STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
24CV039723-910

JOSHUA H. STEIN, in his official capacity as GOVERNOR-ELECT OF THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

DESTIN C. HALL, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; and FREDDY L. JOHNSON, in his official capacity as COMMANDER OF THE STATE HIGHWAY PATROL,

Defendants.

LEGISLATIVE DEFENDANTS' RESPONSE IN OPPOSITION TO THE GOVERNOR'S MOTION FOR SUMMARY JUDGMENT

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Defendants Destin C. Hall, in his official capacity as Speaker of the North Carolina House, and Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate (together, "Legislative Defendants"), submit this brief in opposition to the Governor's motion for summary judgment.

ARGUMENT

The Governor asks for summary judgment on his claims that section 3E.1.(u) violates the North Carolina constitution.[1] Acts of the legislature are "presume[d]" to be constitutional, since the legislature has "plenary power" and serves as "the agent of the people for enacting laws." *Harper v. Hall*, 384 N.C. 292, 323, 886 S.E.2d 393, 414 (2023). Because the Governor fails to overcome this presumption of constitutionality, the Governor's request for summary judgment should be denied.

I. The Governor Has Not Established an Actual Controversy.

As explained in the Legislative Defendants' brief supporting their motion for summary judgment, absent evidence that Governor Stein intends to replace Commander Johnson, the Governor has failed to establish an actual controversy. *See* Legis. Defs. Summ. J. Br. at 6-8. Governor Stein asks for a ruling declaring he has the power to remove Col. Johnson, but the Governor has offered no evidence showing that he intends to actually remove him. Therefore, there is no actual case or controversy at stake; the Governor's lawsuit is seeking merely an advisory opinion. The Court lacks jurisdiction over the case and it must be dismissed. *See Wise v.*

[1] The Governor's brief does not explain how section 3E.1.(q) violates the North Carolina constitution. *See* Gov. Summ. J. Br. at 9 n.4. The Governor's challenge to section 3E.1.(q) should be summarily dismissed. *See* Legis. Defs. Summ. J. Br. at 4 n.2.

Harrington Grove Cmty. Ass'n, Inc., 357 N.C. 396, 408, 584 S.E.2d 731, 740 (2003) ("It is no part of the function of the courts to issue advisory opinions.").

II. Section 3E.1.(u) Does Not Violate the Separation of Powers Clause.

Governor Stein's argument is simple. The Governor believes that because the State Highway Patrol performs an executive function, the agency's leader must necessarily be under his control. *See* Gov. Summ. J. Br. at 13-14. This argument, while simple, is based on a radical view of the Governor's constitutional powers that is detached from the constitution itself.

To support his view of his own powers, the Governor proposes a separation-of-powers test that presumes he has such broad powers in the first place. The Court should reject this proposed test in favor of the test set forth by the Supreme Court. Under the Supreme Court's test, the Governor's constitutional challenge to section 3E.1.(u) necessarily fails.

A. The Court should reject the Governor's proposed separation-of-powers test.

The Governor proposes a two-part test to determine whether Section 3E.1.(u) violates the Separation of Powers Clause. First, according to the Governor, the Court asks whether the State Highway Patrol possesses executive authority. *See* Gov. Summ. J. Br. at 13-14. Second, if the agency possesses executive authority, then the Court inquires whether the law encroaches on the Governor's control of the Highway Patrol. *See id.*

The Governor's proposed test is built on a false premise. The first question in the Governor's test presumes that, under our constitution, the Governor has an

exclusive duty to exercise all executive authority. In other words, the constitution places all executive functions (including those performed by the Highway Patrol) under the Governor's control. But that's not how our constitution structured the executive powers of our state.

Our constitution did not create a unitary executive, in which the Governor has exclusive control over the state government's executive powers. Our constitution divided the executive power among multiple officials. The dispersion of executive power is especially clear when it comes to the enforcement of criminal and public-safety laws. As explained in the Legislative Defendants' own brief, the constitution itself disburses law enforcement responsibilities among county sheriffs and district attorneys, *see* Legis. Defs. Summ. J. Br. at 14-16, and empowers the General Assembly to create additional law enforcement officers, *see id.* at 18. The Governor lacks control over all these officers who enforce the laws. *See id.* The constitution does not assign the Governor an exclusive duty to enforce the laws of this state.

