

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

18 CVS _____

CHRISTOPHER J. ANGLIN,)
)
 Plaintiff,)
)
 v.)
)
 PHILLIP 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; THE STATE OF)
 NORTH CAROLINA; THE NORTH)
 CAROLINA BIPARTISAN STATE)
 BOARD OF ELECTIONS AND)
 ETHICS ENFORCEMENT; and)
 KIMBERLY W. STRACH, in her)
 official capacity as EXECUTIVE)
 DIRECTOR OF THE NORTH)
 CAROLINA BIPARTISAN STATE)
 BOARD OF ELECTIONS AND)
 ETHICS ENFORCEMENT,)
)
 Defendants.)
)

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF
(As Applied Challenge to S.L. 2018-130)**

This matter arises from the North Carolina General Assembly’s override of Governor Roy Cooper’s veto of Senate Bill 3, on Saturday, August 4, 2018. That bill, which was enacted as Session Law 2018-130 (“S.L. 2018-130,” attached as **Exhibit A**) was the product of a hastily-arranged special session of the General Assembly, a session called exclusively to target and harm

the interest of the Plaintiff, Christopher J. Anglin (“Anglin” or “Plaintiff”), who had duly declared his candidacy as a Republican for Associate Justice of the Supreme Court of North Carolina and paid his filing fee prior to the closing of the candidate registration period. *As it is applied to the Plaintiff*, S.L. 2018-130 illegally targets Plaintiff in ways which violate the Constitution of the State of North Carolina.

The North Carolina Supreme Court has long “recognized a direct action under the State Constitution against state officials for violation of rights guaranteed by the Declaration of Rights.” *Corum v. University of North Carolina through its Board of Governors*, 413 S.E.2d 276, 290, 330 N.C. 761, 786 (1992). “The Declaration of Rights was adopted by the people in 1776 in order to affirmatively reserve the rights of the people as well as to protect those rights from encroachment by the State. In 1776 when the people of North Carolina established the State of North Carolina, they clearly and affirmatively set forth certain fundamental human rights which their government was bound to respect. Through the Declaration of Rights, the people of North Carolina secured these rights against state officials and shifting political majorities.” *Id.* at 292, 330 N.C. at 788.

In order to protect those rights guaranteed to him by the Declaration of Rights and the North Carolina Constitution, Plaintiff, by and through his undersigned counsel, seeks a declaratory judgment under N.C. Gen. Stat. § 1-253, *et seq.* and North Carolina Rule of Civil Procedure (“NCRCP”) 57 as well as temporary and permanent injunctive relief under N.C. Gen. Stat. § 1-485 and NCRCP 65 barring the Defendants from enforcing the provisions of S.L. 2018-130 against the Plaintiff. In support of these requests for relief and to establish the breach of his State Constitutional rights by the Defendants, Plaintiff alleges as follows:

PARTIES, JURISDICTION, VENUE and NATURE OF CASE

1. Plaintiff is a citizen and resident of Wake County, North Carolina. He is a licensed attorney and registered as a member of the Republican Party. He is a candidate running for Associate Justice of the North Carolina Supreme Court in an election which is currently set for November 6, 2018.
2. Defendant Phillip E. Berger is the President Pro Tempore of the North Carolina state Senate, and upon information and belief, is a resident of Rockingham County, North Carolina. He is being sued in his official capacity.
3. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and upon information and belief, is a resident of Cleveland County, North Carolina. He is being sued in his official capacity.
4. Defendant State of North Carolina is a sovereign state. In this action the State's laws, as enacted by the General Assembly, are being challenged as unconstitutional as applied to Plaintiff.
5. Defendant North Carolina Bipartisan State Board of Elections and Ethics Enforcement ("SBOE") is a state agency charged with the overall responsibility for the administration of the elections process in North Carolina and has the authority to implement rules and regulations with respect to the conduct of elections. *See* N.C. Gen. Stat. § 163A-741. The SBOE is located and conducts its affairs at 430 N. Salisbury Street, Raleigh, North Carolina.
6. Defendant Kimberley W. Strach is the Executive Director of the SBOE and is therefore the chief elections officer in North Carolina charged with the enforcement of the elections laws of North Carolina, including S.L. 2018-130.

