No. COA26-230 TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

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JAY SINGLETON, D.O.; and SINGLETON VISION CENTER, P.A., Plaintiffs-Appellants, v. NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; JOSH STEIN, Governor of North Carolina, in his official capacity; DEVDUTTA SANGVAI, North Carolina Secretary of Health and Human Services, in his official capacity; PHIL BERGER, President Pro Tempore of the North Carolina Senate, in his official capacity; and DESTIN HALL, Speaker of the North Carolina House of Representatives, in his official capacity, Defendants-Appellees.	From Wake County

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RESPONSE BRIEF FOR DEFENDANTS-APPELLEES

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RESPONSE BRIEF FOR DEFENDANTS-APPELLEES

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ISSUES PRESENTED

1. Does the CON law violate the Supreme Court's decision in *Aston Park*?

2. Does the CON law, on its face and as applied to plaintiffs, violate the Fruits of Labor and Law of the Land Clauses?

3. Does the CON law, on its face and as applied to plaintiffs, violate the Exclusive Emoluments and Anti-Monopoly Clauses?

INTRODUCTION

Enacted in 1978, our State's certificate of need law was the product of extensive deliberation over how to stop spiraling healthcare costs and how to improve access to quality healthcare services, particularly for individuals living in the State's rural communities. For a half-century since, the General Assembly has repeatedly amended the CON law in light of ongoing analysis. For example, accounting for concerns that the law covered too many health services, the General Assembly in 2023 significantly narrowed the law's scope, loosening many of its restrictions and exempting certain activities from CON review. The General Assembly again narrowed the law just this past summer.

Some argue that the CON law should be repealed in its entirety rather than further reformed. Eight times over the last decade, legislation has been

introduced to accomplish that aim. To date, however, a full repeal has not garnered enough support to pass both chambers.

Plaintiffs now ask the Court to stop this ongoing democratic debate about a disputed matter of healthcare regulation and declare them the winners. Plaintiffs make policy arguments, under the guise of state constitutional law, about why the CON law is unwise. But those policy arguments can and should be made to the political branches instead. Healthcare is one of the most complex, heavily regulated, and politically contested markets in the economy. Whether the healthcare system appropriately balances costs, quality, and access—among many other factors—implicates a notoriously challenging and critically important policy debate. The political branches—not the courts—are where that debate should continue.

The three-judge panel below correctly dismissed all of plaintiffs' constitutional claims.

First, contrary to plaintiffs' lead argument, the Supreme Court's decision in *In re Certificate of Need for Aston Park Hospital, Inc.*, 282 N.C. 542 (1973), does not resolve the CON law's constitutionality. The Court in *Aston Park* struck down a 1971 CON law because the Court assumed that healthcare

markets operated like any other and would therefore better respond to free competition than state regulation. The General Assembly then passed a new CON law. The new law makes factual findings about the unusual features of healthcare markets that require reasonable regulation. *Aston Park*'s conclusion about a law that is no longer in force, based on an assumption that no longer holds, has no purchase here.

Second, the CON law does not violate the Fruits of Labor and Law of the Land Clauses. This Court has already so held. *Hope—A Women's Cancer Ctr., P.A. v. State*, 203 N.C. App. 593 (2010). Plaintiffs contend that this precedent is no longer good law, pointing to several recent Supreme Court decisions on the right to earn a living. Plaintiffs argue that those decisions apply a fact-intensive analysis that requires discovery to decide whether the CON law imposes reasonable burdens on economic activity. Plaintiffs overclaim. The cases that they cite all involved challenges to executive action—not legislation—and therefore did not address the presumption of constitutionality that attends the General Assembly's statutory enactments. Plaintiffs must show that the CON law violates the constitution beyond a reasonable doubt. But plaintiffs' brief does not even mention this critical standard, much less explain how plaintiffs satisfy it.

Third, the CON law does not violate the Exclusive Emoluments and Anti-Monopoly Clauses. Both clauses bar state-granted "exclusive" privileges that serve private interests rather than the public good. Instead of granting exclusivity, however, the CON law regulates entry into certain healthcare markets through a continuous process that responds annually to updated data, public comment, and agency review. The law thus leaves the door open to future competition while ensuring access to affordable healthcare services. That is a far cry from the kind of outright prohibitions on entering a market—and the exclusive privileges those prohibitions secured for a select few—that our constitution's framers sought to forestall.

This Court should affirm.

STATEMENT OF THE CASE

In April 2020, Dr. Jay Singleton and his eye clinic, Singleton Vision Center, filed this lawsuit challenging the CON law under the state constitution. (R pp 3-34) The Supreme Court held that plaintiffs' complaint alleged both facial and as-applied claims and remanded for compliance with the three-judge-panel statute. *Singleton v. N.C. Dep't of Health & Hum. Servs.*, 386 N.C. 597, 599 (2024) (per curiam).

On remand, plaintiffs amended their complaint, and defendants moved to dismiss all claims under Rule 12(b)(6). (R pp 88-118, 120) The trial court transferred that motion to a three-judge panel. (R p 123) Plaintiffs then moved for partial summary judgment. (R pp 125-26) The three-judge panel granted defendants' motion to dismiss, denied plaintiffs' motion, and entered final judgment. (R p 157)

Plaintiffs appealed to this Court. (R pp 158-59)

STATEMENT OF THE FACTS

A. The General Assembly passes the CON law to protect public health.

By the mid-1960s, healthcare costs were increasing rapidly, straining government budgets. James B. Simpson, *Full Circle: The Return of Certificate of Need Regulation of Health Facilities to State Control*, 19 Ind. L. Rev. 1025, 1028-29 n.16 (1986). Healthcare services were also unevenly distributed, with some areas oversupplied and others facing shortages. *Id.* at 1031 n.25.

State legislatures responded by passing CON laws. These laws required providers to obtain a "certificate of need" from the state before they could offer certain health services. *Id.* at 1028-29. A CON would issue only when the state concluded that the public had an actual need for the proposed

service. *Id.* CON laws sought to control costs, increase quality, and ensure an equitable distribution of services. *Id.* at 1028-32.

In 1971, the General Assembly passed a CON law. Act of July 21, 1971, ch. 1164, § 1, 1971 N.C. Sess. Laws 1715, 1715-17. The law spanned all of three pages. Its stated aim was to encourage "orderly development" and to avoid "unnecessary duplication" of medical facilities. *Id.* at 1715.