Thus, the Governor is mistaken to request that the Court begin its legal inquiry by asking whether the State Highway Patrol possesses executive authority. That question is premature. For even if the Patrol exercises executive powers, our constitution does not guarantee the Governor exclusive control over *all* executive powers. The Governor, instead, must first show that our constitution assigns him the duty to control the particular executive power at issue (here, the enforcement of criminal and public safety laws, which is what the Patrol does). Then, only if the Governor can identify such a constitutional duty, the Court asks whether section

3E.1.(u) gives the Governor sufficient control over the Patrol. Unsurprisingly, these are the first two questions posed by the separation-of-powers test set forth by our Supreme Court.

B. The Court should follow the separation-of-powers test set forth by the Supreme Court.

When faced with a separation-of-powers claim, the Supreme Court has employed a two-part test.

First, the Court asks whether "the actions of one branch prevent another branch from performing its constitutional duties." *McCrory v. Berger*, 368 N.C. 633, 645, 781 S.E.2d 248, 256 (2016); *see Bacon v. Lee*, 353 N.C. 696, 715, 549 S.E.2d 840, 853 (2001) ("[T]he proper inquiry focuses on the extent to which it prevents the Executive Branch from accomplishing its constitutionally assigned functions." (quotation marks omitted)). The answer depends on (1) which of the executive branch's constitutional duties, if any, are impacted by the challenged law; and (2) if the branch's constitutional duties are impacted, whether the branch nonetheless retains sufficient control to perform its constitutional duty. *McCrory*, 368 N.C. at 646, 781 S.E.2d at 256 (asking whether Governor has "enough control" to "perform his constitutional duty"); *Cooper v. Berger* (*Cooper II*), 371 N.C. 799, 806, 822 S.E.2d 286, 293 (2018) (same); *Cooper v. Berger* (*Cooper I*), 370 N.C. 392, 414, 809 S.E.2d 98, 111 (2018) (same).

Second, even if the challenged law interferes with the performance of a constitutional duty, the Court still inquires whether the disruption is reasonable and justified. *McCrory*, 368 N.C. at 645, 781 S.E.2d at 256 ("[W]e must determine whether

the actions of a coordinate branch 'unreasonably disrupt a core power of the executive.'" (quoting *Bacon*, 353 N.C. at 717, 549 S.E.2d at 854)). The legislature's disruption is constitutionally permissible if it is "justified by an overriding need to promote objectives within the constitutional authority" of the legislature. *Bacon*, 353 N.C. at 715, 549 S.E.2d at 853.

For the Governor to prevail on his constitutional challenge, he must establish (1) that section 3E.1.(u) interferes with one of his constitutional duties; (2) the session law does not leave him enough control to perform that duty; and (3) any interference is not justified by the legislature's overriding objectives. The Governor does not meet this burden.

C. The Governor cannot identify a constitutional duty with which section 3E.1.(u) interferes.

As explained in the Legislative Defendants' summary judgment brief, the Governor cannot find anything in the text or structure of the constitution that commits to his office the duty to enforce criminal and public-safety laws. *See* Legis. Defs. Summ. J. Br. at 14-20.

The threshold question for the Court is whether the challenged law prevents the Governor from performing any duties that our constitution assigns to him. *See Cooper I,* 370 N.C. at 412, 809 S.E.2d at 110 9 ("legislation impermissibly interferes with the authority constitutionally committed to the person holding that office"). To determine whether a law interferes with a constitutional duty of the Governor, a court must first look to find "a textually demonstrable constitutional commitment" of such duty to the Governor. *Id.* at 408, 809 S.E.2d at 107 (cleaned up); *see Harper*, 384

N.C. at 321, 886 S.E.2d at 413 (holding the Separation of Powers Clause itself "does not establish the various powers" of the three branches, rather "[t]he constitutional text develops the nature of those powers").

In the Amended Complaint, the Governor describes the State Highway Patrol as performing "essential law enforcement functions" such as the "day-to-day enforcement of public safety laws." Am. Compl. ¶¶ 5, 55. The Governor contends that he must have control "over the 'views and priorities' of the individual leading one of the most important law enforcement agencies in our State." *Id.* ¶ 66. And he objects to section 3E.1.(u) because it breaks the "chain-of-command for state law enforcement." *Id.* ¶ 15. Thus, the Governor's separation-of-powers claim is based on the Governor's belief that the constitution assigns to him the duty of enforcing the state's criminal and public-safety laws.