7. Defendants lack sovereign immunity for the claims alleged herein.
8. This Court is the proper venue for this action under N.C. Gen. Stat. § 1-82.
9. This Court has personal jurisdiction over all parties and subject matter jurisdiction over the matters set forth herein.
10. Pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, and NCRCP 57, Plaintiff seeks judgment declaring portions of S.L. 2018-130 unconstitutional under the North Carolina Constitution as applied to Plaintiff during this elections cycle.
11. Pursuant to N.C. Gen. Stat. § 1-485 and NCRCP 65, Plaintiff seeks temporary and permanent injunctive relief to prevent Defendants from implementing those portions of S.L. 2018-130 which require Plaintiff to appear on the ballot without designation as to any political party or otherwise interfere with his state constitutional rights as applied to Plaintiff.

FACTUAL ALLEGATIONS

12. On December 16, 2016, the General Assembly of the State of North Carolina (“the General Assembly”) enacted Session Law 2016-125 (“S.L. 2016-125” attached as **Exhibit B**), section 21.(a) of amended N.C. Gen. Stat. §§ 163-106 to restore partisan elections and primaries for judges and justices of the appellate courts. On March 9, 2017, the General Assembly passed Session Law 2017-3 (“S.L. 2017-3”), imposing partisan elections for judges on the trial courts as well.
13. This decision to return to partisan elections and primaries for judges ended 10 years of non-partisan appellate court elections in North Carolina.
14. Upon information and belief, the General Assembly’s purpose in restoring partisan elections and primaries for judicial offices was to provide voters with more information

about candidates' judicial philosophies and to provide an opportunity for a party's members to consider the qualifications and abilities of candidates.

15. On October 17, 2017, the General Assembly of the State of North Carolina overrode Governor Cooper's veto and enacted Session Law 2017-214 ("S.L. 2017-214" attached as **Exhibit C**), which took effect on January 1, 2018, and enacted certain reforms of partisan ballot access in North Carolina.

16. Section 4(a) of S.L. 2017-214, provided for a one-time cancellation of partisan primaries, effective only for the general election held on November 6, 2018, for "Justices of the Supreme Court, Judges of the Court of Appeals, Judges of the superior courts, [and] Judges of the district courts." S.L. 2017-214 also established that "Candidates seeking the office of Justice of the Supreme Court . . . shall file their notice of candidacy with the State Board of Elections and Ethics Enforcement no earlier than 12:00 noon on June 18, 2018, and no later than 12:00 noon on June 29, 2018."

17. Session Law 2017-214 Section 4(b) further provided that:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified party designation or unaffiliated status shall be included on the ballot.

18. Session Law 2017-214 was challenged in a lawsuit brought by the North Carolina Democratic Party before the United States District Court for the Middle District of North Carolina ("The Judicial Primaries Litigation").¹ In that lawsuit, the North Carolina

¹ *North Carolina Democratic Party, et al. v. Phillip 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; the State of North Carolina; the North Carolina Bipartisan State Board of Elections and Ethics Enforcement; and Kimberly Strach, in her official capacity as Executive*

Democratic Party challenged the one-time cancellation of primaries for judicial offices, alleging that such changes impinged on the Democratic Party's freedom of speech and association, in contravention of the United States Constitution. All of the Defendants in this action were also Defendants in the Judicial Primaries Litigation.

19. In the Judicial Primaries Litigation, the plaintiffs sought injunctive and declaratory relief barring application of S.L. 2017-214.

20. Among the concerns addressed in the Judicial Primaries Litigation was the General Assembly's decision under Section 4(b) of S.L. 2017-214 to allow candidates to self-identify themselves with a party, as proven by a certificate issued by the Board of Elections of the candidate's county of residence, thus allowing a potential candidate to switch parties and then declare his or her candidacy without any 90 day cooling-off period. During the January 24, 2018 hearing on preliminary injunction in the Judicial Primaries Litigation, Martin Warf, counsel to Defendants Berger and Moore, engaged in a colloquy with the court on the issue of the lack of the cooling-off period:

THE COURT: Well, it [referring to S.L. 125, S.L. 3, and S.L. 214] does say you can walk in the door on the day you file and change your party affiliation.

MR. WARF: To the extent that it does I don't think

THE COURT: You already told me it did.

MR. WARF: Well, to the extent that it does, I don't think that's what they are arguing is unconstitutional about this issue and that warrants a preliminary injunction.

THE COURT: Well, it does say you can walk in the door on the day you file and change your party affiliation.

