

No. P18-\_\_\_\_\_

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

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Christopher J. Anglin,

Plaintiff,

vs.

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; The State of North Carolina; The North Carolina Bipartisan State Board of Elections and Ethics Enforcement; and Kimberly W. Strach, in her official capacity as Executive Director of the North Carolina Bipartisan State Board of Elections and Ethics Enforcement,

Defendants.

From Wake County  
No. 18 CVS 9748

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**PETITION FOR WRIT OF SUPERSEDEAS AND  
MOTION FOR TEMPORARY STAY**

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**To the Honorable Court of Appeals of North Carolina:**

Plaintiff Christopher J. Anglin (“Plaintiff”) filed to run for a seat on the North Carolina Supreme Court approximately three weeks after changing his registered party affiliation. Thereafter, in an effort to avoid voter confusion, the General Assembly passed Session Law 2018-130 (the “Session Law”), requiring that the registered party affiliation or unaffiliated status for a judicial candidate be shown on the November ballot only if that candidate’s registered party affiliation or unaffiliated status was the same both at the time the candidate filed to run for office and 90 days prior to that filing. Plaintiff brought suit challenging the constitutionality of the Session Law.

On 13 August 2018, the Honorable Rebecca Holt, Wake County Superior Court Judge, enjoined portions of the Session Law as it applies to Plaintiff. Doing so was in error because Plaintiff failed to establish that he is entitled to the extraordinary relief sought—barring enforcement of the Session Law before the election. The Session Law does not deprive Plaintiff of due process or burden his associational rights and, therefore, the Session Law should not be enjoined.

Petitioners Philip E. Berger, in his official capacity as President *Pro Tempore* of the North Carolina Senate and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (“Petitioners”) appealed the trial court’s preliminary injunction. They now petition this Court to issue a writ of supersedeas under N.C. R. App. P. 23 and also move under N.C. R. App. P. 8 for a

temporary stay of that preliminary injunction. The Court should issue the writ and grant the temporary stay for the following reasons:

- Petitioners will suffer irreparable harm if the Court does not issue the writ because their appeal may become moot if the North Carolina Bipartisan State Board of Elections and Ethics Enforcement (the “Board”) prints the election ballots (with the party affiliation information barred under the Session Law) before this appeal is resolved.
- Petitioners can establish a likelihood of success on appeal necessary for the Court to exercise its reversionary power here.
- The matters underlying the trial Court’s preliminary injunction are time sensitive, necessitating expedited consideration and issuance of a stay while the Court considers the petition.

For these reasons, President *Pro Tempore* Berger and Speaker Moore request that the Court grant the petition and issue the writ so that no election ballots can be printed before the Court resolves the merits of the underlying appeal. Because of the potential that their appeal could become moot if the Board prints the November election ballots in compliance with the trial court’s preliminary injunction (and in contravention of the Session Law), Petitioners also request that the Court grant a temporary stay that would give our appellate courts more time to consider the petition while staying the preparation of the ballots for the November 2018 election until 1 September 2018 or earlier if so ordered by the appellate courts.

## **FACTS**

### **A. North Carolina’s 2018 Judicial Election Process**

In October 2017, the General Assembly enacted Session Law 2017-214, which cancelled the 2018 primaries for all candidates seeking election to the district courts, the superior courts, or the appellate courts. 2017 N.C. Sess. Laws 214, § 4(a). Under



Session Law 2017-214, judicial candidates had to indicate the political party with which they were affiliated on their notices of candidacy or, alternatively, note any unaffiliated status at the time of filing to run for judicial office. *Id.* § 4(b). The November 2018 general ballot was to reflect the self-identified party designation or unaffiliated status of all judicial candidates. *Id.*

### **B. Plaintiff's Candidacy**

Plaintiff changed his registered party affiliation from the Democratic Party to the Republican Party on 7 June 2018, by filing the necessary documentation with the Wake County Board of Elections. (Ex. 2 – Compl. ¶ 25.) Just 22 days later and on the last day of filing, Plaintiff filed his candidacy for associate justice of the North Carolina Supreme Court. (*Id.* ¶ 26.) At the time Plaintiff filed, only Justice Barbara Jackson and Anita Earls had filed to run for the Supreme Court seat. (*Id.* ¶ 28.)

### **C. Passage of the Session Law**

On 4 August 2018, the General Assembly passed “An Act to Clarify Political Party Disclosure on the Ballot for Judicial Races in 2018,” over the Governor’s veto. *See* 2018 N.C. Sess. Laws 130. The Session Law applies the same 90-day lookback period already established for all other partisan elections under N.C. Gen. Stat. § 163A-973 to judicial races. *Id.* § 2. Under the Session Law, if “the candidate’s political party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.” *Id.* § 1 (amending 2017 N.C. Sess. Laws 214, § 4(b)). If candidates’ party affiliation or

unaffiliated status is not the same as on their voter registration at the time of filing and 90 days prior to that filing, candidates can (1) remain in the race and on the ballot but with no party affiliation or unaffiliated status to be shown on the ballot, (2) withdraw from the race by the close of business on August 8, 2018. *Id.* §§ 1–2, 3.1. The Session Law’s findings acknowledge “that political organizations and groups made efforts to recruit candidates that could confuse voters.” *See* 2018 N.C. Sess. Laws 130, pmbl. As expressly stated, the goal of the Session Law is to “reduce the opportunity for voter confusion” by “listing only partisan affiliations that a candidate has held for 90 days prior to filing” in order. *Id.*

#### **D. The Complaint and Temporary Restraining Order**

On 6 August 2018, Plaintiff filed his verified complaint alleging that the Session Law violates sections 1, 10, 14, 19, and 32 of the North Carolina Declaration of Rights as applied to him. (Ex. 2 – Compl. ¶¶ 56–71.) Plaintiff named Petitioners, the Board, and its executive director as defendants. (*Id.*) Plaintiff seeks temporary and permanent injunctive relief:

- (1) Prohibiting Defendants from enforcing the Session Law or issuing “any official state publication to the voting public which states that Plaintiff is anything other than a Republican candidate” for the Supreme Court;
- (2) Prohibiting “any change to Plaintiff’s verified designation as a Republican candidate” for the Supreme Court;
- (3) Suspending the Session Law’s deadline to withdraw from the judicial election;
- (4) Prohibiting ballots for the 2018 election from being printed; and
- (5) Alternatively, allowing Plaintiff to withdraw from the race if his temporary and permanent injunctive relief is denied.

(Ex. 2 – Compl. at 23–24, ¶¶ (1)–(6).)

Less than five hours after the filing of Plaintiff’s Complaint, the trial court heard arguments on his motion for a temporary restraining order. Shortly after the hearing, the trial court issued a temporary restraining order enjoining the enforcement of the Session Law for seven days and suspending the application of the deadline for Plaintiff to withdraw until three business days from entry of a final ruling on the preliminary injunctive relief. (See Ex. 4 – Temp. Restraining Order at 2–3.)

**E. Plaintiff’s Conditional Withdrawal**

After entry of the Temporary Restraining Order, Plaintiff submitted a letter to the Board conditionally withdrawing his candidacy. (See Ex. 9 – Pl.’s Ltr. to the Board.) In that letter and its accompanying affidavit, Plaintiff states that, “in the unlikely circumstance that the courts allow [the Session Law] to go into effect, I will not allow my party designation to be misrepresented on the ballot,” and encloses a conditional candidate withdrawal “to be effective only should the [Board] be ordered to take action by a North Carolina court, to finalize and print [the ballot].” *Id.*

**F. The Trial Court’s Preliminary Injunction and this Appeal**

The trial court held its hearing on Plaintiff’s preliminary injunction on 13 August 2018. After hearing arguments from counsel, the Court orally enjoined the Session Law, ruling from the bench that the Board may not print ballots omitting Plaintiff’s party affiliations. The Court also extended its temporary restraining order

until it could issue its preliminary injunction, which was distributed to the parties that same day. (*See* Ex. 7 – Prelim. Injunction.)

In the trial court’s Order Granting Plaintiff’s Motion for Preliminary Injunction (the “Preliminary Injunction”), the Court concludes that the Session Law

- (1) deprives Plaintiff of due process because the law retroactively eliminates his vested right to appear on the ballot as a Republican, (*id.* ¶ 3–4),
- (2) places a severe burden on Plaintiff’s right of association provided by the North Carolina Constitution without a compelling state interest, (*id.* ¶ 5–8), and
- (3) alternatively, to the extent the Session Law does not severely burden Plaintiff’s right of association, the State’s interests are not sufficient to justify even a lesser burden.

The trial court did not address Plaintiff’s claims that the Session Law deprives him of equal protection under Article I, §§ 1, 19, violates the State’s free elections provision under Article I, § 10, deprives Plaintiff of the right of free speech under Article I, § 14, or creates an exclusive emolument in violation of Article I, § 32.

The Preliminary Injunction enjoins Petitioners and the Board from enforcing the Session Law against Plaintiff, authorizing “any change to Plaintiff’s verified designation as a Republican candidate” for the Supreme Court, or authorizing ballot language or the printing of ballots that state the 90-day requirement pertains to Plaintiff’s candidacy. (*Id.* at 10.) The preliminary injunction also stays the August

8, 2018 deadline for Plaintiff to withdraw until the trial court can resolve the case on the merits. (*Id.*)

On 14 August 2018, Petitioners filed their notice of appeal from the Preliminary Injunction.<sup>1</sup> (*See* Ex. 8 – Notice of Appeal.) Because of the exigencies of this case, Petitioners now seek a writ of supersedeas and a temporary stay preventing enforcement of the preliminary injunction during pendency of this appeal.

### **G. Current Status of Ballot Preparation**

In parallel cases filed on 6 August 2018 in Wake County Superior Court, Plaintiffs Governor Roy Cooper (Wake County Case No. 18 CVS 9805) and the North Carolina State Conference of the National Association for the Advancement of Colored People (the “NC NAACP”) and Clean Air Carolina (“CAC”) (Wake County Case No. 18 CVS 9806) challenged the session laws providing the ballot language for four proposed constitutional amendments as unconstitutional. Also on 6 August 2018, the Board filed its Answer and Crossclaim in Wake County Case No. 18 CVS 9805 admitting the allegations of the Governor’s Complaint and seeking its own injunctive relief to enjoin preparation of ballots with the challenged ballot language. These cases (the “Constitutional Amendment Cases”) were transferred to a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1. The plaintiffs’ and the Board’s motions for preliminary injunction were heard on 15 August 2018. Effective 17 August 2018, the

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<sup>1</sup> The Court has jurisdiction over the appeal from the preliminary injunction despite its interlocutory nature because it temporarily enjoins the enforcement of the Session Law, *see* N.C. Gen. Stat. § 7A-27(b)(3)(f), and it affects Petitioner’s substantial rights, *see* N.C. Gen. Stat. § 7A-27(a)(3)(a), § 1-277(a).

three-judge panel entered its Order on Temporary Measures enjoining the preparation or printing of ballots for three business days after entry of the panel's order on the motions for preliminary injunction. (See Ex. 8 – Order on Temporary Measures in Wake County Case Nos. 18 CVS 9805 and 18 CVS 9806.) On 21 August 2018, the three-judge panel entered its Order on Injunctive Relief enjoining the inclusion of two of the four challenged proposed amendments on the ballot such that, pursuant to the Order on Temporary Measures and without relief from this Court, ballot preparation could begin as early as Saturday, 25 August 2018. On 23 August 2018, this Court entered its Order in the Constitutional Amendment Cases (No. P18-584) (the “Stay Order”), staying the preparation or printing of ballots for the November 2018 general election pending further order of the Court.

### **STANDARD OF REVIEW**

Under Rule 23 of the North Carolina Rules of Appellate Procedure, a writ of supersedeas is available “to stay the . . . enforcement of any . . . order, or other determination of a trial tribunal which is not automatically stayed by the taking of appeal . . . .” N.C. R. App. P. 23(a)(1); *see also* N.C. Gen. Stat. § 1-269 (authorizing Court of Appeals to issue writ of supersedeas). The Court of Appeals also has jurisdiction “to issue the prerogative writs,” including supersedeas, “in aid of its own jurisdiction, or to supervise and control the proceedings of any of the trial courts of the General Court of Justice.” N.C. Gen. Stat. Ann. § 7A-32(c). The Supreme Court of North Carolina has held that the “writ of supersedeas may issue in the exercise of, and as ancillary to, the revising power of an appellate court,” and the writ’s purpose

“is to preserve the Status quo pending the exercise of appellate jurisdiction.” *Craver v. Craver*, 298 N.C. 231, 237–38, 258 S.E.2d 357, 362 (1979); *see also City of New Bern v. Walker*, 255 N.C. 355, 121 S.E.2d 544, 545–46 (1961) (explaining the writ’s purpose is to “hold the matter in abeyance pending review”). Appellate courts may also issue a writ of supersedeas to modify temporary injunctive relief pending appeal. *See, e.g., Granville Cty. Bd. of Comm’rs v. N. Carolina Hazardous Waste Mgmt. Comm’n*, 329 N.C. 615, 618, 407 S.E.2d 785, 786 (1991) (“[T]he Court of Appeals allowed the Commission’s petition for writ of supersedeas and stayed the trial court’s preliminary injunction pending disposition of the appeal.”).

The standard for issuing a temporary stay and writ of supersedeas is flexible. Because the rule asks only whether “the writ should issue in justice to the applicant,” it confers broad discretion on the appellate courts to protect the rights of litigants while a case is on appeal. N.C. R. App. P. 23(c). Issuing the writ is the prerogative of the Court. *N. Carolina Fire Ins. Rating Bureau v. Ingram*, 29 N.C. App. 338, 341, 224 S.E.2d 229, 231 (1976). Thus, allowing the writ is appropriate where the petitioner shows that there is merit to the underlying appeal and irreparable harm would occur during pendency of the appeal if the court does not issue the writ. *Abbott v. Highlands*, 52 N.C. App. 69, 71, 277 S.E.2d 820, 827 (1981).

## ARGUMENT

This current petition and motion ask the Court to preserve the *status quo* so that no ballots are printed for the November 2018 election until the Court can entertain the merits of Petitioners’ appeal. Absent a stay, the appeal may very well

become moot; upon the expiration of the stay in the Constitutional Amendment Cases (which could occur before this Court's determination on the Petition), the Board could print ballots showing Plaintiffs' party affiliations in contravention of the Session Law.

Such relief is warranted under the circumstances so that the appeal may be expedited and decided as soon as possible, while also preserving Petitioners' ability to obtain meaningful relief.

The writ of supersedeas and issuance of a stay rests in the discretion of the Court. Petitioners ask that the Court exercise that discretion to avoid irreparable harm and to correct the legal error of the court below.

**I. Without the writ, Petitioners' appeal could become moot, and Petitioners would be irreparably harmed.**

Absent a stay of the trial court's Preliminary Injunction, the ballots for the November 2018 election could be printed in contravention of the Session Law (i.e., with Plaintiff's party affiliation as of just 22 days before he filed to run for office), rendering Petitioners' appeal moot and causing Petitioners irreparable harm. If this Court does not act, the 2018 election ballots will likely be printed, depriving any other appellate court or panel of its ability to correct later the legal errors committed below under the mootness doctrine. The Board could prepare and print the 2018 election ballots upon the expiration of the stay in the Constitutional Amendment Cases. *See* N.C. Gen. Stat. § 163A-1305 (noting that absentee ballots are to be provided 60 days prior to the statewide general election); *see also* Ex. 8 (establishing expiration of current stay as 11:59 P.M. on 24 August 2018). Doing so could potentially leave Petitioners with no redress. *See, e.g., DuBose v. Gastonia Mut. Sav. & Loan Ass'n*, 55



N.C. App. 574, 580, 286 S.E.2d 617, 621 (1982) (explaining that the “question[ ] raised by plaintiffs [was] moot” because “the defendants have completed their foreclosure sale; the property has been conveyed . . . and the sale has been confirmed;” and “plaintiffs obtained neither a stay of execution . . . nor a temporary stay or a writ of supersedeas.”). Because of this possibility and because Petitioners can show they are likely to succeed on the merits, this Court should issue the writ and stay the trial court’s preliminary injunction.

If the Board were to prepare ballots consistent with the trial court’s Preliminary Injunction upon the expiration of the stay in the Constitutional Amendments Cases (and before this Court’s determination on the Petition), the ballots would indicate Plaintiff’s Republican Party registered affiliation. Once the ballots are certified and sent to voters, such information cannot later be withdrawn. Therefore, to deny the relief sought by Petitioners herein could leave Petitioners without any redress to correct the trial court’s improper issuance of the preliminary injunction prohibiting the enforcement of the Session Law. *See DuBose*, 55 N.C. App. at 580, 286 S.E.2d at 621.

Similarly, printing the ballots under the Preliminary Injunction would necessarily mean that the Session Law’s provisions would not be given effect; the ballots would improperly list Plaintiff’s Republican Party affiliation even though such affiliation is not the same as it was 90 days prior to filing to run for office. This is an irreparable harm to Petitioners. *See Maryland v. King*, 567 U.S. 1301, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) (“Any time a State is enjoined by a court from

effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”).

When determining whether to issue a writ—similar to the analysis for a preliminary injunction—the Court should weigh the relative harms of the temporary relief to the parties. *Bd. of Provincial Elders v. Jones*, 273 N.C. 174, 182, 159 S.E.2d 545, 551–52 (1968); accord *Cty. of Johnston v. City of Wilson*, 136 N.C. App 775, 780, 525 S.E.2d 826, 829 (2000) (noting that a court should weigh “the advantages and disadvantages to the parties” in deciding whether to issue a preliminary injunction). The weighing of those relative harms confirms that the writ is necessary and proper here.

Petitioners acknowledge that, due to the extraordinary nature of this case and the impending deadline to prepare ballots for the November 2018 election, Plaintiff’s arguments in this litigation, like Petitioners, could be rendered moot, or Plaintiff could be denied his requested relief (i.e., an injunction of the removal of his registered party affiliation from the ballot). However, while enjoining the Session Law would irreparably harm Petitioner, *see Maryland*, 567 U.S. 1301, 133 S. Ct. at 3, Plaintiff’s *name will be on the ballot*<sup>2</sup> unless his conditional withdrawal from the race is

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<sup>2</sup> On 22 August 2018, Judge Flanagan, in *Poindexter v. Strach*, No. 5:18-CV-366-FL (M.D.N.C. Aug. 22, 2018), issued an Order on the plaintiffs’ motion for preliminary injunction regarding the retrospective application of a “sore loser” provision to North Carolina’s new political party, the Constitutional Party. Holding that the retrospective application of the law was unconstitutional, the Court enjoined its application. *Poindexter*, however, like other cases cited by Plaintiff, deals with candidate access to the ballot (i.e., whether a candidate can appear on the ballot at all) instead of the inclusion of information about that candidate on the ballot. Control over information on the ballot has not implicated the traditional concerns of ballot

effective. Even if no party affiliation appears by his name, Plaintiff can still campaign or otherwise explain to voters that he affiliates with the Republican Party.

Moreover, “a party seeking equitable relief, such as injunctive relief, must come before the court with ‘clean hands.’ Those who seek equitable remedies must do equity, and this maxim is not a precept for moral observance, but an enforceable rule.” *Kennedy v. Kennedy*, 160 N.C. App. 1, 15, 584 S.E.2d 328, 337. North Carolina law requires voters—and candidates for election, by extension—to register for a party in good faith. “When a member of either party desires to change his party affiliation, the good faith of the change is a proper subject of inquiry and challenge. Without the objectionable part of the oath, ample provision is made by which the officials may strike from the registration books the names of those who are not in good faith members of the party.” *Clark*, 261 N.C. at 143, 134 S.E.2d at 170. Thus, our Supreme Court has long recognized the need for “adequate means by which to determine good faith membership in the party and to prevent raids by one party into the ranks of the other.” *Id.* at 142, 134 S.E.2d at 170.

In his own words, Plaintiff says he is running for election “to make the point that partisan judicial elections are a mistake.” (See Ex. 10 – Chris Anglin, *Why I’m running as a Republican for NC Supreme Court*, CHARLOTTE NEWS & OBSERVER (July 30, 2018).) “No matter what happens next, our campaign has been victorious because

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access, and, therefore, *Poindexter* is distinguishable. Plaintiff is appearing on the ballot as a candidate.

it has exposed the folly of partisan judicial elections.” (*Id.*) These statements call into question Plaintiff’s motives for changing his party affiliation to run for election.

Likewise, Plaintiff’s request that the trial court retain jurisdiction to allow him to withdraw from the race later in the event either the trial court or an appellate court refuses to grant injunctive relief, (*see* Ex. 2 – Compl. p. 24, ¶ (6)), and Plaintiff’s recent letter to the Board in which he conditionally withdraws from the Supreme Court race, (*see* Ex. 9),<sup>3</sup> imply that Anglin’s true motivation is something other than trying to win a seat on the Supreme Court (and may have created voter confusion). Thus, Anglin comes to the Court with unclean hands, such that the balance of harms weighs in favor of the relief sought by Petitioners herein (and should also disqualify Plaintiff from receiving the equitable relief he seeks).<sup>4</sup>

**II. The trial court improperly enjoined the Session Law’s enforcement, and, therefore, Petitioners are likely to succeed on the merits of their appeals.**

Because a preliminary injunction is “an extraordinary measure,” courts may only issue it upon the movant’s showing that (1) there is a likelihood of success on the merits of his case; and (2) the movant will likely suffer irreparable loss unless the injunction is issued[.]” *VisionAIR, Inc. v. James*, 167 N.C. App. 504, 508, 606 S.E.2d

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<sup>3</sup> Ironically, Anglin’s withdrawal takes effect “retroactively.” (*Id.*)

<sup>4</sup> For the same reasons Petitioners raise here regarding the balancing of harm and Plaintiff’s unclean hands, Petitioners are likely to prevail on their appeal. A court should not issue a preliminary injunction when there remains a “question as to the right of the defendant to engage in the activity and to forbid the defendant to do so, pending the final determination of the matter, would cause the defendant greater damage than the plaintiff would sustain from the continuance of the activity while the litigation is pending.” *Bd. of Provincial Elders*, 273 N.C. at 182, 159 S.E.2d at 551–52.

359, 362 (2004). “The burden is on the plaintiffs to establish their right to a preliminary injunction.” *Pruitt v. Williams*, 288 N.C. 368, 372, 218 S.E.2d 348, 351 (1975). This extraordinary remedy “will not be lightly granted.” *Travenol Labs., Inc. v. Turner*, 30 N.C. App. 686, 692, 228 S.E.2d 478, 483 (1976).

This is especially true where, as here, Plaintiff challenges the constitutionality of a statute. “When confronted with a challenge to a validly adopted statute, the courts must assume that the General Assembly acted within its constitutional limits unless the contrary clearly appears.” *Reidy v. Whitehart Ass’n, Inc.*, 185 N.C. App. 76, 83, 648 S.E.2d 265, 270 (2007) (citations omitted). A “statute must be upheld unless its unconstitutionality *clearly, positively, and unmistakably* appears beyond a reasonable doubt.” *Rowlette v. State*, 188 N.C. App. 712, 714 656 S.E.2d 619, 621 (emphasis added). “Beyond a reasonable doubt” is our highest level of persuasion—a standard for criminal cases, exceeding the “clear and convincing” standard. *See Scarborough v. Dillard’s, Inc.*, 363 N.C. 715, 730–31, 693 S.E.2d 640, 649 (2009) (discussing burdens of persuasion).

Here, the trial court erred by concluding that Plaintiff is likely to succeed on the merits of his claims that the Session Law violates Plaintiff’s associational and due process rights. (Ex. 7 – Preliminary Injunction ¶¶ 3–8.) Thus, the Court should use its reversionary and supervisory powers to stay the preliminary injunction until the legal error of the court below can be corrected.

**A. The Session Law is not rendered unconstitutional simply because Plaintiff claims it has retroactive effect.**

Plaintiff claims that he has “the right to run for office as a declared Republican candidate,” (Ex. 2 – Compl. ¶ 68), and argues that the Session Law has improperly deprived him of that right retroactively, complaining that it is unfair to “change the rules” under which he filed to run for office (*id.* at ¶ 69). The trial court accepted this argument, concluding that the Session Law has been improperly applied retroactively to Plaintiff because he had a right to be listed on the ballot as a Republican and that right vested upon the filing of his notice of candidacy. (Ex. 7 – Preliminary Injunction ¶¶ 3–4.) The court below has applied the wrong standard such that this Court should issue the writ under its revisionary and supervisory powers.

Even if The Session Law has been applied retrospectively here, it does not violate the North Carolina Constitution’s due process protections.<sup>5</sup> Retroactivity arguments like the one Plaintiff makes here are grounded in the due process portions of the “Law of the Land” provision in article I, § 19 of the North Carolina Constitution. *See Miracle v. N. Carolina Local Gov’t Employees Ret. Sys.*, 124 N.C. App. 285, 292, 477 S.E.2d 204, 209 (1996) (applying due process analysis to law enforcement officer’s challenge to retroactive changes in his pension). Under that standard, it is still “a generally accepted principle of statutory construction that there is no constitutional limitation upon legislative power to enact retroactive laws which do not impair the

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<sup>5</sup> Plaintiff’s lawsuit does not implicate the *Ex Post Facto* clause of article I, § 16, because that clause applies only to criminal law. *See State v. Johnson*, 169 N.C. App. 301, 307, 610 S.E.2d 739, 743–44 (2005); *Calder v. Bull*, 3 U.S. (3 Dall.) 386 (1798) (confirming that *ex post facto* clause of the United States Constitution does not apply to civil statutes).

obligation of contracts or disturb vested rights.” *Falk v. Fannie Mae*, 367 N.C. 594, 601, 766 S.E.2d 271, 276 (2014).

Statutes “readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations.” *State ex. rel. Lee v. Penland-Bailey Co., Inc.*, 50 N.C. App. 498, 503–04, 274 S.E.2d 348, 352 (quoting *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976)). “Instead, the proper question for consideration is whether the act as applied will interfere with rights that have ‘vested.’ Stated otherwise, the statute may be applied retroactively only insofar as it does not impinge upon a right which is otherwise secured, established, and immune from further legal metamorphosis.” *Gardner v. Gardner*, 300 N.C. 715, 718, 268 S.E.2d 468, 470 (1980) (citation omitted).

North Carolina courts have traditionally construed “vested rights” narrowly. The General Assembly’s ability to pass retroactive legislation has been limited to circumstances in which the vested right was either a property right or an enumerated constitutional right. *Wilson v. Anderson*, 232 N.C. 212, 221, 59 S.E.2d 836, 843 (1950) (separation of powers between legislative and judicial branches); *Gardner*, 300 N.C. at 719, 268 S.E.2d at 471 (same); *Piedmont Mem’l Hosp. v. Guilford Cty.*, 221 N.C. 308, 314, 20 S.E.2d 332, 336 (1942) (same); *Branch v. Branch*, 282 N.C. 133, 137, 191 S.E.2d 671, 674 (1972) (right to a jury trial); *Ashley v. Brown*, 198 N.C. 369, 151 S.E. 725, 727 (1930) (personal jurisdiction over non-resident).

The court below does not identify a specific constitutional or property right that would entitle Plaintiff to have his political affiliation included on the ballot. Instead,

the trial court points to a *statutory* right (i.e., the right under Session Law 2017-214 to have his registered party affiliation shown on the ballot) that it concludes vested when Plaintiff filed to run for office. (Ex. 7 – Prelim. Injunction ¶ 3.) This statutory right is not a sufficient right under the North Carolina precedent set forth above because it is not a property or constitutional right that has been affected by the Session Law. Indeed, Plaintiff has no property right to run for office. *See Penny v. Salmon*, 217 N.C. 276, 7 S.E.2d 559, 561 (1940) (“The right of plaintiff to stand for election to an office is a political privilege and not inalienable . . . .”); *Crump v. Snead*, 134 N.C. App. 353, 358, 517 S.E.2d 384, 388 (1999). Plaintiff also has no constitutional right to list his party affiliation on the ballot. *See Marcellus v. Virginia State Bd. of Elections*, 849 F.3d 169, 176 (4th Cir. 2017) (“[C]andidates themselves have no First Amendment right to use the ballot ‘as [a] forum[ ] for political expression’ in which to communicate to voters their status as a party’s nominee.”);

Second, even if this “right” were sufficient to limit the General Assembly’s plenary powers to legislate, there is no support for the trial court’s conclusion that the right vested when Plaintiff filed his notice of candidacy. (Ex. 7 – Prelim. Injunction ¶ 3.) At a minimum, the “right” could not become vested before the ballots are printed. Until that time, it is not uncommon for actions that affect the ballot to be taken *after* candidate filing. *See, e.g.* N.C. Gen. Stat. § 163A-1114 (“The order in which candidates shall appear on official ballots in any election ballot item shall be either alphabetical order or reverse alphabetical order by the last name of the



candidate, which order shall be determined each election by drawing at the [Board] *after* the closing of the filing period for all offices on the ballot.”) (emphasis added.)

The trial court relies on *Roe v. Alabama*, 43 F.3d 574, 580–81 (11th Cir. 1995), to support its conclusion that “retroactive changes in election laws can be patently unfair to the candidates who followed pre-existing election rules.” (Preliminary Injunction p. 7, ¶ 4.) *Roe* is not controlling here, however. In *Roe*, the Eleventh Circuit Court of Appeals enjoined a state circuit court’s order requiring state election officials to count contested absentee ballots (for which accompanying affidavits were not notarized or witnessed) that constituted “a post-election departure from previous practice in Alabama.” Thus, *Roe* dealt with who could vote (as opposed to what can be on the ballot) and also dealt with a post-election change (as opposed to a change before the ballots are even printed).

**B. The Session Law does not abridge Plaintiff’s associational rights because he can still run for election, campaign, and otherwise publicize his political beliefs.**

Plaintiff argued below that the Session Law causes him to lose the “right to tell those voters by designation on the ballot that he, too, is running as a Republican candidate for that seat,” and that the Session Law “would strip [him] of the right to provide important information about his candidacy to the voter in the voting booth.” (Mot. Temp. Restraining Order at 11–12, 21.) Accepting Plaintiff’s arguments, the trial court concluded that the Session Law places a severe burden on Plaintiff’s associational rights. (Ex. 2 – Compl. ¶¶ 5–8.) The trial court and Plaintiff

misunderstand which associational rights are protected, the effects of the Session Law, and the applicable burden.

The North Carolina Supreme Court has determined that the analysis used by the Supreme Court in *Timmons v. Twin Cities Area New Party*, 520 U.S. 351 (1997), “is the proper approach for determining whether [a law] violates our state constitution’s due process, free speech and assembly, and equal protection provisions.” *Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 48, 707 S.E.2d 199, 204 (2011). Under that standard, where first amendment rights are “severely burdened, the challenged statutes must be strictly scrutinized to determine whether they were “narrowly tailored and advance a compelling state interest.” *Timmons* at 358. But if free speech is “not severely burdened, the interests of the State ‘need only be sufficiently weighty to justify the limitation imposed on the party’s rights.’” *Libertarian Party*, 365 N.C. at 47, 707 S.E.2d at 204 (quoting *Timmons*, 520 U.S. at 364. Where the burden is not severe, the “State’s important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.” *Id.*

Not all election laws unconstitutionally burden free speech. The Supreme Court has explained that states “may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.” *Timmons*, 520 U.S. at 358 (citations omitted). Thus, “not all infringements of the right to ballot access warrant strict scrutiny.” *Libertarian Party*, 365 N.C. at 49–50, 707 S.E.2d at 205. To the contrary—“strict scrutiny is warranted only when this associational right is severely burdened.” *Id.* (emphasis added). Thus, the

question before this Court is whether the Session Law severely burdens protected rights. If not, the interests of the State need only be sufficiently weighty to justify the limitation imposed on the party's rights. *Id.* at 51, 707 S.E.2d at 206.

Plaintiff inaccurately alleges that the Session Law requires him to “make a false statement to the voters of North Carolina that he is an unaffiliated voter and candidate when he is actually and legally a registered Republican,” (Compl. ¶ 18), and that if he does not withdraw, the ballot will list him as an unaffiliated candidate, (*id.* ¶ 73). In fact, unaffiliated candidates who were registered as such 90 days before candidate filing will have a designation by their names, while Plaintiff, under the Session Law, would have no designation. *See* 2018 N.C. Sess. Laws 130, §§ 1–2. Nevertheless, the ballot language will explain what a designation—or lack of designation—really means. *See* 2018 N.C. Sess. Laws 130, § 3 (amending 2018 N.C. Sess. Laws 13, § (c) to explain, “The party information by each of the following candidates’ names is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing.”).

The Session Law does not burden Plaintiff as he alleges or, for that matter, burden Plaintiff's protected rights at all. The Session Law does not restrict Plaintiff from appearing on the ballot and running as a Republican. He remains free to campaign as a Republican and educate voters that he is (now) affiliated with the Republican Party. While Plaintiff's change in registered party affiliation means his party affiliation will not appear on the ballot, the Session Law does not “strip Plaintiff

of the right” to provide information about his candidacy on the ballot *because he has no such right*. See *Marcellus v. Virginia State Bd. of Elections*, 849 F.3d at 176; *Twin Cities*, 520 U.S. at 362–363 (“We are unpersuaded, however, by the party’s contention that it has a right to use the ballot itself to send a particularized message, to its candidate and to the voters, about the nature of its support for the candidate”); *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 453 (2008) (“The First Amendment does not give political parties a right to have their nominees designated as such on the ballot.”).

