

STATE OF NORTH CAROLINA

File No.

WAKE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff

Rebecca A. Edwards c/o Tharrington Smith, LLP

Address

150 Fayetteville Street, Suite 1800

City, State, Zip

Raleigh, North Carolina 27601

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

Name Of Defendant(s)

THE BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT

KIM WESTBROOK, In her Official Capacity and THE STATE OF NORTH CAROLINA

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1

THE BIPARTISAN STATE BOARD OF ELECTIONS and ETHICS ENFORCEMENT
430 N. Salisbury Street Raleigh, North Carolina 27603

Name And Address Of Defendant 2

KIM WESTBROOK, In her Official Capacity as the Executive Director of the Bipartisan State Board of Elections and Ethics Enforcement
430 N. Salisbury Street, Raleigh NC 27603



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
¡IMPORTANTE! ¡Se ha entablado un proceso civil en su contra! Estos papeles son documentos legales. ¡NO TIRE estos papeles! Tiene que contestar a más tardar en 30 días. ¡Puede querer consultar con un abogado lo antes posible acerca de su caso y, de ser necesario, hablar con alguien que lea inglés y que pueda traducir estos documentos!

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (if none, Address Of Plaintiff)

Rebecca Anne Edwards
c/o Tharrington Smith, LLP
150 Fayetteville Street, Suite 1800
Raleigh, North Carolina 27603

Date Issued

8-6-18

Time

9

AM PM

Signature

mm

Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)

This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement

Time

AM PM

Signature

Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

I certify that this Summons and a copy of the complaint were received and served as follows:

DEFENDANT 1

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
- By leaving a copy of the summons and complaint at the dwelling house or usual place of abode of the defendant named above with a person of suitable age and discretion then residing therein.
- As the defendant is a corporation, service was effected by delivering a copy of the summons and complaint to the person named below.

Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

<i>Service Fee Paid</i> \$	<i>Signature Of Deputy Sheriff Making Return</i>
<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

File No.

STATE OF NORTH CAROLINA

WAKE County

In The General Court Of Justice
District Superior Court Division

Name Of Plaintiff
Rebecca A. Edwards c/o Tharrington Smith, LLP
Address
150 Fayetteville Street, Suite 1800
City, State, Zip
Raleigh, North Carolina 27601

CIVIL SUMMONS
ALIAS AND PLURIES SUMMONS (ASSESS FEE)

G.S. 1A-1, Rules 3 and 4

VERSUS
Name Of Defendant(s)
THE BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT
KIM WESTBROOK, In her Official Capacity and THE STATE OF NORTH CAROLINA

Date Original Summons Issued

Date(s) Subsequent Summons(es) Issued

To Each Of The Defendant(s) Named Below:

Name And Address Of Defendant 1
THE STATE OF NORTH CAROLINA
C/O The State Attorney General, Josh Stein
114 W. Edenton Street
Raleigh, North Carolina 27603

Name And Address Of Defendant 2



IMPORTANT! You have been sued! These papers are legal documents, DO NOT throw these papers out! You have to respond within 30 days. You may want to talk with a lawyer about your case as soon as possible, and, if needed, speak with someone who reads English and can translate these papers!
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If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address Of Plaintiff's Attorney (If none, Address Of Plaintiff)
Rebecca Anne Edwards
c/o Tharrington Smith, LLP
150 Fayetteville Street, Suite 1800
Raleigh, North Carolina 27603

Date Issued 8-6-18 Time 9 AM PM
Signature mm
Deputy CSC Assistant CSC Clerk Of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date Of Endorsement Time AM PM
Signature
Deputy CSC Assistant CSC Clerk Of Superior Court

NOTE TO PARTIES: Many counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$25,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

(Over)

RETURN OF SERVICE

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Name And Address Of Person With Whom Copies Left (if corporation, give title of person copies left with)

- Other manner of service (specify)

- Defendant WAS NOT served for the following reason:

DEFENDANT 2

<i>Date Served</i>	<i>Time Served</i> <input type="checkbox"/> AM <input type="checkbox"/> PM	<i>Name Of Defendant</i>
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- By delivering to the defendant named above a copy of the summons and complaint.
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<i>Date Received</i>	<i>Name Of Sheriff (type or print)</i>
<i>Date Of Return</i>	<i>County Of Sheriff</i>

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

REBECCA ANNE EDWARDS,

Plaintiff,

v.

