NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2018 AUG 21 P 5:19

18-CVS-9805

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 the PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; and JAMES A. ("ANDY") PENRY, in his official capacity as CHAIR OF THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT,

Defendants.

ORDER ON INJUNCTIVE RELIEF

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

18-CVS-9806

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, and CLEAN AIR CAROLINA,

Plaintiffs,

v.

TIMOTHY K. MOORE, in his official capacity; PHILIP E. BERGER, in his official capacity; THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; JAMES A. ("ANDY") PENRY, in his official capacity; JOSHUA MALCOM, in his official capacity; KEN RAYMOND, in his official capacity; STELLA ANDERSON, in her official capacity; DAMON CIRCOSTA, in his official capacity; STACY EGGERS IV, in her official capacity; JAY HEMPHILL, in his official capacity; VALERIE JOHNSON, in her official capacity; and, JOHN LEWIS, in his official capacity, Defendants.	**ORDER ON INJUNCTIVE RELIEF**

THESE MATTERS CAME ON TO BE HEARD before the undersigned three-judge panel on August 15, 2018. All adverse parties to these actions received the notice required by Rule 65 of the North Carolina Rules of Civil Procedure. The Court considered the pleadings, briefs and arguments of the parties, supplemental affidavits, and the record established thus far, as well as submissions of counsel in attendance.

THE COURT, in the exercise of its discretion and for good cause shown, hereby makes the following findings of fact and conclusions of law:

1. As an initial matter, in order to promote judicial efficiency and expediency, this court has exercised its discretion, pursuant to Rule 42 of the North Carolina Rules of Civil Procedure, to consolidate these two cases for purposes of consideration of the arguments and entry of this Order, due to this court's conclusion that the two cases involve common questions of fact and issues of law. Because the claims do not completely overlap, the various claims of the parties will be addressed separately within this order.

STANDING OF PLAINTIFFS

2. Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives, (hereinafter "Legislative Defendants") do not contend, nor do we otherwise conclude, that Plaintiff Governor Roy A. Cooper (hereinafter "Governor Cooper") lacks standing to bring a separation of powers challenge in this case. Indeed, "if a sitting Governor lacks standing to maintain a separation-of-powers claim predicated on the theory that legislation impermissibly interferes with the authority constitutionally committed to the person holding that office, we have difficulty ascertaining who would ever have standing to assert such a claim." *Cooper v. Berger*, 370 N.C. 392, 412, 809 S.E.2d 98, 110 (2018).

3. Legislative Defendants have, however, filed a motion to dismiss under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure asserting that Plaintiff North Carolina State Conference of the National Association for the Advancement of Colored People (hereinafter "NC NAACP") and Plaintiff Clean Air Carolina (hereinafter "CAC") lack standing to bring a challenge to the Session Laws at issue in this matter.

4. NC NAACP contends that it has standing to bring its claims on behalf of its members, citing the core mission of the organization to advance and improve the political, educational, social, and economic status of minority groups; the elimination of racial prejudice and discrimination; the publicizing of adverse effects of racial discrimination; and the initiation of lawful action to secure the elimination of racial bias and discrimination. (Plaintiffs' Amended Complaint ¶ 8). In order for NC NAACP to have standing to challenge the proposed amendments on behalf of its individual members, each individual member must have standing to sue in his or her own right. *Creek Pointe Homeowner's Ass'n v. Happ*, 146 N.C. App. 159 (2001)

(citing *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977). This showing has not been made here. NC NAACP has not demonstrated that each individual member is a registered voter in North Carolina, or that each individual member is a member of a minority group.

5. NC NAACP does, however, have standing to bring its claims on behalf of the organization itself. "The gist of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation[s] of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 642, 669 S.E.2d 279, 282 (2008) (quoting *Stanley v. Dep't of Conservation & Dev.*, 284 N.C. 15, 28, 199 S.E.2d 641, 650 (1973)). The claims asserted by NC NAACP with respect to the language of the proposed amendments directly impact the ability of the organization to educate its members of the likely effect of the proposed legislation, which is pertinent to the organization's purpose. The undersigned three-judge panel therefore concludes that NC NAACP does have standing to bring this action and, for that reason, Legislative Defendants' motion under Rule 12(b)(1) on these grounds is denied as to NC NAACP.

6. CAC has not asserted the right to bring its claim on behalf of its members. In order to have standing on its own behalf, CAC must demonstrate that the legally protected injury at stake is "(a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Neuse River Found., Inc. v. Smithfield Foods, Inc.*, 155 N.C. App. 110, 114 (2002) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)). The requirement of particularity has not been met here. The general challenge of informing its members of the effects of the proposed legislation is not an injury particularized to CAC, whose stated mission is

"to ensure cleaner air quality for all by educating the community about how air quality affects health, advocating for stronger clean air policies, and partnering with other organizations committed to cleaner air and sustainable practices." (Plaintiffs' Amended Complaint ¶ 17).

7. The specific injuries put forth by CAC concern the merit of the proposed amendments, rather than the manner in which the amendments will appear on the ballot. The courts are not postured to consider questions which involve "textually demonstrable constitutional commitment of the issue to a coordinate political department." *Cooper v. Berger*, 370 N.C. 393, 809 S.E. 2d 98 (2018) (quoting *Baker v. Carr*, 369 U.S. 186 (1962)). Article XIII, Section 4 of the North Carolina Constitution expressly grants the North Carolina General Assembly (hereinafter "General Assembly") the authority to initiate the proposal of a constitutional amendment. This authority exists notwithstanding the position of the courts on the wisdom or public policy implications of the proposal. The undersigned three-judge panel therefore concludes that CAC does not have standing to bring this action and, for that reason, Legislative Defendants' motion under Rule 12(b)(1) is granted as to CAC.