While Petitioners contend that there is no burden on Plaintiff’s free speech or associational rights, for the reasons stated above and because the Session Law applies to all candidates running for judicial office, any burden found by the Court to exist does not severely burden Plaintiff’s rights.<sup>6</sup> See *Burdick v. Takushi*, 504 U.S. 428, 112 (1992) (“If it imposes only ‘reasonable, nondiscriminatory restrictions’ upon those rights, the State’s important regulatory interests are generally sufficient to justify the restrictions.”). Thus, an important regulatory interest like that expressly stated on the face of the Session Law is enough to justify any restriction imposed by the Session Law. As our Supreme Court has recognized, “the avoidance of ‘voter confusion, ballot overcrowding,’ and ‘frivolous candidacies’ is an important regulatory

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<sup>6</sup> A severe burden might include certain restrictions to ballot access. See, e.g., *Norman v. Reed*, 502 U.S. 279, 288–89 (1992) (“To the degree that a State would thwart this interest by limiting the access of new parties to the ballot, we have called for the demonstration of a corresponding interest sufficiently weighty to justify the limitation . . . and we have accordingly required any severe restriction to be narrowly drawn to advance a state interest of compelling importance.”).

interest.” *Libertarian Party*, 365 N.C. at 51, 707 S.E.2d at 206. And, as made clear on the face of the Session Law, the avoidance of voter confusion is the regulatory interest at issue here. As such, The Session Law does not violate Article I, Section 14.

**III. The time exigencies of these cases permit Petitioners to file in this Court in the first instance under N.C. R. App. P. 8(a) and 23(a)(2).**

While a petitioner ordinarily must first apply for a stay at the trial court, between the procedural posture of this case and the Constitutional Amendment Cases, such an attempt would have been unnecessary. There has been a judicial stay of ballot preparation or the Board’s request for such a stay (and, therefore, the indication that the Board would not, on its own initiative, prepare ballots) since 6 August 2018. The court below entered its temporary restraining order on 6 August 2018, which remained in place until 13 August 2018. (*See* Ex. 4 – Temporary Restraining Order.) At the time the temporary restraining order expired, the Board had pending before the three-judge panel in the Constitutional Amendment Cases its motion for preliminary injunction. (Ex. 8 – Order on Temporary Measures.) The three-judge panel’s Order on Temporary Measures was then entered effective on 17 August 2018. (*Id.*)

Preparation of all ballots has been stayed by the Stay Order and was previously stayed by the Order on Temporary Measures in the Constitutional Amendment Cases entered by the Wake County Superior Court. (Ex. 8 – Order on Temporary

Measures.) As a result, there has not been a need for Petitioners to seek what would amount to cumulative stay relief from the trial court.<sup>7</sup>

Applying for a stay at the trial court would also not be feasible because of the time constraints here. Now, however, the possibility that the merits of Petitioners' appeal could become moot upon the expiration of the stay in the Constitutional Amendment Cases (and before this Court's determination on the Petition) qualifies as extraordinary circumstances justifying temporary and supersedeas relief without first applying to the trial court. *See* N.C. R. App. P. 8(a).

*See* N.C. R. App. P. 8(a). It is impracticable to seek a stay from the trial court that would be effective after the expiration of the Order on Temporary Measures, particularly given that this case (and the Constitutional Amendments Cases) are now proceeding before the appellate courts. Thus, application for the temporary stay and petition for writ of supersedeas is properly made to the Court of Appeals in the first instance. N.C. R. App. P. 8(a).

### **MOTION FOR TEMPORARY STAY**

In addition to seeking the writ, Petitioners move the Court under Rule 23(e) of the North Carolina Rules of Appellate Procedure for an order temporarily staying enforcement of the trial court's preliminary injunction until the Court can determine

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<sup>7</sup> In fact, the Order on Temporary Measures expressly states that the trial court "concludes that the parties have satisfied any requirement to ask [the trial court] to stay, pending appeal, the Court's ultimate order on the parties' motions." (*See* Ex. 8.) As such, Petitioners petitioned this Court for a stay in the Constitutional Amendment Cases like that sought here, which stay has now been granted.

whether it will issue its writ of supersedeas. Immediately prior to the filing of this petition and motion, this Court entered its Stay Order in the Constitutional Amendment Cases, which stays the preparation or printing of ballots for the November 2018 general election pending further order of the Court. While the Stay Order has the effect of granting the temporary stay sought herein, out of an abundance of caution, Petitioners nonetheless make this motion for temporary stay and ask that the briefing schedule for response to the Petition for Writ of Supersedeas set forth in the Stay Order be adopted herein.

For good cause shown, a temporary stay is necessary to prevent irreparable harm for the reasons set forth above. Petitioners incorporate here and rely on the arguments presented in their petition and the Anglin Petition.

## CONCLUSION

Petitioners ask this Court to intervene to avoid irreparable harm and to correct a fundamental misapplication of the law by the court below. Therefore, Petitioners request the Court issue its Writ of Supersedeas to the Wake County Superior Court staying enforcement of the Preliminary Injunction until the Court can complete its review and determination of the pending appeal. Petitioners also request that this Court temporarily stay enforcement of the Preliminary Injunction under N.C. R. App. P. 23(e) until such time as this Court can rule on the pending Petition for Writ of Supersedeas and that the Court shorten Plaintiff's ten-day response deadline under N.C. R. App. P. 23(d) and require him to respond as soon as possible. Finally, Petitioners request that the Court consider the petition and motion before expiration of the stay set forth in the Order on Temporary Measures in the Constitutional Amendment Cases so that Petitioners may seek emergency relief from the North Carolina Supreme Court, if necessary.



This the 23<sup>rd</sup> day of August, 2018.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Electronically Submitted \_\_\_\_\_

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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## ATTACHMENTS TO THE PETITION

Attached to this petition and motion for temporary stay for consideration by the Court are copies of the following documents from the trial court record:

- Exhibit 1 - 2018 N.C. Sess. Laws 130 (Senate Bill 3)
- Exhibit 2 - Plaintiff's Complaint (without exhibits)
- Exhibit 3 - Motion for a Temporary Restraining Order
- Exhibit 4 - Temporary Restraining Order
- Exhibit 5 - Motion for a Preliminary Injunction
- Exhibit 6 - Preliminary Injunction
- Exhibit 7 - Notice of Appeal
- Exhibit 8 - 20 August 2018 Order on Temporary Measures (18 CVS 9805 and 18 CVS 9806)
- Exhibit 9 - Plaintiff's Letter to the Board
- Exhibit 10 - Chris Anglin, *Why I'm running as a Republican for NC Supreme Court*, CHARLOTTE NEWS & OBSERVER (July 30, 2018)

VERIFICATION

State of North Carolina )  
County of Wake )

As required under N.C. R. App. P. 23(c), I, D. Martin Warf, counsel for  
Petitioner, after being duly sworn, depose and testify that:

The material allegations of the foregoing petition are true to my personal  
knowledge. Under Rule 23, I also certify that the documents attached to this Petition  
for Writ of Supersedeas, which are not self-authenticating or certified by the clerk of  
the trial tribunal, are true and correct copies of the pleadings and other court papers  
from the file in the Wake County Superior Court, including documents that were  
served or submitted for consideration as contemplated by N.C. R. App. P. 11.

This the 23rd day of August 2018.



*[Handwritten signature]*

D. Martin Warf  
N.C. State Bar No. 32982

*Attorney for Petitioners*

Sworn to and subscribed before me  
this the 23 day of August, 2018.

Wanda B. Gilchrist  
Notary Public for the State of North Carolina  
Print: Wanda B. Gilchrist  
My commission expires: 7-24-23

**CERTIFICATE OF SERVICE**

I, D. Martin Warf, certify that on this date I served a copy of the **Petition for Writ of Supersedeas and Motion for Temporary Stay** by depositing a copy in the United States mail, postage prepaid and addressed as set forth below:

Alexander McC. Peters  
Amar Majmundar  
Olga E. Vysotskaya de Brito  
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This the 23<sup>rd</sup> day of August 2018.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ D. Martin Warf

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# **EXHIBIT 1**

GENERAL ASSEMBLY OF NORTH CAROLINA  
FIRST EXTRA SESSION 2018

SESSION LAW 2018-130  
SENATE BILL 3

AN ACT TO CLARIFY POLITICAL PARTY DISCLOSURE ON THE BALLOT FOR  
JUDICIAL RACES IN 2018.

Whereas, the General Assembly finds that the purpose of listing partisan affiliation on the ballot in judicial races is to provide voters with information about candidates; and

Whereas, the General Assembly finds that political organizations and groups made efforts to recruit candidates that could confuse voters as to candidates long-held partisan affiliations; and

Whereas, the General Assembly finds that listing only partisan affiliations that a candidate has held for 90 days prior to filing would reduce the opportunity for voter confusion; and

Whereas, the General Assembly finds that a similar requirement exists for candidates to run in a party primary for legislative or other partisan office under G.S. 163A-973; and

Whereas, the General Assembly finds that listing party affiliations held for 90 days or more prior to the time of filing should apply to all judicial offices; and

Whereas, the General Assembly finds that it is possible a candidate who filed for judicial office may not desire to remain on the ballot knowing only party affiliation held for 90 days or more will be disclosed on the ballot; and

Whereas, the General Assembly finds that providing a period allowing candidates to withdraw from running for judicial office would provide opportunities for any judicial candidate to be taken off the ballot;

Now, therefore,

the General Assembly of North Carolina enacts:

**SECTION 1.** Section 4(b) of S.L. 2017-214 reads as rewritten:

"**SECTION 4.(b)** Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics Enforcement in the following form, inserting the words in parentheses when appropriate:

Date \_\_\_\_\_

I hereby file notice that I am a candidate for election to the office of \_\_\_\_\_ in the regular election to be held \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_  
(Name of Candidate)

Witness: \_\_\_\_\_

The notice of candidacy shall be either signed in the presence of the chair or secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in the candidate's discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an



affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot."

**SECTION 2.** Section 2(a) of S.L. 2018-13 reads as rewritten:

"**SECTION 2.(a)** The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of 2018 general election ballots regarding these impacted offices setting forth ~~that~~ the listed party affiliation is only the self-identified party of a candidate at least 90 days prior to the time of filing will filing, consistent with G.S. 163A-973, would aid voters' understanding of the 2018 judicial races."

**SECTION 3.** Section 2(c) of S.L. 2018-13 reads as rewritten:

"**SECTION 2.(c)** Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

"No primaries for judicial office were held in 2018. The party information listed by each of the following candidates' names indicates is shown only if the candidates' party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office.~~office and 90 days prior to that filing.~~"

**SECTION 3.1.** Section 4(c) of S.L. 2017-214 reads as rewritten:

"**SECTION 4.(c)** Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office under this section shall have the right to withdraw it at any time prior to either of the following:

- (1) ~~the~~The close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.
- (2) The close of business August 8, 2018."

**SECTION 3.2.** The State Board of Elections and Ethics Enforcement shall notify, as expeditiously as possible, all candidates for Justices and judges of the General Court of Justice for the 2018 general election who have changed party affiliation or unaffiliated status during the

period from 90 days prior the time the candidate filed to run for office and the date the candidate filed to run for office of the requirements of this act. The State Board of Elections and Ethics Enforcement may give notice under this section by written, telephonic, or e-mail or other electronic means.

**SECTION 4.** This act is effective when it becomes law and applies to the 2018 elections only.

In the General Assembly read three times and ratified this the 24<sup>th</sup> day of July, 2018.

s/ Tommy Tucker  
Presiding Officer of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 12:02 p.m. this 4<sup>th</sup> day of August, 2018.

s/ James White  
House Principal Clerk



# **EXHIBIT 2**

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS \_\_\_\_

CHRISTOPHER J. ANGLIN, )  
 )  
 Plaintiff, )

v. )

PHILLIP 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; THE STATE OF )  
 NORTH CAROLINA; THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT; and )  
 KIMBERLY W. STRACH, in her )  
 official capacity as EXECUTIVE )  
 DIRECTOR OF THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT, )  
 )  
 Defendants. )

FILED  
2018 JUN -5 A 8:52

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT  
AND INJUNCTIVE RELIEF  
(As Applied Challenge to S.L. 2018-130)**

This matter arises from the North Carolina General Assembly's override of Governor Roy Cooper's veto of Senate Bill 3, on Saturday, August 4, 2018. That bill, which was enacted as Session Law 2018-130 ("S.L. 2018-130," attached as **Exhibit A**) was the product of a hastily-arranged special session of the General Assembly, a session called exclusively to target and harm

the interest of the Plaintiff, Christopher J. Anglin (“Anglin” or “Plaintiff”), who had duly declared his candidacy as a Republican for Associate Justice of the Supreme Court of North Carolina and paid his filing fee prior to the closing of the candidate registration period. *As it is applied to the Plaintiff*, S.L. 2018-130 illegally targets Plaintiff in ways which violate the Constitution of the State of North Carolina.

The North Carolina Supreme Court has long “recognized a direct action under the State Constitution against state officials for violation of rights guaranteed by the Declaration of Rights.” *Corum v. University of North Carolina through its Board of Governors*, 413 S.E.2d 276, 290, 330 N.C. 761, 786 (1992). “The Declaration of Rights was adopted by the people in 1776 in order to affirmatively reserve the rights of the people as well as to protect those rights from encroachment by the State. In 1776 when the people of North Carolina established the State of North Carolina, they clearly and affirmatively set forth certain fundamental human rights which their government was bound to respect. Through the Declaration of Rights, the people of North Carolina secured these rights against state officials and shifting political majorities.” *Id.* at 292, 330 N.C. at 788.

In order to protect those rights guaranteed to him by the Declaration of Rights and the North Carolina Constitution, Plaintiff, by and through his undersigned counsel, seeks a declaratory judgment under N.C. Gen. Stat. § 1-253, *et seq.* and North Carolina Rule of Civil Procedure (“NCRCP”) 57 as well as temporary and permanent injunctive relief under N.C. Gen. Stat. § 1-485 and NCRCP 65 barring the Defendants from enforcing the provisions of S.L. 2018-130 against the Plaintiff. In support of these requests for relief and to establish the breach of his State Constitutional rights by the Defendants, Plaintiff alleges as follows:

**PARTIES, JURISDICTION, VENUE and NATURE OF CASE**

1. Plaintiff is a citizen and resident of Wake County, North Carolina. He is a licensed attorney and registered as a member of the Republican Party. He is a candidate running for Associate Justice of the North Carolina Supreme Court in an election which is currently set for November 6, 2018.
2. Defendant Phillip E. Berger is the President Pro Tempore of the North Carolina state Senate, and upon information and belief, is a resident of Rockingham County, North Carolina. He is being sued in his official capacity.
3. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and upon information and belief, is a resident of Cleveland County, North Carolina. He is being sued in his official capacity.
4. Defendant State of North Carolina is a sovereign state. In this action the State's laws, as enacted by the General Assembly, are being challenged as unconstitutional as applied to Plaintiff.
5. Defendant North Carolina Bipartisan State Board of Elections and Ethics Enforcement ("SBOE") is a state agency charged with the overall responsibility for the administration of the elections process in North Carolina and has the authority to implement rules and regulations with respect to the conduct of elections. *See* N.C. Gen. Stat. § 163A-741. The SBOE is located and conducts its affairs at 430 N. Salisbury Street, Raleigh, North Carolina.
6. Defendant Kimberley W. Strach is the Executive Director of the SBOE and is therefore the chief elections officer in North Carolina charged with the enforcement of the elections laws of North Carolina, including S.L. 2018-130.

7. Defendants lack sovereign immunity for the claims alleged herein.
8. This Court is the proper venue for this action under N.C. Gen. Stat. § 1-82.
9. This Court has personal jurisdiction over all parties and subject matter jurisdiction over the matters set forth herein.
10. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and NCRCP 57, Plaintiff seeks judgment declaring portions of S.L. 2018-130 unconstitutional under the North Carolina Constitution as applied to Plaintiff during this elections cycle.
11. Pursuant to N.C. Gen. Stat. § 1-485 and NCRCP 65, Plaintiff seeks temporary and permanent injunctive relief to prevent Defendants from implementing those portions of S.L. 2018-130 which require Plaintiff to appear on the ballot without designation as to any political party or otherwise interfere with his state constitutional rights as applied to Plaintiff.

#### **FACTUAL ALLEGATIONS**

12. On December 16, 2016, the General Assembly of the State of North Carolina (“the General Assembly”) enacted Session Law 2016-125 (“S.L. 2016-125” attached as **Exhibit B**), section 21.(a) of amended N.C. Gen. Stat. §§ 163-106 to restore partisan elections and primaries for judges and justices of the appellate courts. On March 9, 2017, the General Assembly passed Session Law 2017-3 (“S.L. 2017-3”), imposing partisan elections for judges on the trial courts as well.
13. This decision to return to partisan elections and primaries for judges ended 10 years of non-partisan appellate court elections in North Carolina.
14. Upon information and belief, the General Assembly’s purpose in restoring partisan elections and primaries for judicial offices was to provide voters with more information

about candidates' judicial philosophies and to provide an opportunity for a party's members to consider the qualifications and abilities of candidates.

15. On October 17, 2017, the General Assembly of the State of North Carolina overrode Governor Cooper's veto and enacted Session Law 2017-214 ("S.L. 2017-214" attached as **Exhibit C**), which took effect on January 1, 2018, and enacted certain reforms of partisan ballot access in North Carolina.

16. Section 4(a) of S.L. 2017-214, provided for a one-time cancellation of partisan primaries, effective only for the general election held on November 6, 2018, for "Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the superior courts, [and] Judges of the district courts." S.L. 2017-214 also established that "Candidates seeking the office of Justice of the Supreme Court . . . shall file their notice of candidacy with the State Board of Elections and Ethics Enforcement no earlier than 12:00 noon on June 18, 2018, and no later than 12:00 noon on June 29, 2018."

17. Session Law 2017-214 Section 4(b) further provided that:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified party designation or unaffiliated status shall be included on the ballot.

18. Session Law 2017-214 was challenged in a lawsuit brought by the North Carolina Democratic Party before the United States District Court for the Middle District of North Carolina ("The Judicial Primaries Litigation").<sup>1</sup> In that lawsuit, the North Carolina

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<sup>1</sup> *North Carolina Democratic Party, et al. v. Phillip 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; the State of North Carolina; the North Carolina Bipartisan State Board of Elections and Ethics Enforcement; and Kimberly Strach, in her official capacity as Executive*

Democratic Party challenged the one-time cancellation of primaries for judicial offices, alleging that such changes impinged on the Democratic Party's freedom of speech and association, in contravention of the United States Constitution. All of the Defendants in this action were also Defendants in the Judicial Primaries Litigation.

19. In the Judicial Primaries Litigation, the plaintiffs sought injunctive and declaratory relief barring application of S.L. 2017-214.

20. Among the concerns addressed in the Judicial Primaries Litigation was the General Assembly's decision under Section 4(b) of S.L. 2017-214 to allow candidates to self-identify themselves with a party, as proven by a certificate issued by the Board of Elections of the candidate's county of residence, thus allowing a potential candidate to switch parties and then declare his or her candidacy without any 90 day cooling-off period. During the January 24, 2018 hearing on preliminary injunction in the Judicial Primaries Litigation, Martin Warf, counsel to Defendants Berger and Moore, engaged in a colloquy with the court on the issue of the lack of the cooling-off period:

**THE COURT:** Well, it [referring to S.L. 125, S.L. 3, and S.L. 214] does say you can walk in the door on the day you file and change your party affiliation.

**MR. WARF:** To the extent that it does I don't think

**THE COURT:** You already told me it did.

**MR. WARF:** Well, to the extent that it does, I don't think that's what they are arguing is unconstitutional about this issue and that warrants a preliminary injunction.

**THE COURT:** Well, it does say you can walk in the door on the day you file and change your party affiliation.

**MR. WARF:** To the extent that it does, I don't think

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*Director of the North Carolina Bipartisan Board of Elections and Ethics Enforcement, (MDNC 1:17-cv-1113).*

this issue and that warrants a preliminary injunction.

**THE COURT:** Well, yeah, that's right, but it's part of the way they're saying their rights have been infringed, I mean, because you are not letting the party -- the party has no control over who says they're a Democrat or a Republican, I mean, for that matter. You don't even have this 90-day truth test, for lack of a better term.

**MR. WARF:** A wait-and-see period.

**THE COURT:** Yeah, which -- I don't know, it just seems like it does play into it a little bit. You don't think so?

**MR. WARF:** Well, again, to the extent that it does play into the analysis of the issue, I think we're looking here at a preliminary injunction that has to be clearly shown of a likelihood of success, and when the Plaintiffs are saying what we've articulated is this section is unconstitutional, but, yet, we're also saying that these other aspects are also unconstitutional, I think they're trying to amend the complaint and what's argument, before the Court as we are going through the oral and I don't think the Court should permit that and take a narrow scope as to what they're actually challenging, that being one section of Session Law 214. But the point where we have spent the most amount of time on is this notion of that there is an associational right to select the standard bearer who best represents the party's ideologies and preference. *As we noted earlier, I think the notion of the standard bearer in judicial elections, as Your Honor was questioning at least, is a little suspect that you're using a judicial candidate to identify what the Democratic party is going to support in a particular election year.*

(Tr. of Jan. 24, 2018 Hrg. on Prelim. Inj., pages 53:19 – 55:5.) (A true and correct copy

of the transcript excerpt is attached as **Exhibit D.**) The colloquy continued:

**THE COURT:** So, now, in North Carolina, it will not be Republicans deciding who's going to run as a Democrat as a group or Democrats deciding for Republicans as a group; it's individual deciding. An individual who goes in and files as a Republican is deciding who the Republican Party is -- who the Republican candidates are basically. They do that individually.



*MR. WARF: I think by filing, yes, but I don't think that that is - - equates to the -- that because five individuals as Republicans decided to run for a particular judicial seat, that they all are the standard bearers of the party through their individual choice to file. The party still has the ability to come back and say we like person A. Yes, there may be other Republicans, but we're backing person A.*

(Tr. of Jan. 24, 2018 Hrg. on Prelim. Inj., page 57:3-16) (Emphasis added.)

21. The lack of a 90-day “cooling-off period” was a fully-anticipated feature of the changes enacted under S.L. 2017-214, and Defendants Berger and Moore, in their responses to the court in the Judicial Primaries Litigation, understood that an effect of that feature could be that “five individuals as Republicans decide to run for a particular judicial seat” but that such a scenario posed little threat to the Republican Party and would not confuse voters because it would “not eliminate their ability to choose a person to back.”
22. On June 5, 2018, the General Assembly of the State of North Carolina met again and passed Senate Bill 486, which established the rules under which candidates for judicial offices in the November 6, 2018 election could file to run in the upcoming election. Senate Bill 486 was vetoed by Governor Roy Cooper, which veto was overridden by the General Assembly on June 20, 2018. As a result, Senate Bill 486 was enacted as Session Law 2018-13 (“S.L. 2018-13” attached as **Exhibit E.**)
23. Part II of S.L. 2018-13 provided in pertinent part:

**SECTION 2.(a)** The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court

judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. *The General Assembly finds that ballot language above the sections of election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters' understanding of the 2018 judicial races.*

**SECTION 2.(b)** For the 2018 general election, the State Board of Elections and Ethics Enforcement shall, notwithstanding G.S. 163A-1114(b)(2), list the following judicial offices at the end of all partisan offices listed on the general election ballot: (1) Justices of the Supreme Court. (2) Judges of the Court of Appeals. (3) Judges of the superior courts. (4) Judges of the district courts.

**SECTION 2.(c)** Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed: "No primaries for judicial office were held in 2018. The information listed by each of the following candidates' names indicates only the candidates' party affiliation or unaffiliated status on their voter registration at the time they filed to run for office."

(Emphasis added.)

24. Notably, S.L. 2018-13 became effective upon enactment and specifically applied *only* to the 2018 general election. (S.L. 2018-13, Section 2.(e).) Again, the General Assembly had specifically considered and "carefully examined" the issue of how to allow for filing in a partisan race without primaries, and determined that a multi-candidate plurality election was to be preferred, and that an explanation that "the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters' understanding of the

2018 judicial races.”

25. On June 7, 2018, Plaintiff changed his party registration from Democrat to Republican by filing the necessary documentation with the Wake County Board of Elections.
26. On June 29, 2018, the last day of filing under the timeline set forth in S.L. 2017-214, Plaintiff filed with the SBOE to run for the office of Associate Justice of the North Carolina Supreme Court, specifically for the seat currently occupied by Justice Barbara Jackson. In so doing, he paid a filing fee of \$1,462 to the SBOE and, pursuant to S.L. 2017-214, Section 4.(b), indicated on his notice of candidacy “the political party recognized under Article 18 of Chapter 163A of the General Statutes” with which he was affiliated at the time of filing, namely the Republican Party.
27. Along with his notice of candidacy, and pursuant to S.L. 2017-214, Section 4.(d), Plaintiff filed a certificate from the Wake County Board of Elections stating that he was a resident of Wake County and a voter registered as a Republican. That certificate verified his party registration. Pursuant to S.L. 2017-214, that designation “shall be included on the ballot.”
28. As of the June 29, 2018 closing of the filing period for candidates for Associate Justice of the Supreme Court, there were three candidates for the office sought by Plaintiff: incumbent Justice Barbara Jackson, a Republican; Democratic candidate Anita Earls; and Plaintiff, a Republican.
29. Almost immediately, Republican members of the General Assembly, along with their staff, raised objections to Anglin’s presence on the ballot as a Republican. This consternation occurred despite the fact that S.L. 2018-13, passed into law not two weeks prior, had determined that “both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering

various proposals of selection and new judicial district maps.” S.L. 2018-13, Section 2.(a). The provisions of both S.L. 2017-214 and S.L. 2018-13, as acknowledged by Defendants Berger and Moore before the Federal District Court in the Judicial Primaries Litigation, specifically allowed for the very result that occurred on June 29, 2018 – the presence of more than one Supreme Court candidate self-declaring as members of the same party.

30. Dallas Woodhouse, Executive Director of the North Carolina Republican Party, stated publicly after the closing of the filing period that “The Party has endorsed somebody, and [Anglin] will be treated as the enemy he is.” Raleigh News & Observer, July 4, 2018, *Why one NC GOP official calls Republican Supreme Court candidate “the enemy.”* (A true and accurate copy of the online version of the story is attached as **Exhibit F.**)

31. Prior to making this statement, Woodhouse made no attempt to contact Plaintiff or his campaign.

32. On July 24, 2018 Senate Bill 3 was introduced during a hastily-called special session of the General Assembly.

33. Senate Bill 3 amended both S.L. 2017-214 and S.L. 2018-13. (See **Exhibit A.**)

34. In the Preamble to Senate Bill 3, the General Assembly made the following findings:

Whereas, the General Assembly finds that the purpose of listing partisan affiliation on the ballot in judicial races is to provide voters with information about candidates; and

Whereas, the General Assembly finds that political organizations and groups made efforts to recruit candidates that could confuse voters as to candidates long-held partisan affiliations; and

Whereas, the General Assembly finds that listing only partisan affiliations that a candidate has held for 90 days or more prior to the time of filing should apply to all judicial offices; and

Whereas, the General Assembly finds that it is possible a candidate who filed for judicial office may not desire to remain on

the ballot knowing only party affiliation held for 90 days or more will be disclosed on the ballot; and

Whereas, the General Assembly finds that providing a period allowing candidates to withdraw from running for judicial office would provide opportunities for any judicial candidate to be taken off the ballot.

35. In relation to the party preference of candidates, Senate Bill 3 amended Section 4.(b) of

S.L. 2017-214 as follows:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.

36. In relation to ballot language, Senate Bill 3 amended the second paragraph of Section 2.(a)

and Section 2.(c) of Session Law 2018-13 as follows:

**SECTION 2.(a) ...**

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of 2018 general election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at least 90 days prior to the time of filing will filing, consistent with G.S. 163A-973, would aid voters' understanding of the 2018 judicial races.

**SECTION 2.(c)** Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

“No primaries for judicial office were held in 2018. The party information listed by each of the following candidates’ names indicates is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office, office and 90 days prior to that filing.”

37. In addition to those amendments, Senate Bill 3 amended Section 4.(c) of Session Law 2018-13 to allow a candidate who has filed a notice of candidacy for any office under the section to withdraw prior to “the close of business August 8, 2018.”
38. Upon information and belief, audio of the debate from the floor of the House of Representatives for the July 27, 2018 session is not available due to a “glitch.”
39. On July 27, 2018, Governor Cooper vetoed Senate Bill 3. A true and accurate copy of the Governor’s veto statement is attached hereto as **Exhibit G**.
40. In his veto, the Governor objected that “Changing the rules for candidates after the filing has closed is unlawful and wrong, especially when the motive is to rig a contest after it is already underway.”
41. On August 4, 2018, the General Assembly met in special session to override the Governor’s veto. The veto was overridden, and Senate Bill 3 took effect as S.L. 2018-130.
42. Plaintiff is nearly uniquely situated to be harmed by the passage of S.L. 2018-130. The law applies only to the November 6, 2018 General Election, and he is the only appellate judicial candidate whose party registration fails to meet the 90-day period imposed by the General Assembly S.L. 2018-130.
43. As a result, Plaintiff is faced with a choice he must make by August 8, 2018: continue his campaign for the Supreme Court, but as an unaffiliated candidate unable to reference the Party of his choice, or withdraw his candidacy entirely by notifying the SBOE by close of

business on August 8, 2018.

44. The actions of Defendants Berger and Moore and the General Assembly in passing S.L. 2018-130, and any action enforcing the terms of S.L. 2018-130 by the SBOE and Defendant Strach, will deprive Plaintiff of his vested right to appear on the ballot as a Republican candidate for Associate Justice of the Supreme Court of North Carolina.
45. Under the terms of the law in effect at the time of his registration, as defended by Defendants Moore and Berger in Federal Court, Mr. Anglin was fully within his rights to register his affiliation with any Party recognized under Article 18 of Chapter 163A of the General Statutes and then file as a candidate for Associate Justice of the Supreme Court.
46. On June 29, 2018, Plaintiff, who was then and is now registered as a Republican voter in Wake County, North Carolina, paid his \$1,462 filing fee and filed to be a candidate for Associate Justice of the North Carolina Supreme Court. On that same day, the filing period for that office closed. At that moment, Plaintiff had a vested right to be one of two Republican candidates for the seat, a situation plainly anticipated and accepted by the General Assembly in enacting S.L. 2017-214 and 2018-13.
47. The passage of S.L. 2018-130 was explicitly targeted at the Plaintiff and was designed to deprive him of that vested right by changing the filing rules after the filing period had closed.
48. Since the closing of the filing period on July 29, 2018, North Carolina voters have been informed of Plaintiff's candidacy as a Republican. For instance, Buncombe County (along with other North Carolina counties) and the SBOE have issued an official notice of the November 6, 2018 election pursuant to the Federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff(b)(2) ("UOCAVA"). A copy of the Buncombe

County version of this UOCAVA Notice is attached hereto as **Exhibit H**.

49. The Buncombe County UOCAVA Notice states “This is an official notice of an election to be conducted in BUNCOMBE County on 11/06/2018. This notice contains a list of all of the ballot measures and federal, State, and local offices this county expects, as of this date, to be on the ballot on the date of the election.”

50. Attached to the Buncombe County UOCAVA Notice is a list which lists Plaintiff, “Christopher (Chris) Anglin” as a Republican candidate for Associate Justice. *See Exhibit H.*

51. UOCAVA Notices are sent or published to overseas and military voters registered in the particular county. Such notices “may be used in conjunction with the federal write-in absentee ballot (FWAB). Covered military & overseas voters seeking to vote by absentee ballot may use the FWAB to register to vote, request an absentee ballot, and vote an official military-overseas ballot.” (**Exhibit H.**)

52. The Notice instructs military-overseas voters that “As soon as ballot styles are printed, this county board of elections will update this notice with the certified candidates for each office and ballot measures and referenda questions that will be on the ballot. For General Elections during even-numbered years, ballots will be printed 60 days prior to the election. . . . **You must request an updated Election Notice.**” (**Exhibit H.**)

53. Notably, however, North Carolina does *not* require an overseas voter to have requested and not received an absentee ballot before using the FWAB. (See FWAB form attached as **Exhibit I**, (showing North Carolina is not listed among those states requiring registration and request prior to using the FWAB); *see also* N.C. Gen. Stat. § 163A-1341(d) (“A covered voter may use the declaration accompanying the federal write-in absentee ballot,



as prescribed under the [UOCAVA], as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.”)).

54. Thus, some number of potential voters in Plaintiff’s race have already been informed by the SBOE and County Boards of Elections that he is a Republican candidate for Associate Justice. Subsequent contrary communications from the SBOE or County Boards of Elections to North Carolina voters may not be read or may confuse the voter *solely about Plaintiff’s status and party registration*.

55. As applied to Plaintiff, therefore, S.L. 2018-130, together with the unamended sections of S.L. 2017-214 and 2018-13, works an unconstitutional deprivation of Plaintiff’s rights under the Constitution of the State of North Carolina and the statutory framework that existed at the time that Plaintiff submitted his notice of candidacy in the following ways.

#### **VIOLATION OF PLAINTIFF’S RIGHTS UNDER THE NORTH CAROLINA DECLARATION OF RIGHTS**

56. Article I, the Declaration of Rights, of the North Carolina Constitution provides affirmative and protected rights for all Persons in North Carolina.

57. Section 1 of the Declaration of Rights states:

##### **Section 1. The equality and rights of persons.**

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness...

58. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and

2018-13, as applied to Plaintiff, deprives Plaintiff of his inalienable right to liberty, insofar as he is being deprived of his vested right to appear on the ballot as a Republican candidate for Associate Justice of the Supreme Court.

59. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and 2018-13, as applied to Plaintiff, arbitrarily and capriciously prevents Plaintiff from having the equality and rights bestowed upon others similarly situated, namely his opponents Barbara Jackson and Anita Earls, insofar as they are not barred from running as a candidate of their chosen political party.

60. Section 10 of the Declaration of Rights declares:

**Sec. 10. Free elections.**

All elections shall be free.

61. “The meaning of [Section 10] is plain: free from interference or intimidation.” Orth, John V. and Paul M. Newby, *The North Carolina State Constitution*, 56 (2013). The General Assembly, and Defendants Moore and Berger, intended Senate Bill 3 specifically to interfere with Plaintiff’s candidacy as a Republican.

62. S.L. 2018-130, as applied to Plaintiff, would deprive Plaintiff of his right as a North Carolinian to participate in an election free from interference or intimidation.