Two years later, in a case called *Aston Park*, our Supreme Court struck down the law under the state constitution. The Court reasoned that healthcare providers, like any other "ordinary business," would have an "incentive to lower prices," provide "better service," and practice "more efficient management" under free-market conditions. *Aston Park*, 282 N.C. at 549. The Court thus concluded that regulating healthcare markets through the CON process was unreasonable. *Id.* at 551. As a result, the Court held that the law violated the Law of the Land, Exclusive Emoluments, and Anti-Monopoly Clauses. *Id.*

Shortly after *Aston Park*, the General Assembly established a commission to study the North Carolina healthcare system. Based on evidence and testimony from 65 witnesses, "one of [the commission's] most important recommendations" was to pass a CON law. Legislative Comm'n on

Med. Cost Containment, *Interim Report to the 1977 General Assembly of North Carolina, Second Session 1978*, at xvi, 2 (1978), https://bit.ly/3FQsgzG. The commission tied its recommendation to findings that—contrary to the Supreme Court's assumption in *Aston Park*—"the economic structure of the health care industry … significantly alters the 'normal' relationship between supply and demand such that competitive forces do not appear." *Id.* at 44.

The General Assembly followed the commission's recommendation and passed a new CON law. Act of June 16, 1978, ch. 1182, § 2, 1977 N.C. Sess. Laws 71, 71-85.

B. The General Assembly routinely amends the CON law.

The new law makes factual findings to show why a CON process protects public health, including:

- That the law is "necessary to control costs, utilization, and distribution of new health service facilities," because "the effect of free market competition" in healthcare markets is "limit[ed]," N.C. Gen. Stat. § 131E-175(1);

- That the "increasing cost" of healthcare "threatens the health and welfare" of North Carolinians, who "need assurance of economical and readily available health care," *id.* § 131E-175(2);

- That, if left to the free market, the provision of healthcare would suffer from "geographical maldistribution" and that those who "have traditionally been medically underserved" would be "especially" harmed, *id.* § 131E-175(3);

- That access to healthcare is "critical to the welfare of rural North Carolinians," *id.* § 131E-175(3a); and

- That "the general welfare" requires a CON law to assess the "cost" and "quality of care" for proposed health services, *id.* § 131E-175(7).

The General Assembly has also periodically updated and added to these findings.[1]

In addition, the General Assembly has extensively amended the law itself. For example, in 2023, the General Assembly loosened many of the law's restrictions and exempted certain activities from CON review, like ambulatory surgical centers and MRI scanners in counties with a population greater than 125,000. An Act To Provide North Carolina Citizens With Greater Access To Healthcare Options, S.L. 2023-7, §§ 3.1(a)-3.4(b), 2023 N.C. Sess. Laws 11, 29-35. Just this year, the General Assembly further amended the law to exempt inpatient rehabilitation services, facilities, and beds from CON review. Current Operations Appropriations Act of 2026, S.L. 2026-41, § 9F.4(a).

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[1] *See, e.g.*, Act of June 30, 1987, ch. 511, § 1, 1987 N.C. Sess. Laws 795, 795-97 (amending various findings, including that healthcare services would be unevenly distributed "if left to the market place"); Act of Mar. 18, 1993, ch. 7, § 1, 1993 N.C. Sess. Laws 5, 5-6 (additional finding explaining why the CON law is needed to ensure rural access to health services).

Over the last decade, at least eight bills have been introduced seeking to entirely repeal the CON law. None has garnered enough support to pass both chambers.[2]

C. The CON law establishes a process for offering certain new health services.

The CON law provides that no person "shall offer or develop a new institutional health service without first obtaining a certificate of need." N.C. Gen. Stat. § 131E-178(a). A "new institutional health service" includes specified health facilities and services. *Id.* § 131E-176(16). The CON law establishes a two-part process for those seeking to offer these services.

First, the process begins by deciding whether a need exists for a covered health service. Such "need determinations" are made annually in the State Medical Facilities Plan. *See* N.C. Dep't of Health & Hum. Servs., *2025 State Medical Facilities Plan*, bit.ly/3V4A2AR; R p 102, ¶ 69 (complaint incorporating the Plan by reference). Each year, the Department and an advisory body, the State Health Coordinating Council, begin work on a Plan

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[2] *See* H.B. 455 (2025), https://bit.ly/4zQT25D; S.B. 370 (2025), bit.ly/463Mm6s; H.B. 107 (2023), bit.ly/3TreP13; S.B. 48 (2023), bit.ly/4aC6QEy; H.B. 410 (2021), bit.ly/3RrNCsu; S.B. 309 (2021), bit.ly/47505rP; H.B. 640 (2017), bit.ly/41uGGiX; S.B. 324 (2017), bit.ly/3RvNGqW.

that projects the public's need for health services in geographic markets across the State. N.C. Gen. Stat. § 131E-176.2. To make these projections, the Department and the Council compile data on healthcare supply and demand. *2025 Plan* at 1. They then apply mathematical formulas to project future needs. *Id.* at 7.

The public has multiple opportunities for comment each year. Any person may submit a written petition requesting changes to the Plan's mathematical formulas. *Id.* The Department and the Council also hold six public meetings after the proposed Plan's release to accept oral and written comments. N.C. Gen. Stat. § 131E-176.2. By the final meeting, any person may submit a written petition "requesting an adjustment to the [proposed Plan's] need determination." *2025 Plan* at 8. The Department and the Council consider these petitions and prepare a final Plan for submission to the Governor. *Id.* at 8-9.[3]

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[3] Regular changes are made to the Plan's methodologies and need determinations in response to petitions. *See, e.g.*, *2025 Plan* at 50, 310 (describing a new service area and adjusted need determination in response to petitions); N.C. Dep't of Health & Human Servs., *2026 State Medical Facilities Plan* at 51, 95, 321 (describing changes in response to petitions), bit.ly/3Vk50ow; N.C. Dep't of Health & Human Servs., *2023 State Medical Facilities Plan* at 31, 44, 48, 79, 135, 309, 323, 358, 359 (same), bit.ly/4hPiotx.

The Governor must approve the Plan, and he may adjust or amend the Plan as he sees fit. N.C. Gen. Stat. § 131E-176(25). With the Governor's approval, the Plan "becomes the official document for health facility and health service planning in North Carolina for the specified calendar year." *2025 Plan* at 7. This need-determination process is therefore "continuous," because the Plan is revised annually in response to public comments, along with the Department's, the Council's, and the Governor's review. *Id.*

Second, when a need determination exists, providers may apply for a CON. N.C. Gen. Stat. § 131E-183(a)(1). Guided by a list of specific statutory criteria, the Department then evaluates each application and makes a decision. *Id.* §§ 131E-183, -185, -186.

