

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

NORTH CAROLINA DEMOCRATIC
PARTY; CUMBERLAND COUNTY
DEMOCRATIC PARTY; DURHAM
COUNTY DEMOCRATIC PARTY;
FORSYTH COUNTY DEMOCRATIC
PARTY; GUILFORD COUNTY
DEMOCRATIC PARTY;
MECKLENBURG COUNTY
DEMOCRATIC PARTY; ORANGE
COUNTY DEMOCRATIC PARTY; and
WAKE COUNTY DEMOCRATIC
PARTY,

Plaintiffs,

v.

PHILLIP 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; THE STATE OF
NORTH CAROLINA; THE NORTH
CAROLINA BIPARTISAN STATE
BOARD OF ELECTIONS AND ETHICS
ENFORCEMENT; and KIMBERLY
STRACH, in her official capacity as
EXECUTIVE DIRECTOR OF THE
NORTH CAROLINA BIPARTISAN
STATE BOARD OF ELECTIONS AND
ETHICS ENFORCEMENT,

Defendants.

CIVIL ACTION NO. 1:17-cv-1113

COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF

Plaintiffs North Carolina Democratic Party (“NCDP”), Cumberland County Democratic Party, Durham County Democratic Party, Forsyth County Democratic Party, Guilford County Democratic Party, Mecklenburg County Democratic Party, Orange County Democratic Party, and Wake County Democratic Party, by and through their undersigned counsel, for their complaint against Defendants State of North Carolina, Phillip 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, the North Carolina Bipartisan State Board of Elections and Ethics Enforcement (“SBOE”), and Kimberly Strach, in her official capacity as Executive Director of the SBOE, allege as follows:

INTRODUCTION

1. This is an action to protect the First and Fourteenth Amendment rights of Plaintiffs, to ensure that Plaintiffs are not deprived of their most fundamental and constitutionally protected right of political association, and to protect Plaintiffs from infringement of their right of association by the State. *See Democratic Party of United States v. Wis.*, 450 U.S. 107, 121-22, (1981) (citing *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975); *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973); *Williams v. Rhodes*, 393 U.S. 23, 30-31 (1968); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)). The First Amendment protects the process by which a political party selects a standard bearer for election to public office who best represents the party’s policy preferences. *See Cal.*

Democratic Party v. Jones, 530 U.S. 567, 575 (2000). Primary elections are the most critical part of a party's process to select the standard bearer for the party's message. *Id.* at 575-76.

2. Section 4(a) of North Carolina Session Law 2017-214 ("S.L. 214") eliminates primaries for partisan judicial elections in 2018, thereby depriving Plaintiffs of their associational rights protected by the First and Fourteenth Amendments of the U.S. Constitution.

3. Plaintiffs requests that this Court find the challenged provisions of S.L. 214 unlawful under the First and Fourteenth Amendments to the U.S. Constitution and that the Court enter declaratory and injunctive relief preventing Defendants from implementing or enforcing Section 4(a) of S.L. 214.

PARTIES

4. Plaintiff NCDP is a political party defined in N.C. Gen. Stat. § 163-96.¹ Its purposes are to (i) bring people together to develop public policies and positions favorable to NCDP members and the public generally, (ii) identify candidates who will support and defend those policies and positions, and (iii) persuade voters to cast their ballots for those candidates.

5. Plaintiffs Cumberland, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake County Democratic Parties are the official political committees for Democrats

¹ Session Law 2017-6 directed the Revisor of Statutes to recodify Chapter 163 of the North Carolina General Statutes into a new Chapter 163A of the General Statutes, however, some parts of Chapter 163 have not yet been recodified. Therefore, hereinafter this Chapter will be referred to as Chapter "163".

in Cumberland, Durham, Forsyth, Guilford, Mecklenburg, Orange, and Wake Counties in North Carolina, respectively. They are separate and independently registered and reporting political committees from Plaintiff NCDP. Their purposes are to: (i) bring people together to develop public policies and positions favorable to their members and the public generally in their respective counties, (ii) identify candidates who will support and defend those policies and positions in their respective counties, (iii) persuade voters to cast their ballots for those candidates in their respective counties, and (iv) provide grassroots energy and organization for Democrats in their respective counties.

