

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
23 CVS 029308-910

ROY A. COOPER, III, in his official
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.

Defendants.

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

Plaintiff Roy Cooper, in his official capacity as Governor of the State of North Carolina, by and through counsel and pursuant to Rule 65 of the North Carolina Rules of Civil Procedure, moves the Court for a temporary restraining order to restrain the effectiveness of Parts II, IV, and VIII of Session Law 2023-139.

In support of this Motion, the Governor shows the Court as follows:

1. Session Law 2023-139 became law on October 10, 2023, and will take effect on January 1, 2024.
2. The Governor filed this lawsuit on October 17, 2023.

3. The Governor's Verified Complaint alleges that Session Law 2023-139 unconstitutionally limits his ability to carry out his constitutional duties and violates the separation of powers.

4. As shown in the Governor's Verified Complaint:

- a. Without a temporary restraining order, Session Law 2023-139 will take effect on January 1, 2024; and
- b. These changes will cause immediate and irreparable injury, loss, or damage to the Governor if allowed to take effect.

5. Counsel listed below certifies that the Governor will give notice to Defendants of this motion on November 6, 2023.

6. This Court has jurisdiction to resolve this Motion before transferring this case to a three-judge panel. *Town of Boone v. State*, 368 N.C. 420, 421 (2015) ("According to the plain text of the statute under which appeal has been sought, appeal of right lies directly to this Court only 'from [an] order or judgment of a court, either final or interlocutory, that *holds* that an act of the General Assembly is facially' unconstitutional. (Emphasis added.) Here, however, neither . . . order included such a holding: The order denying the State's and the County's motions to dismiss did not provide the panel's rationale for denying the motions, and the order issuing the preliminary injunction concluded that the Town 'has shown a likelihood of success on the merits of its case.' We therefore dismiss the State's appeal of the December 2014 orders with prejudice.").

WHEREFORE, Plaintiff Roy Cooper, in his official capacity as Governor of the State of North Carolina, prays the Court:

- a. Issue a temporary restraining order pursuant to North Carolina Rule of Civil Procedure 65 barring Session Law 2023-139 for 10 days; and,
- b. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this the 6th day of November, 2023

/s/ Eric M. David
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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:

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This the 6th day of November, 2023.

BROOKS, PIERCE, McLENDON,
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By: /s/ Eric M. David
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