EXHIBIT 2

Declaration of Derb Stancil Carter, Jr., July 21, 2017

IN THE UNITED STATED DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
NO. 1:15-CV-00399

SANDRA LITTLE COVINGTON, *et.al.*,	)
	)
Plaintiffs,	)
	)
v.	)
	)
STATE OF NORTH CAROLINA, *et. al.*,	)
	)
Defendants.	)
	)
	)

DECLARATION OF DERB STANCIL CARTER JR.

Derb Stancil Carter Jr., under penalty of perjury, declares the following:

1. This declaration is based on my personal knowledge, information, and belief.

2. I am over the age of 18 and suffer from no legal incapacity.

3. I am the director of the Chapel Hill office of the Southern Environmental Law Center ("SELC").

4. SELC has nine offices across the Southeast, including offices in Chapel Hill and Asheville, NC, and is widely recognized as the region's foremost environmental organization. SELC works on a full range of environmental issues to protect the South's natural resources and the health and well-being of its people. Although its regional focus is the Southeast, much of its work is national in scope and impact.

5. SELC works in Congress and state legislatures, including the North Carolina State legislature to inform environmental laws; in regulatory agencies to implement environmental

laws and policies; and in the courts to enforce the law, stop the worst abuses, and set important precedents.

6. SELC works collaboratively with more than 100 national, state, and local groups to enhance their efficacy and achieve common conservation goals. It currently has a staff of over 130 individuals, with over 70 attorneys, including some of the nation's leading experts in their respective fields. Additional information is available at www.southernenvironment.org.

7. Based on my understanding of the North Carolina Constitution and a review of relevant caselaw, it is the position of SELC that subsequent to the United States Supreme Court's June 30 issuance of the mandate in *Sandra Little Covington et. al. v. The State of North Carolina et. al.* the North Carolina General Assembly ("NCGA") ceased to be a de facto legislature and assumed usurper status. No. 16-649, 2017 WL 2407469, at *1 (U.S. June 5, 2017).

8. In *Covington* the United States Supreme Court held that twenty-eight seats in the NCGA are the result of an unconstitutional racial gerrymander. Multiple other districts will also need to be redrawn to make the district map constitutional. It is the position of SELC that upon the issuance of the mandate in *Covington*, the legislature as a whole assumed usurper status, rendering future actions void ab initio.

9. As such, it is the position of SELC the NCGA no longer has the authority to override gubernatorial vetoes, and will not have that authority until constitutional districts are drawn and a legal, de jure legislature is elected.

10. The General Assembly passed House Bill 576, entitled "Allow Aerosolization of Leachate," on June 15, 2017. On June 30, 2017, the bill was vetoed by Governor Roy Cooper. If the NCGA overrides the gubernatorial veto, it will be by the votes of the supermajorities created by the unconstitutional gerrymandering.

11. Allowing usurpers to continue to enact laws violates the North Carolina Constitution. Article I § 2 of the North Carolina Constitution ("All political power is vested in and derived from the people" and "is instituted solely for the good of the whole."); Article I §8 ("The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given"); and Article I § 19 ("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.").

12. Therefore, it is the position of SELC that any attempt by the NCGA at the scheduled August 3rd and September 6th legislative sessions to override Governor Cooper's veto of House Bill 576 would be void.

13. Today, July 21, 2017 SELC sent a letter to Governor Roy Cooper, House Speaker Tim Moore, and Senate Pro Tem Phil Berger outlining this position and noting that "if the usurper legislature does attempt to override the veto it opens itself up to litigation wherein the North Carolina State Courts may be asked to issue a declaratory judgment that the law is facially unconstitutional and void ab initio." *See* Attachment 1.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this twenty-first day of July, 2017.

Derb S. Carter, Jr.

SOUTHERN ENVIRONMENTAL LAW CENTER

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July 21, 2017

Governor Roy Cooper
Office of the Governor
20301 Mail Service Center
Raleigh, NC 27699-0301

Speaker Tim Moore
NC House of Representatives
16 West Jones Street, Room 2304
Raleigh, NC 27601-1096

President Pro Tempore Phil Berger
NC Senate
16 West Jones Street, Room 2007
Raleigh, NC 27601-2808

Re: Request Not to Attempt to Override HB 576 "Allow Aerosolization of Leachate"

Governor Cooper, Speaker Moore, and President Pro Tempore Berger:

On June 30, 2017, when the United States Supreme Court issued its mandate in *Covington v. North Carolina*, the North Carolina General Assembly ceased to be a de facto legislature and became usurpers to that office. Article I, § 2 of the North Carolina Constitution proclaims that "all political power is vested in and derived from the people; … and is instituted solely for the good of the whole."