MR. WARF: To the extent that it does, I don't think

Director of the North Carolina Bipartisan Board of Elections and Ethics Enforcement, (MDNC 1:17-cv-1113).

this issue and that warrants a preliminary injunction.

THE COURT: Well, yeah, that's right, but it's part of the way they're saying their rights have been infringed, I mean, because you are not letting the party -- the party has no control over who says they're a Democrat or a Republican, I mean, for that matter. You don't even have this 90-day truth test, for lack of a better term.

MR. WARF: A wait-and-see period.

THE COURT: Yeah, which -- I don't know, it just seems like it does play into it a little bit. You don't think so?

MR. WARF: Well, again, to the extent that it does play into the analysis of the issue, I think we're looking here at a preliminary injunction that has to be clearly shown of a likelihood of success, and when the Plaintiffs are saying what we've articulated is this section is unconstitutional, but, yet, we're also saying that these other aspects are also unconstitutional, I think they're trying to amend the complaint and what's argument, before the Court as we are going through the oral and I don't think the Court should permit that and take a narrow scope as to what they're actually challenging, that being one section of Session Law 214. But the point where we have spent the most amount of time on is this notion of that there is an associational right to select the standard bearer who best represents the party's ideologies and preference. *As we noted earlier, I think the notion of the standard bearer in judicial elections, as Your Honor was questioning at least, is a little suspect that you're using a judicial candidate to identify what the Democratic party is going to support in a particular election year.*

(Tr. of Jan. 24, 2018 Hrg. on Prelim. Inj., pages 53:19 – 55:5.) (A true and correct copy of the transcript excerpt is attached as **Exhibit D.**) The colloquy continued:

THE COURT: So, now, in North Carolina, it will not be Republicans deciding who's going to run as a Democrat as a group or Democrats deciding for Republicans as a group; it's individual deciding. An individual who goes in and files as a Republican is deciding who the Republican Party is -- who the Republican candidates are basically. They do that individually.

MR. WARF: *I think by filing, yes, but I don't think that that is - - equates to the -- that because five individuals as Republicans decided to run for a particular judicial seat, that they all are the standard bearers of the party through their individual choice to file. The party still has the ability to come back and say we like person A. Yes, there may be other Republicans, but we're backing person A.*

(Tr. of Jan. 24, 2018 Hrg. on Prelim. Inj., page 57:3-16) (Emphasis added.)

21. The lack of a 90-day “cooling-off period” was a fully-anticipated feature of the changes enacted under S.L. 2017-214, and Defendants Berger and Moore, in their responses to the court in the Judicial Primaries Litigation, understood that an effect of that feature could be that “five individuals as Republicans decide to run for a particular judicial seat” but that such a scenario posed little threat to the Republican Party and would not confuse voters because it would “not eliminate their ability to choose a person to back.”
22. On June 5, 2018, the General Assembly of the State of North Carolina met again and passed Senate Bill 486, which established the rules under which candidates for judicial offices in the November 6, 2018 election could file to run in the upcoming election. Senate Bill 486 was vetoed by Governor Roy Cooper, which veto was overridden by the General Assembly on June 20, 2018. As a result, Senate Bill 486 was enacted as Session Law 2018-13 (“S.L. 2018-13” attached as **Exhibit E.**)
23. Part II of S.L. 2018-13 provided in pertinent part:

SECTION 2.(a) The General Assembly finds that both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering various proposals of selection and new judicial district maps. The General Assembly finds that, to allow for more time to thoughtfully consider these changes, the General Assembly enacted S.L. 2017-214, the Electoral Freedom Act of 2017, which, among other items, provided for a one-time cancellation of partisan primaries for the offices of district court

judge, superior court judge, judges of the Court of Appeals, and Supreme Court justices for the 2018 election cycle. The General Assembly finds that all elections for judges in 2018 were to be treated uniformly under S.L. 2017-214, the Electoral Freedom Act of 2017, while those changes were considered.

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. *The General Assembly finds that ballot language above the sections of election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters' understanding of the 2018 judicial races.*

SECTION 2.(b) For the 2018 general election, the State Board of Elections and Ethics Enforcement shall, notwithstanding G.S. 163A-1114(b)(2), list the following judicial offices at the end of all partisan offices listed on the general election ballot: (1) Justices of the Supreme Court. (2) Judges of the Court of Appeals. (3) Judges of the superior courts. (4) Judges of the district courts.

