NO. _____ TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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| NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,<br><br>Plaintiff,<br><br>v.<br><br>TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity,<br><br>Defendants. | ) | From Wake County<br>18 CVS 9806 |

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**NC NAACP'S PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS**

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NO. _____ TENTH JUDICIAL DISTRICT

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**NC NAACP'S PETITION FOR DISCRETIONARY REVIEW PRIOR TO DETERMINATION BY THE COURT OF APPEALS**

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiff-Petitioner the North Carolina State Conference of the National Association for the Advancement of Colored People ("NC NAACP") respectfully submits this Petition for Discretionary Review pursuant to N.C. Gen. Stat. § 7A-31(b) and North Carolina Rule of Appellate Procedure 15(a).

With this Petition, the NC NAACP requests that the Court accept review of this constitutional dispute—a matter of first impression for the North Carolina courts—before a determination is made by the North Carolina Court of Appeals. As set out below, certification of review is appropriate here because (1) the subject matter of Defendants' appeal carries significant public interest, (2) the case involves legal principles of major significance to the jurisprudence of the State, and (3) any significant delay in final adjudication will result in substantial harm to the administration of our State government.

## INTRODUCTION

For many years, the democratic foundation of North Carolina has been under siege. In 2011, the North Carolina General Assembly drew new statewide legislative maps that deliberately used race to assign African-American voters to racially segregated voting districts and thus diminished their voting power. This act was ultimately determined to be illegal by a unanimous United States Supreme Court in the summer of 2017, when it rendered a final judgment affirming that the General Assembly was the product of an unconstitutional racial gerrymander. *Covington v. North Carolina ("Covington I")*, 316 F.R.D. 117, 176 (M.D.N.C. 2016), *aff'd* 137 S. Ct. 2211 (2017) (per curiam).

By that time, North Carolinians had been living for over five years under the stranglehold of an unrepresentative legislature, in which one party enjoyed a veto-proof supermajority maneuvered out of illegal, racially-segregated voting districts. As the *Covington* court explained, because of this unconstitutional gerrymander, legislators were acting "under a cloud of constitutional illegitimacy" and only new, legal elections could "*return the people of North Carolina to their*

*sovereignty*." *Covington v. North Carolina,* 270 F. Supp. 3d 881, 884 (M.D.N.C. 2017) ("*Covington II*") (emphasis added).

In seeking to remedy this grave assault on voting rights and on the democratic foundation of our State, the court determined that immediate elections were warranted, but came to the reluctant conclusion that it would do more harm than good to order special elections so close to the regularly scheduled 2017 election cycle. *Covington II*, 270 F. Supp. 3d at 902. It was therefore not until January 2019 that new lawmakers were seated after elections were finally held under remedial maps free from the taint of the illegal racial gerrymander.

Before this return to a more representative electorate, however, the unconstitutionally-elected body remained in office, and the question remained: what power did the illegally-constituted body have to act? Mindful of the dictates of state sovereignty, the *Covington* court directed this question to our State courts, noting that it was an "unsettled question of North Carolina law." *Covington II*, 270 F. Supp. 3d at 891.

On February 22, 2019, the Wake County Superior Court addressed this question. The court, in an Order firmly grounded in the principles of our state constitution, ruled that "the General Assembly has the authority to submit proposed amendments to the constitution only insofar as it has been bestowed with popular sovereignty." The court found that "the unconstitutional racial gerrymander tainted the three-fifths majorities required by the state constitution before an amendment proposal can be submitted to the people for a vote, breaking the requisite chain of popular sovereignty between North Carolina citizens and their representatives," and thus "the constitutional amendments placed on the ballot in November 6, 2018 were approved by a General Assembly that did not represent the people of North Carolina." Order (Feb. 22, 2019). Accordingly, the court ordered the two challenged amendments, Session Law 2018-119 (the "Voter ID amendment") and 2018-128 (the "Tax Cap amendment") void *ab initio*.

As described below, this Court's direct review of this important question is necessary at this juncture for several reasons. First, the question presented is a matter of significant public interest. Second,

the case involves legal principles of great significance to the jurisprudence of the State. Third, prompt and final adjudication on this previously unsettled question of state law is needed in order to prevent substantial harm to the administration of our State. The NC NAACP thus respectfully requests this Court take up the case for review before adjudication by the Court of Appeals.

