

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. \_\_\_\_\_

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COMMON CAUSE, DAWN  
BALDWIN GIBSON, ROBERT E.  
MORRISON, CLIFF MOONE, T.  
ANTHONY SPEARMAN, ALIDA  
WOODS, LAMAR GIBSON,  
MICHAEL SCHACHTER, STELLA  
ANDERSON, MARK EZZELL, and  
SABRA FAIRES,

Plaintiffs,

v.

DANIEL J. FOREST, in his official  
capacity as President of the North  
Carolina Senate; TIMOTHY K.  
MOORE, in his official capacity as  
Speaker of the North Carolina House  
of Representatives; and PHILIP E.  
BERGER, in his official capacity as  
President Pro Tempore of the North  
Carolina Senate,

Defendants.

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**COMPLAINT**

**INTRODUCTION**

1. This is a declaratory judgment action to declare void North Carolina Session Laws 2016-125 and 2016-126, known as Senate Bill 4 and House Bill 17, enacted at the December 14-16, 2016, Fourth Extra Session of the General Assembly. In an unprecedented maneuver, there was no public notice that a Fourth Extra Session would be called until noon on December 14, 2016, when leaders of the General Assembly issued a proclamation calling the session to start at 2:00 p.m.

that day. Unlike any prior special session, there was no public notice of the purpose of the Fourth Extra Session until bills were filed on the evening of December 14, 2016. Senate Bill 4 and House Bill 17, which significantly altered the structure of North Carolina government, were rushed through the legislative process and sent to the Governor on December 16, 2016, who signed them shortly thereafter.

2. The lack of any advance notice to the public about the Fourth Extra Session and the sharply abbreviated legislative process denied Plaintiffs and other interested citizens any meaningful opportunity to communicate with their representatives about the potential effect of the bills, in violation of Plaintiffs' right under Article I, Section 12 of the North Carolina Constitution to "instruct their representatives." The legislative process also denied Plaintiffs their right to due process under Article I, Section 19.

3. This action is an "as applied" constitutional challenge to the validity of Senate Bill 4 and House Bill 17 and, as such, is not subject to the provisions of N.C. Gen. Stat. § 1-267.1 for the convening of a three-judge panel of superior court judges.

## **THE PARTIES**

4. Plaintiff Common Cause is a non-profit nonpartisan corporation organized and existing under the laws of the District of Columbia, with over 700,000 members and local organizations in 35 states, including North Carolina. Since its founding by John Gardner in 1970, Common Cause has been dedicated to fair elections and making government at all levels more representative, open, and responsive to the interests of ordinary people.

5. Plaintiff Dawn Baldwin Gibson is a resident of Pamlico County, North Carolina, and a pastor at Peletah Ministries in New Bern, North Carolina. Before the Fourth Extra Session, Plaintiff Gibson had exercised her right under Article I, Section 12 of the North Carolina Constitution to instruct her representatives. If Defendants had not denied her the opportunity, she would have exercised her constitutional right to instruct her representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

6. Plaintiff Robert E. Morrison is a resident of Randolph County, North Carolina, and former President of Randolph Hospital in Asheboro, North Carolina. Before the Fourth Extra Session, Plaintiff Morrison had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

7. Plaintiff Cliff Moone is a resident of Catawba County, North Carolina, and a religion instructor at Catawba County Community College. Before the Fourth Extra Session, Plaintiff Moone had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

8. Plaintiff T. Anthony Spearman is a resident of Guilford County, North Carolina, and senior pastor at St. Phillip AME Zion Church in Greensboro, North Carolina. Plaintiff Spearman is President of the North Carolina Council of

Churches. Before the Fourth Extra Session, Plaintiff Spearman had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

9. Plaintiff Alida Woods is a resident of Buncombe County, North Carolina, and former principal of Isaac Dickson Elementary School in Asheville, North Carolina. Before the Fourth Extra Session, Plaintiff Woods had exercised her right under Article I, Section 12 of the North Carolina Constitution to instruct her representatives. If Defendants had not denied her the opportunity, she would have exercised her constitutional right to instruct her representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

