

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
23CV029308-910

ROY A. COOPER, III, in his official capacity as GOVERNOR OF THE STATE OF NORTH CAROLINA, and JOSHUA H. STEIN, in his official capacity as GOVERNOR-ELECT OF THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; and THE STATE OF NORTH CAROLINA.

Defendants.

**PLAINTIFF'S MOTION FOR LEAVE  
TO FILE SUPPLEMENTAL  
COMPLAINT**

Plaintiff Governor Roy Cooper, pursuant to N.C. Gen. Stat. § 1A-1, Rules 15(d) and 19, moves for leave to file a supplemental complaint in this action seeking (a) a declaratory judgment under N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rule of Civil Procedure 57 that Sections 3A.3.(b), (c), (d), (f), (g), and (h) of Senate Bill 382 are unconstitutional and are therefore void and of no effect; and (b) a permanent injunction under North Carolina Rule of Civil Procedure 65.

In support of this Motion, Plaintiff shows the Court the following:

1. On 17 October 2023, Governor Cooper filed this lawsuit challenging the constitutionality of Parts II, IV, and VIII of Senate Bill 749 on grounds that those provisions violate the separation of powers guaranteed by Article I, Section 6, and interfere with his exclusive executive authority delineated in Article III, Section 1, and Article III, Section 5(4) of the North Carolina Constitution. The Governor sought declaratory relief, a preliminary injunction, and a permanent injunction.

2. On 30 November 2023, a three-judge panel of this Court appointed under N.C. Gen. Stat. § 1-267.1 heard arguments on the Governor’s motion for preliminary injunction. That same day, this Court unanimously entered an order granting the Governor’s Motion for Preliminary Injunction, holding that the challenged provisions of Senate Bill 749 were unconstitutional.

3. The Governor moved for summary judgment. Legislative Defendants moved to dismiss, or in the alternative, for judgment on the pleadings.

4. On 11 March 2024, this Court entered a unanimous order granting the Governor’s motion and denying Legislative Defendants’ motions.

5. On November 5, the voters overwhelmingly chose Governor-Elect Stein to be their chief executive for the next four years. As such, Governor-Elect Stein is a proper and necessary plaintiff in this action.

6. Legislative Defendants appealed this Court’s summary judgment decision; briefing closed in the Court of Appeals on 18 November 2024.

7. The next day, Senate Bill 382 (“SB 382”) was introduced in its current form by gutting a preexisting Senate bill that amended the laws of dentistry. SB 382,

which received no public hearing and extremely limited committee consideration, then passed both chambers of the General Assembly on November 19 and 20, 2024 and was presented to the Governor later that day.

8. Governor Cooper vetoed SB 382 on November 26, 2024. On December 11, Legislative Defendants completed their override of the Governor’s veto on strict party lines to enact the bill as Session Law 2024-57. As relevant here, Section 3A of SB 382 contains various amendments to the State’s election laws.

9. On 20 December 2024, Legislative Defendants moved to dismiss the appeal as moot in light of the repeal of most of the challenged portions of Senate Bill 749. *See* Session Law 2024-57, §§ 3.A.3.(b), 4.2.<sup>1</sup>

10. Rule 15(d) of the Rules of Civil Procedure provides that the Court “may, on just terms, permit a party to serve a supplemental pleading setting out any transaction, occurrence, or event that happened after the date of the pleading to be supplemented.” Leave should be “freely granted,” as supplemental pleadings are “of such service in the efficient administration of justice that they ought to be allowed as a matter of course.” *Estate of Williams-Moore v. Alliance One Receivables Mgt.*, 335 F. Supp. 2d 636, 644 (M.D.N.C. 2004).

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<sup>1</sup> Sections 2.3 and 2.4 of Senate Bill 749, respectively, recite the State Board’s duty to appoint members of county boards of elections (also found in N.C. Gen. Stat. § 163-30, prior to the amendment by Section 4.1 of Senate Bill 749 and amended by Section 3A.3.(f) of SB 382) and require the General Assembly’s approval—instead of the Governor’s—to hire private counsel. Those provisions were not repealed by Session Law 2024-57 but remain permanently enjoined by this Court’s March 8, 2024 Order on Summary Judgment.

11. Rule 19 of the North Carolina Rules of Civil Procedure provides for joinder of additional necessary parties (in this case, Governor-Elect Stein). “When a complete determination of a claim cannot be made without the presence of other parties, the court is required to bring them in.” *MacPherson v. City of Asheville*, 283 N.C. 299, 305, 196 S.E.2d 200, 204 (1973).

12. Plaintiff seeks leave of court to file a supplemental complaint alleging that the replacement for Senate Bill 749—i.e., Sections 3A.3.(b), (c), (d), (f), (g), and (h) of SB 382—unconstitutionally violates the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

13. Plaintiff’s proposed supplemental complaint is attached hereto as **Exhibit 1**.

14. The proposed amendments are in the interest of justice and judicial economy as they could obviate the need for an independent legal action based on the after-occurring events.

15. This Motion has been submitted without undue delay or in bad faith and will not cause undue prejudice, and its relief would not inasmuch as there is evidence to support the additional allegations.

16. Before filing this Motion, Plaintiff conferred with counsel for the parties. The State took no position, and Legislative Defendants indicated that they do not consent.

WHEREFORE, Plaintiff Governor and proposed Plaintiff Governor-Elect pray:

1. That the Court enter an Order permitting Plaintiffs to supplement their Complaint pursuant to Rules 15(d) and 19; and
2. Granting such other and further relief as the Court deems just and proper.

Respectfully submitted this the 23rd day of December, 2024.

/s/ Eric M. David

Jim W. Phillips, Jr.

N.C. State Bar No. 12516

jphillips@brookspierce.com

Eric M. David

N.C. State Bar No. 38118

edavid@brookspierce.com

Daniel F. E. Smith

N.C. State Bar No. 41601

dsmith@brookspierce.com

Amanda S. Hawkins

N.C. State Bar No. 50763

ahawkins@brookspierce.com

BROOKS, PIERCE, MCLENDON,

HUMPHREY & LEONARD, L.L.P.

Suite 2000 Renaissance Plaza

230 North Elm Street

Greensboro, NC 27401

(336) 373-8850

(336) 378-1001 (fax)

*Attorneys for Plaintiff Roy A. Cooper, III,  
Governor of the State of North Carolina and  
Joshua H. Stein, Governor-Elect of the State  
of North Carolina*

W. Swain Wood

N.C. State Bar No. 32037

swood@morningstarlawgroup.com

MORNINGSTAR LAW GROUP

434 Fayetteville Street, Suite 2200

Raleigh, NC 27601

(919) 590-0370

*Attorney for Joshua H. Stein, Governor-Elect  
of the State of North Carolina*

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the foregoing document was served on the following parties via email as follows:

NELSON MULLINS RILEY & SCARBOROUGH LLP  
D. Martin Warf  
Martin.warf@nelsonmullins.com  
Noah Huffstetler  
Noah.huffstetler@nelsonmullins.com  
*Attorneys for Legislative Defendants*

NC DEPARTMENT OF JUSTICE  
Stephanie Brennan  
Sbrennan@ncdoj.gov  
Amar Majmundar  
Amajmundar@ncdoj.gov  
*Attorneys for The State of North Carolina*

WAKE COUNTY SUPERIOR COURT  
Kellie Myers  
kellie.z.myers@nccourts.org  
Lisa Tucker  
Lisa.R.Tucker@nccourts.org  
Aaron Davison  
Aaron.D.Davison@nccourts.org  
Byron Frazelle  
Samuel.B.Frazelle@nccourts.org

This the 23rd day of December, 2024.

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

By: /s/ Eric M. David  
Eric M. David

**EXHIBIT 1**  
**PROPOSED SUPPLEMENTAL**  
**COMPLAINT**



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COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
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ROY A. COOPER, III, in his official capacity as GOVERNOR OF THE STATE OF NORTH CAROLINA, and JOSHUA H. STEIN, in his official capacity as GOVERNOR-ELECT OF THE STATE OF NORTH CAROLINA,

Plaintiff,

v.

TIMOTHY K. MOORE, in his official capacity as SPEAKER OF THE NORTH CAROLINA HOUSE OF REPRESENTATIVES; PHILIP E. BERGER, in his official capacity as PRESIDENT PRO TEMPORE OF THE NORTH CAROLINA SENATE; and THE STATE OF NORTH CAROLINA.

Defendants.

### **SUPPLEMENTAL COMPLAINT**

Plaintiffs Governor Roy Cooper and Governor-Elect Joshua H. Stein, pursuant to N.C. Gen. Stat. § 1A-1, Rules 15(d) and 19, seeking (a) a declaratory judgment, and (b) preliminary and permanent injunctions, hereby allege and say:

63. Plaintiffs re-allege and incorporate by reference all allegations of the initial Complaint in this action as if fully set forth herein.

