

STATE OF NORTH CAROLINA

COUNTY OF WAKE

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,

Defendants.

FILED

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

2017 JAN -6 PM 4: 02

16 CVS 15636

WAKE COUNTY, C.S.C.

**ORDER ALLOWING MOTION FOR
PRELIMINARY INJUNCTION**

THIS MATTER came on for hearing on January 5, 2017 before the undersigned three-judge panel upon the Plaintiff's Motion for Preliminary Injunction. Upon consideration of all matters of record, including the Complaint, affidavits on file, arguments by counsel for Plaintiff and counsel for Defendants, and the statements by the attorneys general representing the State Board of Elections, State Ethics Commission, and Secretary of State, the Court finds and concludes as follows:

1. This Court has personal and subject matter jurisdiction over this cause.
2. This cause is properly referred to the undersigned three-judge panel.
3. The Plaintiff, in his motion for a preliminary injunction, seeks to enjoin the operation of legislation enacted by the North Carolina General Assembly on December 16, 2016—Senate Bill 4 (Session Law 2016-125), Parts I and VI—that, among other provisions, creates a new Bipartisan State Board of Elections and Ethics Enforcement ("New State Board"); enacts new Chapter 138B of the North Carolina General Statutes; amends and orders recodification of

Chapters 120C, 138A, and 163 of the North Carolina General Statutes; abolishes the existing State Board of Elections; abolishes the existing State Ethics Commission; transfers all “authority, powers, duties and functions, records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, including the functions of budgeting and purchasing” from the existing State Board of Elections and State Ethics Commission to the New State Board; and appoints the members of the State Ethics Commission as December 31, 2016 as the members of the New State Board. The challenged legislation significantly alters the governance structure and operations of the agency charged with executing the election laws.

4. Plaintiff, Governor Roy A. Cooper, III, filed suit against Defendants challenging the constitutionality of the enacted legislation on grounds that it violates Article I, Section 6, Article III, Section 1, and Article III, Section 5(4) of the North Carolina Constitution. Plaintiff seeks declaratory relief, a temporary restraining order, a preliminary injunction, and a permanent injunction.

5. The Honorable Donald W. Stephens entered a Temporary Restraining Order on December 30, 2016, enjoining the effectiveness of the challenged legislation.

6. The Court finds and concludes that:

a. The Plaintiff, Governor Roy A. Cooper, III, has shown a likelihood of success on the merits of his case; and

b. The Plaintiff is likely to sustain irreparable harm unless a preliminary injunction is issued and, in the opinion of the Court, the issuance of a preliminary injunction is necessary for the protection of the Plaintiff’s rights during the course of this litigation.

c. The balance of equities favors granting a preliminary injunction. The irreparable harm caused by the challenged legislation outweighs any possible harm in

preserving the status quo prior to the challenged legislation taking effect. In fact, preserving the status quo will result in no harm to neither the Plaintiff nor the Defendants. The State Board of Elections will continue with its functions and the State Ethics Commission will likewise continue with its functions.

d. It is not possible, at this early time, for the Court to identify and excise particular provisions of Part I of Senate Bill 4 likely to be unconstitutional while allowing other portions of Part I of the challenged legislation to take effect.

e. The Plaintiff has only argued Part I of the challenged legislation is unconstitutional, and any reference to Part VI is considered by the Court only as it relates to Part I of the challenged legislation, not to other Parts of Session Law 2016-125.

THEREFORE, the Court concludes that the Plaintiff's Motion for a Preliminary Injunction should be ALLOWED and that the Defendants are enjoined during the pendency of this litigation and until further order of the Court as follows:

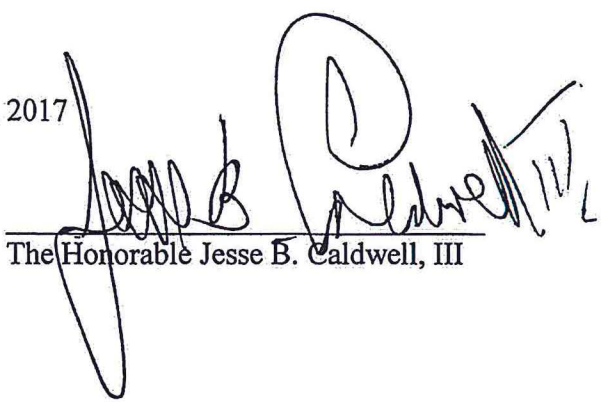
- a. Plaintiff Governor Cooper has no duty to take any action to implement or enforce Part I or Part VI of Senate Bill 4 (Session Law 2016-125) and may so inform the State Ethics Commission and the State Board of Elections;
- b. The provisions of General Statutes Chapters 163, 138A, and 120C remain in effect as they were before the passage of Parts I and VI of Senate Bill 4;
- c. Defendants are restrained and enjoined from taking any action to implement or enforce Part I or Part VI of Senate Bill 4 (Session Law 2016-125); and
- d. Defendants' "officers, agents, servants, employees, and attorneys, and . . . those persons in active concert or participation with them who receive actual notice in any manner of

[this] order by personal service or otherwise” are likewise enjoined from taking any action to implement or enforce Part I or Part VI of Senate Bill 4 (Session Law 2016-125).

- e. In accordance with N.C. Rule Civ. P. 65(c), no security is required of the Plaintiff.

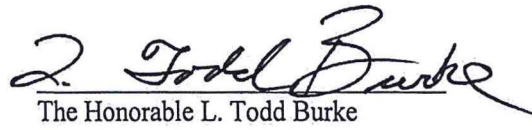
Counsel for Plaintiff shall serve copies of this order on the Chief Deputy Attorney General, Josh Lawson (General Counsel and the duly appointed process agent for the North Carolina State Board of Election), and Perry Y. Newson (executive director for the North Carolina State Ethics Commission).

SO ORDERED, this the 6th day of January, 2017

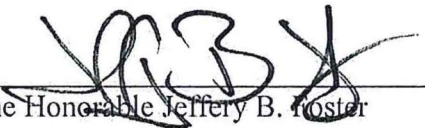


The Honorable Jesse B. Caldwell, III

SO ORDERED, this the 6th day of January, 2017


The Honorable L. Todd Burke

SO ORDERED, this the 6th day of January, 2017


The Honorable Jeffery B. Foster