These criteria direct the Department to assess CON applications in keeping with the law's factual findings. For example, the criteria require applicants to show how their proposed services will affect competition, provide healthcare to medically underserved groups, and enhance the quality of available health services. *Id.* § 131E-183(a)(13), (18a), (20).

After the Department makes its decision, any "affected person" may petition for a contested case hearing before the Office of Administrative Hearings. *Id.* § 131E-188(a). An affected person may then seek judicial review

in this Court. *Id.* § 131E-188(b). The General Assembly has imposed deadlines for the Department and OAH to complete their review. *Id.* § 131E-185(a1), (c); *id.* § 131E-188(a).

D. A three-judge panel unanimously dismisses plaintiffs' claims.

Plaintiffs Dr. Jay Singleton and his New Bern eye clinic, Singleton Vision Center, filed this lawsuit. Dr. Singleton alleged that he wanted to offer outpatient eye surgeries—like cataract or glaucoma surgeries—to his patients at the clinic. (R pp 91-92, ¶¶ 10-12) Dr. Singleton alleged that he could not do so without receiving a CON for an operating room. (R pp 106-07, ¶¶ 96-101)

When Dr. Singleton filed the operative complaint, the Plan projected no need for an additional operating room in the Craven, Jones, and Pamlico service area, where the clinic is located. (R pp 107-08, ¶ 102) Dr. Singleton therefore could not apply for a CON. N.C. Gen. Stat. § 131E-183(a)(1).

Dr. Singleton disagreed with the Plan's need determination. He alleged that, despite "consistent population and economic growth" in the New Bern area, only one provider, CarolinaEast, had a CON authorizing it to offer outpatient eye surgeries. (R p 108, ¶¶ 105-07) Dr. Singleton thus had to perform eye surgeries at CarolinaEast, where he maintained surgical

privileges. (R p 93, ¶ 21) If he could practice at his clinic instead, Dr. Singleton claimed that he would offer high-quality services at a competitive price. (R p 94, ¶¶ 23-25)

Dr. Singleton did not allege that he petitioned for an adjustment of the 2025 Plan's need determination or its methodology. Dr. Singleton alleged that the Plan has not projected a need for an additional operating room in his geographic area "for at least fifteen years." (R p 108, ¶ 103)

Plaintiffs challenged the CON law under the state constitution. In 2024, our Supreme Court held that plaintiffs' complaint asserted both facial and as-applied claims. *Singleton*, 386 N.C. at 599. The Court thus remanded for compliance with the three-judge-panel statute. *Id.*

On remand, plaintiffs filed an amended complaint asserting facial and as-applied claims under the Fruits of Labor, Law of the Land, Exclusive Emoluments, and Anti-Monopoly Clauses. (R pp 113-17) Defendants moved to dismiss under Rule 12(b)(6). (R pp 120-21) The trial court transferred the case to a three-judge panel for a decision on plaintiffs' facial claims, as well as a decision "on Rule 12 motions." R p 123; *see* N.C. R. Civ. P. 42(b)(4). Plaintiffs then moved for partial summary judgment on their facial claims under the Exclusive Emoluments and Anti-Monopoly Clauses. (R pp 125-26)

The three-judge panel unanimously granted defendants' motion to dismiss, denied plaintiffs' motion for partial summary judgment, and entered final judgment. (R p 157) The panel rejected plaintiffs' argument that the CON law violates the Supreme Court's decision in *Aston Park*. The panel held that in passing the current CON law, "the General Assembly codified detailed findings of fact to support the statute's enactment," thus resolving "the deficiencies" in the 1971 CON law that *Aston Park* invalidated. (R p 155) On plaintiffs' fruits-of-labor and law-of-the-land claims, the panel concluded that it was bound by this Court's decision in *Hope*, which upheld the CON law against a similar challenge. (R pp 153-54) On plaintiffs' exclusive-emoluments and anti-monopoly claims, the panel held that the CON law does not grant exclusive privileges, as those clauses require, and otherwise benefits the public good. (R pp 154-56)

This appeal followed. (R pp 158-59)

ARGUMENT

Standard of Review

This Court reviews de novo a trial court's orders on motions to dismiss, *Taylor v. Bank of Am., N.A.*, 382 N.C. 677, 679 (2022), and for summary judgment, *Moseley v. Hendricks*, 388 N.C. 128, 135 (2025).

Discussion of Law

I. The CON Law Does Not Violate the Supreme Court's Decision in *Aston Park*.

At the outset, plaintiffs contend that the Supreme Court in *Aston Park* already held that the CON law is unconstitutional. Br. 19, 25-26, 28. Plaintiffs thus charge the General Assembly with having violated the state constitution for the last half-century by enacting and repeatedly amending the law. This Court has already rejected that argument.

As discussed above, the Supreme Court in *Aston Park* struck down the 1971 CON law under the Law of the Land, Exclusive Emoluments, and Anti-Monopoly Clauses. 282 N.C. at 551; *see supra* p 7. The Court reached that conclusion for one reason: because the Court had no "doubt" that healthcare markets were "comparable" to any other "ordinary" market in their "response to the spur of competition." *Aston Park*, 282 N.C. at 549. Based on this assumption, the Court held that the CON law was unreasonable, given that the free market, rather than state regulation, would create "an incentive to lower prices," provide "better service," and practice "more efficient management." *Id.*

The General Assembly addressed the Court's decision in passing a new CON law. The legislature enacted factual findings in the statute's text explaining why healthcare markets are unusual, why they do not operate under conditions of perfect competition, and why a CON requirement would protect public health. *See supra* pp 8-9. In light of these legislative changes, this Court has twice held that *Aston Park*'s ruling on the 1971 law does not render the current CON law unconstitutional. *Hope*, 203 N.C. App. at 607; *State ex rel. Utils. Comm'n v. Empire Power Co.*, 112 N.C. App. 265, 275 (1993) (citing *Aston Park* as *In re Hospital*). This precedent binds the Court here. *In re Civil Penalty*, 324 N.C. 373, 384 (1989).

