

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

Civil Action No. 5:06-CV-00462-FL

RICHARD L. BISHOP, et al.,	)	
	)	
Plaintiffs,	)	<b>DEFENDANTS'</b>
	)	<b>MOTION TO DISMISS</b>
v.	)	
	)	<b>FED. R. CIV. P. 12(b)(1) and (6)</b>
GARY O. BARTLETT, et al,	)	<b>Local Rule 7.1</b>
	)	
Defendants.	)	

**NOW COME** defendants, by and through the undersigned counsel, and move the court pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil Procedure to dismiss this action on the grounds that:

1. Plaintiffs' claim under § 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. § 1973c, is moot because North Carolina Session Law 2003-403 has been submitted to the Attorney General of the United States for preclearance;

2. This Court lacks subject matter jurisdiction over plaintiffs' claims under 42 U.S.C. § 1983 alleging violation of plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution because those claims are barred by the statute of limitations;

3. This Court lacks subject matter jurisdiction over plaintiffs' claims alleging violation of plaintiffs' rights under the North Carolina Constitution because those claims are barred by the statute of limitations;

4. This Court lacks subject matter jurisdiction over plaintiffs' claims under 42 U.S.C. § 1983 alleging violation of plaintiffs' due process rights under the Fourteenth Amendment to the United States Constitution because those claims are barred by laches;

-2-

5. This Court lacks subject matter jurisdiction over plaintiffs' claims alleging violation of plaintiffs' rights under the North Carolina Constitution because those claims are barred by laches;

6. Plaintiffs have failed to state a claim for which relief can be granted with regard to all claims other than plaintiffs' claim under § 5 of the Voting Rights Act in that plaintiffs have failed to state a claim cognizable under applicable law;

7. Plaintiffs have failed to state a claim for which relief can be granted with regard to all claims other than plaintiffs' claim under § 5 of the Voting Rights Act in that plaintiffs' claims are barred by the statute of limitations;

8. Plaintiffs have failed to state a claim for which relief can be granted with regard to all claims other than plaintiffs' claim under § 5 of the Voting Rights Act in that plaintiffs' claims are barred by laches.

9. Because all of plaintiffs' federal claims should be dismissed, the Court should decline to exercise supplemental jurisdiction over plaintiffs' state law claims.

Defendants request a hearing on this motion.

**WHEREFORE**, defendants respectfully pray that this Court dismiss this action.

Respectfully submitted, this the 19<sup>th</sup> day of December, 2006.

ROY COOPER  
ATTORNEY GENERAL

/s/ Tiare B. Smiley  
Tiare B. Smiley  
Special Deputy Attorney General  
State Bar No. 7719  
tsmiley@ncdoj.gov

-3-

/s/Alexander McC. Peters  
Alexander McC. Peters  
Special Deputy Attorney General  
State Bar No. 13564  
apeters@ncdoj.gov

North Carolina Department of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6900  
Facsimile: (919) 716-6763

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day, December 19, 2006, electronically filed the foregoing **DEFENDANTS' MOTION TO DISMISS** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Robert F. Orr  
Pamela B. Cashwell  
Jeanette Doran Brooks  
225 Hillsborough Street,  
Suite 245  
Raleigh, NC 27603

Respectfully submitted,

/s/ Tiare B. Smiley  
Tiare B. Smiley