### **SUPPLEMENTAL INTRODUCTION**

64. In December 2024, while Legislative Defendants' appeal of their trial court loss in this case was pending, Legislative Defendants tried, for the sixth time

in eight years, to wrest executive authority over the State Board of Elections away from the Governor.

65. This time, they are trying to change a structure of gubernatorial authority that has existed for nearly 100 years by transferring the power to appoint every member of the State Board to the newly elected State Auditor of North Carolina, a Republican.

66. They have done so not because the State Auditor has any expertise or knowledge of election law or election administration. Indeed, the State Auditor has never had any role in North Carolina elections; it appears that North Carolina is the only state that commits elections administration to the State Auditor.

67. The State Auditor's only qualification for this newly assigned role is obvious—he's a Republican with demonstrated fealty to Legislative Defendants.

68. This blatantly partisan restructuring of the State Board is—once again—unconstitutional. It will undermine confidence in elections, and it contravenes the democratic principles on which our State government rests. It cannot stand.

### **SUPPLEMENTAL PROCEDURAL HISTORY**

69. On 17 October 2023, Governor Cooper filed this lawsuit against Legislative Defendants and the State, challenging the constitutionality of Parts II, IV, and VIII of Senate Bill 749 on grounds that those provisions violate the separation of powers guaranteed by Article I, Section 6, and interfere with his exclusive executive authority delineated in Article III, Section 1, and Article III, Section 5(4) of

the North Carolina Constitution. The Governor sought declaratory relief, a preliminary injunction, and a permanent injunction.

70. On 30 November 2023, a three-judge panel appointed under N.C. Gen. Stat. § 1-267.1 heard arguments on the Governor’s motion for preliminary injunction. That same day, the three-judge panel unanimously entered an order granting the Governor’s Motion for Preliminary Injunction, holding that the challenged provisions of Senate Bill 749 were unconstitutional.

71. The Governor moved for summary judgment. Legislative Defendants moved to dismiss, or in the alternative, for judgment on the pleadings.

72. On 11 March 2024, the three-judge panel entered a unanimous order granting the Governor’s motion and denying Legislative Defendants’ motions. The panel rejected Legislative Defendants’ political question doctrine argument and held that the Supreme Court’s decisions in *Cooper I* and *McCrorry* controlled the analysis and compelled the invalidation of the challenged portions of Senate Bill 749.

73. Legislative Defendants appealed the three-judge panel’s decision; briefing closed in the Court of Appeals on 18 November 2024.

74. On 20 December 2024, Legislative Defendants moved to dismiss the appeal as moot in light of the repeal of most of the challenged portions of Senate Bill 749. *See* Session Law 2024-57, §§ 3.A.3.(b), 4.2.<sup>1</sup>

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<sup>1</sup> Sections 2.3 and 2.4 of Senate Bill 749, respectively, recite the State Board’s duty to appoint members of county boards of elections (also found in N.C. Gen. Stat. § 163-30, prior to the amendment by Section 4.1 of Senate Bill 749 and amended by Section 3A.3.(f) of SB 382) and require the General Assembly’s approval—instead of the Governor’s—to hire private counsel. Those provisions were not repealed by Session

## SUPPLEMENTAL FACTS

75. On 5 November 2024, North Carolina voters elected Plaintiff Joshua H. Stein to be their Governor for the next four years. Governor-Elect Stein is a resident of Wake County, North Carolina.

### **II. FOR THE SIXTH TIME, LEGISLATIVE DEFENDANTS UNCONSTITUTIONALLY ALTER THE STATE BOARD OF ELECTIONS.**

76. Just days after the voters overwhelmingly chose Governor-Elect Stein to be their chief executive for the next four years, the leadership of the North Carolina General Assembly used a purported hurricane relief bill to curtail, in significant ways, the core executive responsibilities that, under our Constitution, pass to Governor Stein on January 1, 2025.

77. In addition to electing Governor Stein, the voters in the November 2024 election deprived the General Assembly's partisan majority of super-majority control sufficient to override the Governor's veto in a party-line vote in the legislative session beginning in January 2025.

78. Despite Governor Stein's clear mandate from the voters, Legislative Defendants ran a similar play to the one they tried unsuccessfully in December 2016 against then-Governor-Elect Cooper, using the lame duck legislative session to strip the incoming Governor of executive authority before our system of representative government deprived them of the partisan legislative membership necessary to accomplish such underhanded tactics without any support from another party.

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Law 2024-57 but remain permanently enjoined by this Court's March 8, 2024 Order on Summary Judgment.

79. Under the direction of Defendants Moore and Berger—and without notice, transparency, or time for public input—Senate Bill 382 (“SB 382”) was introduced in its current form on November 19, 2024 by gutting a preexisting Senate bill that amended the laws of dentistry. Because it was a conference report, no amendments were allowed. SB 382, which received no public hearing and extremely limited committee consideration, then passed both chambers of the General Assembly on 19 and 20 November, 2024 and was presented to the Governor later that day.

80. Governor Cooper vetoed SB 382 on 26 November 2024. On December 11, Legislative Defendants led partisan supermajorities in completing their override of the Governor’s veto on strict party lines to enact the bill as Session Law 2024-57. As relevant here, Section 3A of SB 382, attached as **Exhibit A**, contains various amendments to the State’s election laws.

81. The lame duck General Assembly’s attempt to redefine the Governor’s powers after their preferred candidate lost the election directly conflicts with the people’s selection of Governor as the State’s chief executive with the authority granted to him by our Constitution. *See Young v. Bailey*, 368 N.C. 665, 671 (2016) (“The election of a particular candidate signifies public support for that candidate’s platform, policies, and ideology.”).

82. Moreover, Section 3A of SB 382 is Legislative Defendants’ sixth attempt in eight years to deprive the Governor of constitutionally sufficient authority over the State Board of Elections. They have been rebuffed five times by the courts and once, in overwhelming fashion, by the voters.

83. **First attempt:** “On 16 December, 2016, the General Assembly enacted Senate Bill 4 and House Bill 17 [Session Laws 2016-125 and 2016-126].” *Cooper v. Berger*, 370 N.C. at 395. Had they taken effect, these laws would have abolished the existing State Board of Elections and created a new “Bipartisan State Board of Elections and Ethics Enforcement.” *Id.* The new board would have consisted of four members appointed by the Governor, two members appointed by the General Assembly upon the recommendation of the Speaker, and two members appointed by the General Assembly upon recommendation of the President Pro Tempore. Session Law 2016-125 § 2.(c). The Governor, Speaker, and President Pro Tempore were each required to make their appointments from a list of nominees provided by the State chairs of the two largest political parties, and were required to divide their appointments equally between the two parties. *Id.* As a result, the new board’s membership would have been equally divided between the two largest parties, each of whom would have had four members. That legislation, and its recipe for executive deadlock, was struck down by a three-judge panel of the Superior Court, Wake County. *Cooper BOE*, 370 N.C. at 395.

84. **Second Attempt:** The General Assembly then enacted Session Law 2017-6, which, among other things, required the Governor to appoint eight members to a new version of the state elections board by selecting four members each from lists supplied by the chairs of the Republican and Democratic parties. *Cooper BOE*, 370 N.C. at 396. Thus, although the Governor had the nominal authority to appoint all

eight members of the board, the legislation once again ensured executive deadlock by preventing the Governor from appointing a majority of members.

85. The Supreme Court found the restructured elections board unconstitutional because it

le[ft] the Governor with little control over the views and priorities of the Bipartisan State Board, by requiring that a sufficient number of its members to block the implementation of the Governor's policy preferences be selected from a list of nominees chosen by the leader of the political party other than the one to which the Governor belongs, limiting the extent to which individuals supportive of the Governor's policy preferences have the ability to supervise the activities of the Bipartisan State Board, and significantly constraining the Governor's ability to remove members of the Bipartisan State Board.

370 N.C. at 416 (cleaned up).

86. **Third Attempt:** After *Cooper BOE*, the General Assembly enacted the "2018 Legislation" (i.e., Part VII of Session Law 2018-2 and the portions of Session Law 2017-6 that were not struck down in *Cooper BOE*), which sought to establish a nine-member State Board with all members appointed by the Governor: four from a list of six nominees supplied by the State Democratic party chair; four from a list of six nominees supplied by the State Republican party chair; and one from a list of two nominees (not registered as a Democrat or Republican) made by the other eight members. The 2018 Legislation also created evenly split county boards of election appointed by the State Board, containing two members from each major party, and mandated that the chair of each county board be a Republican in every year that Presidential, gubernatorial, and Council of State elections are held.

