



North Carolina General Assembly  
House of Representatives  
Office of the Democratic Leader

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COMMITTEES:

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APPROPRIATIONS  
BANKING  
EDUCATION  
FINANCE  
JUDICIARY  
JUDICIARY SUBCOMMITTEE A  
RULES  
TRANSPORTATION

June 23, 2015

HAND-DELIVERED

Rep. Tim Moore, Speaker  
Speaker of the House  
North Carolina House of Representatives  
16 W. Jones Street, LB 2304  
Raleigh, North Carolina 27601

Dear Mr. Speaker:

On behalf of the North Carolina House Democratic Caucus, per Article II, Section 18 of the North Carolina Constitution entitled "Protests," please find attached the dissent and protest regarding the actions of the North Carolina House of Representatives as herein referenced. We request that this institution and duty of the members to protect that integrity is paramount and should be considered. In matters that have constitutional importance, we should be ever more vigilant.

Sincerely,

Rep. Larry D. Hall  
Democratic Leader

Attachment



Because we so deeply believe that Senate Bill 2, entitled “Magistrates Recusal for Civil Ceremonies”, is fundamentally injurious to the public, the undersigned members of the North Carolina House of Representatives take the rare action of invoking Article II, Section 18 of the North Carolina Constitution to enter into the journal this statement.

Our dissent and protest is issued in writing because the opportunity to make comment in debate was severely limited on the House floor. The Senate passed this bill on February 25, 2015. The House passed this bill on Thursday, May 28, 2015. Governor McCrory immediately vetoed the bill on Friday, May 29, 2015. Following Governor McCrory’s veto, an override motion was placed on the Senate calendar and the veto was overridden on the next legislative day, Monday, June 1, 2015. The bill was received from the Senate in the House on Tuesday, June 2, 2015 and was placed on the House calendar for consideration, with the House ready to proceed on the override vote the following day pursuant to House Rule 44.2. No vote or debate on the calendared override motion occurred for nine more days, until Thursday, June 11, 2015, when the majority suddenly called the Motion to Override upon the commencement of the calendar, limited debate by passing an immediate Motion to Call the Question, and overrode the Governor’s veto, all in a matter of approximately 240 seconds. Our reasons for dissent and protest follow seriatim.

#### Substantive injuries

1. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” treats North Carolinians unequally in patent violation of the Equal Protection Clause of the United States Constitution and Article I, Section 1, 19 and 35 of the North Carolina Constitution.
2. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” undermines the rule of law, confidence in the judicial system to fairly and impartially serve all North Carolinians, and creates, in effect, two separate systems of justice.
3. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” creates the likelihood that a series of indignities will be inflicted upon lesbian, gay, bisexual and transgendered North Carolinians by agents of their own government.
4. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” may have the impact of so severely limiting the number of governmental officials available to issue marriage licenses and perform marriages that any North Carolinians wishing to be married may be hindered in doing so.
5. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” mistakenly inverts the protections of the First Amendment to the U.S. Constitution. The First Amendment secures personal freedom of religion by protecting private citizens from governmental coercion, while SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” is

designed to protect government officials from private and legal conduct with which the official may disagree for unspecified reasons.

6. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” creates serious and negative implications for the growth of North Carolina’s economy and the strength of its 21<sup>st</sup> Century workforce. The bill may well seriously impact what businesses and entrepreneurial talent comes to and stays in our state.
7. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” creates an unprecedented ability for governmental officials to pick and choose what job responsibilities they wish to perform and those which they do not while still receiving full pay supported by all taxpayers.
8. SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” denies full force and effect to the Magistrate’s oath of office and, by implication, to that taken by any judicial official to fairly and impartially administer and enforce all laws in North Carolina. This bill is simply an abandonment of equal justice under the law.