In his brief supporting summary judgment, the Governor does not explain how the text and structure of the constitution make him responsible for enforcing the state's criminal and public-safety laws. Rather, the Governor offers a lone conclusory statement: "Because the Legislative Commander Provision would remove the Governor's primary means of supervising the State Highway Patrol, the constitutional violation is plain." Gov. Summ. J. Br. at 15. But the constitutional violation here is not plain at all. To the contrary, Governor Stein fails to explain how a constitutional violation could possibly exist when the constitutional duty he claims for himself has been assigned by our constitution to sheriffs and district attorneys, rather than the Governor, *see* Legis. Defs. Summ. J. Br. at 14-16, and when the

General Assembly is free to create supplemental law enforcement agencies, such municipal police departments, that are unaccountable to the Governor, *see id.* at 18.

Finding no provision to support the Governor's view of his constitutional duties, the Governor raises a practical objection to section 3E.1.(u). The Governor objects that section 3E.1.(u) must be unconstitutional because the Commander is a "Cabinet-level executive branch officer," and the Governor believes he needs to control all the members of the Cabinet. Gov. Summ. J. Br. at 13-16. Again, the Governor cannot point to a constitutional provision to support his view. That is because the Cabinet is not a creature of our constitution, it is a byproduct of the General Assembly's enactments.

Nowhere does the constitution use the term "Cabinet." The genesis of the term is in the legislation that created and organized the departments of the executive branch. The General Assembly—by exercising its express and inherent constitutional power to structure the executive branch, *e.g.*, N.C. Const. art. III, § 5(10)—created the various departments that are stationed within the executive branch. *See* N.C. Gen. Stat. §§ 143B-2, 143B-6. The appointed heads of the principal departments "make up the membership of the Governor's Cabinet." *Cooper II*, 371 N.C. at 800, 822 S.E.2d at 290. Notably, no statute formally created the Cabinet; rather the General Assembly has implicitly recognized the Cabinet's existence in statutes that dictate the powers of the principal departments. *See, e.g.*, N.C. Gen. Stat. § 126-6.3(a4) (referring to "cabinet and Council of State agencies"); *id.* § 143-745(a)(1) (referring to "a cabinet secretary"); *id.* § 143B-1320 (a)(18) (referring to "cabinet level officer").

Despite the Cabinet being an *implicit* creation of *legislation*, the Governor insists that the North Carolina Constitution guarantees him the power to nominate, supervise, and remove all Cabinet members *See* Gov. Summ. J. Br. at 13-16. The Governor does not look to the constitution's text for this guarantee. Rather, the Governor derives this constitutional guarantee from the *Cooper II* opinion, in which the Supreme Court affirmed the General Assembly's power to demand that the Governor's Cabinet appointees satisfy the Senate's approval. *See* 371 N.C. at 817-18, 822 S.E.2d at 300.

The Governor overstates the holding of *Cooper II*. The Supreme Court in *Cooper II* held only that the senate's confirmation of Cabinet members cannot violate the Separation of Powers Clause so long as the Governor retains the power to nominate, supervise, and remove Cabinet members. *Id.* Although the Supreme Court described the Cabinet members as "critical," *id.* at 807, 822 S.E.2d at 294, this description referred to the traditional heads of the principal departments, who were officers performing duties that the General Assembly had assigned to the Governor. *See Cooper I*, 370 N.C. at 415, 809 S.E.2d at 112 (discussing the Governor's ability to influence the heads of "executive branch agencies subject to his or her control . . . , through delegation from the General Assembly").

The Commander is not a traditional head of a principal department. In restructuring the State Highway Patrol, the General Assembly created a different kind of executive department—one that has a greater degree of independence from the Governor than traditional departments. *Accord Cooper I*, 370 N.C. at 417, 809

S.E.2d at 113 (recognizing the legislature's "authority to provide [an agency] with a reasonable degree of independence from short-term political interference and to foster the making of independent, non-partisan decisions" (footnote omitted)). The General Assembly wanted the Commander, who is tasked with the enforcement of criminal and public-safety laws, to be insulated from political influence. The Highway Patrol was not a replica of the other principal departments already housed in the executive branch; the Patrol was modeled to have a degree of independence that the constitution provided to sheriffs and district attorneys. *See* N.C. Const. art. IV, § 18(1); *id.* art. VII, § 2. Thus, the fact that the Commander is a "Cabinet-level officer" does not mean that the Governor should be able to control him to the same degree as other members of the Cabinet. The General Assembly, in exercising its constitutional authority to modify the Highway Patrol, was free to make the office of Commander different than other Cabinet members.