Even if these cases were not binding, plaintiffs offer no persuasive reason to depart from them. Plaintiffs claim that the current CON law is materially identical to the 1971 CON law that the Supreme Court struck down. Br. 24. Plaintiffs argue that the current law, like the 1971 law, still requires a need determination before providers may apply for a CON to enter certain healthcare markets. Br. 24. But that feature of the law—inherent in *all* CON legislation—was not what drove the Supreme Court's decision. Rather, the Court in *Aston Park* struck down the 1971 CON law because the law provided no basis to question the Court's assumption that

healthcare markets would behave like any other in their "response to the spur of competition." 282 N.C. at 549. The General Assembly thus "had not established a reasonable relationship between the regulation of private facilities for medical care and the public health." *Empire Power*, 112 N.C. App. at 275. The current law addresses that problem with its extensive factual findings. *See supra* pp 8-9.

Nothing in *Aston Park* purported to block the General Assembly, for all time, from passing revised CON legislation. Indeed, by tying the current CON law to the deficiencies that the Court earlier identified in the 1971 law, plaintiffs would effectively prevent the General Assembly from *ever* passing new laws that respond to court decisions. But the legislature has the power to make "statutory changes" that "follow or are reflective of … decisions from [the courts]." *See Rosero v. Blake*, 357 N.C. 193, 203 (2003). Exercising that power here, the General Assembly engaged in the kind of inter-branch dialogue that our system of government seeks to foster—the legislature respected, rather than defied, *Aston Park*.

Plaintiffs further argue that *Aston Park* "remains binding," Br. 2, because the Supreme Court's 2024 decision in this case cited *Aston Park* in stating that plaintiffs' complaint "contains allegations that, if proven, could

render the [CON] law unconstitutional in all its applications," *Singleton*, 386 N.C. at 599. Plaintiffs take this sentence from the Court's 2024 decision, and its accompanying citation to *Aston Park*, out of context. Br. 12-13. The Supreme Court in 2024 held that it was unable to rule on plaintiffs' constitutional claims because they failed to comply with the three-judge-panel statute. *Singleton*, 386 N.C. at 598-99. The Court said nothing about the merits of those claims. *Id.* To the contrary, it lacked jurisdiction to do so. *Id.* at 599. The Court merely held that plaintiffs' theory of the case "*could*" call the entire CON law's constitutionality into question and that plaintiffs' claims were thus properly characterized as both facial and as-applied. *Id.* (emphasis added). The Court remanded for further proceedings specifically to decide whether such claims were viable. *Id.* The Court nowhere suggested, much less held, that plaintiffs "would prevail under *Aston Park*." Br. 3. Remand would have served no purpose if the Court had already decided that issue.

II. The CON Law Is Constitutional Under the Fruits of Labor and Law of the Land Clauses.

Plaintiffs claim that the CON law violates the right to earn a living under the Fruits of Labor and Law of the Land Clauses. N.C. Const. art. I,

§§ 1, 19. But this Court in *Hope* already considered and rejected that argument. *Hope* remains good law. None of the speculative and policy-based "allegations" in plaintiffs' complaint require a different result here.

A. This Court's decision in *Hope* squarely forecloses plaintiffs' right-to-earn-a-living claims.

In *Hope*, this Court held that the CON law does not violate the state constitutional right to earn a living. 203 N.C. App. at 602-07. That decision is dispositive of plaintiffs' identical claims here.

This case is on all fours with *Hope*. In *Hope*, as here, a provider challenged the CON law as violating the Fruits of Labor and Law of the Land Clauses. *Id.* at 602. In *Hope*, as here, the provider argued that the CON law was unreasonable. *See id.* at 602-03.

This Court rejected those arguments. Citing the Supreme Court's decision in *Poor Richard's, Inc. v. Stone*, 322 N.C. 61 (1988), this Court asked (1) whether the CON law had a "legitimate governmental purpose" and (2) "whether the means undertaken in the CON law" were "reasonable in relation to this purpose." *Id.* at 603.

The Court began by recognizing that the CON law seeks to "protect the health and welfare of North Carolina citizens by providing affordable

access to necessary health care." *Id.* Protecting the public health and welfare, the Court held, is a legitimate government interest. *Id.*

The Court also held that the CON law reasonably furthers this interest. In the CON law's factual findings, the General Assembly explained that the effect of free market competition is limited in healthcare markets. *Id.* at 604. Without government regulation, the General Assembly explained, this imperfect competition can cause an unnecessary duplication of healthcare services, increasing costs. *Id.* It can also lead to the uneven distribution of healthcare services across the State. *Id.* To address these problems, the law requires a showing of public need before a party can receive a CON authorizing it to provide a new health service. *Id.*

The Court found this approach to healthcare regulation reasonable in light of the CON law's factual findings. The General Assembly could have reasonably found that a need requirement would "limit the construction of health care facilities in North Carolina to those that are needed by the public and that can be operated efficiently and economically for the public's benefit." *Id.* at 605. The General Assembly could have also reasonably found that without CON regulation, North Carolinians may not have "equal access to health care services at a reasonable price." *Id.* at 604.

Thus, this Court's decision in *Hope* considered and rejected the very argument that plaintiffs repeat here—that the CON law imposes an unreasonable burden on the right to earn a living. When "a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court." *In re Civil Penalty*, 324 N.C. at 384. *Hope* therefore controls.

B. *Hope* remains good law.

Plaintiffs argue that *Hope* is no longer good law. Br. 19. For support, plaintiffs point to three recent Supreme Court decisions on the right to earn a living: *Howell v. Cooper*, 388 N.C. 71 (2025), *N.C. Bar & Tavern Ass'n v. Stein*, 388 N.C. 149 (2025), and *Kinsley v. Ace Speedway Racing, Ltd.*, 386 N.C. 418 (2024). Br. 14-15. Plaintiffs overread these cases.

A subsequent Supreme Court decision overrules this Court's prior precedent only when the "same principle is directly involved in both cases" and the "inference" that this Court's prior precedent has been overruled "is clear and compelling." *Riley v. Debaer*, 144 N.C. App. 357, 362 (2001), *reconsidered on other grounds*, 149 N.C. App. 520 (2002). In other words, this Court's prior precedent must be "clearly irreconcilable" with later-decided

Supreme Court authority. *Gonzalez v. Marifone*, 300 N.C. App. 268, 283-84 (2025) (Murry, J., dissenting) (quoting Bryan A. Garner et al., *The Law of Judicial Precedent* 306 (2016)), *pet. for disc. rev. allowed*, No. 245PA25.