THE BIPARTISAN STATE BOARD OF
ELECTIONS AND ETHICS
ENFORCEMENT; KIM WESTBROOK
STRACH, in her official capacity as
Executive Director of the Bipartisan State
Board of Elections and Ethics Enforcement;
and THE STATE OF NORTH CAROLINA,

Defendants.

**VERIFIED COMPLAINT, MOTION
FOR TEMPORARY RESTRAINING
ORDER, AND MOTION FOR
PRELIMINARY INJUNCTION**

FILED
MAY -5 A 9 25
MMA

INTRODUCTION

1. In 2017, the General Assembly converted elections for District Court judges from non-partisan to partisan elections, and then eliminated primaries for judicial elections in 2018. Without primaries, the General Assembly decided that candidates would be listed on the ballot with their registered party as of the date they filed to run for office. Rebecca Edwards followed those rules. In May 2018, after years spent representing families and children in District Court in Wake County, she decided to run for a Wake County District Court judgeship that had just become vacant. Before filing to run, and because judicial elections were now partisan, Ms. Edwards switched her registered party affiliation from Republican to Democrat to match her political views. On May 31, 2018, she left private practice to focus on her campaign. On the first day of the filing period, June 18, 2018, she filed her notice of candidacy for District Court judge.

2. On August 4, 2018, more than five weeks after the filing period had closed, the General Assembly changed the rules of the election by passing Senate Bill 3. The Bill retroactively added a 90-day requirement for party affiliation for judicial elections, apparently to damage the candidacy of a Republican challenger in the election for a North Carolina Supreme Court seat. If the law is applied to Ms. Edwards, she will have no party affiliation listed on a partisan ballot, denying her fundamental right to express her political beliefs. The ballot will provide the party or unaffiliated status of her four opponents. This distinction will cripple Ms. Edwards' chances in the November 6 election, making it highly unlikely that she will be able to win that election despite her merits.

3. Senate Bill 3 violates Ms. Edwards' due process rights under Article I, Section 19 of the North Carolina Constitution because it retroactively changes the rules for candidates in the middle of an election. Senate Bill 3 violates Ms. Edwards' rights to association and equal protection because it discriminatorily prevents her party affiliation from being listed on the ballot, singling her out in a field of candidates who will be identified by party affiliation. No legitimate state interest justifies these constitutional infringements.

4. This action is an as-applied challenge to the constitutionality of Senate Bill 3, brought exclusively under the North Carolina Constitution. This Court should declare Senate Bill 3 unconstitutional, enjoin the law as applied to Ms. Edwards, and require the State Board to prepare ballots that list her current party affiliation next to her name.

PARTIES

5. Plaintiff Rebecca Edwards is a resident of Wake County, a North Carolina licensed attorney, and a candidate for a District Court seat within the 10th Judicial District that will be filled by election on November 6, 2018.

6. Defendant Bipartisan State Board of Elections and Ethics Enforcement (“State Board”) is the state agency responsible for administering elections in North Carolina.

7. Defendant Kimberly Strach is the executive director of the State Board and a resident of Wake County.

JURISDICTION AND VENUE

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

9. The Court has jurisdiction of this action pursuant to N.C. Gen. Stat. §§ 1-253 *et seq.* & 7A-240.

10. Venue is proper in Wake County Superior Court pursuant to N.C. Gen. Stat. §§ 1-77, 1-81.1, and 1-82.

FACTS

North Carolina’s System of Judicial Elections

11. The judges and justices of North Carolina’s District Courts, Superior Courts, the Court of Appeals, and the Supreme Court are elected by the people. N.C. Const. art. IV, §§ 9, 10, and 16.

12. District Court judges are elected from local judicial districts. N.C. Const. art. IV, § 10.

13. From 2004 until January 1, 2018, all North Carolina judicial races were nonpartisan. During this time, ballots did not list party affiliation of judicial candidates. Judicial elections included a non-partisan primary, with the top two vote-getters advancing to the general election. *See, e.g.,* S.L. 2002-158, § 7.