## PROCEDURAL HISTORY

The NC NAACP first filed this matter in Wake County Superior Court on August 6, 2018.[1] After initial briefing and hearings on a motion for Preliminary Injunction and Temporary Restraining Order, subsequent appeals, and factual developments, the NC NAACP filed an amended complaint on September 19, 2018, challenging four proposed constitutional amendments on two separate bases. First, that the General Assembly lacked the authority to place constitutional amendments on the ballot, pursuant to N. C. Const. art. I §§ 2, 3, 35 and art. XIII § 4; and second, that the language used to present the

[1] In addition to the NC NAACP, Clean Air Carolina was also originally a plaintiff in this case. On Defendants' motion, the lower court dismissed Clean Air Carolina for lack of standing in its February 22, 2019 Order. While Clean Air Carolina maintains that the decision was in error, it is not appealing that decision.

amendments to the people was vague, misleading and incomplete in violation of N. C. Const. art. XIII § 4.

On November 1, 2018, the NC NAACP moved for partial summary judgment as to the first of these claims and asked the court to find that the legislation that placed the amendments on the ballot was void *ab initio*. In addition, the NC NAACP requested injunctive relief to enjoin the constitutional amendments from taking effect.

On November 13, 2018, Defendants filed a motion to dismiss, and on January 3, 2019, filed a brief in support of that motion and in opposition to Plaintiff's motion for partial summary judgment. After briefing and a hearing, on February 22, 2019, the Wake County Superior Court granted NC NAACP's request for partial summary judgment, rendering N.C. Session Laws 2018-119 and 2018-128, and their ensuing constitutional amendments, void.

On February 25, 2019, Defendants filed a notice of appeal in the North Carolina Court of Appeals. Subsequently, Defendants filed a Motion for Temporary Stay and a Petition for Writ of Supersedeas in the Court of Appeals, which were granted. Defendants docketed their appeal on May 1, 2019.

The NC NAACP now asks that this Court assume immediate jurisdiction over Defendants' appeal of the Order from the Superior Court as well as any related petitions or motions.

## STATEMENT OF FACTS

In June 2017, the U.S. Supreme Court issued a final ruling affirming that the North Carolina General Assembly was unlawfully-constituted on the basis that legislative leaders had illegally packed African-American voters into an artificially small number of racially segregated districts. *Covington I*, 316 F.R.D. at 176, *aff'd* 137 S. Ct. at 2211. This sweeping unconstitutional racial gerrymander affected at least 77 out of North Carolina's 100 counties and 83 percent of the State's population, and resulted in the federal courts striking down 28 legislative districts. Remedying these racially discriminatory maps required redrawing 117 districts, implicating over two-thirds of the seats in both houses of the General Assembly and thus the legitimacy of the governing party's supermajority.

In remedying this unconstitutional racial gerrymander, the court determined that immediate elections were warranted and needed to restore popular sovereignty to our State. *Covington II*, 270 F. Supp.

3d at 902. Ultimately, however, the court reluctantly concluded that it would do more harm than good to order special elections so close to the regularly-scheduled 2017 election cycle, noting with disapproval that this reality had been brought about by the legislature's own procedural maneuverings to delay the drawing of remedial maps. *Id.* (declining to order special elections due to concerns that the "compressed and overlapping schedule such an election would entail is likely to confuse voters, raise barriers to participation, and depress turnout").

The *Covington* court also determined that the question of the limits on an unconstitutionally-constituted legislature's authority in the period before new elections could be held to remedy the unconstitutional gerrymander was an "unsettled question of state law." *Covington,* 270 F. Supp. 3d at 901. The federal court thus concluded that this question was "more appropriately directed to North Carolina courts, the final arbiters of state law." *Id.*

Despite being aware of this unsettled question, on June 28, 2018, at the end of the final regular legislative session of the since-unseated, illegal supermajority, the leadership of the General Assembly went

beyond its day-to-day business and passed legislation that would place six significant amendments to the North Carolina constitution before the voters. 2018 N.C. Sess. Laws 117; 118; 128; 119; 96; and 110. The two amendments at issue in this case, the Tax Cap amendment (Session Law 2018-119) and the Voter ID amendment (Session Law 2018-128), passed the constitutionally-required three-fifths threshold for placing a constitutional amendment on the ballot by just one and two votes respectively.[2] These two proposed amendments were placed on the November 2018 ballot and passed.