10. Plaintiff Lamar Gibson is a resident of Guilford County and the development director for On Earth Peace, a non-profit, faith-based organization. Before the Fourth Extra Session, Plaintiff Gibson had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

11. Plaintiff Michael Schachter is resident of Craven County, North Carolina and a retired community college instructor. Before the Fourth Extra Session, Plaintiff Schachter had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to

instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

12. Plaintiff Stella Anderson is a resident of Watauga County, a Democrat, and a member of the Watauga County Board of Elections. Before the Fourth Extra Session, Plaintiff Anderson had exercised her right under Article I, Section 12 of the North Carolina Constitution to instruct her representatives. If Defendants had not denied her the opportunity, she would have exercised her constitutional right to instruct her representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

13. Plaintiff Mark Ezzell is a resident of Wake County, a Democrat, and a member of the Wake County Board of Elections. Before the Fourth Extra Session, Plaintiff Ezzell had exercised his right under Article I, Section 12 of the North Carolina Constitution to instruct his representatives. If Defendants had not denied him the opportunity, he would have exercised his constitutional right to instruct his representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

14. Plaintiff Sabra Faires is a resident of Wake County, an attorney in Raleigh, an unaffiliated voter, and a former candidate for the North Carolina Court of Appeals and the North Carolina Supreme Court. Before the Fourth Extra Session, Plaintiff Faires had exercised her right under Article I, Section 12 of the North Carolina Constitution to instruct her representatives. If Defendants had not denied her the opportunity, she would have exercised her constitutional right to instruct her representatives regarding bills that were introduced and enacted in the Fourth Extra Session.

15. Defendant Daniel J. Forest is the Lieutenant Governor of North Carolina and the President of the Senate. As President of the Senate, Forest, together with Speaker of the House Timothy K. Moore, convened the December 14-16, 2016, extra session of the General Assembly and Forest presided over the Senate during the session. Forest is sued only in his official capacity.

16. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives. As Speaker, Moore, together with Senate President Forest, convened the December 14-16, 2016, extra session of the General Assembly. And, together with Senate President Pro Tempore Berger, Moore was responsible for the conduct of that session. Moore is sued only in his official capacity.

17. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate. As President Pro Tempore, Berger was responsible, together with House Speaker Moore, for the conduct of the December 14-16, 2016, extra session of the General Assembly. Berger is sued only in his official capacity.

### **JURISDICTION AND VENUE**

18. This is a declaratory judgment action brought pursuant to N.C. Gen. Stat. § 1-253 *et seq.*

19. The Superior Court of the General Court of Justice has jurisdiction over this matter pursuant to N.C. Gen. Stat. § 1-253 *et seq.*

20. Venue is proper in Wake County Superior Court pursuant to N.C. Gen. Stat. § 1-77 because Plaintiffs seek a declaratory judgment regarding legislation enacted by the General Assembly in Wake County.

## FACTS

21. Special sessions, called “extra sessions” in the North Carolina Constitution, are permitted to address issues that require prompt legislative action outside the regular session. Article III, Section 5(7) of the Constitution permits the Governor, “on extraordinary occasions,” to convene a special session of the General Assembly “by his proclamation, stating therein the purpose or purposes for which they are thus convened.” Article II, Section 11(2) directs the leaders of the General Assembly to convene a special session when three-fifths of the members of the House and Senate request a special session.

22. Since 1960, there have been 26 special sessions during which the General Assembly enacted legislation. A special session is an unusual event intended for circumstances when important matters cannot be addressed through the ordinary legislative schedule and process. For every special session before the Fourth Extra Session in 2016, there was advance notice to the public that a special session would be convened and notice of the purpose of the special session.