In *Covington*, the United States Supreme Court ruled that 28 districts in the North Carolina legislature were the product of an unconstitutional racial gerrymander. *Covington v. North Carolina* No. 16-649, 2017 WL 2407469, at *1 (U.S. June 5, 2017). As a result, the districts must be redrawn along with many other neighboring districts that will be affected by the reorganization. The North Carolina General Assembly ("the General Assembly") has been writing and passing laws based on these illegal districts for five years now, not as a legally constituted de jure legislature, but as a de facto one. That de facto status is now at an end. *See, e.g., Ryder v. United States*, 515 U.S. 177, 187-88 (1995) (holding that the de facto officer doctrine did not apply prospectively to civilian judges unconstitutionally appointed to the Court of Military Review); *see also State v. Lewis*, 107 N.C. 967, 12 S.E. 457, 458 (1890) (the acts of

an officer elected pursuant to an unconstitutional law are valid if performed *before* the unconstitutionality of the law has been judicially determined (citing *State v. Carroll*, 38 Conn. 449, 473-74 (1871)); *Keeler v. City of Newbern*, 61 N.C. 505, 507 (1868) (mayor and town council lack public presumption of authority to office, making them usurpers).

The General Assembly must cease to draft, debate, and/or pass any new laws until new legislative districts have been drawn and approved and a new, legal,de jure legislature has been constituted. Any new statutes enacted by usurpers have no binding effect and are void ab initio. *State v. Carroll*, 38 Conn. 449, 473-74 (1871) (acts of an officer elected under an unconstitutional law are only valid before the law is adjudged as such); *Van Amringe v. Taylor*, 108 N.C. 196, 12 S.E. 1005, 1007-08 (1891) (actions of usurpers are void).

Article I, § 5 of the North Carolina Constitution proscribes any state law in contravention or subversion of the United States Constitution. No state law adopted in contravention or subversion of the United States Constitution of the United States has "any binding force." The North Carolina Supreme Court ("the Court") has made clear that legislative actions are only valid to the extent they are consistent with the North Carolina Constitution. *Pender County v. Bartlett*, 361 N.C. 491 (2007). The Court has also emphasized that the North Carolina Constitution must be read to conform with its federal counterpart. *Stephenson v. Bartlett*, 355 N.C. 354 (2002). Moreover, where the federal court system needs to be careful not to infringe on state sovereignty, the state court system may go further in crafting a remedy to violations of both federal and state law. *Danforth v. Minnesota*, 552 U.S. 264, 288 (2008) ("The remedy a state court chooses to provide its citizens for violations of the Federal Constitution is primarily a question of state law. Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief,'" quoting *American Trucking Assns., Inc. v. Smith*, 496 U.S., at 178–179, (plurality opinion)).

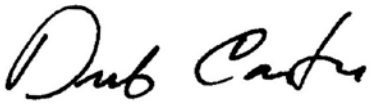
In light of the United States Supreme Court's ruling in *Covington*, it is clear that the current state legislative districts, and by extension the General Assembly itself, violate Article I § 2 of the North Carolina Constitution ("All political power is vested in and derived from the people" and "is instituted solely for the good of the whole."); Article I §8 ("The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given"); and Article I § 19 ("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.").

In Article I, § 35, the framers of the North Carolina Constitution cautioned "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." Now that a definitive order has issued from the highest court in the land declaring 28 legislative districts—and by implication multiple others—unconstitutional, the members of the North Carolina General Assembly are rendered usurpers in office and can no longer legally operate and impose their will on the sovereign people of this state.

Because the General Assembly is now a usurper legislature and their enactments have no binding effect, we believe that the General Assembly is without authority to override Governor Cooper's veto of H576, a bill that would allow landfills to use a new technology to spray liquid

garbage waste into the air throughout North Carolina without a permit. Accordingly, if the usurper legislature does attempt to override the veto it opens itself up to litigation wherein the North Carolina State Courts may be asked to issue a declaratory judgment that the law is facially unconstitutional and void ab initio.

Sincerely,



Derb S. Carter
Director, Chapel Hill Office