POLITICAL QUESTION DOCTRINE

8. Governor Cooper, cross-claimant Bipartisan State Board of Elections and Ethics Enforcement (hereinafter "State Board of Elections"), and NC NAACP have asserted facial challenges to the constitutionality of acts of the General Assembly. The portions of these claims constituting facial challenges to the constitutionality of acts of the General Assembly are within the statutorily-provided jurisdiction of this three-judge panel. N.C.G.S. § 1-267.1; N.C.G.S. § 1A-1, Rule 42(b)(4). All other matters will be remanded, upon finality of any orders entered by this three-judge panel, to the Wake County Superior Court for determination.

9. Legislative Defendants have filed a motion under Rule 12(b)(1) of the North Carolina Rules of Civil Procedure in both cases, asserting that the undersigned three-judge panel lacks subject matter jurisdiction on the theory that the claims constitute non-justiciable political questions. A majority of the three-judge panel has concluded that Governor Cooper's facial constitutional challenges, as expressed, present a justiciable issue as distinguished from "a non-justiciable political question arising from nothing more than a policy dispute," *Cooper*, 370 N.C. at 412, 809 S.E.2d at 110, and, for that reason, Legislative Defendants' motion under Rule 12(b)(1) is denied as to Governor Cooper.

10. Likewise, a majority of this panel has concluded that NC NAACP's facial constitutional challenges, as expressed, present a justiciable issue, as distinguished from a non-justiciable political question and, for that reason, Legislative Defendants' motion under Rule 12(b)(1) on these grounds is denied as to NC NAACP.

NC NAACP "USURPER LEGISLATIVE BODY" CLAIM

11. NC NAACP has also asserted a claim that the General Assembly, as presently constituted, is a "usurper" legislative body whose actions are invalid. While this panel acknowledges the determinations made in this regard in *Covington v. North Carolina*, 270 F. Supp. 3d 881 (2017), we conclude that this claim by NC NAACP in this action constitutes a collateral attack on acts of the General Assembly and, as a result, is not within the jurisdiction of this three-judge panel. N.C.G.S. § 1-267.1. We therefore decline to consider NC NAACP's claim that the General Assembly, as presently constituted, is a "usurper" legislative body.

12. Furthermore, even if NC NAACP's claim on this point was within this three-judge panel's jurisdiction, the undersigned do not at this stage accept the argument that the General Assembly is a "usurper" legislative body. And even if assuming NC NAACP is correct,

a conclusion by the undersigned three-judge panel that the General Assembly is a "usurper" legislative body would result only in causing chaos and confusion in government; in considering the equities, such a result must be avoided. See *Dawson v. Bomar*, 322 F.2d 445 (6th Cir. 1963). For the reasons stated above, we decline to invalidate any acts of this General Assembly as a "usurper" legislative body.

THE PROPOSED AMENDMENTS AND BALLOT LANGUAGE[1]

13. On June 28, 2018, the General Assembly enacted Session Law 2018-117 (hereinafter the "Board Appointments Proposed Amendment"), Session Law 2018-118 (hereinafter the "Judicial Vacancies Proposed Amendment"), Session Law 2018-119 (hereinafter the "Maximum Tax Rate Proposed Amendment") and Session Law 2018-128 (hereinafter "Photo Identification for Voting Proposed Amendment"). Each Session Law contains the text of proposed amendments to the North Carolina Constitution. *See* 2018 N.C. Sess. Laws 117 §§ 1-4; 2018 N.C. Sess. Laws 118 §§ 1-5; 2018 N.C. Sess. Laws 119 § 1; 2018 N.C. Sess. Laws 128 §§ 1-2. Each Session Law also contains the language to be included on the 2018 general election ballot submitting the proposed amendments to the qualified voters of our State. *See* 2018 N.C. Sess. Laws 117 § 5; 2018 N.C. Sess. Laws 118 § 6; 2018 N.C. Sess. Laws 119 § 2; 2018 N.C. Sess. Laws 128 § 3.

14. Governor Cooper and State Board of Elections have asserted claims that the sections containing the ballot language in S.L. 2018-117 and S.L. 2018-118 are facially in violation of the North Carolina Constitution. NC NAACP also has asserted claims that these

[1] In the following, full quotations of the proposed amendments, underlined text in the proposed amendments represents additions to the North Carolina Constitution, ~~strikethrough~~ text in the proposed amendments represents language to be removed from the North Carolina Constitution, and text that is not otherwise underlined or struck through represents already-existing language of the North Carolina Constitution that will remain unchanged. The proposed amendments are displayed in this manner so that it is readily apparent what is proposed to be added to and removed from the North Carolina Constitution.

same sections containing the ballot language, as well as in S.L. 2018-119 and S.L. 2018-128, are facially in violation of the North Carolina Constitution.

15. Section 1 of S.L. 2018-117 proposes to amend Article VI of the North Carolina Constitution by adding a new section to read:

> **Sec. 11. Bipartisan State Board of Ethics and Elections Enforcement.**
> (1) The Bipartisan State Board of Ethics and Elections Enforcement shall be established to administer ethics and election laws, as prescribed by general law. The Bipartisan State Board of Ethics and Elections Enforcement shall be located within the Executive Branch for administrative purposes only but shall exercise all of its powers independently of the Executive Branch.
> (2) The Bipartisan State Board of Ethics and Elections Enforcement shall consist of eight members, each serving a term of four years, who shall be qualified voters of this State. Of the total membership, no more than four members may be registered with the same political affiliation, if defined by general law. Appointments shall be made as follows:
>
> (a) Four members by the General Assembly, upon the recommendation of the President Pro Tempore of the Senate, from nominees submitted to the President Pro Tempore by the majority leader and minority leader of the Senate, as prescribed by general law. The President Pro Tempore of the Senate shall not recommend more than two nominees from each leader.
>
> (b) Four members by the General Assembly, upon the recommendation of the Speaker of the House of Representatives, from nominees submitted to the Speaker of the House by the majority leader and minority leader of the House of Representatives, as prescribed by general law. The Speaker of the House of Representatives shall not recommend more than two nominees from each leader.

