

STATE OF NORTH CAROLINA
COUNTY OF WAKE

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

JOSHUA H. STEIN, in his official
capacity as GOVERNOR OF THE
STATE OF NORTH CAROLINA,

Plaintiff,

vs.

DESTIN C. HALL, 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,

Defendants.

**JOINT MOTION TO VACATE
JUDGMENT; TO SUPPLEMENT THE
COMPLAINT; AND TO ESTABLISH A
BRIEFING SCHEDULE**

The parties jointly move this Court for an order vacating its 11 March 2024 final judgment, pursuant to Rule 60 of the North Carolina Rules of Civil Procedure; to permit supplemental amendment of Plaintiff's complaint pursuant to Rule 15(d), as requested in the Governor's 23 December 2024 motion; and to establish a briefing schedule for dispositive motions on Plaintiff's supplemental complaint. In support of this Motion, the parties show:

1. On 17 October 2023, then-Governor Cooper, in his official capacity as Governor,¹ filed this lawsuit challenging the constitutionality of Parts II, IV, and VIII

¹ Governor Cooper filed this action in his official capacity; therefore, pursuant to N.C. Gen. Stat. § 1A-1, Rule 25(f), Governor Stein is automatically substituted for

of Senate Bill 749, enacted as 2023 Session Law 139, on grounds that those provisions violate the separation of powers guaranteed by Article I, Section 6, and interfere with his 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. The Governor moved for summary judgment. Legislative Defendants moved to dismiss, or in the alternative, for judgment on the pleadings.

3. On 11 March 2024, this Court, appointed under N.C. Gen. Stat. § 1-267.1, entered an order granting the Governor's motion and denying Legislative Defendants' motions. Parts II, IV, and VIII of 2023 Session Law 139 were enjoined as unconstitutional.

4. Legislative Defendants appealed this Court's summary judgment decision, and briefing closed in the Court of Appeals on 18 November 2024.

5. On 11 December 2024, the General Assembly enacted SB 382 over then-Governor Cooper's veto. Senate Bill 382, enacted as 2024 Session Law 57, made changes to the State Board of Elections. Among other things, the Session Law repealed aspects of Parts II, IV, and VIII of 2023 Session Law 139; returned the Board to a 5-member structure; administratively transferred the Board to the Department of the State Auditor; and granted the authority to appoint all of the Board's members

Governor Cooper, and the case continues unabated. The same is true for Speaker of the North Carolina House of Representatives, Destin C. Hall. Then-Speaker Moore was sued in his official capacity; therefore, Speaker Hall is substituted.

to the Auditor. These changes to the appointments are effective for Board terms beginning 1 May 2025.

6. On 20 December 2024, Legislative Defendants moved to dismiss their appeal as moot in light of the repeal of most of the challenged portions of 2023 Session Law 139. See 2024 N.C. Sess. Laws 57, §§ 3.A.3.(a), 4.2.

7. On 23 December 2024, consistent with N.C. Gen. Stat. § 1A-1, Rule 15(d), Plaintiff moved to supplement his Complaint to add a facial constitutional challenge of the Board changes in 2024 Session Law 57. Defendants initially indicated that they objected, in part on the grounds that Rule 15 could not be used to supplement a complaint following a final judgment.

8. The parties have conferred in an attempt to resolve their procedural disputes and, as a result, jointly move this Court to set aside its 11 March 2024 final judgment pursuant to N.C. Gen. Stat. § 1A-1, Rule 60(b)(5) and (6) on the ground that the law enjoined has been repealed.²

9. So long as the Court's 11 March 2024 final judgment is vacated, Defendants do not object to Plaintiff's motion to file his proposed Supplemental Complaint, which alleges a facial constitutional challenge to 2024 Session Law 57.

² This procedure is akin to the appellate courts' practice of vacating a lower court opinion that has become unreviewable because of intervening mootness. See *Hoke Cnty. Bd. of Educ. v. State*, 367 N.C. 156, 159, 749 S.E.2d 451, 454 (2013) ("Once the issues on appeal become moot, the appropriate disposition is to dismiss the appeal ex mero motu and to vacate the decision of the Court of Appeals."); see also *Messer v. Town of Chapel Hill*, 346 N.C. 259, 261, 485 S.E.2d 269, 270 (1997) (per curiam) (citing *State ex rel. Utils. Comm'n v. S. Bell Tel. & Tel. Co.*, 289 N.C. 286, 290, 221 S.E.2d 322, 324–25 (1976)).

10. In furtherance of resolving this challenge to 2024 Session Law 57 on the merits, the parties propose that the Court set a case management schedule focused on the expedient presentation and resolution of dispositive motions, as follows:

a. Defendants shall file a supplemental answer or other responsive pleading to the Supplemental Complaint within 14 days of the filing of the Supplemental Complaint on order of this Court.

b. Count 1 of the Complaint is moot given the repeal of the offending portions of 2023 Session Law 139, and the preliminary injunction entered in this matter on 30 November 2023 is vacated as moot.

c. As to Count 2 of the Supplemental Complaint, the parties should file any summary judgment motions and briefs in support of dispositive motions by 17 February 2025.

d. The parties should file any responses in opposition to those dispositive motions by 17 March 2025.

e. The parties should be prepared to argue the dispositive motions as to Count 2 of the Supplemental Complaint at a hearing scheduled on or after 24 March 2025 at the Court's discretion and convenience of the parties.

11. This Motion is submitted in good faith and not for the purpose of delay.

WHEREFORE the parties jointly move this Court for an order:

1. Vacating this Court's 11 March 2024 opinion, as well as vacating the 20 November 2023 order on Plaintiff's motion for preliminary injunction;

2. Permitting the filing of Plaintiff's Supplemental Complaint as attached to Exhibit 1 of its 23 December 2024 Motion to Supplement, except that, pursuant to Rule 25(f) of the North Carolina Rules of Civil Procedure, the Governor, in his official capacity, be noted as Joshua H. Stein and the Speaker of the North Carolina House of Representatives, in his official capacity, be noted as Destin C. Hall;
3. Requiring Defendants to file responsive pleadings to Plaintiff's Supplemental Complaint within 14 days of its filing;
4. Setting a briefing schedule for dispositive motions where motions and corresponding briefs are due on 17 February 2025 and any responses are due 17 March 2025, with a hearing on the motions scheduled on or after 24 March 2025; and
5. Whatever further and just relief that justice should require.

Respectfully submitted this the 28th day of January, 2025.

/s/ Eric M. David

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing **JOINT MOTION** via email to the address identified below:

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This the 28th day of January 2025.

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