Despite his objections to section 3E.1.(u), the Governor cannot point to a constitutional provision that assigns the Governor a duty that section 3E.1.(u) prevents him from performing.

D. The Governor has sufficient control over the State Highway Patrol.

Assuming the Governor could identify a constitutional duty impacted by section 3E.1.(u), the Governor must still show that the law deprives him of too much control over the State Highway Patrol. *E.g.*, *McCrory*, 368 N.C. at 646, 781 S.E.2d at 256 (asking whether Governor has "enough control" to "perform his constitutional duty"). The Governor has not done so.

1. The legislature did not appoint the Commander.

The Governor claims "Legislative Defendants themselves appointed their preferred Commander to the Governor's Cabinet." Gov. Summ. J. Br. at 15. That is incorrect. Col. Johnson was appointed by Governor Cooper in April of 2021. Johnson Aff. ¶ 5. The General Assembly extended Col. Johnson's current term so that he could transition into the inaugural five-year term created by section 3E.1.(p). *See* Legis. Defs. Summ. J. Br. at 22-24. The Governor does not challenge the constitutionality of a five-year term, *see id.*; the Governor just doesn't like how the inaugural five-year term straddles his current term. But that doesn't make it unconstitutional.

The Governor goes on to object that extending Col. Johnson's current term deprived the Governor of the ability to choose the Commander. Gov. Summ. J. Br. at 12. That is also incorrect. The General Assembly's extension of a term does not deprive the Governor of the appointment power; it just changes the timing of when the appointment power can be exercised. The power of appointment continues to reside solely with the Governor. Decades ago, the General Assembly passed a law that postponed election dates for certain judges, causing them to stay in office beyond their initial terms. *See Martin v. Preston*, 325 N.C. 438, 450, 385 S.E.2d 473, 479 (1989). The Supreme Court held that the law did not deprive citizens of their right to vote for judges. *Id.* at 455, 385 S.E.2d at 481–82. Why? Because the law merely postponed when they voted next; it didn't take away their vote. *See id.* The same is true here. The extension of Col. Johnson's initial appointment merely postpones when the next appointment will be made; it doesn't take away the Governor's appointment.

2. The Governor can sufficiently supervise the Patrol.

While the Commander has a new degree of independence from the Governor, the State Highway Patrol is not completely autonomous. Rather, as explained already by the Legislative Defendants, the Governor has meaningful control over the Patrol and its membership. *See* Legis. Defs. Summ. J. Br. at 24-25. The Governor does not contend otherwise. In fact, the Governor never argues that Session Law 2024-57 gives him insufficient supervisory powers over the Highway Patrol. *See generally* Gov. Summ. J. Br.

3. The Governor cannot infer a constitutional guarantee to remove the Commander.

The power to remove an appointee is not a constitutional imperative. The Governor does not cite any authority to the contrary. Rather, the Governor argues that, because his office has always had the power to remove the Commander, his power to do so must implicitly reside somewhere in the constitution. *See* Gov. Summ. J. Br. at 4-6, 16. The Governor's argument is wrong on two fronts.

First, the Governor's argument assumes that the Court can infer (based on past legislation) that the constitution tacitly grants the Governor the power to remove all his appointees. The Governor's request for the Court to divine a hidden provision within the constitution's text must be rejected. "The constitution is interpreted based on its plain language. . . . There are no hidden meanings or opaque understandings." *Harper*, 384 N.C. at 297, 886 S.E.2d at 399. When our current constitution was drafted, the People rejected an amendment which would have given the Governor power to appoint and remove the heads of all administrative departments and

agencies. *See* Report of the North Carolina State Constitution Study Commission 1968, p. 113 (1968). If the Governor wants the constitution to guarantee him the power to remove an appointee, he will need to ask the people to add such a provision to the constitution.

Second, Governor Stein appears to misstate the level of control the Governor had over the Commander under prior legislation. *See* Gov. Summ. J. Br. at 4-6. A review of the laws suggests that the Governor has not always held absolute power to remove the Commander.