63. Section 14 of the Declaration of Rights provides:

**Sec. 14. Freedom of speech and press.**

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

64. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and 2018-13, as applied to Plaintiff, deprives Plaintiff of his right of political association, a key

component of the freedom of speech. Plaintiff has a right under Section 14 of the North Carolina Constitution to express political beliefs and associate himself with the political party of his choice. Prior to the enactment of S.L. 2018-130, this right included a vested right to associate himself with the Republican Party as a candidate for Associate Justice of the North Carolina Supreme Court.

65. By changing the rules in the middle of the game, Defendants will have arbitrarily and capriciously deprived Plaintiff of his freedom of speech through political association.
66. Moreover, S.L. 2018-130 has the effect as applied to Plaintiff of requiring Plaintiff to make a false statement to the voters of North Carolina that he is an unaffiliated voter and candidate when he is actually and legally a registered Republican.
67. Section 19 of the Declaration of Rights provides:

**Sec. 19. Law of the land; equal protection of the laws.**

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

68. S.L. 2018-130, as applied to Plaintiff, disseizes Plaintiff of a privilege and vested right for which he paid and to which he was entitled by statute: the right to run for office as a declared Republican candidate.
69. By enacting and enforcing the terms of S.L. 2018-130 against Plaintiff, Defendants will be retroactively changing the rules under which Plaintiff filed, paid and began his campaign. Common Law principles and the Law of the Land frown upon retroactive deprivations of vested rights. Thus, S.L. 2018-130, as applied to Plaintiff, deprives Plaintiff

of his vested right, and thus his liberties, privileges and property without following the Law of the Land and without Due Process.

70. Section 32 of the Declaration of Rights states:

**Sec. 32. Exclusive emoluments.**

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

71. S.L. 2018-130, as applied to Plaintiff in his race for Associate Justice of the Supreme Court, provides an exclusive and separate emolument to the incumbent Associate Justice, Barbara Jackson, by retroactively changing the rules that apply to her race and listing her as the sole Republican on the ballot, when Plaintiff was a registered Republican at the time of filing his candidacy. The General Assembly thus removed judicial primaries and substituted its own declaration of which candidate is the standard bearer for the Republican Party to the exclusive benefit of Justice Jackson and to the exclusive detriment of Plaintiff, a registered Republican. Plaintiff is therefore directly and materially harmed by an unconstitutional benefit made by the General Assembly to his opponent.

**IMMEDIATE AND IRREPARABLE HARM**

72. Upon the override of Governor Cooper's veto and the enactment of S.L. 2018-130, Plaintiff has been immediately and irreparably harmed by the loss of the above rights under the North Carolina Constitution.

73. Moreover, due to the impending August 8, 2018 deadline under which he must withdraw from the race or be listed on the General Election ballot as an unaffiliated candidate, Plaintiff's need for injunctive and declaratory relief from this Court is immediate. The General Assembly did not even consider Senate Bill 3 until after the closing of the filing

period, and the override of the Governor's veto did not take place until August 4, 2018. August 4 was a Saturday, leaving Plaintiff only three days on which the Courts are open to challenge S.L. 2018-130 and protect his rights.

74. In addition, upon information and belief, if Plaintiff does not withdraw from the race before close of business on August 8, 2018, the SBOE will shortly thereafter confirm official ballot language and authorize the printing of ballots for the November 6, 2018 general election which will provide the incorrect information that Plaintiff is not affiliated with any political party.
75. Plaintiff cannot be compensated by monetary relief for the loss of his Constitutional Rights or the loss of the opportunity to run in the General Election of November 6, 2018 as a Republican candidate for Associate Justice of the North Carolina Supreme Court.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment – N.C.G.S. § 1-253, et. seq.-All Defendants)**

76. Plaintiff restates and incorporates by reference each of the preceding allegations as if fully set forth herein.
77. A present and real controversy between the parties as to the constitutionality of S.L. 2018-130 as it applies to Plaintiff.
78. S.L. 2018-130 as applied to Plaintiff, unconstitutionally deprives Plaintiff of each of the rights enumerated above, any one of which presents an irreparable and immediate harm to Plaintiff necessitating relief from this Court.
79. Pursuant to N.C.G.S. § 1-253 and NCRCP 57, the Plaintiff is entitled to a declaratory judgment that the following provisions of S.L. 2018-130 are unconstitutional as applied to Plaintiff:

- **Section 1.** amending Section 4.(b) of S.L. 2017-214 as follows:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot."

- **Section 3.** amending Section 2.(c) of S.L. 2018-13 to change the required language to be included immediately prior to the placement of the Supreme Court race on the November 6, 2018 ballot as follows:

"No primaries for judicial office were held in 2018. The party information listed by each of the following candidates' names ~~indicates is shown~~ only if the candidates' party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office ~~office~~ and 90 days prior to that filing."

**SECOND CLAIM FOR RELIEF**  
**(Temporary and Permanent Injunctive Relief –**  
**N.C. Gen. Stat. § 1-485, NCRCP 65)**

**80.** Plaintiff restates and incorporates by reference each of the preceding allegations as if fully set forth herein.

**81.** Because S.L. 2018-130, as applied to Plaintiff, unlawfully deprives Plaintiff of his rights under the North Carolina Constitution, as set forth above, Plaintiff is and will be irreparably harmed by the enforcement of those provisions.

**82.** Moreover, the deadline imposed by Section 3.1 under which Plaintiff must decide by "[t]he close of business on August 8, 2018" whether to withdraw his candidacy or accept being listed without party designation on the November 6 General Election Ballot,

renders the harm suffered by Plaintiff immediate.

83. The balance of harms is overwhelmingly in favor of Plaintiff, insofar as entry of an injunction barring the enforcement of the provisions of S.L. 2018-130 that require Plaintiff to appear on the General Election Ballot without party designation would preserve his Constitutional rights and his access to the ballot. On the other hand, denial of his requested temporary and permanent injunctive relief would require him to withdraw from the election prior to the close of business August 8, 2018 or be listed falsely as an candidate without party designation, when he paid for and registered for the right to run as a Republican.
84. Authorization of an official ballot by the SBOE and printing of that ballot by county boards of elections prior to the resolution of the issues presented in this Complaint would deprive Plaintiff of the above rights and leave him with no viable or sufficient remedy.
85. There is no corresponding harm to the Defendants arising from entry of this injunctive relief.
86. Without entry of the requested injunctive relief, Plaintiff will be irreparably injured during the pendency of this litigation. Should the August 8, 2018 deadline pass without entry of relief, prior to the resolution of the Constitutional questions at issue in this case, Plaintiff will be required to appear on a ballot under a false party designation, or withdraw from the race entirely, without resolution of his Constitutional claims.

WHEREFORE, Plaintiff prays of the Court for relief as follows:

(1) Declaratory judgment that the following provisions of S.L. 2018-130 are unconstitutional as applied to Plaintiff:

- **Section 1.** amending Section 4.(b) of S.L. 2017-214 as follows:

“A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate’s political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.”

- **Section 3.** amending Section 2.(c) of S.L. 2018-13 to change the required language to be included immediately prior to the placement of the Supreme Court race on the November 6, 2018 ballot as follows:

“No primaries for judicial office were held in 2018. The party information listed by each of the following candidates’ names indicates is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office. ~~office~~ and 90 days prior to that filing.”

(2) Temporary and permanent injunctive relief barring Defendants State of North Carolina, SBOE, or Strach from enforcing against the Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that the Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court;



(3) Temporary and permanent injunctive relief barring any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the North Carolina Supreme Court on the official ballot for the November 6, 2018 General Election;

(4) Temporary and permanent injunctive relief suspending the applicability of the portions of Section 3.1 of S.L. 2018-130 requiring that Plaintiff withdraw from the election by August 8, 2018 if he wishes not to appear on the ballot, and further providing Plaintiff at least three business days from a final ruling on the Preliminary Injunctive Relief sought to notify Defendant SBOE if he wishes to withdraw from the ballot and be so withdrawn;

(5) Temporary and permanent injunctive relief barring Defendant SBOE or Defendant Strach from authorizing official ballot language for the November 6, 2018 election or authorizing the printing of ballots by county boards of elections until such time as this Court so orders;

(6) That this Court maintain Jurisdiction to ensure Plaintiff the opportunity to withdraw if subsequent review by this Court or appellate action overturns any injunctive relief entered by this Court;

(7) That Plaintiff recover all costs of this action, including reasonable attorney fees, pursuant to applicable law; and

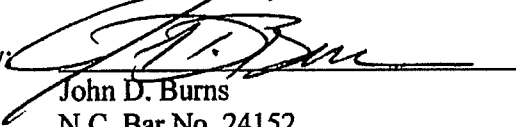
(8) Such other and further relief as this Court deems just and appropriate.

**SIGNATURE PAGE FOLLOWS**

Respectfully submitted, this the 6<sup>th</sup> day of August 2018.

FORREST FIRM, P.C.

By:

  
John D. Burns

N.C. Bar No. 24152

410 N. Boylan Ave


Raleigh, NC 27613

p/f 919-706-1389

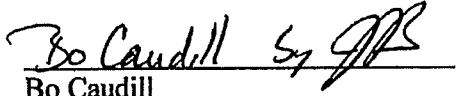
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WEAVER, BENNETT & BLAND, P.A.

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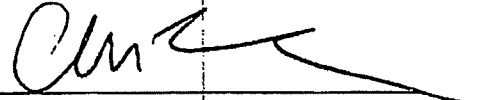
[bcaudill@wbbatty.com](mailto:bcaudill@wbbatty.com)

VERIFICATION

STATE OF NORTH CAROLINA

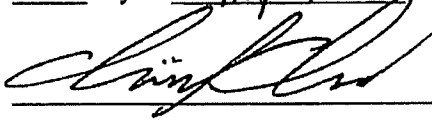
WAKE COUNTY

Christopher J. Anglin, first being duly sworn, deposes and says that he is the Plaintiff in the above action; that he has read the foregoing Pleading and the contents thereof; that the same are true and correct of his own knowledge except those matters and things stated therein upon information and belief, and as to those, he believes them to be true.



Signature

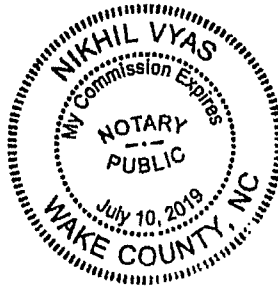
Sworn to and subscribed before me this  
5<sup>th</sup> day of August 2018.



Signature of Notary Public

Nikhil Vyas

Printed Name of Notary Public



My Commission Expires: 7/10/2019

(NOTARIAL SEAL)

18CV009748

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS \_\_\_\_

CHRISTOPHER J. ANGLIN, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 PHILLIP 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; THE STATE OF )  
 NORTH CAROLINA; THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT; and )  
 KIMBERLY W. STRACH, in her )  
 official capacity as EXECUTIVE )  
 DIRECTOR OF THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT, )  
 )  
 Defendants. )  
 )

**VERIFIED COMPLAINT EXHIBITS**

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# **Exhibit A**

GENERAL ASSEMBLY OF NORTH CAROLINA  
FIRST EXTRA SESSION 2018

SESSION LAW 2018-130  
SENATE BILL 3

AN ACT TO CLARIFY POLITICAL PARTY DISCLOSURE ON THE BALLOT FOR  
JUDICIAL RACES IN 2018.

Whereas, the General Assembly finds that the purpose of listing partisan affiliation on the ballot in judicial races is to provide voters with information about candidates; and

Whereas, the General Assembly finds that political organizations and groups made efforts to recruit candidates that could confuse voters as to candidates long-held partisan affiliations; and

Whereas, the General Assembly finds that listing only partisan affiliations that a candidate has held for 90 days prior to filing would reduce the opportunity for voter confusion; and

Whereas, the General Assembly finds that a similar requirement exists for candidates to run in a party primary for legislative or other partisan office under G.S. 163A-973; and

Whereas, the General Assembly finds that listing party affiliations held for 90 days or more prior to the time of filing should apply to all judicial offices; and

Whereas, the General Assembly finds that it is possible a candidate who filed for judicial office may not desire to remain on the ballot knowing only party affiliation held for 90 days or more will be disclosed on the ballot; and

Whereas, the General Assembly finds that providing a period allowing candidates to withdraw from running for judicial office would provide opportunities for any judicial candidate to be taken off the ballot;

Now, therefore,  
the General Assembly of North Carolina enacts:

**SECTION 1.** Section 4(b) of S.L. 2017-214 reads as rewritten:

"**SECTION 4.(b)** Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics Enforcement in the following form, inserting the words in parentheses when appropriate:

Date \_\_\_\_\_

I hereby file notice that I am a candidate for election to the office of \_\_\_\_\_ in the regular election to be held \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_  
(Name of Candidate)

Witness: \_\_\_\_\_

The notice of candidacy shall be either signed in the presence of the chair or secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in the candidate's discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an



affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot."

**SECTION 2.** Section 2(a) of S.L. 2018-13 reads as rewritten:

"**SECTION 2.(a)** The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of 2018 general election ballots regarding these impacted offices setting forth ~~that the~~ listed party affiliation ~~is only the self-identified party~~ of a candidate at least 90 days prior to the time of filing ~~will filing, consistent with G.S. 163A-973, would aid voters' understanding of the~~ 2018 judicial races."

**SECTION 3.** Section 2(c) of S.L. 2018-13 reads as rewritten:

"**SECTION 2.(c)** Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

"No primaries for judicial office were held in 2018. The party information listed by each of the following candidates' names indicates-is shown only if the candidates' party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office-office and 90 days prior to that filing."

**SECTION 3.1.** Section 4(c) of S.L. 2017-214 reads as rewritten:

"**SECTION 4.(c)** Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office under this section shall have the right to withdraw it at any time prior to either of the following:

- (1) ~~the~~The close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.
- (2) The close of business August 8, 2018."

**SECTION 3.2.** The State Board of Elections and Ethics Enforcement shall notify, as expeditiously as possible, all candidates for Justices and judges of the General Court of Justice for the 2018 general election who have changed party affiliation or unaffiliated status during the

period from 90 days prior the time the candidate filed to run for office and the date the candidate filed to run for office of the requirements of this act. The State Board of Elections and Ethics Enforcement may give notice under this section by written, telephonic, or e-mail or other electronic means.

**SECTION 4.** This act is effective when it becomes law and applies to the 2018 elections only.

In the General Assembly read three times and ratified this the 24<sup>th</sup> day of July, 2018.

s/ Tommy Tucker  
Presiding Officer of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 12:02 p.m. this 4<sup>th</sup> day of August, 2018.

s/ James White  
House Principal Clerk



# **Exhibit B**

GENERAL ASSEMBLY OF NORTH CAROLINA  
FOURTH EXTRA SESSION 2016

SESSION LAW 2016-125  
SENATE BILL 4

AN ACT TO CONSOLIDATE THE FUNCTIONS OF ELECTIONS, CAMPAIGN FINANCE, LOBBYING, AND ETHICS UNDER ONE STATE AGENCY BY CREATING THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; TO CLARIFY THE GENERAL ASSEMBLY'S AUTHORITY TO CORRECT DEFECTS IDENTIFIED BY A COURT IN APPORTIONMENT OR DISTRICTING PLANS; TO RESTORE PARTISAN ELECTIONS FOR THE NORTH CAROLINA SUPREME COURT AND COURT OF APPEALS; TO MODIFY APPELLATE REVIEW OF CERTAIN CASES; AND TO MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS.

The General Assembly of North Carolina enacts:

**PART I. CREATION OF BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

**SECTION 1.** Recodification; Technical and Conforming Changes. – The Revisor of Statutes shall recodify Chapter 138A of the General Statutes, Chapter 120C of the General Statutes, as well as Chapter 163 of the General Statutes, as amended by this act, into a new Chapter 138B of the General Statutes to be entitled "Elections and Ethics Enforcement Act," as enacted by Section 2 of this act. The Revisor may also recodify into the new Chapter 138B of the General Statutes other existing statutory laws relating to elections and ethics enforcement that are located elsewhere in the General Statutes as the Revisor deems appropriate. The new Chapter 138B of the General Statutes shall have the following structure:

**SUBCHAPTER I. GENERAL PROVISIONS**

Article 1. Bipartisan State Board of Elections and Ethics Enforcement.

**SUBCHAPTER II. ETHICS AND LOBBYING**

Article 5. General Provisions.

Article 6. Public Disclosure of Economic Interests.

Article 7. Ethical Standards for Covered Persons.

Article 8. Lobbying.

Part 1. Registration

Part 2. Prohibitions and Restrictions

Part 3. Reporting

Part 4. Liaison Personnel

Part 5. Exemptions

Part 6. Miscellaneous

Article 9. Violation Consequences.

**SUBCHAPTER III. ELECTION AND ELECTION LAWS**

Article 15. Time of Primaries and Elections.

Part 1. Time of Primaries and Elections

Part 2. Time of Elections to Fill Vacancies

Article 16. Election Officers.

Part 1. State Board Powers and Duties



\* 5 4 - V - 7 \*

General Assembly Of North Carolina Fourth Extra Session 2016

- Part 2. County Boards of Elections
- Part 3. Political Activities by Board of Elections Members and Employees
- Part 4. Precinct Election Officials
- Article 17. Qualifying to Vote.
  - Part 1. Qualifications of Voters
  - Part 2. Registration of Voters
  - Part 3. Challenges
  - Part 4. HAVA Administrative Complaint Procedure
- Article 18. Political Parties.
- Article 19. Nomination of Candidates.
  - Part 1. Primary Elections
  - Part 2. Nomination by Petition
  - Part 3. Challenge to Candidacy
- Article 20. Conduct of Primaries and Elections.
  - Part 1. Precincts and Voting Places
  - Part 2. Precinct Boundaries
  - Part 3. Voting
  - Part 4. Counting Official Ballots, Canvassing Votes, Hearing Protests, and Certifying Results
  - Part 5. Members of United States House of Representatives
  - Part 6. Presidential Electors
  - Part 7. Presidential Preference Primary Act
  - Part 8. Petitions for Elections and Referenda
- Article 21. Absentee Voting.
  - Part 1. Absentee Ballot
  - Part 2. Uniform Military and Overseas Voters Act
- Article 22. Regulation of Election Campaigns.
  - Part 1. Corrupt Practices and Other Offenses Against the Elective Franchise
- Article 23. Regulating Contributions and Expenditures in Political Campaigns.
  - Part 1. In General
  - Part 2. Disclosure Requirements for Media Advertisements
  - Part 3. Municipal Campaign Reporting
- Article 24. The North Carolina Public Campaign Fund.
- Article 25. The Voter-Owned Elections Act.
- Article 26. Legal Expense Funds.
- Article 27. Municipal Elections.
  - Part 1. Municipal Election Procedure
  - Part 2. Conduct of Municipal Elections
- Article 28. Nomination and Election of Appellate, Superior, and District Court Judges.

When recodifying, the Revisor is authorized to change all references to the State Ethics Commission, to the State Board of Elections, or to the Secretary of State, to instead be references to the Bipartisan State Board of Elections and Ethics Enforcement. The Revisor may separate subsections of existing statutory sections into new sections and, when necessary to organize relevant law into its proper place in the above structure, may rearrange sentences that currently appear within subsections. The Revisor may modify statutory citations throughout the General Statutes, as appropriate, and may modify any references to statutory divisions, such as "Chapter," "Subchapter," "Article," "Part," "section," and "subsection," adjust the order of lists of multiple statutes to maintain statutory order, correct terms and conform names and titles changed by this act, eliminate duplicative references to the Bipartisan State Board of Elections and Ethics Enforcement that result from the changes authorized by this section, and make

conforming changes to catch lines and references to catch lines. The Revisor may also adjust subject and verb agreement and the placement of conjunctions. The Revisor shall consult with the State Ethics Commission, the State Board of Elections, the Secretary of State, and the new Bipartisan State Board of Elections and Ethics Enforcement on this recodification.

**SECTION 2.(a)** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 138B.**

**"Elections and Ethics Enforcement Act."**

**SECTION 2.(b)** Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Subchapter to read:

**"SUBCHAPTER I. GENERAL PROVISIONS."**

**SECTION 2.(c)** Subchapter I of Chapter 138B of the General Statutes, as enacted by this act, is amended by adding a new Article to read:

**"Article 1.**

**"Bipartisan State Board of Elections and Ethics Enforcement.**

**"§ 138B-1. Bipartisan State Board of Elections and Ethics Enforcement established.**

**There is established the Bipartisan State Board of Elections and Ethics Enforcement, referred to as the State Board in this Chapter.**

**"§ 138B-2. Membership.**

**(a) The State Board shall consist of eight individuals registered to vote in North Carolina, as follows:**

- (1) Four members shall be appointed by the Governor, two of whom shall be of the political party with the highest number of registered affiliates and two of whom shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. The Governor shall appoint two members each from a list of three nominees submitted by the State party chairs of the two political parties with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board.**
- (2) Two members shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the Speaker of the House of Representatives by the majority leader of the House of Representatives and a list of three nominees submitted to the Speaker of the House of Representatives by the minority leader of the House of Representatives.**
- (3) Two members shall be appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as provided in G.S. 120-121. One member shall be of the political party with the highest number of registered affiliates and one member shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. All appointments shall be from a list of three nominees submitted to the President Pro Tempore by the majority leader of the Senate and a list of three nominees submitted to the President Pro Tempore by the minority leader of the Senate.**

**(b) Members shall serve for four-year terms, beginning May 1 immediately following the election of the Governor.**

(c) Members shall be removed by the member's appointing authority from the State Board only for misfeasance, malfeasance, or nonfeasance.

(d) Any vacancy occurring on the State Board shall be filled by an individual affiliated with the same political party of the vacating member. Any vacancy occurring in the State Board in an appointment made by the Governor shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill the vacancy from a list of two names submitted by the State party chair of the political party with which the vacating member was affiliated if that list is submitted within 30 days of the occurrence of the vacancy. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the Speaker of the House of Representatives shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term. Any vacancy occurring on the State Board in an appointment made by the General Assembly upon the recommendation of the President Pro Tempore of the Senate shall be filled in accordance with G.S. 120-122 for the remainder of the unfulfilled term.

(e) At the first meeting held after new appointments are made, the members of the State Board shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State; and that I will well and truly execute the duties of the office of member of the Bipartisan State Board of Elections and Ethics Enforcement according to the best of my knowledge and ability, according to law, so help me God."

(f) At the first meeting in May, the State Board shall organize by electing one of its members chair and one of its members vice-chair, each to serve a one-year term as such. In the odd-numbered year, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In the even-numbered year, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

(g) At the first meeting held after new appointments are made after taking the oath, the State Board shall elect one of its members secretary, to serve a four-year term as such.

(h) No person shall be eligible to serve as a member of the State Board who holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof. No person who holds any office in a political party or organization, or who is a candidate for nomination or election to any office, or who is a campaign manager or treasurer of any candidate in a primary or election shall be eligible to serve as a member of the State Board. In addition, no person while serving on the State Board shall:

- (1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
- (2) Register as a lobbyist under Article 8 of this Chapter.
- (3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.

(5) Solicit contributions for a candidate, political committee, or referendum committee.

(i) Members of the State Board shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6.

"§ 138B-3. Meetings; quorum; majority.

The State Board shall meet at least monthly and at other times as called by its chair or by six of its members. In the case of a vacancy in the chair, meetings may be called by the vice-chair. Six members of the State Board constitute a quorum for the transaction of business. Except where required by law to act unanimously, a majority vote for action of the State Board shall require six of the eight members.

"§ 138B-4. Powers of the State Board in the execution of State Board duties.

(a) In the performance of the duties enumerated in this Chapter, the State Board, upon a vote of six or more of its members, shall have power to administer oaths, issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence. Such subpoenas for designated witnesses or identified papers, books, records, and other evidence shall be signed and issued by the chair.

(b) In the absence of the chair or upon the chair's refusal to act, the vice-chair may sign and issue subpoenas, summon witnesses, and compel the production of papers, books, records, and other evidence approved in accordance with subsection (a) of this section. In the absence of the chair or upon the chair's refusal to act, any member of the State Board may administer oaths.

(c) The State Board, upon a vote of six or more of its members, may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

"§ 138B-5. Independent agency, staff, and offices.

(a) The State Board shall be and remain an independent regulatory and quasi-judicial agency and shall not be placed within any principal administrative department. The State Board shall exercise its statutory powers, duties, functions, and authority and shall have all powers and duties conferred upon the heads of principal departments under G.S. 143B-10.

(b) The State Board may employ professional and clerical staff, including an Executive Director.

"§ 138B-6. Executive Director of the State Board.

(a) There is hereby created the position of Executive Director of the State Board, who shall perform all duties imposed by statute and such duties as may be assigned by the State Board.

(b) The State Board shall appoint an Executive Director for a term of four years with compensation to be determined by the Office of State Human Resources. The Executive Director shall serve beginning May 15 after the first meeting held after new appointments to the State Board are made, unless removed for cause, until a successor is appointed. In the event of a vacancy, the vacancy shall be filled for the remainder of the term.

(c) The Executive Director shall be responsible for staffing, administration, execution of the State Board's decisions and orders, and shall perform such other responsibilities as may be assigned by the State Board.

(d) The Executive Director shall be the chief State elections official."

SECTION 3.(a) G.S. 138A-6 is repealed.

SECTION 3.(b) G.S. 138A-7 is repealed.

**SECTION 3.(c)** G.S. 138A-8 is repealed.

**SECTION 3.(d)** G.S. 138A-9 is repealed.

**SECTION 3.(e)** G.S. 138A-13 reads as rewritten:

**"§ 138A-13. Request for advice.**

...  
(a2) A request for a formal advisory opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The ~~Commission-State Board~~ shall issue formal advisory opinions having prospective application only. A public servant or legislative employee who relies upon the advice provided to that public servant or legislative employee on a specific matter addressed by the requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the ~~Commission, State Board~~, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the employing entity.
- (3) ~~Investigation by the Secretary of State.~~

...  
(b1) A request by a legislator for a recommended formal advisory opinion shall be in writing, electronic or otherwise. The ~~Commission-State Board~~ shall issue recommended formal advisory opinions having prospective application only. Until action is taken by the Committee under G.S. 120-104, a legislator who relies upon the advice provided to that legislator on a specific matter addressed by the requested recommended formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the Committee or ~~Commission, State Board~~, except for an inquiry under G.S. 138A-12(b)(3).
- (2) Any adverse action by the house of which the legislator is a member.
- (3) ~~Investigation by the Secretary of State.~~

...."

**SECTION 4.** Chapter 120C of the General Statutes reads as rewritten:

..."

**"§ 120C-101. Rules and forms.**

(a) The ~~Commission-State Board~~ shall adopt any rules or definitions necessary to interpret the provisions of this Chapter and adopt any rules necessary to administer the provisions of this Chapter, ~~except for Articles 2, 4 and 8 of this Chapter. The Secretary of State shall adopt any rules, orders, and forms as are necessary to administer the provisions of Articles 2, 4 and 8 of this Chapter. The Secretary of State may appoint a council to advise the Secretary in adopting rules under this section.~~ Chapter.

(b) With respect to the forms adopted under subsection (a) of this section, the ~~Secretary of State~~ ~~State Board~~ shall adopt rules to protect from disclosure all confidential information under Chapter 132 of the General Statutes related to economic development initiatives or to industrial or business recruitment activities. The information shall remain confidential until the State, a unit of local government, or the business has announced a commitment by the business to expand or locate a specific project in this State or a final decision not to do so, and the business has communicated that commitment or decision to the State or local government agency involved with the project.

(c) In adopting rules under this Chapter, the ~~Commission-State Board~~ is exempt from the requirements of Article 2A of Chapter 150B of the General Statutes, except that the ~~Commission-State Board~~ shall comply with G.S. 150B-21.2(d). At least 30 business days prior to adopting a rule, the ~~Commission~~ ~~State Board~~ shall:

- (1) Publish the proposed rules in the North Carolina Register.

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- (2) Submit the rule and a notice of public hearing to the Codifier of Rules, and the Codifier of Rules shall publish the proposed rule and the notice of public hearing on the Internet to be posted within five business days.
- (3) Notify those on the mailing list maintained in accordance with G.S. 150B-21.2(d) and any other interested parties of its intent to adopt a rule and of the public hearing.
- (4) Accept written comments on the proposed rule for at least 15 business days prior to adoption of the rule.
- (5) Hold at least one public hearing on the proposed rule no less than five days after the rule and notice have been published.

A rule adopted under this subsection becomes effective the first day of the month following the month the final rule is submitted to the Codifier of Rules for entry into the North Carolina Administrative Code, and applies prospectively. A rule adopted by the Commission that does not comply with the procedural requirements of this subsection shall be null, void, and without effect. For purposes of this subsection, a rule is any ~~Commission~~State Board regulation, standard, or statement of general applicability that interprets an enactment by the General Assembly or Congress, or a regulation adopted by a federal agency, or that describes the procedure or practice requirements of the ~~Commission~~State Board.

~~(d) For purposes of G.S. 150B-21.3(b2), a written objection filed by the Commission to a rule adopted by the Secretary of State pursuant to this Chapter shall be deemed written objections from 10 or more persons under that statute. Notwithstanding G.S. 150B-21.3(b2), a rule adopted by the Secretary of State pursuant to this Chapter objected to by the Commission under this subsection shall not become effective until an act of the General Assembly approving the rule has become law. If the General Assembly does not approve a rule under this subsection by the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Rules Review Commission approves the rule, the permanent rule shall not become effective and any temporary rule associated with the permanent rule expires. If the General Assembly fails to approve a rule by the day of adjournment, the Secretary of State may initiate rulemaking for a new permanent rule, including by the adoption of a temporary rule.~~

**"§ 120C-102. Request for advice.**

(a) At the request of any person, State agency, or governmental unit affected by this Chapter, the ~~Commission~~State Board shall render advice on specific questions involving the meaning and application of this Chapter and that person's, State agency's, or any governmental unit's compliance therewith. Requests for advice and advice rendered in response to those requests shall relate to real or reasonably anticipated fact settings or circumstances.

(a1) A request for a formal opinion under subsection (a) of this section shall be in writing, electronic or otherwise. The ~~Commission~~State Board shall issue formal advisory opinions having prospective application only. An individual, State agency, or governmental unit who relies upon the advice provided to that individual, State agency, or governmental unit on a specific matter addressed by a requested formal advisory opinion shall be immune from all of the following:

- (1) Investigation by the ~~Commission~~State Board.
- (2) Any adverse action by the employing entity.
- (3) ~~Investigation by the Secretary of State.~~

(b) Staff to the ~~Commission~~State Board may issue advice, but not formal advisory opinions, under procedures adopted by the ~~Commission~~State Board.

(c) The ~~Commission~~State Board shall publish its formal advisory opinions within 30 days of issuance, edited as necessary to protect the identities of the individuals requesting opinions.



(d) Except as provided under subsections (c) and (d1) of this section, a request for advice, any advice provided by ~~Commission~~State Board staff, any formal advisory opinions, any supporting documents submitted or caused to be submitted to the ~~Commission~~State Board or ~~Commission~~State Board staff, and any documents prepared or collected by the ~~Commission~~State Board or the ~~Commission~~State Board staff in connection with a request for advice are confidential. The identity of the individual, State agency, or governmental unit making the request for advice, the existence of the request, and any information related to the request may not be revealed without the consent of the requestor. An individual, State agency, or governmental unit who requests advice or receives advice, including a formal advisory opinion, may authorize the release to any other person, the State, or any governmental unit of the request, the advice, or any supporting documents.

For purposes of this section, "document" is as defined in G.S. 120-129. Requests for advice, any advice, and any documents related to requests for advice are not "public records" as defined in G.S. 132-1.

~~(d1) Staff to the Commission may share all information and documents related to requests under subsection (a) and (a1) of this section with staff of the Office of the Secretary of State. The information and documents in the possession of the staff of the Office of the Secretary of State shall remain confidential and not public records. The Commission shall forward an unedited copy of each formal advisory opinion under this section to the Secretary of State at the time the formal advisory opinion is issued to the requestor, and the Secretary of State shall treat that unedited advisory opinion as confidential and not a public record.~~

(e) Requests for advisory opinions may be withdrawn by the requestor at any time prior to the issuance of a formal advisory opinion.

...

**"§ 120C-601. Powers and duties of the ~~Commission~~State Board.**

(a) The ~~Commission~~State Board may investigate complaints of violations of this Chapter and shall refer complaints related solely to Articles 2, 4, or 8 of this Chapter to the ~~Secretary of State~~Chapter.

(b) The ~~Commission~~State Board may petition the Superior Court of Wake County for the approval to issue subpoenas and subpoenas duces tecum as necessary to conduct investigations of violations of this Chapter. The court shall authorize subpoenas under this subsection when the court determines they are necessary for the enforcement of this Chapter. Subpoenas issued under this subsection shall be enforceable by the court through contempt powers. Venue shall be with the Superior Court of Wake County for any nonresident person, or that person's agent, who makes a reportable expenditure under this Chapter, and personal jurisdiction may be asserted under G.S. 1-75.4.

(c) Complaints of violations of this Chapter and all other records accumulated in conjunction with the investigation of these complaints shall be considered confidential records and may be released only by order of a court of competent jurisdiction. Any information obtained by the ~~Commission~~State Board from any law enforcement agency, administrative agency, or regulatory organization on a confidential or otherwise restricted basis in the course of an investigation shall be confidential and exempt from G.S. 132-6 to the same extent that it is confidential in the possession of the providing agency or organization.

(d) The ~~Commission~~State Board shall publish annual statistics on complaints, including the number of complaints, the number of apparent violations of this Chapter referred to a district attorney, the number of dismissals, and the number and age of complaints pending.

**"§ 120C-602. Punishment for violation.**

(a) Whoever willfully violates any provision of Article 2 or Article 3 of this Chapter shall be guilty of a Class 1 misdemeanor, except as provided in those Articles. In addition, no lobbyist who is convicted of a violation of the provisions of this Chapter shall in any way act as a lobbyist for a period of two years from the date of conviction.

