

FILED

DATE: January 12, 2024

TIME: 01/12/2024 2:08:24 PM

WAKE COUNTY

SUPERIOR COURT JUDGES OFFICE

STATE OF NORTH CAROLINA
BY: S. Smallwood

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23CV28505-910

COUNTY OF WAKE

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; THE STATE
OF NORTH CAROLINA; NORTH
CAROLINA ENVIRONMENTAL
MANAGEMENT COMMISSION;
JOHN (JD) SOLOMON, in his official
capacity as CHAIR of the North
Carolina Environmental Management
Commission; CHRISTOPHER M.
DUGGAN, in his official capacity as
VICE-CHAIR of the North Carolina
Environmental Management
Commission; and YVONNE C.
BAILEY, TIMOTHY M.
BAUMGARTNER, CHARLES S.
CARTER, MARION DEERHAKE,
MICHAEL S. ELLISON, STEVEN P.
KEEN, H. KIM LYERLY,
JACQUELINE M. GIBSON, JOSEPH
REARDON, ROBIN SMITH, KEVIN
L. TWEEDY, ELIZABETH J. WEESE,
and BILL YARBOROUGH, in their
official capacities as
COMMISSIONERS of the North
Carolina Environmental Management
Commission.

Defendants.

**TEMPORARY RESTRAINING
ORDER**

THIS MATTER came on for hearing on January 11, 2024, before the Court upon Governor Roy A. Cooper, III's ("Plaintiff's") Motion for Temporary Restraining Order enjoining the North Carolina Environmental Management Commission ("EMC"), its Commissioners, officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise, from voluntarily dismissing the EMC's claims in *EMC vs. RRC* (23CV032096-910) during the pendency of this litigation. Plaintiff's counsel were present at the hearing, and advised the Court that they had given Defendants, Philip E. Berger, President Pro Tempore of the North Carolina Senate, Timothy K. Moore, Speaker of the North Carolina House of Representatives, the State of North Carolina (through the Attorney General), EMC (through its general counsel), and Commissioners John (JD) Solomon, Christopher M. Duggan, Yvonne C. Bailey, Timothy Baumgartner, Charles S. Carter, Marion Deerhake, Michael S. Ellison, Steven P. Keen, H. Kim Lyerly, Jacqueline M. Gibson, Joseph Reardon, Robin Smith, Kevin L. Tweedy, Elizabeth J. Weese, and Bill Yarborough (through EMC's general counsel) notice of Governor Cooper's intent to seek a temporary restraining order.

Upon consideration of all matters of record, including the Motion for Temporary Restraining Order, Verified Supplemental Complaint, Affidavits of Elizabeth Biser and Robin Smith, and arguments by counsel for Plaintiff and counsel for Defendants, the Court finds and concludes as follows:

1. This Court has personal jurisdiction over Defendants and subject matter jurisdiction over this matter.
2. This Court has jurisdiction to resolve this Motion.
3. For purposes of the temporary restraining order, Plaintiff has demonstrated a likelihood of success on the merits on his *as-applied* constitutional challenge to the Environmental Management Commission, as structured under Session Law 2023-136. *A.E.P. Indus., Inc. v. McClure*, 308 N.C. 393, 401–02 (1983). Plaintiff has also demonstrated that he would be irreparably harmed in the absence of a temporary restraining order and the balance of equities favors granting a temporary restraining order.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. That Plaintiff's Motion for Temporary Restraining Order is GRANTED;
2. That Defendants North Carolina Environmental Management Commission ("EMC"), John (JD) Solomon, Christopher M. Duggan, Yvonne C. Bailey, Timothy Baumgartner, Charles S. Carter, Marion Deerhake, Michael S. Ellison, Steven P. Keen, H. Kim Lyerly, Jacqueline M. Gibson, Joseph Reardon, Robin Smith, Kevin L. Tweedy, Elizabeth J. Weese, and Bill Yarborough are enjoined from voluntarily dismissing the EMC's claims in *EMC vs. RRC* (23CV032096-910) until this Court rules on Plaintiff's Motion for Preliminary Injunction;
3. That "those persons in active concert or participation with them who receive actual notice in any manner of [this] order by personal service or otherwise"

are likewise enjoined from voluntarily dismissing the EMC's claims in *EMC vs. RRC* (23CV032096-910) until this Court rules on Plaintiff's Motion for Preliminary Injunction; and

4. The parties will be heard on Plaintiff's Motion for Preliminary Injunction on January 18 at 2:30 PM in Courtroom 10A of the Wake County Courthouse.

SO ORDERED, this the 12th day of January, 2024 at 1:58 p.m.



Honorable Rebecca W. Holt
Superior Court Judge Presiding
Wake County Superior Court

1/12/2024 1:57:16 PM

Certificate of Service

I HEREBY CERTIFY that the foregoing document (order granting shortened notice) was served on the parties listed below by:

x-Transmitting a copy hereof to each said party via e-mail;

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kymhunter@gmail.com
Pro se Intervener

This the **12th** day of **January**, 2024.

1/12/2024 2:08:16 PM



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