The November 2018 election also marked the first opportunity since 2010 for North Carolinians to elect members of the General Assembly under maps cured from the distorting influence of the unlawful racial gerrymander. Prior to that, North Carolinians had

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[2] 2017 NC General Assembly Roll Call vote on Voter ID Amendment: https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/S/792 (Senate);
https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/H/1260 (House).
2017 NC General Assembly Roll Call vote on Tax Cap Amendment: https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/S/775 (Senate);
https://www.ncleg.gov/Legislation/Votes/RollCallVoteTranscript/2017/H/1286 (House).

lived for over half a decade under an unconstitutional body that did not reflect the will of the people. Subsequent to the November 2018 election, a single political party no longer holds a supermajority in either the North Carolina House or Senate.

## REASONS WHY THIS COURT SHOULD EXERCISE DISCRETIONARY REVIEW

The NC NAACP respectfully requests, pursuant to N.C. Gen. Stat. § 7A-31(b) and North Carolina Rule of Appellate Procedure 15(b), that the Court accept this case for discretionary review before a determination is made by the Court of Appeals. Under N.C. Gen. Stat. § 7A-31(b), direct review is appropriate "when in the opinion of the Supreme Court any of the following apply":

> (1) The subject matter of the appeal has significant public interest.
>
> (2) The cause involves legal principles of major significance to the jurisprudence of the State.
>
> (3) Delay in final adjudication is likely to result from failure to certify and thereby cause substantial harm.
>
> (4) The work load of the courts of the appellate division is such that the expeditious administration of justice requires certification.
>
> (5) The subject matter of the appeal is important in overseeing the jurisdiction and integrity of the court system.

N.C. Gen. Stat. § 7A-31(b). The circumstances presented here satisfy at least three of these independent bases for the Court's certification of discretionary review.

First, this case touches upon a matter of significant public interest, implicating the very basis of our democracy, as well as the process that governs how North Carolina's foundational legal document may be amended. All North Carolinians will be affected by the ruling. This Court has previously accepted similar petitions for direct review prior to consideration by the Court of Appeals.

The case also involves legal principles of major import to our State. As the *Covington* court made clear, the limit on the authority of an illegally racially-gerrymandered General Assembly to act is an unsettled question of state law. In the instant matter, resolving this question implicates both the power held by a body that does not represent the people of North Carolina, as well as the long-standing safeguards set in place to protect our State's foundational legal document. Defendants' defense—that this question cannot be resolved because it is non-justiciable—also raises a legal issue of significant import and would undermine prior precedent from this Court.

Finally, adjudication by this Court prior to review by the Court of Appeals will prevent substantial harm to the people of North Carolina. As Defendants indicated in their Petition for a Writ of Supersedeas before the Court of Appeals, all parties agree that there is a need for swift adjudication. The question of the validity of the constitutional requirement for photo voter ID, in particular, should be promptly adjudicated. Beginning in the 2020 election cycle, which is less than a year away, voters will be required to present a photo ID in order to vote, *see* N.C. Sess. L. 2019-4, with statewide implementation of the photo voter ID, as required by N.C. Sess. L. 2018-144, currently underway. It would be prudent for this case to be fully resolved, at the very least, in advance of the start of the 2020 election cycle.

## I. The subject matter of the appeal carries significant public interest because it implicates fundamental questions about North Carolina's democracy and our Constitution.

This Court may take up direct review of a case where, as here, "[t]he subject matter of the appeal has significant public interest." N.C. Gen. Stat. § 7A-31(b)(1). The present case involves fundamental questions about our democracy and our constitution and will impact all

North Carolinians. It is thus the subject of significant public interest, and direct review is warranted.