87. A three-judge trial court panel held that, “when analyzed collectively and in their entirety, all of the foregoing provisions combine to strip the Governor of the requisite control mandated by *Cooper* and *McCrorry*, and that the Acts thus prevent the Governor from fulfilling his core duty of taking care that the State’s election laws are faithfully executed.” See Order ¶ 79, *Cooper v. Berger*, 18 CVS 3348 (N.C. Super. Ct. Wake Cnty., Oct. 16, 2018).

88. **Fourth Attempt:** In the summer of 2018, the General Assembly proposed constitutional amendments. See Session Law 2018-117. Among other things, the General Assembly submitted an amendment creating a new State Board echoing the board structure invalidated in *Cooper BOE*—i.e., an eight-member board with the Governor appointing four members recommended by the Democratic and Republican Senate leaders and four members recommended by the Democratic and Republican House leaders. Session Law 2018-133. The voters rejected that amendment by a vote of 2,199,787 against (62%) and 1,371,446 for (38%).

89. **Fifth Attempt:** In the now-repealed provisions of Senate Bill 749, the General Assembly granted itself authority to appoint all members of an eight-member State Board and all members of four-member county boards of election. All vacancies in board membership were to be filled by the General Assembly or its leadership. In the event of board deadlock in the selection of the Chair of the State Board, Executive Director of the State Board, or chair of a county board, Legislative Defendants would make the selection. See Summary Judgment Order, *Cooper v. Berger*, No. 23CV029308-910, (N.C. Super. Ct. Wake Cnty., Mar. 11, 2024). This



Court unanimously enjoined those provisions because Senate Bill 749 was “the most stark and blatant removal of appointment power from the Governor since *McCrorry* and *Cooper I*,” which controlled, and mandated a permanent injunction. *See id.* ¶ 14.

90. Legislative Defendants’ latest attempt to restructure the State Board of Election and county boards of election fares no better under our Constitution than their prior five attempts.

91. Before turning to the specific provisions of SB 382, however, it is important to emphasize the provisions of the North Carolina Constitution that prevent the General Assembly from restructuring executive agencies to deprive the Governor of constitutionally sufficient control. Legislative Defendants, persistently failing to heed the limits our constitutional order places on them, continue their attempts to reorder our State’s constitutional balance of powers through statutory enactments. But mere statutes cannot override or rewrite the North Carolina Constitution.

92. The Governor is the only executive branch officer vested with the executive power of the State. N.C. CONST. art. III, § 1 (“The executive power of the State shall be vested in the Governor.”).

93. The Governor is also the sole executive branch officer with a constitutional duty to “take care that the laws be faithfully executed.” N.C. CONST. art. III, § 5(4).

94. In contrast to the express vesting of executive authority in the Governor, the North Carolina Constitution does not expressly vest any powers or duties in the

other executive officers<sup>2</sup> who comprise the Council of State. N.C. CONST. art. III, §§ 7, 8; N.C. CONST. art. III, § 7(2) (providing that the duties of the elected members of the Council of State “shall be prescribed by law.”). Thus, the executive power is vested solely in the Governor, N.C. CONST. art. III, § 1, while the particular duties of the other Council of State members are granted, removed, or modified by legislative act. *See id.* art. III, § 7(2).

95. The holdings and teachings of *Wallace*, *McCrorry*, and *Cooper BOE* are clear: the separation of powers clause of the North Carolina Constitution requires that the Governor have the authority to appoint a majority of members of a State board, commission, or council that exercises final executive authority. That is necessary so that the Governor, through his appointees, can fulfill his constitutional duty to “take care that the laws be faithfully executed,” N.C. CONST. art. III, § 5(4), and may, as our state’s Chief Executive, implement executive policy consistent with his views and priorities on issues assigned by the General Assembly to executive agencies.

96. Contrary to those teachings and to the plain restrictions of the Separation of Powers and Faithful Execution clauses, SB 382 does the following:

- a. Effectively repeals all portions of Session Law 2023-139 (SB 749) that were challenged and enjoined in this case. *See* Session Law 2024-57, §§ 3.A.3.(a).

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<sup>2</sup> The Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Attorney General, Commissioner of Agriculture, Commissioner of Labor, and Commissioner of Insurance.

- b. Transfers the “North Carolina State Board of Elections . . . administratively to the Department of the State Auditor.” *See id.* § 3.A.2.<sup>3</sup>
- c. Removes executive authority over the State Board of Elections and gives it to the State Auditor (a Republican elected in November 2024). The State Auditor appoints all five members of the State Board of Elections; no more than three of those five can be from the same political party. The State Auditor is required to choose the board members from lists of four nominees submitted to the State Auditor by the state party chair of each of the two largest political parties. *Id.* §§ 3A.3.(b), (c), (g).
- d. The State Board appoints four members of each county board of elections (two from each major political party), and the State Auditor appoints the fifth member of the county board, as well as the chair. *Id.* § 3A.3.(f), (h).

97. In sum, under Sections 3A.3.(b), (c), (d), (f), (g), and (h) of SB 382 (“the Challenged Elections Board Provisions”), the State Board remains a five-member board, with each member appointed by the State Auditor, not the Governor. County boards are five-member boards, with the State Auditor having the unfettered right to select the critical fifth member, as well as the chair.

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<sup>3</sup> To avoid doubt: Plaintiffs do not challenge Sections 3A.1, 3A.2, and 3A.3.(a) of SB 382.

98. The Challenged Elections Board Provisions treat the State Auditor and Governor as if they were interchangeable for constitutional purposes.

99. Unlike the State Auditor, however, who is expressly vested with no authority under the Constitution, the Governor is vested with the executive power of the State and the constitutional duty to “take care that the laws be faithfully executed.” N.C. CONST. art. III, §§ 1, 5(4).

100. As a result of the Challenged Elections Board Provisions, the Governor cannot fulfill either of these constitutionally assigned roles, because he has no ability to appoint, remove, or supervise any member of the State Board of Elections or the 100 county boards of elections.

101. It is undisputed that the General Assembly has considerable authority to restructure the agencies of North Carolina government and assign, modify, and remove powers, functions, and duties.

102. As our Supreme Court instructs:

The General Assembly cannot, however, consistent with the textual command contained in Article III, Section 5(4) of the North Carolina Constitution, structure an executive branch commission in such a manner that the Governor is unable, within a reasonable period of time, to “take care that the laws be faithfully executed” because he or she is required to appoint half of the commission members from a list of nominees consisting of individuals who are, in all likelihood, not supportive of, if not openly opposed to, his or her policy preferences while having limited supervisory control over the agency and circumscribed removal authority over commission members.

*Cooper BOE*, 370 N.C. at 418.

103. “An agency structured in that manner ‘leaves the Governor with little control over the views and priorities of the [majority of] officers’ and prevents the Governor from having ‘the final say on how to execute the laws.’” *Id.* (quoting *McCrorry*, 368 N.C. at 647). Any statute structuring an executive board in that manner “impermissibly, facially, and beyond a reasonable doubt interferes with the Governor’s ability to ensure that the laws are faithfully executed as required by Article III, Section 5(4) of the North Carolina.” *Id.*

104. Here, the Governor does not have any direct or indirect powers of appointment, supervision, or removal over any members—let alone a constitutionally sufficient majority—of the State and county boards of elections.

105. Thus, the Challenged Elections Board Provisions, “in their statutory context, prevent the Governor from performing his constitutional duty to take care that the laws are faithfully executed. By doing so, these provisions violate the separation of powers clause.” *McCrorry*, 368 N.C. at 649.

### **COUNT 2: DECLARATORY JUDGMENT**

#### **The Challenged Elections Board Provisions Violate the Separation of Powers and Faithful Execution Clauses of the North Carolina Constitution**

106. The Governor restates and incorporates by reference the preceding paragraphs of this Complaint and Supplemental Complaint, as if fully set forth herein.

107. A present and real controversy exists between the parties as to the constitutionality of the Challenged Elections Board Provisions.

108. Individually, and as whole, the Challenged Elections Board Provisions unconstitutionally violate the Separate of Powers Clause that is “a cornerstone of our state and federal governments.” *State ex rel. Wallace v. Bone*, 304 N.C. 591, 601 (1982).

109. Individually, and as whole, the Challenged Elections Board Provisions prevent the Governor from performing his core executive function of ensuring that the laws are faithfully executed. *McCrorry*, 368 N.C. at 635 (“[T]he separation of powers clause requires that, as the three branches of government carry out their duties, one branch will not prevent another branch from performing its core functions.”).