23. On November 8, 2016, Democrat Roy Cooper defeated then-Governor Republican Pat McCrory in the election for North Carolina governor. Due to the narrow margin of victory, McCrory did not concede defeat until December 5, 2016. McCrory remained the governor until December 31, 2016. On November 8, 2016, Democrat Michael Morgan defeated then-Justice Republican Bob Edmunds in the election for a seat on the North Carolina Supreme Court. Morgan’s election tipped the partisan balance on the Supreme Court in favor of Democrats. On November 8, 2016, Republican Mark Johnson defeated incumbent Democrat June Atkinson in the election for Superintendent of Public Instruction.

24. In October 2016, Hurricane Matthew hit North Carolina and caused catastrophic flooding in the eastern part of the state. On November 30, 2016, Governor McCrory publicly announced that he would call the General Assembly into a special session to address legislation to provide relief to those affected by Hurricane Matthew. McCrory stated that the special session would likely be held in the second week of December.

25. On December 9, 2016, McCrory issued a proclamation calling a special session on December 13, 2016, “for the purpose of authorizing financial assistance necessary to aid the recovery from both Hurricane Matthew and the western North Carolina wildfires, for the purpose of making any changes in law to facilitate the recovery, and for the purpose of addressing any other matters the General Assembly elects to consider.”

26. In the weeks leading up to the special session for hurricane relief, there was widespread public speculation that the General Assembly intended to address legislation in the session that would expand the number of Supreme Court justices from seven to nine. The purpose of the “court packing” plan was to enable McCrory to appoint two new Republican members to the Court before he left office, restoring the Republican advantage on the Court.

27. Many media outlets reported on the possible court packing plan, including the News & Observer, the Winston-Salem Journal, and WRAL. Numerous citizens and public interest groups opposed the court packing plan. For example, Common Cause spoke out in opposition to the court packing plan and urged its North Carolina members to contact their legislators about the plan.

28. Pursuant to McCrory's proclamation, the General Assembly convened the Third Extra Session on December 13, 2016. A bill providing for hurricane relief, The Disaster Recovery Act of 2016, was introduced and passed in the House on December 13.

29. On December 14, 2016, the Senate convened at approximately 11:00 a.m. The Senate unanimously passed an amended version of the Disaster Recovery Act of 2016 at 11:50 a.m. on December 14. At 1:30 p.m. on December 14, the House concurred in the amended version of the Disaster Recovery Act of 2016. The bill was presented to the Governor on December 14 and he signed it on December 15.

30. At approximately 2:02 p.m. on December 14, 2016, the Senate adjourned the Third Extra Session. At approximately 2:05 p.m. on December 14, the House adjourned the Third Extra Session.

31. During the Third Extra Session, only three other bills were introduced in the House, none of which passed out of committee. During the session, no other bills were introduced in the Senate. No legislation regarding the Supreme Court was introduced during the session. McCrory later stated that his efforts helped forestall the enactment of any court packing legislation.

32. At approximately 12:00 p.m. on December 14, 2016, Defendants Moore and Forest announced that a Fourth Extra Session was being called based on the request of three-fifths of the members of the House and Senate. They issued a proclamation convening the special session at 2:00 p.m. on December 14 "to consider bills concerning any matters the General Assembly elects to consider." The proclamation included no notice as to the possible legislative subjects of the session, nor any explanation for why a special session was needed. Before this

announcement, no legislator had told the public or the media that there would be a Fourth Extra Session, or even that such a session was being considered.