This case addresses a fundamental question about our democratic system of government in North Carolina: Can a General Assembly that is infected by a sweeping, unconstitutional racial gerrymander that produced an unrepresentative and illegal supermajority, be permitted to use that supermajority to amend our State's constitution?

This question arises out of an extreme and unprecedented set of circumstances in North Carolina. Over seven years ago, the General Assembly enacted unconstitutionally racially-gerrymandered maps that packed African-American voters into districts in a manner unauthorized by law in order to diminish their power. This illegal racial gerrymander was one of the "largest . . . ever encountered by a federal court," and remedying the constitutional violation required that nearly two-thirds of House and Senate districts be redrawn. *See Covington I,* 316 F.R.D. at 128, 176*; Covington v. North Carolina* ("*Covington III*"), 283 F. Supp. 3d 410, 419-20 (M.D.N.C. 2018), *aff'd in part, rev'd in part*, 138 S. Ct. 2548 (2018).

As the *Covington* court noted, this unlawful and large-scale segregation of voters by race struck "at the heart of the substantive rights and privileges guaranteed by our Constitution." *Covington II*, 270 F. Supp. 3d at 890. Indeed, "unjustifiably drawing districts based on race encourages representatives 'to believe that their primary obligation is to represent only the members of [a particular racial] group, rather than their constituency as a whole'"—a message that is "altogether antithetical to our system of representative democracy." *Id.* at 891 (quoting *Shaw v. Reno*, 509 U.S. 630, 648 (1993)).

Defendants' unconstitutional racial gerrymander thus "interfered with the mechanism by which the people confer their sovereignty on the General Assembly and hold the General Assembly accountable," leaving North Carolinians governed by legislators that were "acting under a cloud of constitutional illegitimacy." *Id.* at 891, 897.

As a court of federal jurisdiction and thus reluctant to over-step the bounds of state sovereignty, however, the *Covington* court left open the state law question of how much power this unconstitutional body had to act before new elections could be held. That question, which is at

issue in the present case, goes to the heart of our democratic order and is a matter of significant public interest.

The unconstitutional racial gerrymander in this case was so extreme that it overturned the power structure in our State and created an unaccountable and unrepresentative supermajority from one party. North Carolinians were forced to wait for over six years to have sovereignty returned to them in the form of a more representative and accountable legislative branch. This case thus concerns the protection of our most fundamental values of representative democracy and popular sovereignty, and, as discussed below in Part II, raises important questions about the nature of our Constitution and how it may be amended. Every North Carolinian will feel the effects of the case.

The constitutional dispute at issue in this case is at least of the same magnitude of public interest, if not greater, than similar cases in

which this Court has previously certified review prior to adjudication by the Court of Appeals.[3]

Moreover, this case will also determine the state income tax rate cap and whether our constitution includes a requirement for photo voter ID. These substantive changes to the income tax cap and the right to vote in our State have bearing on most North Carolinians, further

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[3] *See, e.g.*, *Cooper v. Berger*, No. 52P17-2, 2017 N.C. LEXIS 643, (N.C. Jul. 19, 2017) (granting bypass petition to decide constitutionality of election law legislation); *Fisher v. Flue-Cured Tobacco Coop. Stabilization Corp.*, 369 N.C. 202, 794 S.E.2d 699 (2016) (Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals in case concerning class certification of tobacco farmers); *Hart v. State*, 773 S.E.2d 885, 2014 N.C. LEXIS 1246 (N.C. Oct. 10, 2014) (appeal involving constitutionality of private school "voucher" program); *Richardson v. State*, 773 S.E.2d 885, 2014 N.C. LEXIS 1246 (N.C. Oct. 10, 2014) (same); *Cubbage v. Bd. of Trs. of the Endowment Fund*, 773 S.E.2d 884, 2014 N.C. LEXIS 1245 (N.C. Oct. 10, 2014) (appeal involving constitutionality of proposed sale of Hoffman Forest); *State v. Young*, 773 S.E.2d. 882, 2014 N.C. LEXIS 1243 (N.C. Mar. 12, 2014) (appeal involving constitutionality of sentence of life without parole for juvenile); *State v. Seam*, 773 S.E.2d 882, 2014 N.C. LEXIS 1241 (N.C. Mar. 12, 2014) (same); *State v. Perry*, 773 S.E.2d 882, 2014 N.C. LEXIS 1242 (N.C. Mar. 12, 2014) (same); *Hoke Cty. Bd. of Educ. v. State*, 579 S.E.2d 275, 2003 N.C. LEXIS 408 (N.C. Mar. 18, 2003) (appeal involving claim that State failed in its constitutional duty to provide sound basic education); *Pope v. Easley*, 548 S.E.2d 527, 2001 N.C. LEXIS 466 (N.C. May 3, 2001) (appeal involving constitutionality of legislative change to size of Court of Appeals); *Williams v. Blue Cross Blue Shield*, 552 S.E.2d 637, 2001 N.C. LEXIS 703 (N.C. July 19, 2001) (appeal involving constitutionality of employment provisions of county ordinance and enabling act for ordinance); *Bailey v. State*, 541 S.E.2d 141, 1999 N.C. LEXIS 1233 (N.C. Nov. 4, 1999) (appeal involving constitutional challenge to tax on retirement benefits).