Here, plaintiffs are wrong that the Supreme Court's recent right-to-earn-a-living cases have overruled *Hope* with sufficient clarity to justify departing from this Court's prior precedent. To start, *Hope* asked whether the CON law was "reasonable," citing the Supreme Court's decision in *Poor Richard's*—the same case that the Supreme Court has cited in its more recent right-to-earn-a-living cases. *See Ace Speedway*, 386 N.C. at 424. *Hope* therefore did not apply an entirely outdated legal test. 203 N.C. App. at 602-03.

Moreover, the cases that plaintiffs cite as having supposedly overruled *Hope* all involved right-to-earn-a-living challenges to *executive* action. *Id.* at 419; *Howell*, 388 N.C. at 72; *N.C. Bar & Tavern*, 388 N.C. at 151. By contrast, plaintiffs here challenge a law passed by the General Assembly.

This distinction matters. As this Court has recognized, claims that "laws promulgated by the legislature" violate the right to earn a living confront a different legal standard. *See Kinsley v. Ace Speedway Racing, Ltd.*, 284 N.C. App. 665, 676 (2022), *aff'd*, 386 N.C. 418 (2024). The reason is that a

party challenging a law passed by the General Assembly has the burden to show that the law is unconstitutional beyond a reasonable doubt. *Holmes v. Moore*, 384 N.C. 426, 441 n.5 (2023) (distinguishing challenges to executive and legislative action on this ground). As a result, "[a] court's applying a constitutional provision to particular facts or evaluating the quality of certain evidence"—as a court often does when evaluating claims against executive officials—"is fundamentally different than assessing the constitutionality of a statute through judicial review." *Harper v. Hall*, 384 N.C. 292, 343 (2023). "Every presumption favors the validity of a statute." *Baker v. Martin*, 330 N.C. 331, 334 (1991). The authority to "invalidate legislative acts is one that must be exercised by [the courts] with the utmost restraint." *Holmes*, 384 N.C. at 439.

The beyond-a-reasonable-doubt standard ensures that courts do not decide policy questions that the political branches should resolve instead. "[W]hether an act is good or bad law, wise or unwise, is a question for the Legislature and not for the courts." *State v. Warren*, 252 N.C. 690, 696 (1960). After all, "unlike the judiciary, the General Assembly is well equipped to weigh all the factors surrounding a particular problem, balance competing interests, provide an appropriate forum for a full and open

debate, and address all of the issues at one time." *Rhyne v. K-Mart Corp.*, 358 N.C. 160, 170 (2004) (cleaned up).

The Supreme Court's recent right-to-earn-a-living cases do not address the beyond-a-reasonable-doubt standard, or how that standard should apply in the context of challenges to statutes that allegedly impose unreasonable burdens on legitimate economic activity. Plaintiffs miss this key distinction. The Supreme Court cases they cite neither concern the same principle as *Hope* nor give rise to a clear and compelling inference that *Hope* has been overruled. *See Riley*, 144 N.C. App. at 362. *Hope* thus remains good law and forecloses plaintiffs' fruits-of-labor and law-of-the-land claims.[4]

[4] That the Supreme Court's recent right-to-earn-a-living cases relied in part on prior decisions invalidating several occupational-licensing statutes does not change this conclusion. *Howell*, 388 N.C. at 80 n.17. These occupational-licensing cases—decided many decades ago—did not apply the Supreme Court's modern beyond-a-reasonable-doubt standard. *Compare, e.g.*, *Roller v. Allen*, 245 N.C. 516, 521 (1957) (statute must "clearly" violate the constitution), *and State v. Harris*, 216 N.C. 746, 764 (1940) (court has a "duty" to uphold a statute when its "constitutionality may be merely a matter of doubt," but the constitution "should receive a liberal interpretation in favor of a citizen"), *with Harper*, 384 N.C. at 324 (a party challenging a statute's constitutionality must "meet the highest quantum of proof, a showing that the statute is unconstitutional beyond a reasonable doubt").

C. Plaintiffs' allegations do not establish that the CON law violates the right to earn a living.

Plaintiffs seek to circumvent *Hope* in another way: by pointing to allegations in their complaint that, they claim, entitle them to discovery on the CON law's constitutionality. First, plaintiffs allege that the General Assembly passed the CON law with an improper purpose. Second, plaintiffs allege that the CON law's factual findings are "false." Third, plaintiffs allege that the CON law is unreasonable as applied to them. All of these allegations, even taken as true, are legally irrelevant.

1. Plaintiffs' allegations about the General Assembly's supposedly improper purpose are legally irrelevant.

Plaintiffs first emphasize their allegations that the General Assembly had an improper motive when it passed the CON law: to protect incumbent healthcare providers from competition. Br. 16 (citing R p 115, ¶ 147). Plaintiffs argue that these allegations entitle them to discovery on whether the CON law serves a proper governmental purpose. Br. 18.

These allegations do not get plaintiffs anywhere. The Supreme Court has held that the beyond-a-reasonable-doubt standard precludes courts from inquiring into the subjective motivations of legislators. *Holmes*, 384 N.C. at 440. Such an inquiry, the Court has explained, would undermine the

beyond-a-reasonable-doubt standard by having courts assess "evidence that is by its very nature speculative, subjective, and thus, insufficient to meet the well-established burden of proof." *Id.*

This kind of subjective inquiry would also be unworkable. In challenges to executive action, plaintiffs may identify a decisionmaker who allegedly acted with an improper purpose. Fact discovery may therefore show whether the decisionmaker's stated purpose was pretextual. *Ace Speedway*, 386 N.C. at 425. A legislature, by contrast, "is a 'they' and not an 'it.'" *United States v. Mitra*, 405 F.3d 492, 495 (7th Cir. 2005) (Easterbrook, J.). "Inquiries into [legislative] motives or purposes are a hazardous matter." *United States v. O'Brien*, 391 U.S. 367, 383 (1968). "What motivates one legislator" to vote for a statute "is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for [courts] to eschew guesswork." *Id.* at 384.

Whether a statute furthers a proper governmental purpose is thus a legal question. To answer that question, courts should look at the statute's plain text. *See Hanson v. Charlotte-Mecklenburg Bd. of Educ.*, 387 N.C. 445, 445-47 (2025) (Newby, C.J., concurring). Here, the statute shows that in passing the CON law, the General Assembly sought to ensure access to

affordable healthcare services. N.C. Gen. Stat. § 131E-175. That is a legitimate governmental purpose as a matter of law. Plaintiffs' speculative allegations to the contrary are legally irrelevant under the beyond-a-reasonable-doubt standard. *Holmes*, 384 N.C. at 440.