14. In 2017, the General Assembly converted elections for Superior Court and District Court judges from non-partisan elections to partisan elections, beginning with the 2018 election period. S.L. 2017-3, §§ 5 and 14.

15. Later in 2017, the General Assembly eliminated primaries for judicial offices, including District Court judges, for the 2018 election cycle only. S.L. 2017-214, § 4(a). It set June 18 to June 29, 2018 as the filing period for candidates for judicial offices.

16. Session Law 2017-214 provided that in 2018, judicial candidates “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.” S.L. 2017-214, § 4(a). The law provided that the candidate’s “verified party designation or unaffiliated status shall be included on the ballot.” *Id.*

17. On December 17, 2017, the North Carolina Democratic Party, along with a number of county Democratic Party plaintiffs, filed an action in federal court in the Middle District of North Carolina challenging the constitutionality of Section 4(a) of S.L. 2017-2014. *See N.C. Democratic Party v. Berger*, 306 F. Supp. 3d 803 (M.D.N.C.), *vacated*, 717 Fed. App’x 304 (4th Cir. 2018). The plaintiffs argued, in part, that the elimination of primaries for partisan judicial elections could lead to voter confusion. *N.C. Democratic Party v. Berger*, Plaintiffs’ Trial Brief at 6, No. 1:17-cv-1113, ECF No. 90 (M.D.N.C. May 25, 2018).

18. In their filings in that case, the defendants—which included the Speaker of the House and President Pro Tempore of the Senate—recognized that then-pending Senate Bill 486 would limit the possibility of voter confusion by explaining exactly how party affiliations were listed for each judicial candidate. *N.C. Democratic Party v. Berger*, Defendants’ Joint Reply in

Support of Mot. for Summ. J. at 8 n.4, No. 1:17-cv-1113, ECF No. 98 (M.D.N.C. June 1, 2018). The legislative defendants specifically dismissed the idea of requiring partisan affiliation be set 90 days before filing to run for office, contending that such a requirement was unnecessary and would not be an effective tool to combat voter confusion. *N.C. Democratic Party v. Berger*, Defs.' Trial Br. at 5, No. 1:17-cv-1113, ECF No. 93 (M.D.N.C. May 25, 2018).

19. On June 20, 2018, the General Assembly enacted Senate Bill 486 by overriding a veto of Governor Cooper. The law placed the following statement on ballots for the 2018 election immediately prior to the listing of all judicial races: "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." S.L. 2018-13, Part II, § 2.(c).

Plaintiff's Candidacy for Wake County District Court

20. Ms. Edwards has been a registered voter in Wake County since 2000.

21. Ms. Edwards was admitted to the practice of law in North Carolina after receiving her Bachelor of Arts degree in English, with honors and distinction, from the University of North Carolina at Chapel Hill and her Juris Doctor degree, Cum Laude, from the Campbell University Norman Adrian Wiggins School of Law.

22. Ms. Edwards has been in private practice since 2013, primarily representing clients in family law matters in Wake County.

23. Ms. Edwards is a member of the Family Law section of the North Carolina Bar Association, the Family Law section of the American Bar Association, and the Wake County Bar Association. She has served as chair of the North Carolina Bar Association Family Law Council Children's Issues Committee since 2014, and was co-chair in the prior year.

24. In December 2017, Ms. Edwards was elected by members of the Wake County Bar and Tenth Judicial District to serve a three-year term on the Board of Directors for those entities. Ms. Edwards also serves her community as a volunteer Guardian ad Litem, advocating in court for children in the custody of Wake County Human Services.

25. Ms. Edwards' legal career and volunteer efforts have primarily been in Wake County District Court, including her family law practice and volunteer service as a Guardian ad Litem.

26. When Ms. Edwards first registered to vote after turning age 18, she registered as a Republican.

27. Over the past several years, Ms. Edwards has increasingly supported Democratic causes and candidates, including the election of Governor Roy Cooper. Although she is troubled by the level of partisanship at all levels of government, she has considered herself a Democrat for the past several years and believes that the Democratic Party best reflects her political positions.

28. North Carolina's judicial districts and seats are established by N.C. Gen. Stat. §§ 7A-130 and 7A-133. Wake County constitutes the 10th Judicial District, with 19 District Court judges.