(b) ~~In addition to the criminal penalties set forth in this section, the Secretary of State may levy civil fines for a violation of any provision of Articles 2, 4, or 8 of this Chapter up to five thousand dollars (\$5,000) per violation. In addition to the criminal penalties set forth in this section, the Commission~~State Board may levy civil fines for a violation of any provision of this Chapter ~~except Article 2, 4, or 8 of this Chapter~~ up to five thousand dollars (\$5,000) per violation.

**"§ 120C-603. Enforcement by district attorney and Attorney General.**

(a) ~~The Commission or the Secretary of State, as appropriate,~~ State Board may investigate complaints of violations of this Chapter and shall report apparent violations of this Chapter to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

(b) Complaints of violations of this Chapter involving the ~~Commission~~State Board or any member employee of the ~~Commission~~State Board shall be referred to the Attorney General for investigation. The Attorney General shall, upon receipt of a complaint, make an appropriate investigation thereof, and the Attorney General shall forward a copy of the investigation to the district attorney of the prosecutorial district as defined in G.S. 7A-60 of which Wake County is a part, who shall prosecute any person or governmental unit who violates any provisions of this Chapter.

...."

**SECTION 5.(a) G.S. 163-19 is repealed.**

**SECTION 5.(b) G.S. 163-20 reads as rewritten:**

**"§ 163-20. Meetings of Board; quorum; minutes.**

(a) ~~Call of Meeting. — The State Board of Elections shall meet at the call of the chairman whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The chairman shall call a meeting of the Board upon the written application or applications of any two members thereof. If there is no chairman, or if the chairman does not call a meeting within three days after receiving a written request or requests from two members, any three members of the Board shall have power to call a meeting of the Board, and any duties imposed or powers conferred on the Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.~~

(b) ~~Place of Meeting. — Except as provided in subsection (c), below, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in Raleigh to be designated by the chairman. However, subject to the limitation imposed by subsection (c), below, upon the prior written request of any four-six members, the State Board of Elections shall meet at any other place in the State designated by the four-six members.~~

(c) ~~Meetings to Investigate Alleged Violations of This Chapter. — When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.~~

(d) ~~Quorum. — A majority of the members constitutes a quorum for the transaction of business by the State Board of Elections. If any member of the Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the Governor may summarily remove any member failing to attend and appoint his successor.~~

(e) ~~Minutes. — The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the Board in Raleigh.~~"

**SECTION 5.(c) G.S. 163-21 is repealed.**

**SECTION 5.(d) G.S. 163-23 is repealed.**

**SECTION 5.(e) G.S. 163-26 is repealed.**

**SECTION 5.(f)** G.S. 163-27 is repealed.

**SECTION 5.(g)** G.S. 163-28 is repealed.

**SECTION 5.(h)** G.S. 163-30 reads as rewritten:

**"§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.**

In every county of the State there shall be a county board of elections, to consist of ~~three~~ four persons of good moral character who are registered voters in the county in which they are to act. Two of the members of the county board of elections shall be of the political party with the highest number of registered affiliates and two shall be of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board. In 2017, members of county boards of elections shall be appointed by the State Board on the second Tuesday in July. Members ~~In 2019, members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June 1985,~~ and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. ~~Not more than two members of the county board of elections shall belong to the same political party.~~

No person shall be eligible to serve as a member of a county board of elections who holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.

No person who holds any office in a state, congressional district, county or precinct political party or organization, or who is a campaign manager or treasurer of any candidate or political party in a primary or election, shall be eligible to serve as a member of a county board of elections, provided however that the position of delegate to a political party convention shall not be considered an office for the purpose of this section.

No person shall be eligible to serve as a member of a county board of elections who is a candidate for nomination or election.

No person shall be eligible to serve as a member of a county board of elections who is the wife, husband, son, son-in-law, daughter, daughter-in-law, mother, mother-in-law, father, father-in-law, sister, sister-in-law, brother, brother-in-law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the board of elections becoming ineligible, that member's seat shall be declared vacant. This paragraph only applies if the county board of elections is conducting the election for which the relative is a candidate.

The State ~~chairman~~ chair of each political party shall have the right to recommend to the State Board of Elections ~~three~~ registered voters in each county for appointment to the board of elections for that county. If such recommendations are received by the Board 15 or more days before the last Tuesday in June ~~1985~~ 2017, and each two years thereafter, it shall be the duty of the State Board of Elections ~~to~~ appoint the county boards from the names thus recommended.

Whenever a vacancy occurs in the membership of a county board of elections for any cause the State ~~chairman~~ chair of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board of Elections ~~to~~ fill the vacancy from the names thus recommended.

At the meeting of the county board of elections required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute

the duties of the office of member of the \_\_\_\_\_ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

At the first meeting in July annually, the county boards shall organize by electing one of its members chair and one of its members vice-chair, each to serve a one-year term as such. In the odd-numbered year, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In the even-numbered year, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

Each member of the county board of elections shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the ~~chairman~~ chair of the board, and shall be paid the sum of twenty-five dollars (\$25.00) per day for attending each of those meetings."

**SECTION 5.(i) G.S. 163-31 reads as rewritten:**

**"§ 163-31. Meetings of county boards of elections; quorum; majority; minutes.**

In each county of the State the members of the county board of elections shall meet at the courthouse or board office at noon on the Tuesday following the third Monday in July in the year of their appointment by the State Board of Elections and, after taking the oath of office provided in G.S. 163-30, they shall organize by electing one member ~~chairman~~ chair and another member secretary of the county board of elections. On the Tuesday following the third Monday in August of the year in which they are appointed the county board of elections shall meet and appoint precinct chief judges and judges of elections. The board may hold other meetings at such times as the ~~chairman~~ chair of the board, or any ~~two~~ three members thereof, may direct, for the performance of duties prescribed by law. ~~A majority of the~~ Three members shall constitute a quorum for the transaction of board business. Except where required by law to act unanimously, a majority vote for action of the board shall require three of the four members. The ~~chairman~~ chair shall notify, or cause to be notified, all members regarding every meeting to be held by the board.

The county board of elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the board office and it shall be the responsibility of the secretary, elected by the board, to keep the required minute book current and accurate. The secretary of the board may designate the director of elections to record and maintain the minutes under his or her supervision."

**SECTION 5.(j) G.S. 163-182.13 reads as rewritten:**

**"§ 163-182.13. New elections.**

(a) When State Board May Order New Election. – The State Board of Elections may order a new election, upon agreement of at least ~~four~~ six of its members, in the case of any one or more of the following:

- (1) Ineligible voters sufficient in number to change the outcome of the election were allowed to vote in the election, and it is not possible from examination of the official ballots to determine how those ineligible voters voted and to correct the totals.
- (2) Eligible voters sufficient in number to change the outcome of the election were improperly prevented from voting.
- (3) Other irregularities affected a sufficient number of votes to change the outcome of the election.
- (4) Irregularities or improprieties occurred to such an extent that they taint the results of the entire election and cast doubt on its fairness.

(b) **State Board to Set Procedures.** – The State Board of Elections shall determine when a new election shall be held and shall set the schedule for publication of the notice, preparation of absentee official ballots, and the other actions necessary to conduct the election.

(c) **Eligibility to Vote in New Election.** – Eligibility to vote in the new election shall be determined by the voter's eligibility at the time of the new election, except that in a primary, no person who voted in the initial primary of one party shall vote in the new election in the primary of another party. The State Board of Elections shall promulgate ~~adopt~~ rules to effect the provisions of this subsection.

(d) **Jurisdiction in Which New Election Held.** – The new election shall be held in the entire jurisdiction in which the original election was held.

(e) **Which Candidates to Be on Official Ballot.** – All the candidates who were listed on the official ballot in the original election shall be listed in the same order on the official ballot for the new election, except in either of the following:

- (1) If a candidate dies or otherwise becomes ineligible between the time of the original election and the new election, that candidate may be replaced in the same manner as if the vacancy occurred before the original election.
- (2) If the election is for a multiseat office, and the irregularities could not have affected the election of one or more of the candidates, the new election, upon agreement of at least ~~four~~ six members of the State Board, may be held among only those candidates whose election could have been affected by the irregularities.

(f) **Tie Votes.** – If ineligible voters voted in an election and it is possible to determine from the official ballots the way in which those votes were cast and to correct the results, and consequently the election ends in a tie, the provisions of G.S. 163-182.8 concerning tie votes shall apply."

**SECTION 5.(k) G.S. 163-278.22(7) reads as rewritten:**

"(7) To make investigations to the extent the State Board deems necessary with respect to statements filed under the provisions of this Article and with respect to alleged failures to file any statement required under the provisions of this Article or Article 22M of the General Statutes and, upon complaint under oath by any registered voter, with respect to alleged violations of any part of this Article or Article 22M of the General Statutes. The State Board shall conclude all investigations no later than one year from the date of the start of the investigation, unless the State Board has reported an apparent violation to the proper district attorney and additional investigation of the apparent violation is deemed necessary by the State Board."

**SECTION 6. G.S. 120-70.141 reads as rewritten:**

**"§ 120-70.141. Purpose and powers of Committee.**

(a) The Joint Legislative Elections Oversight Committee shall examine, on a continuing basis, election administration and campaign finance regulation in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve elections administration and campaign finance regulation. In this examination, the Committee shall do the following:

- (1) Study the budgets, programs, and policies of the Bipartisan State Board of Elections and Ethics Enforcement and the county boards of elections to determine ways in which the General Assembly may improve election ~~administration and campaign finance regulation administration.~~
- (1a) Study the budgets, programs, and policies of the Bipartisan State Board of Elections and Ethics Enforcement and the county boards of elections to determine ways in which the General Assembly may improve campaign finance regulation.

- (2) Examine election statutes and court decisions to determine any legislative changes that are needed to improve election administration and campaign finance regulation.
- (3) Study other states' initiatives in election administration and campaign finance regulation to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and
- (4) Study any other election matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee."

**SECTION 7.** Any previous assignment of duties of a quasi-legislative or quasi-judicial nature by the Governor or General Assembly to the agencies or functions transferred by this act shall have continued validity with the transfer under this act. Except as otherwise specifically provided in this act, each enumerated commission, board, or other function of State government transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is a continuation of the former entity for purposes of succession to all the rights, powers, duties, and obligations of the former. Where the former entities are referred to by law, contract, or other document in their former name, the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act, is charged with exercising the functions of the former named entity.

**SECTION 8.** No action or proceeding pending on January 1, 2017, brought by or against the State Board of Elections, the State Ethics Commission, or the Secretary of State regarding the lobbyist registration and lobbying enforcement of the Secretary of State shall be affected by any provision of this act, but the same may be prosecuted or defended in the name of the Bipartisan State Board of Elections and Ethics Enforcement, as created in this act. In these actions and proceedings, the Bipartisan State Board of Elections and Ethics Enforcement or its Executive Director, as appropriate, shall be substituted as a party upon proper application to the courts or other administrative or quasi-judicial bodies.

Any business or other matter undertaken or commanded by any State program or office or contract transferred by this act to the Bipartisan State Board of Elections and Ethics Enforcement pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on January 1, 2017, may be conducted and completed by the Bipartisan State Board of Elections and Ethics Enforcement in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners or directors thereof.

**SECTION 9.** The consolidation provided for under this act shall not affect any ongoing investigation or audit. Any ongoing hearing or other proceeding before the State Ethics Commission or State Board of Elections on January 1, 2017, shall be transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created by this act, on January 1, 2017. Prosecutions for offenses or violations committed before January 1, 2017, are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

**SECTION 10.** Rules adopted by the State Ethics Commission, Secretary of State related to lobbying, and the State Board of Elections shall remain in effect as provided in G.S. 150B-21.7. Policies, procedures, and guidance shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement. The list of covered boards adopted by the State Ethics Commission under G.S. 138A-11 as of December 31, 2016,

shall continue in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

**SECTION 11.** Any evaluation of a statement of economic interest issued by the State Ethics Commission pursuant to Article 3 of Chapter 138A of the General Statutes in 2016 shall remain in effect until amended or repealed by the Bipartisan State Board of Elections and Ethics Enforcement.

**SECTION 12.** The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Ethics Commission are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the State Board of Elections are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing, of the lobbying registration and lobbying enforcement functions of the Secretary of State are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, as created in Part I of this act. The Director of the Budget shall resolve any disputes arising out of this transfer.

**SECTION 13.** The members of the State Ethics Commission serving on December 31, 2016, shall constitute and serve as the Bipartisan State Board of Elections and Ethics Enforcement, as constituted and authorized by this act until June 30, 2017. The chair and vice-chair of the State Ethics Commission serving on December 31, 2016, shall continue to serve as the chair and vice-chair of Bipartisan State Board of Elections and Ethics Enforcement, as constituted and authorized by this act until June 30, 2017. Notwithstanding G.S. 138B-2, members of the Bipartisan State Board of Elections and Ethics Enforcement appointed by the Governor and General Assembly in 2017 shall take office July 1, 2017.

**SECTION 14.** Until such time as the Bipartisan State Board of Elections and Ethics Enforcement appointed in 2017 appoints an Executive Director, the Executive Director of the State Board of Elections under G.S. 163-26, as of December 31, 2016, shall be acting Executive Director.

**SECTION 15.** The appropriations and resources of the State Ethics Commission is transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6.

**SECTION 16.** The appropriations and resources of the State Board of Elections, including any office space of the State Board of Elections, is transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfer shall have all the elements of a Type I transfer under G.S. 143A-6, with the Budget Code for the newly established State Board being the previous State Board of Elections budget code of 18025.

**SECTION 17.** The appropriations and resources of the lobbying registration and lobbying enforcement functions of the Secretary of State are transferred to the Bipartisan State Board of Elections and Ethics Enforcement, and the transfers shall have all the elements of a Type I transfer under G.S. 143A-6. Specifically, the following positions shall be transferred: Lobbying Compliance Director (Position 60008800), Law Enforcement Agent (Position 60008806), Administrative Assistant II (Position 60008801), Administrative Assistant II (Position 60008802), and Administrative Assistant II (Position 60008803).

**SECTION 18.** The Bipartisan State Board of Elections and Ethics Enforcement shall report to the Joint Legislative Commission on Governmental Operations, Joint Legislative Elections Oversight Committee, and the Legislative Ethics Committee on or before April 1,

2018, and again on or before March 1, 2019, as to recommendations for statutory changes necessary to further implement this consolidation.

**SECTION 19.** Notwithstanding the recodification in Section 1 of this Part, the Bipartisan State Board of Elections and Ethics Enforcement shall not administer or enforce Part 1, Part 3, or Part 6 of Article 8 of Chapter 138B of the General Statutes, and the Secretary of State shall maintain the authority to administer and enforce Articles 2, 4, and 8 of Chapter 120C of the General Statutes, as those Articles existed on January 1, 2017, until October 1, 2017. Section 17 of this Part becomes effective October 1, 2017. G.S. 163-30, as amended by Section 5(h) of this Part and G.S. 163-31, as amended by Section 5(i) of this Part, becomes effective July 1, 2017. G.S. 163-278.22(7), as amended by Section 5(k) of this Part, becomes effective January 1, 2017, and applies to investigations initiated on or after that date. Except as otherwise provided, this Part becomes effective January 1, 2017.

## **PART II. CLARIFY LEGISLATIVE AUTHORITY TO APPORTION DISTRICTS**

**SECTION 20.(a)** G.S. 120-2.4 reads as rewritten:

**"§ 120-2.4. Opportunity for General Assembly to remedy defects.**

(a) If the General Assembly enacts a plan apportioning or redistricting State legislative or congressional districts, in no event may a court impose its own substitute plan unless the court first gives the General Assembly a period of time to remedy any defects identified by the court in its findings of fact and conclusions of law. That period of time shall not be less than two weeks. In the event the General Assembly does not act to remedy any identified defects to its plan within that period of time, the court may impose an interim districting plan for use in the next general election only, but that interim districting plan may differ from the districting plan enacted by the General Assembly only to the extent necessary to remedy any defects identified by the court.

(b) Notwithstanding any other provision of law or authority of the State Board of Elections under Chapter 163 of the General Statutes, the State Board of Elections shall have no authority to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under this section or a plan enacted by the General Assembly."

**SECTION 20.(b)** G.S. 163-22 is amended by adding two new subsections to read:

**"(r) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.**

**(s) Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority.**"

**SECTION 20.(c)** G.S. 163-33 is amended by adding two new subdivisions to read:

**"(15) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.**

**(16) Nothing in this Chapter shall grant authority to county boards of elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan**



adopted by the appropriate unit of local government under statutory or local act authority."

**SECTION 20.(d)** G.S. 163-27.1 reads as rewritten:

**"§ 163-27.1. Emergency powers.**

**(a)** The Executive Director, as chief State elections official, may exercise emergency powers to conduct an election in a district where the normal schedule for the election is disrupted by any of the following:

- (1)** A natural disaster.
- (2)** Extremely inclement weather.
- (3)** An armed conflict involving Armed Forces of the United States, or mobilization of those forces, including North Carolina National Guard and reserve components of the Armed Forces of the United States.

In exercising those emergency powers, the Executive Director shall avoid unnecessary conflict with the provisions of this Chapter. The Executive Director shall adopt rules describing the emergency powers and the situations in which the emergency powers will be exercised.

**(b)** Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting State legislative or congressional districts other than a plan imposed by a court under G.S. 120-2.4 or a plan enacted by the General Assembly.

**(c)** Nothing in this Chapter shall grant authority to the State Board of Elections to alter, amend, correct, impose, or substitute any plan apportioning or redistricting districts for a unit of local government other than a plan imposed by a court, a plan enacted by the General Assembly, or a plan adopted by the appropriate unit of local government under statutory or local act authority."

### **PART III. PARTISAN APPELLATE COURT ELECTIONS**

**SECTION 21.(a)** G.S. 163-106 reads as rewritten:

**"§ 163-106. Notices of candidacy; pledge; with whom filed; date for filing; withdrawal.**

...

**(c)** Time for Filing Notice of Candidacy. – Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

- Governor
- Lieutenant Governor
- All State executive officers
- Justices of the Supreme Court
- Judges of the Court of Appeals
- United States Senators
- Members of the House of Representatives of the United States
- District attorneys

Candidates seeking party primary nominations for the following offices shall file their notice of candidacy with the county board of elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the primary:

- State Senators
- Members of the State House of Representatives
- All county offices.

**(d)** Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any primary in which there are two or more vacancies for associate justices for the Supreme Court, two or more vacancies for the Court of Appeals, or two vacancies for United States Senator from

North Carolina, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which ~~he~~ the candidate seeks nomination. Votes cast for a candidate shall be effective only for ~~his~~ the candidate nomination to the vacancy for which ~~he~~ the candidate has given notice of candidacy as provided in this subsection.

...."

**SECTION 21.(b) G.S. 163-107(a) reads as rewritten:**

"(a) Fee Schedule. – At the time of filing a notice of candidacy, each candidate shall pay to the board of elections with which ~~he~~ the candidate files under the provisions of G.S. 163-106 a filing fee for the office ~~he seeks~~ sought in the amount specified in the following tabulation:

<b>Office Sought</b>	<b>Amount of Filing Fee</b>
Governor	One percent (1%) of the annual salary of the office sought
Lieutenant Governor	One percent (1%) of the annual salary of the office sought
All State executive offices	One percent (1%) of the annual salary of the office sought
All <u>Justices of the Supreme Court, Judges of the Court of Appeals, and District Attorneys of the General Court of Justice</u>	One percent (1%) of the annual salary of the office sought
United States Senator	One percent (1%) of the annual salary of the office sought
Members of the United States House of Representatives	One percent (1%) of the annual salary of the office sought
State Senator	One percent (1%) of the annual salary of the office sought
Member of the State House of Representatives	One percent (1%) of the annual salary of the office sought
All county offices not compensated by fees	One percent (1%) of the annual salary of the office sought
All county offices compensated partly by salary and partly by fees	One percent (1%) of the first annual salary to be received (exclusive of fees)

The salary of any office that is the basis for calculating the filing fee is the starting salary for the office, rather than the salary received by the incumbent, if different. If no starting salary can be determined for the office, then the salary used for calculation is the salary of the incumbent, as of January 1 of the election year."

**SECTION 21.(c) G.S. 163-107.1(b) reads as rewritten:**

"(b) If the candidate is seeking the office of United States Senator, Governor, Lieutenant Governor, ~~or any State executive officer, Justice of the Supreme Court, or Judge of the Court of Appeals,~~ the petition must be signed by 10,000 registered voters who are members of the political party in whose primary the candidate desires to run, except that in the case of a political party as defined by G.S. 163-96(a)(2) which will be making nominations by primary election, the petition must be signed by five percent (5%) of the registered voters of the State who are affiliated with the same political party in whose primary the candidate desires to run, or in the alternative, the petition shall be signed by no less than 8,000 registered voters regardless of the voter's political party affiliation, whichever requirement is greater. The petition must be filed with the State Board of Elections not later than 12:00 noon on Monday preceding the filing deadline before the primary in which he seeks to run. The names on the petition shall be verified by the board of elections of the county where the signer is registered, and the petition must be presented to the county board of elections at least 15 days before the

petition is due to be filed with the State Board of Elections. When a proper petition has been filed, the candidate's name shall be printed on the primary ballot."

**SECTION 21.(d)** G.S. 163-111(c)(1) reads as rewritten:

"(1) A candidate who is apparently entitled to demand a second primary, according to the unofficial results, for one of the offices listed below, and desiring to do so, shall file a request for a second primary in writing with the Executive Director of the State Board of Elections no later than 12:00 noon on the ninth day (including Saturdays and Sundays) following the date on which the primary was conducted, and such request shall be subject to the certification of the official results by the State Board of Elections. If the vote certification by the State Board of Elections determines that a candidate who was not originally thought to be eligible to call for a second primary is in fact eligible to call for a second primary, the Executive Director of the State Board of Elections shall immediately notify such candidate and permit ~~him~~ the candidate to exercise any options available to ~~him~~ the candidate within a 48-hour period following the notification:

Governor,  
Lieutenant Governor,  
All State executive officers,  
Justices of the Supreme Court, Judges of the Court of Appeals, or  
District Attorneys of the General Court of Justice,  
United States Senators,  
Members of the United States House of Representatives,  
State Senators in multi-county senatorial districts, and  
Members of the State House of Representatives in multi-county representative districts."

**SECTION 21.(e)** Subchapter X of Chapter 163 of the General Statutes reads as rewritten:

**"SUBCHAPTER X. ELECTION OF APPELLATE, SUPERIOR, SUPERIOR AND DISTRICT COURT JUDGES.**

"Article 25.

"Nomination and Election of ~~Appellate, Superior, Superior~~ and District Court Judges.

"§ 163-321. Applicability.

The nomination and election of ~~justices of the Supreme Court, judges of the Court of Appeals, and superior and district court judges of the General Court of Justice~~ shall be as provided by this Article.

...  
"§ 163-323. Notice of candidacy.

...  
(b) Time for Filing Notice of Candidacy. – Candidates seeking election to the following offices shall file their notice of candidacy with the State Board of Elections no earlier than 12:00 noon on the second Monday in February and no later than 12:00 noon on the last business day in February preceding the election:

~~Justices of the Supreme Court.~~  
~~Judges of the Court of Appeals.~~  
Judges of the superior courts.  
Judges of the district courts.

...  
(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or~~ district court judge to be filled by nominations, each candidate shall, at

the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections a written statement designating the specialized judgeship to which the person seeks nomination.

...  
"§ 163-325. Petition in lieu of payment of filing fee.

...  
(b) Requirements of Petition; Deadline for Filing. – If the candidate is seeking the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge~~, that individual shall file a written petition with the State Board of Elections no later than 12:00 noon on Monday preceding the filing deadline before the primary. ~~If the office is justice of the Supreme Court or judge of the Court of Appeals, the petition shall be signed by 8,000 registered voters in the State. If the office is superior court or district court judge, the~~ The petition shall be signed by five percent (5%) of the registered voters of the election area in which ~~the office will be voted for. the registered voters will vote for the office.~~ The board of elections shall verify the names on the petition, and if the petition and notice of candidacy are found to be sufficient, the candidate's name shall be printed on the appropriate ballot. Petitions must be presented to the county board of elections for verification at least 15 days before the petition is due to be filed with the State Board of Elections. The State Board of Elections may adopt rules to implement this section and to provide standard petition forms.

"§ 163-326. Certification of notices of candidacy.

...  
(b) Notification of Local Boards. – No later than 10 days after the time for filing notices of candidacy under the provisions of G.S. 163-323(b) has expired, the chairman of the State Board of Elections shall certify to the chairman of the county board of elections in each county in the appropriate district the names of candidates for nomination to the offices of ~~justice of the Supreme Court, judge of the Court of Appeals, and superior and district court judge~~ who have filed the required notice and paid the required filing fee or presented the required petition to the State Board of Elections, so that their names may be printed on the official judicial ballot for ~~justice of the Supreme Court, judge of the Court of Appeals, and superior and district court.~~

...  
"§ 163-329. Elections to fill vacancy in office created after primary filing period opens.

(a) General. – If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court~~ after the filing period for the primary opens but more than 60 days before the general election, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted without a primary using the method provided in subsection (b1) of this section. If a vacancy is created in the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or judge of superior court~~ before the filing period for the primary opens, and under the Constitution of North Carolina an election is to be held for that position, such that the office shall be filled in the general election as provided in G.S. 163-9, the election to fill the office for the remainder of the term shall be conducted in accordance with G.S. 163-322.

(b) Repealed by Session Laws 2006-192, s. 8(a), effective August 3, 2006, and applicable to vacancies occurring on or after that date.

(b1) Method for Vacancy Election. – If a vacancy for the office of ~~justice of the Supreme Court, judge of the Court of Appeals, or judge of the superior court~~ occurs more than 60 days before the general election and after the opening of the filing period for the primary, then the

State Board of Elections shall designate a special filing period of one week for candidates for the office. If more than two candidates file and qualify for the office in accordance with G.S. 163-323, then the Board shall conduct the election for the office as follows:

- (1) When the vacancy described in this section occurs more than 63 days before the date of the second primary for members of the General Assembly, a special primary shall be held on the same day as the second primary. The two candidates with the most votes in the special primary shall have their names placed on the ballot for the general election held on the same day as the general election for members of the General Assembly.
  - (2) When the vacancy described in this section occurs less than 64 days before the date of the second primary, a general election for all the candidates shall be held on the same day as the general election for members of the General Assembly and the results shall be determined on a plurality basis as provided by G.S. 163-292.
  - (3) Repealed by Session Laws 2013-381, s. 51.1, effective January 1, 2014.
- (c) **Applicable Provisions.** – Except as provided in this section, the provisions of this Article apply to elections conducted under this section.
- (d) **Rules.** – The State Board of Elections shall adopt rules for the implementation of this section. The rules are not subject to Article 2A of Chapter 150B of the General Statutes. The rules shall include the following:
- (1) If after the first-choice candidate is eliminated, a ballot does not indicate one of the uneliminated candidates as an alternative choice, the ballot is exhausted and shall not be counted after the initial round.
  - (2) The fact that the voter does not designate a second or third choice does not invalidate the voter's higher choice or choices.
  - (3) The fact that the voter gives more than one ranking to the same candidate shall not invalidate the vote. The highest ranking given a particular candidate shall count as long as the candidate is not eliminated.
  - (4) In case of a tie between candidates such that two or more candidates have an equal number of first choices and more than two candidates qualify for the second round, instant runoff voting shall be used to determine which two candidates shall advance to the second round.

...  
"§ 163-332. Ballots.

...  
(b) **Ballots to Be Furnished by County Board of Elections.** – It shall be the duty of the county board of elections to print official ballots for the following offices to be voted for in the primary:

~~Justice of the Supreme Court.~~  
~~Judge of the Court of Appeals.~~  
Superior court judge.  
District court judge.

In printing ballots, the county board of elections shall be governed by instructions of the State Board of Elections with regard to width, color, kind of paper, form, and size of type.

Three days before the election, the chairman of the county board of elections shall distribute official ballots to the chief judge of each precinct in his county, and the chief judge shall give a receipt for the ballots received. On the day of the primary, it shall be the chief judge's duty to have all the ballots so delivered available for use at the precinct voting place.

...."

**SECTION 21.(f)** G.S. 163-323(h) is repealed.

**SECTION 21.(g)** G.S. 163-165.5(a)(4) reads as rewritten:

"(4) Party designations in partisan ballot items and in nonpartisan ballot items as required by G.S. 163-323(h) items."

**SECTION 21.(h)** This Part becomes effective January 1, 2018, and applies to primaries and elections held on or after that date.

**PART IV. MODIFY APPELLATE REVIEW OF CERTAIN CASES**

**SECTION 22.(a)** G.S. 7A-16 reads as rewritten:

**"§ 7A-16. Creation and organization.**

The Court of Appeals is created effective January 1, 1967. It shall consist initially of six judges, elected by the qualified voters of the State for terms of eight years. The Chief Justice of the Supreme Court shall designate one of the judges as Chief Judge, to serve in such capacity at the pleasure of the Chief Justice. Before entering upon the duties of his office, a judge of the Court of Appeals shall take the oath of office prescribed for a judge of the General Court of Justice.

The Governor on or after July 1, 1967, shall make temporary appointments to the six initial judgeships. The appointees shall serve until January 1, 1969. Their successors shall be elected at the general election for members of the General Assembly in November, 1968, and shall take office on January 1, 1969, to serve for the remainder of the unexpired term which began on January 1, 1967.

Upon the appointment of at least five judges, and the designation of a Chief Judge, the court is authorized to convene, organize, and promulgate, subject to the approval of the Supreme Court, such supplementary rules as it deems necessary and appropriate for the discharge of the judicial business lawfully assigned to it.

Effective January 1, 1969, the number of judges is increased to nine, and the Governor, on or after March 1, 1969, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1971. Their successors shall be elected at the general election for members of the General Assembly in November, 1970, and shall take office on January 1, 1971, to serve for the remainder of the unexpired term which began on January 1, 1969.

Effective January 1, 1977, the number of judges is increased to 12; and the Governor, on or after July 1, 1977, shall make temporary appointments to the additional judgeships thus created. The appointees shall serve until January 1, 1979. Their successors shall be elected at the general election for members of the General Assembly in November, 1978, and shall take office on January 1, 1979, to serve the remainder of the unexpired term which began on January 1, 1977.

On or after December 15, 2000, the Governor shall appoint three additional judges to increase the number of judges to 15.

The Court of Appeals shall sit in panels of three judges ~~each~~ each and may also sit en banc to hear or rehear any cause upon a vote of the majority of the judges of the court. The Chief Judge insofar as practicable shall assign the members to panels in such fashion that each member sits a substantially equal number of times with each other member. ~~Member~~, shall preside ~~over the panel of which he is a member, when a member of a panel,~~ and shall designate the presiding judge of the other panel or panels.

~~Three judges shall constitute a quorum for the transaction of the business of the court, except as may be provided in G.S. 7A-32. Except as may be provided in G.S. 7A-32, three judges shall constitute a quorum for the transaction of the business of the court when sitting in panels of three judges, and a majority of the then sitting judges on the Court of Appeals shall constitute a quorum for the transaction of the business of the court when sitting en banc.~~

In the event the Chief Judge is unable, on account of absence or temporary incapacity, to perform the duties placed upon him as Chief Judge, the Chief Justice shall appoint an acting

Chief Judge from the other judges of the Court, to temporarily discharge the duties of Chief Judge."

**SECTION 22.(b) G.S. 7A-27 reads as rewritten:**

**"§ 7A-27. Appeals of right from the courts of the trial divisions.**

(a) Appeal lies of right directly to the Supreme Court in any of the following cases:

- (1) All cases in which the defendant is convicted of murder in the first degree and the judgment of the superior court includes a sentence of death.
- (2) From any final judgment in a case designated as a mandatory complex business case pursuant to G.S. 7A-45.4 or designated as a discretionary complex business case pursuant to Rule 2.1 of the General Rules of Practice for the Superior and District Courts.
- (3) From any interlocutory order of a Business Court Judge that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.

~~(a1) Appeal lies of right directly to the Supreme Court from any order or judgment of a court, either final or interlocutory, that holds that an act of the General Assembly is facially invalid on the basis that the act violates the North Carolina Constitution or federal law. Nothing in this subsection shall be deemed to apply to appeals from orders of the trial courts pertaining to criminal proceedings, to proceedings under Chapter 15A of the General Statutes, to proceedings making a collateral attack on any judgment entered in a criminal proceeding, or to appeals from orders of the trial courts pertaining to civil proceedings filed by a taxpayer pursuant to G.S. 105-241.17.~~

(b) Except as provided in subsection (a) or ~~(a1)~~ of this section, appeal lies of right directly to the Court of Appeals in any of the following cases:

- (1) From any final judgment of a superior court, other than one based on a plea of guilty or nolo contendere, including any final judgment entered upon review of a decision of an administrative agency, except for a final judgment entered upon review of a court martial under G.S. 127A-62.
- (2) From any final judgment of a district court in a civil action.
- (3) From any interlocutory order or judgment of a superior court or district court in a civil action or proceeding that does any of the following:
  - a. Affects a substantial right.
  - b. In effect determines the action and prevents a judgment from which an appeal might be taken.
  - c. Discontinues the action.
  - d. Grants or refuses a new trial.
  - e. Determines a claim prosecuted under G.S. 50-19.1.
  - f. Grants temporary injunctive relief restraining the State or a political subdivision of the State from enforcing the operation or execution of an act of the General Assembly as applied against a party in a civil action. ~~Assembly. This sub-subdivision only applies where the State or a political subdivision of the State is a party in the civil action. This sub-subdivision does not apply to facial challenges to an act's validity heard by a three-judge panel pursuant to G.S. 1-267.1.~~
- (4) From any other order or judgment of the superior court from which an appeal is authorized by statute.

(c) through (e) Repealed by Session Laws 2013-411, s. 1, effective August 23, 2013."

