STATEMENT OF CONCERNED LAWYERS
REGARDING TWO PROPOSED CONSTITUTIONAL AMENDMENTS

The General Assembly has proposed that the people of North Carolina approve six amendments to our State Constitution this November. One amendment would result in a massive transfer of executive powers to the General Assembly and another would give the General Assembly the power to select whomever they wanted for appointment to vacancies on the District, Superior and appellate courts.

As concerned lawyers from all political spectrums, and from throughout the State, including all six former Chief Justices of the North Carolina Supreme Court, we believe that:

- The amendment *"to implement a non-partisan merit-based system"* for judicial appointment is partisan and is not merit-based. The proposal in fact grants to the General Assembly the unrestricted authority to narrow the field of nominees to two, on a purely partisan basis, without regard for merit.

- The *"legislative powers"* amendment appropriates the duties and powers of the executive branch to the General Assembly. It eviscerates the doctrine of separation of powers and checks and balances inherent in that doctrine--two fundamental principles of the United States and North Carolina Constitutions.

The combined effect of these amendments would be to empower the legislative branch with control over both the executive and judicial functions. The amendments would destroy our State's balance of power--the separation of powers--and our system of checks and balances. They would strike a severe blow to our most cherished principles of balanced government.

We agree with all five former Governors who oppose the passage of these amendments.

All of us will vote against these two amendments. We urge you to vote against them. And, we urge you to join us in advocating for their defeat.

JUDICIAL SELECTION

One of the checks on overreaching governmental power has been the right of the people to seek redress in the courts. That right depends upon a fair, impartial judiciary. Justice must be administered according to the rule of law by qualified judges free from influence by forces outside the law, including politics and political ideology.

The General Assembly mandated that the proposed amendment ballot question read:

> *Constitutional amendment to implement a non-partisan merit-based system that relies upon professional qualifications instead of political influence when nominating justices and judges to be selected to fill vacancies that occur between judicial elections.*

This ballot description is deceptive. The proposed selection process is not merit-based, and it does not rely upon the professional qualifications of candidates.

Under the current Constitution the Governor fills judicial vacancies, and the appointed judge serves until someone is elected at the next general election. Until recently changed by the General Assembly, the Governor was required to appoint one of three lawyers recommended by each local District Bar throughout the State when appointing district court judges.

Under the label "merit selection," the proposed amendment shifts that power from the Governor to the General Assembly, but with no requirement for any merit-based evaluation. The amendment directs the General Assembly to establish a commission to be appointed by the General Assembly, the Governor, and the Chief Justice which would determine whether a nominee is "qualified . . . as prescribed by law." The only legal qualifications for service as a judge in North Carolina are that one must be a duly licensed North Carolina attorney in good standing and not older than 72. The commission must submit all qualified nominees to the General Assembly. That body, and no one else, is then free to select at least two nominees, regardless of merit, and submits those names to the Governor. The Governor must choose from those nominees.

The commission has no responsibility or obligation to evaluate, examine, or determine whether any nominee has the training, knowledge, skill, or temperament to serve in a judicial role. As with the appointment to executive branch boards and commissions discussed below, the amendment grants the General Assembly practical control over both the nomination and selection processes for filling judicial vacancies. Because many sitting judges were first appointed to vacancies, this process vests significant control over the judicial branch in the General Assembly, abrogating the doctrine of separation of powers.

If this amendment passes, the judicial branch will cease to be a co-equal branch of government. Every vacancy occurring on any trial or appellate court must be filled by a lawyer whom the General Assembly has recommended. Having a bench selected by the legislature will undermine judicial independence and integrity; those chosen by this process will evaluate the laws written by those who appointed them. The legislature chooses judges to fill vacancies in only two states, Virginia and South Carolina. As recently as 2000, every member of the South Carolina Supreme Court was a former legislator, and in Rhode Island (which abandoned legislative appointment in 1994), the system led to outright corruption and impeachment proceedings against two consecutive chief justices.

SEPARATION OF POWERS

Since our founding, the doctrine of separation of powers of our three branches of government and the inherent checks and balances this separation imposes on each branch have shielded the people from arbitrary and abusive governmental action, regardless of which political party controlled the executive or legislative branches.

The separation of powers amendment, (House Bill 913), is entitled "An Act to Amend the Constitution of North Carolina to Establish a Bipartisan Board of Ethics and Elections Enforcement and to Clarify Board Appointments." What that title does not tell is that the amendment radically enhances the power of the General Assembly by essentially abolishing the separation of powers clause of our Constitution.

The relevant section states (emphasis added):

> *The legislative powers of the State government shall control the powers, duties, responsibilities, appointments, and terms of office of any board or commission prescribed by general law. The executive powers of the State government shall be used to faithfully execute the general laws prescribing the board or commission.*

Inherent in the power of the Governor to execute the laws is the power to appoint members of the executive branch. In the last two years, the North Carolina Supreme Court has ruled three times that the General Assembly violated the separation of powers principles of our Constitution by prohibiting the Governor from exercising his inherent power of appointment. Having failed to achieve that objective under the current Constitution, the General Assembly now seeks to overturn those precedents by changing the Constitution because it stands in their way. The Governor appoints over 1950 individuals to 332 state boards and commissions to carry out the will of the people. The proposed amendment would seize that authority from the Governor and authorize the General Assembly to appoint every member of virtually every state board and commission in North Carolina. The Governor would thus be stripped of the power and prestige of the Office, relegating the Governor to essential irrelevance.

This proposed amendment not only shifts the appointment responsibility from the Governor to the General Assembly, it also empowers the General Assembly to control the "powers, duties, [and] responsibilities" of all boards and commissions. Thus, the Governor's inherent power to execute the laws will be appropriated by the General Assembly.

This proposal is contrary to the principles of good government and a long history of allocating authority between our Governor and the General Assembly.

We urge you to vote against these proposed amendments, copies of which are attached.

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