

STATE OF NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

COUNTY OF WAKE

17 CVS 5084

2018 MAR -5 P 4: 20

ROY A. COOPER, III, in his official
capacity as GOVERNOR OF THE
STATE OF NORTH CAROLINA,

Plaintiff,

v.

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; and THE
STATE OF NORTH CAROLINA,

Defendants.

FINAL JUDGMENT

THIS CAUSE coming before the undersigned three judge panel, constituted by the assignment of the Chief Justice of the North Carolina Supreme Court on April 27, 2017, upon remand by the North Carolina Supreme Court for further proceedings not inconsistent with the Supreme Court opinion in this matter filed on January 26, 2018 Opinion (*Cooper v. Berger*, __ N.C. __, __ S.E.2d __, No. 52PA17-2 (Jan. 26, 2018), including the entry of a final judgment on the merits;

AND IT APPEARING that in said opinion the Supreme Court reversed this Court's October 31, 2017 order concluding it had no jurisdiction to reach the Plaintiff's claims challenging the constitutionality of Session Law 2017-6, now recodified into a new Chapter 163A; and that the Supreme Court further in its said opinion reversed

this Court's decision of October 31, 2017, on the merits of the Plaintiff's claim, in which this Court upheld the constitutionality of the challenged statutes;

AND IT FURTHER APPEARING that the Supreme Court in its opinion found that "[t]he Governor is not challenging the General Assembly's decision to 'prescribe the functions, powers and duties of the administrative departments and agencies of the State' by merging the State Board of Elections and the Ethics Commission into the Bipartisan State Board and prescribing what the Bipartisan State Board is required or permitted to do; instead, he is challenging the extent, if any, to which the statutory provisions governing the manner in which the Bipartisan State Board is constituted and required to operate pursuant to Session Law 2017-6 impermissibly encroach upon his constitutionally established executive authority to see that laws are faithfully executed."

AND IT FURTHER APPEARING that in its said opinion, the Supreme Court ruled that "the provisions of Session Law 2017-6 concerning the membership of and appointments to the Bipartisan State Board, taken in context with the other provisions of that legislation, impermissibly interfere with the Governor's ability to faithfully execute the laws in violation of Article III, Section 5(4) of the North Carolina Constitution," and are therefore unconstitutional;

AND IT FURTHER APPEARING that this Court's role is to follow strictly the opinion of the appellate court in entering any judgment, not to alter or amend the scope of the opinion. *See Collins v. Simms*, 257 N.C. 1, 12, 125 S.E.2d 298, 306 (1962).


"[The trial court] can only proceed to execute the mandate and settle so much as remains to be done, without rescission or modification." *Id.*

WHEREFORE based upon consideration of all matters of record, and in light of the further guidance and mandate to this court provided by the Supreme Court's Opinion, and pursuant to N.C. Gen. Stat. § 1-253 *et seq.* and North Carolina Rules of Civil Procedure 57,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. That N.C. Gen Stat. § 163A-2 in its entirety, including subsections (a) through (j), dealing with membership of and appointment to the State Board, is hereby declared void and of no effect;
2. That N.C. Gen Stat. § 163A-2 in its entirety, including subsections (a) through (j), is permanently enjoined in its entirety.
3. That the parties shall bear their own costs.

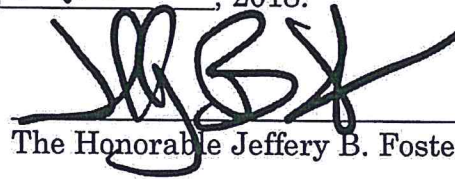
SO ORDERED, this the 5th day of March, 2018.


The Honorable Jesse B. Caldwell, III

SO ORDERED, this the 5th day of March, 2018.

L. Todd Burke
The Honorable L. Todd Burke

SO ORDERED, this the 5th day of March, 2018.


The Honorable Jeffery B. Foster

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on all parties by serving counsel as indicated below by U.S. Mail, postage prepaid, addressed as follows, with a courtesy copy sent via email on March 5, 2018:

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This the 5th day of March, 2018.



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