29. On May 16, 2018, Governor Cooper appointed Keith Gregory, a Wake County District Court Judge in the 10th District, to be a Judge on the Wake County Superior Court.

30. Pursuant to N.C. Gen. Stat. § 7A-140, the District Court seat that Judge Gregory vacated will be filled in the November 6, 2018 general election.

31. In May 2018, Ms. Edwards was encouraged by fellow members of the bar and volunteer community to consider running for Judge Gregory's vacated District Court seat. After

deciding to run, Ms. Edwards changed her registered party affiliation to Democrat to reflect her political beliefs and ongoing affiliation with the Democratic Party.

32. Ms. Edwards ended her private practice on May 31, 2018, to focus on campaigning for office.

33. Ms. Edwards filed to run in the District Court election on June 18, 2018, the first day of the filing period. She expected that her affiliation with the Democratic Party would be reflected on the ballot as required by S.L. 2017-214.

34. Ms. Edwards filed her notice of candidacy and paid a filing fee of \$1,167 on June 18, 2018.

35. Ms. Edwards certified a campaign committee on June 18, 2018, and began fundraising for her election campaign.

36. Ms. Edwards has received bipartisan endorsements from prominent members of the local bar, including retired judges from the Wake County Superior and District Courts.

37. Filing for judicial races closed on June 29, 2018. Four candidates filed for Judge Gregory's former seat in addition to Ms. Edwards:

- a. Nicholette Fulton, a registered Unaffiliated;
- b. Walter Rand, a registered Democrat;
- c. John Ratledge, a registered Republican; and
- d. Evan Schreier, a registered Republican.

38. Three candidates filed for Justice Barbara Jackson's seat on the North Carolina Supreme Court:

- a. Barbara Jackson, the incumbent registered Republican;

b. Chris Anglin, a registered Republican who had changed his registered party affiliation less than 90 days before he filed to run in the election; and

c. Anita Earls, a registered Democrat.

39. On July 12, 2018, the Tenth Judicial Bar held an election to select nominees whose names would be forwarded to Governor Cooper for consideration to be appointed to fill Judge Gregory's vacant District Court seat until the November election. Ms. Edwards received the most votes of the five candidates seeking the endorsement.

40. On July 24, 2018, more than three weeks after the filing period for 2018 judicial races closed, the General Assembly called a special session and adopted Senate Bill 3 to modify retroactively the requirements judicial candidates must have met at the time of filing to have their party affiliation listed on the ballot for the 2018 election. (Senate Bill 3 attached as Exhibit 1). Senate Bill 3 establishes two categories of candidates. If a candidate held a single party affiliation for the 90 days before filing for office, the candidate would appear on the ballot with a party identifier. If a candidate changed his or her party affiliation less than 90 days before filing for office, the candidate would appear on the ballot without any party identifier.

41. Senate Bill 3 established a retroactive requirement for filing with a party affiliation without notice to Ms. Edwards and without giving her any way to comply.

42. Upon information and belief, the majority of the General Assembly passed Senate Bill 3 to handicap Mr. Anglin's campaign for the North Carolina Supreme Court, in the hopes that doing so would increase Justice Jackson's chance of winning.

43. Governor Roy Cooper vetoed Senate Bill 3 on July 27, 2018, stating that, "Changing the rules for candidates after the filing period has closed is unlawful and wrong[.]" See Governor Roy Cooper Objections and Veto Message (attached as Exhibit 2).

44. On August 4, 2018, the General Assembly overrode Governor Cooper's veto and Senate Bill 3 was enacted as Session Law 2018-130. Session Law 2018-130 applies retroactively to all candidates running in judicial races in 2018.

The Effect of Senate Bill 3/S.L. 2018-130

45. When Ms. Edwards filed to run for District Court Judge, she did so under a system guaranteeing candidates that their partisan affiliation or unaffiliated status at the time they filed for office "shall be included on the ballot." S.L. 2017-214 § 4(b).