2018 N.C. Sess. Laws 117, § 1.

16. Section 2 of S.L. 2018-117 proposes to amend Article I, Section 6 of the North Carolina Constitution by rewriting the section to read as follows:

> **Sec. 6. Separation of powers.**
> (1) The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.
> (2) The legislative powers of the State government shall control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law. The executive powers of the State government shall be used to faithfully execute the general laws prescribing the board or commission.

2018 N.C. Sess. Laws 117, § 2.

17. Section 3 of S.L. 2018-117 proposes to amend Article II, Section 20 of the North Carolina Constitution by rewriting the section to read as follows:

> **Sec. 20. Powers of the General Assembly.**
> (1) Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.
> (2) No law shall be enacted by the General Assembly that appoints a member of the General Assembly to any board or commission that exercises executive or judicial powers.

2018 N.C. Sess. Laws 117, § 3.

18. Section 4 of S.L. 2018-117 proposes to amend Article III, Section 5 of the North Carolina Constitution by rewriting the section to read as follows:

> **Sec. 5. Duties of Governor.**
> ...
> (4) Execution of laws. The Governor shall take care that the laws be faithfully executed. In faithfully executing any general law enacted by the General Assembly controlling the powers, duties, responsibilities, appointments, and terms of office of any board or commission, the Governor shall implement that general law as enacted and the legislative delegation provided for in Section 6 of Article I of this Constitution shall control.
> ...
> (8) Appointments. The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for. The legislative delegation provided for in Section 6 of Article I of this Constitution shall control any executive, legislative, or judicial appointment and shall be faithfully executed as enacted.
> ....

2018 N.C. Sess. Laws 117, § 4.

19. Section 5 of S.L. 2018-117 contains the language to be included on the 2018 general election ballot submitting the proposed amendments in Sections 1-4 of S.L. 2018-117 to the qualified voters of our State. The "question to be used in the voting systems and ballots" is required by S.L. 2018-117 to read as follows:

[ ] FOR [ ] AGAINST

Constitutional amendment to establish a bipartisan Board of Ethics and Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority.

2018 N.C. Sess. Laws 117, § 5.

20. Section 1 of S.L. 2018-118 proposes to amend Article IV of the North Carolina Constitution by adding a new section to read:

Sec. 23. Merit selection; judicial vacancies.

(1) All vacancies occurring in the offices of Justice or Judge of the General Court of Justice shall be filled as provided in this section. Appointees shall hold their places until the next election following the election for members of the General Assembly held after the appointment occurs, when elections shall be held to fill those offices. When the vacancy occurs on or after the sixtieth day before the next election for members of the General Assembly and the term would expire on December 31 of that same year, the Chief Justice shall appoint to fill that vacancy for the unexpired term of the office.

(2) In filling any vacancy in the office of Justice or Judge of the General Court of Justice, individuals shall be nominated on merit by the people of the State to fill that vacancy. In a manner prescribed by law, nominations shall be received from the people of the State by a nonpartisan commission established under this section, which shall evaluate each nominee without regard to the nominee's partisan affiliation, but rather with respect to whether that nominee is qualified or not qualified to fill the vacant office, as prescribed by law. The evaluation of each nominee of people of the State shall be forwarded to the General Assembly, as prescribed by law. The General Assembly shall recommend to the Governor, for each vacancy, at least two of the nominees deemed qualified by a nonpartisan commission under this section. For each vacancy, within 10 days after the nominees are presented, the Governor shall appoint the nominee the Governor deems best qualified to serve from the nominees recommended by the General Assembly.

(3) The Nonpartisan Judicial Merit Commission shall consist of no more than nine members whose appointments shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General Assembly, as prescribed by law. The General Assembly shall, by general law, provide for the establishment of local merit commissions for the nomination of judges of the Superior and District Court. Appointments to local merit commissions shall be allocated between the Chief Justice of the Supreme Court, the Governor, and the General Assembly, as prescribed by law. Neither the Chief Justice of the Supreme Court, the Governor, nor the General Assembly shall be allocated a majority of appointments to a nonpartisan commission established under this section.

(4) If the Governor fails to make an appointment within 10 days after the nominees are presented by the General Assembly, the General Assembly shall elect,

in joint session and by a majority of the members of each chamber present and voting, an appointee to fill the vacancy in a manner prescribed by law.

(5) If the General Assembly has adjourned sine die or for more than 30 days jointly as provided under Section 20 of Article II of this Constitution, the Chief Justice shall have the authority to appoint a qualified individual to fill a vacant office of Justice or Judge of the General Court of Justice if any of the following apply:

(a) The vacancy occurs during the period of adjournment.

(b) The General Assembly adjourned without presenting nominees to the Governor as required under subsection (2) of this section or failed to elect a nominee as required under subsection (4) of this section.

(c) The Governor failed to appoint a recommended nominee under subsection (2) of this section.

(6) Any appointee by the Chief Justice shall have the same powers and duties as any other Justice or Judge of the General Court of Justice, when duly assigned to hold court in an interim capacity and shall serve until the earlier of:

(a) Appointment by the Governor.