**SECTION 22.(c) G.S. 7A-30 reads as rewritten:**

**"§ 7A-30. Appeals of right from certain decisions of the Court of Appeals.**

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

- (1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or
- (2) In which there is a ~~dissent~~ dissent when the Court of Appeals is sitting in a panel of three judges. An appeal of right pursuant to this subdivision is not effective until after the Court of Appeals sitting en banc has rendered a decision in the case, if the Court of Appeals hears the case en banc, or until after the time for filing a motion for rehearing of the cause by the Court of Appeals has expired or the Court of Appeals has denied the motion for rehearing."

**SECTION 22.(d) G.S. 7A-31(a) reads as rewritten:**

"(a) In any cause in which appeal is taken to the Court of Appeals, Appeals, including any cause heard while the Court of Appeals was sitting en banc, except a cause appealed from the North Carolina Industrial Commission, the North Carolina State Bar pursuant to G.S. 84-28, the Property Tax Commission pursuant to G.S. 105-345, the Board of State Contract Appeals pursuant to G.S. 143-135.9, the Commissioner of Insurance pursuant to ~~G.S. 58-2-80~~, G.S. 58-2-80 or G.S. 58-65-131(c), a court-martial pursuant to G.S. 127A-62, a motion for appropriate relief, or valuation of exempt property pursuant to G.S. 7A-28, the Supreme Court may, in its discretion, on motion of any party to the cause or on its own motion, certify the cause for review by the Supreme Court, either before or after it has been determined by the Court of Appeals. A cause appealed to the Court of Appeals from any of the administrative bodies listed in the preceding sentence may be certified in similar fashion, but only after determination of the cause in the Court of Appeals. The effect of such certification is to transfer the cause from the Court of Appeals to the Supreme Court for review by the Supreme Court. If the cause is certified for transfer to the Supreme Court before its determination in the Court of Appeals, review is not had in the Court of Appeals but the cause is forthwith transferred for review in the first instance by the Supreme Court. If the cause is certified for transfer to the Supreme Court after its determination by the Court of Appeals, the Supreme Court reviews the decision of the Court of Appeals.

Except in courts-martial and motions within the purview of G.S. 7A-28, the State may move for certification for review of any criminal cause, but only after determination of the cause by the Court of Appeals."

**SECTION 22.(e) G.S. 58-65-131(c) reads as rewritten:**

"(c) Compliance Required in Certain Events. – A corporation governed by this Article shall comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133 before it may do any of the following:

...

In determining whether the corporation must comply with the provisions of this section, G.S. 58-65-132, and G.S. 58-65-133, the Commissioner may review and consolidate actions of the corporation, its subsidiaries, and other legal entities in which the corporation directly or indirectly owns an interest, and treat the consolidated actions as requiring a conversion. An appeal of the Commissioner's order that consolidated actions require a conversion shall lie directly to the North Carolina Court of Appeals, ~~provided that any party may petition the North Carolina Supreme Court, pursuant to G.S. 7A-31(b), to certify the case for discretionary review by the Supreme Court prior to determination by the Court of Appeals.~~ Appeals under this subsection must be filed within 30 days of the Commissioner's order and shall be considered in the most expeditious manner practical. The corporation must file a plan of conversion within 12 months of the later of the issuance of the Commissioner's order or a final decision on appeal."



**SECTION 22.(f)** G.S. 120-2.5 is repealed.

**SECTION 23.(a)** G.S. 1A-1, Rule 42(b)(4) of the Rules of Civil Procedure, reads as rewritten:

**"Rule 42. Consolidation; separate trials.**

...  
(b) Separate trials. –

...  
(4) Pursuant to G.S. 1-267.1, any facial challenge to the validity of an act of the General Assembly, other than a challenge to plans apportioning or redistricting State legislative or congressional districts, shall be heard by a three-judge panel in the Superior Court of Wake County if a claimant raises such a challenge in the claimant's complaint or amended complaint in any court in this State, or if such a challenge is raised by the defendant in the defendant's answer, responsive pleading, or within 30 days of filing the defendant's answer or responsive pleading. In that event, the court shall, on its own motion, transfer that portion of the action challenging the validity of the act of the General Assembly to the Superior Court of Wake County for resolution by a three-judge panel if, after all other matters in the action have been resolved, a determination as to the facial validity of an act of the General Assembly must be made in order to completely resolve any matters in the case. The court in which the action originated shall maintain jurisdiction over all matters other than the challenge to the act's facial validity and validity. For a motion filed under Rule 11 or Rule 12(b)(1) through (7), the original court shall rule on the motion, however, it may decline to rule on a motion that is based solely upon Rule 12(b)(6). If the original court declines to rule on a Rule 12(b)(6) motion, the motion shall be decided by the three-judge panel. The original court shall stay all matters that are contingent upon the outcome of the challenge to the act's facial validity pending a ruling on that challenge and until all appeal rights are exhausted. Once the three-judge panel has ruled and all appeal rights have been exhausted, the matter shall be transferred or remanded to the three-judge panel or the trial court in which the action originated for resolution of any outstanding matters, as appropriate."

**SECTION 23.(b)** This section becomes effective February 1, 2017, and applies to motions filed on or after that date.

## **PART V. MODIFY THE TERM FOR INDUSTRIAL COMMISSIONERS**

**SECTION 24.(a)** G.S. 97-77 reads as rewritten:

**"§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.**

(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of six commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission for terms of six years. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employers. Three commissioners shall be persons who, on account of their previous vocations, employment or affiliations, can be classed as representatives of employees. No person may serve more than two terms on the Commission, including any term served prior to the effective date of this section. In calculating the number of terms served, a partial term that is less than three years in length shall not be included.

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(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy ~~for the remainder of the unexpired term~~ shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term. If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving.

~~(b) One member, to be designated by the Governor, shall act as chairman. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the chairman, the Governor shall designate a new chairman from the remaining commissioners for the remainder of the four-year term. No member who has served less than one year on the Commission may be designated to act as chairman.~~

The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Human Resources Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman may hire or fire personnel and transfer personnel within the Industrial Commission.

~~The Governor may designate one vice-chairman from the remaining commissioners. On December 30, 2016, and every four years thereafter, one member shall be designated by the Governor to act as vice-chairman for a term of four years. In case of death, incapacity, resignation, or any other vacancy of the vice-chairman, the Governor shall designate a new vice-chairman from the remaining commissioners for the remainder of the four-year term. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman."~~

SECTION 24.(b) G.S. 97-77(a1), as amended by subsection (a) of this section, reads as rewritten:

General Assembly Of North Carolina Fourth Extra Session 2016

"(a1) Appointments of commissioners are subject to confirmation by the General Assembly by joint resolution. The names of commissioners to be appointed by the Governor shall be submitted by the Governor to the General Assembly for confirmation by the General Assembly on or before March 1 of the year of expiration of the term. If the Governor fails to timely submit nominations, the General Assembly shall appoint to fill the succeeding term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section.

In case of death, incapacity, resignation, or any other vacancy in the office of any commissioner prior to the expiration of the term of office, a nomination to fill the vacancy for the remainder of the unexpired term shall be submitted by the Governor within four weeks after the vacancy arises to the General Assembly for confirmation by the General Assembly. ~~Appointments to fill a vacancy shall have a term of six years plus the remainder of the unexpired term.~~ If the Governor fails to timely nominate a person to fill the vacancy, the General Assembly shall appoint a person to fill the remainder of the unexpired term upon the joint recommendation of the President Pro Tempore of the Senate and the Speaker of the House of Representatives in accordance with G.S. 120-121 not inconsistent with this section. If a vacancy arises or exists pursuant to this subsection when the General Assembly is not in session, and the appointment is deemed urgent by the Governor, the commissioner may be appointed and serve on an interim basis pending confirmation by the General Assembly. For the purpose of this subsection, the General Assembly is not in session only (i) prior to convening of the Regular Session, (ii) during any adjournment of the Regular Session for more than 10 days, and (iii) after sine die adjournment of the Regular Session.

No person while in office as a commissioner may be nominated or appointed on an interim basis to fill the remainder of an unexpired term, or to a full term that commences prior to the expiration of the term that the commissioner is serving."

**SECTION 24.(c)** Subsection (a) of this section is effective when it becomes law and applies to the first appointment made to fill a vacancy existing as of that date. Subsection (b) of this section becomes effective on the earlier of December 31, 2016, or upon the filling of a vacancy pursuant to subsection (a) of this section.

**PART VI. EFFECTIVE DATE**

**SECTION 25.** If any provision of this act or its application is held invalid, the invalidity does not affect other provisions or applications of this act that can be given effect without the invalid provisions or application, and to this end, the provisions of this act are severable.

**General Assembly Of North Carolina Fourth Extra Session 2016**

**SECTION 26.** Except as otherwise provided, this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 16<sup>th</sup> day of December, 2016.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Pat McCrory  
Governor

Approved 1:19 p.m. this 16<sup>th</sup> day of December, 2016

# **Exhibit C**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2017-214  
SENATE BILL 656

AN ACT TO CHANGE THE DEFINITION OF A "POLITICAL PARTY" BY REDUCING THE NUMBER OF SIGNATURES REQUIRED FOR THE FORMATION OF A NEW POLITICAL PARTY AND FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY; TO AUTHORIZE ESTABLISHMENT OF POLITICAL PARTIES RECOGNIZED IN A SUBSTANTIAL NUMBER OF STATES IN THE PRIOR PRESIDENTIAL ELECTION; TO CHANGE TIMING OF FILING OF PETITIONS; TO REDUCE THE THRESHOLD FOR A SUBSTANTIAL PLURALITY TO THIRTY PERCENT; AND TO ELIMINATE JUDICIAL PRIMARIES FOR THE 2018 GENERAL ELECTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be ~~either one of the following:~~

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for ~~presidential electors; or electors.~~
- (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to ~~two percent (2%)~~ one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of ~~four~~ three congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State ~~chairman~~ chair of the proposed new political party.
- (3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. To be effective, the group must file their documentation with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith verify the documentation filed with it and shall immediately communicate its determination to the State chair of the proposed new political party."



\* 8 5 6 - V - 6 \*

**SECTION 2.(a)** G.S. 163-122(a), as amended by Section 10 of S.L. 2017-3, reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have the voter's name printed on the general election ballot as an unaffiliated candidate shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting the voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the ~~second Wednesday prior to day~~ of the primary election and must be signed by qualified voters of the State equal in number to ~~two percent (2%)~~ one and a half percent (1.5%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of ~~four~~ three congressional districts in North Carolina. The petitions shall be divided into sections based on the county in which the signatures were obtained. Provided the petitions are timely filed, the State Board of Elections shall require the filed petition be verified no later than 15 business days after canvass of the primary in one of the following ways:
  - a. The Executive Director shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the designated county and shall attach to the petition a signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in each county.
  - b. The chair shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the chair's county and shall attach to the petition the chair's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in the chair's county. The chair shall return the petition and certificate to the State Board.

The State Board shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the State Board.

- (2) Except as provided in this subsection, if the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. ~~These~~ For district offices other than General Assembly seats, petitions must be filed with the State Board of Elections on or before 12:00 noon on the ~~second Wednesday prior to day~~ of the primary election and must be signed by qualified voters of the district equal in number to ~~four~~ one and a half percent (1.5%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. For General Assembly seats in which the district lies in more than one county, petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the

district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

- (3) If the office is a county office or a single county legislative district, file written petitions with the chair or director of the county board of elections supporting the voter's candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the ~~second Wednesday prior to~~ today of the primary election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the ~~chairman~~ chair or director of the county board of elections. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.
- (4) If the office is a partisan municipal office, file written petitions with the chair or director of the county board of elections in the county wherein the municipality is located supporting the voter's candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.
- (5) If the office is a superior court judge or a district court judge, regardless of whether the district lies entirely in one county or in more than one county, file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the ~~second Wednesday prior to~~ today of the primary election and must be signed by qualified voters of the district equal in number to two percent (2%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

Upon compliance with the provisions of subdivisions (1), (2), (3), (4), or (5) of this subsection, the board of elections with which the petitions have been timely filed shall cause



the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter."

**SECTION 2.(b)** G.S. 163-296 reads as rewritten:

**"§ 163-296. Nomination by petition.**

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least ~~four percent (4%)~~ one and a half percent (1.5%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by ~~four percent (4%)~~ one and a half percent (1.5%) of the voters qualified to vote for that office."

**SECTION 3.** G.S. 163-111(a) reads as rewritten:

**"(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality.** – Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

- (1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by ~~forty percent (40%)~~ thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.
- (2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by ~~forty percent (40%)~~ thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees."

**SECTION 4.(a) No 2018 Primary for Judicial Offices.** – Notwithstanding G.S. 163-106, no party primaries shall be held for candidates seeking the following offices in the general election held on November 6, 2018:

Justices of the Supreme Court.

Judges of the Court of Appeals.

Judges of the superior courts.

Judges of the district courts.

Candidates seeking the office of Justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, or judge of the district court shall file their notice of

candidacy with the State Board of Elections and Ethics Enforcement no earlier than 12:00 noon on June 18, 2018, and no later than 12:00 noon on June 29, 2018.

**SECTION 4.(b) Form of Notice.** – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics Enforcement in the following form, inserting the words in parentheses when appropriate:

Date \_\_\_\_\_

I hereby file notice that I am a candidate for election to the office of \_\_\_\_\_ in the regular election to be held \_\_\_\_\_, \_\_\_\_\_.

Signed \_\_\_\_\_  
(Name of Candidate)

Witness: \_\_\_\_\_

The notice of candidacy shall be either signed in the presence of the chair or secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in the candidate's discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified party designation or unaffiliated status shall be included on the ballot.

**SECTION 4.(c) Withdrawal of Notice of Candidacy.** – Any person who has filed a notice of candidacy for an office under this section shall have the right to withdraw it at any time prior to the close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

**SECTION 4.(d) Certificate That Candidate Is Registered Voter.** – Candidates shall file along with their notice a certificate signed by the chair of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge or district court judge, and the county contains more than one superior court district or district court district, stating the judicial district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections and Ethics Enforcement shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections and Ethics Enforcement shall prescribe the form for such certificate and distribute it to each county board of elections no later than the last Monday in December of 2017.

**SECTION 4.(e) Candidacy for More Than One Office Prohibited.** – No person may file a notice of candidacy for more than one office or group of offices described in

subsection (a) of this section, or for an office or group of offices described in subsection (a) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

**SECTION 4.(f) Notice of Candidacy for Certain Offices to Indicate Vacancy.** – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, superior court judge, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections and Ethics Enforcement a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections and Ethics Enforcement a written statement designating the specialized judgeship to which the person seeks nomination.

**SECTION 4.(g) Residency Requirements.** – No person may file a notice of candidacy for superior court judge or district court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Section 9(1) of Article IV of the North Carolina Constitution, which requires regular superior court judges to reside in the district for which elected, and Section 10 of Article IV of the North Carolina Constitution, which requires every district court judge to reside in the district for which elected.

**SECTION 4.(h) Filing Fees.** – Candidates shall pay filing fees as required by G.S. 163-107 and G.S. 163-107.1.

**SECTION 4.(i) Failure of Candidates to File; Death or Other Disqualification of a Candidate; No Withdrawal From Candidacy.** –

- (1) Insufficient number of candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this section, the State Board of Elections and Ethics Enforcement shall extend the filing period for five days for any such offices.
- (2) Vacancies; reopening filing. – If only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections and Ethics Enforcement shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections and Ethics Enforcement receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.
- (3) Later vacancies; ballots not reprinted. – If the ballots have been printed at the time the State Board of Elections and Ethics Enforcement receives notice of a candidate's death or other disqualification, and if the Board determines

that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections and Ethics Enforcement shall declare the office vacant and it shall be filled in the manner provided by law.

- (4) **No withdrawal permitted of living, qualified candidate after close of filing.** – After the close of the candidate filing period, a candidate who has filed a notice of candidacy for an office under this section, who has not withdrawn notice before the close of filing as permitted by subsection (c) of this section, who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.
- (5) **Death, disqualification, or failure to qualify after election.** – If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before that person has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

**SECTION 4.(j) Ballot Order.** – For the 2018 general election, the State Board of Elections and Ethics Enforcement shall place elections for the offices elected as provided in this section with other partisan offices, as provided in G.S. 163-165.6(b)(3). Order of candidates for those offices shall be determined as provided in G.S. 163-165.6(c).

**SECTION 4.(k) Determination of Election Winners.** – A general election for all candidates seeking office as provided in this section shall be held on November 6, 2018. In the general election, the candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections and Ethics Enforcement shall determine the winner by lot.

**SECTION 5.** This act becomes effective January 1, 2018, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 5<sup>th</sup> day of October, 2017.

s/ Philip E. Berger  
President Pro Tempore Officer of the Senate

s/ David R. Lewis  
Presiding Officer of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 10:50 a.m. this 17<sup>th</sup> day of October, 2017.

s/ James White  
House Principal Clerk

# **Exhibit D**

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

NORTH CAROLINA DEMOCRATIC ) CASE NO. 1:17CV1113  
PARTY, et al., )  
Plaintiffs, )  
V. )  
PHILLIP E. BERGER, et al., ) Greensboro, North Carolina  
Defendants. ) January 24, 2018  
9:32 a.m.

TRANSCRIPT OF THE **PRELIMINARY INJUNCTION HEARING**  
BEFORE THE HONORABLE CATHERINE C. EAGLES  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: JOHN R. WALLACE, ESQ.  
DAWN E. LEE, ESQ.  
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JAMES BERNIER, JR., ESQ.  
OLGA E. VYSOTSKAYA DE BRITO, ESQ.  
N.C. DEPARTMENT OF JUSTICE  
P.O. Box 629  
Raleigh, North Carolina 27602  
  
Court Reporter: BRIANA BELL, RPR  
Official Court Reporter  
P.O. Box 20991  
Winston-Salem, North Carolina 27120

1 subsection of that which is at issue here, that whether Your  
2 Honor is trying to determine whether something is clearly shown  
3 or not, it seems to me that there's a lot of gaps that have not  
4 been appropriately filled out yet by the Plaintiff as their  
5 burden to warrant a preliminary injunction; whereas, on the  
6 merits, those gaps may be able to be fleshed out and  
7 determined.

8           And to just return to this discussion of the  
9 associational First Amendment rights, when you look at the  
10 cases, you can see that they hold that at least one  
11 associational right is that an individual voter has the right  
12 to associate with the political party of her choice. I don't  
13 think there is a contention that this law would infringe on  
14 that.

15           There's also a right that the political party has a  
16 right to identify the people who make up the party. Again,  
17 this law does not say change that, you know, Democrats are  
18 voting in a Republican primary or not.

19           **THE COURT:** Well, it does say you can walk in the  
20 door on the day you file and change your party affiliation.

21           **MR. WARF:** To the extent that it does, I don't think

22 --

23           **THE COURT:** You already told me it did.

24           **MR. WARF:** Well, to the extent that it does, I don't  
25 think that's what they are arguing is unconstitutional about

NCDP, et al. v. Berger, et al. - PI Hearing 1/24/18



1 this issue and that warrants a preliminary injunction.

2           **THE COURT:** Well, yeah, that's right, but it's part  
3 of the way they're saying their rights have been infringed, I  
4 mean, because you are not letting the party -- the party has no  
5 control over who says they're a Democrat or a Republican, I  
6 mean, for that matter. You don't even have this 90-day truth  
7 test, for lack of a better term.

8           **MR. WARF:** A wait-and-see period.

9           **THE COURT:** Yeah, which -- I don't know, it just  
10 seems like it does play into it a little bit. You don't think  
11 so?

12           **MR. WARF:** Well, again, to the extent that it does  
13 play into the analysis of the issue, I think we're looking here  
14 at a preliminary injunction that has to be clearly shown of a  
15 likelihood of success, and when the Plaintiffs are saying what  
16 we've articulated is this section is unconstitutional, but,  
17 yet, we're also saying that these other aspects are also  
18 unconstitutional, I think they're trying to amend the complaint  
19 and what's before the Court as we are going through the oral  
20 argument, and I don't think the Court should permit that and  
21 take a narrow scope as to what they're actually challenging,  
22 that being one section of Session Law 214.

23           But the point where we have spent the most amount of  
24 time on is this notion of that there is an associational right  
25 to select the standard bearer who best represents the party's

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1 ideologies and preferences. As we noted earlier, I think the  
2 notion of the standard bearer in judicial elections, as Your  
3 Honor was questioning at least, is a little suspect that you're  
4 using a judicial candidate to identify what the Democratic  
5 party is going to support in a particular election year.

6 **THE COURT:** But the legislature by statute has itself  
7 decided that party designation is important; right?

8 **MR. WARF:** From the standpoint of information on the  
9 ballot, yes.

10 **THE COURT:** So you can't say it's important on the  
11 one hand and not important on the other hand, which is what it  
12 sounds like you're saying to me. I mean, it's either important  
13 or it's not important, and if it's important --

14 **MR. WARF:** What I'm saying is that their right to  
15 choose their person for office is a First Amendment  
16 associational right, but I don't think we can confuse that with  
17 they have to a right to demand the State offer a primary --

18 **THE COURT:** Uh-huh.

19 **MR. WARF:** -- to make -- help them make that choice.  
20 There's no case that says the primary -- having a primary is  
21 the choice de jure and should be required under all  
22 circumstances.

23 **THE COURT:** So going back to your Iowa Caucus  
24 example, I don't know anything about that, but if you have a  
25 caucus, would that not be the person then who was on the ballot

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1 as opposed to all other people who weren't selected at the  
2 Caucus? Do you understand what I mean?

3 I mean, I hear what you're saying, and it's a good  
4 point. You're saying, well, there are other ways to select a  
5 standard bearer, but the legislature hasn't authorized any of  
6 those other ways. It hasn't provided a way for that choice to  
7 be meaningful; right?

8 **MR. WARF:** Well, I think it has provided a way. In  
9 fact, you can see from some of these other elections that when  
10 the specific political party makes an endorsement, that's what  
11 they're doing; they're picking their standard bearer.

12 Now, I don't know that the law equates necessarily  
13 the choice -- a party's choice to pick a standard bearer, as  
14 protected by the First Amendment, with the ability to exclude  
15 other people from that party running in the general election.

16 **THE COURT:** Well, what does mean? I mean, exclusion  
17 is exactly what the *Jones* case was about; right?

18 **MR. WARF:** Exclusion of other people making the  
19 party's choice.

20 **THE COURT:** Okay.

21 **MR. WARF:** I don't think the exclusion of choice  
22 applies to the general election. I think the exclusion of  
23 choice is I don't want Republicans making my choice as the  
24 Democratic Party or vice versa as to who is going to be running  
25 on the ballot in a general election.

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1           **THE COURT:** Right. I mean, that's -- yes.

2           **MR. WARF:** That's not infringed.

3           **THE COURT:** So, now, in North Carolina, it will not  
4 be Republicans deciding who's going to run as a Democrat as a  
5 group or Democrats deciding for Republicans as a group; it's  
6 individuals deciding. An individual who goes in and files as a  
7 Republican is deciding who the Republican Party is -- who the  
8 Republican candidates are basically. They do that  
9 individually.

10           **MR. WARF:** I think by filing, yes, but I don't think  
11 that that is -- equates to the -- that because five individuals  
12 as Republicans decided to run for a particular judicial seat,  
13 that they all are the standard bearers of the party through  
14 their individual choice to file. The party still has the  
15 ability to come back and say we like person A. Yes, there may  
16 be other Republicans, but we're backing person A.

17           **THE COURT:** The party through its leadership.

18           **MR. WARF:** Its leadership or whatever --

19           **THE COURT:** Because you are prohibiting the party  
20 through an election, a public election, from selecting its  
21 standard bearer, right, by not having a primary?

22           **MR. WARF:** Their ability to choose via a primary has  
23 been eliminated for 2018, but that does not eliminate their  
24 ability to choose a person to back. The two are not synonymous  
25 because if they were synonymous, Your Honor, then you would be

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1 saying you have to have a primary because the primary, as the  
2 selection method, is protected under the First Amendment. And  
3 I don't think necessarily that any political party would say,  
4 or any individual, that because the General Assembly offers one  
5 method of choice, that that somehow is rolled up into a First  
6 Amendment right to not ever change that method of choice or  
7 state choice, as long as it doesn't --

8           **THE COURT:** I mean, I'll be interested to hear what  
9 the Plaintiffs say on rebuttal. Certainly, there could be  
10 different ways than a primary, one would think, to select a,  
11 we'll just use the case law, standard bearer, but it kind of  
12 comes back to that definition of standard bearer. I just would  
13 be interested in you pointing to me if there is any language in  
14 any of these cases that indicates that standard bearer means  
15 something different from nominee.

16           **MR. WARF:** I don't know that the language has been  
17 that specific about it, but that language goes all the way back  
18 to a concurring result in 1975 in the *Ripon Society* case,  
19 R-I-P-O-N, and it has been carried forth as an associational  
20 right to choose a standard bearer. And in that *Ripon* case, I  
21 believe they were talking about, indeed, someone who would help  
22 shape the policies of the party for a particular year. I mean,  
23 you can think about that from a presidential election choice.  
24 It's probably going to drive the nature of the party for that  
25 particular year, and I believe -- I would have to go back and

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# **Exhibit E**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2018-13  
SENATE BILL 486

AN ACT TO MAKE VARIOUS CHANGES RELATED TO ELECTION LAWS.

The General Assembly of North Carolina enacts:

**PART I. CRIMINAL RECORD CHECKS FOR STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT**

SECTION 1.(a) Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

**"§ 143B-968. Criminal record checks for employees and contractors of the State Board of Elections and Ethics Enforcement and county directors of elections.**

(a) As used in this section, the term:

(1) "Current or prospective employee" means any of the following:

- a. A current or prospective permanent or temporary employee of the State Board or a current or prospective county director of elections.
- b. A current or prospective contractor with the State Board.
- c. An employee or agent of a current or prospective contractor with the State Board.
- d. Any other individual otherwise engaged by the State Board who has or will have the capability to update, modify, or change elections systems or confidential elections or ethics data.

(2) "State Board" means the State Board of Elections and Ethics Enforcement.

(b) The Department of Public Safety may provide to the Executive Director of the State Board a current or prospective employee's criminal history from the State and National Repositories of Criminal Histories. The Executive Director shall provide to the Department of Public Safety, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Public Safety. The fingerprints of the current or prospective employee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(c) The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The criminal history report shall be provided to the Executive Director of the State Board, who shall keep all information obtained pursuant to this section confidential to the State Board. A criminal history report obtained as provided in this section is not a public record under Chapter 132 of the General Statutes."

SECTION 1.(b) Subpart D of Part 4 of Article 13 of Chapter 143B of the General Statutes is amended by adding a new section to read:

**"§ 143B-969. Criminal record checks for employees of county boards of elections.**



\* S 4 8 6 - V - 5 \*

(a) As used in this section, the term:

(1) "Current or prospective employee" means a current or prospective permanent or temporary employee of a county board of elections.

(2) "State Board" means the State Board of Elections and Ethics Enforcement.

(b) The Department of Public Safety may provide to a county board of elections a current or prospective employee's criminal history from the State and National Repositories of Criminal Histories. The county board of elections shall provide to the Department of Public Safety, along with the request, the fingerprints of the current or prospective employee, a form signed by the current or prospective employee consenting to the criminal record check and use of fingerprints and other identifying information required by the State and National Repositories, and any additional information required by the Department of Public Safety. The fingerprints of the current or prospective employee shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(c) The Department of Public Safety may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee shall not exceed the actual cost of locating, editing, researching, and retrieving the information.

(d) The criminal history report shall be provided to the county board of elections, who shall keep all information obtained pursuant to this section confidential to the county board of elections, the county director of elections, the State Board, and the Executive Director of the State Board. A criminal history report obtained as provided in this section is not a public record under Chapter 132 of the General Statutes."

SECTION 1.(c) Article 1 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"§ 163A-7. Criminal history record checks of current and prospective employees of the State Board and county directors of elections.

(a) As used in this section, the term "current or prospective employee" means any of the following:

(1) A current or prospective permanent or temporary employee of the State Board or a current or prospective county director of elections.

(2) An employee or agent of a current or prospective contractor with the State Board.

(3) Any other individual otherwise engaged by the State Board who has or will have the capability to update, modify, or change elections systems or confidential elections or ethics data.

(b) A criminal history record check shall be required of all current or prospective permanent or temporary employees of the State Board and all current or prospective county directors of elections, which shall be conducted by the Department of Public Safety as provided in G.S. 143B-968. The criminal history report shall be provided to the Executive Director, who shall keep all information obtained pursuant to this section confidential to the State Board, as provided in G.S. 143B-968(d). A criminal history report provided under this subsection is not a public record under Chapter 132 of the General Statutes.

(c) If the current or prospective employee's verified criminal history record check reveals one or more convictions, the conviction shall constitute just cause for not selecting the person for employment or for dismissing the person from current employment. The conviction shall not automatically prohibit employment.

(d) A prospective employee may be denied employment or a current employee may be dismissed from employment for refusal to consent to a criminal history record check or to submit fingerprints or to provide other identifying information required by the State or National



Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(e) A conditional offer of employment or appointment may be extended pending the results of a criminal history record check authorized by this section.

(f) A county board of elections shall require a criminal history record check of all current or prospective employees of the county board of elections, as defined in G.S. 163A-778(a)(1), who have or will have access to the statewide computerized voter registration system maintained under G.S. 163A-874 and for any additional position or function as the State Board may designate. The county director of elections shall provide the criminal history record of all current or prospective employees of the county board of elections required by this subsection or in designated positions to the Executive Director and State Board.

(g) Neither appointment as a precinct official or assistant under Part 4 of Article 16 of this Chapter nor employment at a one-stop early voting location shall require a criminal history record check unless the official, assistant, or employee performs a function designated by the State Board pursuant to subsection (f) of this section."

SECTION 1.(d) Part 2 of Article 16 of Chapter 163A of the General Statutes is amended by adding a new section to read:

"§ 163A-778. Criminal history record checks of current and prospective employees of county boards of elections.

(a) As used in this section, the term "current or prospective employee" means a current or prospective permanent or temporary employee of a county board of elections who has or will have access to the statewide computerized voter registration system maintained under G.S. 163A-874 or has a position or function designated by the State Board as provided in G.S. 163A-7(f).

(b) The county board of elections shall require a criminal history record check of all current or prospective employees, which shall be conducted by the Department of Public Safety as provided in G.S. 143B-969. The criminal history report shall be provided to the county board of elections. A county board of elections shall provide the criminal history record of all current or prospective employees required by G.S. 163A-7 to the Executive Director and the State Board. The criminal history report shall be kept confidential as provided in G.S. 143B-969(d) and is not a public record under Chapter 132 of the General Statutes.

(c) If the current or prospective employee's verified criminal history record check reveals one or more convictions, the conviction shall constitute just cause for not selecting the person for employment, or for dismissing the person from current employment. The conviction shall not automatically prohibit employment.

(d) The county board of elections may deny employment to or dismiss from employment a current or prospective employee who refuses to consent to a criminal history record check or to submit fingerprints or to provide other identifying information required by the State or National Repositories of Criminal Histories. Any such refusal shall constitute just cause for the employment denial or the dismissal from employment.

(e) The county board of elections may extend a conditional offer of employment or appointment pending the results of a criminal history record check authorized by this section.

(f) Neither appointment as a precinct official or assistant under Part 4 of Article 16 of this Chapter nor employment at a one-stop early voting location shall require a criminal history record check unless the official, assistant, or employee performs a function designated by the State Board pursuant to G.S. 163A-7(f)."

SECTION 1.(e) G.S. 163A-774(b) reads as rewritten:

"(b) Appointment, Duties; Termination. – Upon receipt of a nomination from the county board of elections stating that the nominee for director of elections is submitted for appointment upon majority selection by the county board of elections the Executive Director shall issue a letter of appointment of such nominee to the chairman of the county board of elections within 10

days after receipt of the nomination. Thereafter, nomination, unless good cause exists to decline the appointment. The Executive Director may delay the issuance of appointment for a reasonable time if necessary to obtain a criminal history records check sought under G.S. 143B-968. The Executive Director shall apply the standards provided in G.S. 163A-7 in determining whether a nominee with a criminal history shall be selected. If the Executive Director determines a nominee shall not be selected and does not issue a letter of appointment, the decision of the Executive Director of the State Board shall be final unless the decision is, within 10 days from the official date on which it was made, deferred by the State Board. If the State Board defers the decision, then the State Board shall make a final decision on appointment of the director of elections and may direct the Executive Director to issue a letter of appointment. If an Executive Director issues a letter of appointment, the county board of elections shall enter in its official minutes the specified duties, responsibilities and designated authority assigned to the director by the county board of elections. The specified duties and responsibilities shall include adherence to the duties delegated to the county board of elections pursuant to G.S. 163A-769. A copy of the specified duties, responsibilities and designated authority assigned to the director shall be filed with the State Board. In the event the Executive Director is recused due to an actual or apparent conflict of interest from rendering a decision under this section, the chair and vice-chair of the State Board shall designate a member of staff to fulfill those duties."

**SECTION 1.(f)** This section becomes effective August 1, 2018.

## **PART II. 2018 JUDICIAL ELECTIONS BALLOT INFORMATION**

**SECTION 2.(a)** The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters' understanding of the 2018 judicial races.

**SECTION 2.(b)** For the 2018 general election, the State Board of Elections and Ethics Enforcement shall, notwithstanding G.S. 163A-1114(b)(2), list the following judicial offices at the end of all partisan offices listed on the general election ballot:

- (1) Justices of the Supreme Court.
- (2) Judges of the Court of Appeals.
- (3) Judges of the superior courts.
- (4) Judges of the district courts.

**SECTION 2.(c)** Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

"No primaries for judicial office were held in 2018. The information listed by each of the following candidates' names indicates only the candidates' party affiliation or unaffiliated status on their voter registration at the time they filed to run for office."

**SECTION 2.(d)** Except as provided in this section, ballot order for the judicial offices listed in subsection (b) of this section shall be as provided in Section 4(j) of S.L. 2017-214.