#### Procedural Injuries

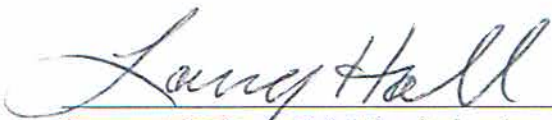
1. The enactment of SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” violates Article II, section 22 of the North Carolina Constitution, which requires the House to enter the Governor’s “objections and veto message on its journal, and proceed to reconsider it.” The objections and veto message were entered in the House Journal on June 2, but the House did not timely nor reasonably proceed to reconsider it. Indeed, for 10 days the House calendared the veto override for a vote each legislative day, but never proceeded to debate or vote on it.
2. At the same time, the House was violating its own rules for the consideration of legislation on a daily basis. House Rule 44.2 (b) creates the standard process for reconsidering a veto and allows the majority to place the item on the House calendar for reconsideration the next legislative day following notice from the Senate after its override and placement on the calendar. Once the bill is on the calendar, the majority should not play games with the People’s Constitution—the reconsideration must occur at that time lest the right to public notice and prompt consideration and resolution of the impasse between the executive and legislative branches of government over the issue be rendered impotent. Our citizens have a right to know what the law and what it is not in a prompt and reasonable fashion; holding a Governor’s veto in limbo until the timing pleases the Majority is unconstitutional.

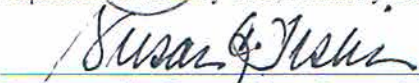
3. In addition, and of serious consequence, was the intentional and repeated violation of House Rule 5, which mandates a specific order of business that must be followed absent a vote of a majority of the House for leave to proceed in a different order. On each and every day, the override was placed on the House calendar as “Unfinished Business,” no vote was ever taken for leave of the House to not consider that item of business or to bypass the item. This Rule 5 patently disallows. And, in North Carolina, the House Rules are not simply discretionary guidelines—they are mandated requirements by Resolution enacted by the House by vote of the members.
4. All of these provisions work in tandem and were synergistically violated from June 2-11, 2015 rendering the House override vote null and void.


### Conclusion

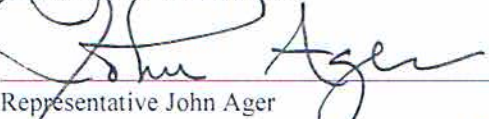
For the reasons stated above, as well as those contained in the Governor’s veto message, and all of those argued on the merits of SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” when it was first considered, the undersigned members believe the override vote on SB 2 “MAGISTRATES RECUSAL FOR CIVIL CEREMONIES” is substantially and constitutionally injurious to the public and hereby dissent, protest, and note our grave concerns and objections for entry onto the journal for consideration by the people of our state.

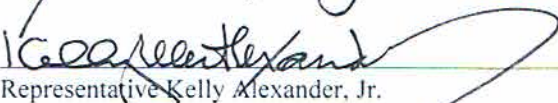
Respectfully submitted, this the 17<sup>th</sup> day of June, 2015 by the undersigned members.

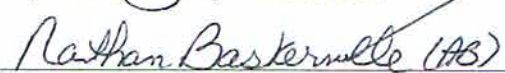
  
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Representative Larry Hall, Minority Leader

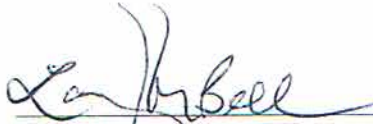
  
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Representative Susan Fisher, Deputy Minority Leader

  
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Representative Gale Adcock

  
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Representative John Ager

  
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Representative Kelly Alexander, Jr.


  
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Representative Nathan Baskerville