SECTION 2.(c) Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed: "No primaries for judicial office were held in 2018. The information listed by each of the following candidates' names indicates only the candidates' party affiliation or unaffiliated status on their voter registration at the time they filed to run for office."

(Emphasis added.)

24. Notably, S.L. 2018-13 became effective upon enactment and specifically applied *only* to the 2018 general election. (S.L. 2018-13, Section 2.(e).) Again, the General Assembly had specifically considered and “carefully examined” the issue of how to allow for filing in a partisan race without primaries, and determined that a multi-candidate plurality election was to be preferred, and that an explanation that “the listed party affiliation is only the self-identified party of a candidate at the time of filing will aid voters’ understanding of the

2018 judicial races.”

25. On June 7, 2018, Plaintiff changed his party registration from Democrat to Republican by filing the necessary documentation with the Wake County Board of Elections.
26. On June 29, 2018, the last day of filing under the timeline set forth in S.L. 2017-214, Plaintiff filed with the SBOE to run for the office of Associate Justice of the North Carolina Supreme Court, specifically for the seat currently occupied by Justice Barbara Jackson. In so doing, he paid a filing fee of \$1,462 to the SBOE and, pursuant to S.L. 2017-214, Section 4.(b), indicated on his notice of candidacy “the political party recognized under Article 18 of Chapter 163A of the General Statutes” with which he was affiliated at the time of filing, namely the Republican Party.
27. Along with his notice of candidacy, and pursuant to S.L. 2017-214, Section 4.(d), Plaintiff filed a certificate from the Wake County Board of Elections stating that he was a resident of Wake County and a voter registered as a Republican. That certificate verified his party registration. Pursuant to S.L. 2017-214, that designation “shall be included on the ballot.”
28. As of the June 29, 2018 closing of the filing period for candidates for Associate Justice of the Supreme Court, there were three candidates for the office sought by Plaintiff: incumbent Justice Barbara Jackson, a Republican; Democratic candidate Anita Earls; and Plaintiff, a Republican.
29. Almost immediately, Republican members of the General Assembly, along with their staff, raised objections to Anglin’s presence on the ballot as a Republican. This consternation occurred despite the fact that S.L. 2018-13, passed into law not two weeks prior, had determined that “both chambers of the General Assembly have carefully examined judicial redistricting and the forms of judicial selection with multiple committees considering

various proposals of selection and new judicial district maps.” S.L. 2018-13, Section 2.(a). The provisions of both S.L. 2017-214 and S.L. 2018-13, as acknowledged by Defendants Berger and Moore before the Federal District Court in the Judicial Primaries Litigation, specifically allowed for the very result that occurred on June 29, 2018 – the presence of more than one Supreme Court candidate self-declaring as members of the same party.

30. Dallas Woodhouse, Executive Director of the North Carolina Republican Party, stated publicly after the closing of the filing period that “The Party has endorsed somebody, and [Anglin] will be treated as the enemy he is.” Raleigh News & Observer, July 4, 2018, *Why one NC GOP official calls Republican Supreme Court candidate “the enemy.”* (A true and accurate copy of the online version of the story is attached as **Exhibit F.**)
31. Prior to making this statement, Woodhouse made no attempt to contact Plaintiff or his campaign.
32. On July 24, 2018 Senate Bill 3 was introduced during a hastily-called special session of the General Assembly.
33. Senate Bill 3 amended both S.L. 2017-214 and S.L. 2018-13. (See **Exhibit A.**)
34. In the Preamble to Senate Bill 3, the General Assembly made the following findings:

Whereas, the General Assembly finds that the purpose of listing partisan affiliation on the ballot in judicial races is to provide voters with information about candidates; and

Whereas, the General Assembly finds that political organizations and groups made efforts to recruit candidates that could confuse voters as to candidates long-held partisan affiliations; and

Whereas, the General Assembly finds that listing only partisan affiliations that a candidate has held for 90 days or more prior to the time of filing should apply to all judicial offices; and

Whereas, the General Assembly finds that it is possible a candidate who filed for judicial office may not desire to remain on

the ballot knowing only party affiliation held for 90 days or more will be disclosed on the ballot; and

Whereas, the General Assembly finds that providing a period allowing candidates to withdraw from running for judicial office would provide opportunities for any judicial candidate to be taken off the ballot.

- 35.** In relation to the party preference of candidates, Senate Bill 3 amended Section 4.(b) of S.L. 2017-214 as follows:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.

