STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
18 CVS 9806

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

Plaintiffs,

vs.

TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity, THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT, ANDREW PENRY, in his official capacity, JOSHUA MALCOLM, 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 his official capacity, JAY HEMPHILL, in his official capacity, VALERIE JOHNSON, in her official capacity, JOHN LEWIS, in his official capacity,

Defendants.

DEFENDANTS BERGER AND MOORE'S MEMORANDUM IN OPPOSITION TO MOTIONS FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

COME NOW 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 (collectively,

"Defendants"), and hereby serve this Memorandum in opposition to the Motion for Temporary Restraining Order and Preliminary Injunction of Plaintiffs North Carolina State Conference of the National Association for the Advancement of Colored People (the "NAACP") and Clean Air Carolina.[1]

INTRODUCTION

Despite Plaintiffs' arguments to the contrary, the General Assembly is not a usurper but, rather, was authorized to pass Session Laws 2018-117, 2018-118, 2018-119, and 2018-128 (the "Session Laws"), which propose four constitutional amendments. This Court lacks subject matter jurisdiction to hear Plaintiffs' other claims regarding the validly enacted Session Laws because Plaintiffs lack standing to assert such claims and because such claims amount to a nonjusticiable political question. Moreover, the ballot language at issue is not misleading under either the North Carolina Constitution or N.C. Gen. Stat. § 163A-1108. Finally, if the injunctive relief requested by Plaintiffs is denied, Plaintiffs will not suffer irreparable harm that outweighs the harm that would be suffered by Defendants and the people of North Carolina if the laws *are* enjoined. As such, Plaintiffs' claims related to the constitutionality of the Session Laws under Article III, Section 4 and N.C. Gen. Stat.

[1] Except as distinguished below, Defendants adopt and incorporate by reference the factual and procedural background, the applicable legal standards, and the arguments raised in their Memorandum in Opposition to Motions for Temporary Restraining Order and Preliminary Injunction (the "Cooper Memorandum") submitted on August 9, 2018, in *Roy A. Cooper, III v. Philip E. Berger, et al.*, Wake County Superior Court Case No., 18 CVS 9805.

§ 163A-1108 should be dismissed for lack of subject matter jurisdiction, and their request for preliminary injunctive relief should be denied.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed their Complaint for Declaratory and Injunctive Relief and their Motion for Temporary Restraining Order and Preliminary Injunction and Request for an Expedited Hearing on August 6, 2018, challenging the constitutionality of the Session Laws on the grounds that (1) the North Carolina General Assembly is a "usurper body" that lacks the authority to place constitutional amendments on the 2018 election ballot and, and (2) the enactment of "vague, incomplete, and misleading" ballot language and proposed constitutional amendments as set forth in the Session Laws violates Article I, Section 3 and Article XIII, Section 4 of the North Carolina Constitution. *See, e.g.,* Complaint at ¶¶ 94-95, 97-98.

Challenges to Electoral Districts

In July 2011, the General Assembly enacted new redistricting plans for the North Carolina House of Representatives, the North Carolina Senate, and the United States Congress. On November 3, 2011, Margaret Dickson and forty-five other registered voters filed a complaint seeking to have three redistricting plans declared invalid on the grounds that they constituted racial gerrymanders in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 19 of the North Carolina Constitution. *Dickson v. Rucho*, 367 N.C. 542, 547, 766 S.E.2d 238, 243 (2014), cert. granted, judgment vacated, 135 S. Ct. 1843, 191 L. Ed. 2d 719 (U.S. 2015) ("*Dickson I*"). On November 4, 2011, the North Carolina State Conference

of Branches of the NAACP, joined by three organizations and forty-six individuals, filed a complaint seeking similar relief.[2] *Id.*

The North Carolina Supreme Court affirmed the decision by the Superior Court to dismiss all of the plaintiffs' claims. *See Dickson I*, *supra.* On January 16, 2015, the plaintiffs filed their first petition for a writ of *certiorari* with the United States Supreme Court, seeking review of the federal issues decided by the North Carolina Supreme Court in *Dickson I*. *See* Petition for Writ of *Certiorari*, *Dickson v. Rucho,* 2015 WL 241877 (No. 14-839); *see also* 135 S. Ct. 1843 (mem.) (2015).

Before the North Carolina Supreme Court issued its ruling in *Dickson I*, plaintiffs, who were already represented by counsel for the *Dickson* plaintiffs, filed a federal lawsuit challenging Congressional Districts 1 and 12 as racial gerrymanders. *Harris v. McCrory*, No. 1:13-CV-949 (M.D.N.C. 24 October 2013).

On April 20, 2015, the United States Supreme Court vacated the judgment in *Dickson I* and remanded that case to the North Carolina Supreme Court for further consideration in light of the decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015), which had been handed down a month earlier.

Thereafter, another group of plaintiffs, who were represented either by counsel for the *Dickson* plaintiffs or by counsel for the *NAACP* plaintiffs, filed a second federal lawsuit challenging the 2011 majority black legislative districts as racial

[2] The cases were assigned to a three-judge panel of the Superior Court under N.C. Gen. Stat. § 1-267.1 and were consolidated.

gerrymanders. *Covington v. North Carolina*, No. 1:15-CV-399 (M.D.N.C. 19 May 2015).

On December 19, 2015, following the first remand by the United States Supreme Court, the North Carolina Supreme Court issued its second decision in the *Dickson* litigation, affirming the decision by the Superior Court to dismiss all of the state and federal claims alleged by the *Dickson* plaintiffs and the *NAACP* plaintiffs. *Dickson v. Rucho*, 368 N.C. 481, 781 S.E.2d 404 (2015) ("*Dickson II*").

On February 5, 2016, the federal district court issued its decision in *Harris*, finding that the 2011 versions of Congressional Districts 1 and 12 were racial gerrymanders and enjoining their future use. *Harris v. McCrory*, 159 F.Supp.3d 600 (M.D.N.C. 2016), *aff'd Cooper v. Harris*, 137 S. Ct. 1455 (2017). Subsequently, on February 19, 2016, the General Assembly enacted a new 2016 Congressional Plan. *See* N.C. Sess. Law 2016-1. Elections were conducted under the 2016 Congressional Plan, which remains in force, during the 2016 general election.

On June 30, 2016, the *Dickson* and *NAACP* plaintiffs filed a second petition for a writ of *certiorari*, seeking review of the federal issues resolved by this Court's decision in *Dickson II*. *See* Petition for Writ of *Certiorari*, *Dickson v. Rucho,* 2016 WL 3611905; *see also* 137 S. Ct. 2186 (mem.) (2017).

On August 11, 2016, the *Covington* federal district court entered an opinion and judgment finding that the 2011 majority black legislative districts constituted racial gerrymanders. The *Covington* district court did not enjoin the 2011 majority black districts for the 2016 election but prohibited the State from using those districts

in elections after 2016. The federal district court also directed that new plans be drawn by the General Assembly in its "next legislative session." *Covington v. North Carolina*, 316 F.R.D. 117, 176-78 (M.D.N.C. 2016), *aff'd*, 137 S. Ct. 2211 (2017).

On May 22, 2017, the United States Supreme Court affirmed the decision of the *Harris* district court. *Cooper v. Harris*, *supra.*

On May 30, 2017, the United States Supreme Court vacated the North Carolina Supreme Court's judgment in *Dickson II* and remanded the case for further consideration in light of the United States Supreme Court's decision in *Harris*. *See Dickson v. Rucho,* 137 S. Ct. 2186 (mem.) (2017).

On June 5, 2017, the United States Supreme Court affirmed the decision of the *Covington* district court. *Covington v. North Carolina*, *supra.*

On July 31, 2017, the *Covington* district court provided North Carolina an opportunity to enact new legislative redistricting plans no later than September 1, 2017. *See* 2017 WL 3254098 (M.D.N.C. 2017). On August 31, 2017, the General Assembly enacted new legislative plans repealing all of the majority black legislative districts challenged in *Dickson*. *See* N.C. Sess. Law 2017-207; 2017-208. The 2018 election will be held under the redrawn legislative districts.

Despite the distractions caused by constant litigation, the North Carolina General Assembly continued to serve in their official capacity and govern the state. In fact, the General Assembly passed 214 laws in 2017 and has passed an additional 131 laws thus far in 2018, including the challenged Session Laws.

Session Law 2018-119[3]

House Bill 1092, which is entitled "An Act to amend the North Carolina Constitution to provide that the maximum tax rate on incomes cannot exceed seven percent," was adopted by more than three-fifths of both houses of the North Carolina General Assembly. It was ratified as Session Law 2018-119 on June 28, 2018. Session Law 2018-119 sets forth a proposed constitutional amendment specifying that "[t]he rate of tax on incomes shall not in any case exceed seven percent." Currently, the Constitution provides that "[t]he rate of tax on incomes shall not in any case exceed ten percent."

Under Section 2 of Session Law 2018-119,

> The amendment set out in Section 1 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:
>
> "[ ] FOR [ ] AGAINST
>
> Constitutional amendment to reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%)."