33. At approximately 2:06 p.m. on December 14, 2016, the House convened the Fourth Extra Session. At 2:19 p.m., the House adopted House Resolution 1 (“HR 1”), modifying the permanent rules of the House for the extra session to expedite the consideration of legislation and restrict the opportunity of members of the public to know the contents of the legislation and instruct their representatives on its likely effect. Among the changes in the House rules adopted by HR 1 were:

a. Rule 31(a) was amended to eliminate the requirement that a bill be submitted to the clerk and made public by 3:00 p.m. on the day before introduction.

b. Rule 31.1 was amended to require all bills be introduced not later than 7:00 p.m. on December 14, 2016.

c. Rule 31.1(i) was amended to eliminate the requirement that a bill cover only a single subject unless approved by a majority of the House.

d. Rule 32 was amended to eliminate the requirement that a bill be first referred to committee before being placed on the House calendar.

e. Rule 36(b) was amended to eliminate the requirement that a majority of the House approve placing a bill on the calendar on the same day as reported by committee.

f. Rule 36(b1) was amended to eliminate the requirement that a proposed committee substitute for a bill be distributed to committee members electronically by 9:00 p.m. on the day before the committee meeting.

g. Rule 41 was amended to allow a bill to be placed on the House calendar on the day of introduction, rather than requiring that first reading and referral to committee take place on the next legislative day after introduction; to allow Senate bills received by the House to be placed on the House calendar on the day received rather than the next legislative day; and to eliminate the requirement of approval of two-thirds of the members to have more than one reading of a bill on the same day.

h. Rule 44(d) was amended to allow a vote on a conference committee report on the day of the report rather than on the next legislative day.

i. Rule 44.2 was amended to allow a vote on overriding a gubernatorial veto on the day of the veto rather than requiring it to be placed on the calendar for the second legislative day after the veto.

34. After convening on December 14, the House extended the deadline for the introduction of bills to 7:45 p.m. that evening. Twenty-one bills were introduced in the House, including House Bill 17. The House recessed at approximately 7:50 p.m. that day.

35. At approximately 2:34 p.m. on December 14, 2016, the Senate convened the Fourth Extra Session. At 2:37 p.m., the Senate adopted Senate Resolution 1 ("SR 1"), modifying the permanent rules of the Senate for the extra session to expedite the consideration of legislation and restrict the opportunity for members of the public to know the contents of the legislation and instruct their representatives on its likely effect. Among the changes in the Senate rules adopted by SR 1 were:

a. Rule 40 was amended to eliminate the requirement that bills be filed and made public by 3:00 p.m. on the day before introduction.

b. Rule 40.1 was amended to require all bills be introduced not later than 5:00 p.m. on December 14, 2016.

c. Rule 43 was amended to eliminate the requirement that a House bill be received at least one and a half hours before the Senate session to receive first reading in the Senate on that day.

d. Rule 45.1 was amended to allow a bill reported by committee with amendments or a committee substitute to go on the Senate calendar for the same day rather than waiting until the next legislative day.

e. Rule 50 was amended to provide that bills receive third reading on the same day immediately after second reading, eliminating the requirement for a two-thirds vote to allow second and third reading on the same day.

f. Rule 56.1 was amended to allow Senate concurrence to House amendments on the same day as received rather than waiting until the next legislative day.

36. After convening on December 14, the Senate extended the deadline for the introduction of bills to 7:00 p.m. that evening. Seven bills were introduced in the Senate, including Senate Bill 4. The Senate recessed at approximately 5:02 p.m. that day.

37. When introduced, House Bill 17 was 18 pages long and Senate Bill 4 was 25 pages long. Seeking to restrict public scrutiny, participation, and debate, Defendants concealed from the public the contents of House Bill 17 and Senate Bill

4 before convening the Fourth Extra Session. Defendants knew the bills were being drafted, knew what was in them, and deliberately kept that knowledge from the public.

38. On December 15, 2016, the House Rules, Calendar, and Operations Committee convened at 10:00 a.m. to discuss House Bill 17. The committee adopted a committee substitute for the bill. The House convened at 1:00 p.m. After adopting three additional amendments, the House passed House Bill 17 at 6:41 p.m. and sent the bill to the Senate.