- 36.** In relation to ballot language, Senate Bill 3 amended the second paragraph of Section 2.(a) and Section 2.(c) of Session Law 2018-13 as follows:

SECTION 2.(a) ...

The General Assembly notes that election to these offices will be held under a plurality election system, with candidates running under a political party label on the ballot, without having gone through a party primary. The General Assembly finds that ballot language above the sections of 2018 general election ballots regarding these impacted offices setting forth that the listed party affiliation is only the self-identified party of a candidate at least 90 days prior to the time of filing will filing, consistent with G.S. 163A-973, would aid voters' understanding of the 2018 judicial races.

SECTION 2.(c) Notwithstanding G.S. 163A-1112, immediately prior to the placement of the judicial offices listed in subsection (b) of this section on the ballot, the following information shall be printed:

“No primaries for judicial office were held in 2018. The party information listed by each of the following candidates’ names indicates is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office-office and 90 days prior to that filing.”

37. In addition to those amendments, Senate Bill 3 amended Section 4.(c) of Session Law 2018-13 to allow a candidate who has filed a notice of candidacy for any office under the section to withdraw prior to “the close of business August 8, 2018.”
38. Upon information and belief, audio of the debate from the floor of the House of Representatives for the July 27, 2018 session is not available due to a “glitch.”
39. On July 27, 2018, Governor Cooper vetoed Senate Bill 3. A true and accurate copy of the Governor’s veto statement is attached hereto as **Exhibit G**.
40. In his veto, the Governor objected that “Changing the rules for candidates after the filing has closed is unlawful and wrong, especially when the motive is to rig a contest after it is already underway.”
41. On August 4, 2018, the General Assembly met in special session to override the Governor’s veto. The veto was overridden, and Senate Bill 3 took effect as S.L. 2018-130.
42. Plaintiff is nearly uniquely situated to be harmed by the passage of S.L. 2018-130. The law applies only to the November 6, 2018 General Election, and he is the only appellate judicial candidate whose party registration fails to meet the 90-day period imposed by the General Assembly S.L. 2018-130.
43. As a result, Plaintiff is faced with a choice he must make by August 8, 2018: continue his campaign for the Supreme Court, but as an unaffiliated candidate unable to reference the Party of his choice, or withdraw his candidacy entirely by notifying the SBOE by close of

business on August 8, 2018.

44. The actions of Defendants Berger and Moore and the General Assembly in passing S.L. 2018-130, and any action enforcing the terms of S.L. 2018-130 by the SBOE and Defendant Strach, will deprive Plaintiff of his vested right to appear on the ballot as a Republican candidate for Associate Justice of the Supreme Court of North Carolina.
45. Under the terms of the law in effect at the time of his registration, as defended by Defendants Moore and Berger in Federal Court, Mr. Anglin was fully within his rights to register his affiliation with any Party recognized under Article 18 of Chapter 163A of the General Statutes and then file as a candidate for Associate Justice of the Supreme Court.
46. On June 29, 2018, Plaintiff, who was then and is now registered as a Republican voter in Wake County, North Carolina, paid his \$1,462 filing fee and filed to be a candidate for Associate Justice of the North Carolina Supreme Court. On that same day, the filing period for that office closed. At that moment, Plaintiff had a vested right to be one of two Republican candidates for the seat, a situation plainly anticipated and accepted by the General Assembly in enacting S.L. 2017-214 and 2018-13.
47. The passage of S.L. 2018-130 was explicitly targeted at the Plaintiff and was designed to deprive him of that vested right by changing the filing rules after the filing period had closed.
48. Since the closing of the filing period on July 29, 2018, North Carolina voters have been informed of Plaintiff's candidacy as a Republican. For instance, Buncombe County (along with other North Carolina counties) and the SBOE have issued an official notice of the November 6, 2018 election pursuant to the Federal Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff(b)(2) ("UOCAVA"). A copy of the Buncombe

County version of this UOCAVA Notice is attached hereto as **Exhibit H**.