(b) Election by the General Assembly.

(c) The first day of January succeeding the next election of the members of the General Assembly, and such election shall include the office for which the appointment was made.

However, no appointment by the Governor or election by the General Assembly to fill a judicial vacancy shall occur after an election to fill that judicial office has commenced, as prescribed by law.

2018 N.C. Sess. Laws 118, § 1.

21. Section 2 of S.L. 2018-118 proposes to amend Article IV, Section 10 of the North Carolina Constitution by rewriting the section to read as follows:

Sec. 10. District Courts.

(1) The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected.

(2) For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The initial term of appointment for a magistrate shall be for two years and subsequent terms shall be for four years.

(3) The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. ~~Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law.~~ Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office, unless otherwise provided by the General Assembly.

2018 N.C. Sess. Laws 118, § 2.

22. Section 3 of S.L. 2018-118 proposes to amend Article IV, Section 18 of the North Carolina Constitution by adding a new subsection to read:

(3) Vacancies. All vacancies occurring in the office of District Attorney shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term in which a vacancy has occurred expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office.

2018 N.C. Sess. Laws 118, § 3.

23. Section 4 of S.L. 2018-118 repeals in its entirety Article IV, Section 19 of the North Carolina Constitution, which currently reads as follows:[2]

Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

2018 N.C. Sess. Laws 118, § 4.

[2] For the sake of clarity, this section is not displayed as ~~struck through~~ despite the proposed amendment fully removing the language from the North Carolina Constitution.

24. Section 5 of S.L. 2018-118 proposes to amend Article II, Section 22, Subsection (5) of the North Carolina Constitution by rewriting the subsection to read as follows:

> (5) Other exceptions. Every bill:
> (a) In which the General Assembly makes an appointment or appointments to public office and which contains no other matter;
> (b) Revising the senate districts and the apportionment of Senators among those districts and containing no other matter;
> (c) Revising the representative districts and the apportionment of Representatives among those districts and containing no other matter;~~, or~~
> (d) Revising the districts for the election of members of the House of Representatives of the Congress of the United States and the apportionment of Representatives among those districts and containing no other ~~matter;~~matter;
> (e) Recommending a nominee or nominees to fill a vacancy in the office of Justice and Judge of the General Court of Justice, in accordance with Section 23 of Article IV of this Constitution; or
> (f) Electing a nominee or nominees to fill a vacancy in the office of Justice or Judge of the General Court of Justice, in accordance with Section 23 of Article IV of this Constitution,
> shall be read three times in each house before it becomes law and shall be signed by the presiding officers of both houses.

2018 N.C. Sess. Laws 118, § 5.

25. Section 6 of S.L. 2018-118 contains the language to be included on the 2018 general election ballot submitting the proposed amendments in Sections 1-5 of S.L. 2018-118 to the qualified voters of our State. The "question to be used in the voting systems and ballots" is required by S.L. 2018-118 to read as follows:

> [ ] FOR [ ] AGAINST
> Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections.

2018 N.C. Sess. Laws 118, § 6.

26. Section 1 of S.L. 2018-119 proposes to amend Article V, Section 2 of the North Carolina Constitution by rewriting the section to read as follows:

Sec. 2. State and local taxation.

...

(6) Income tax. The rate of tax on incomes shall not in any case exceed ~~ten~~ seven percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

....

2018 N.C. Sess. Laws 119, § 1.

27. Section 2 of S.L. 2018-119 contains the language to be included on the 2018 general election ballot submitting the proposed amendment in Section 1 of S.L. 2018-119 to the qualified voters of our State. The "question to be used in the voting systems and ballots" is required by S.L. 2018-119 to read as follows:

[ ] FOR [ ] AGAINST

Constitutional amendment to reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%).

2018 N.C. Sess. Laws 119, § 2.

28. Section 1 of S.L. 2018-128 proposes to amend Article VI, Section 2 of the North Carolina Constitution by adding a new subsection to read:

(4) Photo identification for voting in person. Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

2018 N.C. Sess. Laws 128, § 1.

29. Section 2 of S.L. 2018-128 proposes to amend Article VI, Section 3 of the North Carolina Constitution by rewriting the section to read as follows:

Sec. 3. ~~Registration.~~Registration; Voting in Person.

(1) Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

(2) Voters offering to vote in person shall present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions.

2018 N.C. Sess. Laws 128, § 2.

30. Section 3 of S.L. 2018-128 contains the language to be included on the 2018 general election ballot submitting the proposed amendments in Sections 1-2 of S.L. 2018-128 to the qualified voters of our State. The "question to be used in the voting systems and ballots" is required by S.L. 2018-128 to read as follows:

> [ ] FOR [ ] AGAINST
> Constitutional amendment to require voters to provide photo identification before voting in person.

2018 N.C. Sess. Laws 128, § 3.

Guiding Legal Principles

31. The analytical framework for reviewing a facial constitutional challenge is well-established. *Town of Boone v. State*, 369 N.C. 126, 130, 794 S.E.2d 710, 714 (2016). Acts of the General Assembly are presumed constitutional, and courts will declare them unconstitutional only when "it [is] plainly and clearly the case." *State ex rel. Martin v. Preston*, 325 N.C. 438, 449, 385 S.E.2d 473, 478 (1989) (quoting *Glenn v. Bd. Of Educ.*, 210 N.C. 525, 529-30, 187 S.E. 781, 784 (1936)). The party alleging the unconstitutionality of a statute has the burden of proving beyond a reasonable doubt that the statute is unconstitutional. *Baker v. Martin*, 330 N.C. 331, 334-35, 410 S.E. 2d 887, 889 (1991). "This is a rule of law which binds us in deciding this case." *Id.*

32. In considering these facial constitutional challenges, this panel understands and applies the following principles of law to the analysis: We presume that laws enacted by the General Assembly are constitutional, and we will not declare a law invalid unless we determine that it is unconstitutional beyond a reasonable doubt. The constitutional violation must be plain and clear. To determine whether the violation is plain and clear, we look to the text of the

constitution, the historical context in which the people of North Carolina adopted the applicable constitutional provision, and our precedents.