39. At 8:30 a.m. on December 15, 2016, the Senate Redistricting Committee convened to discuss Senate Bill 4. The committee adopted the bill with one amendment and adjourned at 10:04 a.m. At 10:30 a.m., the Senate Finance Committee convened to discuss Senate Bill 4. The committee adopted a committee substitute for the bill and adjourned at 11:50 a.m. The Senate convened at 2:30 p.m. After adopting an additional amendment, the Senate passed Senate Bill 4 at 4:22 p.m. and sent the bill to the House. The House Elections Committee convened at 8:30 p.m. to discuss Senate Bill 4. At approximately 9:45 p.m., the House Elections Committee adopted a new committee substitute for the bill.

40. On December 16, 2016, at approximately 8:21 a.m., the House Finance Committee passed Senate Bill 4. The House convened at 9:30 a.m. At approximately 12:00 p.m., the House adopted another amendment for Senate Bill 4, passed the bill, and sent it back to the Senate for concurrence in those changes. At 12:39 p.m., the Senate concurred in the House's changes to the bill. Senate Bill 4 was ratified and sent to the Governor.

41. On December 16, 2016, the Senate Education Committee convened at 9:30 a.m. to discuss House Bill 17. The committee adopted a new committee substitute for the bill and adjourned at 10:20 a.m. The Senate Appropriations Committee convened at 11:00 a.m. to discuss House Bill 17. The committee passed the bill without debate and adjourned at 11:38 a.m. The bill was sent to the Senate floor where two more amendments were adopted, and at 1:52 p.m., the Senate passed the amended version of House Bill 17 and sent it back to the House for concurrence in the Senate's changes. At approximately 2:55 p.m., the House concurred in the Senate's changes to the bill. The bill was ratified and sent to the Governor.

42. During the Fourth Extra Session, the General Assembly also confirmed three nominations made by McCrory: (a) Andrew Heath as a Special Superior Court Judge, Res. 2016-25; (b) Adam Conrad as a Special Superior Court Judge, Res. 2016-26; and (c) Yolanda Stith as a commissioner on the Industrial Commission, Res. 2016-27.

43. At approximately 3:27 p.m. on December 16, 2016, the Senate adjourned the Fourth Extra Session. At approximately 3:49 p.m. on December 16, the House adjourned the Fourth Extra Session.

44. Governor McCrory signed the 27-page Senate Bill 4 at 1:19 p.m. on December 16, 2016. He signed the 20-page House Bill 17 at 4:30 p.m. on December 19, 2016.

45. Senate Bill 4 enacted significant changes in the structure of North Carolina government and election administration, including:

a. Merging the State Board of Elections with the State Ethics Commission into a new “Bipartisan State Board of Elections and Ethics Enforcement,” in effect replacing all State Board of Elections members with members of the Ethics Commission inexperienced in election matters. S.L. 2016-125, ss. 1-19.

b. Increasing the size of the State Board of Elections, from five members, as it has been constituted unchanged since 1901, to eight members. S.L. 2016-125, s. 2.

c. Replacing the method of selecting State Board of Election members which had existed unchanged since 1901 — all five members appointed by the Governor, with no more than three from the same political party — with four members to be appointed by the General Assembly and four by the Governor, split evenly between Republicans and Democrats. S.L. 2016-125, s. 2.

d. Restricting the chair of the board to a one-year term and effectively mandating that the chair selected by the board be a Republican in years in which presidential, congressional, legislative, state, and county elections are held. S.L. 2016-125, s. 2.

e. Setting a super-majority requirement of six out of eight members for significant actions by the board, necessarily increasing the likelihood of partisan gridlock and the inability of the board to act on difficult election disputes, rather than maintaining the simple majority requirement that has been the rule for the board since 1901. S.L. 2016-125, ss. 2, 5.

f. Increasing the size of the 100 county boards of election from three, as has been the case since 1901, to four, necessarily increasing the likelihood of partisan gridlock and the inability of county boards to act on difficult election disputes. S.L. 2016-125, s. 5.

g. Replacing the method of selecting county board members which had existed unchanged since 1901 — three members appointed by the State Board from nominations made by the two major political parties, with no more than two members from one party — with two members to be appointed by the State Board from the Republican Party and two from the Democratic Party. S.L. 2016-125, s. 5.