Session Law 2018-117, § 2.

Session Law 2018-128

House Bill 1092, which is entitled "An act to amend the North Carolina Constitution to require photo identification to vote in person," was adopted by more

[3] Consistent with Note 1, *supra*, explanations of Session Laws 2018-117 and -118 are covered in the Response to the Governor's Request for a TRO.

than three-fifths of both houses of the North Carolina General Assembly. It was ratified as Session Law 2018-128 on June 29, 2018. Session Law 2018-128 sets forth a proposed constitutional amendment that would add to Article VI (suffrage and eligibility to office) a requirement for 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.

Session Law 2018-128, § 1. The new language would appear in Article VI, Sections 2 (Qualifications of voter) and 3 (Registration).

Under Section 3 of Session Law 2018-128,

> The amendments set out in Sections 1 and 2 of this act shall be submitted to the qualified voters of the State at a statewide general election to be held in November of 2018, which election shall be conducted under the laws then governing elections in the State. Ballots, voting systems, or both may be used in accordance with Chapter 163A of the General Statutes. The question to be used in the voting systems and ballots shall be:
>
> "[ ] FOR [ ] AGAINST
>
> Constitutional amendment to require voters to provide photo identification before voting in person."

Id. at § 3.

Procedural Background

Plaintiffs' Motion for Temporary Restraining Order was heard before the Honorable Paul C. Ridgeway at 10:00 a.m. on August 7, 2018, approximately 24 hours after Plaintiffs filed their Complaint but 40 days after the Session Laws, including the ballot questions, were final. At the hearing, Plaintiffs argued that the current

General Assembly is a usurper body that lacks authority to pass the proposed amendments and that the ballot language for presenting the proposed constitutional amendments (the "Proposed Amendments") contained in the Session Laws violates the Constitution. Judge Ridgeway determined that Plaintiffs' challenges are facial challenges that must be heard and determined by a three-judge panel pursuant to N.C. Gen. Stat. § 1-267.1. Chief Justice Martin appointed a three-judge panel on the afternoon of August 7, 2018, and the panel scheduled a hearing on Plaintiffs' request for interlocutory injunctive relief for August 15, 2018.

ARGUMENT

"It is a well-recognized principle of statutory construction that a court will not adjudge an act of the Legislature invalid unless its violation of the Constitution is, in their judgment, clear, complete, and unmistakable." *Kornegay v. Goldsboro*, 180 N.C. 441, 445-46, 105 S.E. 187, 189 (1920) (quotations and citation omitted). "And that as between two permissible interpretations, [t]hat construction of a statute be adopted which will uphold the law." *Id.* (quotations omitted). The courts intervene only when properly presented with a question, and then, only construe the power of the General Assembly to act—nothing more.

> The courts have no power to declare an act unconstitutional because it is opposed to the spirit supposed to pervade the Constitution, or is against the nature and spirit of the Government, or is contrary to the general principles of liberty, or because they may be harsh and may create hardships or inconvenience, or upon the grounds of inexpediency, injustice, or impropriety, or because not wise or against public policy. The courts are not

> the guardians of the rights of the people against oppressive legislation which does not violate the provisions of the Constitution. The propriety, wisdom, and expediency of legislation is exclusively a legislative question and the courts will not declare a statute invalid because in their judgment it may be unwise or detrimental to the best interests of the State. The only question for the courts to decide is one of power, not of expediency, and statutes will not be declared void simply because, in the opinion of the Court, they are unwise.

Id. (quotations omitted). Discourse about the policy choices the people of North Carolina are being asked to make regarding the Proposed Amendments is healthy. However, the judicial branch should not get involved in such debate from the bench. The General Assembly has full authority to pass the Proposed Amendments. Because Plaintiffs lack standing to challenge the ballot language at issue; the question presented regarding the ballot language is a political question; and the ballot questions appropriately identify the amendments at issue, this Court should deny Plaintiffs' request for any interlocutory relief and dismiss their case.

I. THE GENERAL ASSEMBLY WAS AUTHORIZED TO PASS THE SESSION LAWS.

Plaintiffs contend that the North Carolina General Assembly is a "usurper body" that lacks the authority to place constitutional amendments on the 2018 election ballot. Although the North Carolina General Assembly passed numerous laws in 2017 and 2018, Plaintiffs cherry-picked four specific amendments in an attempt to circumvent the proscribed legislative process for the type of challenge they bring and to substitute their policy judgments for those of the General Assembly.

Because the current North Carolina General Assembly had full authority to pass the Proposed Amendments, the requested injunctive relief should be denied.

A. Plaintiffs are not likely to succeed on the merits of their claim.

Plaintiffs have failed to show that their claim has a high likelihood for success on the merits. Plaintiffs, citing questionable case law, argue that the claim is likely to succeed because the General Assembly is a "usurper body" that lacks authority. This is an extreme overreach. In fact, the United States Supreme Court and other authorities have held to the contrary.

Since the decision of the United States Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), many North Carolina redistricting plans have been declared unconstitutional. Nevertheless, it is a settled principle of law that a legislature elected under an unconstitutional plan remains "a legislature empowered to act." *Baker v. Carr*, 369 U.S. 186 250 n. 5 (1962). Moreover, "legislative acts performed by legislators held to have been elected in accordance with an unconstitutional apportionment" are "not therefore void." *Ryder v. United States*, 15 U.S. 177, 183 (1995) (acknowledging prior holding in *Connor v. Williams*, 404 U.S. 549, 550-51 (1972)); *Buckley v. Valeo*, 424 U.S. 1, 142 (holding legislative acts performed by legislators elected in accordance with unconstitutional appointment plan are given de-facto validity); *Martin v. Henderson*, 289 F. Supp. 411, 414 (1967) (holding malapportioned legislature is nonetheless still empowered to act).

The General Assembly that enacted the Proposed Amendments was elected in 2016 under districts that were drawn in 2011. The use of the 2011 districts for the

2016 election was specifically approved by the federal court in *Covington v. North Carolina* in an August 15, 2016 order. *See* 1:15-cv-399 (M.D.N.C. 2016) (D.E. 123, p. 163). The same court later declined a request by the *Covington* plaintiffs to order special elections for the North Carolina General Assembly in 2017. *See* 1:15-cv-399 (M.D.N.C. 2016) (D.E. 180 at p. 8).

Despite controlling case law to the contrary and the *Covington* court order, Plaintiffs cite to several 19th century North Carolina cases in an ill-fated attempt to show that the General Assembly lacked authority to pass the Proposed Amendments. However, these cases are easily distinguished because they are outside of the redistricting context. Instead, these cases merely discuss criteria for determining when an officer has de facto status. *See Keeler v. City of New Bern*, 61 N.C. 505, 507 (1868) (holding that New Bern councilmen who were never actually elected to office were usurpers and unable to bind the town in contract); *see Van Amringe v. Taylor*, 108 N.C. 196, 12 S.E. 1005, (1891) (when clerk of the registrar of an election precinct fraudulently obtains possession of books under a promise to return them, which he refuses to do, and assumes to act as registrar, he is not a de facto officer; election held by him as registrar and his appointees as judges is void).

Plaintiffs also cite *State v. Lewis*, 107 N.C. 967, 12 S.E. 457, 458 (1890) to support their unfounded proposition. In *Lewis*, the defendant was arrested for assault and battery and found guilty in a trial presided over by Judge Whittaker. After the trial, Judge Whittaker, upon his own commission, after learning that he was not properly empowered to act as a judge because he was appointed through

unconstitutional means, arrested the judgment. The defendant then challenged the legitimacy of the verdict based on Judge Whittaker's potential status as a de jure or de facto officer. The defendant argued that, since Judge Whittaker was appointed through unconstitutional means, the jury verdict was void. The court considered whether the presiding judge was properly appointed by the governor and, if not, the effect that his de jure or de facto status would have on Defendant's trial. The court explained that the actions of a de facto judge are valid and enforceable as long as he acted in accordance with the duties of the office and held himself out as a judge to the public. Since Judge Whittaker still believed himself to be a properly appointed judge at the time of the trial, the arrested judgment was overturned and the trial deemed valid. Ultimately, the court also found that Judge Whittaker was properly appointed and that the verdict was enforceable.

The instant case challenges the power of the North Carolina General Assembly—not the validity of a criminal trial like in *Lewis*. Instead, Plaintiffs argue that the North Carolina General Assembly lacks the power and authority to pass the legislation at issue. As stated above, the United States Supreme Court has continually rejected this argument and found that legislative bodies elected through unconstitutional avenues retain the right to pass legislation. The court in *Lewis* explained that a de facto officer's actions are considered valid as long as the officer acts in accordance with the duties of the position and holds himself out to the public as occupying the position. Here, the Defendants clearly acted in accordance with their duties and responsibilities because the challenged actions are legislation, and

passage of the Proposed Amendments is within the purview of the General Assembly's proscribed duties. N.C. Const. art. I § 1. ("The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives"); N.C. Const. art. XIII, § 4 ("A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly.").