In 1929, patrolmen were selected by the Highway Commission (with the Governor's approval) and the patrolmen served "at the pleasure of the Governor *and State Highway Commission*." Pub. L. Ch. 218 § 1 (1929) (emphasis added). In 1933, when the Highway Patrol was transferred to the Department of Revenue, the law deprived the Governor of the power to appoint or remove patrolmen, giving it instead to the Commissioner of Revenue. *See* Pub. L. Ch. 214 § 2 (1933) ("[T]he appointment, employment and/or assignment of said Highway Patrolman shall be made by the Commissioner of Revenue."). When the Patrol was transferred to the Department of Motor Vehicles in 1941, the legislature handed the power to appoint and remove patrolmen to the Commissioner of Motor Vehicles. *See* Pub. L. Ch. 36 § 4 (1941) (amending chapter 214 of the public laws of 1933 to substitute "Commissioner of Motor Vehicles" for "Commissioner of Revenue").

In 1977, the General Assembly gave the Governor the power to appoint the Commander. *See* N.C. Sess. Law 1977-70, § 6. But that legislation still did not give

the Governor the absolute power to remove the Commander. *See id.* Rather, the Governor's authority to remove the Commander appears to derive from his power to remove any patrolman, a power he shared with the Secretary of Public Safety. N.C. Gen. Stat. § 20-185(a) (2024) (Members of the Patrol "serve at the pleasure of the Governor and Secretary [of Public Safety].").

It appears the Governor has never had absolute power to remove the Commander. Thus, even if the Court was permitted to infer a constitutional removal power based solely on prior legislation, the Governor's implicit constitutional power would not be as vast as the Governor contends.

E. Any interference with the Governor's purported constitutional duty is justified by the overriding objectives of Session Law 2024-57.

The Governor's control over executive power is never absolute. Our constitution anticipates the General Assembly interfering with the Governor's constitutional duties when such interference is necessary for the General Assembly to discharge its own constitutional duties.

The last question in the Supreme Court's separation-of-powers test asks whether, even if the challenged law disrupts another branch's constitutional duties, the law is nonetheless "justified by an overriding need to promote objectives within the constitutional authority of the intervening branch of government." *Bacon*, 353 N.C. at 715, 549 S.E.2d at 853 (quotation marks omitted). Our constitution provides for some "overlap between branches." *In re Alamance Cnty. Ct. Facilities*, 329 N.C. 84, 96, 405 S.E.2d 125, 130 (1991). Overlap between the powers of the legislative and executive branches is unavoidable when the General Assembly is exercising its broad

constitutional duty to structure the various departments and agencies of our state. *See Stein v. Berger*, No. 114P25, 2025 WL 1486969, at *2 (N.C. Sup. Ct. May 23, 2025) ("Notably, the constitution grants the General Assembly broad authority to reorganize the executive branch.").

Even if the Governor could point to a constitutional duty implicated by section 3E.1.(u)—and also show that the law is too disruptive of his control of the Highway Patrol—the Governor's challenge to section 3E.1.(u) still fails because the limitation on the Governor's ability to replace Commander Johnson is justified by the objectives of continuity of leadership and political independence. *See* Legis. Defs. Summ. J. Br. at 28-30. The one-time extension of the current term of one of Governor Cooper's appointees is part of a broader reorganization of the Highway Patrol. And any residual limitations on the Governor's ability to influence the Commander is consistent with the independence of law enforcement officers first created by our constitution.

III. Legislative Defendants Reserve Their Arguments as to Lack of Subject-Matter Jurisdiction.

As stated in their brief supporting their motion for summary judgment, Legislative Defendants reserve their arguments that the separation-of-powers claim (1) presents a political question over which the courts lack subject matter jurisdiction and (2) fails for lack of subject-matter jurisdiction because the Governor did not exhaust the constitutional process afforded under section 5(10) of article III of the North Carolina constitution. *See* Legis. Defs. Summ. J. Br. at 31-32; *see also Stein*, 2025 WL 1486969, at *3 (Berger, J., concurring) (noting that because the challenged

law "does not appear to delegate a core function of the office of the governor" and does not "disable the executive branch from functioning," the courts "may lack the authority to limit the legislature's actions here").

IV. The Governor Does Not Explain How Section 3E.1.(u) Grants an Impermissible Emolument.

The Governor's argument that the Session Law violates the Emoluments Clause is unpersuasive.