heightening the public interest in the outcome of this case. Indeed, developments in the case have been widely discussed in public fora.[4] In addition to news articles, there have been numerous editorials written on both sides of the dispute,[5] legislators and former Supreme Court Justices have debated the merits of the case in public,[6] and North

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[4] *See, e.g.*, Will Doran, *N.C. Judge Throws Out Voter ID and Income Tax Constitutional Amendments*, NEWS AND OBSERVER, Feb. 22, 2019, https://www.newsobserver.com/news/politics-government/article226652589.html; Katie Wadington, *NC Court Cites Gerrymandering and Rules New Constitutional Amendments as Invalid*, ASHEVILLE CITIZEN-TIMES, Feb. 22, 2019, https://www.citizen-times.com/story/news/local/2019/02/22/nc-court-cites-gerrymandering-voids-amendments-including-voter-id/2956429002/; Ian Millhiser, *Court Hands Down a Stunningly Aggressive Attack on Illegal Gerrymandering,* THINK PROGRESS, Feb. 25, 2019, https://thinkprogress.org/court-hands-down-a-stunningly-aggressive-attack-on-illegal-gerrymandering-63af167072c6/; Will Doran, *Does Voter ID Still Exist in North Carolina? It's a Complicated* Question, NEWS AND OBSERVER, March 4, 2019, https://www.newsobserver.com/news/politics-government/article226810804.html.

[5] *See, e.g.*, Robert F. Orr, Opinion, *Nothing 'Wild-Eyed' About Judge's Ruling on Legislature's Legitimacy*, NEWS AND OBSERVER (Feb. 26, 2019), https://www.newsobserver.com/opinion/article226813589.html; Editorial, *Illegal Districts, Illegal Elections, Illegal Amendments*, TRIAD CITY BEAT (Feb. 28, 2019), https://triad-city-beat.com/editorial-illegal-districts-illegal-elections-illegal-amendments/; John Hood, Opinion, *John Hood: Amendment Decision Endangers Democrats*, WINSTON-SALEM JOURNAL (Mar. 2, 2019), https://www.journalnow.com/opinion/columnists/john-hood-amendment-decision-endangers-democrats/article_24c20173-7d32-5e89-b496-f844022f3b4a.html.

[6] *See, e.g.*, Spectrum News, Capitol Tonight, Feb. 28, 2019, https://spectrumlocalnews.com/nc/charlotte/capital-tonight-interviews/2019/02/28/state-lawmakers-on-amendment-ruling (Representatives Grier Martin and David Lewis discussing the case); Spectrum News, Capitol

Carolina Governor Roy Cooper has taken questions about the case.[7] Public interest in this case is thus significant and this Court's direct review is warranted.

## II. This case involves legal principles of major significance to the jurisprudence of the State.

N.C. Gen. Stat. § 7A-31(b)(2) provides a separate basis for this Court's discretionary review where "[t]he cause involves legal principles of major significance to the jurisprudence of the State." This case, which implicates our most fundamental constitutional principles, as well as the nature of amending the constitution, easily provides such a basis.