110. Accordingly, individually, and as whole, the Challenged Elections Board Provisions facially violate the Separation of Powers Clause (Article I, Section 6) and the Faithful Execution Clause (Article III, Section 5(4)) of the North Carolina Constitution.

111. Pursuant to N.C. Gen. Stat. §§ 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, the Governor is entitled to a judgment and permanent injunction declaring that the Challenged Elections Board Provisions are unconstitutional and are therefore void and of no effect.

#### **SUPPLEMENTAL PRAYER FOR JUDGMENT**

WHEREFORE, Plaintiffs pray as follows, in addition to the prayer for judgment in the initial Complaint:

1. That the Court enter a declaratory judgment and preliminary and permanent injunction, pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and North Carolina Rules of Civil Procedure 57 and 65, declaring that Sections 3A.3.(b), (c), (d), (f), (g), and (h) of SB 382 are unconstitutional and are therefore void and of no effect;

2. That the Court grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 23rd day of December, 2024.

/s/ Eric M. David

Jim W. Phillips, Jr.

N.C. State Bar No. 12516

jphillips@brookspierce.com

Eric M. David

N.C. State Bar No. 38118

edavid@brookspierce.com

Daniel F. E. Smith

N.C. State Bar No. 41601

dsmith@brookspierce.com

Amanda S. Hawkins

N.C. State Bar No. 50763

ahawkins@brookspierce.com

BROOKS, PIERCE, MCLENDON,

HUMPHREY & LEONARD, L.L.P.

Suite 2000 Renaissance Plaza

230 North Elm Street

Greensboro, NC 27401

(336) 373-8850

(336) 378-1001 (fax)

*Attorneys for Plaintiff Roy A. Cooper, III,  
Governor of the State of North Carolina and  
Joshua H. Stein, Governor-Elect of the State  
of North Carolina*

W. Swain Wood

N.C. State Bar No. 32037

swood@morningstarlawgroup.com

MORNINGSTAR LAW GROUP

434 Fayetteville Street, Suite 2200

Raleigh, NC 27601

(919) 590-0370

*Attorney for Joshua H. Stein, Governor-Elect  
of the State of North Carolina*



**CERTIFICATE OF SERVICE**

I hereby certify that on this day a copy of the foregoing document was served on the following parties via email as follows:

NELSON MULLINS RILEY & SCARBOROUGH LLP  
D. Martin Warf  
martin.warf@nelsonmullins.com  
Noah Huffstetler  
noah.huffstetler@nelsonmullins.com  
*Attorneys for Legislative Defendants*

NC DEPARTMENT OF JUSTICE  
Stephanie Brennan  
sbrennan@ncdoj.gov  
Amar Majmundar  
amajmundar@ncdoj.gov  
*Attorneys for The State of North Carolina*

WAKE COUNTY SUPERIOR COURT  
Kellie Myers  
kellie.z.myers@nccourts.org  
Lisa Tucker  
Lisa.R.Tucker@nccourts.org  
Aaron Davison  
Aaron.D.Davison@nccourts.org  
Byron Frazelle  
Samuel.B.Frazelle@nccourts.org

This the 23rd day of December, 2024.

BROOKS, PIERCE, McLENDON,  
HUMPHREY & LEONARD, L.L.P.

By: /s/ Eric M. David  
Eric M. David

# **EXHIBIT A**

## **SECTION 3A OF SENATE BILL 382**

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2023**

**SESSION LAW 2024-57**  
**SENATE BILL 382**

AN ACT TO MAKE MODIFICATIONS TO AND PROVIDE ADDITIONAL APPROPRIATIONS FOR DISASTER RECOVERY; TO MAKE TECHNICAL, CLARIFYING, AND OTHER MODIFICATIONS TO THE CURRENT OPERATIONS APPROPRIATIONS ACT OF 2023; AND TO MAKE VARIOUS CHANGES TO THE LAW.

The General Assembly of North Carolina enacts:

**PART I. DISASTER RELIEF**

**SUBPART I-A. GENERAL PROVISIONS**

**SECTION 1A.1.** Title. – This Part shall be known as "The Disaster Recovery Act of 2024 – Part III."

**SECTION 1A.2.** Maximum Amounts; Effectuate Savings. – The appropriations and allocations made in this Part are for maximum amounts necessary to implement this Part. Savings shall be effected where the total amounts appropriated or allocated are not required to implement this Part.

**SECTION 1A.3.** Scope. – Unless otherwise provided, this Part applies to the North Carolina counties in the affected area, as defined in Section 1A.4 of this Part.

**SECTION 1A.4.** Definitions. – Unless otherwise provided, the following definitions apply in this Part:

- (1) Affected area. – The counties designated before, on, or after the effective date of this act under a major disaster declaration by the President of the United States under the Stafford Act (P.L. 93-288) as a result of Hurricane Helene.
- (2) FEMA. – The Federal Emergency Management Agency.
- (3) Helene Fund. – The Hurricane Helene Disaster Recovery Fund established in Section 4.1 of S.L. 2024-51.
- (4) OSBM. – The Office of State Budget and Management.
- (5) Recipient. – A State agency or a non-State entity, as those terms are defined in G.S. 143C-1-1.
- (6) Savings Reserve. – The Savings Reserve established in G.S. 143C-4-2.
- (7) SERDRF. – The State Emergency Response and Disaster Relief Fund established in G.S. 166A-19.42.

**SECTION 1A.5.** Transfer of Additional Disaster Relief Funds. – Notwithstanding G.S. 143C-4-2, the State Controller shall transfer the sum of two hundred twenty-seven million dollars (\$227,000,000) from the Savings Reserve to the Helene Fund and, except as otherwise provided in this act, the funds shall remain unspent until appropriated by an act of the General Assembly. It is the intent of the General Assembly to review funding and to consider actions needed to address remaining unmet needs.

**SUBPART I-B. EDUCATION**



costs. The Department shall provide the funds allocated by this subdivision to the Conservancy upon the earlier of (i) January 1, 2025, or (ii) the date the Department completes the study required by subdivision (c)(4) of Section 14.7 of S.L. 2023-134 and notifies the Office of State Budget and Management that it has done so.

- (2) Seven hundred fifty thousand dollars (\$750,000) to be divided equally between the 15 eligible entities previously funded for capacity-building grants pursuant to Section 14.7(c)(1) of S.L. 2023-134.
- (3) Two hundred thousand dollars (\$200,000) to the Great Trails State Coalition, a nonprofit corporation, for (i) a time-limited position to assist and coordinate trail planning and implementation for the nonprofit organizations in the State, (ii) marketing for trail events, and (iii) promoting outdoor trail recreation.

## **SUBPART II-I. TRANSPORTATION**

### **AIRPORT IMPROVEMENT FUNDS SHALL NOT REVERT**

**SECTION 2I.1.** Notwithstanding G.S. 143C-1-2(b), G.S. 63-74(d), Section 41.4 of S.L. 2022-74, or any other provision of law to the contrary, funds allocated for airport improvements on or after July 1, 2019, by Section 4.7 of S.L. 2019-231, Section 2.2(j) of S.L. 2023-134, or any other act of the General Assembly for projects that are active as of November 18, 2024, shall not revert but shall remain available to expend until completion of the improvement.

### **REALLOCATE ROCKINGHAM SPEEDWAY PEDESTRIAN BRIDGE FUNDS**

**SECTION 2I.2.** Notwithstanding the Committee Report described in Section 43.2 of S.L. 2023-134 or any provision of law to the contrary, of the sum of two million dollars (\$2,000,000) in nonrecurring funds for the 2023-2024 fiscal year allocated for the construction of a pedestrian bridge over Highway 1 at the Rockingham Speedway in Richmond County, one million seven hundred thousand dollars (\$1,700,000) shall be allocated as a grant to the Rockingham Dragway and three hundred thousand dollars (\$300,000) shall be allocated as a grant to the Rockingham Speedway. The funds reallocated in this section shall be used for facility improvements.

## **SUBPART II-J. FINANCE**

### **ELIMINATE ADDITIONAL MEANS OF NOTICE TO ADVERTISE PROPERTY TAX LIENS CURRENTLY REQUIRED BY LAW**

**SECTION 2J.1.** Section 22 of S.L. 2024-45 is repealed.

## **SUBPART II-K. GENERAL PROVISIONS**

### **STORMWATER AND STREAM REHABILITATION ALLOCATION CHANGE**

**SECTION 2K.1.** The funds allocated by Section 5.6(f)(16)a. of S.L. 2023-134 to the Office of State Budget and Management to provide a directed grant to Pilot View Resource Conservation and Development, Inc., for stormwater and stream rehabilitation shall instead be allocated to the Davie County Economic Development Commission, Inc., as a directed grant for the same purposes.

