

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

FILED
2021 JAN 28 PM 12:38

20 CVS 12925

COASTAL CONSERVATION ASSOCIATION, d/b/a CCA NORTH CAROLINA; BRUCE C. ABBOTT; CHARLES P. ADAMS, JR.; CONSTANTINE A. ARETAKIS, II; FREDERICK L. BERRY; ANDREW R. BOYD; HARRY T. BRANCH; TROY D. BRANHAM; RUPERT D. BROWN; JUDITH C. BULLOCK; WILLIAM L. BYRD, JR.; JOHNNY L. CANUP; MICHAEL D. CARTER; WILLIE T. CLOSS, JR.; KENNETH D. COOPER, JR.; L. AVERY CORNING, IV; PAUL N. COX; BENJAMIN M. CURRIN; DANIEL E. DAWSON; MARY F. DAWSON; CHARLES B. EFIRD; FRANK K. EILER; CHRISTOPHER ELKINS; DAN E. ESTREM; ANDREW P. GILLIKIN; LELAN E. HALLER, JR.; JOHN M. HISLOP; RAYMOND Y. HOWELL; JOEY S. HUMPHREY; THOMAS G. HURT; CLARK W. HUTCHINSON, JR.; ANDREW G. JONES, JR.; GEORGE M. KIVETT, JR.; JOHN C. KNIGHT, JR.; BRADFORD A. KOURY; CHARLES H. LAUGHRIDGE; CASEY M. LLOYD; MARILYN R. LOWE; CHARLIE LOYA, JR.; NICKIE N. LUCAS; BRUCE D. MACLACHLAN; EULISS D. MADREN; WILLIAM W. MANDULAK; DARRELL G. MCCORMICK; TERESA A. D. MCCULLOUGH; SAMUEL B. MCLAMB, III; JAMES M. MCMANUS, JR.; JOHN W. MCQUAID; GEORGE R. MODE; JOHN V. MOON; DENNIS K. MOORE; KENNETH N. MOORE, JR.; WARREN S. MOORING; ELIJAH T. MORTON; DANIEL J. NIFONG; SADIE R. NIFONG; ROBERT B. NOWELL, JR.; ELBERT W. OWENS, JR.; WYATT E. PARCEL; VAN B. PARRISH; JAMES H. PARROTT; BRYAN C. PATE; ALEXANDRA S. PEYTON; HUNTER L. PEYTON; JEFFREY P. PICKERING; ROBERT R. RICE, II; ROBERT T. RICE; ORICE A. RITCH, JR.; MARK A. RUFFIN; PEARCE RUFFIN; ERIC J. SATO; SEAN P. SCULLY; LENNY T. SMATHERS; CARROLL W. SPENCER; JOHN R. SPRUILL; DAVID M. SUMMERS; JOHN B. TAGGART; JESSE H. WASHBURN, II; ANDREW J. WEBSTER; MELISSA N. WILLIAMS; VANDEXTER WILLIAMS; DONALD A. WILLIS, JR.; A. REXFORD WILLIS, III; JAN L. WILLIS; PHILLIP R. WOOD; RAYE P. WOODIN, III; JOSEPH G. YAGER,

Plaintiffs,

v.

STATE OF NORTH CAROLINA,

Defendant.

**DEFENDANT'S
MOTION TO
DISMISS**

**[RULE 12(b)(1),
(2) and (6)]**

The defendant—the State of North Carolina (the “State”)—through undersigned counsel, moves the Court pursuant to Rule 12(b)(1), (2) and (6) to dismiss the Complaint. In support of this motion, the State shows the following:

1. The plaintiffs have not pleaded facts that show that the State has waived its sovereign immunity, and the State has not in fact or law waived its sovereign immunity. The Complaint should be dismissed under Rule 12(b)(1), (2) and (6).

2. The plaintiffs lack standing to make a claim under the public trust doctrine because only the State can enforce the public trust doctrine. The claim should be dismissed under Rule 12(b)(1) and (6).

3. The Complaint does not state a claim upon which relief can be granted because the public trust doctrine does not create the type of fiduciary obligations upon which the plaintiffs rely. The Complaint should be dismissed under Rule 12(b)(6).

4. The Complaint does not state a claim upon which relief can be granted because the remedy requested would violate the constitutional provision requiring the separation of powers. N.C. Const. art. I, § 6. The Complaint should be dismissed under Rule 12(b)(6).

5. To the extent that the plaintiffs are alleging an independent claim under article I, section 38 of the North Carolina Constitution, the Complaint does

not state a claim upon which relief can be granted under that provision because the Complaint does not allege facts that show that the State has abridged any of the plaintiffs' rights that are protected by article I, section 38. Any such claim should therefore be dismissed under Rule 12(b)(6).

6. To the extent that the plaintiffs are alleging an independent claim under article XIV, section 5 of the North Carolina Constitution, the Complaint does not state a claim upon which relief can be granted under that provision because article XIV, section 5 does not articulate any enforceable individual right but instead clarifies state policies and functions regarding environmental protection and creates a land conservation program. Any such claim should therefore be dismissed under Rule 12(b)(6).

7. Pursuant to N.C. State Conference of the NAACP v. Moore, 849 S.E.2d 87 (N.C. Ct. App. 2020), the Court of Appeals held, over a dissent, that certain amendments to the North Carolina Constitution were lawful, reversing a trial court judgment that held that the amendments were unlawful. That case is currently before the North Carolina Supreme Court. See N.C. State Conf. of the NAACP v. Moore, No. 261A18-3 (N.C. appeal docketed Oct. 14, 2020). Should the Supreme Court hold that the amendments are invalid, it would likely result in the invalidation of article I, section 38 as well. Accordingly, the Complaint would

fail to state a claim on the basis of article I, section 38 and would be subject to dismissal under Rule 12(b)(6).

8. To the extent that the plaintiffs are alleging a right to relief under the Uniform Declaratory Judgment Act, such plea should be denied for all of the foregoing reasons under Rule 12(b)(1), (2) and (6).

WHEREFORE, the State respectfully requests that the Court dismiss the Complaint in its entirety.

Respectfully submitted, this, the 28th day of January 2021.

JOSHUA H. STEIN
N.C. ATTORNEY GENERAL



Scott A. Conklin
Assistant Attorney General
N.C. State Bar No. 28257
sconklin@ncdoj.gov

Marc Bernstein
Special Deputy Attorney General
N.C. State Bar No. 21642
mbernstein@ncdoj.gov

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
Telephone: (919) 716-6600
Facsimile: (919) 716-6767
ATTORNEYS FOR THE
DEFENDANT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing Defendant's Motion to Dismiss upon counsel for the plaintiffs by electronic mail addressed as follows:

Keith H. Johnson
Andrew H. Erteschik
John M. Durnovich
Stephanie L. Gumm
kjohnson@poynerspruill.com
aerteschik@poynerspruill.com
jdurnovich@poynerspruill.com
sgumm@poynerspruill.com
ATTORNEYS FOR THE PLAINTIFFS

This the 28th day of January 2021.

JOSHUA H. STEIN
Attorney General



Scott A. Conklin
Assistant Attorney General