6. Defendant State of North Carolina is a sovereign state. The State's laws, as enacted by the General Assembly, are being challenged as unconstitutional in this action.

7. Defendant Philip E. Berger is the President Pro Tempore of the North Carolina Senate and, upon information and belief, is a resident of Rockingham County, North Carolina.

8. Defendant Timothy K. Moore is the Speaker of the North Carolina House of Representatives and, upon information and belief, is a resident of Cleveland County, North Carolina.

9. Defendant SBOE is a state agency charged with the overall responsibility for the administration of the elections process in North Carolina and has authority to implement rules and regulations with respect to the conduct of elections. *See* N.C. Gen. Stat. § 163-22.

10. Defendant Kimberly Strach is the Executive Director of the SBOE and, upon information and belief, is a resident of Wake County, North Carolina. The Executive Director is the chief elections officer of the State and is responsible for the administration of state laws affecting voting, including those pertaining to voter registration. *See* N.C. Gen. Stat. § 163-82.2.

JURISDICTION AND VENUE

11. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, and 2202, as well as 42 U.S.C. § 1983.

12. Venue is proper in this district under 28 U.S.C. § 1391 because a substantial number of judicial races—including local district and superior court races—that will be affected by the enforcement of S.L. 214 will occur in this district and because some of the Plaintiffs reside in this district.

FACTS

13. Since 1868 the North Carolina Constitution has required that judges and justices of the district courts, superior courts and appellate courts be elected by the people. N.C. Const. art. IV, §§ 9, 10 and 16.

14. For many years the General Assembly afforded citizens their right to elect judges and justices through partisan elections, and the General Assembly assured the major political parties their constitutional right to select their judicial nominees in partisan elections through closed or open primary elections or by direct party nomination.

See N.C. Sess. Law 1996-9-es2; *see also* N.C. Sess. Law 2001-403; N.C. Sess. Law. 2002-158.

15. By 2006 the General Assembly had changed the method of judicial elections for district courts, superior courts, and appellate courts from partisan elections to nonpartisan elections and modified primaries for such nonpartisan elections to a top-two system. *See* S.L. 1996-9-es2; *see also* S.L. 2001-403; S.L. 2002-158; N.C. Gen. Stat. § 163-322.

16. On December 16, 2016, the General Assembly enacted Session Law 2016-125 (“S.L. 125”), restoring partisan elections for judges and justices of the appellate courts and on March 9, 2017, the General Assembly enacted Session Law 2017-3 (“S.L. 3”), restoring partisan elections for judges of the district courts and superior courts.

17. Both S.L. 125 and S.L. 3 assured the major political parties their constitutional right to determine their nominees in the partisan elections for these judicial positions through semi-open primary elections. *See* S.L. 124 § 21(a); *see also* S.L. 3 § 5; N.C. Gen. Stat. § 163-106.

18. The General Assembly’s stated purposes in restoring partisan elections with partisan primaries for judicial offices were to provide voters with more information about candidates’ judicial philosophies and to provide an opportunity for a party’s members to consider the qualifications and abilities of candidates.

19. Both S.L. 125 and S.L. 3 become effective January 1, 2018.

20. On April 4, 2017, the General Assembly filed Senate Bill 2017-656 (“S.B. 656”), the Electoral Freedom Act of 2017. A Proposed Conference Committee Substitute Bill for S.B. 656, submitted on October 4, 2018, added Section 4(a), eliminating primaries for judges and district attorneys for the 2018 election cycle.

21. On October 5, 2017, the General Assembly amended the Proposed Conference Committee Substitute Bill for S.B. 656 to restore primaries for the election of district attorneys but not for the election of judges.

22. That same day the Proposed Conference Committee Substitute Bill for S.B. 656 was ratified and sent to the Governor for his approval.

23. The Governor vetoed S.B. 656 on October 17, 2017 on the grounds that it “takes away the right of the people to vote for the judges of their choice.” *See* Governor Roy Cooper Objections and Veto Message (copy attached as Exhibit 1).

24. On October 17, 2017 the General Assembly overrode the Governor’s veto, and S.B. 656 was ratified as 2017 S.L. 214. *See* S.L. 214 (copy attached as Exhibit 2).