**SECTION 2.(e)** This section is effective when it becomes law and applies to the 2018 general election.

### **PART III. OTHER ELECTION CHANGES**

**SECTION 3.1.** G.S. 150B-45 reads as rewritten:

**"§ 150B-45. Procedure for seeking review; waiver.**

(a) Procedure. – To obtain judicial review of a final decision under this Article, the person seeking review must file a petition within 30 days after the person is served with a written copy of the decision. The petition must be filed as follows:

- (1) Contested tax cases. – A petition for review of a final decision in a contested tax case arising under G.S. 105-241.15 must be filed in the Superior Court of Wake County.
- (2) Other final decisions. – A petition for review of any other final decision under this Article must be filed in the superior court of the county where the person aggrieved by the administrative decision resides, or in the case of a person residing outside the State, in the county where the contested case which resulted in the final decision was filed.

(b) Waiver. – A person who fails to file a petition within the required time waives the right to judicial review under this Article. For good cause shown, however, the superior court may accept an untimely petition.

(c) Judicial Review for State Board of Elections and Ethics Enforcement. – For a stay entered pursuant to G.S. 150B-33(b)(6), the State Board of Elections and Ethics Enforcement may obtain judicial review of the temporary restraining order or preliminary injunction in the superior court of the county designated in subsection (a) of this section."

**SECTION 3.2.(a)** G.S. 163A-741 is amended by adding a new subsection to read:

"(j1) Notwithstanding G.S. 153A-98 or any other provision of law, all officers, employees, and agents of a county board of elections are required to give to the State Board, upon request, all information, documents, and data within their possession, or ascertainable from their records, including any internal investigation or personnel documentation and are required to make available, upon request pursuant to an investigation under subsection (d) of this section, any county board employee for interview and to produce any equipment, hardware, or software for inspection. These requirements are mandatory and shall be timely complied with as specified in a request made by any four members of the State Board."

**SECTION 3.2.(b)** G.S. 153A-98 is amended by adding a new subsection to read:

"(c5) Notwithstanding the requirements of this section, information shall be provided to the State Board of Elections and Ethics Enforcement from employee personnel records as provided in G.S. 163A-741."

**SECTION 3.3.** G.S. 163A-775 is amended by adding a new subsection to read:

"(e) In the event the Executive Director is recused due to an actual or apparent conflict of interest from rendering a decision under this section, the chair and vice-chair of the State Board shall designate a member of staff to fulfill those duties."

**SECTION 3.4.** G.S. 163A-953 reads as rewritten:

**"§ 163A-953. General election participation by new political party.**

In the first general election following the date on which a new political party qualifies under the provisions of G.S. 163A-950, it shall be entitled to have the names of its candidates for national, State, congressional, and local offices printed on the official ballots upon paying a filing fee equal to that provided for candidates for the office in G.S. 163A-979 or upon complying with the alternative available to candidates for the office in G.S. 163A-980.

For the first general election following the date on which it qualifies under G.S. 163A-950, a new political party shall select its candidates by party convention. An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have that individual's name placed on the general election ballot as a candidate for the new political party for the same office in that year. Following adjournment of the nominating convention, but not later than the first day of July prior to the general election, the president of the convention shall certify to the State Board the names of persons chosen in the convention as the new party's candidates in the ensuing general election. Any candidate nominated by a new party shall be affiliated with the party at the time of certification to the State Board. The requirement of affiliation with the party will be met if the candidate submits at or before the time of certification as a candidate an application to change party affiliation to that party. The State Board shall print names thus certified on the appropriate ballots as the nominees of the new party. The State Board shall send to each county board of elections the list of any new party candidates so that the county board can add those names to the appropriate ballot."

**SECTION 3.6.** G.S. 163A-1114(b)(4) reads as rewritten:

"(4) When offices are in the same class, they shall be listed in alphabetical order by office name, or in numerical or alphabetical order by district name. Governor and Lieutenant Governor, in that order, shall be listed before other Council of State offices. The Supreme Court shall be listed before the Court of Appeals. Judicial offices and district attorney shall be listed, in that order, after other offices in the same class. Mayor shall be listed before other citywide offices. Chair of a board, where elected separately, shall be listed before other board seats having the same electorate. Chief Justice shall be listed before Associate Justices."

**SECTION 3.6A.** G.S. 163A-1115(a)(1) reads as rewritten:

"(1) That the vendor post a performance bond or letter of credit to cover damages resulting from defects in the voting system-system, expenses associated with State or federal decertification of the voting system, and to protect against the vendor's insolvency or financial inability to make State or federally mandated modifications or updates to the voting system. Damages may include, among other items, any costs of conducting a new county or statewide election attributable to those defects. The bond or letter of credit shall be maintained in the amount determined by the State Board as sufficient for the cost of a new statewide election or in the amount of ten million dollars (\$10,000,000), whichever is greater."

**SECTION 3.7.(a)** G.S. 163A-1115(c) reads as rewritten:

"(c) Only electronic poll books or ballot duplication systems that have been certified by the State Board in accordance with procedures and subject to standards adopted by the State Board-Board, or which have been developed or maintained by the State Board, shall be permitted for use in elections in this State. Among other requirements as set by the State Board, the certification requirements shall require that a vendor meet at least all of the following elements:

- (1) That the vendor post a bond or letter of credit to cover damages resulting from defects in the electronic poll book or ballot duplication system, Damages may include, among other items, any costs of conducting a new election attributable to those defects.
- (2) That the vendor provide access to all of any information required to be placed in escrow by a vendor pursuant to G.S. 163A-1118 for review and examination by the State Board, the Department of Information Technology, the State chairs of each political party recognized under G.S. 163A-950, the purchasing county, and designees as provided in subdivision (9) of subsection (f) of this section.

- (3) That the vendor must quote a statewide uniform price for each unit of the equipment.
- (4) That the vendor must separately agree with the purchasing county that if it is granted a contract to provide software for an electronic poll books or ballot duplication system but fails to debug, modify, repair, or update the software as agreed or, in the event of the vendor having bankruptcy filed for or against it, the source code described in G.S. 163A-1118(a) shall be turned over to the purchasing county by the escrow agent chosen under G.S. 163A-1118(a)(1) for the purposes of continuing use of the software for the period of the contract and for permitting access to the persons described in subdivision (2) of this subsection for the purpose of reviewing the source code."

**SECTION 3.7.(b)** G.S. 163A-1118 is amended by adding a new subsection to read:

"(c) Definitions. – For the purposes of this section, the term "voting system" shall include an electronic poll book or a ballot duplication system."

**SECTION 3.8.(a)** G.S. 163A-1115 is amended by adding the following new subsections to read:

"(h) Neither certification of electronic poll books, ballot duplication systems, or voting systems under this section shall constitute a license under Chapter 150B of the General Statutes.

(i) The State Board in writing may decertify or otherwise halt the use of electronic poll books in North Carolina. Any such action is appealable only to the Superior Court of Wake County.

(j) No voting system used in any election in this State shall be connected to a network, and any feature allowing connection to a network shall be disabled. Prohibited network connections include the Internet, intranet, fax, telephone line, networks established via modem, or any other wired or wireless connection."

**SECTION 3.8.(b)** G.S. 150B-2(3) reads as rewritten:

"(3) "License" means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and Statutes, occupational licenses, licenses, and certifications of electronic poll books, ballot duplication systems, or voting systems under G.S. 163A-1115."

**SECTION 3.9.(a)** G.S. 163A-1388(a) reads as rewritten:

"(a) Class 2 Misdemeanors. — Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be ~~unlawful~~ unlawful to do any of the following:

- (1) For any person to fail, as an officer or as a judge or chief judge of a primary or election, or as a member of any board of elections, to prepare the books, ballots, and return blanks which it is ~~his~~ the person's duty under the law to prepare, or to distribute the same as required by law, or to perform any other duty imposed upon ~~him~~ that person within the time and in the manner required by ~~law~~ law.
- (2) For any member, director, or employee of a board of elections to alter a voter registration application or other voter registration record without either the written authorization of the applicant or voter or the written authorization of the State ~~Board~~ Board.
- (3) For any person to continue or attempt to act as a judge or chief judge of a primary or election, or as a member of any board of elections, after having been legally removed from such position and after having been given notice of such ~~removal~~ removal.
- (4) For any person to break up or by force or violence to stay or interfere with the holding of any primary or election, to interfere with the possession of any

- ballot box, election book, ballot, or return sheet by those entitled to possession of the same under the law, or to interfere in any manner with the performance of any duty imposed by law upon any election officer or member of any board of ~~elections;~~elections.
- (5) For any person to be guilty of any boisterous conduct so as to disturb any member of any election board or any chief judge or judge of election in the performance of ~~his that person's~~ duties as imposed by ~~law;~~law.
  - (6) For any person to bet or wager any money or other thing of value on any ~~election;~~election.
  - (7) For any person, directly or indirectly, to discharge or threaten to discharge from employment, or otherwise intimidate or oppose any legally qualified voter on account of any vote such voter may cast or consider or intend to cast, or not to cast, or which ~~he that voter~~ may have failed to ~~cast;~~cast.
  - (8) For any person to publish in a newspaper or pamphlet or otherwise, any charge derogatory to any candidate or calculated to affect the candidate's chances of nomination or election, unless such publication be signed by the party giving publicity to and being responsible for such ~~charge;~~charge.
  - (9) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or ~~election;~~election.
  - (10) For any person to give or promise, in return for political support or influence, any political appointment or support for political ~~office;~~office.
  - (11) For any ~~chairman chair~~ of a county board of elections or other returning officer to fail or neglect, willfully or of malice, to perform any duty, act, matter or thing required or directed in the time, manner and form in which said duty, matter or thing is required to be performed in relation to any primary, general or special election and the returns ~~thereof;~~thereof.
  - (12) For any clerk of the superior court to refuse to make and give to any person applying in writing for the same a duly certified copy of the returns of any primary or election or of a tabulated statement to a primary or election, the returns of which are by law deposited in his office, upon the tender of the fees ~~therefor;~~therefor.
  - (13) For any person willfully and knowingly to impose upon any blind or illiterate voter a ballot in any primary or election contrary to the wish or desire of such voter, by falsely representing to such voter that the ballot proposed to ~~him the~~ voter is such as ~~he desires;~~ or the voter desires.
  - (14) Except as authorized by G.S. 163A-878, for any person to provide false information, or sign the name of any other person, to a written report under ~~G.S. 163A-878; [or] G.S. 163A-878.~~
  - (15) For any person to be compensated based on the number of forms submitted for assisting persons in registering to vote.
  - (16) For any person who is not an elections official or who is not otherwise authorized by law to retain a registrant's signature, full or partial Social Security number, date of birth, or the identity of the public agency at which the registrant registered under G.S. 163A-884, any electronic mail address submitted under Part 2 of Article 17 of this Chapter, or drivers license number from any form described in G.S. 163-862 after submission of the form to the county board of elections or elections official."

**SECTION 3.9.(b)** This section becomes effective December 1, 2018, and applies to offenses committed on or after that date.

**SECTION 3.10.** G.S. 163A-1412(a) reads as rewritten:

"(a) Each candidate, candidate who has received funds or made payments or given consent for anyone else to receive funds or transfer anything of value for the purpose of bringing about that individual's nomination or election for office, political committee, and referendum committee shall appoint a treasurer and, under verification, report the name and address of the treasurer to the Board. Only an individual who resides in North Carolina shall be appointed as a treasurer. A candidate may appoint himself or herself or any other individual, including any relative except his or her spouse, as his the candidate's treasurer, and, upon failure to file report designating a treasurer, the candidate shall be concluded to have appointed himself or herself as treasurer and shall be required to personally fulfill the duties and responsibilities imposed upon the appointed treasurer and subject to the penalties and sanctions hereinafter provided."

**SECTION 3.11.(a)** Section 30.8 of S.L. 2013-281, as amended by Section 6(a) of S.L. 2015-103, reads as rewritten:

"**SECTION 30.8.** Any direct record electronic (DRE) voting systems currently certified by the State Board of Elections and Ethics Enforcement which do not use paper ballots shall be decertified and shall not be used in any election held on or after ~~September 1, 2019, for counties that use direct record electronic voting machines on election day as of January 1, 2015, and January 1, 2018, for all other counties.~~ December 1, 2019. Decertification of a DRE voting system that does not use paper ballots may not be appealed to the Superior Court of Wake County pursuant to ~~G.S. 163-165.7(b).~~ G.S. 163A-1115(d)."

**SECTION 3.11.(b)** Section 30.9 of S.L. 2013-281, as amended by Section 6(b) of S.L. 2015-103, reads as rewritten:

"**SECTION 30.9.** This Part becomes effective ~~September 1, 2019, December 1, 2019,~~ for counties that use direct record electronic voting machines on election day as of January 1, 2015. ~~This Part becomes effective for all other counties January 1, 2018, machines.~~"

#### **PART IV. DUAL OFFICE HOLDING CHANGES**

**SECTION 4.(a)** G.S. 160A-284 reads as rewritten:

"**§ 160A-284. Oath of office; holding other offices.**

(a) Each person appointed or employed as chief of police, policeman, or auxiliary policeman shall take and subscribe before some person authorized by law to administer oaths the oath of office required by Article VI, Sec. 7, of the Constitution. The oath shall be filed with the city clerk.

(b) ~~The offices of policeman, policeman and chief of police, and auxiliary policeman~~ police are hereby declared to be offices that may be held concurrently with any other appointive office pursuant to Article VI, Sec. 9, of the Constitution. The offices of policeman and chief of police are hereby declared to be offices that may be held concurrently with any elective office, other than elective office in the municipality employing the policeman or chief of police, pursuant to Section 9 of Article VI of the Constitution.

(c) The office of auxiliary policeman is hereby declared to be an office that may be held concurrently with any elective office or appointive office pursuant to Article VI, Sec. 9, of the Constitution."

**SECTION 4.(b)** This section is effective when it becomes law. Any policeman or chief of police having taken an oath of office to any elective office in this State prior to the effective date is not deemed to have resigned his or her position as a law enforcement officer due to the elective office.

#### **PART V. TECHNICAL CHANGES TO G.S. 163A-2.**

**SECTION 5.** G.S. 163A-2 is rewritten to read:

**"§ 163A-2. Membership.**

(a) The State Board shall consist of nine individuals registered to vote in North Carolina, appointed by the Governor, as follows:

- (1) Four individuals registered with the political party with the highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chairs of that party.
- (2) Four individuals registered with the political party with the second highest number of registered affiliates in the State, from a list of six nominees submitted by the State party chairs of that party.
- (3) One individual not registered with either the political party with the largest number of registered affiliates in the State or of the political party with the second-largest number of registered affiliates in the State, from a list of two nominees selected by the other eight members of the State Board.

The number of registered affiliates shall be as reflected by the latest registration statistics published by the State Board. The Governor shall make all appointments promptly upon receipt of the list of nominees from each nominating entity and in no instance shall appoint later than 30 days after receipt of the list.

(b) Within 14 days of appointment by the Governor of the eight members appointed under subdivisions (1) and (2) of subsection (a) of this section, the eight members shall hold an initial appointment selection meeting for the sole purpose of selecting two nominees who meet the qualifications for appointment under subdivision (3) of subsection (a) of this section and shall promptly submit those names to the Governor. No additional actions, other than the oath of office, shall be taken by the eight members appointed under subdivisions (1) and (2) of subsection (a) of this section at the appointment selection meeting.

(c) Beginning on May 1 of the odd-numbered year, members shall serve for two-year terms.

(d) Members may be removed from the State Board by the Governor, acting in the Governor's discretion. Vacancies created on the State Board by removal from office by the Governor shall be filled in accordance with subsection (e) of this section.

(e) Any vacancy occurring on the State Board shall be filled by an individual meeting the same appointment criteria under subsection (a) of this section as the vacating member. Any vacancy occurring in the State Board shall be filled by the Governor, and the person so appointed shall fill the unexpired term. The Governor shall fill vacancies as follows:

- (1) For a vacancy for an appointment under subdivision (1) or (2) of subsection (a) of this section, the Governor shall fill the vacancy from a list of two names submitted by the State party chair of the political party with which the vacating member was affiliated if that list is submitted within 30 days of the occurrence of the vacancy.
- (2) For a vacancy for an appointment under subdivision (3) of subsection (a) of this section, the Governor shall fill the vacancy from a list of two names submitted by the remaining members of the State Board if that list is submitted within 30 days of the occurrence of the vacancy. The State Board shall hold a meeting within 21 days of the occurrence of the vacancy for the purpose of selecting two nominees for submission to the Governor to fill the vacancy.

(f) At the first meeting held after any new appointments are made, the members of the State Board shall take the following oath:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain, and defend the Constitution of said State; and that I will well and truly execute the duties of the office of member of the Bipartisan State Board of



Elections and Ethics Enforcement according to the best of my knowledge and ability, according to law, so help me God."

(g) At the first meeting held after the appointment of the member under subdivision (3) of subsection (a) of this section, the State Board shall organize by electing one of its members chair and one of its members vice-chair, each to serve a two-year term as such. In 2017 and every four years thereafter, the chair shall be a member of the political party with the highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the second highest number of registered affiliates. In 2019 and every four years thereafter, the chair shall be a member of the political party with the second highest number of registered affiliates, as reflected by the latest registration statistics published by the State Board, and the vice-chair a member of the political party with the highest number of registered affiliates.

(h) At the first meeting held after the appointment under subdivision (3) of subsection (a) of this section, the State Board shall elect one of its members as secretary, to serve a two-year term as such.

(i) No person shall be eligible to serve as a member of the State Board who meets any of the following criteria:

- (1) Holds any elective or appointive office under the government of the United States, the State of North Carolina, or any political subdivision thereof.
- (2) Holds any office in a political party or organization.
- (3) Is a candidate for nomination or election to any office.
- (4) Is a campaign manager or treasurer of any candidate in a primary or election.
- (5) Has served two full consecutive terms.

(j) No person while serving on the State Board shall do any of the following:

- (1) Make a reportable contribution to a candidate for a public office over which the State Board would have jurisdiction or authority.
- (2) Register as a lobbyist under Article 8 of this Chapter.
- (3) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the nomination or election of one or more clearly identified candidates for public office.
- (4) Make written or oral statements intended for general distribution or dissemination to the public at large supporting or opposing the passage of one or more clearly identified referendum or ballot issue proposals.
- (5) Solicit contributions for a candidate, political committee, or referendum committee.

(k) State Board members shall receive per diem, subsistence, and travel, as provided in G.S. 138-5 and G.S. 138-6."

## **PART VI. SEVERABILITY CLAUSE**

**SECTION 6.** If any section or provision of this act is declared unconstitutional or invalid by the courts, it does not affect the validity of this act as a whole or any part other than the part so declared to be unconstitutional or invalid.

## **PART VII. EFFECTIVE DATE**

**SECTION 7.** Except as otherwise provided herein, this act is effective when it becomes law and applies to elections held on or after that date.

In the General Assembly read three times and ratified this the 5<sup>th</sup> day of June, 2018.

s/ Philip E. Berger  
President Pro Tempore of the Senate

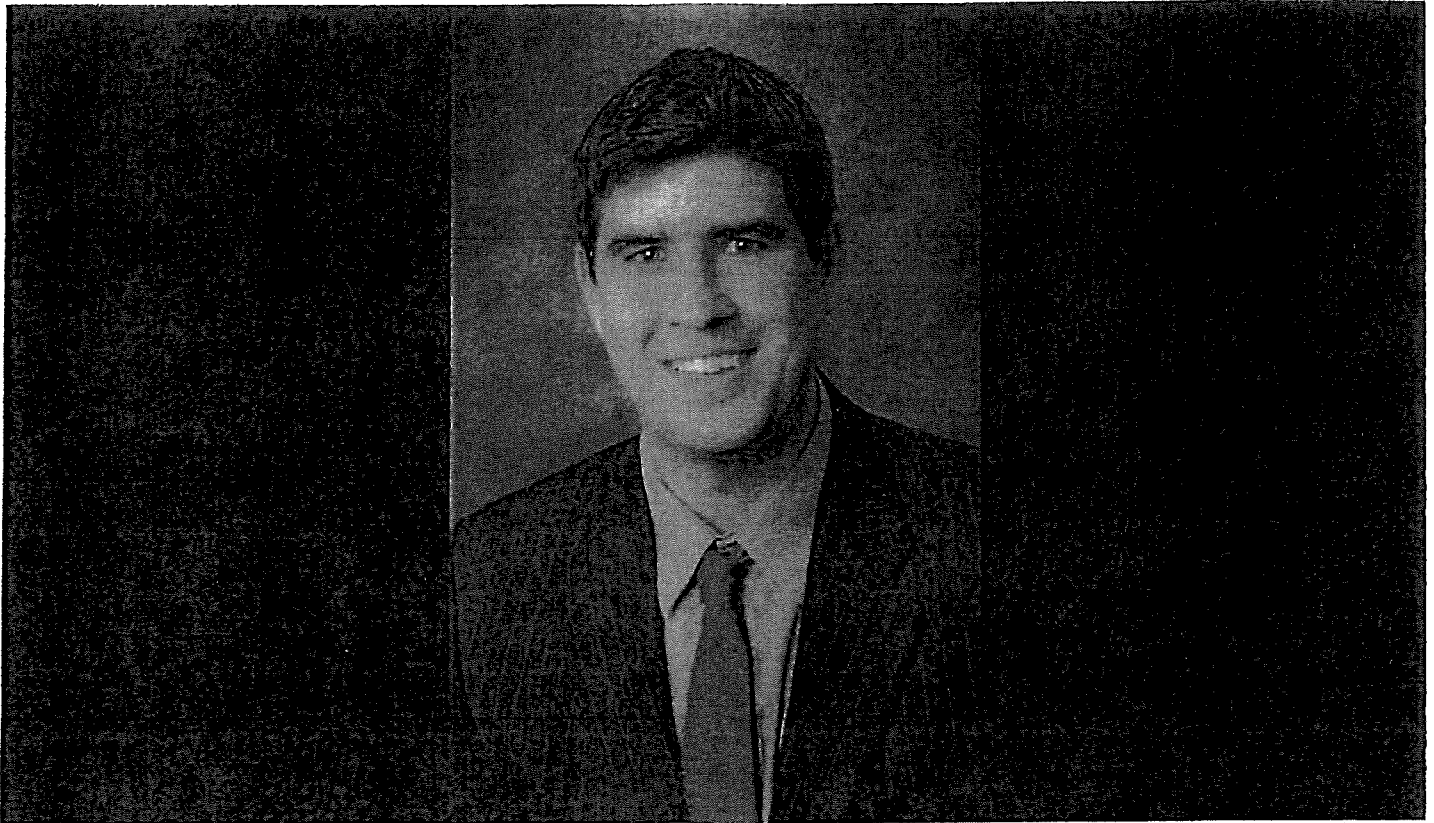
s/ Nelson Dollar  
Presiding Officer of the House of Representatives

VETO Roy Cooper  
Governor

Became law notwithstanding the objections of the Governor at 1:20 p.m. this 20<sup>th</sup> day of June, 2018.

s/ James White  
House Principal Clerk

# **Exhibit F**



ELECTIONS

# Why one NC GOP official calls Republican Supreme Court candidate 'the enemy'

BY JIM MORRILL AND ANNE BLYTHE  
*[jmorrill@charlotteobserver.com](mailto:jmorrill@charlotteobserver.com)  
[ablythe@newsobserver.com](mailto:ablythe@newsobserver.com)*

July 04, 2018 09:29 AM  
Updated July 05, 2018 02:12 PM

North Carolina Republicans are crying foul over a candidate who could change the balance of the state Supreme Court. And that candidate is a Republican.

Raleigh attorney Chris Anglin filed at the last minute last week. He joined incumbent Justice Barbara Jackson, a Republican, and Democrat Anita Earls in the race.

But until June 7, Anglin was a registered Democrat. Republicans worry that by siphoning votes from Jackson, he could open the door for Democrat Earls. GOP executive director Dallas Woodhouse made it clear whom the party supports.

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PHOTO: JEFFREY...

"The party has endorsed somebody, and (Anglin) will be treated like the enemy he is," Woodhouse said.

### Breaking News

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Anglin's candidacy is the latest twist in a year when Democrats have fought Republican changes to judicial elections and the courts. It also underscores the importance of the November election in a year when Republican lawmakers eliminated judicial primaries, making it possible for candidates to dilute a party's vote and sway the election.

Last month, in an apparent attempt to siphon votes for Democratic candidates, a group linked to Republican consultants sent mailers "recruiting Democratic lawyers to run for judge."

And one Democratic judicial candidate from Wake County paid the filing fee of a man to run as a second Republican candidate, prompting the county GOP chairman to call it the "sleaziest, most underhanded, and outrageous thing I can imagine."

But the race for Supreme Court, now controlled 4-3 by Democrats, is the state's highest profile judicial contest. It features a candidate in Earls who has been a regular thorn in the side of the GOP.

As former executive director of the Durham-based Southern Coalition for Social Justice, Earls, a one-time Charlotte lawyer, has played a major role in lawsuits challenging North Carolina's redistricting plans, voter ID law and other voting restrictions.

Barbara Jackson, left, and Anita Earls are candidates for the N.C. Supreme Court.

File photos



Jackson said she stands out from Anglin because of her experience — 28 years as a lawyer and eight years on the state Supreme Court bench. She did not know until Monday that the other Republican on the ballot with her used to be a Democrat.

"Really I'm the only Republican on the ballot," she said.

Anglin, 32, is running as a "constitutional Republican" who assails what he calls "the constant assault on the independent judiciary at the state and federal level."

Though he shared a campaign photo of Democratic Gov. Roy Cooper on his Facebook page in 2015, Anglin said he's not a Democratic "plant." He's also Facebook friends with Democratic Sen. Jay Chaudhuri and Ken Eudy, a Cooper adviser.

"I filed as a Republican to ... stand up for the independence of the judiciary," he said. "...This is not a trick by the Democrats. ... I didn't think I could sit on the sidelines any more and not take action."

For several years, the Republican-led General Assembly has made many changes to the courts that rule on the constitutionality of laws. Since 2011, the lawmakers taking North Carolina on a sharp swing to the political right have seen many of their laws overturned in court.

This year, they talked about sweeping changes to judicial districts and adopted a proposal to ask voters to amend the state Constitution so the two leaders of the General Assembly control what names the governor must consider when filling vacancies on the benches of the state courts.

They also considered asking voters to abandon the election of judges, but stopped short of that. Last year, they did away with primary elections for all judicial races this year.

The state Democratic Party went to federal court in an effort to stop that. Attorneys argued that without an election to winnow the field of candidates in the first year in decades that all judicial elections are partisan, the party would not have a way to let voters know its candidate of choice on the November ballot.

Republican lawmakers also changed the election rules for 2018 so that any candidate could declare affiliation with a party right up to the time of filing for office.

Democrats argued in court that could lead to shenanigans. For example, they said, someone could file in their party but not really represent the platform.

A Democratic Party spokesman said the party had nothing to do with recruiting Anglin. So did a Cooper adviser. But one GOP consultant said Anglin could split the GOP vote.

"At the end of the day, in the absence of real information, the impact is that will dilute the vote among Republicans," said Paul Shumaker.

Anglin said he's not running just to split the GOP vote.

"My interest is getting on the bench," he said. "I think there are Republicans out there that are appalled by what the state legislature has done. ...To me, being a constitutional Republican means that you believe in the Constitution and that there should be three co-equal branches of government."

Perry Woods, a campaign consultant who works mostly with Democrats, is helping Anglin with his campaign. Neither he nor Woods would say how they were brought together.

"Other people put us together," Anglin said.

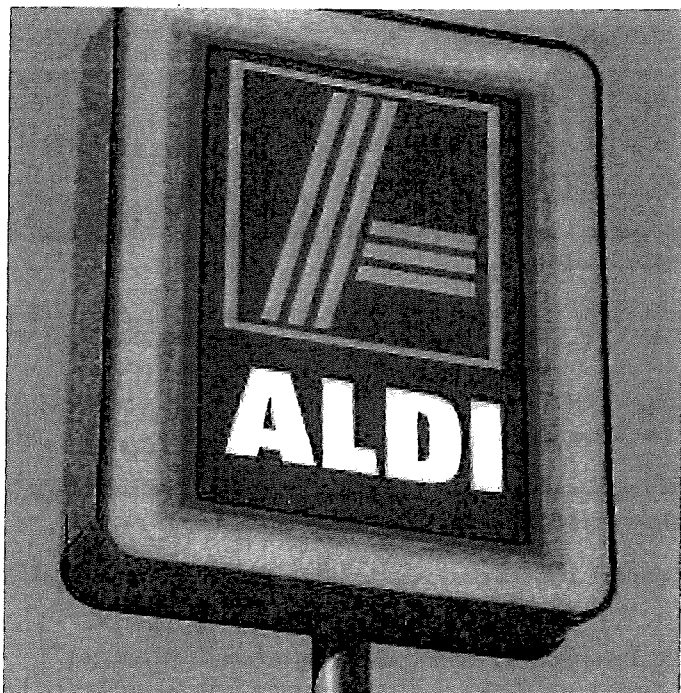
**Correction**

An earlier version of this story misstated how long a candidate had to belong to a party before filing for office. This year candidates could change party affiliation up to the time of filing.

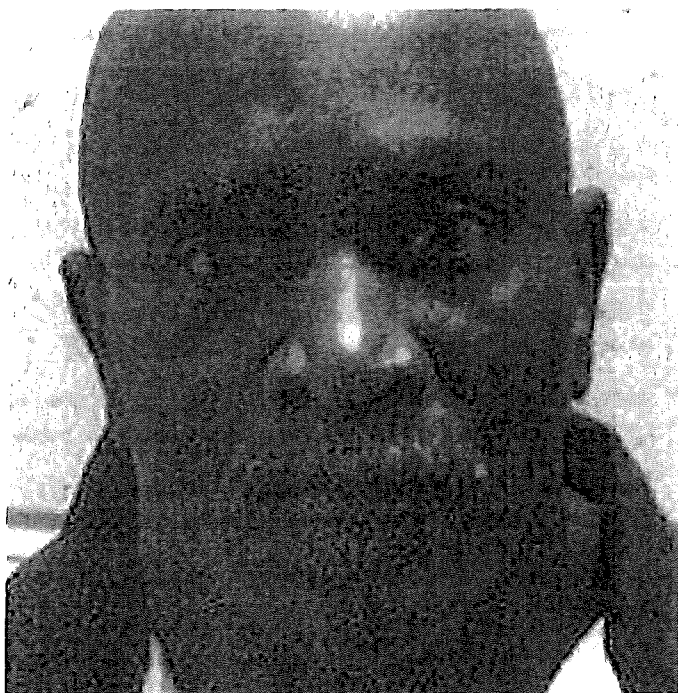
*Jim Morrill, 704-358-5059; @jim Morrill*

*Anne Blythe, 919-836-4948; @AnneBlythe1*

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The Untold Truth of Aldi



Murderer on Death Row Has Extravagant Request for Last Meal

# **Exhibit G**





Roy Cooper, Governor  
*State of North Carolina*

**GOVERNOR ROY COOPER OBJECTIONS AND VETO MESSAGE:**

***Senate Bill 3, AN ACT TO CLARIFY POLITICAL PARTY DISCLOSURE ON THE BALLOT FOR JUDICIAL RACES IN 2018.***

Changing the rules for candidates after the filing has closed is unlawful and wrong, especially when the motive is to rig a contest after it is already underway. All judge elections should be free of partisanship, and continued undermining of these elections creates confusion and shows contempt for the judiciary.

Therefore, I veto the bill.

Roy Cooper  
Governor

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this the 27<sup>th</sup> day of July 2018, at 2:53pm for reconsideration by that body.

The Capitol Building, Raleigh, NC 27602  
Mail: 20301 Mail Service Center, Raleigh, NC 27699-0301  
Phone: (919)814-2100

July 27, 2018

2:53 p.m.

period from 90 days prior the time the candidate filed to run for office and the date the candidate filed to run for office of the requirements of this act. The State Board of Elections and Ethics Enforcement may give notice under this section by written, telephonic, or e-mail or other electronic means.

**SECTION 4.** This act is effective when it becomes law and applies to the 2018 elections only.

In the General Assembly read three times and ratified this the 24<sup>th</sup> day of July, 2018.

*W. Tommy Tucker*  
\_\_\_\_\_  
Tommy Tucker  
Presiding Officer of the Senate

*Tim Moore*  
\_\_\_\_\_  
Tim Moore  
Speaker of the House of Representatives

**VETO**  
*Roy Cooper*

\_\_\_\_\_  
Roy Cooper  
Governor

Approved \_\_\_\_\_ .m. this \_\_\_\_\_ day of \_\_\_\_\_, 2018

RECEIVED FROM GOVERNOR

Date July 27, 2018

Time 2:53 p.m.

Senate Bill 3-Ratified

Page 3  
Signed *Manek Holland*  
Anglin v. Berg

# **Exhibit H**



---

**2018 GENERAL**

**Election Date: 11/06/2018**

This is an official notice of an election to be conducted in BUNCOMBE County on **11/06/2018**. This notice contains a list of all of the ballot measures and federal, State, and local offices this county expects, as of this date, to be on the ballot on the date of the election. (See Attachment)

An Election Notice will be prepared not later than 100 days before a regularly scheduled election that permits absentee voting, and as soon as practicable in the case of an election or vacancy election not regularly scheduled. For a second primary, an Election Notice will be prepared, no later than the day following the date the appropriate board of elections orders that a second primary be held.

As soon as ballot styles are printed, this county board of elections will update this notice with the certified candidates for each office and ballot measures and referenda questions that will be on the ballot. For General Elections during even-numbered years, ballots will be printed 60 days prior to the election. For statewide primaries and other elections (except municipal elections), ballots will be printed 50 days prior to the election. Municipal ballots are available 30 days prior to Election Day. You must request an updated Election Notice.