h. Restricting the chair of the county board to a one-year term and effectively mandating that the chair selected by the board be a Republican in years in which presidential, congressional, legislative, state, and county elections are held. S.L. 2016-125, s. 5.

i. Converting elections for Justices of the Supreme Court and Judges of the Court of Appeals from non-partisan elections to partisan elections. S.L. 2016-125, s. 21.

j. Creating a procedure for the Court of Appeals to hear cases en banc for the first time since the court was established in 1967. S.L. 2016-125, ss. 22-23.

k. Temporarily modifying the term of commissioners on the Industrial Commission so that a commissioner appointed to a vacant seat would have a six-year term rather than just serving the remainder of the unexpired term; and specifying that the Governor would designate

commissioners as chairman and vice-chairman on December 30, 2016, and every four years thereafter. S.L. 2016-125, s. 24. This change to the terms of commissioners only applied to the first appointment made under the provision and expired on December 31, 2016. S.L. 2016-125, s. 24(c). On December 16, 2016, McCrory used this provision to appoint Yolanda Stith, the wife of McCrory's chief of staff, to a just-vacated seat on the Industrial Commission, and the Senate confirmed Stith's appointment on the same date.

46. House Bill 17 enacted significant changes in the structure of North Carolina government, including:

a. Transferring from the State Board of Education to the Superintendent of Public Instruction the authority (i) to supervise and administer the public schools; and (ii) to administer the funds appropriated for the public schools. S.L. 2016-126, ss. 1-33.

b. Reducing the number of state government positions that the Governor could deem "exempt" from the North Carolina Human Resources Act. S.L. 2016-126, ss. 7-8.

c. Removing the authority of the Governor to appoint three members to the North Carolina Charter Schools Advisory Board. S.L. 2016-126, s. 17.

d. Removing the authority of the Governor to appoint four members to the board of trustees of each university in the UNC system. S.L. 2016-126, s. 35.

e. Requiring Senate confirmation of the Governor's appointments for the heads of various state agencies. S.L. 2016-126, s. 38.

47. Portions of Senate Bill 4 and House Bill 17 have been challenged as unconstitutional in two separate lawsuits. In *Cooper v. Berger*, 16-CVS-15636 (Wake Cty.), Governor Cooper challenged the provisions described in paragraphs 45(a), 46(b), and 46(e) above as violating the separation of powers requirements of the North Carolina Constitution. On March 17, 2017, a three-judge panel declared unconstitutional Sections 1-19 of Senate Bill 4 and portions of Sections 7-8 of House Bill 17. In *State Board of Education v. State of North Carolina*, 16-CVS-15607 (Wake Cty.), the State Board of Education challenged the provisions described in paragraph 46(a) above as violating Article IX, Section 5 of the North Carolina Constitution.

48. Plaintiff Common Cause regularly monitors legislative activities that might affect the rights of citizens to participate in state and local government, and advocates on behalf of its members and all citizens through direct contact with legislators. If Senate Bill 4 and House Bill 17 had been considered according to the General Assembly's usual rules and with adequate notice given, and if it had been provided an opportunity, Plaintiff Common Cause would have acted to educate members of the General Assembly on the likely consequences of Senate Bill 4 and House Bill 17 and the detrimental effect the bills would have on North Carolina's participatory democracy, and would have been able to advocate for amendments that would have served the citizens of North Carolina.