2. Plaintiffs' allegations about the CON law's "false" factual findings are legally irrelevant.

Plaintiffs next emphasize their allegations that the CON law's findings of fact are "false." Br. 18 (citing R pp 98, 114, ¶¶ 50, 144). Plaintiffs argue that these allegations entitle them to discovery on the question of whether the CON law unreasonably burdens the right to earn a living. Br. 18.

Plaintiffs' allegations amount to nothing more than a policy disagreement over how the legislature has chosen to regulate healthcare. If a party seeks to present "conflicting evidence" to contradict legislative factual findings, the beyond-a-reasonable-doubt standard means that the legislature's reasonable findings control. *See State v. Hilton*, 378 N.C. 692, 703 n.4 (2021); *Poor Richard's*, 322 N.C. at 66. Were the rule otherwise, the right to earn a living would be reduced to a "judicial sword for judges to wield" against laws "they personally deem 'bad' or 'unwise.'" *Howell*, 388 N.C. at 81. "Most legislation, after all, relies on assumptions that can be

empirically challenged." *Colon Health Ctrs. of Am., LLC v. Hazel*, 813 F.3d 145, 159 (4th Cir. 2016). The General Assembly is not required to "submit expert testimony or provide bullet-proof empirical backing for every legislative judgment." *Id.*

To be sure, legislative findings do not immunize a statute from judicial scrutiny. Courts need not credit findings that are inconsistent with "common knowledge and experience." *State v. Harris*, 216 N.C. 746, 758 (1940). But the findings in the CON law are amply supported—in the text of the statute, in the findings of the commission, and by common experience, as other courts have confirmed. *See, e.g.*, *Colon Health*, 813 F.3d at 158; *Tiwari v. Friedlander*, 26 F.4th 355, 366 (6th Cir. 2022). The findings thus establish a "feature which distinguishes" healthcare markets "in a way which justifies its regulation." *Poor Richard's*, 322 N.C. at 65. Plaintiffs may challenge those findings through the political process, not litigation.

Plaintiffs' claim that the CON law's factual findings are "false" *today* fails for another reason. In assessing right-to-earn-a-living claims, courts decide whether the government acted reasonably in light of "the information available at the time." *N.C. Bar & Tavern*, 388 N.C. at 162. The question is

thus whether the General Assembly could have been reasonably persuaded by the factual findings when it passed the CON law in 1978.

Plaintiffs effectively concede that the CON law was reasonable when the General Assembly enacted it. Plaintiffs instead contend that the CON law has since outlived its usefulness. *See* Br. 17. But updating a statute is a legislative, not a judicial, function. *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018) (only legislatures may "revise statutes in light of new social problems and preferences"). If conditions have changed since the law's passage that require its amendment or repeal, that task is for the political branches.

3. Plaintiffs' allegations that the CON law is unreasonable as applied to them are legally irrelevant.

Plaintiffs finally point to their allegations that the CON law is unreasonable as applied to them. Br. 16 (citing R pp 112-13, ¶¶ 124-34).

Economic laws, however, need not be perfectly tailored in all applications to survive constitutional review. The Supreme Court has rejected strict scrutiny as the standard for right-to-earn-a-living claims. *See Howell*, 388 N.C. at 80. Applying reasonableness review, the court has instead considered whether a statute's requirements have a "tendency" to

achieve the government's interest in a way that "is constitutionally sufficient to justify them." *Poor Richard's*, 322 N.C. at 66. The analysis thus focuses on how the statute relates "to the overall problem the government seeks to correct, not on the extent to which it furthers the government's interests in an individual case." *Ward v. Rock Against Racism*, 491 U.S. 781, 801 (1989). An economic law may be under- or overinclusive in some circumstances and still survive reasonableness review. A contrary rule would apply a strict-scrutiny standard that the Supreme Court has disavowed. *Howell*, 388 N.C. at 80.

Under the proper legal framework, plaintiffs' allegations about their specific circumstances are "beside the point." *Ward*, 491 U.S. at 801. A "case by case determination of need, beyond that determined by the Plan," is not required to satisfy the constitution. *Hope*, 203 N.C. App. at 606. The "reasonabl[e]" relationship between "the General Assembly's goal of protecting the public welfare" and the CON law is enough. *Id.*

III. The CON Law Is Constitutional Under the Exclusive Emoluments and Anti-Monopoly Clauses.

Plaintiffs finally argue that the CON law violates the Exclusive Emoluments and Anti-Monopoly Clauses. Both clauses require plaintiffs to

show that the CON law grants exclusive privileges. But the CON law does not foreclose future entry into any healthcare market. And the law passes constitutional review in any event because it promotes the general welfare.

A. Plaintiffs' claims fail because the CON law does not grant exclusive privileges.

1. Exclusive-emoluments and anti-monopoly claims require state-granted exclusivity.

The Exclusive Emoluments and Anti-Monopoly Clauses are two related provisions of our state constitution that trace their roots to the founding. The Exclusive Emoluments Clause provides that "[n]o person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." N.C. Const. art. I, § 32. The Anti-Monopoly Clause provides that "[p]erpetuities and monopolies are contrary to the genius of a free state and shall not be allowed." *Id.* art. I, § 34.

The clauses share related language focused on prohibiting exclusive state-granted privileges. At the founding, an "emolument" was a "profit" or an "advantage." Samuel Johnson, *A Dictionary of the English Language* (3d ed. 1768). That profit or advantage had to be "exclusive." It had to "debar[ ] [others] from participation." *Id.* The word "monopoly" had a similar

meaning: the "exclusive privilege of selling anything." *Id.*; John V. Orth & Paul Martin Newby, *The North Carolina State Constitution* 91 (2d ed. 2013) ("[A] legal monopoly would be the grant of an exclusive right to trade in a certain area or to deal in certain goods.").

The clauses also share a common history and purpose. They were enacted in response to the historical experiences of the framers with the monarchy's "grants of monopolies to reward their political favorites." *Id*. at 90. Monopolies had the effect of enriching a select few at the public's expense, stifling the ability of the colonists to compete in foreign trade. Franklin D. Jones, *Historical Development of the Law of Business Competition*, 36 Yale L.J. 42, 49-52 (1926). By enacting these clauses, the framers sought to bar similar "outright prohibitions on entering an industry." Steven G. Calabresi & Larissa C. Leibowitz, *Monopolies and the Constitution: A History of Crony Capitalism*, 36 Harv. J. of L. & Pub. Pol. 983, 1093 (2012).