25. Like S.L. 125 and S.L. 3, S.L. 214 becomes effective January 1, 2018.

26. Pursuant to S.L. 214 § 4(a), no party primaries shall be held for candidates seeking North Carolina judicial offices for the 2018 general election and candidates seeking such offices shall file their notices of candidacy with the SBOE no earlier than 12:00 noon on June 18, 2018 and no later than 12:00 noon on June 29, 2018. S.L. 214 § 4(a). In 2018, there will be approximately one hundred fifty (150) judicial elections,

including one (1) Supreme Court race, three (3) Court of Appeals races, about thirty-one (31) Superior Court races, and one hundred eighteen (118) District Court races.

27. In no area is a political party's associational right more important than in the selection of its nominee for election through a primary. *See Jones*, 530 U.S. at 575. The process of selecting a political party's nominee often determines a party's positions on significant public policy issues and it is a party's nominee who becomes the party's ambassador to the general electorate in winning the public over to the party's views. *Id.*

28. S.L. 214 eliminates the fundamental right of Plaintiffs to choose their judicial nominees in a partisan primary.

29. The elimination of primaries is in direct contradiction of Defendants' purported rationale for the return to partisan elections for justices and judges through the enactment of 2016 S.L. 125 and 2017 S.L. 3. These two statutes amended Section 106(c) of Chapter 163 to include judicial offices.

30. In advocating for S.L. 3 during House debate, Representative Justin Burr, who was among the bill's sponsors, stated that "HB100 will allow [superior and district court judges] to fall in line with every other office in North Carolina and provide critical information that can assist voters with selecting the candidate that they the voter feels is the most qualified and best for the job." N.C. House of Rep. 2017-2018 Sess., Audio Archives (Feb. 22, 2017) (statement of Rep. Burr) (quotation altered).

31. Another sponsor of S.L. 3, Representative Bert Jones, emphasized the importance of primary elections during House debate for S.L. 3, and stated that "...one of

the major roles of political parties is to sort through candidates in a primary way so that the best candidates can go forward in the fall so that you don't have a situation like a couple years ago in a nonpartisan judicial race where there were 19 candidates on the ballot and leave it possible for someone to win with less than 20% of the vote." N.C. House of Rep. 2017-2018 Sess., Audio Archives (Feb. 22, 2017) (statement of Rep. Jones).

32. Defendants have not articulated, and cannot articulate, any compelling or important regulatory interests that would justify the elimination of primaries for the partisan election of judges and justices of the district courts, the superior courts or the appellate courts.

CAUSE OF ACTION

33. Plaintiffs reallege and incorporate herein by reference the preceding allegations of this Complaint.

34. The First and Fourteenth Amendments afford "special protection" to "the process by which a political party selects a standard bearer who best represents the party's ideologies and preferences." *Jones*, 530 U.S. at 575 (internal quotation marks omitted).

35. Primary elections are the means by which a party selects the candidates to represent the party in a general election.

36. Denying a political party the right to select its own candidates "unquestionably implicates an associational freedom." *Id.*

37. Section 4(a) of S.L. 214 violates 42 U.S.C. § 1983 and Plaintiffs' First Amendment rights.

38. No compelling or important regulatory interest justifies Defendants' elimination of primary elections for candidates for judges and justices.

39. Section 4(a) of S.L. 214 is unconstitutional, and Plaintiffs are entitled to a declaratory judgment regarding their rights under the First and Fourteenth Amendments.

IRREPARABLE INJURY AND HARM

40. Plaintiffs hereby reallege and incorporate herein by reference the preceding allegations of this Complaint.

41. The elimination of primaries for judicial offices deprives Plaintiffs and their members of the capacity to perform the duties for which they were established and will cause them and their members great and immediate harm.

42. The elimination of primaries for judicial offices is in direct conflict with good and important public policies recognized and embraced by Defendants themselves and is not in the public interest.

43. The public interests harmed by the elimination of primaries for judicial offices include the public's interests in an informed and knowledgeable electorate, the public's interest in the reduction of voter confusion and the public's interest in ensuring that persons elected to public office are supported by a majority of voters.

44. The public interest requires a prompt order from the Court to align judicial primaries with all other primaries taking place in 2018, as the filing period for these primaries will open on February 12, 2018. N.C. Gen. Stat. § 163-106(c).