49. Plaintiffs Dawn Baldwin Gibson, Robert E. Morrison, Cliff Moone, T. Anthony Spearman, Alida Woods, Lamar Gibson, Michael Schachter, Stella Anderson, Mark Ezzell, and Sabra Faires (the "Individual Plaintiffs") regularly monitor legislative activities and exercise their constitutional right to instruct their

representatives. In legislative sessions that preceded the Fourth Extra Session, the Individual Plaintiffs instructed their representatives by a variety of methods, including directly contacting legislators and other public officials, meeting with legislators, attending and participating in legislative committee hearings, supporting associations that engage in lobbying activities, and exercising their constitutional rights to assemble together to consult for the common good and to apply to the General Assembly for the redress of grievances. If Senate Bill 4 and House Bill 17 had been considered according to the General Assembly's usual rules and with adequate notice given, the Individual Plaintiffs would have used these methods to inform legislators of the detrimental consequences of Senate Bill 4 and House Bill 17 for their communities and their state, and would have advocated for amendments that would have served the citizens of North Carolina. Defendants' actions deprived them of the opportunity to do so.

50. Each of the Individual Plaintiffs is a registered voter who regularly exercises his or her right to vote. As a registered voter, each has been harmed by the provisions of Senate Bill 4, described in paragraph 45 above, that will result in partisan gridlock on the State and local boards of election.

51. Plaintiff Stella Anderson is a Democratic member of the Watauga County Board of Elections. If Senate Bill 4 had not been enacted, Plaintiff Anderson would likely have been selected to serve as chair of the Watauga County Board of Elections in 2017 and 2018, and the board would have had a 2-1 Democratic majority. Instead, Senate Bill 4 provides that each local board of elections will have two Democratic and two Republican members, requires a majority vote of three members, and guarantees that a Republican will serve as

chair in every “even-numbered year,” when elections are typically conducted. These changes in election law reduced Plaintiff Anderson’s ability to be an effective member of the Watauga County Board of Elections.

52. Plaintiff Mark Ezzell is a Democratic member of the Wake County Board of Elections. If Senate Bill 4 had not been enacted, Plaintiff Ezzell would likely have been selected to serve as chair of the Wake County Board of Elections in 2017 and 2018, and the board would have had a 2-1 Democratic majority. Instead, Senate Bill 4 provides that each local board of elections will have two Democratic and two Republican members, requires a majority vote of three members, and guarantees that a Republican will serve as chair in every “even-numbered year,” when elections are typically conducted. These changes in election law reduced Plaintiff Ezzell’s ability to be an effective member of the Wake County Board of Elections.

53. Plaintiff Sabra Faires is an unaffiliated voter. In 2014, Plaintiff Faires ran for a seat on the North Carolina Court of Appeals. In 2016, Plaintiff Faires ran for a seat on the North Carolina Supreme Court. Plaintiff Faires is qualified to serve on the North Carolina Court of Appeals and the North Carolina Supreme Court, and desires to run for a seat on one of the appellate courts in 2018. Senate Bill 4 changed elections for the North Carolina Supreme Court and North Carolina Court of Appeals from nonpartisan to partisan, making it substantially more difficult for unaffiliated voters, including Plaintiff Faires, to run for and win an election for appellate judge.

## **FIRST CLAIM FOR RELIEF**

### Article I, Section 12 of the North Carolina Constitution (Right to Instruct Their Representatives)

54. Article I, Section 12 of the North Carolina Constitution provides: “The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances . . . .”

55. The “instruct their representatives” language has been part of the state constitution since 1776 and embodies fundamental rights of speech and association.

56. The “instruct their representatives” language embodies the fundamental concept that North Carolina has a representative government in which citizens have a right to be informed of legislation and other governmental actions that will affect them and to communicate with their representatives as to the consequences of those actions. The right to instruct is an essential element of representative government.

57. The right to “instruct their representatives” is reflected in N.C. Gen. Stat. § 120-18. That statute, first enacted in 1868, provides citizens a statutory right to appeal to the House or Senate if one of its committees denies the request of the citizen to be heard. Plaintiffs were effectively denied the right to appeal by the process by which Senate Bill 4 and House Bill 17 was enacted.

58. The legislative process for enactment of Senate Bill 4 and House Bill 17 – a special session for which there was no advance notice, and consideration by multiple legislative committees and both houses of the General Assembly within less than two days after the first public disclosure of the legislation’s content – was

designed to and did deny Plaintiffs any meaningful opportunity to learn and assess the contents of the legislation and communicate to their representatives in the General Assembly about its likely effect.