To decide whether state action creates an "exclusive" privilege, courts ask whether future competition has been foreclosed in a relevant market. For example, in *Town of Clinton v. Standard Oil Co.*, 193 N.C. 432 (1927), the Supreme Court struck down a town ordinance that prevented new gasoline stations from opening. *Id.* at 433. The Court held that the ordinance

violated the Anti-Monopoly Clause because it ensured that the town's six existing gasoline stations "would be the sole sellers for all time in perpetuity." *Id.* at 435.

This Court reached a similar conclusion in *Rockford-Cohen Group, LLC v. N.C. Dep't of Insurance*, 230 N.C. App. 317 (2013). There, this Court held that a statute granting a single business the "exclusive right" to provide bail bondsmen training violated the Anti-Monopoly Clause. *Id.* at 324. The statute "exclude[d] all others from being considered" and "thereby foreclos[ed] the possibility that others could provide this training." *Id.* at 322-23.

By contrast, the Supreme Court has upheld state action that leaves the door open to new market entrants. The Court's decision in *Madison Cablevision, Inc. v. City of Morganton*, 325 N.C. 634 (1989), illustrates this principle. There, a city declined to renew a cable company's television franchise. *Id.* at 640. The city also rejected franchise applications from two other providers, instead deciding that it would establish a city-owned system. *Id.* at 641.

One of the affected cable companies sued, asserting claims under the Exclusive Emoluments and Anti-Monopoly Clauses. *Id.* at 643. The Supreme

Court held that the city did not violate either provision. *Id.* at 653. The Court explained that the city had not made itself an "exclusive" provider of cable television because it had "not foreclosed for any period the possibility that franchises might be granted to other applicants." *Id.* at 654. To the contrary, the city "expressly left open the possibility that other cable companies could apply for and obtain a franchise in the future." *Id.*

In light of this text, history, and precedent, the legal standard here is effectively undisputed. Plaintiffs concede that "[a] regulatory system that allows anybody to seek and obtain permission to enter the market" does not grant "exclusive rights." Br. at 29. Thus, the question is whether the CON law grants exclusive rights under this test.[5]

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[5] Plaintiffs argue that the panel below erred by also relying on *American Motors Sales Corp. v. Peters*, 311 N.C. 311 (1984). Br. 27-29. In *American Motors*, the Supreme Court held that a plaintiff may allege a monopoly claim based on state action that has "[m]ore than a mere adverse effect on competition." 311 N.C. at 316; *see DiCesare v. Charlotte-Mecklenburg Hosp. Auth.*, 376 N.C. 63, 98 (2020) (similar). Here, plaintiffs only argue that the CON law has eliminated, rather than reduced, competition in healthcare markets. Br. 30. Because plaintiffs have only framed their anti-monopoly claim based on this alleged exclusion—and because the panel correctly rejected that theory, R pp 155-56—the Court need not address *American Motors*.

2. The CON law does not grant exclusive privileges.

The CON law leaves the door open for providers to "seek and obtain" entry into regulated healthcare markets and is therefore constitutional.

Recall the two-step process that the CON law establishes. At step one, the Department and the Council engage in an annual public process of projecting need determinations for certain services based on recent data and mathematical formulas. *See supra* pp 10-12. Parties then have multiple opportunities each year to petition for changes to these formulas and projected need determinations. *See supra* pp 10-12. Petitions are granted—and need determinations are amended—with some regularity. *See supra* p 11 n.3. At step two, the CON law sets out a process for parties to apply for a CON, challenge a denial before OAH, and seek judicial review. *See supra* pp 12-13.

The upshot is that the CON law ensures that future competition is never foreclosed in a regulated healthcare market because need determinations change every year. If the Plan's mathematical formula projects no need for a specific health service in a given year, a party may petition the Council and the Department and ask them to include a need determination based on case-specific facts that a formulaic data analysis

cannot adequately capture. A no-need finding in one year, moreover, has no precedential effect. To the contrary, data is updated annually. Parties also have an opportunity every year to seek amendments to the methodologies and policies that calculate these need determinations. The statutory review criteria for CON applications expressly seek to promote competition. N.C. Gen. Stat. § 131E-183(a)(18a). And if the Department denies a CON, affected parties have a right to review before OAH and this Court. In all of these ways, the CON law leaves the door open to future competition. No CON determination is ever set in stone.

These features of the law put this case on all fours with *Madison Cablevision*. The CON law does "not foreclose[ ] for any period the possibility" that new applicants might be able to enter a given market. *See Madison Cablevision*, 325 N.C. at 654. The law "expressly le[aves] open the possibility" that providers may "apply for and obtain" a CON "in the future." *Id.* It does so by establishing a detailed process for agency decision-making, public input, and agency review. In other words, the law is a "regulation," not a "prohibition"—it does not give any provider the sole right to offer health services "for all time in perpetuity." *Town of Clinton*, 193 N.C. at 435.

3. Plaintiffs' contrary arguments lack merit.

Plaintiffs insist that the CON law grants exclusive privileges, but their arguments misunderstand how the CON process actually works.

To begin, plaintiffs contend that the CON law grants exclusive privileges because the need determinations in the Plan are prerequisites to applying for a CON. *See* Br. 30. Plaintiffs are correct that the Plan must project need for a given service before a provider may apply. N.C. Gen. Stat. § 131E-183(a)(1). But the Plan projects and updates these need determinations *every year*. Thus, although a need determination is required to apply for a CON, need determinations are never fixed—they continuously evolve to reflect recent conditions. This responsive process ensures that no incumbent provider has exclusive privileges to operate in a market "for all time in perpetuity." *Town of Clinton*, 193 N.C. at 435.

Plaintiffs appear to argue that, in the alternative, the CON law grants exclusive privileges by setting need determinations two years in advance. Br. 30. Plaintiffs contend that if the Plan finds no need for a particular health service, a CON will be unavailable for at least two years. Br. 9, 30. But that is simply incorrect. The Plan *calculates* need determinations by projecting need two years into the future. *See 2025 Plan* at 69-82 (making 2025 need

determinations by projecting need in 2027). Providers, however, apply for a CON in the same calendar year that the need determination appears in the Plan. If there is a need determination in the 2025 Plan, for example, providers may apply in 2025 for a CON to fill that need. *Id.* at 83. If the Plan makes no need determination, the process merely restarts the next year.