The prohibition against impermissible emoluments "is not implicated when the enactment is intended for the promotion of the general welfare, as distinguished from the benefit of the individual, and if there is reasonable basis for the Legislature to conclude that the granting of the benefit would be in the public interest." *N.C. Utilities Comm'n v. CUCA*, 336 N.C. 657, 677, 446 S.E.2d 332, 344 (1994) (cleaned up).

The Governor does not address this test. Rather, the Governor asserts that section 3E.1.(u) is a "legislatively-prescribed, unremovable term granted by Legislative Defendants to a single, specifically identified person" and therefore "is an unconstitutional exclusive privilege." Gov. Summ. J. Br. at 18. But the Governor's list of adjectives about section 3E.1.(u) does not explain how the law is an impermissible emolument.

First, the fact that the term extension is "legislatively-prescribed" is irrelevant to the Emoluments Clause analysis. The clause prohibits the government from granting a benefit to a person without securing a corresponding public benefit from

the person. *See CUCA*, 336 N.C. at 677, 446 S.E.2d at 344. The clause is unconcerned with which branch of government granted the benefit.

Second, that Col. Johnson is "unremovable" by the Governor is also irrelevant. The question is whether Col. Johnson is providing a public benefit in exchange for the benefits granted him by the state, *see id.*, and the Governor does not contend otherwise. The Governor's reliance on *Leete v. County of Warren,* 341 N.C. 116, 462 S.E.2d 476 (1995) is misplaced. *See* Gov. Summ. J. Br. at 18. In *Leete*, the court prohibited a county from awarding an employee, who had already announced his resignation, an additional severance package because the employee had already been paid "all compensation due" for his past public service. 341 N.C. at 120-21, 462 S.E.2d at 478-79. In contrast, the payments to which the Governor objects are future compensation due for Col. Johnson's *future* public service.

Third, the Governor's characterization of Col. Johnson's appointment as being "granted by Legislative Defendants" is inaccurate. The General Assembly did not appoint Col. Johnson as the Commander. Governor Cooper appointed Col. Johnson; and he did so for an indefinite term. The legislature merely extended Col. Johnson's indefinite term to transition him into the inaugural five-year term created by section 3E.1.(p). The appellate courts have already held that extensions of terms are not violations of the Emoluments Clause. *See Crump v. Snead*, 134 N.C. App. 353, 356, 517 S.E.2d 384, 387 (1999) (extending term of county official not an exclusive emolument); *see Martin*, 325 N.C. at 456, 385 S.E.2d at 482–83 (keeping judicial candidates in office beyond original term not an exclusive emolument).

Fourth, the Governor points out that section 3E.1.(u) grants an extension to a "single, specifically identified" person. But every time the Governor decides to appoint a person to a public office, the Governor is giving an appointment to a "single, specifically identified" person. Doing so does not award the appointee an impermissible emolument. And neither would the Governor's decision to extend the term of an existing appointee. The fact that section 3E.1.(u) applies to a single person doesn't make it unconstitutional. That is just the nature of appointments.

Beyond these characterizations of section 3E.1.(u), the Governor offers a single sentence to explain how section 3E.1.(u) awards Col. Johnson an impermissible emolument: "The significant benefit lacks the required justification." Gov. Summ. J. Br. at 19. But simply saying a benefit is unjustified does not make it so. The Governor does not dispute that Col. Johnson has provided exceptional service to North Carolina as the current Commander. And because "it will always be presumed that public officials will discharge their duties in good faith," the Governor bears a "heavy burden" to overcome the presumption that Col. Johnson will continue to provide such exceptional service during his extended term. *Leete*, 341 N.C. at 119, 462 S.E.2d at 478 (quotation marks omitted). The Governor offers nothing to meet this heavy burden. There is no basis to doubt that the public will continue to benefit from Col. Johnson's continued service as the Commander. Consequently, the extension of Col. Johnson's term is not an impermissible emolument.

V. The Governor Has Abandoned His Equal Protection Challenge.

The Governor does not argue that section 3E.1.(u) violates the Equal Protection Clause. That is because the session law clearly does not implicate the Governor's

equal protection rights. *See* Legis. Defs. Summ. J. Br. at 35-37. The Governor rightfully abandoned this claim.

CONCLUSION

For the foregoing reasons, Legislative Defendants respectfully ask the Court to deny the Governor's motion for summary judgment.

This the 9th day of June, 2025.

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CERTIFICATE OF SERVICE

This certifies that on this day a copy of the foregoing document was served on the following by email at an address of record with the court or by consent:

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This the 9th day of June, 2025.

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