46. Following the passage of Senate Bill 3, Ms. Edwards will no longer appear on the ballot with her partisan affiliation or any other identifier. Each of her opponents will retain their party identifier or designation of unaffiliation. Fulton will appear as a registered Unaffiliated. Rand will appear as a registered Democrat. Ratledge and Schreier will appear as registered Republicans. Ms. Edwards will appear without any partisan affiliation information.

47. Plaintiff is aware of at least three additional judicial candidates who will also appear without a partisan identifier because of Senate Bill 3.

a. In the race for North Carolina Supreme Court, Anglin will no longer appear on the ballot with any partisan identifiers. Earls will appear as affiliating with the Democratic Party, and Jackson will appear as affiliating with the Republican Party.

b. In the race for North Carolina District Court Judge District 26A seat 1, Michael Stading will appear without any partisan identifier.

c. In the race for North Carolina District Court Judge District 19C seat 2, Kevin Eddinger will appear on the ballot without any partisan identifier. Eddinger changed his registration from "Democrat" to "Unaffiliated" on May 14, 2018. Eddinger

is running as an incumbent. No one filed to run against Eddinger. He will therefore appear on the ballot as the only candidate for his election.

48. Under Senate Bill 3, all candidates have until the close of business of August 8, 2018, to withdraw from their races. The stated reason for this allowance is the fact that “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.”

49. Upon information and belief, on August 9, 2018, the State Board will begin printing ballots for the November 6, 2018 general election. Pursuant to Senate Bill 3, the State Board will exclude Ms. Edwards’ party affiliation from the ballot because the retroactive application of the law prohibits party identification for candidates who changed their party affiliation within 90 days of filing for office.

50. Most North Carolina voters formally or informally identify with either the Democratic or the Republican Party. *See* Affidavit of Gary Bartlett (attached as Exhibit 3).

51. Many voters do not know who the judicial candidates are or who they will vote for until they enter the voting booth. Candidates in partisan races are afforded a “voting cue” on the ballot in the form of a party label. When partisan labels are provided on a ballot, many voters rely on that label when determining how to cast their vote. *Id.*

52. In a partisan race, a candidate’s partisan affiliation as shown on a ballot is the most significant determinant of voting behavior. *Id.*

53. Voters are more likely to rely on partisan affiliation information included on the ballot when deciding how to vote in lower-profile or judicial elections. *Id.*

54. Any candidate appearing on the ballot without partisan affiliation would be highly unlikely to win an election if the ballot also included candidates who are shown as affiliated with the Democratic and Republican Parties. This disadvantage would be especially severe for a candidate running for a lower-profile judicial election such as a county District Court judge. *Id.*

55. Because Ms. Edwards will appear on the ballot without any partisan information, but with opponents identified as being Unaffiliated, Democratic, and Republican, it will be nearly impossible for her to win the election regardless of her qualifications and election campaign.

FIRST CAUSE OF ACTION

SENATE BILL 3 VIOLATES PLAINTIFF'S RIGHT TO DUE PROCESS AND FREE ELECTIONS

56. This claim is brought exclusively under the North Carolina Constitution.

57. Plaintiff's rights to due process of law, speech, political association, and the participation in free elections are protected by the North Carolina Constitution. N.C. Const. Art. I, §§ 10, 12, 14, 19.

58. "Retroactivity is generally disfavored in the law ... in accordance with 'fundamental notions of justice' that have been recognized throughout history[.]" *E. Enterprises v. Apfel*, 524 U.S. 498, 532 (1998) (internal citations omitted). The State unconstitutionally deprives a candidate due process of law when it retroactively changes the rules to an election without prior notice, to the candidate's detriment. *Gardner v. Gardner*, 300 N.C. 715, 719, 268 S.E.2d 468, 471 (1980); *Roe v. State of Ala. By & Through Evans*, 43 F.3d 574, 580 (11th Cir. 1995); *Briscoe v. Kuser*, 435 F.2d 1046, 1055 (7th Cir. 1970).

59. Plaintiff relied on the ballot access system in place during the candidate filing period when forming her campaign strategy, deciding to run for office, and filing for office.

60. By retroactively depriving Plaintiff of her right to political association and speech, Senate Bill 3 inhibits Plaintiff's vested rights without due process of law.

61. By retroactively preventing Plaintiff from having an equal place on the ballot as her electoral opponents, Senate Bill 3 obstructs Plaintiff's right to participate in free elections without due process of law.

