

NORTH CAROLINA COURT OF APPEALS

Roy A. Cooper, III in his capacity as)
Governor of the State of North Carolina,)

Plaintiff,)

v.)

Philip E. Berger, in his official capacity)
as President Pro Tempore of the North)
Carolina Senate; Timothy K. Moore, in)
his official capacity as Speaker of the)
North Carolina House of Representatives)
and The State of North Carolina,)

From Wake County

Defendants.)

DEFENDANT-APPELLANT'S MOTION TO DISMISS
OR OTHERWISE ALLOW WITHDRAWAL OF THEIR APPEAL

Defendants Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (collectively, "Defendants"), hereby move this Court pursuant to North Carolina Appellate Rule 37(e) to dismiss or permit withdrawal of Defendants' 12 March 2024 Notice of Appeal related to the 11 March 2024 Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendants' Motion to Dismiss and Motion for Judgment on the Pleadings as well as any and all intermediate orders involving the merits and necessarily effecting the judgment, including but not limited to, the same trial court's order of 30

November 2023 granting Plaintiff's motion for preliminary injunction. In support of this Motion, Defendants show the following:

1. Plaintiff filed suit on 17 October 2023 seeking a declaration that Part I of Session Law 2023-139, regarding (among other things) the methodology of appointing members of the State Board of Elections and county boards of election, was unconstitutional.

2. A three-judge panel consisting of the Honorable Edwin Wilson, Lori Hamilton, and Andrew Womble was appointed for this facial constitutional challenge.

3. That panel entered a preliminary injunction on 30 November 2023.

4. On 11 March 2024, that panel entered its Order determining that Session Law 2023-139 was unconstitutional and enjoining it.

5. On 12 March 2024, Defendants timely appealed that 11 March 2024 Order and all intervening orders including the order on preliminary injunction.

6. Since that time, the parties have settled and filed the record on appeal, as well as completed briefing in this Court. Briefing was completed on 18 November 2024.

7. Recently, the General Assembly proposed Senate Bill 382 and enacted it by overriding the Governor's veto. As enacted, Part III of Session Law 2024-57 addresses election law changes. Section 3A.1 of the Session Law repeals Part I of Session Law 2023-139 that dealt with the structure of the State Board of Elections and the county boards of election and is the subject of this appeal. Other subparts of

Part III of Session Law 2024-57 provide a new structure for the State Board of Elections and the county boards—in particular the appointments.

8. The repeal of Part I of Session Law 2023-139 moots further review of the litigation concerning that Session Law’s constitutionality.

9. Based on mootness, Defendants seek leave to withdraw their appeal or otherwise have it dismissed.

10. Counsel for Defendants has consulted counsel for Plaintiff and counsel for the State. Neither party has an objection to the requested relief.

WHEREFORE, Defendants request that this Court permit withdrawal or otherwise dismiss Defendants’ Notice of Appeal in this case on the grounds that the case is moot. Defendants further request that this Court determine each party should bear its own costs for the appeal.

Respectfully submitted, this the 20th day of December, 2024.

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By: /s/ Electronically Submitted

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N.C. R. App. P. 33(b) Certification: I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, the 20th of December, served a copy of the foregoing MOTION via email to the address identified below:

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