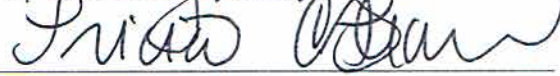
Representative Larry Bell



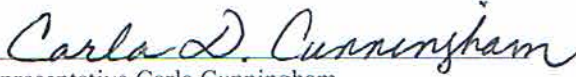
Representative Cecil Brockman



Representative Becky Carney



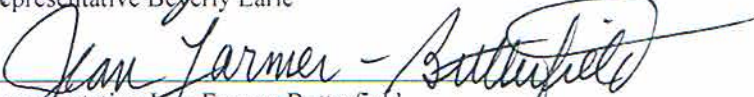
Representative Tricia Cotham



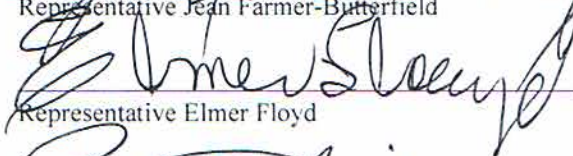
Representative Carla Cunningham



Representative Beverly Earle



Representative Jean Farmer-Butterfield



Representative Elmer Floyd

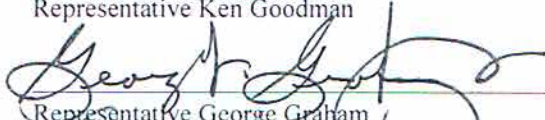


Representative Rosa Gill

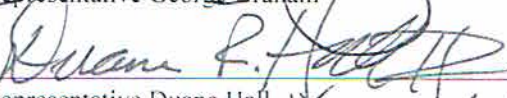


Representative Rick Glazier

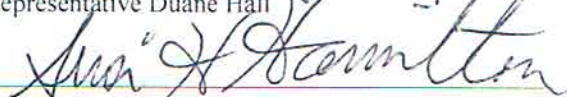
Representative Ken Goodman



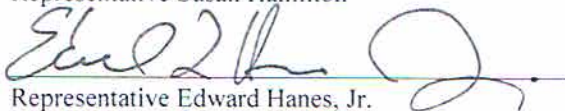
Representative George Graham



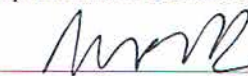
Representative Duane Hall




Representative Susan Hamilton




Representative Edward Hanes, Jr.



Representative Pricey Harrison

  
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Representative Yvonne Holley

  
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Representative Howard Hunter, III

  
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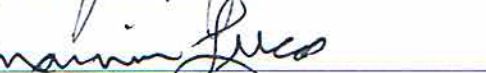
Representative Verla Insko

  
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Representative Darren Jackson

  
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Representative Ralph Johnson

  
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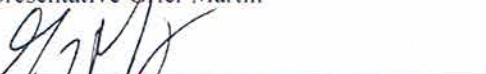
Representative Marvin Lucas

  
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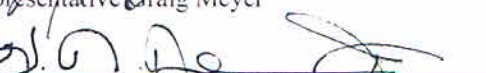
Representative Paul Luebke

  
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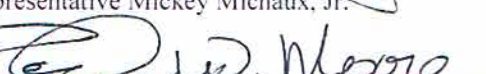
Representative Grier Martin

  
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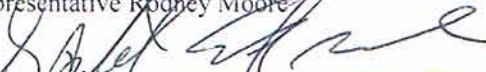
Representative Craig Meyer

  
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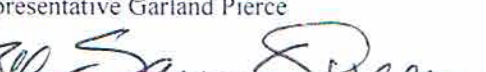
Representative Mickey Michaux, Jr.

  
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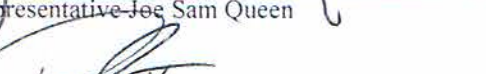
Representative Rodney Moore

  
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Representative Garland Pierce

  
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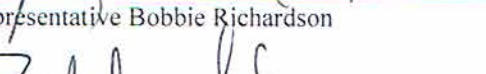
Representative Joe Sam Queen

  
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Representative Robert Reives, II

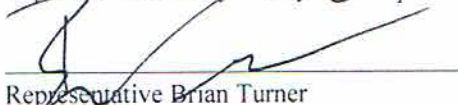
  
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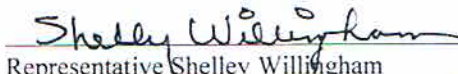
Representative Bobbie Richardson

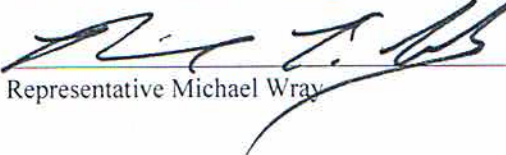
  
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Representative Brad Salmon

  
Representative Evelyn Terry

  
Representative Brian Turner

  
Representative Shelley Willingham

  
Representative Michael Wray