62. The retroactive application of Senate Bill 3 to Plaintiff is fundamentally unfair, does not serve a legitimate purpose, and fails under any level of judicial scrutiny.

63. Senate Bill 3 is unconstitutional as applied to Plaintiff, and Plaintiff is entitled to a declaratory judgment regarding her rights under Article I of the North Carolina Constitution.

SECOND CAUSE OF ACTION

SENATE BILL 3 VIOLATES PLAINTIFF'S RIGHTS TO ASSOCIATION, FREE SPEECH, AND EQUAL PROTECTION

64. This claim is brought exclusively under the North Carolina Constitution.

65. The North Carolina Constitution protects the rights of citizens to associate and to form political parties for the advancement of common political goals and ideas. *See Libertarian Party of N. Carolina v. State*, 365 N.C. 41, 49, 707 S.E.2d 199, 204 (2011); N.C. Const. Art. I, §§ 12, 14, 19.

66. Statutes affecting ballot access implicate fundamental rights to free speech, assembly, and equal protection. N.C. Const. Art. I, §§ 12, 14, 19.

67. Association with a political party is a fundamental associational right.

68. Candidates for elected office have the right to political association free from discriminatory burdens imposed by the State. *Marcellus v. Virginia State Bd. of Elections*, 849 F.3d 169, 177 (4th Cir. 2017).

69. Senate Bill 3 retroactively denies Plaintiff the ability to associate with and express her affiliation with the Democratic Party. Senate Bill 3 retroactively establishes a system in which Plaintiff's opponents would retain their ability to express their partisan affiliation on the ballot. Senate Bill 3 severely burdens Plaintiff's associational rights.

70. Senate Bill 3 severely disadvantages Plaintiff's ability to prevail in the partisan 2018 judicial election.

71. By allowing all of Plaintiff's opponents to have their party affiliation listed on the ballot for the 2018 election but denying the same right to Plaintiff based on an arbitrary and retroactive 90-day rule, Senate Bill 3 imposes a discriminatory burden on Plaintiff's right to political association and speech.

72. The application of Senate Bill 3 to Plaintiff does not serve a legitimate purpose and fails under any level of judicial scrutiny.

73. Senate Bill 3 is unconstitutional as applied to Plaintiff, and Plaintiff is entitled to a declaratory judgment regarding her rights under Article I of the North Carolina Constitution.

MOTION FOR TEMPORARY RESTRAINING ORDER
AND MOTION FOR PRELIMINARY INJUNCTION

74. The retroactive application of Senate Bill 3 to Plaintiff, depriving Plaintiff of her right to political association, will cause Plaintiff great, immediate, and irreparable harm.

75. The retroactive application of Senate Bill 3 to Plaintiff is in direct conflict with public policy and does not serve a legitimate public interest.

76. The public interests harmed by the retroactive enforcement of Senate Bill 3 to Plaintiff include, but are not limited to, the public's interest in an informed and knowledgeable

electorate, the public's interest in free and fair elections, and the public's interest in the reduction of voter confusion.

77. The public interest requires a prompt order from the Court to halt the printing of any ballots for the November 6, 2018 election that do not list Plaintiff's designated party affiliation.

78. Plaintiff is likely to succeed on the merits of her claims.

79. Providing Plaintiff the injunctive relief sought herein is necessary to protect her rights during the course of this litigation, and the lack of injunctive relief will result in immediate and irreparable harm to the Plaintiff and the public.

80. The balance of the equities and the public interest strongly favor granting the injunctive relief sought by Plaintiff.

81. Accordingly, Plaintiff moves for a temporary restraining order and preliminary injunction barring Defendants from applying Senate Bill 3 to Plaintiff and to the ballots in Plaintiff's election for Wake County District Court judge.

