

EXHIBIT B

**N.C. Election Board's Response to Petitions
for Writ of Supersedeas or Prohibition in
Cooper v. Berger, No. 367P18 (N.C. Aug. 29,
2018)**

SUPREME COURT OF NORTH CAROLINA

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

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; NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT; and JAMES A. (“ANDY”) PENRY, in his official capacity as CHAIR OF THE NORTH CAROLINA BIPARTISAN STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT.

From Wake County
No. 18 CVS 9805

ELECTIONS BOARD’S RESPONSE TO PETITIONS FOR WRIT OF SUPERSEDEAS OR PROHIBITION, TO MOTION FOR TEMPORARY STAY, AND TO MOTION TO SUSPEND THE APPELLATE RULES

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Under Rules 2, 21(d), 22(c), 23(d), and 37(a) of the North Carolina Rules of Appellate Procedure, defendants-crossclaimants, the North Carolina Bipartisan State Board of Elections and Ethics Enforcement and J. Anthony Penry, in his official capacity as Chair of the Board (collectively, the Board), respectfully respond to the petitions and motions that the Governor of this State filed yesterday.

The Board urges the Court to review the merits of the Governor's petitions. The importance of the issues here, as well as the timing demands of this case, call out for this Court's direct review.

All parties agree that the essential issue before the Court—the fairness of ballot questions that the voters will see when they decide whether to amend their State Constitution—has surpassing importance. By reviewing those ballot questions, this Court can interpret and enforce the standards that protect North Carolinians' right to consider potential constitutional amendments on an informed basis. See, e.g., N.C. Const. art. I, §§ 2, 3; id. art. XIII, §§ 2, 4.

The timing of this case is equally extraordinary. Eight days ago, a three-judge trial court, after extensive briefing and a full day of argument,

granted a preliminary injunction that bars the use of two misleading ballot questions. Although the General Assembly initially appealed from that injunction, it soon changed tack, relied on the injunction, and enacted revised versions of the ballot questions at issue. Those events came to rest just two days ago.

The late-breaking events in this case create a need for swift, decisive judicial review. Federal law requires the Board to make absentee ballots available to voters at least forty-five days before a general election. See, e.g., 52 U.S.C. § 20302(a)(8)(A). This year, that deadline is September 22. Before the Board can make absentee ballots available, it must prepare, print, and test those ballots. Those steps require the Board to begin ballot-related work at least twenty-one days before the deadline for the release of absentee ballots—that is, by Saturday, September 1.

As these timelines show, the Board, the parties, and the voters urgently need a prompt and decisive resolution of this case. The lateness of the hour allows only one court to review the constitutionality of the new ballot questions.

The importance of that judicial review identifies the proper Court to conduct it: this Court, the ultimate authority on North Carolina

constitutional law. Only this Court can resolve this case in a way that will command the respect of all parties and, most importantly, the people of our State.

CONCLUSION

The Board respectfully requests that the Court take all steps needed to review the Governor's petitions promptly and on the merits.

To allow that review to occur under stable conditions, the Board requests that the Court enter a temporary stay in this case, mirroring the one that the Court entered this morning in NAACP, No. 261P18.

Respectfully submitted, this 29th day of August, 2018.

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Rule 33(b) certification: I certify that all of the lawyers listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF SERVICE

I certify that today, I caused the attached document to be served on all counsel of record by email, addressed to:

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This 29th day of August, 2018.

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