemmons, pursuant to Rules 8(a)(2) and 12(b)(1), (2), and (6) of the Federal Rules of Civil Procedure, and move for the dismissal of Plaintiffs' Complaint. Specifically, this Court should dismiss Plaintiffs' Complaint in its entirety for the following reasons:

1. The 88 page, 657 paragraph Complaint fails to satisfy Rule 8(a)(2) and should be dismissed.
2. Plaintiffs fail to plead plausible facts sufficient to demonstrate standing as to their various claims and the Court lacks subject matter jurisdiction pursuant Rule 12(b)(1) over the claims asserted in this 42 U.S.C. §1983 action.

3. Plaintiffs fail to plead plausible facts to establish the legal sufficiency of their claims and/or in general fail to state a claim for relief, and the claims should be dismissed pursuant to Rule 12(b)(6).
4. Although Plaintiffs do not name the “State of North Carolina” or the “North Carolina General Assembly” in the case-caption, the Complaint contains numerous allegations of conduct or misconduct by the State. Claim 5(Count 1), Claim 5 (Count 2), and Claim 6 (the state law defamation claim) are brought, or appear to be brought, directly against the State, which is not a person within the meaning of 42 U.S.C. §1983, and otherwise not subject to suit under the Eleventh Amendment. The Court lacks jurisdiction to entertain claims against the State and such claims should be dismissed pursuant to Rules 12(b)(1), (2) and/or (6).
5. Plaintiffs fail to plead plausible facts sufficient to demonstrate that Defendant Attorney General Stein, Defendant Secretary Hooks, and the forty-four (44) North Carolina District Attorneys in this action are proper parties pursuant to 42 U.S.C. § 1983. Accordingly, dismissal is proper pursuant to Rule 12(b)(2) and (6).
6. Plaintiffs fail to plead plausible facts sufficient to lift the bar of Eleventh Amendment immunity as to Defendant Attorney General Stein, Defendant Secretary Hooks, and the forty-four (44) North Carolina District Attorneys. Accordingly, dismissal is proper pursuant to Rule 12(b)(1) and (6).

7. The State has not waived its immunity in N.C.G.S. §143-291 for tort claims against state officials in federal court and the Eleventh Amendment bars Claim 6 for state law defamation. Accordingly, this claim must be dismissed pursuant to Rule 12(b)(1) and (6). Defendants also move to strike allegations concerning this claim pursuant to Rule 12(f).

A (proposed) Memorandum in Support of Defendants' Motion to Dismiss has been submitted herewith with a Renewed Consent Motion to Exceed Page Limits.

WHEREFORE, Defendants request that the Complaint be dismissed in its entirety.

Respectfully submitted this 28th day of April 2017.

ROY COOPER
Attorney General

/s/ Lauren Clemmons
Special Deputy Attorney General
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **MOTION TO DISMISS ON BEHALF OF ALL STATE DEFENDANTS** electronically with the Clerk of Court using the CM/ECF system which will send notification of such filing to counsel for Plaintiff:

Paul Dubbeling
paul.dubbeling@gmail.com

Respectfully submitted this 28th day of April, 2017.

/s/Lauren M. Clemmons
Lauren M. Clemmons
Special Deputy Attorney General