33. Article I of the North Carolina Constitution declares that "[a]ll political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole." N.C. Const. art. I, § 2. Article I also declares that "[t]he people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States." N.C. Const. art. I, § 3. Article I also preserves the right to due process of law, declaring that "[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land." N.C. Const. art. I, § 19. Finally, Article I declares that "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." N.C. Const. art. I, § 35.

34. Article XIII of the North Carolina Constitution provides that "[t]he people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way." N.C. Const. art. XIII, § 2. The two permitted methods to amend the Constitution require an amendment to be proposed by a "Convention of the People of this State," or by the General Assembly. N.C. Const. art. XIII, §§ 3, 4.

35. An amendment to the Constitution "may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the

proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly." N.C. Const. art. XIII, § 4.

36. These provisions of the North Carolina Constitution make plain and clear a number of points: first, the power to govern in this State, including the power to write, revise, or abolish the Constitution is vested in the **people** of this State, founded upon the **will of the people**; second, the General Assembly may initiate a proposal for one or more amendments to the Constitution, by adopting an act submitting the proposal to the voters. The General Assembly has exclusive authority to determine the time and manner in which the proposal is submitted to the voters, but ultimately the issue must be submitted to the voters for ratification or rejection, whereupon the will of the people, expressed through their votes, will determine whether or not the proposal becomes law.

37. Finally, while not a Constitutional provision, or standard for interpretation of the North Carolina Constitution, the State Board of Elections is required by our State's general statutes to "ensure that official ballots throughout the State have all the following characteristics: (1) Are readily understandable by voters. (2) Present all candidates and questions in a fair and nondiscriminatory manner." N.C.G.S. § 163A-1108. We note that while the State Board of Elections has asserted a cross-claim based upon these statutory requirements in N.C.G.S. § 163A-1108, such a claim is not within the jurisdiction of a three-judge panel constituted under N.C.G.S. § 1-267.1. The undersigned three-judge panel has therefore not considered this statutorily-based claim.

Issue Presented

38. The ultimate question presented to this three-judge panel by the facial constitutional challenges requires this panel to decide whether or not the language contained in the ballot questions adopted by the General Assembly satisfies the constitutional mandate that proposed amendments be submitted to the voters for ratification or rejection.

39. In addressing this issue, the Legislative Defendants have argued that the issue might better be decided after the November election rather than before and that the issue might even become moot, depending upon the outcome of the vote. We are compelled, however, in conducting our analysis, to do so through a neutral lens and to do so without considering the wisdom or lack thereof of the proposed amendments. The question is not whether the voters *should* vote for or against the measures, but whether the voters in this State have had a fair opportunity to declare themselves upon this question. *Hill,* 176 N.C. at 584, 97 S.E. at 503.

Applicable Legal Standards When Examining Ballot Language

40. We are aware that our courts have not previously addressed a situation exactly like the one presented here. As a result, this panel must rely on principals of constitutional interpretation established by our courts, including the text of the Constitution and accepted canons of construction, as well as the historical jurisprudence of our courts on similar issues. Other courts provide persuasive, but not authoritative guidance in analysis of challenged ballot proposal language.

41. Since 1776 our constitutions have recognized that all political power resides in the people. N.C. Const. art. I, § 2; N.C. Const. of 1868, art. I, § 2; N.C. Const. of 1776, Declaration of Rights § 1. Presently, our constitutional jurisprudence provides that "the General Assembly is checked and balanced by its structure and *its accountability to the people*." *State ex rel. McCrory*

v. Berger, 368 N.C. 533, 653, 781 S.E.2d 248, 261 (2016) (Newby, J. concurring in part and dissenting in part) (emphasis added). In order to amend the constitution, the amendment must "be submitted to the qualified voters of this State," N.C. Const. art. II, § 22. Notably, "the object of all elections is to ascertain, fairly and truthfully, the will of the people," *Wilmington, O. & E.C.R. Co. v. Onslow Cty. Comm'rs*, 116 N.C. 563, 568, 21 S.E. 205, 207 (1895).

42. Legislative Defendants submit that this panel should apply a substantive due process standard in determining whether or not the language of the Ballot Questions satisfies constitutional requirements, *i.e.*, "When the ballot language purports to identify the proposed amendment by briefly summarizing the text, then substantive due process is satisfied and the election is not patently and fundamentally unfair so long as the summary does not so plainly mislead voters about the text of the amendment that they do not know what they are voting for or against, that is, they do not know which amendment is before them." *Sprague v. Cortes*, 223 F.Supp. 3d 248, 295 (M.D. Pa. 2016). A majority of this panel concludes that this standard, though relevant, is not determinative to an issue decided by state courts under our state constitution.

43. A majority of this panel instead concludes that the requirements of our state constitution are more appropriately gleaned from the decisions of state courts, and in particular our own Supreme Court. In *Hill v. Lenoir County*, 176 NC 572, 97 SE 498 (1918), our Supreme Court said: "In elections of this character great particularity should be required in the notice in order that the voters may be *fully informed of the question they are called upon to decide*. There is high authority for the principle that even where there is no direction as to the form in which the question is submitted to the voters, it is essential that it be stated in such manner to enable

them *intelligently to express their opinion upon it*[.]" *Id.* at 578, 97 S.E. at 500-01 (emphasis added).

