

PURSUANT TO
RULE 5:

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5:30 PM

WAKE COUNTY

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 015636

ROY A. COOPER, III, in his official
capacity as GOVERNOR OF THE STATE
OF NORTH CAROLINA,

Plaintiff,

v.

PHILIP E. BERGER, in his official capacity
as PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE; and
TIMOTHY K. MOORE, in his official
capacity as SPEAKER OF THE NORTH
CAROLINA HOUSE OF
REPRESENTATIVES,

Defendants.

**TEMPORARY RESTRAINING
ORDER**

THIS MATTER came on for telephonic hearing on February 7, 2017, before the undersigned three-judge panel upon the Plaintiff's Motion for Temporary Restraining Order regarding Part III of House Bill 17 (Session Law 2016-126, §§ 38-39) ("the Advice and Consent Amendment"). Upon consideration of all matters of record, including the Amended Complaint, affidavits on file, arguments by counsel for Plaintiff and counsel for Defendants, the Court finds and concludes as follows:

1. This Court has personal and subject matter jurisdiction over this cause.
2. This cause is properly referred to the undersigned three-judge panel.
3. The Plaintiff, in his motion for temporary restraining order, seeks to restrain the operation of the Advice and Consent Amendment, which was enacted by the North Carolina General Assembly on December 19, 2016 and requires the Governor to submit his nominees to head the principal departments to the North Carolina Senate for confirmation.

4. The statutory deadline for the Governor to submit his nominees to the President of the North Carolina Senate is May 15, 2017. *See* N.C. Gen. Stat. § 147-12(a)(3d). Despite the existing May 15 deadline and the fact that the Governor has not yet notified the President of the Senate of the names of the Governor's nominees, the North Carolina Senate has scheduled each of the Governor's nominees to appear for a confirmation hearing between Wednesday, February 8, 2017 and Thursday, March 16, 2017. The first nominee scheduled to appear for a confirmation hearing (on Wednesday, February 8, 2017 at 11:00 a.m) is Larry Hall, who the Governor appointed as Secretary of the Department of Military and Veterans Affairs.

5. Plaintiff's Amended Complaint (¶¶ 70-89, 132-39, 155-65), challenges the constitutionality of the Advice and Consent Amendment on the grounds that it violates Article I, Section 6, and Article III, Sections 1, 5(4), and 5(8) of the North Carolina Constitution. In his Amended Complaint, Plaintiff seeks declaratory relief, a preliminary injunction, and a permanent injunction. Plaintiff has filed motions seeking a temporary restraining order and preliminary injunction.

6. The Court finds and concludes that:

a. The Plaintiff, Governor Roy A. Cooper, III, has shown a likelihood of success on the merits of his challenge.

b. The Plaintiff is likely to sustain irreparable harm unless a temporary restraining order is issued and, in the opinion of the Court, the issuance of a temporary restraining order is necessary for the protection of the Plaintiff's rights during the course of this litigation.

c. The balance of equities favors granting a temporary restraining order. The immediate and irreparable harm caused by the challenged legislation outweighs any

possible harm in preserving the status quo prior to the challenged legislation being implemented. Plaintiff's selections of the individuals to lead the principal executive departments will not be disrupted in their daily activities to faithfully execute the laws. Should the Advice and Consent Amendment ultimately be held constitutional, the confirmation process may proceed at that time.

d. It is not possible, at this early time, for the Court to identify and excise particular provisions of Part III of House Bill 17 likely to be unconstitutional while allowing other portions of Part III of the challenged legislation to take effect.

THEREFORE, the Court concludes that the Plaintiff's Motion for a Temporary Restraining Order should be ALLOWED and that the Defendants are enjoined during the pendency of this litigation and until further order of the Court as follows:

- a. Plaintiff Governor Cooper does not have any duty to take any action to implement or enforce Part III of House Bill 17 (Session Law 2016-126, §§ 38-39) and may so inform the individuals he has appointed to lead the principal departments;
- b. The provisions of General Statutes Chapter 143B remain in effect as they were before the passage of Part III of House Bill 17;
- c. Defendants are restrained and enjoined from taking any action to implement or enforce Part III of House Bill 17 (Session Law 2016-126, §§ 38-39); and
- d. Defendants' "officers, agents, servants, employees, and attorneys, and . . . those persons in active concert or participation with them who receive actual notice in any manner of [this] order by personal service or otherwise" are likewise enjoined from taking any

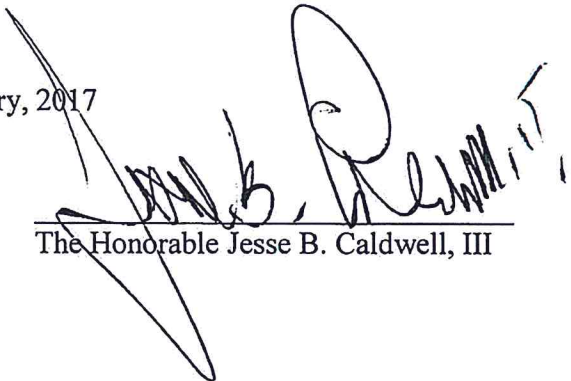
action to implement or enforce Part III of House Bill 17 (Session Law 2016-126, §§ 38-39).

e. In accordance with N.C. Rule Civ. P. 65(c), no security is required of the Plaintiff.

Unless Defendants consent to an extension of this temporary restraining order, Governor-elect Cooper's motion for preliminary injunction shall be heard before the undersigned three judge panel within ten days from the date of this order, on Friday, February 10, 2017, at 11:00 a.m. in a location to be determined by the panel and communicated to counsel through the trial court administrator.

SO ORDERED, this the 7th day of February at 5:30 p.m.

SO ORDERED, this the 7th day of February, 2017



The Honorable Jesse B. Caldwell, III

SO ORDERED, this the 7th day of February, 2017

A handwritten signature in black ink, reading "L. Todd Burke". The signature is written in a cursive style with a horizontal line underneath the name.

The Honorable L. Todd Burke

SO ORDERED, this the 7th day of February, 2017



The Honorable Jeffery B. Foster


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was served on the parties listed below by mailing a copy thereof to each of said parties, addressed, postage prepaid, as follows:

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This the 8th day of February, 2017.



Kellie Z. Myers
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