Here, plaintiffs claim that the Plan's mathematical formula has not projected need for a new operating room in their service area for the last 15 years. *See* Br. 9. But as discussed, the formulas that project future need determinations use annually updated data. And plaintiffs do not claim that they petitioned the Department and the Council for a need determination in the 2025 Plan based on their unique circumstances. The mere fact that an individual may be required to apply for admission to enter a healthcare market does not, without more, create an exclusive emolument or monopoly. *See State v. Call,* 121 N.C. 643, 646 (1897) (rejecting exclusivity claim in the medical context).

B. Plaintiffs' claims fail because the CON law serves the public good.

As shown above, plaintiffs' claims fail for a threshold reason: The CON law does not foreclose competition in any healthcare market. Even if the

Court disagrees, however, the CON law is still constitutional because it promotes the general welfare.

1. The CON law is "in consideration of public services" under the Exclusive Emoluments Clause.

Start with the Exclusive Emoluments Clause. That clause expressly allows the government to provide exclusive emoluments "in consideration of public services." N.C. Const. art. I, § 32. The Supreme Court has read the term "public services" to include those services that (1) promote the general welfare, so long as (2) "there is reasonable basis for the Legislature to conclude that the granting of the [benefit] would be in the public interest." *State ex rel. Utils. Comm'n v. Carolina Util. Customers Ass'n*, 336 N.C. 657, 677 (1994) (quoting *State v. Knight*, 269 N.C. 100, 108 (1967)); *Town of Emerald Isle ex rel. Smith v. State*, 320 N.C. 640, 654 (1987) (same).

The CON law meets this well-established standard. As discussed above, this Court has already held that the CON law reasonably promotes the public interest. *See supra* Part II.A.

Plaintiffs claim that the term "public services" in the Exclusive Emoluments Clause is limited to "*government* services" and cannot include services provided by private parties that nonetheless benefit the public good.

Br. 23 (emphasis added). But plaintiffs cite *no* case that has ever drawn that distinction. To be sure, the Supreme Court has struck down laws under the clause when private parties performed the service at issue. *See* Br. 23 n.6. But the Court's reasoning in those cases focused on *why* the service failed to benefit the public rather than on *who* performed the service. *See, e.g.*, *Simonton v. Lanier*, 71 N.C. 498, 504 (1874) (distinguishing "public laws" that are "founded on the gravest considerations of public benefit" from "private statutes" that "are not of common concern, and do not receive the watchful and cautious scrutiny of the legislature"); *accord Motley v. S. Finishing & Warehouse Co.*, 122 N.C. 347, 351 (1898) (asking "[w]hat benefit can this privilege be to the public?").

2. The CON law does not cause the loss of a common right under the Anti-Monopoly Clause.

The anti-monopoly clause similarly permits the government to grant an exclusive privilege that furthers a public purpose. "Monopoly, as originally defined, consisted in a grant by the sovereign of an exclusive privilege to do something which had theretofore been a matter of common right." *Harris*, 216 N.C. at 761. For example, the Court has recognized common rights in certain "innocuous [and] ordinary" trades or "harmless

occupations." *Id.* at 748, 759. But a right ceases to be "common" when its "restraint becomes necessary for the public good." *Thrift v. Bd. of Comm'rs of Town of Elizabeth City*, 122 N.C. 31, 37 (1898). Indeed, the Supreme Court has long recognized that, unlike "harmless professions," there are other professions "so affected with the public interest as to warrant their regulation for the public good." *Warren*, 252 N.C. at 694.

Plaintiffs cite no case holding that the practice of medicine has ever been understood to involve the kind of "harmless" professional conduct that triggers a common right. To the contrary, our Supreme Court has upheld medical licensing regimes as a valid "exercise of the police power for the protection of the public" and "in no sense the creation of a monopoly or special privileges." *Call*, 121 N.C. at 646. As discussed above, the CON law's regulation of healthcare markets serves the public good. *See supra* Part II.A. The CON law thus does not cause the loss of a common right, and plaintiffs therefore cannot state a claim under the Anti-Monopoly Clause.

C. Plaintiffs are not entitled to offensive summary judgment.

If this Court concludes that the three-judge panel erred in granting defendants' motion to dismiss under Rule 12(b)(6), the Court should reject

plaintiffs' argument that they are entitled to offensive summary judgment on their facial exclusive-emoluments and anti-monopoly claims. Br. 3-4, 30.

A plaintiff is entitled to offensive summary judgment when it shows no genuine dispute that it has established each element of its claims. *Parks Chevrolet, Inc. v. Watkins*, 74 N.C. App. 719, 721 (1985). Here, as discussed, plaintiffs must show that the CON law grants an "exclusive" privilege. But defendants introduced evidence that the CON law does not in fact exclude plaintiffs from offering eye surgery services. Defendants introduced evidence showing that Dr. Singleton has a second office in Greenville, North Carolina, and that he faces no CON requirement for developing an operating room there given the service area's large population. Doc. Ex. 848-49, 855. Defendants also introduced evidence that Dr. Singleton can perform eye surgeries at his New Bern clinic by developing a procedure room, a medical facility that is not subject to CON review. Doc. Ex. 849-50, 855, 860-61.

In light of this evidence, plaintiffs cannot show that the CON law grants an exclusive privilege as applied to them. And because the CON law has at least one constitutional application as a result, plaintiffs are not entitled to summary judgment on their facial claims. *Holmes*, 384 N.C. at 436 (a facial

challenge requires establishing that "no set of circumstances" exists in which a statute would be valid).

CONCLUSION

Defendants respectfully request that this Court affirm the dismissal of plaintiffs' claims.

Respectfully submitted, this the 12th day of October, 2026.

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N.C. R. App. P. 33(b) Certification:
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CERTIFICATE OF COMPLIANCE

I certify that the attached brief complies with Appellate Rule 28(j)(2). The brief uses 14-point Constantia type. According to Microsoft Word, the body of the brief (including footnotes and citations) contains fewer than 8,750 words.

This the 12th day of October, 2026.

/s/ Electronically submitted
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CERTIFICATE OF SERVICE

I certify that today, I served the foregoing document on all parties to this case by email to counsel, as follows:

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