44. Drawing from the requirements expressed in *Hill*, as well as analyses from other jurisdictions, a majority of this panel find that relevant considerations include 1) whether the ballot question clearly makes known to the voter what he or she is being asked to vote upon, 2) whether the ballot question fairly presents to the voter the primary purpose and effect of the proposed amendment, and 3) whether the language used in the ballot question implies a position in favor of or opposed to the proposed amendment. See *Stop Slots MD 2008 v. State Bd. of Elections*, 424 Md. 163, 208, 34 A.3d 1164, 1191 (2012) (noting that ballot questions need to be determined on what would put an "average voter" on notice of "the purpose and effect of the amendment"); *Donaldson v. Dep't of Transp.*, 262 Ga. 49, 51, 414 S.E.2d 638, 640 (1992) (establishing that the courts must "presume that the voters are informed" but the legislature should still "strive to draft ballot language that leaves no doubt in the minds of the voters as to the purpose and effect of each . . . amendment"); *Fla. Dep't of State v. Fla. State Conf. of NAACP Branches*, 43 So. 3d 662, 668 (Fl. 2010) (noting that lawmakers, as well as the voting public, "must be able to comprehend the sweep of each proposal from a fair notification in the proposition itself that is neither less nor more extensive than it appears to be"); *State ex rel. Voters First v. Ohio Ballot Bd.*, 133 Ohio St. 3d 257, 978 N.E.2d 119 (2012) (finding that material omissions in the ballot language of a proposed amendment to the Ohio constitution deprived the voters of the right to know what they were voting upon).[3]

[3] One of the cases cited by Legislative Defendants was *Sears v. State*, 232 Ga. 547, 208 S.E.2d 93 (1974), which included the following language:

"Though we hold that the ballot language is not a proper subject for more than this minimal judicial review we must note that to the extent to which the legislature describes proposed amendments in any way other than through the most objective and brief of terms...it exposes itself to the temptation—yielded to here, we think—to interject its own value judgments concerning the amendments into the ballot language and thus to propagandize the voters in the very voting booth in denigration of the integrity of the ballot." 232 Ga. at 556, 208 S.E.2d at 100.

45. In the present case, as in *Hill,* there can be no doubt that our General Assembly has the exclusive power and authority to initiate a proposal for a constitutional amendment and to specify the time and manner in which voters of the State are presented with the proposal. But the proposal must be "**submitted**" to the voters. According to the Merriam-Webster Dictionary, "submit" means "to present or propose to another for consideration" or "to submit oneself to the authority or will of another." In order for the proposals to be submitted to the will of the people, the ballot language must comply with the constitutional requirements as expressed in *Hill.*

46. With those legal principles in mind, we now turn our attention to the particular issues presented by the present litigation.

INJUNCTIVE RELIEF

47. This panel is presented with two lawsuits, one filed by Governor Cooper, along with a cross-claim filed by the State Board of Elections, and a second filed by NC NAACP. Although the Governor contests only two of the proposed measures, it is helpful to our analysis to discuss all four of the measures in each lawsuit, as we find the application of the aforementioned legal principles to be substantially different with respect to each of the four proposed amendments and, specifically, the proposed Ballot Question pertaining to each.

48. "The purpose of a preliminary injunction is ordinarily to preserve the *status quo* pending trial on the merits. Its issuance is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities." *State ex rel. Edmisten v. Fayetteville Street Christian School*, 299 N.C. 351, 357, 261 S.E.2d 908, 913 (1980). A preliminary injunction is an "extraordinary remedy" and will issue "only (1) if a plaintiff is able to show *likelihood* of success on the merits of his case and (2) if a plaintiff is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is

necessary for the protection of a plaintiff's rights during the course of litigation." *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393, 401, 302 S.E.2d 754, 759-60 (1983) (emphasis in original); see also N.C.G.S. § 1A-1, Rule 65(b). When assessing the preliminary injunction factors, the trial judge "should engage in a balancing process, weighing potential harm to the plaintiff if the injunction is not issued against the potential harm to the defendant if injunctive relief is granted. In effect, the harm alleged by the plaintiff must satisfy a standard of relative substantiality as well as irreparability." *Williams v. Greene*, 36 N.C. App. 80, 86, 243 S.E.2d 156, 160 (1978).

The Tax Rate Proposed Amendment

49. S.L. 2018-119, as shown above, proposes to amend Article V, Section 2 of the North Carolina Constitution by rewriting the section. NC NAACP contend that the proposed Ballot Language in S.L. 2018-119 is misleading, suggesting that the currently-applicable tax rate will be reduced. We conclude otherwise. The language of the Ballot Question may not be perfect, but it is virtually identical to the wording of the amendment itself, referring clearly to "a maximum allowable rate." NC NAACP would prefer that the Ballot Question use the term "maximum tax rate cap," but the word "cap" appears nowhere in the amendment itself and we do not consider it necessary for the Ballot Question to explain all potential legal ramifications of the amendment, but only its purpose and effect.

The Photo Identification for Voting Proposed Amendment

50. S.L. 2018-128, as shown above, proposes an amendment requiring photo identification in order to vote in person. The proposed amendment would amend Article VI, Sections 2 and 3 of the North Carolina Constitution by adding identical language to each section, the pertinent provisions of which read as follows: "Voters offering to vote in person shall

present photographic identification before voting. The General Assembly shall enact general laws governing the requirements of such photographic identification, which may include exceptions." The language of the Ballot Question adopted by the General Assembly reads: "Constitutional Amendment to require voters to provide photo identification before voting in person."

