

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20 CVS 500171

CRYSTAL WALDRON, and CLUB 519,

Plaintiffs,

v.

GOVERNOR ROY A. COOPER, III, in
his official capacity as Governor of the
State of North Carolina,

Defendant.

**ORDER TRANSFERRING TO A
THREE-JUDGE PANEL**

1. THIS MATTER, presently pending before the undersigned, is now before the Court on plaintiffs' Amended Complaint, (ECF No. 21), Motion to Transfer, (ECF No. 22), and defendant's Motion to Dismiss, (ECF No. 24). The sole claim in the Amended Complaint is a facial challenge as to the constitutionality of provisions of the North Carolina Emergency Management Act, N.C.G.S. §§ 166A-19–19.79. The Motion to Dismiss likewise presents that sole issue. There is no other pending issue which can be addressed without resolving the facial constitutional issue.

2. N.C.G.S. § 1-267.1 and N.C.G.S. § 1A-1, Rule 42(b)(4) require that a facial challenge to the constitutionality of an Act of the North Carolina General Assembly must be heard and determined by a three-judge panel of Superior Court.

3. N.C.G.S. § 1A-1, Rule 19(d) further mandates that, "[t]he Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State through the General Assembly, must be joined as defendants in any civil action challenging the validity of a North Carolina statute or provision of the North

Carolina Constitution under State or federal law.” N.C.G.S. § 1A-1, Rule 19(d). As the Speaker and President Pro Tempore were not named in the Amended Complaint and have not filed a notice of intervention of right under N.C.G.S. § 1A-1, Rule 24(c), the Court addresses their absence *ex mero motu*. See *Smith v. USAA Cas. Ins. Co.*, 261 N.C. App. 40, 49–50 (2018) (explaining that “[w]hen there is an absence of necessary parties, the trial court should correct the defect *ex mero motu* upon failure of a competent person to make a proper motion”).

4. The Court therefore hereby ORDERS as follows:
 - a. The Court declines to rule upon the Motion to Dismiss;
 - b. The Speaker of the House of Representatives and the President Pro Tempore of the Senate are hereby added as necessary parties to this action, and plaintiffs are directed to provide a copy of all of the pleadings in this action to them;
 - c. This case is transferred to a three-judge panel of Superior Court, Wake County, to be appointed by the Chief Justice of the Supreme Court of North Carolina, pursuant to N.C.G.S. § 1-267 and N.C.G.S. § 1A-1, Rule 42(b)(4).

IT IS SO ORDERED this 26th day of March, 2021.

/s/ James L. Gale

James L. Gale
Judge Presiding