Next, Plaintiffs rely on several cases to support the argument that a usurper legislature only has the limited authority to engage in acts deemed necessary to run the day-to-day affairs of the state. Since the Proposed Amendments are not necessary for the day-to-day governance of North Carolina, Plaintiffs argue that this Court should enjoin Defendants from putting forth the Proposed Amendments on the 2018 ballot. This argument creates the preposterous notion that the judiciary here should be tasked with sifting through the hundreds of laws passed by the General Assembly to determine which laws are "day-to-day" laws and which are not. Then, the judiciary would strike down those laws deemed unnecessary to govern the day-to-day affairs of the state. The enormity of the judicial intrusion into the legislative process that would be mandated by Plaintiffs' position cannot be understated. Plaintiffs' theory would require judges to dictate what duly enacted bills would become law and which would not, much like a judicial veto. On its face, Plaintiffs' position is absurd.

Moreover, the cases cited by Plaintiffs do not assist them. Plaintiffs first rely on *Dawson v. Bomar*, 322 F.2d 445, 446 (6th Cir. 1963). Their reliance is misplaced because *Dawson* actually reaffirms the Legislative Defendants' position. In *Dawson*,

a state prisoner filed a petition for habeas corpus against the Warden of the Tennessee State Penitentiary. *Id.* The plaintiff asserted that the failure of the Tennessee legislature to reapportion itself in 1901 violated the Constitution of Tennessee and the equal protection clause of the Fourteenth Amendment of the United States Constitution. *Id.* As a result, the plaintiff argued that the capital punishment laws enacted by the allegedly unconstitutionally apportioned legislature were void. *Id.* The court held that there was a public necessity to uphold the acts of the malapportioned legislature and affirmed the lower court's ruling that death by electrocution would not be declared unconstitutional. *Id.*

Next, Plaintiffs rely on *Butterworth v. Dempsey*, 237 F. Supp. 302, 311 (D. Conn. 1964). In *Butterworth*, the entire structure of Connecticut's legislature was invalid. *Id.* As a result, population deviations existed in both houses upwards to 200%. *Id.* The state conceded liability, and the court gave the state numerous opportunities to fix the problem, including an order for the state to convene a constitutional convention to change the constitution to prevent structural malapportionment. *Id.* at 308. The court reluctantly stepped in because the legislature repeatedly failed to fix the problem. *Id.* The court explained:

> This Court has repeatedly stressed its preference that reapportionment of the legislature be done by the legislature itself rather than by the Court. We still prefer it that way. But the hour is late. And we now believe, in view of the ample and repeated opportunities which have been afforded to the legislature to perform what is primarily its function of reapportioning itself, that we as a Court must act if the legislature does not succeed in doing so.

Id.

The repeated failures of the Connecticut legislature required extreme and unusual action (i.e., court intervention). In the present case, however, only 28 out of 170 North Carolina districts were ruled unconstitutional as a result of racial gerrymandering. (Compl. ¶ 41.) Further, the districts were not malapportioned, nor do any structural deficiencies exist in North Carolina's Constitution. Since there was no malapportionment, unlike in *Butterworth*, votes in North Carolina were not diluted. Finally, since the General Assembly conformed to all prior court orders regarding redistricting and has cooperated fully with the judiciary, the extreme measures warranted in *Butterworth* are not warranted here.

Plaintiffs also rely on *Norton v. Shelby Co.*, 118 U.S. 425 (1886), in which the plaintiff brought suit to enforce payment of bonds issued by the Board of Commissioners of Shelby County, Tennessee, in payment of a subscription by the county to stock in the Mississippi River Railroad Company. The Court noted that the Tennessee Supreme Court had determined that "no such board ever had a lawful existence; that it was an unauthorized and illegal body . . . ." *Id.* at 441. The court explained that, while the acts of a de facto incumbent of an office lawfully created are binding for reasons of public policy

> The doctrine which gives validity to acts of officers *de facto*, whatever defects there may be in the legality of their appointment of election, is founded upon considerations of policy and necessity, for the protection of the public and individuals whose interests may be affected thereby. Offices are created for the benefit of the public, and private parties are not permitted to inquire into the title of persons clothed with the evidence of such offices, and in apparent possession of their powers and functions. For the good order and peace of society their authority is to

> be respected and obeyed until, in some regular mode prescribed by law, their title is investigated and determined.

Id. However, the acts of a person assuming to fill and perform duties of an office which does not exist *de jure* can have no validity in law. *Id.* at 441-41. *Norton* is inapplicable to Defendants because the members of the General Assembly clearly occupy legitimate offices. Plaintiffs do not contend that the representative positions themselves were unlawfully created.

In the present case, the General Assembly is comprised of elected officials. Unlike the dated cases mentioned by Plaintiffs, the officials here have actually been elected to office. Therefore, under North Carolina law, a challenge to the validity of the title or an act of a de facto officer must be brought through a *quo warranto* action. *See Kings Mountain Bd. of Educ. v. N. Carolina State Bd. of Educ.*, 159 N.C. App. 568, 575, 583 S.E.2d 629, 635, *writ denied, review denied*, 588 S.E.2d 476 (N.C. 2003); s*ee also Rogers v. Powell*, 174 N.C. 388, 389, 93 S.E. 917, (1917) (affirming dissolution of plaintiff's preliminary injunction against board of trustees members on the grounds that resolution first required a *quo warranto* action to determine the rightful occupiers of the office).

Plaintiffs have not initiated—and cannot initiate—a *quo warranto* action. First, such action may only be brought by a "private relator," (i.e., private citizen) on leave of the Attorney General. N.C. Gen. Stat. § 1-516 *see also Associated Cosmetologists of N.C. v. Ritchie*, 206 N.C. 808, 175 S.E. 308, 310 (1934). Moreover, a *quo warranto* action must be brought within 90 days after the officer's induction into office. N.C. Gen. Stat. § 1–522; *State ex rel. Barker v. Ellis*, 144 N.C. App. 135,

138, 547 S.E.2d 166, 168 (2001) (affirming dismissal of *quo warranto* action brought 93 days after candidate assumed office). Plaintiffs, which are not private citizens, allege that the "N.C.G.A. has been illegally constituted since 2011 when the leadership unlawfully used race to construct racially segregated districts that resulted in an unaccountable and unconstitutional supermajority in the state legislature." (Plaintiffs' Mem. at 30.) Thus, by Plaintiffs' own admission, they have had over seven years to challenge properly the status of the Defendants. Because Plaintiffs failed to initiate a timely *quo warranto* action, their Complaint should be dismissed. It follows that Plaintiffs' claims have no likelihood of success on the merits. Therefore, this Court should deny Plaintiffs' request for preliminary injunction and temporary restraining order.

B. The Plaintiffs fail to demonstrate that they will suffer irreparable harm.

Plaintiffs fail to demonstrate that they will suffer irreparable loss or harm if this preliminary injunction relief is not granted. It is well-established that an injunction will be granted only when irreparable injury is both real and immediate. *Duke Power Co. v. City of High Point*, 69 N.C. App. 335, 337, 317 S.E.2d 699, 700 (1984). Further, "[i]njunctive relief is premised on an injury actually threatened and practically certain, not one anticipated and merely probable." *Id.*

The issuance of a preliminary injunction "is a matter of discretion to be exercised by the hearing judge after a careful balancing of the equities. *Id.* at 400. North Carolina Courts have explained that in 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 (1978).

Plaintiffs contend that they will be irreparably harmed if these amendments are placed on the November ballot. This is utterly false. Despite Plaintiffs' urging, the Court is not faced with the task of having to determine whether the challenged constitutional amendments duly enacted by the General Assembly will receive a vote. If the court denies Plaintiffs' request for injunctive relief, the Proposed Amendments will appear on the ballot while this action proceeds in due course. Should Plaintiffs prevail on their challenge before the November election, then any votes cast for the challenged amendment simply would not count. And, if this lawsuit is not resolved before the November election and the Proposed Amendments are adopted by North Carolina voters, the Proposed Amendments could be deemed invalid. In either case, if Plaintiffs are correct that their challenge is meritorious—which the Defendants deny—they will suffer no irreparable harm. But, if Plaintiffs have their way and the court prohibits the Proposed Amendments from appearing on the ballot and Plaintiffs' claims are dismissed, the voters of North Carolina will be denied the opportunity to consider the Proposed Amendments and will be left with no recourse because the 2018 election cycle will have passed and a new General Assembly will be seated in January 2019. Since a preliminary

injunction will disproportionately hurt Defendants and the voters, the balance of equities heavily weighs against the preliminary injunction.

C. Plaintiffs' claims are barred by the doctrine of laches.

Finally, Plaintiffs' claims are barred by the doctrine of laches because Plaintiffs' delay in bringing this action makes it unjust to permit the prosecution of the claim.