## **PART III. VARIOUS LAW CHANGES**

### **SUBPART III-A. ELECTIONS**

## TRANSFER STATE BOARD OF ELECTIONS TO STATE AUDITOR

**SECTION 3A.1.** Part I of S.L. 2023-139 is repealed.

**SECTION 3A.2.(a)** The North Carolina State Board of Elections is transferred administratively to the Department of the State Auditor. This transfer has all of the elements of a Type II transfer, as described in G.S. 143A-6, except that the management functions of the State Board of Elections shall not be performed under the direction and supervision of the State Auditor except as provided in this section. Under this transfer, the State Board of Elections shall exercise all its prescribed statutory powers independently of the State Auditor, except that budgeting functions shall be performed under the direction and supervision of the State Auditor.

**SECTION 3A.2.(b)** No action or proceeding pending on July 1, 2025, brought by or against the State Board of Elections shall be affected by any provision of this section. Any business or other matter undertaken or commanded by any State program or office or contract transferred by this section pertaining to or connected with the functions, powers, obligations, and duties set forth herein, which is pending on July 1, 2025, may be conducted and completed in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the original program, office, or commissioners or directors thereof.

**SECTION 3A.2.(c)** The transfer provided for under this section shall not affect any ongoing investigation or audit. Prosecutions for offenses or violations committed before July 1, 2025, are not abated or affected by this section.

**SECTION 3A.2.(d)** Rules and forms adopted by the State Board of Elections shall remain in effect until amended or repealed.

**SECTION 3A.2.(e)** G.S. 163-28 is repealed.

**SECTION 3A.2.(f)** This section becomes effective July 1, 2025.

**SECTION 3A.3.(a)** Section 2.1, Section 2.2, Section 2.5, Section 4.1, Part V, Section 8.1, Section 8.2, and Section 8.3 of S.L. 2023-139 are repealed.

**SECTION 3A.3.(b)** G.S. 147-64.6(c) is amended by adding a new subdivision to read:

"(23) The Auditor shall make appointments to the State Board of Elections."

**SECTION 3A.3.(c)** G.S. 163-19 reads as rewritten:

**"§ 163-19. State Board of Elections; appointment; term of office; vacancies; oath of office.**

(a) There is established the State Board of Elections, which may be referred to as the "State Board" in this Chapter.

(b) The State Board of Elections shall consist of five registered voters whose terms of office shall begin on May 1, 2019, May 1 of the year following the election of the President of the United States and shall continue for four years, and until their successors are appointed and qualified. The Governor-State Auditor shall appoint the members of the State Board and likewise shall appoint their successors every four years at the expiration of each four-year term. Not more than three members of the State Board shall be members of the same political party. The Governor-State Auditor shall appoint the members from a list of nominees submitted to the Governor-State Auditor by the State party chair of each of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board. Each State party chair shall submit a list of four nominees who are affiliated with that political party. No person may serve more than two full consecutive four-year terms.

(c) Any vacancy occurring in the State Board shall be filled by the Governor-State Auditor, and the person so appointed shall fill-serve the remainder of the unexpired term. The Governor-State Auditor shall fill the vacancy from a list of three nominees submitted to the Governor-State Auditor by the State party chair of the political party that nominated the vacating member as provided in subsection (b) of this section. The State party chair shall submit a list of three nominees must be who are affiliated with that political party.

...."

**SECTION 3A.3.(d)** G.S. 163-20 reads as rewritten:

**"§ 163-20. Meetings of Board; quorum; minutes.**

(a) Call of meeting. – The State Board of Elections shall meet at the call of the ~~chairman~~ chair whenever necessary to discharge the duties and functions imposed upon it by this Chapter. The ~~chairman~~ chair shall call a meeting of the State Board upon the written application or applications of any two members thereof. If there is no ~~chairman~~ chair, or if the ~~chairman~~ chair does not call a meeting within three days after receiving a written request or requests from two members, any three members of the State Board shall have power to call a meeting of the State Board, and any duties imposed or powers conferred on the State Board by this Chapter may be performed or exercised at that meeting, although the time for performing or exercising the same prescribed by this Chapter may have expired.

(b) Place of Meeting. – Except as provided in ~~subsection (e), below, subsection (c) of this section~~, the State Board of Elections shall meet in its offices in the City of Raleigh, or at another place in the City of Raleigh to be designated by the ~~chairman~~ chair. However, subject to the limitation imposed by ~~subsection (e), below, subsection (c) of this section~~ upon the prior written request of any four members, the State Board of Elections shall meet at any other place in the State designated by the four members.

(c) Meetings to Investigate Alleged Violations of This Chapter. – When called upon to investigate or hear sworn alleged violations of this Chapter, the State Board of Elections shall meet and hear the matter in the county in which the violations are alleged to have occurred.

(d) Quorum. – A majority of the members constitutes a quorum for the transaction of business by the State ~~Board of Elections~~ Board. If any member of the State Board fails to attend a meeting, and by reason thereof there is no quorum, the members present shall adjourn from day to day for not more than three days, by the end of which time, if there is no quorum, the ~~Governor~~ State Auditor may summarily remove any member failing to attend and appoint ~~his~~ a successor.

(e) Minutes. – The State Board of Elections shall keep minutes recording all proceedings and findings at each of its meetings. The minutes shall be recorded in a book which shall be kept in the office of the State Board in the City of Raleigh."

**SECTION 3A.3.(e)** G.S. 163-22(c) reads as rewritten:

"(c) The State Board shall advise the county boards of elections as to the proper methods of conducting primaries and elections. The State Board shall require all reports from the county boards of elections and election officers as provided by law, or as are deemed necessary by the State Board, and shall compel observance of the requirements of the election laws by county boards of elections and other election officers. In performing these duties, the State Board shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws imposing duties upon a county ~~board of elections~~ board. The State Board shall have power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause. Before exercising this power, the State Board shall notify the county board of elections member affected and give that member an opportunity to be heard."

**SECTION 3A.3.(f)** G.S. 163-30 reads as rewritten:

**"§ 163-30. County boards of elections; appointments; terms of office; qualifications; vacancies; oath of office; instructional meetings.**

(a) In every county of the State there shall be a county board of elections, ~~to which may be referred to as "county board" in this Chapter~~. Each county board shall consist of five persons of good moral character who are registered voters in the county in which they are to act. Members of county boards of elections shall be appointed by the State Board of Elections on the last Tuesday in June, and every two years thereafter, and their terms of office shall continue for two years from the specified date of appointment and until their successors are appointed and qualified. Four members of each county boards of elections board shall be appointed by the State

Board on the last Tuesday in June ~~and every two years thereafter, and their terms of office of each odd-numbered year and shall continue for two years from the specified date of appointment and to serve until their successors are appointed and qualified.~~ One member of ~~the each county boards of elections board~~ shall be appointed by the ~~Governor State Auditor~~ to be the chair of the county board on the last Tuesday in June ~~and every two years thereafter, of each odd-numbered year~~ and that member's term of office shall continue ~~for two years from the specified date of appointment and~~ until a successor is appointed and qualified. Of the appointments to each county board ~~of elections~~ by the State Board, two members each shall belong to the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board.

(b) No person shall be eligible to serve as a member of a county board ~~of elections~~ who meets any of the following criteria:

- (1) Holds any elective office under the government of the United States, or of the State of North Carolina or any political subdivision thereof.
- (2) Holds any office in a state, congressional district, county or precinct political party or organization. Provided, however, that the position of delegate to a political party convention shall not be considered an office for the purpose of this subdivision.
- (3) Is a campaign manager or treasurer of any candidate or political party in a primary or election.
- (4) Is a candidate for nomination or election.
- (5) Is the wife, husband, son, son in law, daughter, daughter in law, mother, mother in law, father, father in law, sister, sister in law, brother, brother in law, aunt, uncle, niece, or nephew of any candidate for nomination or election. Upon any member of the county board of elections becoming ineligible, that member's seat shall be declared vacant. This subdivision only applies if the county board ~~of elections~~ is conducting the election for which the relative is a candidate.

(c) The State chair of the two political parties having the highest number of registered affiliates as reflected by the latest registration statistics published by the State Board shall have the right to recommend to the State Board three registered voters in each county for appointment to the county board of elections for that county. If such recommendations are received by the State Board 15 or more days before the last Tuesday in June 2019, ~~and each two years thereafter, of each odd-numbered year,~~ it shall be the duty of the State Board to appoint the county boards from the names thus recommended.

(d) Whenever a vacancy occurs in the membership of a county board ~~of elections~~ for any cause the State chair of the political party of the vacating member shall have the right to recommend two registered voters of the affected county for such office, and it shall be the duty of the State Board to fill the vacancy from the names thus recommended.

