

STATE OF NORTH CAROLINA

WAKE COUNTY

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

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; and THE STATE OF NORTH CAROLINA,

Defendants.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

23 CVS 28505-910

**THE NORTH CAROLINA HOME  
BUILDERS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE  
*AMICUS CURIAE* BRIEF**

The North Carolina Home Builders Association (NCHBA) moves the Court for leave to submit an *amicus curiae* brief. In support of this Motion, NCHBA shows the Court the following:

1. On October 10, 2023, North Carolina Governor Roy A. Cooper III filed this action in Wake County Superior Court challenging the constitutionality of recent statutory enactments. The Governor's complaint was accompanied by a motion for a temporary restraining order and a preliminary injunction.

2. On October 18, 2023, the Court issued notice that it would hear arguments on November 1, 2023, regarding the Governor's request for preliminary injunctive relief. The notice

required the Governor to submit materials on October 23, 2023, and the Legislative Defendants to submit materials on October 27, 2023.

3. Trial courts generally have discretion on whether to grant leave to file an *amicus* brief. *See Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008); *see also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (noting that non-parties have the option to file *amicus* briefs in district court proceedings and that *amici* “often make useful contributions to litigation”); *accord* N.C.R. App. P. 28(i) (discussing submission of *amicus* briefs in appellate courts).

4. There is no North Carolina Rule of Civil Procedure that applies to motions for leave to appear as *amicus curiae* in Superior Court; therefore, the Court may look to the North Carolina Rules of Appellate Procedure for guidance on such motions. Rule 28(i) of our Appellate Rules states that an *amicus curiae* “may file a brief with the permission of the appellate court,” and that permission can be obtained by filing a motion “that states concisely the nature of *amicus curiae*’s interest, the reasons why the brief is desirable, the issues of law to be addressed in the brief, and the position of *amicus curiae* on those issues.” N.C.R. App. P. 28(i)(1). The motion must include a copy of the *amicus curiae*’s brief. N.C.R. App. P. 28(i)(2). Finally, the *amicus curiae* must file its motion and brief within the time allowed for filing of the party’s brief that the *amicus curiae* seeks to support. N.C.R. App. P. 28(i)(3).

5. NCHBA is a not-for-profit trade association that was incorporated in 1963 for the purpose of being a voice for the residential construction industry in this state. The Association is comprised of more than 15,000 member firms, including licensed general contractors and businesses that provide goods and services to builders. The Association’s member firms are responsible for constructing the overwhelming majority of homes offered for sale in North Carolina.

6. The Association is a key voice in improving industry standards for conduct, quality, and ethics in North Carolina. NCHBA advocates before all branches of government, and the Association has a long record of representing home builders' interests before the judicial branch, typically by way of *amicus* participation in cases of significance to the industry. Given its interest in construction quality and affordability, NCHBA regularly appears before the North Carolina Building Code Council (BCC) and advocates for or against proposed changes to our State's residential building code. To illustrate the importance of building codes to NCHBA, the Association employs a Director of Codes and Construction that is dedicated to advocacy efforts before the BCC.

7. NCHBA was the major proponent of HB 488 (Session Law 2023-108), working closely with legislators from the bill's first introduction through its enactment, brought about by the General Assembly's override of the Governor's veto. Session Law 2023-108 will introduce a new building code agency in 2025, the Residential Code Council, which will be responsible for maintaining and revising North Carolina's residential building code and the other codes related to residential construction. NCHBA believes that the new Residential Code Council will maintain and revise the residential building code in a manner that will better reflect the concerns and needs of our citizens, by insuring safe and well-built housing while keeping housing affordability as a major consideration.

8. The proposed *amicus* brief addresses the narrow, but important, issue of the Governor's request for *preliminary* injunctive relief. The sections of Session Law 2023-108 that the Governor seeks to enjoin—Sections 1.(a) and 1.(b), *see* Comp. ¶ 181—do not take effect until January 1, 2025. *See* N.C. Sess. Law 2023-108, § 1.(r). Because the Governor is not in

danger of immediate harm, a preliminary injunction at the outset of this lawsuit is not needed to maintain the *status quo*.

9. Counsel for the NCHBA has conferred with counsel for the parties. Legislative Defendants and the State of North Carolina consent to this motion. The Governor takes no position on the motion.

10. The NCHBA does not seek to participate in oral argument at the scheduled hearing.

11. A copy of the proposed *amicus* brief is attached hereto, along with a proposed order.

WHEREFORE, the North Carolina Home Builders Association respectfully requests that the Court grant this Motion for leave to file its *amicus curiae* brief.

Respectfully submitted, this the 27th day of October, 2023.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the foregoing document was served on the following parties via email as follows:

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This the 27th day of October, 2023.

/s/ Craig D. Schauer

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