In equity, where the lapse of time has resulted in some change in the condition of the property or in the relations of the parties which would make it unjust to permit the prosecution of the claim, the doctrine of laches will be applied. *Save Our Sch. of Bladen Cty., Inc. v. Bladen Cty. Bd. of Educ.*, 140 N.C. App. 233, 235, 535 S.E.2d 906, 909 (2000). Further, what constitutes a delay will be determined on a case-by-case basis. *Id.* When the delay is mere neglect to seek a known remedy or to assert a known right, and the party does not have a reasonable excuse, the courts are strongly inclined to treat the delay as fatal to the plaintiff's claim. *Id.*

Here, Plaintiffs purposefully delayed bringing this action until less than 48 hours before the 2018 ballots were to be finalized. Such blatant gamesmanship should not be rewarded. It is clear that Plaintiffs had knowledge of the potential action; counsel for NC NAACP signed a brief filed with the North Carolina Supreme Court in *Dickson v. Rucho* last year making the same "usurper" argument that is the basis of Plaintiffs' lawsuit here. Since there is no reasonable excuse for such delay, the Court should treat the delay as fatal to Plaintiffs' claims.

II. PLAINTIFFS LACK STANDING TO BRING A CHALLENGE TO THE BALLOT LANGUAGE.

In the Amended Complaint, the NC NAACP alleges that it has standing to sue on behalf of its members because, in large part, "its members would otherwise have standing to sue in their own rights."[4] (Amend. Compl. ¶ 9.) However, both our Court of Appeals and the Fourth Circuit Court of Appeals have rejected the right of citizens to sue under similar circumstances.

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[4] Plaintiffs do allege that they will be harmed by the Proposed Amendments. (*See* Amend. Compl. ¶¶ 11 ("Members of the NC NAACP . . . will be directly harmed by the proposed voter ID constitutional amendment. Members will be effectively denied the right to vote . . . ."); 14 (the NC NAACP "will be harmed by the proposed constitutional amendment that would further politicize the judiciary . . . ."); 15 ("The NC NAACP and its members will be harmed by the boards and commissions amendment because giving the General Assembly unprecedented broad power to control these boards and commissions will make the boards and commissions less independent and less able to conduct their mission in an impartial way."); 16 (the NC NAACP is harmed because the proposed constitutional amendment harms "the ability to advocate for its priority issues."); 18 ("Clean Air Carolina will be harmed by the amendment to cap the state income tax at 7%."); 19 ("Clean Air Carolina will be harmed by the Boards and Commissions amendment because it will grant control over state boards and commissions to the N.C.G.A., which will make the boards and commissions less independent and less able to conduct their missions in an impartial, scientific way."); 20 ("Clean Air Carolina will be harmed by the provision shifting control of appointments to judicial vacancies from the Governor . . . because it is concerned that this is likely to make the judiciary less independent and more political."). Claims based on the alleged harms that may result if the Proposed Amendments become law are not ripe and do not confer standing. *See Sterling v. Gil Soucy Trucking, Ltd.*, 146 N.C. App. 173, 183, 552 S.E.2d 674, 680 (2001) ("Therefore, as this issue is not yet ripe and defendants do not have proper standing, any opinion issued at this juncture would be advisory, in contravention of well-settled case law.").

As set forth in *Green v. Eure*, 27 N.C. App. 605, 607, 220 S.E.2d 102, 104 (1975), less than a month after the people of North Carolina voted to approve six constitutional amendments that would become our present Constitution, a plaintiff with a "general interest common to all members of the public" alleged nearly identical claims to those that Plaintiffs bring here. *Id.* at 27 N.C. App. at 607, 220 S.E.2d at 104. The plaintiff challenged certain constitutional amendments by arguing that the submission to the voters was "inadequately descriptive, and so false and misleading . . . that they [were] violative of the constitutional provision that all elections ought to be free, [were] devoid of the fundamental elements of due process of law, and [were] calculated to prevent an expression of the will of the people." *Id.* As a result, the plaintiff claimed that the constitutional amendments were "so many, and so extensive, as to propose in effect, and in fact, a new constitution, and as such do not constitutionally lend themselves to adoption under the provisions of section 2 of Article XIII of the Constitution of North Carolina." *Id.*

The Court of Appeals dismissed the case for lack of standing, holding that the plaintiff had "shown only such interest as is shared generally by all residents, citizens, and taxpayers of the State. He has failed to show that individual interest which is requisite for standing in court." *Id.* at 607–08, 220 S.E.2d at 104. The Court explained that its authority "to declare an act of the Legislature unconstitutional arises from, and is incident of, its duty to determine the respective rights and liabilities of duties of litigants in a controversy brought before it by the proper procedure." *Id.* (quoting *Nicholson v. Education Assistance Authority*, 275 N.C. 439,

168 S.E. 2d 401 (1969)). In *Green*, though, the Court explained that that authority would have been exceeded had it decided the questions raised by the appeal because the plaintiff had not "been injuriously affected thereby in their persons, property or constitutional rights. The rationale of this rule is that only one with a genuine grievance, one personally injured by a statute, can be trusted to battle the issue. It is not sufficient that he has merely a general interest common to all members of the public." *Id.* at 608, 220 S.E.2d at 105 (quotations and alterations omitted). The Court determined that the plaintiff, as a citizen and taxpayer, "has no more than a general interest common to all members of the public in the question he seeks to have determined in this litigation." *Id.* (quotation omitted). The plaintiff had no "status legally different from that of all other citizens and taxpayers." *Id.* at 609, 220 S.E.2d at 105. According to the *Green* court, "Courts may not decide mere differences of opinion between citizens, or between citizens and the State, concerning the validity of a statute." *Id.* Jurisdiction "is not appropriate merely to determine questions of general public interest." *Id.*

Plaintiffs here are in the same position as the plaintiff in *Green*. Members of the NC NAACP or Clean Air Carolina, when it comes to language on the ballot for a constitutional amendment, are in no different a position than non-members. The John Locke Foundation, NC Policy Watch, or any other interest group would fair no differently. Plaintiffs lack standing to challenge the propriety of the ballot question regarding the Proposed Amendments.

Plaintiffs here would fare no better if Fourth Circuit precedent were applied. In an appeal from the Eastern District of North Carolina, the Fourth Circuit explained that the "plaintiffs' federal due process claim relates solely to the manner in which Amendment One was presented and made available to the voters during the November 2004 election." *Bishop v. Bartlett*, 575 F.3d 419, 424 (4th Cir. 2009). This was insufficient to establish standing because "the plaintiffs do not contend that they—or any other voter, for that matter—were actually misled by the ballot language or that they unsuccessfully attempted to obtain the full text of" the challenged amendment. *Id*. The Court explained that plaintiffs' claims "that the ballot language contained 'potentially misleading language'" was insufficient. *Id*. "The plaintiffs' interest . . . is merely a claim of the right, possessed by every citizen, to require that the Government be administered according to law. This type of abstract, generalized interest clearly fails to meet the requirement that an injury be concrete and particularized." *Id*.

Similar to the plaintiffs in *Green* and *Bishop*, these Plaintiffs lack standing to bring their cause of action regarding allegedly misleading ballot language under the North Carolina Constitution. Their claimed harms are neither individualized nor particular but are instead harms hypothesized in the abstract before the voters have even been able to consider the constitutional amendments. This "generalized interest clearly fails to meet the requirement that an injury be concrete and particularized," *Bishop*, 575 F.3d at 424, so the Plaintiffs cannot carry their burden of establishing standing. Therefore, Plaintiffs' request for interlocutory injunctive relief should be

denied, and Defendants' motion to dismiss the claims related to the ballot language should be granted.

III. BECAUSE THE PEOPLE OF NORTH CAROLINA HAVE GIVEN ONLY THE GENERAL ASSEMBLY THE AUTHORITY TO SUBMIT PROPOSALS FOR CONSTITUTIONAL AMENDMENTS, THE ALLEGED MISLEADING NATURE OF THE BALLOT QUESTIONS IS A POLITICAL QUESTION.

The Constitution of 1868, North Carolina's second Constitution, had more requirements associated with amending the Constitution than are included in the current version of the Constitution:

> SEC. 2. No part of the constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in ach house of the Genral Assembly and agreed to by three fifths of the whole number of members of each house respectively; nor shall any alteration take place until the bill, so agreed to, shall have been published, six months previous to a new election of members to the General Assembly. If after such publication the alteration proposed by the preceeding General Assembly shall be agreed to, in the first session thereafter by two thirds of the whole representation in each house of the General Asssmbly, after the same shall have been read three times on three several days, in each House, then the said Genral Assembly shall prescribe a mode by which the amendment or amendments may be submitted to the qualified voters of the House of Representatives throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters voting thereon have approved thereof, then, and not otherwise, the same shall become a part of the Constitution.

N.C. Const. Article XIII, § 2 (1868) available at https://www.ncleg.net/library/Documents/Constitution_1868.pdf (misspellings in original). At the Convention in 1875, the people approved an amendment to the provisions of the Constitution governing its amendment. They repealed the section quoted above and adopted the following:

> SEC. 2. No part of the Constitution of this State shall be altered unless a bill to alter the same shall have been agreed to by three-fifths of each House of the General Assembly. And the amendment or amendments so agreed to shall be submitted at the next general election to the qualified voters of the whole State, in such manner as may be prescribed by law. And in the event of their adoption by a majority of the votes cast, such amendment or amendments shall become a part of the Constitution of this State.
>
> Read three times and ratified in open Convention, this the 4th day of October, A. D. 1875.