(e) At the meeting of the county board ~~of elections~~ required by G.S. 163-31 to be held on Tuesday following the third Monday in July in the year of their appointment the members shall take the following oath of office:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will support the Constitution of the United States; that I will be faithful and bear true allegiance to the State of North Carolina and to the constitutional powers and authorities which are or may be established for the government thereof; that I will endeavor to support, maintain and defend the Constitution of said State, not inconsistent with the Constitution of the United States; and that I will well and truly execute the duties of the office of member of the \_\_\_\_\_ County Board of Elections to the best of my knowledge and ability, according to law; so help me God."

(f) Each member of the county board ~~of elections~~ shall attend each instructional meeting held pursuant to G.S. 163-46, unless excused for good cause by the chair of the county board,

and shall be paid the sum of twenty five dollars (\$25.00) per day for attending each of those meetings."

**SECTION 3A.3.(g)** Notwithstanding any other provision of law, the current terms of office of the members of the State Board of Elections shall terminate on April 30, 2025, and members shall be appointed to the State Board of Elections in accordance with G.S. 163-19, as amended by this section, for a term to begin May 1, 2025.

**SECTION 3A.3.(h)** Notwithstanding any other provision of law, the current terms of office of the members of the county boards of elections shall terminate on June 24, 2025, and members of each county board of election shall be appointed in accordance with G.S. 163-30, as amended by this section, for a term beginning on June 25, 2025, and expiring on July 19, 2027.

## **VARIOUS ELECTION CHANGES**

**SECTION 3A.4.(a)** G.S. 163-82.4(f) reads as rewritten:

"(f) Correcting Registration Forms. – If the voter fails to complete any required item on the voter registration form but provides enough information on the form to enable the county board of elections to identify and contact the voter, the voter shall be notified of the omission and given the opportunity to complete the form at least by 5:00 P.M.–12:00 P.M. on the third business day before the county canvass as set in G.S. 163-182.5(b). ~~after the election.~~ If the voter corrects that omission within that time and is determined by the county board of elections to be eligible to vote, the county board shall permit the voter to vote. If the information is not corrected by election day, the voter shall be allowed to vote a provisional official ballot. If the correct information is provided to the county board of elections by at least 5:00 P.M.–12:00 P.M. on the third business day before the county canvass, ~~after the election,~~ the county board shall count any portion of the provisional official ballot that the voter is eligible to vote."

**SECTION 3A.4.(b)** G.S. 163-166.8(d) reads as rewritten:

"(d) Precinct officials shall maintain a log of any individual, other than a minor child under the age of 18 in the care of a voter, who enters the voting place pursuant to this section and is not seeking to vote in that voting place. The Precinct officials shall use the log provided by the State Board, which shall include the printed name and address of the individual entering the voting place, the time the individual entered the voting place, and a space for that individual's signature. This subsection shall not apply to observers and runners appointed pursuant to G.S. 163-45.1 and G.S. 163-45.2."

**SECTION 3A.4.(c)** G.S. 163-166.12 reads as rewritten:

**"§ 163-166.12. Requirements for certain voters who register by mail.**

...

(d) Voting When Identification Numbers Do Not Match. – Regardless of whether an individual has registered by mail or by another method, if the individual has provided with the registration form a drivers license number or last four digits of a Social Security number but the computer validation of the number as required by G.S. 163-82.12 did not result in a match, and the number has not been otherwise validated by the ~~board of elections,~~ county board, in the first election in which the individual votes that individual shall submit with the ballot the form of identification described in subsection (a) or subsection (b) of this section, depending upon whether the ballot is voted in person or absentee. If that identification is provided no later than 12:00 P.M. on the third business day after the election and the county board of elections does not determine that the individual is otherwise ineligible to vote a ballot, the failure of identification numbers to match shall not prevent that individual from registering to vote and having that individual's vote counted.

(e) The Right to Vote Provisionally. – If an individual is required under subsection (a), (b), or (d) of this section to present identification in order to vote, but that individual does not present the required identification, that individual may vote a provisional official ballot. If the voter is at the voting place, the voter may vote provisionally there without unnecessary delay. If



the voter is voting by ~~mail-in~~ absentee ballot, the ~~mailed~~ absentee ballot without the required identification shall be treated as a provisional official ballot.

...."

**SECTION 3A.4.(d)** G.S. 163-166.16(c) reads as rewritten:

"(c) **Provisional Ballot Required Without Photo Identification.** – If the registered voter cannot produce the identification as required in subsection (a) of this section, the registered voter may cast a provisional ballot that is counted only if the registered voter brings an acceptable form of photograph identification listed in subsection (a) of this section to the county board of elections no later than ~~the end of business on the business day prior to the canvass by the county board of elections as provided in G.S. 163-182.5.~~ 12:00 P.M. on the third business day after the election. The State Board shall provide the registered voter casting a provisional ballot due to failure to provide photo identification an information sheet on the deadline to return to the county board of elections to present photo identification, and what forms of photo identification are acceptable, in order for the voter's provisional ballot to be counted."

**SECTION 3A.4.(e)** G.S. 163-182.2(a)(4) reads as rewritten:

"(4) If the county board of elections finds that an individual voting a provisional official ballot (i) was registered in the county as provided in 163-82.1, (ii) voted in the proper precinct under G.S. 163-55 and G.S. 163-57, and (iii) was otherwise eligible to vote, the provisional official ballots shall be counted by the county board of elections ~~before the canvass.~~ no later than 5:00 P.M. on the third business day after the election. Except as provided in G.S. 163-82.15(e), if the county board finds that an individual voting a provisional official ballot (i) did not vote in the proper precinct under G.S. 163-55 and G.S. 163-57, (ii) is not registered in the county as provided in G.S. 163-82.1, or (iii) is otherwise not eligible to vote, the ballot shall not be counted. If a voter was properly registered to vote in the election by the county board, no mistake of an election official in giving the voter a ballot or in failing to comply with G.S. 163-82.15 or G.S. 163-166.11 shall serve to prevent the counting of the vote on any ballot item the voter was eligible by registration and qualified by residency to vote."

**SECTION 3A.4.(f)** G.S. 163-230.1 reads as rewritten:

**"§ 163-230.1. Simultaneous issuance of absentee ballots with application.**

(a) **Written Request.** – A qualified voter who is eligible to vote by absentee ballot under G.S. 163-226, or that voter's near relative or verifiable legal guardian, shall complete a request form for an absentee application and absentee ballots so that the county board of elections receives that completed request form not later than 5:00 P.M. on the second Tuesday before the election. That completed written request form shall be in compliance with G.S. 163-230.2. The county board of elections shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. Upon receiving the completed request form, the county board of elections shall cause to be mailed to that voter a single package that includes all of the following:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned ballot.

(a1) **Mailing of Application and Ballots.** – The ballots, envelope, and instructions shall be mailed to the voter by the county board's chair, member, officer, or employee as determined by the county board and entered in the register as provided by this Article.

(a2) Publish Deadline for Written Request and Ballot. – At least once per primary or election, each county board of ~~elections~~ and the State Board shall publish on its website or in any mailing sent to voters the following information:

- (1) The date by which a completed request form as described in subsection (a) of this section must be received by a county ~~board of elections~~ board.
- (2) The means by which the voter's marked absentee ballot must be returned to the county ~~board of elections~~ board.
- (3) The date and time the voter's completed absentee ballot must be received by the county board of ~~elections~~ in order to be counted.

(b) Absence for Sickness or Physical Disability. – Notwithstanding the provisions of subsection (a) of this section, if a voter expects to be unable to go to the voting place to vote in person on election day because of that voter's sickness or other physical disability, that voter or that voter's near relative or verifiable legal guardian may make the request for absentee ballots in person to the county board of elections of the county in which the voter is registered after 5:00 P.M. on the second Tuesday before the election but not later than 5:00 P.M. on the last business day before the election. The county board of ~~elections~~ shall treat that completed request form in the same manner as a request under subsection (a) of this section but may personally deliver the application and ballots to the voter or that voter's near relative or verifiable legal guardian, and shall enter in the register of absentee requests, applications, and ballots issued the information required in G.S. 163-228 as soon as each item of that information becomes available. The county board of ~~elections~~ shall personally deliver to the requester in a single package:

- (1) The official ballots the voter is entitled to vote.
- (2) A container-return envelope for the ballots, printed in accordance with G.S. 163-229.
- (3) An instruction sheet.
- (4) A clear statement of the requirement for a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3) with the returned application and voted ballots.

