

NORTH CAROLINA COURT OF APPEALS

ROY A. COOPER, III,
in his official capacity,

Plaintiff-Appellee,

v.

PHILIP 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; and
THE STATE OF NORTH CAROLINA,

Defendants-Appellants.

From Wake County

**GOVERNOR JAMES G. MARTIN,
GOVERNOR JAMES B. HUNT, JR.,
GOVERNOR MICHAEL F. EASLEY,
GOVERNOR BEVERLY E. PERDUE, AND
GOVERNOR PATRICK L. MCCRORY'S
MOTION FOR LEAVE TO FILE AMICUS BRIEF
IN SUPPORT OF GOVERNOR ROY A. COOPER, III**

The five living former Governors of North Carolina, Governor James G. Martin, Governor James B. Hunt, Jr., Governor Michael F. Easley, Governor Beverly E. Perdue, and Governor Patrick L. McCrory, seek the Court's leave

under Appellate Rule 28.1 to file the accompanying brief in support of the Appellee in this appeal, Governor Roy A. Cooper, III.

Consistent with Appellate Rule 37(c), the undersigned have informed the parties that the former Governors would seek leave to file an amicus brief in this appeal. No party opposes the motion.

NATURE OF AMICI'S INTEREST

The five living former Governors of North Carolina have a strong interest in this case: their interest in preserving the executive power, status, and dignity that the Constitution confers on the Office of the Governor.

Other than Governor Cooper, they are the only five living individuals who have been entrusted with the State's executive power. *See* N.C. Const. art. III, § 1. That unique, shared experience has given the former Governors a deep understanding of how the Constitution's separation-of-powers guarantee works in the real world. Based on that experience, the former Governors seek to share their perspective that not only is Senate Bill 749 unconstitutional, but it also lacks any legitimate justification.

Although the former Governors' affiliation is bipartisan (two Republican and three Democratic former Governors), their interest is nonpartisan. This case, after all, is not about partisan politics. It is about the separation of powers—a bedrock constitutional principle as old as the

State of North Carolina itself. That foundational principle transcends politics.

Embracing that foundational principle, the former Governors ask the Court to affirm the three-judge panel's unanimous decision invalidating Senate Bill 749.

REASONS THE BRIEF WOULD BE BENEFICIAL

The former Governors strongly agree with Governor Cooper that the three-judge panel in this case should be affirmed. Indeed, the only two questions before the Court have both been definitively answered by controlling precedent from a mere six years ago. *See Cooper v. Berger*, 370 N.C. 392, 395–400, 422, 809 S.E.2d 98, 100–02, 116 (2018).

But separate and apart from this controlling precedent, the former Governors wish to call special attention to the fact that Senate Bill 749 suffers from a more basic flaw: Not only is it unconstitutional, but it also lacks any legitimate justification for its enactment—a “solution without a problem” that reveals its true motive.

As described in the former Governors' amicus brief, there is no legitimate justification—nor has the General Assembly identified one—for eliminating the Governor's executive power to appoint and supervise the Board of Elections. In short, there is no problem in need of a solution.

Rather, for nearly 125 years, the Board of Elections has faithfully ensured that our elections are lawful and accurate.

In focusing on that issue, the former Governors seek to show the Court that Senate Bill 749 should be viewed as what it really is: the General Assembly's latest attempt to take away the Governor's constitutionally conferred executive power.

ISSUE OF LAW TO BE ADDRESSED

If permitted to participate as amici, the former Governors' brief will address the following question:

Given the Board of Elections' nearly 125-year record of faithfully ensuring lawful and accurate elections, did Senate Bill 749 lack a legitimate justification for eliminating the Governor's executive power to appoint and supervise the Board?

As the former Governors' amicus brief describes, Senate Bill 749 was not driven by any actual need to solve a real-world problem. Instead, it was driven by the General Assembly's continued campaign to seize the Governor's constitutional powers.

* * *

For the reasons above, the former Governors respectfully request that the Court allow this motion and accept their amicus brief.

Respectfully submitted the 29th day of October, 2024.

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*N.C. R. App. P. 33(b) Certification:
I certify that all of the attorneys listed
below have authorized me to list their
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CERTIFICATE OF SERVICE

I certify that, in accordance with Appellate Rule 26(c), I have served a copy of the foregoing document by e-mail on the following:

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This the 29th day of October, 2024.

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