Amendment XXIX, Convention 1875 available at https://www.ncleg.net/library/Documents/Amdts_1875.pdf. Thus, as of 1875, while the General Assembly still controlled "the manner" in which the people received a proposed amendment, some of the other requirements of the earlier Constitution (e.g., requiring two General Assemblies to agree to advance the proposed amendment to the voters) were deleted.

The 1968 Constitutional Commission proposed slight modifications to Article XIII, Section 4 of the Constitution regarding amendments beginning in the General Assembly. *See* 1968 Constitutional Commission Report, p.89 (1968). That proposal was adopted and is the provision included in the current version of the Constitution:

> ***A proposal of a new or revised Constitution or an amendment or amendments to this 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.*** If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

N.C. Const. Article XIII, § 4 (emphasis added). At the time of the 1968 study, the Commission noted that the provisions regarding constitutional amendment were

nearly a century old. Commission Report at 89. "The proposed language incorporates established North Carolina theory and practice with respect to the matters involved." *Id*.

The proposal to amend Article XIII, and, indeed, the entirety of the rewrite of the 1971 Constitution, appeared on the ballot with only the following question: vote for or against "revision of the Constitution of North Carolina." Session Law 1969-1258. Article XIII, Section 4 of the Constitution has not been changed since. Moreover, when the Governor was granted veto power through amendment of the Constitution in 1996, proposed constitutional amendments were expressly excepted from the bill subject to veto.[5] *See* Session Law 1995-5; Article II, Section 22.

In addition to the provisions of Article XIII, Article I, Section 3 also gives the people the sole and exclusive right to amend the Constitution:

> The 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. The limitations on amending the Constitution are only those that might flow from the United States Constitution.

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[5] Even the 1968 Commission, which recommended the passage of a gubernatorial veto, did not suggest giving the Governor the power to veto proposed constitutional amendments. "Basically, this amendment provides that the Governor can veto any bill except one submitting an issue to the voters for their approval (for example, a constitutional amendment or a bond issue)." 1968 Commission Report, p. 103.

Where the text of our Constitution makes clear that the commitment of the power to propose and submit constitutional amendments is reserved for the General Assembly, the issue is a political question that this Court has no authority to review. As the United States Supreme Court recognized in *Baker v. Carr,* 369 U.S. 186, 217 (1962), any one of the following conditions may give rise to a non-justiciable political question:

> … *a textually demonstrable constitutional commitment of the issue to a coordinate political department*; or *a lack of judicially discoverable and manageable standards for resolving it*; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. (emphasis added).

Here, because the Constitution recognizes the right of the General Assembly to propose amendments "at the time and in the manner prescribed by the General Assembly," and it is the people of this State who have the "sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution," there is no constitutional controversy for this Court to decide. *See, e.g., Brannon v. N.C. State Bd. of Elections*, 331 N.C. 335, 340, 416 S.E.2d 390, 393 (1992) ("If the meaning of our Constitution is clear from the words used, we need not search for a meaning elsewhere."). Any judicial decision on these issues would

infringe on the balance of powers struck within the Constitution itself. The Governor has no veto. The judicial branch has no standard to measure "fairness" or whether what might be considered a misleading proposal for amendment to one person is not to another. *See, e.g., Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 639, 599 S.E.2d 365, 391 (2004) ("In our view, not only are the applicable statutory and constitutional provisions persuasive in and of themselves, but the evidence in this case demonstrates that the trial court was without satisfactory or manageable judicial criteria that could justify mandating changes with regard to the proper age for school children."). If the courts attempt to decide the challenge alleged by Plaintiffs, the courts would be creating a separation of powers violation by performing the role of a gatekeeper between the textual authority given to the General Assembly to propose amendments and the textual (exclusive) right of the people to pass judgment upon them.

Plaintiffs do not allege the ballot questions violate the federal constitution (*i.e.,* substantive due process), a specific limitation the courts could weigh given that it is referred to directly in Article I, Section III. Plaintiffs also do not allege a separation of powers question.[6] Absent allegations of this sort, the courts do not get into a public

[6] Even had Plaintiffs raised a separation of powers claim, such claim would still be barred by the political question doctrine. Defendants acknowledge that the Supreme Court in *Cooper v. Berger*, 370 N.C. 392, 809 S.E.2d 98 (2018) rejected the argument that the Governor's Complaint, which challenged the statutory structure of the Bipartisan State Board as a violation of separation of powers, was a nonjusticiable political question. The *Cooper* decision does not hold that there is no political question doctrine in North Carolina. Rather, it attempted to harmonize Article III, Sections 5(4) (execution of laws) and (10) (administrative reorganization) and held

policy debate and attempt to weigh the policies of changes proposed to the people of North Carolina.

The North Carolina Supreme Court is the final arbiter of the Constitution, subject to the right of the people to amend their Constitution. When that amendment process, pursuant to the plain and express language of the Constitution, does not include the courts, this Court should decline jurisdiction and refuse to insert itself into the process. *See Bank of Union v. Redwine*, 171 N.C. 559, 570, 88 S.E. 878, 883 (1916) ("We simply declare the law as we find it, without usurping the power to change the Constitution, a power which the people have reserved to themselves.").

Addressing the non-justiciability of political questions, this Court in *Bacon v. Lee* explained:

> The political question doctrine controls, essentially, when a question becomes "not justiciable ... because of the separation of powers provided by the Constitution." *Powell v. McCormack,* 395 U.S. 486, 517, 89 S. Ct. 1944, 1961, 23 L.Ed.2d 491, 514 (1969). "The ... doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. The Judiciary is particularly ill-suited to make such decisions...." *Japan Whaling Ass'n v. American Cetacean Soc'y,* 478 U.S. 221, 230, 106 S. Ct. 2860, 2866, 92 L.Ed.2d 166, 178 (1986). "It

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that the Court could rule upon the separation of powers question raised. *Cooper*, 370 N.C. at 411, 809 S.E.2d at 109 ("the authority granted to the General Assembly pursuant to Article III, Section 5(10) is subject to other constitutional limitations, including the explicit textual limitation contained in Article III, Section 5(4)."). Here, however, there is nothing to harmonize; the laws to be faithfully executed are the Session Laws that provide explicit instructions on how the Proposed Amendments are to be submitted to the voters, a duty that is committed to the General Assembly in Article XIII, Section 4.

> is well established that the ... courts will not adjudicate political questions." *Powell,* 395 U.S. at 518, 89 S. Ct. at 1962, 23 L.Ed.2d at 515.

Bacon v. Lee, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001). The policy choice here—what language should be used on the ballot to present the proposed constitutional amendments to the voters—is committed to the halls of the General Assembly where three-fifths of that body adopted the language that "shall appear on the ballot." *See* Session Laws 2018-117, -118, -119 and -128.

To understand the full applicability of the political question doctrine, analysis of what is in the text of the Constitution is necessary.

> In other words, whether there is a 'textually demonstrable constitutional commitment of the issue to a coordinate political department' of government and what is the scope of such commitment are questions we must resolve for the first time in this case. For, as we pointed out in *Baker v. Carr*, supra, '(d)eciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.' *Id*., at 211, 82 S. Ct. at 706.

Powell v. McCormack, 395 U.S. 486, 521 (1969). The Court must analyze the plain text of the Constitution in light of the Plaintiffs' arguments to determine whether it should weigh in on the merits. Absent allegations of violations of due process, which has a measureable standard and is recognized within our Constitution, the determination of the propriety of the language on the ballot for a proposed

constitutional amendment is a political question. This Court should dismiss Plaintiffs' claims for lack of subject matter jurisdiction.

IV. PLAINTIFFS HAVE NOT SHOWN THAT THE BALLOT LANGUAGE IS MISLEADING.

As set forth in the *Cooper* Memorandum, because the ballot question for a proposed constitutional amendment in North Carolina does not need to explain every possible circumstance, exception, or impact of the proposed amendment, the ballot questions set forth in the Session Laws are not misleading and satisfactorily serve to identify the amendments at issue for consideration by the voters. As such, they pass constitutional muster.

A. The ballot question in Session Law 2018-119 is not misleading.

Session Law 2018-119 asks the citizens of North Carolina to vote for or against: "Constitutional amendment to reduce the income tax rate in North Carolina to a maximum allowable rate of seven percent (7%)." This language is not misleading.