As this Court has noted, there is nothing more significant to our State jurisprudence than the legitimacy of our constitution and the guarantee that it is reflective of popular sovereignty. "It is axiomatic under our system of government that the constitution within its

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Tonight, Feb. 26, 2019 (Counsel for NC NAACP and former Supreme Court Justice Barbara Jackson discussing the case).

[7] Associated Press, *Cooper: Ruling voiding voter ID amendment has 'sound basis'"* WLOS (Mar. 6, 2019), https://wlos.com/news/local/cooper-ruling-voiding-voter-id-amendment-has-sound-basis.

compass is supreme as the established expression of the will and purpose of the people." *In re Trusteeship of Kenan*, 261 N.C. 1, 7, 134 S.E.2d 85, 90 (1964). And, to ensure this mandate, "[i]t is the state judiciary that has the responsibility to protect the state constitutional rights of the citizens; this obligation to protect the fundamental rights of individuals is as old as the State." *State v. Harris*, 216 N.C. 746, 6 S.E.2d 854 (1939).

Here, this Court is presented with a case of first impression about the limits of power of an illegally-constituted body and the sanctity of the constitutional amendment process. The question implicates the constitutional guarantees set out in our declaration of rights that "all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole" N.C. Const. art. I, § 2, and that the people of North Carolina "have the inherent, sole and exclusive right of regulating the internal government and . . . of altering . . . their Constitution." *Id.* § 3. Moreover, the question concerns the future legitimacy of the strict two-step process for constitutional amendment proscribed by N.C. Const. art. XIII § 4 that has governed our State for almost two centuries.

Indeed, in their authoritative treatise on the North Carolina Constitution, Justice Newby and Professor John Orth refer to the "awesome power" of the constitutional amendment.[8] The authors note that the requirement that a three-fifths supermajority of both houses of the General Assembly must agree to any amendment is one that has been in place for as long as there has been a mechanism for constitutional amendment[9]—an unbroken history that makes clear that the founders of our democracy intended for amending the constitution to be a demanding, representative, and considered action, and, therefore, necessarily difficult.[10]

Defendants, first through gerrymandering, and now in its arguments to the court in this case, attempt to inflict irreparable damage on this awesome process. Permitting the use of an unconstitutionally-elected supermajority to meet the critical first step

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[8] JOHN V. ORTH & PAUL M. NEWBY, THE NORTH CAROLINA STATE CONSTITUTION 201 (Oxford Commentaries on the State Constitutions of the United States) (2d ed. 2013).

[9] *Id.*

[10] This intent has been adhered to and reinforced over our history. For example, the supermajority requirement to call a constitutional convention was debated and set in 1835 and is even more stringent, requiring a two-thirds majority of legislators to call for a convention.

in the constitutional amendment process would entirely undermine this heightened safeguard that ensures that constitutional amendments are representative of the people's will. Similarly, Defendants' arguments that popular ratification of a proposed constitutional amendment is all that is required[11] would essentially write out of the constitution the three-fifths threshold requirement.[12] A final ruling from this Court is needed to preserve this safeguard in our constitutional amendment process.

The arguments offered by Defendants in this matter also involve important matters of constitutional law. Defendants have argued that the judiciary does not have jurisdiction to consider the limits of an unconstitutionally-constituted body's authority and maintain that the issue is a non-justiciable political question. Such a defense has serious implications for the important role of the judicial branch in serving as a check on the powers of a legislative branch that contravenes the

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[11] *See, e.g.*, Def. Pet. For Writ of Supersedeas at 15.

[12] The three-fifths threshold requirement also offers an important protection to our State's minority groups. There are many examples outside of the constitutional amendment context of where "direct democracy" and a simple majority vote can be employed to disadvantage minority groups. *See* Barbara S. Gamble, *Putting Civil Rights to a Popular Vote*, 41 AM. J. POL. SCI. 245, 257-60 (1997).

constitution and does not represent the people of North Carolina, as well as its role in safeguarding North Carolina's foundational legal document from illegal amendment.