51. NC NAACP contends that the ballot language is misleading by failing to define "photo identification" and failing to make clear that implementing legislation will be needed to establish which photo IDs would suffice. Again, we conclude otherwise. There can be little doubt whether or not the voters will be able to identify the issue on which they will be voting with respect to this proposed amendment. This panel takes judicial notice that Voter ID laws currently comprise a significant political issue in this country, on which an overwhelming majority of voters have strong feelings, one way or the other. The General Assembly has the exclusive authority to determine the details of any implementing legislation and it would be entirely inappropriate for this panel to speculate as to whether or not that legislation will comport with state and federal constitutional requirements. We have already noted that there is a presumption of constitutional validity afforded to every act of the General Assembly, and we must afford that same presumption to acts that may be enacted in the future.

52. In making the aforementioned observations, we are mindful of the fact that there has been ongoing litigation in the federal courts concerning similar legislation previously passed by this General Assembly. Indeed, NC NAACP has devoted much of its argument on this amendment to the reasons for their philosophical opposition to the Voter ID amendment itself. These arguments go well beyond the function of this three-judge panel in these cases. In determining facial constitutional challenges, this court should not concern itself with the wisdom

of the legislation, its political ramifications, or the possible motives of the legislators in submitting the issue to voters in the form of a proposed constitutional amendment. This court is limited to determining whether the enacting legislation is facially unconstitutional. With regard to S.L. 2018-128, this panel cannot conclude beyond a reasonable doubt that any such facial invalidity has been shown.

The Board Appointments Proposed Amendment

53. S.L. 2018-117, as shown above, proposes to amend Article VI of the North Carolina Constitution by adding a new section, amend Article I, Section 6 by rewriting the section, amend Article II, Section 20 by rewriting the section, and amend Article III, Section 5 by rewriting the section. The language of the Ballot Question, also as shown above, is as follows: "Constitutional amendment to establish a bipartisan Board of Ethics and Elections to administer ethics and election laws, to clarify the appointment authority of the Legislative and the Judicial Branches, and to prohibit legislators from serving on boards and commissions exercising executive or judicial authority."

54. Governor Cooper, the State Board of Elections, and the NC NAACP complain that this ballot language is misleading in saying that the amendment "establishes" a bipartisan Board of Ethics and Elections, and will "prohibit" legislators from serving on boards and commissions exercising executive or judicial authority. While the language may not be the most accurate or articulate description of the effect of these provisions, we do not find that the language in these two parts of the Ballot Question is so misleading, standing alone, so as to violate constitutional requirements; although each of these provisions already exists under law, neither has previously been addressed specifically by our state constitution.

55. In addition to the two points described above, the Ballot Question says only: "to clarify the appointment authority of the Legislative and the Judicial Branches[.]" The Merriam-Webster Dictionary defines "clarify" as "to make understandable" or "to free of confusion." The concern here with this particular language in the Ballot Question is whether it describes the remaining portions of the proposed amendment with sufficient particularity in order that the voters may be fully informed of the question they are called upon to decide. In this regard, a majority of this panel concludes beyond a reasonable doubt that this portion of the ballot language in the Board Appointments Proposed Amendment does not sufficiently inform the voters and is not stated in such manner as to enable them intelligently to express their opinion upon it. In particular:

a. The proposed amendment substantially realigns appointment authority as allocated previously between the Legislative and Executive branches, but makes no mention of how the Amendment affects the Executive branch.

b. The ballot language mentions clarification of appointment authority of the Judicial Branch, but the Amendment makes no mention of any changes to appointment authority of the Judiciary.

c. The Amendment makes significant changes of the duties of the Governor in exercising his powers pursuant to the Separation of Powers clause, but no mention is made of that change in the ballot language.

The Judicial Vacancies Proposed Amendment

56. S.L. 2018-118, as shown above, proposes to amend Article IV of the North Carolina Constitution by adding a new section, amend Article IV, Section 10 by rewriting the section, amend Article IV, Section 18 by adding a new subsection, repeal in its entirety Article

IV, Section 19, and amend Article II, Section 22, Subsection (5) by rewriting the subsection. The language of the Ballot Question, also as shown above, is as follows: "Constitutional amendment to implement a nonpartisan merit-based system that relies on professional qualifications instead of political influence when nominating Justices and judges to be selected to fill vacancies that occur between judicial elections."

57. Governor Cooper, the State Board of Elections, and NC NAACP complain that this ballot language is misleading in saying that the amendment implements a "nonpartisan merit-based system" that instead of relying on "political influence" relies on "professional qualifications." A majority of this panel agrees and finds that the language in this Ballot Question misleads and does not sufficiently inform the voters. The concern here with the Ballot Question, again, is whether it describes the proposed amendment with sufficient particularity in order that the voters may be fully informed of the question they are called upon to decide. In this regard, a majority of this panel concludes beyond a reasonable doubt that the ballot language in S.L. 2018-118 does not sufficiently inform the voters and is not stated in such manner to enable them intelligently to express their opinion upon it. In particular:

a. The ballot language indicates that the nonpartisan merit-based system will rely on "professional qualifications" rather than "political influence." The Amendment requires only that the commission screen and valuate each nominee without regard to the nominee's partisan affiliation, but rather with respect to whether that nominee is qualified or not qualified, as prescribed by law. Aside from partisan affiliation, there is no limitation or control on political influence; the nominees are categorized only as qualified or not qualified rather than being rated or ranked in any order of qualification and

the General Assembly is not required to consider any criteria other than choosing nominees found "qualified" by the Commission. (As pointed out by Plaintiffs, current qualifications by law for holding judicial office in this state only require that the person be 21 years of age or more, hold a law license and, in some instances, be a resident of the District.)