If approved, the current maximum allowable rate of income tax will be reduced from 10% in the Constitution to 7%. The ballot language identifies that this constitutional cap on the tax rate is the proposal on which the people are asked to vote. *See* Exhibit E (diagramming the text of the ballot questions set forth in the Session Laws against the text of the Proposed Amendments). Plaintiffs argue that some citizens might believe they are passing upon a constitutional amendment to reduce the taxes they are *currently* paying. (*See* Plaintiff's Mem. at 24 ("Where it may appear to voters to lower current income rates, in actuality the 7% cap is higher

than the current rate of 5.5% . . . .")) But, this ballot language does not suggest that anyone in the State is paying taxes at 10%, the current constitutional rate cap on income tax. Interestingly, when the 10% rate cap was added to the Constitution, the ballot language in 1969 asked the voters to consider a "constitutional amendment authorizing the General Assembly to fix personal exemptions for income tax purposes." Session Law 1969-872, § 5. The ballot language did not reference the current income tax rate—or even reference the tax rate.

Plaintiffs contend that voters do not understand what they pay in taxes, *see* Plaintiffs' Mem. at 24, and, therefore, must not realize that the General Assembly sets tax rates pursuant to general law, *see* N.C. Gen. Stat. § 105-153.7. Such an unsupported contention[7] has no place in a facial challenge and should not be the basis for determining whether a proposed constitutional amendment is presented to the people of North Carolina. On a facial challenge, it is important to remember that this Court is not to look for hypothetical situations that *could* invalidate the statute; to the contrary, Plaintiff must "establish that no set of circumstances exists under which the [a]ct would be valid." *State v. Bryant*, 359 N.C. 554, 564, 614 S.E.2d 479, 486 (2005) (quotations omitted). "The fact that a statute might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid." *Id.*

[7] In response, Defendants would contend that voters are surely familiar with politicians debating the advantages and disadvantages of raising or lowering income taxes and that voters are also aware that they have not voted on a constitutional amendment to set the applicable annual income tax rate on a regular basis.

B. The ballot question in Session Law 2018-128 is not misleading.

Session Law 2018-128 asks the citizens of North Carolina to vote for or against: "Constitutional amendment to require voters to provide photo identification before voting in person." This language—like the ballot question in Session Law 2018-119—is not misleading. The ballot question expresses the exact nature of the amendment, and is tied to the amendment itself. *See* Exhibit E.

Plaintiffs essentially argue that a lack of proposed implementing legislation regarding what might be considered "photo identification" and what exceptions might be allowed if the amendment passes should prevent the proposed amendment from being presented to the voters. However, there is no demonstrable requirement that implementing legislation consistent with a proposed constitutional amendment be passed before that amendment can be presented to the people to consider.

When considering the amendments presented from the adoption of the 1971 Constitution through today, only about half have had implementing legislation, contingent upon the passage of the amendment, in place at the time the amendment was presented to the people. *See* Exhibit F (identifying amendments presented with and without implementing language at the time of presentation of the amendment to the people). The rest have left further implementing legislation as prescribed by law up to the General Assembly. The presence or lack of implementing language is wholly within the General Assembly's purview and is not a basis for determining the constitutionality or unconstitutionality of the proposal submitted to the people. If it were otherwise, the Court would be mandating that the General Assembly pass

legislation—something that the Court cannot do—before an amendment could be presented.[8] "Although courts are authorized to interpret and declare the law, the judicial branch has no authority to direct a legislative body to enact legislation." *Marriot v. Chatham County*, 187 N.C. App. 491, 495, 654 S.E.2d 13, 16 (2007) (citing *In re Marklam*, 259 N.C. 566, 570, 131 S.E.2d 329, 333 (1963)). It may or may not help the amendment's chances of passing if additional policy considerations are explored through implementing legislation, but it is the purview of the General Assembly whether or not to pass such legislation or not. This Court cannot withhold the right of the people to vote the proposed amendment up or down because legislation has not been passed.

That Plaintiffs disagree with the fundamental question of whether identification should be required is not sufficient to stop the people from voting on that question.

> The Legislature, being familiar with local conditions, is primarily the judge of the necessity of such enactments. The mere fact that a court may differ with the Legislature in its views of public policy, or that judges may hold views inconsistent with the propriety of the legislation in

[8] Our Constitution refers to "as prescribed by law" or "by general law" over 35 times. This is not a failing but rather a fundamental recognition that the General Assembly makes laws and has the unfettered ability to change them to meet the policy needs of the state so long as the provisions of the North Carolina Constitution or federal Constitution are not contravened. The overarching principle demonstrated is that amendments to the Constitution have frequently, throughout history, directed or authorized the General Assembly to pass legislation implementing amendments. On these occasions, the legislation has at times accompanied the amendment; at times it has not. As a result, the voter identification amendment at issue is wholly consistent with historical practices of amending the Constitution.

> question affords no ground for judicial interference, unless the act * * * is unmistakably in excess of legislative power.

Kornegay v. Goldsboro, 180 N.C. 441, 446, 105 S.E. 187, 189 (1920) (quoting *McLean v. Arkansas*, 211 U.S. 539, 53 L. Ed. 315, 29 S. Ct. 206.)

V. THE LEGISLATIVE HISTORY OF SECTION 163A-1108 DOES NOT PROVIDE A STANDARD UNDER WHICH TO ADJUDICATE THE REQUIREMENTS FOR BALLOT QUESTIONS REGARDING AMENDMENTS.

Plaintiffs seek an injunction, in part, on the grounds that the ballot language as passed by the General Assembly violates N.C. Gen. Stat. § 163A-1108 because the ballot questions are not presented in a "fair and nondiscriminatory manner." (Am. Compl. ¶ 63.) But there is no private right of action for citizens of North Carolina to enforce this statute. "Our courts have generally held that a private right of action only exists where the legislature expressly provides for such in the statute." *Cockerham-Ellerbee v. Town of Jonesville*, 176 N.C. App. 372, 377, 626 S.E.2d 685, 689 (2006); *Jacobs v. Physicians Weight Loss Ctr. of Am., Inc.*, 173 N.C. App. 663, 674, 620 S.E.2d 232, 240 (2005); *Lea v. Grier*, 156 N.C. App. 503, 508, 577 S.E.2d 411, 415 (2003); *Lane v. City of Kinston*, 142 N.C. App. 622, 628, 544 S.E.2d 810, 815 (2001); *Vanasek v. Duke Power Co.*, 132 N.C. App. 335, 339, 511 S.E.2d 41, 44 (1999). Section 163A-1108 contains no such right. The General Assembly has recently shown that, regarding election laws, it can and will, by explicit design, create a private right of action. "The General Assembly expressly created a private right of action for political candidates and their committees to enforce its policy decision to require that political television ad sponsors be properly disclosed." *Comm. to Elect Forest v. Emples.*

Political Action Comm., No. COA17-569, 2018 N.C. App. LEXIS 609, at *12 (Ct. App. June 19, 2018). The General Assembly later repealed that private right of action, almost as quickly as it created the right. *See id.* at *2, n.1. Without a means for arguing a direct violation of N.C. Gen. Stat. § 163A-1108, this Court should dismiss any claims based upon it.[9]

Section 163A-1108 also does not bolster Plaintiffs' claims or detract from Defendants' argument that the Session Laws in question require the Bipartisan State Board to place the ballot language on the ballot. Section 1108 was first created in Chapter 163 as N.C. Gen. Stat. § 163-165.4 (2001). *See* Session Law 2001-460, § 3. Session Law 2001-460 was a culmination of efforts to combine election methodology across the state into mechanical or electronic voting under then-Article 14A, because, by 2001, only three counties still used paper ballots, covered by Article 13, and 97 counties used mechanical or electronic systems, covered under Article 14. *See* Election Laws Revision Committee, Final Report to the 2001 Session of the 2001 General Assembly of North Carolina at 21 (2001) available at https://ncleg.net/Library/studies/2001/st11388.pdf.

> Proposal V merges and updates Articles 13 and 14, of Chapter 163 to conform to modern election practices. Instead of very specific instructions for hand-counted paper ballots in Article 13 and the carte blanche rulemaking authority to the State Board for everything else in Article 14, the rewrite wipes out that distinction, giving the State Board guidelines to use in making rules that apply to all technologies.

[9] In *Brinkman v. Barrett Kays & Assocs., P.A.*, 155 N.C. App. 738, 745, 575 S.E.2d 40, 45 (2003), the Court of Appeals also rejected that a plaintiff could graft a private right of action into "the Clean Water Act by importing Chapter 75 and asserting a Chapter 75 claim to enforce the statutory provision."

Id. Thus, the language in N.C. Gen. Stat. § 163-165.4, regarding "Standards for official ballots" grew out of a need to set "general principles that are technologically neutral" and to give some guidance to "promulgat[ing] rules for different voting methods." North Carolina Administrative Code section 08 N.C.A.C. 06B.0101-.0102 regarding general ballot guidelines has not been expanded on any rulemaking. In 2013, as part of election law changes regarding voter identification, N.C. Gen. Stat. § 163-165.4 (2013) amended the words "shall seek to ensure" to just "shall ensure." It was recodified to Chapter 163A, unchanged, by Session Law 2017-6, regarding the establishment of the Bipartisan State Board. Nothing about the original Election Laws Revision Committee, its Study Report, or the language of the statute itself was intended to alter how constitutional amendments are presented to the people. Rather, its history shows it grew out of the need for a more uniform system of elections in all 100 counties. It was neither intended to unlock a reservoir of power for the Bipartisan State Board to ignore the express mandate of the General Assembly regarding language that should be included on the ballot if the Bipartisan State Board found such language to be unfair nor was it designed as a legislative standard by which the courts are authorized to adjudicate the ballot question of a proposed constitutional amendment.