59. In the normal legislative process with the normal rules, both Senate Bill 4 and House Bill 17 would have been:

a. Introduced in a regular session instead of an extra session of the General Assembly.

b. Addressed only a single subject instead of a plethora of subjects.

c. Made public and posted on the General Assembly's website on the day they were filed instead of being introduced and filed with no posted explanation.

d. Filed on one day and introduced the next, instead of being filed and introduced the same day.

e. Referred to committee and scheduled for a hearing at a regular committee meeting time with published notice of the meeting, instead of referred to committee and considered by that committee on the day the bill was both filed and introduced.

f. Considered by the full House or Senate on the day after they were reported out of committee, instead of being considered on the same day they were reported out of committee.

g. Considered on both second and third readings on the same day only upon approval of two-thirds of the membership.

h. Upon passage in one chamber, sent to the other chamber for consideration on the next legislative day, instead of on the same day.

60. In addition, under the normal legislative process, House Bill 17 would have received its first reading in a Senate session only if the bill had been received at least an hour and a half before the scheduled Senate session. Similarly, under the normal legislative process, Senate Bill 4 would not have been considered by the Senate on concurrence on the same day that it was received from the House.

61. Plaintiffs were deprived of their ability to instruct their representatives because (a) there was no advance public notice of the Fourth Extra Session and the legislative subjects it would address; (b) the proclamation calling the extra session was not announced until after noon on December 14, 2016; (c) the session began only two hours later; (d) the text of Senate Bill 4 and House Bill 17 became public only after they were filed during the evening of December 14; (e) little direct communication with legislators was possible once the House and Senate members went into session; and (f) Senate Bill 4 and House Bill 17 were passed less than two days after they became public.

62. There was no emergency requiring the Fourth Extra Session, and no circumstances justified the lack of notice and the lack of opportunity for citizens to instruct their representatives.

63. The lack of any advance notice of the Fourth Extra Session; the haste in which the General Assembly convened after the issuance of the proclamation calling the extra session; the failure to timely disclose the contents of Senate Bill 4 and House Bill 17; the inclusion of several different subjects in the bills; and the amendment of the usual rules of the House and Senate to eliminate opportunities for communication with legislators, combined to deprive Plaintiffs and other

citizens of the right to instruct their representatives, in violation of Article 1, Section 12.

**SECOND CLAIM FOR RELIEF**

Article I, Section 19 of the North Carolina Constitution  
(Law of the Land—Due Process)

64. Article I, Section 19 of the North Carolina Constitution provides that “[n]o person shall...in any manner be deprived of his . . . liberty . . . but by the law of the land.”

65. The right of the people “to instruct their representatives” under Article I, Section 12 of the North Carolina Constitution is a fundamental liberty interest protected by substantive and procedural due process in the Law of the Land Clause of Article I, Section 19. The Law of the Land Clause also protects citizens against arbitrary and capricious processes for enacting legislation.

66. The process by which Senate Bill 4 and House Bill 17 were enacted, as described above, deprived Plaintiffs of both substantive and procedural due process in violation of Article I, Section 19.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request the following relief:

(1) That the Court declare the process by which Defendants enacted North Carolina Session Laws 2016-125 (“Senate Bill 4”) and 2016-126 (“House Bill 17”) violated Plaintiffs’ rights under Article I, Sections 12 and 19 of the North Carolina Constitution;

(2) That the Court declare North Carolina Session Laws 2016-125 and 2016-126 void based on their enactment in violation of Article I, Sections 12 and 19 of the North Carolina Constitution;

(3) That the Court permanently enjoin Defendants from implementation and enforcement of Session Laws 2016-125 and 2016-126;

(4) That the Court award Plaintiffs all reasonable costs incurred in connection with this action; and

(5) Such other and further legal and equitable relief as this Court deems necessary, just, and proper.

This the 19th of April, 2017.

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