45. Plaintiffs are entitled to preliminary and permanent injunctive relief restraining Defendants from:

(a) Eliminating primary elections for North Carolina judicial elections in 2018; and

(b) Placing on the general election ballot the Democratic Party affiliations of judicial candidates who are not the nominees of Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request the Court enter judgment:

1. Declaring Section 4(a) of S.L. 214 unconstitutional;
2. Enjoining its enforcement;
3. Awarding Plaintiffs fees and costs; and
4. Providing Plaintiffs such other relief as may be appropriate.

Respectfully submitted this 12th day of December, 2017.

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Democratic Party*

EXHIBIT 1



Roy Cooper, Governor
State of North Carolina

GOVERNOR ROY COOPER OBJECTIONS AND VETO MESSAGE:

Senate Bill 656 AN ACT TO CHANGE THE DEFINITION OF A "POLITICAL PARTY" BY REDUCING THE NUMBER OF SIGNATURES REQUIRED FOR THE FORMATION OF A NEW POLITICAL PARTY AND FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY; TO AUTHORIZE ESTABLISHMENT OF POLITICAL PARTIES RECOGNIZED IN A SUBSTANTIAL NUMBER OF STATES IN THE PRIOR PRESIDENTIAL ELECTION; TO CHANGE TIMING OF FILING OF PETITIONS; TO REDUCE THE THRESHOLD FOR A SUBSTANTIAL PLURALITY TO THIRTY PERCENT; AND TO ELIMINATE JUDICIAL PRIMARIES FOR THE 2018 GENERAL ELECTION.

This legislation abolishes a scheduled election and takes away the right of the people to vote for the judges of their choice. It is the first step toward a constitutional amendment that will rig the system so that the legislature picks everybody's judges in every district instead of letting the people vote for the judges they want. If the legislature doesn't like the fact that judges are ruling many of their laws unconstitutional, they should change their ways instead of their judges.

Therefore, I veto the bill.



Roy Cooper
Governor

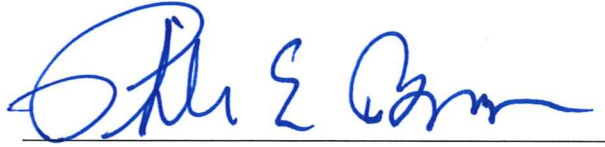
The bill, having been vetoed, is returned to the Clerk of the North Carolina Senate on this the 9th day of October, 2017, at 11:55 am for reconsideration by that body.

The Capitol Building, Raleigh, NC 27602
Mail: 20301 Mail Service Center, Raleigh, NC 27699-0301
Phone: (919)814-2100

*Received from the
Governor: Oct. 9, 2017
@ 11:56 a.m.
Sarah Lang*

SECTION 5. This act becomes effective January 1, 2018, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 5th day of October, 2017.



Presiding Officer of the Senate

VETO



~~Tim Moore~~

~~Speaker of the House of Representatives~~

Presiding Officer

Roy Cooper
Governor

Approved _____ .m. this _____ day of _____, 2017

*Received from the Governor:
Oct. 9, 2017
@ 11:56 a.m.
Sarah Day*

EXHIBIT 2

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-214
SENATE BILL 656

AN ACT TO CHANGE THE DEFINITION OF A "POLITICAL PARTY" BY REDUCING THE NUMBER OF SIGNATURES REQUIRED FOR THE FORMATION OF A NEW POLITICAL PARTY AND FOR UNAFFILIATED CANDIDATES TO OBTAIN BALLOT ACCESS ELIGIBILITY; TO AUTHORIZE ESTABLISHMENT OF POLITICAL PARTIES RECOGNIZED IN A SUBSTANTIAL NUMBER OF STATES IN THE PRIOR PRESIDENTIAL ELECTION; TO CHANGE TIMING OF FILING OF PETITIONS; TO REDUCE THE THRESHOLD FOR A SUBSTANTIAL PLURALITY TO THIRTY PERCENT; AND TO ELIMINATE JUDICIAL PRIMARIES FOR THE 2018 GENERAL ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-96(a) reads as rewritten:

"(a) Definition. – A political party within the meaning of the election laws of this State shall be ~~either one of the following:~~