VI. PLAINTIFFS HAVE NOT SHOWN THAT THEY WILL SUFFER IRREPARABLE HARM OR THAT THE BALANCING OF THE EQUITIES FALLS IN THEIR FAVOR.

In addition to the reasons set forth in the Cooper Memorandum, Defendants deny that Plaintiffs will suffer irreparable harm. Plaintiffs claim that they will suffer

irreparable harm because they "are responsible for educating their members and the general public about constitutional amendments," and, in the absence of an injunction, will be forced to expend their limited resources educating their members and voters across North Carolina as to proposed constitutional amendments[.]" (Plaintiff's Mem. at 46.) As set forth in footnote 4 above, Plaintiffs have made clear that they are opposed to and believe they will be harmed by the Proposed Amendments if they are ratified by the voters. Even if Plaintiffs had raised no claims regarding the constitutionality of the ballot language, they would be expending resources to educate "their members and the North Carolina electorate more broadly about ballot initiatives that may impact the welfare of the state." (*Id.* at 47.) Thus, the alleged irreparable harm is not linked to the allegedly unconstitutional ballot language.

Moreover, despite their allegations, Plaintiffs are not "require[d]" to "immediately divert their limited resources toward educating the voters of North Carolina." (*Id.*) The full text of the proposed constitutional amendments is easily accessible to voters. And, by law, the Constitutional Amendments Publication Commission will prepare "an explanation of the amendment in simple and commonly used language" that will be provided to news outlets and be available to registered voters. N.C. Gen. Stat. § 147-54.10. Thus, there are many opportunities for voters to learn about the Proposed Amendments that do not require an expenditure of Plaintiffs' resources.

Plaintiffs have argued that no irreparable harm will ensue from granting an injunction because the General Assembly could place similar proposed constitutional amendments on the ballot. The Supreme Court of the United States has held otherwise. *See Maryland v. King*, 567 U.S. 1301, 133 S. Ct. 1, 3 (2012) (Roberts, C.J., in chambers) ("Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury."). Such harm to the General Assembly and the State outweighs Plaintiffs' claimed harm.

CONCLUSION

For the foregoing reasons, this Court lacks subject matter jurisdiction to hear Plaintiffs' claims related to the constitutionality of the Session Laws under Article III, Section 4 and N.C. Gen. Stat. § 163A-1108, and such claims should be dismissed. Additionally, Plaintiffs are unable to establish their likelihood of success on the merits or irreparable harm and, therefore, are not entitled to the preliminary injunctive relief requested (i.e., enjoining the inclusion of the ballot questions set forth in Session Law 2018-117, 2018-118, 2018-119, and 2018-128 on the November ballot). This Court should deny Plaintiffs' Motions for Temporary Restraining Order and Preliminary Injunction, allowing the ballots to be printed with the ballot questions as set forth in the Session Laws and grant Defendants' Motion to Dismiss.

Respectfully submitted this the 13th day of August, 2018.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served upon the persons indicated below via first class mail and electronic mail addressed as follows:

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This the 13th day of August, 2018.

/s/ D. Martin Warf
D. Martin Warf

EXHIBIT E

Senate Bill 75, "CONSTITUTIONAL AMENDMENT – MAXIMUM INCOME TAX RATE OF 7.0%"

Ballot Question: Constitutional amendment to **reduce the income tax rate**[1] in North Carolina to a **maximum allowable rate**[2] of seven percent (7%).

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1. Section 1 of SB 75 provides that rate cap goes from **ten to seven** percent.

2. Section 1 of SB 75 incorporates the existing constitutional language of "**shall not in any case exceed**…"

House Bill 1092, "CONST. AMENDMENT – REQUIRE PHOTO ID TO VOTE"

Ballot Question: Constitutional amendment to require voters to provide **photo identification**[1] before voting **in person**[2].

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1. Section 1 of HB 1092 requires voters to present "**photographic identification** before voting."

2. Sections 1 and 2 of HB 1092 use the phrase "**in person**" four times—twice in captions or tag lines and once each in the two sections of the Constitution to be amended.

EXHIBIT F

Amendments to the North Carolina Constitution of 1971

Session Law	Article Affected	Topic	Date	Vote		Result	Implementing Legislation?*
				Yes	No		
1969, ch.1258		Revising and Amending the Constitution of North Carolina	11/03/1970	393,759	251,132	Adopted	No implementing legislation contingent on amendment passage found.[1]
1969, ch. 827	Art. IX, sec. 10	Reassigning Benefits of Escheats	11/03/1970	362,097	248,451	Adopted	No implementing legislation contingent on amendment passage found.[2]
1969, ch. 872	Art. V, sec. 2(6)	Authorizing the GA to Fix Personal Income Tax Exemptions	11/03/1970	336,600	282,697	Adopted	No implementing legislation contingent on amendment passage found.[3]
1969, ch. 932	Art. III, sec. 5(10)	Executive Reorganization Amendment	11/03/1970	400,892	248,795	Adopted	No implementing legislation contingent on amendment passage found.[4]
1969, ch. 1004	Art. VI, sec.4	Repealing Literacy Requirement for Voting	11/03/1970	279,132	355,347	Rejected	No implementing legislation contingent on amendment passage found.[5]
1969, ch. 1200	Art. V	Revising Finance Article	11/03/1970	323,131	281,087	Adopted	No implementing legislation contingent on amendment passage found.[6]
1969, ch. 1270	Art. II	Authorizing Calling of Extra Legislative Sessions on Petition of Legislators	11/03/1970	332,981	285,581	Adopted	No implementing legislation contingent on amendment passage found..
1971, ch. 201	Art. VI, sec. 1	Lowering Voting Age to 18	11/07/1972	762,651	425,708	Adopted	Implementing legislation found in S.L. 1971-585.

[1] This amendment basically is the 1971 Constitution, but there was no enabling or implementing legislation associated with it.
[2] The amendment requires that the "method, amount, and type of distribution shall be prescribed by law" and that the "General Assembly shall provide that the benefits… be extended to the youth of the State free of expense for tuition." The next revision of the escheats laws was in 1971, chapter 1135 and was related to the constitutional amendment as it references property accruing to the State after 6/30/71, the date used in NC. Const. Art. IX, Sec. 10(2) and Sec. 7(3).
[3] The amendment limits the income tax rate to 10% & requires allowing personal exemptions/deductions so only net incomes are taxed. The rate was not above 10% at the time and in 1967 (Ch 1110) corporate and individual income tax adjustments were already in law.
[4] This amendment reorganizes the administrative departments and agencies of the State and provides, in the Constitutional language that "Not later than July 1, 1975, all administrative departments, [etc.] shall be allocated by law…." The Executive Reorganization Act of 1973 arguably implemented the amendment. At the time the public was to vote whether to reorganize virtually all of the government, not only was there no concurrent legislation, but the Constitution allowed for 6 years to pass before the voters would know the result.
[5] The amendment does provide, as do each of the 1st 6 amendments, that laws and clauses of laws in conflict with the Act are repealed.
[6] This amendment recompiles Article 5 (Finance) of the Constitution, mandating equitable and uniform taxation. Chapter 105 was in effect, but nothing specifically enabling any provision of that Article can be found in the 1969 Session Laws.

Amendments to the North Carolina Constitution of 1971

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				Yes	No		
1971, ch. 451	Art. IV, sec. 8	Requiring Legislative Age Limit for Justices and Judges	11/07/1972	811,440	304,489	Adopted	Implementing legislation found in S.L. 1971-508.
1971, ch. 560	Art. IV, sec. 17	Authorizing Legislative Provision for Censure or Removal of Justices and Judges	11/07/1972	807,960	272,470	Adopted	Implementing legislation found in S.L. 1971-590.
1971, ch. 630	Art. XIV, sec. 5	Declaring State Policy to Conserve and Protect Natural Resources	11/07/1972	976,581	146,895	Adopted	No implementing legislation contingent on amendment passage found.
1971, ch. 857	Art. VII, sec. 1	Limiting the Incorporation of Towns Near Existing Towns	11/07/1972	694,921	374,184	Adopted	No implementing legislation contingent on amendment passage found.*
1973, ch. 394	Art. IV, sec. 18	Changing Title of Solicitor to District Attorney	11/05/1974	474,199	249,452	Adopted	No implementing legislation contingent on amendment passage found.*
1973, ch. 1222		Authorizing Legislation to Provide for Tax- exempt Industrial Revenue Bonds	11/05/1974	317,285	376,269	Rejected	No implementing legislation contingent on amendment passage found.*
1975, ch. 641	Art. V, sec. 8	Authorizing the Issuance of Revenue Bonds to Finance or Refinance Health Care Facility Projects	03/23/1976	382,091	311,300	Adopted	Implementing legislation found in S.L. 1975-766.
1975, ch. 826	Art. V, sec. 9	Authorizing the Issuance of Revenue Bonds to Finance Industrial Development and Pollution Control Projects for Public Utilities	03/23/1976	373,033	304,938	Adopted	Implementing legislation found in S.L. 1975-800.
1977, ch. 80	Art. X, sec. 2	Extending the Benefit of the Homestead Exemption to Surviving Spouses of Either Sex	11/08/1977	517,366	59,714	Adopted	Implementing legislation found in S.L. 1977-81.
1977, ch. 115	Art. X, sec. 5	Permitting Any Person (Not Only a Husband) to Insure His or Her Own Life for the Benefit of His or Her Spouse or Children or Both, free from Claims of Creditors of the Insured or the Insured's Estate	11/08/1977	513,526	57,835	Adopted	Implementing legislation found in S.L. 1977-518.
1977, ch. 363	Art. III, sec. 2(2)	Empowering the Voters to Elect the Governor and Lieutenant Governor for Two Consecutive Terms	11/08/1977	307,754	278,013	Adopted	No implementing legislation contingent on amendment passage found.