(c) Delivery of Absentee Ballots and Container-Return Envelope to Applicant. – When the county board of ~~elections~~ receives a completed request form for applications and absentee ballots from the voter, or the near relative or the verifiable legal guardian of that voter, the county board shall promptly issue and transmit them to the voter in accordance with the following instructions:

- (1) On the top margin of each absentee ballot the applicant is entitled to vote, the chair, a member, officer, or employee of the county board of elections shall write or type the words "Absentee Ballot No. \_\_\_\_ " or an abbreviation approved by the State Board and insert in the blank space the number assigned the applicant's application in the register of absentee requests, applications, and absentee ballots issued. That person shall not write, type, or print any other matter upon the absentee ballots transmitted to the absentee voter. Alternatively, the county board of elections may cause to be barcoded on the absentee ballot the voter's application number, if that barcoding system is approved by the State Board.
- (2) The chair, member, officer, or employee of the county board of elections shall fold and place the absentee ballots (identified in accordance with the preceding instruction) in a container-return envelope and write or type in the appropriate blanks thereon, in accordance with the terms of G.S. 163-229(b), the absentee voter's name, the absentee voter's application number, and the designation of the precinct in which the voter is registered. If the absentee ballot is barcoded under this section, the envelope may be barcoded rather

than having the actual number appear. The person placing the absentee ballots in the envelopes shall leave the container-return envelope holding the absentee ballots unsealed.

- (3) The chair, member, officer, or employee of the county board ~~of elections~~ shall then place the unsealed container-return envelope holding the absentee ballots together with printed instructions for voting and returning the absentee ballots, in an envelope addressed to the voter at the post office address stated in the request, seal the envelope, and mail it at the expense of the county ~~board of elections~~ ~~board~~. Provided, that in case of a request received after 5:00 P.M. on the second Tuesday before the election under the provisions of subsection (b) of this section, in lieu of transmitting the absentee ballots to the voter in person or by mail, the chair, member, officer, or employee of the county board ~~of elections~~ may deliver the sealed envelope containing the instruction sheet and the container-return envelope holding the absentee ballots to a near relative or verifiable legal guardian of the voter.

The county board ~~of elections~~ may receive completed written request forms for applications at any time prior to the election but shall not mail applications and absentee ballots to the voter or issue applications and absentee ballots in person earlier than 60 days prior to the statewide general election in an even-numbered year, or earlier than 50 days prior to any other election. No election official shall issue applications for absentee ballots except in compliance with this Article.

(d) Voter to Complete. – The application shall be completed and signed by the voter personally, the absentee ballots marked, the absentee ballots sealed in the container-return envelope, and the certificate completed as provided in G.S. 163-231.

(e) Approval of Applications. – At its next official meeting prior to election day after the return of the completed container-return envelope with the voter's absentee ballots, the county board ~~of elections~~ shall determine whether the container-return envelope has been properly executed. If the county board determines that the container-return envelope has been properly executed, it shall approve the application and deposit the container-return envelope with other container-return envelopes for the envelope to be opened and the absentee ballots counted at the same time as all other container-return envelopes and absentee ballots.

(e1) Curable Deficiencies. – If a container-return envelope contains a curable deficiency, the county board ~~of elections~~ shall promptly notify the voter of the deficiency and the manner in which the voter may cure the deficiency. Curable deficiencies are deficiencies that can be cured with supplemental documentation or attestation provided by the voter, including when any of the following occurs:

- (1) The voter did not sign the voter certification as required by G.S. 163-231(a)(4).
- (2) The voter signed the application in the wrong place on the application.
- (3) The voter failed to include with the container-return envelope a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3), as required by subsection (f1) of this section.

The identification of the two persons witnessing the casting of the absentee ballot in accordance with G.S. 163-231(a) is not a curable deficiency. Any container-return envelope with a curable deficiency that is transmitted to the county board shall be considered timely if cure documentation is received no later than ~~the end of business~~ 12:00 P.M. on the third business day before the canvass conducted by the county board of elections held pursuant to G.S. 163-182.5 after the election. Cure documentation may be transmitted via ~~e-mail~~ email to the county board ~~of elections~~ if the deficiency is one described in subdivision (3) of this subsection. The notification of voters regarding curable deficiencies is an administrative task that may be

performed by county board staff and is not required to be performed at an absentee meeting as provided for in subsection (f) of this section. The voter shall be notified of curable deficiencies by mail, and by telephone or email if the telephone number or email address was provided by the voter on the request form for absentee ballots.

(f) Required Meeting of County Board of Elections. – During the period commencing on the fifth Tuesday before an election, in which absentee ballots are authorized, the county board ~~of elections~~ shall hold one or more public meetings each Tuesday at 5:00 P.M. for the purpose of action on applications for absentee ballots. At these meetings, the county board ~~of elections~~ shall pass upon applications for absentee ballots.

If the county board ~~of elections~~ changes the time of holding its meetings or provides for additional meetings in accordance with the terms of this subsection, notice of the change in hour and notice of the schedule of additional meetings, if any, shall be published in a newspaper circulated in the county at least 30 days prior to the election.

At the time the county board ~~of elections~~ makes its decision on an application for absentee ballots, the county board shall enter in the appropriate column in the register of absentee requests, applications, and ballots issued opposite the name of the applicant a notation of whether the applicant's application was "Approved" or "Disapproved".

The decision of the county board on the validity of an application for absentee ballots shall be final subject only to such review as may be necessary in the event of an election contest. The county board ~~of elections~~ shall constitute the proper official body to pass upon the validity of all applications for absentee ballots received in the county; this function shall not be performed by the chair or any other member of the county board individually.

(f1) Each container-return envelope returned to the county board with application and voted ballots under this section shall be accompanied by a photocopy of identification described in G.S. 163-166.16(a) or an affidavit as described in G.S. 163-166.16(d)(1), (d)(2), or (d)(3).

(g) Rules. – The State Board, by rule or by instruction to the county ~~board~~ boards of elections, shall establish procedures to provide appropriate safeguards in the implementation of this section. The State Board shall adopt rules to provide for the forms of identification that shall be included with returned application and voted absentee ballots. At a minimum, the rules shall include the following:

- (1) Acceptable photocopies of forms of readable identification, as described in G.S. 163-166.16(a).
- (2) A process for a voter without acceptable photocopies of forms of readable identification under subdivision (1) of this subsection to complete an alternative affidavit in accordance with G.S. 163-166.16(d)(1), (d)(2), or (d)(3) that includes inability to attach a physical copy of the voter's identification with the returned application and voted ballots as a reasonable impediment to compliance with the identification requirement, provided the reasonable impediment includes one of the following:
  - a. The number of the voter's North Carolina drivers license issued under Article 2 of Chapter 20 of the General Statutes, including a learner's permit or a provisional license.
  - b. The number of the voter's special identification card for nonoperators issued under G.S. 20-37.7.
  - c. The last four digits of the voter's social security number.

(h) Recodified as G.S. 163-226(f) by Session Laws 2019-239, s. 1.2(a), effective January 1, 2020, and applicable to elections conducted on or after that date."

**SECTION 3A.4.(g)** G.S. 163-234 reads as rewritten:

**"§ 163-234. Counting absentee ballots by county ~~board of elections~~ board.**

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the county board of elections to be counted by the county board of elections as follows:

- (1) Only those absentee ballots returned to the county board of elections in a properly executed container-return envelope and received pursuant to G.S. 163-231 shall be counted. Absentee ballots not received pursuant to all requirements in G.S. 163-231 shall not be deemed to be valid and shall not be counted. ~~Absentee ballots received prior to election day shall be counted on election day.~~ An absentee ballot returned in an executed container-return envelope containing a deficiency listed in G.S. 163-230.1(e) shall be counted if documentation curing the deficiency is timely received by the county board of elections in accordance with the requirements of G.S. 163-230.1(e).
- (2) The county board of elections shall meet at 5:00 P.M. on election day in the county board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 P.M. on election day, those received on election day, day and those received pursuant to G.S. 163-231(b)(2). Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, so long as the elector does not in any manner interfere with the election officials in the discharge of their duties. The count of these absentee ballots shall be continuous until completed, and the members shall not separate or leave the counting place except for unavoidable necessity.

The county board of elections may begin counting absentee ballots issued under Article 21A of this Chapter between the hours of 9:00 A.M. and 5:00 P.M. and may begin counting all absentee ballots between the hours of 2:00 P.M. and 5:00 P.M. upon the adoption of a resolution at least two weeks prior to the election in which the hour and place of counting absentee ballots shall be stated. ~~The resolution also may provide for an additional meeting following the day of the election and prior to the day of canvass to count absentee ballots received on election day as provided in subdivision (11) of this section.~~ A copy of the resolution shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but the notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots. Nothing in this section prohibits a county board of elections from taking preparatory steps for the count earlier than the times specified in this section, as long as the preparatory steps do not reveal to any individual not engaged in the actual count election results before the times specified in this subdivision for the count to begin. By way of illustration and not limitation, a preparatory step for the count would be the entry of tally cards from direct record electronic voting units into a computer for processing. The county board shall not announce the result of the count before 7:30 P.M.