- (1) Any group of voters which, at the last preceding general State election, polled for its candidate for Governor, or for presidential electors, at least two percent (2%) of the entire vote cast in the State for Governor or for presidential ~~electors; or electors.~~
- (2) Any group of voters which shall have filed with the State Board of Elections petitions for the formulation of a new political party which are signed by registered and qualified voters in this State equal in number to ~~two percent (2%)~~ one-quarter of one percent (0.25%) of the total number of voters who voted in the most recent general election for Governor. Also the petition must be signed by at least 200 registered voters from each of ~~four~~ three congressional districts in North Carolina. To be effective, the petitioners must file their petitions with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith determine the sufficiency of petitions filed with it and shall immediately communicate its determination to the State ~~chairman~~ chair of the proposed new political party.
- (3) Any group of voters which shall have filed with the State Board of Elections documentation that the group of voters had a candidate nominated by that group on the general election ballot of at least seventy percent (70%) of the states in the prior Presidential election. To be effective, the group must file their documentation with the State Board of Elections before 12:00 noon on the first day of June preceding the day on which is to be held the first general State election in which the new political party desires to participate. The State Board of Elections shall forthwith verify the documentation filed with it and shall immediately communicate its determination to the State chair of the proposed new political party."



SECTION 2.(a) G.S. 163-122(a), as amended by Section 10 of S.L. 2017-3, reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. – Any qualified voter who seeks to have the voter's name printed on the general election ballot as an unaffiliated candidate shall:

- (1) If the office is a statewide office, file written petitions with the State Board of Elections supporting the voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the ~~second Wednesday prior to day~~ of the primary election and must be signed by qualified voters of the State equal in number to ~~two percent (2%)~~ one and a half percent (1.5%) of the total number of voters who voted in the most recent general election for Governor. Also, the petition must be signed by at least 200 registered voters from each of ~~four~~ three congressional districts in North Carolina. The petitions shall be divided into sections based on the county in which the signatures were obtained. Provided the petitions are timely filed, the State Board of Elections shall require the filed petition be verified no later than 15 business days after canvass of the primary in one of the following ways:
 - a. The Executive Director shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the designated county and shall attach to the petition a signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in each county.
 - b. The chair shall examine the names on the petition and place a check mark on the petition by the name of each signer who is qualified and registered to vote in the chair's county and shall attach to the petition the chair's signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in the chair's county. The chair shall return the petition and certificate to the State Board.

The State Board shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the State Board.

- (2) Except as provided in this subsection, if the office is a district office under the jurisdiction of the State Board of Elections under G.S. 163-182.4(b), file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These For district offices other than General Assembly seats, petitions must be filed with the State Board of Elections on or before 12:00 noon on the second Wednesday prior to day of the primary election and must be signed by qualified voters of the district equal in number to ~~four~~ one and a half percent (4%)(1.5%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. For General Assembly seats in which the district lies in more than one county, petitions must be filed with the State Board of Elections on or before 12:00 noon on the day of the primary election and must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of registered voters in the

district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

- (3) If the office is a county office or a single county legislative district, file written petitions with the chair or director of the county board of elections supporting the voter's candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the ~~second Wednesday prior to~~ today of the primary election and must be signed by qualified voters of the county equal in number to four percent (4%) of the total number of registered voters in the county as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. Each petition shall be presented to the ~~chairman~~ chair or director of the county board of elections. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.
- (4) If the office is a partisan municipal office, file written petitions with the chair or director of the county board of elections in the county wherein the municipality is located supporting the voter's candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The chair or director of the county board of elections shall verify the filed petition no later than 15 business days after canvass as provided in sub-subdivision b. of subdivision (1) of this subsection, and shall return a copy of each petition, together with a copy of the certificate required in this section, to the person who presented it to the county board of elections.
- (5) If the office is a superior court judge or a district court judge, regardless of whether the district lies entirely in one county or in more than one county, file written petitions with the State Board of Elections supporting that voter's candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the ~~second Wednesday prior to~~ today of the primary election and must be signed by qualified voters of the district equal in number to two percent (2%) of the total number of registered voters in the district as reflected by the voter registration records of the State Board of Elections as of January 1 of the year in which the general election is to be held. The petitions shall be divided into sections based on the county in which the signatures were obtained. The petitions shall be verified as specified in subdivision (1) of this subsection.