**Transmitting a Federal Write-In Absentee Ballot:**

This notice may be used in conjunction with the federal write-in absentee ballot (FWAB). Covered military & overseas voters seeking to vote by absentee ballot may use the FWAB to register to vote, request an absentee ballot, and vote an official military-overseas ballot. When using the FWAB to register to vote, and/or request an absentee ballot, please transmit your signed and completed FWAB no later than 5:00 p.m. on the day before Election Day. If submitted later than this day and time, your absentee ballot will not be counted. Federal write-in absentee ballots are available at [www.NCSBE.gov](http://www.NCSBE.gov). You may also request a regular absentee ballot by using the federal postcard application (FPCA), available at [www.FVAP.gov](http://www.FVAP.gov). A regular ballot can be mailed, faxed or emailed to you. You may return the FWAB or a regular absentee ballot by mail, secure fax (919) 715-0351 or email ([absentee@ncsbe.gov](mailto:absentee@ncsbe.gov)).

**Marking a Federal Write-In Absentee Ballot:**

When marking a FWAB, for each office for which you wish to vote, write in either a candidate's name or political party designation. For ballot measures or referenda, write either "YES" (you are *for* the ballot measure or referendum) or "NO" (you are *against* the ballot measure or referendum). In a primary, if you are registered as Democrat, Republican or Libertarian, for partisan contests, you may only vote for the candidates of the party for which you are affiliated. You are also eligible to vote for non-partisan contests. If you are registered as unaffiliated ("Independent"), in a primary, you may choose to vote for the partisan contests of one of the parties or you may choose to vote for non-partisan contests only. Please contact your local board of elections to confirm your party affiliation or voter registration status.

Please check the website for the NC State Board of Elections ([www.NCSBE.gov](http://www.NCSBE.gov)) for additional information on military-overseas absentee voting.

**Election Notice Of Contests and Referenda  
BUNCOMBE BOARD OF ELECTIONS (11/06/2018)**

BUNCOMBE BOARD OF ELECTIONS (11/06/2018)

CANDIDATE NAME	NAME ON BALLOT	PARTY
<b>US HOUSE OF REPRESENTATIVES DISTRICT 10</b>		
PATRICK MCHENRY	Patrick McHenry	REP
DAVID BROWN	David Wilson Brown	DEM
<b>US HOUSE OF REPRESENTATIVES DISTRICT 11</b>		
CLIFTON INGRAM	Clifton B. Ingram, Jr.	LIB
MARK MEADOWS	Mark Meadows	REP
PHILLIP PRICE	Phillip G. Price	DEM
<b>NC STATE SENATE DISTRICT 48</b>		
NORMAN BOSSERT	Norm Bossert	DEM
CHARLES EDWARDS	Chuck Edwards	REP
<b>NC STATE SENATE DISTRICT 49</b>		
WILLIAM MEREDITH	William Meredith	LIB
TERESA VAN DUYN	Terry Van Duyn	DEM
MARK CRAWFORD	Mark Crawford	REP
<b>NC HOUSE OF REPRESENTATIVES DISTRICT 114</b>		
SUSAN FISHER	Susan C. Fisher	DEM
KRIS LINDSTAM	Kris A. Lindstrom	REP
<b>NC HOUSE OF REPRESENTATIVES DISTRICT 115</b>		
JOHN AGER	John Ager	DEM
AMY EVANS	Amy Evans	REP
<b>NC HOUSE OF REPRESENTATIVES DISTRICT 116</b>		
BRIAN TURNER	Brian Turner	DEM
MARILYN BROWN	Marilyn A. Brown	REP
<b>DISTRICT ATTORNEY DISTRICT 40</b>		
TODD WILLIAMS	Todd M. Williams	DEM
<b>NC SUPREME COURT ASSOCIATE JUSTICE SEAT 1</b>		
BARBARA JACKSON	Barbara Jackson	REP
CHRISTOPHER ANGLIN	Christopher (Chris) Anglin	REP
ANITA EARLS	Anita Earls	DEM
<b>NC COURT OF APPEALS JUDGE SEAT 1</b>		
ANDREW HEATH	Andrew T. Heath	REP
JOHN ARROWOOD	John S. Arrowood	DEM
<b>NC COURT OF APPEALS JUDGE SEAT 2</b>		
JEFFERSON GRIFFIN	Jefferson G. Griffin	REP
TOBIAS HAMPSON	Tobias (Toby) Hampson	DEM
SANDRA RAY	Sandra Alice Ray	REP
<b>NC COURT OF APPEALS JUDGE SEAT 3</b>		
SIDNEY KITCHEN	Chuck Kitchen	REP
MICHAEL MONACO	Michael Monaco, Sr.	LIB
ALLEGRA COLLINS	Allegra Katherine Collins	DEM

# **Exhibit I**

# Federal Write-In Absentee Ballot

- If you do not receive your absentee ballot in enough time to meet your State's deadlines, use this ballot as a backup. If you send in this ballot and receive your State's ballot later, you should fill out and return your State ballot as well. Your election office will count only one ballot.
- The following require you to register and request an absentee ballot before filling out this form: AL, AS, AR, CT, FL, GU, HI, ID, IL, IN, IA, KS, LA, MI, NH, NJ, NM, NY, PA, PR, RI, TX, VT, WV, and WY. If your State or territory is listed, complete a Federal Post Card Application (FPCA) online at [FVAP.gov](http://FVAP.gov).
- If you already registered and requested a ballot, send in the *Voter Information* page and the *Official Backup Ballot*.

## Use this form if you are:

- On active duty in the Uniformed Services or Merchant Marine
- An eligible spouse or dependent
- On active duty in the National Guard under State orders (some States only)
- A U.S. citizen living outside the United States

## You can vote wherever you are. This is how.

1. Fill out your *Voter Information* page completely and accurately.
  - Your U.S. voting residence address is used to determine where you are eligible to vote absentee. For military voters, it is usually your last address in your State of legal residence. For overseas citizens, it is usually the last place you lived before moving overseas. You do not need to have any current ties with this address.
  - Most States allow you to provide a Driver's License number or the last 4 digits of your SSN. Some States require a full SSN. See your State's guidelines at [FVAP.gov](http://FVAP.gov).
  - Most States require you to specify a political party to vote in primary elections. This information may be used to register you with a party.
  - Remember to sign the bottom of the *Voter Information* page!
2. Carefully fill out your *Official Backup Ballot*.
  - DO NOT sign your ballot or include any personal information. Keep your ballot anonymous.
  - Remove the adhesive liner from the top and sides of your ballot.
  - Fold and seal tightly.
3. Assemble your documents for mailing.
  - Put your *Voter Information* page and *Official Backup Ballot* into the envelope.
  - You can find the address for your election office at [FVAP.gov](http://FVAP.gov).
  - All States accept this form by mail, but they vary on email and fax. See your State's rules in the *Voting Assistance Guide* online at [FVAP.gov](http://FVAP.gov).

### Agency Disclosure Statement

The public reporting burden for this collection of information is estimated to average 15 minutes per response, including time to review instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to: Department of Defense, Washington Headquarters Services, Executive Services Directorate, Information Management Division, 4800 Mark Center Dr., East Tower, Suite 03F09, Alexandria, VA 22350-3100. [OMB Control #0704-0502]. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number. DO NOT RETURN YOUR FORM TO THE ADDRESS ABOVE.

### Privacy Act Statement

**Authority:** The authority to collect your personal information on this form comes from 52 U.S.C. § 20301, "Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)."

**Principal purpose:** This form serves as a write-in absentee ballot for elections for Federal office or other elections provided by State law or special provisions for all persons covered by UOCAVA.

**Routine use(s):** There is no retention of this information by the Federal government. Completed forms are sent by you to an appropriate State election official.

**Disclosure:** Your disclosure of personal information is voluntary. However, failure to provide the requested information may result in the Federal Write-In Absentee Ballot not being recognized and therefore not counted.

**Questions? Email [vote@fvap.gov](mailto:vote@fvap.gov)**

# Voter Information

## Federal Write-In Absentee Ballot (FWAB)

Have you already registered and requested an absentee ballot?  Yes  No

Some States allow you to use this form to register and request ballots for future elections. Visit [FVAP.gov](http://FVAP.gov) for more details.

Print clearly in blue or black ink.

### 1. Who are you? Pick one.

For absent Uniformed Service members, their families, and citizens residing outside the United States.

- I am on active duty in the Uniformed Services or Merchant Marine -OR-  I am an eligible spouse or dependent.
- I am an activated National Guard member on State orders.
- I am a U.S. citizen living outside the country, and I intend to return.
- I am a U.S. citizen living outside the country, and my return is uncertain.
- I am a U.S. citizen living outside the country, and I have never lived in the United States.

Last name

Suffix (Jr., II)

Sex  Female  Male

First name

Previous names (if applicable)

Middle name

Birth date (MM/DD/YYYY) / /

Social Security Number - - -

Driver's license or State ID #

### 2. What is your U.S. voting residence address?

Your voting materials will not be sent to this address. See Instructions on other side of form.

Street address

Apt #

City, town, village

State

County

ZIP

### 3. Where are you now? You must give your CURRENT contact information.

Your mailing address. (Different from above)

Your mail forwarding address. (If applicable)

### 4. What is your contact information? This is so election officials can reach you about your request.

Provide the country code and area code with your phone and fax number. Do not use a Defense Switched Network (DSN) number.

Email:

Phone:

Alternate email:

Fax:

### 5. What is your voting preference for future elections?

Do you want to register and request a ballot for all elections you are eligible to vote in?

- Yes
- No

How do you want to receive voting materials from your election office?

- Mail
- Email or online
- Fax

What is your political party for primary elections?

### 6. What additional information must you provide?

The following need more information: Alabama, Alaska, Arizona, Puerto Rico, Virginia, and Wisconsin. (Ex. Witness signature, etc.) You may also use this space to clarify your voter information. See the Voting Assistance Guide online at [FVAP.gov](http://FVAP.gov).

### 7. You must read and sign this statement.

I swear or affirm, under penalty of perjury, that:

- The information on this form is true, accurate, and complete to the best of my knowledge. I understand that a material misstatement of fact in completion of this document may constitute grounds for conviction of perjury.
- I am a U.S. citizen, at least 18 years of age (or will be by the day of election), eligible to vote in the requested jurisdiction, and
- I am not disqualified to vote due to having been convicted of a felony or other disqualifying offense, nor have I been adjudicated mentally incompetent; or if so, my voting rights have been reinstated; and
- I am not registering, requesting a ballot, or voting in any other jurisdiction in the United States, except the jurisdiction cited in this voting form.
- In voting, I have marked and sealed this ballot in private and have not allowed any person to observe the marking of this ballot, except those authorized to assist voters under State and Federal law.

Sign here **X**

Today's date (MM/DD/YYYY) / /



# Official Backup Ballot

## Federal Write-In Absentee Ballot (FWAB)

Vote by writing the NAME or PARTY of the candidates you choose. To find out about specific candidates and races go to [FVAP.gov](http://FVAP.gov).

Print clearly in blue or black ink.

### Instructions

- This ballot can be used to vote for federal offices.
- DO NOT write your name or any identifying number (SSN, driver's license) on this ballot.
- Photocopy this page if you require additional room for candidates or ballot initiatives.
- If you are voting in American Samoa, Guam, Puerto Rico, or the U.S. Virgin Islands, you may vote for Delegate or Resident Commissioner, and in presidential primaries. State laws vary about using the FWAB for other offices like Governor or Mayor. Learn more online at [FVAP.gov](http://FVAP.gov).

### Federal offices

President and Vice President

U.S. Senator

U. S. Representative, Delegate, or  
Resident Commissioner to Congress

### Non-federal offices

Office

Candidate name

Political party

### Ballot initiatives

# Official Ballot

Federal Write-In Absentee Ballot

**Private**

---

Fold your ballot and keep it private. Put it in the envelope.

# **EXHIBIT 3**

STATE OF NORTH CAROLINA  
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

18 CVS \_\_\_\_\_

CHRISTOPHER J. ANGLIN, )  
 )  
 Plaintiff, )

v. )

PHILLIP 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; THE STATE OF )  
 NORTH CAROLINA; THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT; and )  
 KIMBERLY W. STRACH, in her )  
 official capacity as EXECUTIVE )  
 DIRECTOR OF THE NORTH )  
 CAROLINA BIPARTISAN STATE )  
 BOARD OF ELECTIONS AND )  
 ETHICS ENFORCEMENT, )

Defendants. )  
)

*MM*  
FILED  
A 6 53

**MOTION FOR TEMPORARY  
RESTRAINING ORDER**

NOW COMES the Plaintiff Christopher J. Anglin (“Anglin”) through counsel and respectfully moves the Court pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure to enter a Temporary Restraining Order to prevent irreparable injury and loss to Plaintiff which will occur before the adverse parties and attorneys can be heard in opposition to Plaintiff’s lawsuit and request for a permanent injunction. In support of this motion for a

temporary restraining order Plaintiff show the facts and exhibits attached to the verified Complaint and further shows the Court as follows:

(1) That Session Law 2018-130, which was originally passed by the North Carolina General Assembly (“the General Assembly”) as Senate Bill 3, was vetoed by Governor Roy Cooper on July 27, 2018. Defendants Phillip E. Berger in his official capacity as President Pro Tempore of the North Carolina Senate (“Berger”) and Timothy K. Moore in his official capacity as Speaker of the North Carolina House of Representatives (“Moore”) then called a special session of the General Assembly to override Governor Cooper’s veto on Saturday, August 4, 2018. At that special session the General Assembly overrode the Governor’s veto and passed Senate Bill 3 as Session Law 2018-130. The law became effective immediately upon enactment;

(2) That Plaintiff’s rights guaranteed under North Carolina’s Constitution are being infringed by the act of the North Carolina General Assembly (“the General Assembly”) in enacting Session Law 2018-130 as described in his Verified Complaint;

(3) That Plaintiff’s constitutional rights and his vested right to appear on the November 6, 2018 General Election Ballot as a designated Republican candidate will be lost unless the Court issues a temporary restraining order providing for the relief requested below and preventing Defendants the State of North Carolina, the North Carolina Bipartisan Board of Elections and Ethics Enforcement (“SBOE”) or Kimberly W. Strach in her official capacity as Executive Director of the SBOE (“Strach”) from publishing to the voting public through official ballot language or other official communication that Plaintiff is not a designated Republican candidate for Associate Justice of the North Carolina Supreme Court in the November 6, 2018 General Election;

(4) That the State of North Carolina and the SBOE are prepared at any time to certify the official ballot language for the November 6, 2018 General Election. If certified in compliance with Session Law 2018-130, such language will deny and deprive the Plaintiff of his rights under North Carolina's Constitution before he would have the opportunity to have the question adjudicated, specifically:

- a. Under Article I, section 1 of the North Carolina Constitution - "**The equality and rights of persons**" - Plaintiff is being denied equality under the law. The General Assembly has created a special statute that imposes restrictions that apply only to Plaintiff's candidacy in this election in 2018, and which retroactively changes the laws in effect on June 29, 2018, the date on which candidate filing for the Supreme Court seat closed.
- b. Under Article I, section 10 of the North Carolina Constitution - "**Free elections**" - elections in North Carolina are guaranteed to be "free." The clear meaning of free is to be free from interference and free from intimidation. Plaintiff's candidacy in the November 6, 2018 General Election is being interfered with by the General Assembly through Session Law 2018-130, through which the General Assembly is imposing its determination of which of two Republican candidates are allowed to be so designated on the ballot. Such interference is exactly what the Free Elections clause was designed to prevent. This interference is discriminatory and is tailored specifically to hurt the Plaintiff, and severely burdens Plaintiff by making him the only candidate in this race denied the opportunity to have his registered party designation listed on the General Election ballot. The sole purpose of Session Law 2018-

130 is to enhance by legislative action the candidacy of the incumbent Republican candidate for this particular public office – the exact opposite of a free election.

- c. Under Article I, section 14 of the North Carolina Constitution – “**Freedom of speech and press**” – Plaintiff has the absolute and vested right to associate himself with the Republican Party and to identify himself on the ballot as a Republican under the electoral statutes that existed on June 29, 2018 when filing closed. Plaintiff is free to accurately describe himself as a Republican candidate, as he is, in fact, a registered Republican. Session Law 2018-130 is tailored specifically to restrict the Plaintiff’s ability to identify himself as a Republican candidate on the November ballot and violates and restrains his rights to free speech and association and wrongfully places him at a decided disadvantage to the other candidates in the general election.
- d. Under Article I, section 19 of the North Carolina Constitution – “**Law of the land; equal protection of the laws**” – Plaintiff has a vested right to appear on the ballot in the November 6, 2018 General Election as a Republican candidate of which he cannot be deprived but by the Law of the land and Due Process of law. By enacting and enforcing Session Law 2018-130, Defendants seek to deprive Plaintiff of that right through an arbitrary and capricious retroactive intervention in the General Election in order to change the rules of the race after the race has started and after the filings for the office have closed, to favor one particular candidate.

e. Under Article 1, section 32 of the North Carolina Constitution – “**Exclusive emoluments**” – the granting of exclusive emoluments or separate privileges to any person or set of persons by the legislature is prohibited but in the consideration of public services. Session Law 2018-130 wrongfully creates an advantage for one Republican candidate over another Republican candidate. Session Law 2018-130 legislatively selects the incumbent Republican candidate over the Plaintiff and denies Plaintiff the opportunity to identify himself as he registered. Thus, Session Law 2018-130 grants a privilege and emolument to one of two Republican candidates for the same political office. The election for a seat on the North Carolina Supreme Court cannot be free if the legislature can change the rules governing the election so as to improve one candidate’s chances after candidates have filed and the race has already begun;

(5) That this request for a temporary restraining order is an emergency. If Defendants the State of North Carolina, the SBOE or Strach are permitted to certify the official ballot language under Session Law 2018-130 or otherwise communicate in an official publication to the voters of North Carolina that Plaintiff is not a Republican candidate for Associate Justice of the North Carolina Supreme Court, Plaintiff will sustain immediate and irreparable harm which will place his candidacy at an unfair and extreme disadvantage to the other Republican candidate;

(6) That under the terms of Session Law 2018-130, Plaintiff is required to decide by close of business on August 8, 2018 whether to withdraw from the race or proceed as a candidate without party designation. This requirement unlawfully forces the Plaintiff to choose between two options which deprive him of his vested right and his protected Constitutional rights;



(6) Because the Defendants Berger and Moore scheduled the veto override on Senate Bill 3 for Saturday, August 4, 2018, when the Courts and most government offices were closed, the Plaintiff could not act to protect his interests until the open of business on Monday morning August 6, 2018. Plaintiff's counsel provided courtesy copies of the Summons, Complaint, this Motion, the Memorandum in Support of this Motion, and a draft Notice of Hearing setting a hearing for 2:30 pm on Monday August 6, 2018 to Defendants' counsel of record by email on Sunday, August 5, 2018 as set forth in Counsel's declaration. Plaintiff will serve Defendants immediately upon filing this action pursuant to Rule 4 of the North Carolina Rules of Civil Procedure and will notify counsel by telephone to the extent possible.

WHEREFORE, in order to preserve his rights until such time as this Court may fully consider and rule upon his claims, Plaintiff respectfully requests the entry of a Temporary Restraining Order under Rule 65(b) of the North Carolina Rules of Civil Procedure providing the following temporary injunctive relief:

- (1) Barring Defendants the State of North Carolina, SBOE, or Strach from enforcing against the Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that the Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court;
- (2) Barring any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the North Carolina Supreme Court on the official ballot for the November 6, 2018 General Election;

- (3) Suspending the applicability of the portions of Section 3.1 of S.L. 2018-130 requiring that Plaintiff withdraw from the election by August 8, 2018 if he wishes not to appear on the ballot, and further providing Plaintiff at least three business days from entry of a final ruling on the Preliminary Injunctive Relief sought to notify Defendant SBOE if he wishes to withdraw from the ballot and be so withdrawn;
- (4) Barring Defendants State of North Carolina, SBOE, or Strach from authorizing official ballot language for the November 6, 2018 election or authorizing the printing of ballots by county Boards of Elections until such time as this Court so orders;
- (5) Providing that this Court maintain Jurisdiction to ensure Plaintiff the opportunity to withdraw if subsequent review by this Court or appellate action overturns any injunctive relief entered by this Court; and
- (6) Such other and further relief as this Court deems just and appropriate.

**[SIGNATURE PAGE FOLLOWS]**

Respectfully requested, this the 6<sup>th</sup> day of August 2018.

FORREST FIRM, P.C.

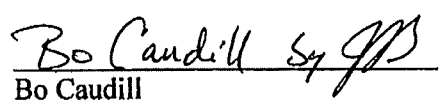
By: 

John D. Burns  
N.C. Bar No. 24152  
410 N. Boylan Ave  
Raleigh, NC 27613  
p/f 919-706-1389  
[john.burns@forrestfirm.com](mailto:john.burns@forrestfirm.com)

WEAVER, BENNETT & BLAND, P.A.

By: 

Michael David Bland  
N.C. Bar No. 8179

  
Bo Caudill

N.C. Bar No. 45104  
196 N. Trade St.  
Matthews, NC 28105  
Tel: (704) 844-1400  
Fax: (704) 845-1503  
[dbland@wbbatty.com](mailto:dbland@wbbatty.com)  
[bcaudill@wbbatty.com](mailto:bcaudill@wbbatty.com)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has this date served the foregoing Motion for Temporary Restraining Order by personally delivering copies of same to the below-identified persons at the address indicated:


N.C. Bipartisan State Board of Elections and Ethics Enforcement  
Kimberly W. Strach, in her official capacity

c/o Josh Lawson, General Counsel  
430 N. Salisbury St.  
Suite 3128  
Raleigh, NC 27603-5918

The State of North Carolina  
Rep. Timothy K. Moore, in his official capacity  
Sen. Phillip E. Berger, in his official capacity

c/o Chief Deputy Attorney General Alexander M. Peters  
Office of the Attorney General  
N.C. Department of Justice  
114 W. Edenton St.  
Raleigh, NC 27601

This 6<sup>th</sup> day of August 2018.



John D. Burns  
N.C. Bar No. 24152  
*Counsel for Plaintiff*

# **EXHIBIT 4**

STATE OF NORTH CAROLINA  
WAKE COUNTY

~~FILED~~  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

2018 AUG -7 AM 11: 52  
18 CVS 9748

WAKE CO., C.S.C.

CHRISTOPHER J. ANGLIN,  
Plaintiff,

v.

PHILLIP 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; THE STATE OF  
NORTH CAROLINA; THE NORTH  
CAROLINA BIPARTISAN STATE  
BOARD OF ELECTIONS AND  
ETHICS ENFORCEMENT; and  
KIMBERLY W. STRACH, in her  
official capacity as EXECUTIVE  
DIRECTOR OF THE NORTH  
CAROLINA BIPARTISAN STATE  
BOARD OF ELECTIONS AND  
ETHICS ENFORCEMENT,  
Defendants.

TEMPORARY RESTRAINING ORDER

THIS MATTER CAME ON TO BE HEARD during the August 6, 2018 Session of the Wake County Superior Court. The Court considered the Motion of the Plaintiff for entry of a Temporary Restraining Order pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure, and considered the Verified Complaint submitted by Plaintiff, as well as arguments and submissions of counsel in attendance. The Court has also reviewed the Declaration of John

D. Burns, counsel to Plaintiff and finds that Plaintiff has made suitable and sufficient efforts to comply with Rule 65(b)(ii) to provide notice of this hearing to opposing parties.

The Court finds that because of the August 8, 2018 ballot printing deadline and the requirement under S.L.2018-130 4(c) (2) that the Plaintiff withdraw from the election before the printing of the ballots if he wants to remain on the ballot without party designation, the need for this court to act immediately to prevent harm while the parties are waiting for a hearing on a motion for a preliminary injunction. The Court further finds that, in order to protect the rights of all parties and the public interest while this matter is considered and adjudicated, it is appropriate under Rule 65(b) to enter the following TEMPORARY RESTRAINING ORDER this date, August 6, 2018, at 4:15 P.M..

Defendants are therefore hereby ENJOINED for a period of 7 days from the date and time noted above from:

- (1) Enforcing against the Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that the Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court;
- (2) Authorizing any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the North Carolina Supreme Court on the official ballot for the November 6, 2018 General Election;
- (3) Authorizing official ballot language for the November 6, 2018 election or authorizing the printing of ballots by county Boards of Elections until such time as this Court so orders;

This Court further finds that, in order to preserve Plaintiff's ability, as provided by the terms of S.L. 2018-130, §4.(c)(2), to withdraw from the election before printing of ballots if he wishes not to remain on the ballot without party designation, it is necessary to suspend the application of the August 8, 2018 deadline set forth in S.L. 2018-130, § 4.(c)(2) until these matters can be adjudicated. It is therefore further ORDERED that Plaintiff shall have the right to withdraw his notice of candidacy and be withdrawn from the ballot prior to authorization of ballot language at any time within three business days from entry of a final ruling on Preliminary Injunctive Relief.

A return hearing before this Court to consider entry of a Preliminary Injunction under Rule 65 is set for Monday, August 13, 2018 at 10:00 AM.

SO ORDERED, this 6<sup>th</sup> day of August 2018 at 4:15 P.M.

  
\_\_\_\_\_  
SUPERIOR COURT JUDGE PRESIDING



# **EXHIBIT 5**

4

**STATE OF NORTH CAROLINA  
WAKE COUNTY**

**IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION**

**18 CVS 9748**

**CHRISTOPHER J. ANGLIN,** )  
 )  
 **Plaintiff,** )  
 )  
 )  
 **v.** )  
 )  
 **PHILLIP 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; THE STATE OF** )  
 **NORTH CAROLINA; THE NORTH** )  
 **CAROLINA BIPARTISAN STATE** )  
 **BOARD OF ELECTIONS AND** )  
 **ETHICS ENFORCEMENT; and** )  
 **KIMBERLY W. STRACH, in her** )  
 **official capacity as EXECUTIVE** )  
 **DIRECTOR OF THE NORTH** )  
 **CAROLINA BIPARTISAN STATE** )  
 **BOARD OF ELECTIONS AND** )  
 **ETHICS ENFORCEMENT,** )  
 )  
 **Defendants.** )  
 )

**MOTION FOR PRELIMINARY  
INJUNCTION**

NOW COMES the Plaintiff Christopher J. Anglin (“Anglin”) through counsel and respectfully moves the Court pursuant to Rule 65 of the North Carolina Rules of Civil Procedure to enter a Preliminary Injunction restraining the implementation of Session Law 2018-130 and preventing Defendants from removing Plaintiff’s Republican party designation on the ballot for Associate Justice of the Supreme Court in the November 6, 2018 General Election. In support of

this motion Plaintiff relies on the facts set forth in the verified Complaint and further shows the Court as follows:

(1) That Session Law 2018-130, which was originally passed by the North Carolina General Assembly (“the General Assembly”) as Senate Bill 3, was vetoed by Governor Roy Cooper on July 27, 2018. Defendants Phillip E. Berger in his official capacity as President Pro Tempore of the North Carolina Senate (“Berger”) and Timothy K. Moore in his official capacity as Speaker of the North Carolina House of Representatives (“Moore”) then called a special session of the General Assembly to override Governor Cooper’s veto on Saturday, August 4, 2018. At that special session the General Assembly overrode the Governor’s veto and passed Senate Bill 3 as Session Law 2018-130. The law became effective immediately upon enactment;

(2) That Plaintiff’s rights guaranteed under North Carolina’s Constitution are being infringed by the act of the North Carolina General Assembly (“the General Assembly”) in enacting Session Law 2018-130 as described in his Verified Complaint;

(3) That Plaintiff’s constitutional rights and his vested right to appear on the November 6, 2018 General Election Ballot as a designated Republican candidate will be lost unless the Court issues a preliminary injunction providing for the relief requested below and preventing Defendants the State of North Carolina, the North Carolina Bipartisan Board of Elections and Ethics Enforcement (“SBOE”) or Kimberly W. Strach in her official capacity as Executive Director of the SBOE (“Strach”) from publishing to the voting public through official ballot language or other official communication that Plaintiff is not a designated Republican candidate for Associate Justice of the North Carolina Supreme Court in the November 6, 2018 General Election;

(4) That the State of North Carolina and the SBOE are prepared at any time to certify the official ballot language for the November 6, 2018 General Election. If certified in compliance with Session Law 2018-130, such language will deny and deprive the Plaintiff of his rights under North Carolina's Constitution before he would have the opportunity to have the question adjudicated, specifically:

- a. Under Article I, section 1 of the North Carolina Constitution - "**The equality and rights of persons**" - Plaintiff is being denied equality under the law. The General Assembly has created a special statute that imposes restrictions that apply only to Plaintiff's candidacy in this election in 2018, and which retroactively changes the laws in effect on June 29, 2018, the date on which candidate filing for the Supreme Court seat closed.
- b. Under Article I, section 10 of the North Carolina Constitution - "**Free elections**" - elections in North Carolina are guaranteed to be "free." The clear meaning of free is to be free from interference and free from intimidation. Plaintiff's candidacy in the November 6, 2018 General Election is being interfered with by the General Assembly through Session Law 2018-130, through which the General Assembly is imposing its determination of which of two Republican candidates are allowed to be so designated on the ballot. Such interference is exactly what the Free Elections clause was designed to prevent. This interference is discriminatory and is tailored specifically to hurt the Plaintiff, and severely burdens Plaintiff by making him the only candidate in this race denied the opportunity to have his registered party designation listed on the General Election ballot. The sole purpose of Session Law 2018-

130 is to enhance by legislative action the candidacy of the incumbent Republican candidate for this particular public office – the exact opposite of a free election.

- c. Under Article I, section 14 of the North Carolina Constitution – “**Freedom of speech and press**” – Plaintiff has the absolute and vested right to associate himself with the Republican Party and to identify himself on the ballot as a Republican under the electoral statutes that existed on June 29, 2018 when filing closed. Plaintiff is free to accurately describe himself as a Republican candidate, as he is, in fact, a registered Republican. Session Law 2018-130 is tailored specifically to restrict the Plaintiff’s ability to identify himself as a Republican candidate on the November ballot and violates and restrains his rights to free speech and association and wrongfully places him at a decided disadvantage to the other candidates in the general election.
- d. Under Article I, section 19 of the North Carolina Constitution – “**Law of the land; equal protection of the laws**” – Plaintiff has a vested right to appear on the ballot in the November 6, 2018 General Election as a Republican candidate of which he cannot be deprived but by the Law of the land and Due Process of law. By enacting and enforcing Session Law 2018-130, Defendants seek to deprive Plaintiff of that right through an arbitrary and capricious retroactive intervention in the General Election in order to change the rules of the race after the race has started and after the filings for the office have closed, to favor one particular candidate.

e. Under Article 1, section 32 of the North Carolina Constitution – “**Exclusive emoluments**” – the granting of exclusive emoluments or separate privileges to any person or set of persons by the legislature is prohibited but in the consideration of public services. Session Law 2018-130 wrongfully creates an advantage for one Republican candidate over another Republican candidate. Session Law 2018-130 legislatively selects the incumbent Republican candidate over the Plaintiff and denies Plaintiff the opportunity to identify himself as he registered. Thus, Session Law 2018-130 grants a privilege and emolument to one of two Republican candidates for the same political office. The election for a seat on the North Carolina Supreme Court cannot be free if the legislature can change the rules governing the election so as to improve one candidate’s chances after candidates have filed and the race has already begun;

(5) That Plaintiff is likely to succeed on the merits of his action;

(6) That because S.L. 2018-130 deprives Plaintiff of his rights under the North Carolina Constitution, he will suffer irreparable harm unless the injunction is issued. Issuance of the injunction requested is necessary for the preservation of Plaintiff’s fundamental rights during the course of this litigation.

(7) That Defendants have all received notice of this motion and the hearing set by the Court on Monday, August 13, 2018 to consider continuing the terms of the TRO entered on August 6, 2018 and to consider the entry of a Preliminary Injunction;


WHEREFORE, in order to preserve his rights until such time as this Court may fully consider and rule upon his claims, Plaintiff respectfully requests the entry of a Preliminary Injunction under Rule 65 of the North Carolina Rules of Civil Procedure providing the following injunctive relief:

- (1) Barring Defendants the State of North Carolina, SBOE, or Strach from enforcing against the Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that the Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court;
- (2) Barring any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the North Carolina Supreme Court on the official ballot for the November 6, 2018 General Election;
- (3) Suspending the applicability of the portions of Section 3.1 of S.L. 2018-130 requiring that Plaintiff withdraw from the election by August 8, 2018 if he wishes not to appear on the ballot, and further providing Plaintiff at least three business days from entry of a final ruling on the Preliminary Injunctive Relief sought to notify Defendant SBOE if he wishes to withdraw from the ballot and be so withdrawn;
- (4) Barring Defendants State of North Carolina, SBOE, or Strach from authorizing official ballot language for the November 6, 2018 election or authorizing the printing of ballots by county Boards of Elections until such time as this Court so orders;

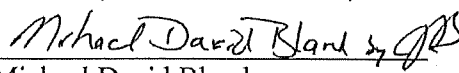
- (5) Providing that this Court maintain Jurisdiction to ensure Plaintiff the opportunity to withdraw if subsequent review by this Court or appellate action overturns any injunctive relief entered by this Court; and
- (6) Such other and further relief as this Court deems just and appropriate.

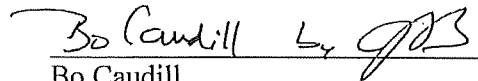
Respectfully requested, this the <sup>16<sup>th</sup></sup> 9<sup>th</sup> day of August 2018.

FORREST FIRM, P.C.

By:   
John D. Burns  
N.C. Bar No. 24152  
410 N. Boylan Ave  
Raleigh, NC 27613  
p/f 919-706-1389  
[john.burns@forrestfirm.com](mailto:john.burns@forrestfirm.com)

WEAVER, BENNETT & BLAND, P.A.