PRAYER FOR RELIEF


WHEREFORE, Plaintiff respectfully requests the Court enter judgment:

1. Issuing a temporary restraining order and preliminary injunction pursuant to North Carolina Rule of Civil Procedure 65 enjoining Defendants from applying the 90-day pre-registration requirement to Plaintiff; enjoining Defendants from approving language for ballots to be used in the 10th Judicial District that states the 90-day pre-registration requirement; and staying the effect of the August 8, 2018 deadline for withdrawal from the election for Wake County District Court judge until disposition of Plaintiff's claim on the merits;

2. Entering a declaratory judgment and injunction, pursuant to N.C. Gen. Stat. § 1-253 *et seq.* and North Carolina Rule of Civil Procedure 65; declaring Senate Bill 3 unconstitutional as applied to Plaintiff;
3. Awarding Plaintiff's fees and costs pursuant to applicable statutory and common law, including N.C. Gen. Stat. §§ 6-20 and 1-263; and
4. Providing Plaintiff such other relief as the court may deem appropriate.

This, the 6th day of August, 2018.

PATTERSON HARKAVY LLP


Narendra K. Ghosh, NC Bar No. 37649
Paul E. Smith, NC Bar No. 45014
100 Europa Drive, Suite 420
Chapel Hill, NC 27517
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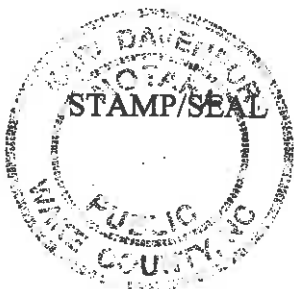
Attorneys for Plaintiff

VERIFICATION

I, REBECCA ANNE EDWARDS, hereby state that I am the Plaintiff in the above-titled action, that I have read the contents of the foregoing **VERIFIED COMPLAINT, MOTION FOR TEMPORARY RESTRAINING ORDER, AND MOTION FOR PRELIMINARY INJUNCTION** and that the contents therein are true and accurate and as to those items alleged upon information and belief, that I believe they are true to the best of my knowledge.

Rebecca Edwards
Rebecca Anne Edwards

Sworn and subscribed before me this the 6th day of August, 2018.



[Signature]
Notary Public

Name: Kari Davenport

My commission expires: April 6, 2020

GENERAL ASSEMBLY OF NORTH CAROLINA
FIRST EXTRA SESSION 2018

SESSION LAW 2018-130
SENATE BILL 3

AN ACT TO CLARIFY POLITICAL PARTY DISCLOSURE ON THE BALLOT FOR
JUDICIAL RACES IN 2018.

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 prior to filing would reduce the opportunity for voter confusion; and

Whereas, the General Assembly finds that a similar requirement exists for candidates to run in a party primary for legislative or other partisan office under G.S. 163A-973; and

Whereas, the General Assembly finds that listing party affiliations 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;

Now, therefore,

the General Assembly of North Carolina enacts:

SECTION 1. Section 4(b) of S.L. 2017-214 reads as rewritten:

"SECTION 4.(b) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics Enforcement in the following form, inserting the words in parentheses when appropriate:

Date _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____,

Signed _____

(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chair or secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in the candidate's discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an



affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

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 as 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 2. Section 2(a) of S.L. 2018-13 reads as rewritten:

"**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 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 3. Section 2(c) of S.L. 2018-13 reads as rewritten:

"**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."~~

SECTION 3.1. Section 4(c) of S.L. 2017-214 reads as rewritten:

"**SECTION 4.(c)** Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office under this section shall have the right to withdraw it at any time prior to either of the following:

- (1) ~~the~~The close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.
- (2) The close of business August 8, 2018."

SECTION 3.2. The State Board of Elections and Ethics Enforcement shall notify, as expeditiously as possible, all candidates for Justices and judges of the General Court of Justice for the 2018 general election who have changed party affiliation or unaffiliated status during the

period from 90 days prior the time the candidate filed to run for office and the date the candidate filed to run for office of the requirements of this act. The State Board of Elections and Ethics Enforcement may give notice under this section by written, telephonic, or e-mail or other electronic means.

SECTION 4. This act is effective when it becomes law and applies to the 2018 elections only.

In the General Assembly read three times and ratified this the 24th day of July, 2018.

s/ Tommy Tucker
Presiding Officer of the Senate

s/ Tim Moore
Speaker of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 12:02 p.m. this 4th day of August, 2018.

s/ James White
House Principal Clerk



Roy Cooper, Governor
State of North Carolina

GOVERNOR ROY COOPER OBJECTIONS AND VETO MESSAGE:

Senate Bill 3, AN ACT TO CLARIFY POLITICAL PARTY DISCLOSURE ON THE BALLOT FOR JUDICIAL RACES IN 2018.