b. The Amendment makes substantial changes to appointment powers of the Governor in filling judicial vacancies, but no mention is made of the Governor in the ballot language.

c. Perhaps most significantly, the ballot language makes no mention of the provisions of Section 5 of S.L. 2018-118, which adds two new provisions to Article II, Section 22, Subsection (5) of the North Carolina Constitution

    i. Recommending a nominee or nominees to fill a vacancy in the office of Justice and Judge of the General Court of Justice in accordance with Section 23 of Article IV of this Constitution, or

    ii. Electing a nominee or nominees to fill a vacancy in the office of Justice or Judge of the General Court of Justice, in accordance with Section 23 of Article IV of this Constitution.

Each of these provisions omits the words "and containing no other matter" included in each of the other enumerated exceptions in Section 5, meaning that proposed Bills coupled with judicial appointments would be immune to a veto by the Governor. The ballot language makes no mention of any effect of the Amendment upon veto powers of the Governor.

58. We therefore find that there is a substantial likelihood that Governor Cooper, the State Board of Elections, and NC NAACP will prevail on the merits of these actions with respect to the constitutionality of the Ballot Question language pertaining to the Board Appointments Proposed Amendment and the Judicial Vacancies Proposed Amendment. We do not find that there is a substantial likelihood that NC NAACP will prevail on the merits of this action with respect to the constitutionality of the Ballot Question language pertaining to the Tax Rate Proposed Amendment and the Photo Identification for Voting Proposed Amendment.

59. We find that irreparable harm will result to Governor Cooper, the State Board of Elections, and NC NAACP if the Ballot Language included in S.L. 2018-117 and S.L. 2018-118 is used in placing these respective proposed constitutional amendments on a ballot, in that we conclude beyond a reasonable doubt that such language does not meet the requirements under the North Carolina Constitution for submission of the issues to the will of the people by providing sufficient notice so that the voters may be fully informed of the question they are called upon to decide and in a manner to enable them intelligently to express their opinion upon it.

60. Under these circumstances, the Court, in its discretion and after a careful balancing of the equities, concludes that the requested injunctive relief shall issue in regards to S.L. 2018-117 and S.L. 2018-118. The requested injunctive relief is denied in regards to S.L. 2018-119 and S.L. 2018-128. This court concludes that no security should be required of the Governor, as an officer of the State, but that security in an amount of $1,000 should be required of the NC NAACP pursuant to Rule 65 to secure the payment of costs and damages in the event that it is later determined that this relief has been improvidently granted.

61. This three-judge panel recognizes the significance and the urgency of the questions presented by this litigation. This panel also is mindful of its responsibility not to

disturb an act of the law-making body unless it clearly and beyond a reasonable doubt runs counter to a constitutional limitation or prohibition. For that reason, this Order is being expedited so that (1) the parties may proceed with requests for appellate review, if any, or (2) the General Assembly may act immediately to correct the problems in the language of the Ballot Questions so that these proposed amendments, properly identified and described, may yet appear on the November 2018 general election ballot. This panel likewise does not seek to retain jurisdiction to "supervise" or otherwise be involved in re-drafting of any Ballot Question language. That process rests in the hands of the General Assembly, subject only to constitutional limitations.

62. In view of the fact that counsel for all parties have candidly expressed a likelihood that ANY decision of this panel in this case will be appealed, this three-judge panel hereby certifies pursuant to Rule 54 of the North Carolina Rules of Civil Procedure this matter for immediate appeal, notwithstanding the interlocutory nature of this order, finding specifically that this order affects substantial rights of each of the parties to this action.

63. The Honorable Jeffrey K. Carpenter dissents from portions of this Order and will file a separate Opinion detailing his positions on each of the issues herein addressed.

BASED UPON THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. Plaintiff Governor Cooper's motion for a preliminary injunction is hereby GRANTED as follows:
    a. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 5 of Session Law 2018-117.

b. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 6 of Session Law 2018-118.

2. Cross-claimant State Board of Elections' motion for a preliminary injunction is hereby GRANTED as follows:
   a. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 5 of Session Law 2018-117.
   b. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 6 of Session Law 2018-118.

3. Plaintiff NC NAACP's motion for preliminary injunction is hereby GRANTED IN PART AND DENIED IN PART, as follows:
   a. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 5 of Session Law 2018-117.
   b. The Legislative Defendants and the State Board of Elections, their officers, agents, servants, employees and attorneys and any person in active concert or participation with them are hereby enjoined from preparing any ballots, printing any ballots or authorizing any person or entity to prepare or print any ballots for the November 2018 general election containing the Ballot Question language currently contained in Section 6 of Session Law 2018-118.

4. Except as hereinbefore described, all requests for injunctive relief are hereby DENIED.

5. Legislative Defendants' Rule 12(b)(1) motion as to Plaintiff Governor Cooper's claims is hereby DENIED.

6. Legislative Defendants' Rule 12(b)(1) motion as to Plaintiff NC NAACP's claims is hereby DENIED.

7. Legislative Defendants' Rule 12(b)(1) motion as to Plaintiff CAC's claims is hereby GRANTED.

8. The Motions for realignment of the Defendant Board of Elections is hereby remanded to the Wake County Superior Court for determination.

SO ORDERED, this 21st day of August, 2018.

Forrest D. Bridges, Superior Court Judge

Thomas H. Lock, Superior Court Judge

as a majority of this Three Judge Panel