49. The Buncombe County UOCAVA Notice states “This is an official notice of an election to be conducted in BUNCOMBE County on 11/06/2018. This notice contains a list of all of the ballot measures and federal, State, and local offices this county expects, as of this date, to be on the ballot on the date of the election.”
50. Attached to the Buncombe County UOCAVA Notice is a list which lists Plaintiff, “Christopher (Chris) Anglin” as a Republican candidate for Associate Justice. *See Exhibit H*.
51. UOCAVA Notices are sent or published to overseas and military voters registered in the particular county. Such notices “may be used in conjunction with the federal write-in absentee ballot (FWAB). Covered military & overseas voters seeking to vote by absentee ballot may use the FWAB to register to vote, request an absentee ballot, and vote an official military-overseas ballot.” (**Exhibit H**.)
52. The Notice instructs military-overseas voters that “As soon as ballot styles are printed, this county board of elections will update this notice with the certified candidates for each office and ballot measures and referenda questions that will be on the ballot. For General Elections during even-numbered years, ballots will be printed 60 days prior to the election. . . . **You must request an updated Election Notice.**” (**Exhibit H**.)
53. Notably, however, North Carolina does *not* require an overseas voter to have requested and not received an absentee ballot before using the FWAB. (See FWAB form attached as **Exhibit I**, (showing North Carolina is not listed among those states requiring registration and request prior to using the FWAB); *see also* N.C. Gen. Stat. § 163A-1341(d) (“A covered voter may use the declaration accompanying the federal write-in absentee ballot,

as prescribed under the [UOCAVA], as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official no later than 5:00 P.M. on the day before the election.”)).

54. Thus, some number of potential voters in Plaintiff’s race have already been informed by the SBOE and County Boards of Elections that he is a Republican candidate for Associate Justice. Subsequent contrary communications from the SBOE or County Boards of Elections to North Carolina voters may not be read or may confuse the voter *solely about Plaintiff’s status and party registration*.

55. As applied to Plaintiff, therefore, S.L. 2018-130, together with the unamended sections of S.L. 2017-214 and 2018-13, works an unconstitutional deprivation of Plaintiff’s rights under the Constitution of the State of North Carolina and the statutory framework that existed at the time that Plaintiff submitted his notice of candidacy in the following ways.

VIOLATION OF PLAINTIFF’S RIGHTS UNDER THE NORTH CAROLINA DECLARATION OF RIGHTS

56. Article I, the Declaration of Rights, of the North Carolina Constitution provides affirmative and protected rights for all Persons in North Carolina.

57. Section 1 of the Declaration of Rights states:

Section 1. The equality and rights of persons.

We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness...

58. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and

2018-13, as applied to Plaintiff, deprives Plaintiff of his inalienable right to liberty, insofar as he is being deprived of his vested right to appear on the ballot as a Republican candidate for Associate Justice of the Supreme Court.

59. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and 2018-13, as applied to Plaintiff, arbitrarily and capriciously prevents Plaintiff from having the equality and rights bestowed upon others similarly situated, namely his opponents Barbara Jackson and Anita Earls, insofar as they are not barred from running as a candidate of their chosen political party.

60. Section 10 of the Declaration of Rights declares:

Sec. 10. Free elections.

All elections shall be free.

61. “The meaning of [Section 10] is plain: free from interference or intimidation.” Orth, John V. and Paul M. Newby, *The North Carolina State Constitution*, 56 (2013). The General Assembly, and Defendants Moore and Berger, intended Senate Bill 3 specifically to interfere with Plaintiff’s candidacy as a Republican.

62. S.L. 2018-130, as applied to Plaintiff, would deprive Plaintiff of his right as a North Carolinian to participate in an election free from interference or intimidation.

63. Section 14 of the Declaration of Rights provides:

Sec. 14. Freedom of speech and press.

Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

64. S.L. 2018-130 together with the remaining unamended portions of S.L. 2017-214 and 2018-13, as applied to Plaintiff, deprives Plaintiff of his right of political association, a key

component of the freedom of speech. Plaintiff has a right under Section 14 of the North Carolina Constitution to express political beliefs and associate himself with the political party of his choice. Prior to the enactment of S.L. 2018-130, this right included a vested right to associate himself with the Republican Party as a candidate for Associate Justice of the North Carolina Supreme Court.

65. By changing the rules in the middle of the game, Defendants will have arbitrarily and capriciously deprived Plaintiff of his freedom of speech through political association.
66. Moreover, S.L. 2018-130 has the effect as applied to Plaintiff of requiring Plaintiff to make a false statement to the voters of North Carolina that he is an unaffiliated voter and candidate when he is actually and legally a registered Republican.
67. Section 19 of the Declaration of Rights provides:

Sec. 19. Law of the land; equal protection of the laws.