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. All judge elections should be free of partisanship, and continued undermining of these elections creates confusion and shows contempt for the judiciary.

Therefore, I veto the bill.

A handwritten signature in cursive script that reads "Roy Cooper".

Roy Cooper
Governor

The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this the 27th day of July 2018, at 2:53pm for reconsideration by that body.

The Capitol Building, Raleigh, NC 27602
Mail: 20301 Mail Service Center, Raleigh, NC 27699-0301
Phone: (919)814-2100



July 27, 2018
2:53 p.m.
Sarah Holland

AFFIDAVIT OF GARY O. BARTLETT

Gary O. Bartlett, being duly sworn, states:

1. I am an adult resident and citizen of Goldsboro, North Carolina; am under no disability; and am competent to make this affidavit.

2. From August 1993 to May 2013, I was the Executive Director of the North Carolina State Board of Elections. My responsibilities as Executive Director were designated in Chapter 163 of the North Carolina General Statutes and generally covered administration of primary and general elections in North Carolina, including matters such as voter registration, precinct changes, campaign finances, and any other duties that the Board gave me.

3. During my tenure as Executive Director of the State Board of Elections, I was involved in many organizations that advance the effective administration of elections nationwide. I was an active member in the National Association of State Election Directors (better known as NASED). I am a former board member of the Election Center, an association of election officials from across the United States and parts of Canada who get together to help resolve election issues and explore new ways of administering elections. I have also been involved with the Election Center's National Task Force on Election Reform (from 2000 to 2002) and was the national co-chair for three years of the National Task Force on Elections Accessibility (my total involvement was from approximately 1997 to 2002). I served on the Federal Elections Commission Advisory Panel and the Standards Board of the United States Election Assistance Commission.

4. Since leaving the State Board, I have remained involved in election administration in North Carolina and elsewhere in the country, conducting studies of voting alternatives, serving as an expert witness, and making presentations to legislative bodies and national organizations.



such as the Election Assistance Commission and the Democracy Fund. I currently lead a consulting group known as the Ranked Choice Voting Resource Center Team. Through these and other activities I have remained in contact with election officials throughout North Carolina and remain familiar with election administration in the state and with the appointment of state and local election board members.

5. I am intimately familiar with voting patterns and behavior in North Carolina and with academic research regarding voting patterns, voter behavior, and ballot access.

6. Most North Carolina voters formally or informally identify with either the Democratic or the Republican Party.

7. Many voters do not know who the candidates are or who they will vote for until they enter the voting booth. Candidates in partisan races are afforded a "voting cue" on the ballot in the form of a party label. When partisan labels are provided on a ballot, many voters rely on that label when determining how to cast their vote. Research indicates that a candidate's partisan affiliation as shown on a ballot is the most significant determinant of voting behavior.

8. Voters are more likely to lack information about lower-profile elections, such as a race for District Court Judge, than higher-profile elections, such as a race for President, Governor, United States Senator, or United States Representative. Voters are also more likely to lack information about judicial elections compared to elections for other offices. Voters are therefore more likely to rely on partisan affiliation information included on the ballot when deciding how to vote in lower-profile or judicial elections.

9. In my opinion, any candidate appearing on the ballot without partisan affiliation would be highly unlikely to win an election if the ballot also included candidates who are shown

as affiliated with the Democratic and Republican Parties. This disadvantage would be especially severe for a candidate running for a lower-profile judicial election such as District Court Judge.

10. In my experience, when North Carolina has changed its standards regarding candidate qualifications and ballot access, the changes have not applied retrospectively to candidates who have already filed for office and satisfied preexisting requirements.

This concludes my affidavit.

This 3 day of August 2018.

Gary O. Bartlett
Gary O. Bartlett

NORTH CAROLINA

COUNTY OF Wayne

SWORN to and subscribed before me,
this the 3rd day of August 2018.

[Signature] (SEAL)
NOTARY PUBLIC

My commission expires: 01-21-22