Amendments to the North Carolina Constitution of 1971

Session Law	Article Affected	Topic	Date	Vote		Result	Implementing Legislation?
				Yes	No		
1977, ch. 528	Art. V, sec. 10	Permitting Municipalities that Generate or Distribute Electric Power to Own and Operate Generating and Distribution Facilities Jointly with Public or Private Entities Engaged in That Business	11/08/1977	349,935	180,624	Adopted	Implementing legislation found in S.L. 1977-708.
1977, ch. 690	Art. III, sec. 5(3)	Requiring that the State Budget be Balanced at All Times	11/08/1977	443,453	104,935	Adopted	No implementing legislation contingent on amendment passage found.
1979, ch. 638	Art. IV, sec. 22	Providing that Only Persons Authorized to Practice Law in the Courts of this State are Eligible to be Justices and Judges of the General Court of Justice	11/04/1980	888,634	352,714	Adopted	No implementing legislation contingent on amendment passage found.
1981, ch. 504		Increasing the Terms of State Senators and Representatives from Two to Four Years	06/29/1982	163,058	522,181	Rejected	Implementing legislation included in amendment legislation.
1981, ch. 513	Art. IV, sec. 8	Authorizing Legislation to Provide for the Recall of Retired State Supreme Court Justices and Court of Appeals Judges to Serve Temporarily on Either Court	06/29/1982	356,895	295,638	Adopted	No implementing legislation contingent on amendment passage found.
1981, ch. 803	Art. IV, sec. 12(1)	Authorizing Legislation to Grant the State Supreme Court Jurisdiction to Review on Direct Appeal a Final Order or Decision of the NC Utilities Commission	06/29/1982	392,886	253,629	Adopted	No implementing legislation contingent on amendment passage found.
1981, ch. 808		Authorizing Legislation to Empower Public Bodies, in Order to Develop NC Seaports and Airports, to Acquire, Construct, Finance, Refinance, Sell or Lease Lands and Facilities and to Finance for Private Interests Seaport, Airport and Other Related Commercial Facilities	06/29/1982	292,031	342,567	Rejected	Implementing legislation included in S.L. 1981-856, as amended by S.L. 1981-988
1981, ch. 887		Authorizing Legislation to Permit the State to Issue Tax-exempt Revenue Bonds to Finance or Refinance the Acquisition and Construction of Facilities for Private Institutions of Higher Education	06/29/1982	303,292	338,650	Rejected	Implementing legislation in S.L. 1981-784

Amendments to the North Carolina Constitution of 1971

Session Law	Article Affected	Topic	Date	Vote		Result	Implementing Legislation?
				Yes	No		
1981, ch. 1241	Art. II, sec. 9	Providing that the Terms of State Senators and Representatives Shall Begin 1 January Next After Their Election	11/02/1982	690,218	276,432	Adopted	No implementing legislation contingent on amendment passage found.
1981, ch. 1247		Authorizing Legislation to Permit Municipalities to Issue Tax Increment Bonds	11/02/1982	182,147	810,565	Rejected	Implementing legislation in S.L. 1981-1276
1983, ch. 298	Art. III, sec. 7(7) Art. IV, sec. 18(1)	Providing that Only Persons Authorized to Practice Law in the Courts of this State are Eligible to be Attorney General or District Attorney	11/06/1984	1,159,460	357,796	Adopted	No implementing legislation contingent on amendment passage found.
1983, ch. 765	Art. V, sec. 11	Authorizing Legislation to permit the Issuance by the state of Tax-exempt Revenue Bonds to Finance and Refinance Agricultural Capital Facilities	05/08/1984	420,405	360,009	Adopted	No implementing legislation contingent on amendment passage found.
1985, ch. 61 *repealed by* 1985, ch.1010		Authorizing Legislation to Prohibit Future Governors and Lieutenant Governors from Succeeding Themselves Except for the Present Governor and Lieutenant Governor	Note: This proposed amendment was repealed by 1985, ch.1010, and therefore did not go to a vote of the people.				Implementing legislation included in amendment legislation
1985, ch. 768		Authorizing Legislation to provide for Election of state and county Officers in Odd-numbered Years	05/06/1986	230,159	547,076	Rejected	Implementing legislation included in amendment legislation
1985, ch. 814	Art. V, sec. 12	Permitting the General Assembly to Enact Laws to Allow Revenue Bonds to be Issued to Finance or Refinance Higher Education Facilities for Private Nonprofit Institutions	11/04/1986	675,587	448,845	Adopted	Implementing legislation in S.L. 1985-794.
1985, ch. 920	Art. III, sec. 7(3) Art. IV, sec. 19	Providing for Elections to be Held to fill the Remainder of an Unexpired Term if Vacancy Occurs 60 Days Before Next Election	11/04/1986	740,241	365,959	Adopted	Implementing legislation included in amendment legislation
1985, ch. 933	Art. V, sec. 13	Permitting the General Assembly to Assist in the Development of New and Existing Seaports and Airports	11/04/1986	688,911	391,908	Adopted	Implementing legislation included in amendment legislation
1993, ch. 497		Authorizing Counties and Cities to issue Tax Increment Bonds Without Voter Approval	11/02/1993	197,762	651,190	Rejected	Implementing legislation included in amendment legislation
1995-5, s.3	Art. II, sec. 22 Art. III, Sec. 5	Veto Power for Governor	11/05/1996	1,652,294	544,335	Adopted	No implementing legislation contingent on amendment passage found.

Amendments to the North Carolina Constitution of 1971

Session Law	Article Affected	Topic	Date	Vote		Result	Implementing Legislation?
				Yes	No		
1995-5, s.3	Art. II, sec. 22 Art. III, Sec. 5	Veto Power for Governor	11/05/1996	1,652,294	544,335	Adopted	No implementing legislation contingent on amendment passage found.
1995-429, s.3	Art. XI, sec. 1	Require Alternative Punishments	11/05/1996	1,889,620	303,596	Adopted	Implementing legislation included in amendment
1995-438, s.2	Art. I, sec. 37	Victims Rights Amendment	11/05/1996	1,714,872	488,805	Adopted	No implementing legislation contingent on amendment passage found.
1999-268, s.3 *amended by:* 2001-217, s.3 *amended by:* 2002-3, s. 1 (Extra Session)	Art. XIV, sec. 5	State Nature and Historic Preserve	11/05/2002	1,283,375	507,426	Adopted	Implementing legislation included in original amendment legislation – S.L. 1999-268. S.L. 2001-217 also had additional implementing legislation.
2003-403, s.1	Art. V, sec. 14	Local Option Project Development Financing	11/02/2004	1,504,391	1,429,179	Adopted	Implementing legislation included in original amendment legislation.
2003-423, s.1	Art. IX, sec. 7	School Fines and Forfeitures	11/02/2004	2,348,155	662,324	Adopted	Implementing legislation included in original amendment legislation.
2004-128, s.16	Art. IV, sec. 10	Amend Magistrate Term	11/02/2004	1,984,152	933,021	Adopted	Implementing legislation included in original amendment legislation.
2010-49, s.2	Art. VII, sec. 2	No Felon as Sheriff	11/02/2010	2,090,837	370,023	Adopted	No implementing legislation contingent on amendment passage found.
2011-409	Art. XIV, sec. 6	Defense of Marriage	05/08/2012	1,317,178	840,802	Adopted	No implementing legislation contingent on amendment passage found.

Amendments to the North Carolina Constitution of 1971

Session Law	Article Affected	Topic	Date	Vote		Result	Implementing Legislation?
				Yes	No		
2013-300	Art. I, sec. 24	Criminal Defendant May Waive Jury Trial	11/04/2014	1,408,119	1,245,052	Adopted	Implementing legislation included in original amendment legislation

* Implementing language refers to language made contingent upon the passage of the amendment, and does not include references to session laws enacted after passage of the amendment.

**Contains boilerplate language "All laws and clauses of laws in conflict with this act are repealed."