No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

68. S.L. 2018-130, as applied to Plaintiff, disseizes Plaintiff of a privilege and vested right for which he paid and to which he was entitled by statute: the right to run for office as a declared Republican candidate.
69. By enacting and enforcing the terms of S.L. 2018-130 against Plaintiff, Defendants will be retroactively changing the rules under which Plaintiff filed, paid and began his campaign. Common Law principles and the Law of the Land frown upon retroactive deprivations of vested rights. Thus, S.L. 2018-130, as applied to Plaintiff, deprives Plaintiff

of his vested right, and thus his liberties, privileges and property without following the Law of the Land and without Due Process.

70. Section 32 of the Declaration of Rights states:

Sec. 32. Exclusive emoluments.

No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

71. S.L. 2018-130, as applied to Plaintiff in his race for Associate Justice of the Supreme Court, provides an exclusive and separate emolument to the incumbent Associate Justice, Barbara Jackson, by retroactively changing the rules that apply to her race and listing her as the sole Republican on the ballot, when Plaintiff was a registered Republican at the time of filing his candidacy. The General Assembly thus removed judicial primaries and substituted its own declaration of which candidate is the standard bearer for the Republican Party to the exclusive benefit of Justice Jackson and to the exclusive detriment of Plaintiff, a registered Republican. Plaintiff is therefore directly and materially harmed by an unconstitutional benefit made by the General Assembly to his opponent.

IMMEDIATE AND IRREPARABLE HARM

72. Upon the override of Governor Cooper's veto and the enactment of S.L. 2018-130, Plaintiff has been immediately and irreparably harmed by the loss of the above rights under the North Carolina Constitution.

73. Moreover, due to the impending August 8, 2018 deadline under which he must withdraw from the race or be listed on the General Election ballot as an unaffiliated candidate, Plaintiff's need for injunctive and declaratory relief from this Court is immediate. The General Assembly did not even consider Senate Bill 3 until after the closing of the filing

period, and the override of the Governor's veto did not take place until August 4, 2018. August 4 was a Saturday, leaving Plaintiff only three days on which the Courts are open to challenge S.L. 2018-130 and protect his rights.

74. In addition, upon information and belief, if Plaintiff does not withdraw from the race before close of business on August 8, 2018, the SBOE will shortly thereafter confirm official ballot language and authorize the printing of ballots for the November 6, 2018 general election which will provide the incorrect information that Plaintiff is not affiliated with any political party.
75. Plaintiff cannot be compensated by monetary relief for the loss of his Constitutional Rights or the loss of the opportunity to run in the General Election of November 6, 2018 as a Republican candidate for Associate Justice of the North Carolina Supreme Court.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment – N.C.G.S. § 1-253, et. seq.-All Defendants)

76. Plaintiff restates and incorporates by reference each of the preceding allegations as if fully set forth herein.
77. A present and real controversy between the parties as to the constitutionality of S.L. 2018-130 as it applies to Plaintiff.
78. S.L. 2018-130 as applied to Plaintiff, unconstitutionally deprives Plaintiff of each of the rights enumerated above, any one of which presents an irreparable and immediate harm to Plaintiff necessitating relief from this Court.
79. Pursuant to N.C.G.S. § 1-253 and NCRCP 57, the Plaintiff is entitled to a declaratory judgment that the following provisions of S.L. 2018-130 are unconstitutional as applied to Plaintiff:

- **Section 1.** amending Section 4.(b) of S.L. 2017-214 as follows:

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate's political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot."

- **Section 3.** amending Section 2.(c) of S.L. 2018-13 to change the required language to be included immediately prior to the placement of the Supreme Court race on the November 6, 2018 ballot as follows:

~~"No primaries for judicial office were held in 2018. The party information listed by each of the following candidates' names indicates is shown only if the candidates' party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office-office and 90 days prior to that filing."~~

SECOND CLAIM FOR RELIEF

**(Temporary and Permanent Injunctive Relief –
N.C. Gen. Stat. § 1-485, NCRCP 65)**

80. Plaintiff restates and incorporates by reference each of the preceding allegations as if fully set forth herein.

81. Because S.L. 2018-130, as applied to Plaintiff, unlawfully deprives Plaintiff of his rights under the North Carolina Constitution, as set forth above, Plaintiff is and will be irreparably harmed by the enforcement of those provisions.

82. Moreover, the deadline imposed by Section 3.1 under which Plaintiff must decide by "[t]he close of business on August 8, 2018" whether to withdraw his candidacy or accept being listed without party designation on the November 6 General Election Ballot,

renders the harm suffered by Plaintiff immediate.