Our constitution provides that "[a] frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." *Id.* art. I § 35. And this Court has often held the political question doctrine applies to those controversies that "revolve around policy choices and value determinations," not to the interpretation of the constitution itself. *Cooper v. Berger*, 370 N.C. 392, 408, 809 S.E.2d 98, 107 (2018) (citing *Bacon v. Lee*, 353 N.C. 696, 717, 549 S.E.2d 840, 854 (2001)).

Here, the question before the Court relates to the authority of the General Assembly to place amendments on the ballot, not a debate over the substance of the amendments themselves. Defendants' argument—that such a fundamental issue of constitutional construction is non-justiciable—would be a major departure from this Court's previous jurisprudence, and thus raises a legal question of great significance that should be reviewed by this Court.

## III. Absent discretionary review, delay in final adjudication will cause substantial harm to the administration of our State government.

This Court's discretionary review is also appropriate where "[d]elay in final adjudication is likely to result from failure to certify and thereby cause substantial harm." N.C. Gen. Stat. § 7A-31(b)(3).

Such is the case here. If this appeal were to be decided by the Court of Appeals before returning to this Court, the final resolution of the case would likely take at least an additional year. Such delay would cause substantial harm to the people of North Carolina.

The case implicates two substantive amendments to our constitution, a photo voter ID requirement and a cap on the state income tax rate. The need for a prompt and final resolution of this case is most acutely apparent as to the Voter ID amendment.

The 2020 primary elections—the first at which a photo voter ID may now be required—is, at this point, less than a year away.[13] Resolution in this case substantially prior to the March 2020 primary

[13] Even while the requirement that voters present a photo ID has been delayed until the 2020 primary election, implementation requirements and administrative rulemaking deadlines set out in Session Law 2018-144 continue. *See* N.C. Sess. L. 2019-4.

elections is necessary to bring clarity. Prompt adjudication by this Court, foregoing an intervening review by the Court of Appeals, is the only available path to ensure that the issues in this case are resolved within that timeframe.

In their Petition for Writ of Supersedeas, Defendants themselves noted the import of the issues involved, and argued that prompt adjudication was necessary. While the NC NAACP does not agree with much of Defendants' characterization of the implications of this case, the parties are in full agreement that an expeditious final resolution of the issues presented here is warranted, as they have both tangible and intangible ramifications for our democracy.

## ISSUES FOR WHICH REVIEW IS SOUGHT

The NC NAACP respectfully requests that the Court exercise discretionary review over each of the proposed issues on appeal set forth by Defendants in the Record on Appeal filed in the Court of Appeals:[14]

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[14] As we informed Legislative Defendants, the NC NAACP objects to Issues on Appeal numbers 3-5. Specifically, Defendants' issue 3 suggests that the trial court could have granted partial summary judgment in Defendants' favor, but Defendants sought no such relief. Defendants' issues 4 and 5 seek to appeal the appropriateness of the remedy imposed by the trial court, which Defendants have not previously contested or preserved for appeal.

1. Did the trial court err in granting Plaintiff's motion for partial summary judgment?

2. Did the trial court err in denying Legislative Defendants' motion to dismiss?

3. Alternatively, did the trial court err in failing to grant partial summary judgment in favor of Defendants under N.C. Gen. Stat. 1A-1, Rule 56 (c)?

4. Did the trial court err in voiding N.C. Session Laws 2019-119 and 2018-128?

5. Did the trial court err in voiding the amendments to the N.C. Constitution effectuated by N.C. Session Laws 2018-119 and 2018-128 and the affirmative votes by a majority of North Carolina citizens as to each amendment?

## CONCLUSION

For the foregoing reasons, the NC NAACP respectfully requests that this Court allow this Petition for Discretionary Review and exercise discretionary review over the appeal in this matter, prior to adjudication by the Court of Appeals.

Respectfully submitted this 1st day of May, 2019.

/s/ Kimberley Hunter

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## CERTIFICATE OF SERVICE

The undersigned attorneys hereby certify that they served a copy of the NC NAACP's Petition for Discretionary Review Prior to Adjudication by the Court of Appeals upon the parties via e-mail and by U.S. mail to the attorney for Defendants named below:

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This the 1st day of May, 2019.

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