- (3) Notwithstanding subdivision (2) of this section, a county board of elections may, at each meeting at which it approves absentee ballot applications pursuant to G.S. 163-230.1(e) and (f), remove those absentee ballots from their envelopes and have them read by an optical scanning machine, without printing the totals on the scanner. The county board shall complete the

counting of these absentee ballots at the times provided in subdivision (2) of this section. The State Board shall provide instructions to county boards ~~of elections~~ for executing this procedure, and the instructions shall be designed to ensure the accuracy of the count, the participation of county board members of both parties, and the secrecy of the results before election day. This subdivision applies only in counties that use optical scan devices to count absentee ballots.

- (4) The counting of absentee ballots shall not commence until a majority and at least one county board member of each political party represented on the county board is present and that fact is publicly declared and entered in the official minutes of the county board.
- (5) The county board ~~of elections~~ may employ such assistants as deemed necessary to count the absentee ballots, but each county board member present shall be responsible for and observe and supervise the opening and tallying of the absentee ballots.
- (6) As each ballot envelope is opened, the county board shall cause to be entered into a pollbook designated "Pollbook of Absentee Voters" the name of the absentee voter, or if the pollbook is computer-generated, the county board shall check off the name. Preserving secrecy, the absentee ballots shall be placed in the appropriate ballot boxes, at least one of which shall be provided for each type of ballot.

After all absentee ballots have been placed in the boxes, the counting process shall begin.

If a challenge transmitted to the county board on canvass day by a chief judge is sustained, the absentee ballots challenged and sustained shall be withdrawn from the appropriate boxes, as provided in G.S. 163-89(e).

As soon as the absentee ballots have been counted and the names of the absentee voters entered in the pollbook as required in this subdivision, the county board members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered in the pollbook. The county board ~~of elections~~ is responsible for the safekeeping of the pollbook of absentee voters.

- (7) Upon completion of the counting process the county board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board. The abstract shall be signed by the members of the county board in attendance and the original mailed immediately to the State Board.
- (8) One copy of the absentee abstract shall be retained by the county board ~~of elections~~ and the totals appearing on the absentee abstract shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (9) In the event a political party does not have a member of the county board ~~of elections~~ present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chair of the absent member, or a member of the party's county executive committee, is in attendance. The person shall act as an official witness to the counting and shall include his or her printed name and signature on the absentee ballot abstract, along with the name of who designated him or her to attend.
- (10) The county board ~~of elections~~ shall retain all container-return envelopes and absentee ballots, in a safe place, for at least 22 months, and longer if any contest is pending concerning the validity of any ballot.

- (11) ~~The county board of elections shall meet after election day and prior to the date of canvass to determine whether the container return envelopes for absentee ballots received on election day pursuant to G.S. 163-231(b) have been properly executed. The county board of elections shall comply with the requirements of G.S. 163-230.1 for approval of applications. Any absentee ballots received pursuant to G.S. 163-231(b)(2) shall be counted by the county board of elections on the day of canvass. The county board of elections may also shall meet following after the day of the election and prior to the day of canvass to count absentee ballots received pursuant to G.S. 163-231(b)(2) upon the adoption of a resolution pursuant to subdivision (2) of this section. The county board of elections shall comply with all other requirements of this section and G.S. 163-230.1 for the counting of these absentee ballots.~~
- (12) No later than 5:00 P.M. on the third business day after the election, the county board shall announce the tally of all absentee ballots, except those subject to a challenge or those cast in accordance with Article 21A of this Chapter."

**SECTION 3A.4.(h)** This section becomes effective January 1, 2025, and applies to elections conducted on or after that date.

**SECTION 3A.5.(a)** G.S. 163-278.19B reads as rewritten:

**"§ 163-278.19B. Political party headquarters building funds.**

(a) Notwithstanding the provisions of G.S. 163-278.19, a person prohibited by that section from making a contribution may donate to political ~~parties~~ parties, and affiliated party committees and political parties and affiliated party committees may accept from such a ~~person~~ person, money and other things of value donated to a political party headquarters building fund.

(b) Donations made to the political party headquarters building fund in accordance with this section shall be subject to all the following rules:

- (1) The donations solicited and accepted are designated to the political party headquarters building fund.
- (2) Potential donors to ~~that the political party headquarters building fund~~ are advised that all donations will be exclusively for the political party headquarters building fund.
- (3) The political party or affiliated party committee establishes a separate segregated bank account into which shall be deposited only donations for the political party headquarters building fund from persons prohibited by G.S. 163-278.19 from making contributions.
- (4) The donations deposited in the separate segregated bank account for the political party headquarters building fund ~~will~~ shall be spent only as follows:
  - a. ~~to~~ To purchase a principal headquarters building, to construct a principal headquarters building, to renovate a principal headquarters building, or to pay a mortgage on a principal headquarters building, ~~to repay donors if a principal headquarters building is not purchased, constructed, or renovated, or building.~~
  - b. ~~to~~ To pay building rent or monthly or bimonthly utility expenses incurred to operate the principal headquarters building. ~~Donations deposited into that account shall be used solely for the purposes set forth in the preceding sentence, and specifically shall not be used for headquarters equipment other than fixtures, personnel compensation, or travel or fundraising expenses or requirements of any kind.~~
  - c. ~~Notwithstanding the above, To compensate personnel compensation and including~~ in-kind benefits may be paid to for no more than three personnel whose functions are primarily administrative in nature, such as providing accounting, payroll, or campaign finance reporting

services, for the party and whose job functions require no more than ten percent (10%) of work time to be spent on political advocacy each calendar year.

- d. To repay donors if a principal headquarters building is not purchased, constructed, renovated, or rented.
- e. To fund legal actions as defined in G.S. 163-278.300(4).
- f. To make a legal expense donation to a legal expense fund under Article 22M of this Chapter.

- (5) The political party executive committee or affiliated party committee shall report donations to and spending by a political party headquarters building fund on every report required to be made by G.S. 163-278.9. If a committee is excused from making general campaign finance reports under G.S. 163-278.10A, that committee shall nonetheless report donations in any amount to and spending in any amount by the political party headquarters building fund at the times required for reports in G.S. 163-278.9.

(c) Donations deposited into a political party headquarters building fund shall be used solely for the purposes set forth in this section. Except as otherwise provided in this section, the political party headquarters building fund shall not be used for headquarters equipment other than fixtures, personnel compensation, travel, fundraising expenses, or other expenses of any kind.

(d) If all the criteria set forth in subdivisions (1) through (5) of this section are complied with, then donations to Donations made to, and spending by by, a political party headquarters building fund do fund in accordance with this section shall not constitute contributions or expenditures as defined in G.S. 163-278.6. ~~If those criteria are complied with, then donations may be made to a political party headquarters building fund.~~"

**SECTION 3A.5.(b)** G.S. 163-278.316 is amended by adding a new subsection to read:

"(f) A legal expense fund may accept a legal expense donation from a political party headquarters building fund."

**SECTION 3A.5.(c)** This section becomes effective January 1, 2025, and applies to donations made and expenses paid on or after that date.

## **SUBPART III-B. GENERAL GOVERNMENT**

### **MODIFY CERTAIN PROCEDURES RELATED TO APPOINTMENTS**

**SECTION 3B.1.(a)** G.S. 120-122 reads as rewritten:

#### **"§ 120-122. Vacancies in legislative appointments.**

When a vacancy occurs in any office subject to appointment by the General Assembly upon the recommendation of the Speaker of the House of Representatives, upon the recommendation of the President Pro Tempore of the Senate, or upon the recommendation of the President of the Senate, and the vacancy occurs either: (i) after election of the General Assembly but before convening of the regular session; (ii) when the General Assembly has adjourned to a date certain, which date is more than 20 days after the date of adjournment; (iii) after sine die adjournment of the regular session; or (iv) when the term of office expires and a successor has not been appointed, then the Governor may appoint a person to serve until the expiration of the term or until the General Assembly fills the vacancy, whichever occurs first. The General Assembly may fill the vacancy in accordance with G.S. 120-121 during a regular or extra session. When a person is holding over in office after the expiration of the term, for the purpose of this section that office may be filled as if it were vacant. Before making an ~~appointment,~~ appointment in accordance with this section, the Governor shall consult the officer who recommended the original appointment to the General Assembly (the Speaker of the House of Representatives, the President Pro Tempore of the Senate, or the President of the Senate), and ask for a written recommendation.