- 83.** The balance of harms is overwhelmingly in favor of Plaintiff, insofar as entry of an injunction barring the enforcement of the provisions of S.L. 2018-130 that require Plaintiff to appear on the General Election Ballot without party designation would preserve his Constitutional rights and his access to the ballot. On the other hand, denial of his requested temporary and permanent injunctive relief would require him to withdraw from the election prior to the close of business August 8, 2018 or be listed falsely as an candidate without party designation, when he paid for and registered for the right to run as a Republican.
- 84.** Authorization of an official ballot by the SBOE and printing of that ballot by county boards of elections prior to the resolution of the issues presented in this Complaint would deprive Plaintiff of the above rights and leave him with no viable or sufficient remedy.
- 85.** There is no corresponding harm to the Defendants arising from entry of this injunctive relief.
- 86.** Without entry of the requested injunctive relief, Plaintiff will be irreparably injured during the pendency of this litigation. Should the August 8, 2018 deadline pass without entry of relief, prior to the resolution of the Constitutional questions at issue in this case, Plaintiff will be required to appear on a ballot under a false party designation, or withdraw from the race entirely, without resolution of his Constitutional claims.

WHEREFORE, Plaintiff prays of the Court for relief as follows:

(1) Declaratory judgment that the following provisions of S.L. 2018-130 are unconstitutional as applied to Plaintiff:

- **Section 1.** amending Section 4.(b) of S.L. 2017-214 as follows:

“A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. ~~The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified~~ If the candidate’s political party affiliation or unaffiliated status is the same on their voter registration at the time they filed to run for office and 90 days prior to that filing, the political party designation or unaffiliated status shall be included on the ballot.”

- **Section 3.** amending Section 2.(c) of S.L. 2018-13 to change the required language to be included immediately prior to the placement of the Supreme Court race on the November 6, 2018 ballot as follows:

“No primaries for judicial office were held in 2018. The party information listed by each of the following candidates’ names indicates is shown only if the candidates’ party affiliation or unaffiliated status is the same as on their voter registration at the time they filed to run for office-office and 90 days prior to that filing.”

(2) Temporary and permanent injunctive relief barring Defendants State of North Carolina, SBOE, or Strach from enforcing against the Plaintiff the provisions of S.L. 2018-130 or otherwise issuing or causing any county Board of Elections to issue any official state publication to the voting public which states that the Plaintiff is anything other than a Republican candidate for Associate Justice of the Supreme Court;

(3) Temporary and permanent injunctive relief barring any change to Plaintiff's verified designation as a Republican candidate for Associate Justice of the North Carolina Supreme Court on the official ballot for the November 6, 2018 General Election;

(4) Temporary and permanent injunctive relief suspending the applicability of the portions of Section 3.1 of S.L. 2018-130 requiring that Plaintiff withdraw from the election by August 8, 2018 if he wishes not to appear on the ballot, and further providing Plaintiff at least three business days from a final ruling on the Preliminary Injunctive Relief sought to notify Defendant SBOE if he wishes to withdraw from the ballot and be so withdrawn;

(5) Temporary and permanent injunctive relief barring Defendant SBOE or Defendant Strach from authorizing official ballot language for the November 6, 2018 election or authorizing the printing of ballots by county boards of elections until such time as this Court so orders;

(6) That this Court maintain Jurisdiction to ensure Plaintiff the opportunity to withdraw if subsequent review by this Court or appellate action overturns any injunctive relief entered by this Court;

(7) That Plaintiff recover all costs of this action, including reasonable attorney fees, pursuant to applicable law; and

(8) Such other and further relief as this Court deems just and appropriate.

SIGNATURE PAGE FOLLOWS

Respectfully submitted, this the 6th day of August 2018.

FORREST FIRM, P.C.

By:

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VERIFICATION

STATE OF NORTH CAROLINA

WAKE COUNTY

Christopher J. Anglin, first being duly sworn, deposes and says that he is the Plaintiff in the above action; that he has read the foregoing Pleading and the contents thereof; that the same are true and correct of his own knowledge except those matters and things stated therein upon information and belief, and as to those, he believes them to be true.

Signature

Sworn to and subscribed before me this
____ day of _____ 2018.

Signature of Notary Public

Printed Name of Notary Public

My Commission Expires: _____

(NOTARIAL SEAL)