By:   
Michael David Bland  
N.C. Bar No. 8179

  
Bo Caudill  
N.C. Bar No. 45104  
196 N. Trade St.  
Matthews, NC 28105  
Tel: (704) 844-1400  
Fax: (704) 845-1503  
[dbland@wbbatty.com](mailto:dbland@wbbatty.com)  
[bcaudill@wbbatty.com](mailto:bcaudill@wbbatty.com)



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has this date served the foregoing Motion for Preliminary Injunction by email delivery to the below-identified persons at the address indicated:

**N.C. Bipartisan State Board of Elections and Ethics Enforcement**  
**Kimberly W. Strach, in her official capacity**  
c/o Josh Lawson, General Counsel  
[Joshua.lawson@ncsbe.gov](mailto:Joshua.lawson@ncsbe.gov)

and

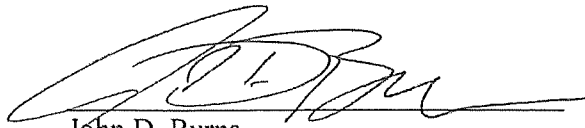
James Bernier, Esq.  
NC Department of Justice  
[jbernier@ncdoj.gov](mailto:jbernier@ncdoj.gov)

**The State of North Carolina**  
**Rep. Timothy K. Moore, in his official capacity**  
**Sen. Phillip E. Berger, in his official capacity**  
c/o Chief Deputy Attorney General Alexander M. Peters  
[apeters@ncdoj.gov](mailto:apeters@ncdoj.gov)

and

D. Martin Warf  
Nelson Mullins Riley & Scarborough  
[Martin.warf@nelsonmullins.com](mailto:Martin.warf@nelsonmullins.com)

This <sup>10<sup>th</sup></sup> ~~9<sup>th</sup>~~ day of August 2018.



John D. Burns  
N.C. Bar No. 24152  
*Counsel for Plaintiff*

# **EXHIBIT 6**

FILED  
NORTH CAROLINA  
WAKE COUNTY  
CHRISTOPHER J. ANGLIN,  
C.S.C.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18-CVS-9748

Plaintiff,

v.

PHILLIP E. BERGER, in his official  
capacity as the PRESIDENT PRO  
TEMPORE OF THE NORTH  
CAROLINA SENATE; TIMOTHY K.  
MOORE, in his official capacity as  
SPEAKER OF THE NORTH  
CAROLINA HOUSE OF  
REPRESENTATIVES; THE STATE OF  
NORTH CAROLINA; THE NORTH  
CAROLINA BIPARTISAN STATE  
BOARD OF ELECTIONS AND ETHICS  
ENFORCEMENT; and KIMBERLY W.  
STRACH, in her official capacity as  
EXECUTIVE DIRECTOR OF THE  
NORTH CAROLINA BIPARTISAN  
STATE BOARD OF ELECTIONS AND  
ETHICS ENFORCEMENT,

Defendants.

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR  
PRELIMINARY INJUNCTION**

THIS MATTER CAME ON TO BE HEARD before the Court during the August 13, 2018, Session of Superior Court, Wake County. All adverse parties to this action received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. The Court considered the pleadings, arguments, briefs of the parties, supplemental affidavits, and the record established thus far, as well as submissions of counsel in attendance.

THE COURT, in the exercise of its discretion and for good cause shown, hereby makes the following:

### Findings of Fact

1. In 2016 and 2017, the North Carolina General Assembly (hereinafter “the General Assembly”) enacted laws making partisan all elections for judicial office in North Carolina. *See* 2016 N.C. Sess. Laws 125, §§ 21(a), 21(h) (Court of Appeals and Supreme Court); 2017 N.C. Sess. Laws 3, §§ 5, 14 (Superior and District Courts).

2. On October 17, 2017, Session Law 2017-214 (hereinafter “S.L. 2017-214”) became law notwithstanding the objections of Governor Roy Cooper. S.L. 2017-214 became “effective January 1, 2018, and applie[d] to all primaries and elections held on or after that date.” 2017 N.C. Sess. Law. 214, § 5.

3. S.L. 2017-214 cancelled the 2018 judicial primaries for all candidates seeking judicial office. In place of a judicial primary, S.L. 2017-214 provided that each person seeking judicial office was required to file a notice of candidacy, and that a “candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified party designation or unaffiliated status shall be included on the ballot.” 2017 N.C. Sess. Law. 214, § 4.(b).

4. S.L. 2017-214 therefore required a candidate’s political party affiliation to appear on the ballot when that candidate chose to be affiliated with a political party and that party designation was verified as the party with which the candidate was registered. S.L. 2017-214 did not, however, require the candidate’s party affiliation or unaffiliated status be the same as the

party with which the candidate was registered for any specific amount of time prior to the date of filing the notice of candidacy.

5. On June 7, 2018, Plaintiff changed his party registration from the Democratic Party to the Republican Party by filing the necessary documentation with the Wake County Board of Elections.

6. On June 18, 2018, at noon the filing period for judicial candidates began.

7. On June 20, 2018, Session Law 2018-13 (hereinafter “S.L. 2018-13”) became law notwithstanding the objections of Governor Roy Cooper. S.L. 2018-13 provided that a disclaimer would appear at the top of the judicial offices section of the 2018 general election ballot as follows:

“No primaries for judicial office were held in 2018. The information listed by each of the following candidates’ names indicates only the candidates’ party affiliation or unaffiliated status on their voter registration at the time they filed to run for office.”

2018 N.C. Sess. Law. 13, § 2.(c).

8. On June 29, 2018, Plaintiff filed with the Bipartisan State Board of Elections and Ethics Enforcement (hereinafter “the Bipartisan State Board of Elections”) the necessary paperwork to run for a seat on the Supreme Court of North Carolina, specifically as an associate justice. Plaintiff also paid the requisite filing fee.

9. As required by S.L. 2017-214, Plaintiff indicated on his notice of candidacy the political party—i.e., the Republican Party—with which he was affiliated. As required by S.L. 2017-214, Plaintiff included a certification from the Wake County Board of Elections that his party registration was with the Republican Party at the time of his filing his notice of candidacy.

10. On June 29, 2018, at noon the filing period for judicial candidates ended.

11. On August 4, 2018, Session Law 2018-130 (hereinafter “S.L. 2018-130”) became law notwithstanding the objections of Governor Roy Cooper. S.L. 2018-130 “is effective when it becomes law and applies to the 2018 elections only.” 2018 N.C. Sess. Law. 130, § 4.

12. S.L. 2018-130, in part, rewrites S.L. 2017-214, such that Section 4.(b) now reads, in pertinent part, as follows: “A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. If the candidate’s political party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.” 2018 N.C. Sess. Law. 130, § 1.

13. S.L. 2018-130 does not change the requirement that a candidate indicate a party affiliation or unaffiliated status on his or her notice of candidacy, does not extend the deadline for filing a notice of candidacy, and does not otherwise allow already-filed notices of candidacy to be amended—only withdrawn.

14. Importantly to Plaintiff’s claims, S.L. 2018-130 changes the legal consequences flowing from Plaintiff’s already-completed actions in filing a notice of candidacy. The application of S.L. 2018-130 to a candidate like Plaintiff, who changed his or her party registration less than ninety days before filing a notice of candidacy, now precludes the candidate’s party affiliation or unaffiliated status from being included on the 2018 general election ballot. The application of S.L. 2018-130 to Plaintiff will result in no party affiliation or unaffiliated status being listed with Plaintiff’s name on the partisan ballot, while still providing a party affiliation or unaffiliated status of Plaintiff’s opponents.

15. S.L. 2018-130 also changed the text of the disclaimer provided by S.L. 2018-13.

The disclaimer now reads as follows:

“No primaries for judicial office were held in 2018. The party information by each of the following candidates’ names is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office and 90 days prior to that filing.”

2018 N.C. Sess. Law. 130, § 3.

16. On August 6, 2018, Plaintiff filed a verified complaint seeking a temporary restraining order and preliminary injunction.

17. On August 6, 2018, the Court entered a temporary restraining order pursuant to Rule 65(b) of the North Carolina Rules of Civil Procedure.

18. Any candidate appearing on a ballot without partisan affiliation would be highly unlikely to win an election if the ballot also included candidates for the same race who are shown as affiliated with a political party. *See* Affidavit of Gary O. Bartlett.

19. Plaintiff alleges in his verified complaint that S.L. 2018-130, as applied to Plaintiff, violates the rights Plaintiff enjoys under Article I, Sections 1, 10, 14, 19, and 32 of the North Carolina Constitution. Plaintiff seeks to enjoin Defendants from enforcing against Plaintiff the party affiliation and ballot disclaimer provisions of S.L. 2018-130 and from authorizing any change to Plaintiff’s verified designation as a Republican candidate for judicial office.

Based upon the foregoing findings of fact, the Court makes the following:

#### Conclusions of Law

1. “The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the

hearing judge after a careful balancing of the equities.” *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an “extraordinary remedy” and will issue “only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.” *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-760 (1983) (emphasis in original); see also N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge “should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability.” *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

2. While the Court recognizes S.L. 2018-130 is entitled to a presumption of constitutionality, Plaintiff has shown a likelihood that he will prevail on the merits of his case, particularly as it relates to his claims based on a violation of his due process and associational rights under Article I, Sections 19 and 14 of the North Carolina Constitution, respectively.

3. Plaintiff has shown that his political party designation was properly verified by the required certificate at the time Plaintiff filed his notice of candidacy. Pursuant to S.L. 2017-214, Plaintiff’s verified party designation was thereby required to be included on the 2018 general election ballot. 2017 N.C. Sess. Law. 214, § 4.(b). Additionally, the filing period for judicial candidates has closed. Plaintiff has shown that he satisfied North Carolina’s requirements to run for judicial office and thereby obtained the right to appear on the 2018



general election ballot as provided by the law as it existed at that time. As such, Plaintiff has shown that he had a vested right to appear on the 2018 general election ballot with his chosen political party designation because it was “so far perfected as to permit no statutory interference.” *Gardner v. Gardner*, 300 N.C. 715, 719, 268 S.E.2d 468, 471 (1980).

4. S.L. 2018-130 is retroactive in its application to Plaintiff because the Session Law’s “operative effect is to alter the legal consequences of conduct or transactions completed prior to its enactment.” *Gardner*, 300 N.C. at 718, 268 S.E.2d at 471. Retroactive changes in election laws can be patently unfair to the candidates who followed pre-existing election rules and procedures. See *Roe v. Alabama*, 43 F.3d 574, 580-81 (11th Cir. 1995). Plaintiff has shown that S.L. 2018-130 retroactively eliminates Plaintiff’s vested right and forces Plaintiff to choose between either being listed on the ballot with no party affiliation or withdrawing from the race—neither of which allows Plaintiff the opportunity to enjoy his vested right. Importantly, S.L. 2018-130 provides Plaintiff no opportunity to comply with the new requirements to otherwise preserve his vested right. As such, Plaintiff has shown that S.L. 2018-130, as applied to Plaintiff, violates fundamental principles of fairness, thereby violating Plaintiff’s right to due process provided by the North Carolina Constitution.

5. S.L. 2017-214 as originally written conferred on Plaintiff the right to have his party affiliation listed on the ballot, and while candidates for political office typically have no right to have a partisan affiliation listed on a ballot, if a law gives some candidates for a specific race a party identifier, but not other candidates for the same race, that law imposes “a burden on the associational rights of the candidates left unidentified.” *Marcellus v. Va. State Bd. Of Elections*, 849 F.3d 169, 177 (4th Cir. 2016). As such, Plaintiff has shown that S.L. 2018-130, as

applied to Plaintiff, burdens Plaintiff's right of association provided by the North Carolina Constitution.

6. The burden imposed by S.L. 2018-130, as applied to Plaintiff, is severe. S.L. 2018-130 eliminates Plaintiff's vested right to have his party affiliation listed on the ballot while allowing the other candidates in the same, specific race to have their party affiliation listed on the ballot. Moreover, S.L. 2018-130's new requirement imposed on Plaintiff does not allow Plaintiff any amount of time, reasonable or otherwise, to comply. The burden on Plaintiff's rights is also severe because it affects Plaintiff's rights "at the most crucial stage in the election process—the instant before the vote is cast." *Cook v. Gralike*, 531 U.S. 510, 525 (2001).

7. When due process and associational rights are "severely burdened" by an election law, "the challenged statutes must be strictly scrutinized to determine whether they were 'narrowly tailored and advance a compelling state interest.'" *Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 47, 707 S.E.2d 199, 203 (2011). The State carries this burden of proof. *Id.* While the General Assembly's stated interest in preventing voter confusion is in general a legitimate, compelling State interest, it is unlikely that the State can show that S.L. 2018-130 advances a compelling interest. Furthermore, the State cannot likely show that S.L. 2018-130 is narrowly tailored to advance its proffered compelling interest because the Session Law was not "the least restrictive means of advancing the State's compelling interest." *State v. Bishop*, 368 N.C. 869, 878, 787 S.E.2d 814, 820 (2016). Indeed, the State already resolved concerns regarding voter confusion through the enactment of S.L. 2017-214 and S.L. 2018-13. As a result, Plaintiff is likely to show that, as applied to Plaintiff, the severe burden S.L. 2018-130 imposes on Plaintiff's rights will not survive strict scrutiny.

8. Moreover, even if S.L. 2018-130 does not severely burden Plaintiff's rights, Plaintiff will likely be able to show the State's interests are not "sufficiently weighty to justify the limitation imposed on [Plaintiff's] rights." *Libertarian Party*, 365 N.C. at 51, 707 S.E.2d at 206. Plaintiff is therefore likely to prevail even if strict scrutiny does not apply.

9. In addition to Plaintiff's showing that there is a likelihood he will prevail on the merits of his case, Plaintiff will suffer an immediate and irreparable loss of his rights if the preliminary injunction is not issued. Additionally, it is the opinion of the Court that issuance of a preliminary injunction is necessary for the protection of Plaintiff's rights during the course of the present litigation. S.L. 2018-130 includes a deadline of August 8, 2018, for candidates to withdraw from the race, which has been temporarily enjoined by the Court. The Bipartisan State Board of Elections, through counsel, has represented that ballots for the 2018 general election must be printed immediately. Once ballots are printed, Plaintiff's constitutional injury will be irreparable. Given the severity of Plaintiff's constitutional injury and absence of legitimate countervailing interests, the public interest in fair elections clearly favors issuance of a preliminary injunction and a weighing of the equities leads the Court to conclude that the potential harm to Plaintiff if the injunction is not issued outweighs the potential harm to Defendants if injunctive relief is granted.

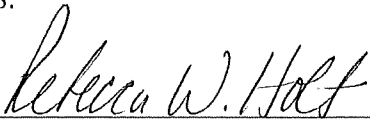
10. Therefore, the Court, in its discretion and after a careful balancing of the equities, concludes it is proper that a preliminary injunction shall issue, enjoining the application of S.L. 2018-130 to Plaintiff's candidacy for Associate Justice of the Supreme Court of North Carolina.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND  
DECREED that:

1. Plaintiff's motion for a preliminary injunction is hereby GRANTED.
2. Defendants are hereby ENJOINED during the pendency of this litigation from:
  - a. Enforcing against Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court of North Carolina;
  - b. Authorizing any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the Supreme Court of North Carolina on the official ballot for the November 6, 2018, General Election; and,
  - c. Authorizing official ballot language for the November 6, 2018, General Election or authorizing the printing of ballots by county Boards of Elections that state the 90-day pre-registration requirement pertains to Plaintiff's candidacy for Associate Justice of the Supreme Court of North Carolina.
3. The Court hereby STAYS the effect of the August 8, 2018, deadline for withdrawal from 2018 general election for judicial office until disposition of Plaintiff's claim on the merits. This Court maintains jurisdiction to ensure Plaintiff the opportunity to withdraw Plaintiff's name from the ballot if subsequent review by this Court or appellate action overturns any injunctive relief entered by this Court.

4. This Court has considered the necessity of a bond under Rule 65 of the North Carolina Rules of Civil Procedure and finds that a nominal bond will suffice. Plaintiff is therefore ORDERED to pay a bond of \$1.00 (One Dollar) to the Wake County Clerk of Court.

SO ORDERED, this 13<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
Rebecca W. Holt  
Superior Court Judge Presiding

# **EXHIBIT 7**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
18 CVS 9748

FILED

CHRISTOPHER J. ANGLIN, Plaintiff, 2018 AUG 14 P 3: 25

vs. C.S.C.

vs.

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; THE STATE OF NORTH CAROLINA; THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; and KIMBERLY W. STRACH, in her official capacity as EXECUTIVE DIRECTOR OF THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT,

Defendants.

NOTICE OF APPEAL

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (collectively, "Defendants"), hereby give notice of appeal to the North Carolina Court of Appeals from the Order Granting Plaintiff's Motion for Preliminary Injunction entered by the Honorable

Rebecca W. Holt in the above-captioned cause in the General Court of Justice,  
Superior Court Division of Wake County, on 13 August 2018.

This the 14<sup>th</sup> day of August, 2018.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: \_\_\_\_\_



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*Attorneys for Defendants Philip E. Berger, in his  
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Carolina Senate and Timothy K. Moore, in his official  
capacity as Speaker of the North Carolina House of  
Representatives*



## Certificate of Service

The undersigned certifies that a true and correct copy of the foregoing was served upon the persons indicated below via email and U.S. mail addressed as follows:

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This the 14<sup>th</sup> day of August, 2018.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: \_\_\_\_\_

  
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*Attorneys for Defendants Philip E. Berger, in his  
official capacity as President Pro Tempore of the North*

*Carolina Senate and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives*

# **EXHIBIT 8**

FILED

STATE OF NORTH CAROLINA 2018 JUL 27 IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
COUNTY OF WAKE W. 18 CV 9805

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;  
NORTH CAROLINA BIPARTISAN STATE  
BOARD OF ELECTIONS AND ETHICS  
ENFORCEMENT; and  
JAMES A. ("ANDY") PENRY, in his official  
capacity as CHAIR OF THE NORTH  
CAROLINA BIPARTISAN STATE BOARD  
OF ELECTIONS AND ETHICS  
ENFORCEMENT,

Defendants.

**ORDER ON TEMPORARY MEASURES**

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

NORTH CAROLINA STATE CONFERENCE  
OF THE NATIONAL ASSOCIATION FOR  
THE ADVANCEMENT OF COLORED  
PEOPLE; and CLEAN AIR CAROLINA,

Plaintiffs,

v.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR DIVISION  
18 CVS 9806

TIM MOORE, in his official capacity;  
PHILIP BERGER, in his official capacity;  
THE NORTH CAROLINA BIPARTISAN  
STATE BOARD OF ELECTIONS AND  
ETHICS ENFORCEMENT; ANDREW  
PENRY, in his official capacity; JOSHUA  
MALCOLM, in his official capacity; KEN  
RAYMOND, in his official capacity; STELLA  
ANDERSON, in her official capacity;  
DAMON CIRCOSTA, in his official  
capacity; STACY EGGERS IV, in his official  
capacity; JAY HEMPHILL, in his official  
capacity; VALERIE JOHNSON, in her  
official capacity; JOHN LEWIS, in his  
official capacity,

Defendants.

## ORDER ON TEMPORARY MEASURES

THIS MATTER came on for hearing on August 15, 2018, before the undersigned three-judge panel on the Motion for Temporary Restraining Order and Preliminary Injunction of Plaintiff Governor Roy A. Cooper, III and the Motion for Temporary Restraining Order and Preliminary Injunction of Defendants-Crossclaimants the North Carolina Bipartisan State Board of Elections and Ethics Enforcement and J. Anthony (Andy) Penry (collectively the Board), regarding the inclusion on the November 2018 general election ballot of two ballot questions concerning proposed amendments to the North Carolina Constitution. Also before the Court are the Motion for Temporary Restraining Order and Preliminary Injunction and Request for an Expedited Hearing of the North Carolina State Conference of the National Association for the Advancement of Colored People and Clean Air Carolina regarding the inclusion on the November 2018 general election ballot of four ballot questions concerning proposed amendments to the

North Carolina Constitution. Also before the Court are Governor Cooper's and the Board's Unopposed Joint Notice and Request for Hearing on Motions for Preliminary Injunction, as well as Governor Cooper's Motion to Shorten Time for Filing and Service of Affidavit in Support of Governor Cooper's Motion for Temporary Restraining Order and Preliminary Injunction. All parties had notice and were represented at the hearing. The Court has considered all matters of record, including the pleadings and motions, the parties' briefs, the affidavits on file, and the arguments of counsel. The Court FINDS and CONCLUDES as follows:

1. Under North Carolina law, for a general election in an even-numbered year, the Board must make absentee ballots available to voters 60 days before the election— here, September 7. *See* N.C. Gen. Stat. § 163A-1305(a) (2017). Before these ballots can be made available, the Board must prepare and print the ballots and conduct testing on them. The Board has represented to the Court that this preparation, printing, and testing takes at least 21 days. Thus, under the circumstances of this year's election, in the absence of a court order to the contrary, the Board would expect to begin preparing, printing, and testing ballots on August 17.

2. The Court intends to enter its ultimate order on the parties' motions as soon as possible, but in view of the complexity of these cases and the shortness of time, the Court might not enter an order by August 17.

3. It would not serve the public interest for the Board to begin preparing, printing, and testing the ballots before this Court enters its ultimate order on the parties' motions. If the Board began preparing the ballots, then the Court later entered an order

that affected the content of the ballot, the Board would be required to restart its process, wasting the public resources that had been spent on the process before that time.

4. After the Court enters its ultimate order on the parties' motions, it would serve the public interest for the present order to remain in effect for three business days after the entry of the ultimate order. That short continuation of the present order would prevent confusion and a possible waste of public resources while any appellants from the ultimate order seek a stay of the ultimate order from the appellate courts.

5. The Court concludes that the parties have satisfied any requirement to ask this Court to stay, pending any appeal, the Court's ultimate order on the parties' motions. *See* N.C. Gen. Stat. § 1A-1, Rule 62(c); N.C. R. App. P. 8(a), 23(a)(1).

In view of the above findings and conclusions, the Court, in the exercise of its discretion and for good cause shown, hereby ORDERS as follows:

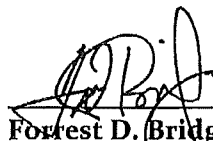
A. While this order is in effect, the Board, its officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them, shall not take any action to authorize or approve any language to be placed on the official ballot for the November 2018 general election.

B. While this order is in effect, the Board, its officers, agents, servants, employees, and attorneys, and any persons in active concert or participation with them, shall not prepare ballots, print ballots, or authorize any person or entity to prepare or print ballots for the November 2018 general election.

C. The relief provided by decretal paragraphs A and B of this order automatically expires on whichever of the following dates and events occurs first:

1. 11:59 p.m. Eastern Daylight Time on Friday, August 31, 2018.
2. 11:59 p.m. Eastern Daylight Time on the third non-weekend day after the entry of the Court's ultimate order on the parties' motions for preliminary injunction. For purposes of calculating this expiration date, the day of entry of the Court's ultimate order does not count as the first of the three business days allowed.
3. Any other expiration date that is explicitly stated in a later order of this Court or in an order of an appellate court.

SO ORDERED, this the 17<sup>th</sup> day of August 2018 at 5:30 p.m.



Forrest D. Bridges  
*Superior Court Judge Presiding*

Signed on Behalf of and with Consent of:  
**Thomas H. Lock**, *Superior Court Judge Presiding*  
**Jeffrey K. Carpenter**, *Superior Court Judge Presiding*



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing document was served on the following persons by depositing a copy of the same in the United States mail, postage prepaid, and properly addressed, as follows:

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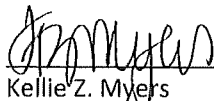
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Daryl V. Atkinson  
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[daryl@forwardjustice.org](mailto:daryl@forwardjustice.org)  
[lkang@forwardjustice.org](mailto:lkang@forwardjustice.org)

This the 20<sup>th</sup> day of August, 2018.



Kellie Z. Myers

Trial Court Administrator, 10<sup>th</sup> Judicial District  
[kellie.z.myers@nccourts.org](mailto:kellie.z.myers@nccourts.org)

# **EXHIBIT 9**



STATE BOARD OF ELECTIONS

August 8, 2018

AUG 08 2018

*Via Hand Delivery*

J. Anthony Penry, Esq., Chair  
Josh Lawson, Esq., General Counsel  
North Carolina State Board of Elections & Ethics Enforcement  
430 N. Salisbury Street, Third floor  
Raleigh, North Carolina 27603-5918

*Re: Conditional Candidate Withdrawal for NC Supreme Court  
Associate Justice Seat 1 (Jackson Seat)*

Dear Messrs. Penry and Lawson,

As you are aware, litigation exists concerning the application of Session Law 2018 – 130 (Senate Bill 3) to “Clarify Political Party Disclosure on the Ballot for Judicial Races in 2018,” (*Anglin v. Berger, Moore, et. al.* 18 CVS 9748, and *Edwards v. State Board, Strach* in Wake County Superior Court). Until this litigation concludes, my proper placement and party label on the November 2018 ballot by the North Carolina State Board of Elections & Ethics Enforcement (“Board”) remains uncertain.

While I firmly believe and intend to prove in court that S.L. 2018-130 is an unconstitutional violation of my rights under the North Carolina Constitution, in the unlikely circumstance that the courts allow it to go into effect, I will not allow my party designation to be misrepresented on the ballot. Section 4.(c)(2) of S.L. 2018-130 would require that I withdraw from the race by close of business on August 8, 2018 or allow my name to be on the ballot with no designation. Judge Holt’s Temporary Restraining Order stays that deadline.

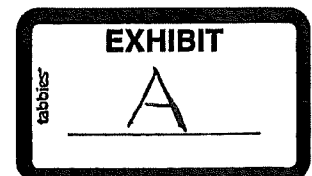
Consequently, pursuant to Section 4.(c)(2) of S.L. 2018-130, I hereby file the attached conditional notice. This conditional notice is to be effective only should the Board be ordered to take action by a North Carolina court, to finalize and print the North Carolina November 2018 General Election ballot listing Christopher (Chris) Anglin as a candidate for NC Supreme Court Associate Justice Seat 1 (Jackson Seat) without my accompanying party affiliation of Republican, or if the Board otherwise determines--in the absence of a court order prohibiting such determination--it appropriate to certify, finalize, or print such ballots subject to the provisions of S.L. 2018-130. In that event, my attached candidate withdrawal takes effect retroactively to August 8, 2018 at noon. Should the courts otherwise allow my original filing based upon my party registration as of July 29, 2018 under S.L. 2018-13 to stand, the attached document should be considered void and of no effect.

Section 2(c) of S.L. 2018-13 (unamended), my attached candidate withdrawal takes effect retroactively to August 8, 2018 at noon.

Should you have any question about this conditional candidate withdrawal, please do not hesitate to contact me.

Sincerely,


Christopher Anglin

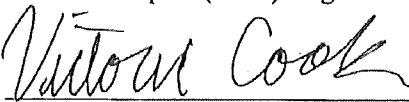


J. Anthony Penry, Esq., Chair  
Josh Lawson, Esq., General Counsel  
August 8, 2018  
Conditional Candidate Withdrawal  
Page 2

### Conditional Candidate Withdrawal

Subject to the conditions contained in my accompanying 8 August 2018 letter, I hereby withdraw as a candidate for election to the office of *NC Supreme Court Associate Justice Seat 1 (Jackson Seat)* effective on this date 8 August 2018 at 12:00 noon, in the regular North Carolina general election to be held Tuesday, 6 November 2018.

Signed:   
Christopher (Chris) Anglin

Witness: 

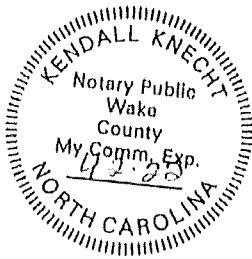
STATE OF NORTH CAROLINA

COUNTY OF WAKE

Signed and sworn to before me this day by Christopher (Chris) Anglin, and I certify that the aforesaid person personally appeared before me this day acknowledging to me that he signed the foregoing Conditional Candidate Withdrawal.

Date: Aug 8 2018

(Official/Notarial Seal)

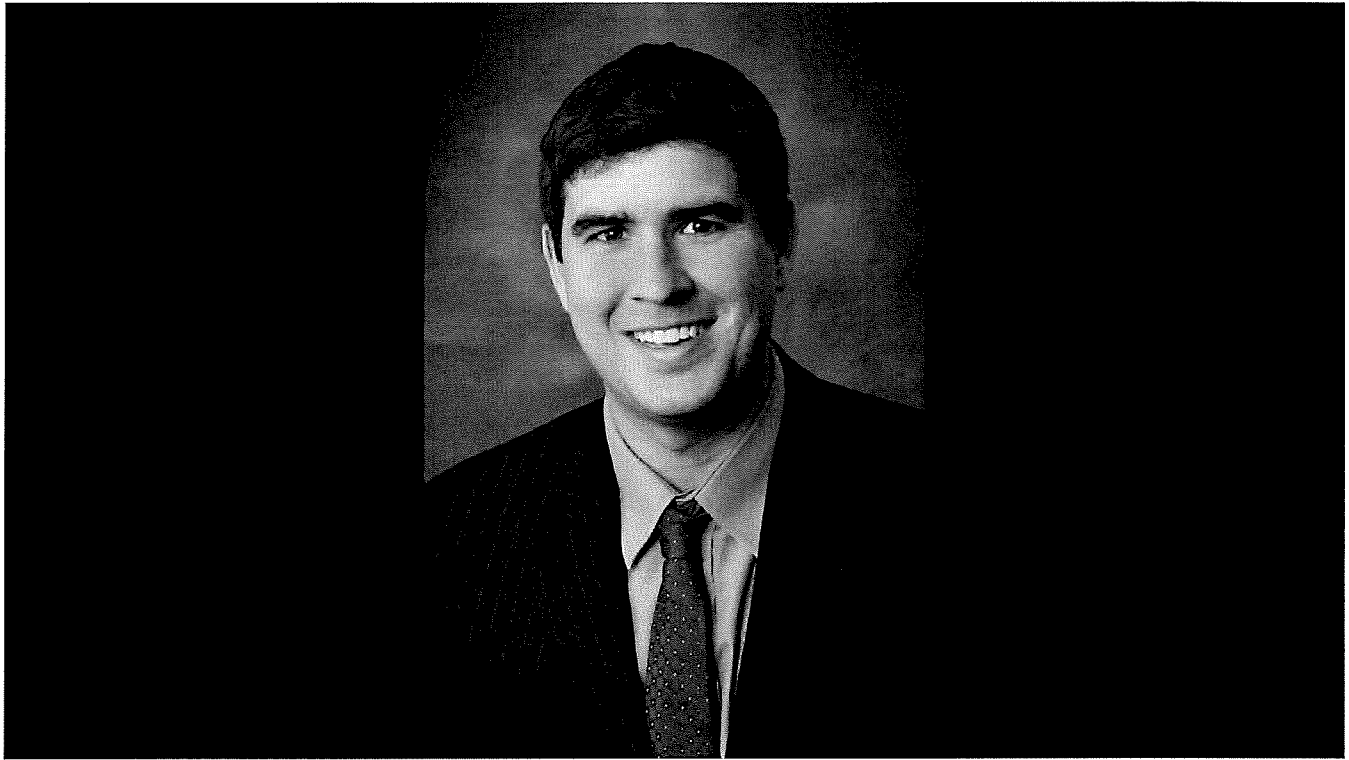


Kendall Knecht, Notary Public

Notary's Printed Name: Kendall Knecht

My commission expires: 4-2-2022

# **EXHIBIT 10**



VIEWPOINT

## Chris Anglin: Why I'm running as a Republican for NC Supreme Court

BY CHRIS ANGLIN - SPECIAL TO THE OBSERVER EDITORIAL BOARD

July 30, 2018 03:17 PM

*In response to "Democrats say they're the party of principles. They should act like it" (July 27 Observer editorial):*

This has been a dizzying decade for North Carolinians. Nearly every day we have witnessed attacks on the rule of law and the checks and balances of our democracy at both the federal and state level.

Our legislature has governed like the emperor with no clothes since gaining super majorities. The only check to its overreach has been an independent judiciary, so judicial elections have been a frequent and repeated target of power grabs.

First, N.C. lawmakers eliminated public financing for judicial races, widening the door for big money influence on the courts.

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Then they made us the first state in 100 years to make judicial races partisan, including the state Supreme Court. They rigged the ballot order to favor their candidate and eliminated the primary election for this year.

They've abolished seats on the Court of Appeals and redrawn judicial districts to favor one party over another.

They have openly expressed a desire to do away with judicial elections altogether and to give the legislature the power to control all judicial seats.

They passed six unneeded, misleading constitutional amendments that will harm voting rights, and strip power from the executive and judicial branches of government. There is nothing transparent, nor conservative about this. It's just bad governing, putting party and power over the people.

While this has happened, the incumbent Supreme Court justice running for re-election has failed to stand up for the judiciary, remaining silent as lawmakers took steps to help her.

I could no longer watch from the sidelines and decided to run for Supreme Court to fight for our independent judiciary. When I announced, I stated I was running as a Republican to be a voice for the many disaffected, conservative, constitutional Republicans who believe the party has left them, and to make the point that partisan judicial elections are a mistake. They force judges to kowtow more to parties, and it is how you get judges like Roy Moore.

Some have questioned if I'm a "genuine" Republican. That is a fair question for many elected GOP leaders today. Is Donald Trump? An independent before 2012, I voted for George Bush, Pat McCrory and interned in Phil Berger, Jr.'s D.A. office. I want to represent the traditional GOP, one that respected our Constitution and the rule of law.

Bob Orr and Howard Manning were outstanding independent yet conservative jurists who also happened to be Republicans. I would serve as they did, for the people, not a party.

Now, in a stunning act of cowardice, legislators have taken steps to misrepresent my campaign on the ballot, and the incumbent continues to remain silent. They made the rules. I followed them. They will stop at nothing to hand pick their judge, and undermine our democratic process.

It may be legal, but it certainly isn't right. Even children understand that changing the rules in the middle of the game is wrong. It's downright un-American. No matter what happens next, our campaign has been victorious because it has exposed the folly of partisan judicial elections, and the emperor's naked grab for power.

North Carolinians have a chance to get off this dizzying ride. They can stand up for an independent judiciary and the checks and balances of our democracy by defeating all six unneeded, misleading Amendments, and by electing lawmakers and judges who will fight for the rule of law, not undermine it. I'm confident they will make the right choices.

 COMMENTS ▼

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