

## NORTH CAROLINA GENERAL ASSEMBLY

PRESIDENT PRO TEMPORE  
PHIL BERGER

SPEAKER OF THE HOUSE  
TIM MOORE

RALEIGH, NC 27601

August 23, 2021

### VIA U.S. MAIL AND EMAIL

W. Swain Wood  
General Counsel  
[swood@ncdoj.gov](mailto:swood@ncdoj.gov)

Reuben F. Young  
Civil Bureau Chief  
[ryoung@ncdoj.gov](mailto:ryoung@ncdoj.gov)

Re: *Community Success Initiative v. Moore, et al.*, 19-CVS-15941 (Wake County)

Dear Messrs. Wood and Young:

Your office has represented the General Assembly in defense of the above captioned litigation, which asserts a facial challenge to the constitutionality of G.S. 13-1. That statute provides for the restoration of rights of citizenship, including the right to vote, to individuals convicted of felonious crimes.

Given today's adverse and unexpected ruling, we asked the North Carolina Department of Justice (hereinafter "Department") to file a stay with the Superior Court pending an appeal. You declined, citing the fact that the Court had not issued a written ruling as grounds not to appeal. Respectfully, that makes no sense. Our counsel informed us today that the State Board of Elections is actively effectuating the Court's oral order and that the State Board expects that the updated voter registration forms will be in place by tomorrow. It cannot be that a court order must be followed and yet is at the same time unappealable.

We then asked whether the Department would file an appeal once the Court reduced its oral order to a written order. Instead of affirming that the Department would continue its representation of the General Assembly as it had done since this case was filed in 2019, our counsel informed us that you would have to review the written order, whenever it comes, "before [you] can make a determination on whether to appeal the same." Like the first excuse, this is an extraordinary position. There is no secret what the Court's ruling will say – all agree that today's ruling grants the Plaintiffs the entire relief they sought. Until today, we were never informed that the Department would give second thought to representing the General Assembly on appeal.

This sudden change of heart is out of line with statute. Your office is statutorily required to provide representation during trial and on appeal. Absent some conflict of which we are unaware and that the Department has not articulated, your defense of this litigation is not optional. By statute, the General

Assembly, through the Speaker of the House and the President Pro Tempore of the Senate as agents of the State, “shall be deemed to be a client of the Attorney General” “[w]henver the validity or constitutionality of an act of the General Assembly or a provision of the Constitution of North Carolina is the subject of an action in any State or federal court.” N.C. Gen. Stat. § 120-32.6(b). Additionally, “in such cases, the General Assembly through the Speaker of the House of Representatives and President Pro Tempore of the Senate jointly shall possess final decision-making authority with respect to the defense of the challenged act of the General Assembly or provision of the North Carolina Constitution.” *Id.*

The Department has left the General Assembly with no option but to seek private counsel to protect its rights. The General Assembly was unable to file an appeal today because your office refused to do so. And given the Department’s sudden hesitance to represent the General Assembly on appeal, the General Assembly cannot rely on the Department to file an appeal when the written order is finally issued. This is flatly unacceptable to a client you are duty-bound to represent.

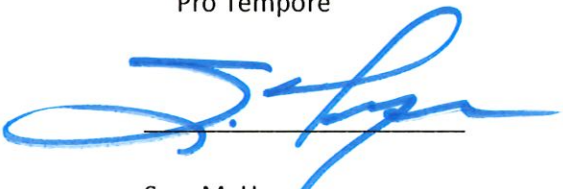
North Carolina law authorizes the North Carolina General Assembly to act on the State’s behalf and hire outside counsel where “the validity or constitutionality of an act of the General Assembly” is challenged. *Id.* As such, effective immediately, the General Assembly has retained David H. Thompson, of Cooper & Kirk PLLC, to assume the defense of this litigation. The Department of Justice will transfer all files related to this matter to Mr. Thompson at the address below:

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Cooper & Kirk, PLLC  
1523 New Hampshire Avenue, N.W.  
Washington, D.C. 20036  
(202) 220-9659  
[dthompson@cooperkirk.com](mailto:dthompson@cooperkirk.com)

Sincerely,



Joshua A. Yost  
General Counsel  
Office of the Senate President  
Pro Tempore



Sam M. Hayes  
General Counsel  
Office of the Speaker of the House  
of Representatives