Upon compliance with the provisions of subdivisions (1), (2), (3), (4), or (5) of this subsection, the board of elections with which the petitions have been timely filed shall cause

the unaffiliated candidate's name to be printed on the general election ballots in accordance with Article 14A of this Chapter."

SECTION 2.(b) G.S. 163-296 reads as rewritten:

"§ 163-296. Nomination by petition.

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least ~~four percent (4%)~~ one and a half percent (1.5%) of the whole number of voters qualified to vote in the municipal election according to the voter registration records of the State Board of Elections as of January 1 of the year in which the general municipal election is held. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by ~~four percent (4%)~~ one and a half percent (1.5%) of the voters qualified to vote for that office."

SECTION 3. G.S. 163-111(a) reads as rewritten:

"(a) Nomination Determined by Substantial Plurality; Definition of Substantial Plurality. – Except as otherwise provided in this section, nominations in primary elections shall be determined by a substantial plurality of the votes cast. A substantial plurality within the meaning of this section shall be determined as follows:

- (1) If a nominee for a single office is to be selected, and there is more than one person seeking nomination, the substantial plurality shall be ascertained by multiplying the total vote cast for all aspirants by ~~forty percent (40%)~~ thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirant who obtains a substantial plurality shall be declared the nominee. If two candidates receive a substantial plurality, the candidate receiving the highest vote shall be declared the nominee.
- (2) If nominees for two or more offices (constituting a group) are to be selected, and there are more persons seeking nomination than there are offices, the substantial plurality shall be ascertained by dividing the total vote cast for all aspirants by the number of positions to be filled, and by multiplying the result by ~~forty percent (40%)~~ thirty percent (30%). Any excess of the sum so ascertained shall be a substantial plurality, and the aspirants who obtain a substantial plurality shall be declared the nominees. If more candidates obtain a substantial plurality than there are positions to be filled, those having the highest vote (equal to the number of positions to be filled) shall be declared the nominees."

SECTION 4.(a) No 2018 Primary for Judicial Offices. – Notwithstanding G.S. 163-106, no party primaries shall be held for candidates seeking the following offices in the general election held on November 6, 2018:

Justices of the Supreme Court.
Judges of the Court of Appeals.
Judges of the superior courts.
Judges of the district courts.

Candidates seeking the office of Justice of the Supreme Court, judge of the Court of Appeals, judge of the superior court, or judge of the district court shall file their notice of

candidacy with the State Board of Elections and Ethics Enforcement no earlier than 12:00 noon on June 18, 2018, and no later than 12:00 noon on June 29, 2018.

SECTION 4.(b) Form of Notice. – Each person offering to be a candidate for election shall do so by filing a notice of candidacy with the State Board of Elections and Ethics Enforcement in the following form, inserting the words in parentheses when appropriate:

Date _____

I hereby file notice that I am a candidate for election to the office of _____ in the regular election to be held _____, _____.
Signed _____
(Name of Candidate)

Witness: _____

The notice of candidacy shall be either signed in the presence of the chair or secretary of the State Board of Elections and Ethics Enforcement or signed and acknowledged before an officer authorized to take acknowledgments who shall certify the notice under seal. An acknowledged and certified notice may be mailed to the State Board of Elections and Ethics Enforcement. In signing a notice of candidacy, the candidate shall use only the candidate's legal name and, in the candidate's discretion, any nickname by which commonly known. A candidate may also, in lieu of that candidate's first name and legal middle initial or middle name, if any, sign that candidate's nickname, provided the candidate appends to the notice of candidacy an affidavit that the candidate has been commonly known by that nickname for at least five years prior to the date of making the affidavit. The candidate shall also include with the affidavit the way the candidate's name (as permitted by law) should be listed on the ballot if another candidate with the same last name files a notice of candidacy for that office.

A notice of candidacy signed by an agent or any person other than the candidate shall be invalid.

A candidate, at the time of filing the notice of candidacy under this section, shall indicate on the notice of candidacy the political party recognized under Article 18 of Chapter 163A of the General Statutes with which that candidate is affiliated or any unaffiliated status. The certificate required by subsection (d) of this section shall verify the party designation or unaffiliated status, and the verified party designation or unaffiliated status shall be included on the ballot.

SECTION 4.(c) Withdrawal of Notice of Candidacy. – Any person who has filed a notice of candidacy for an office under this section shall have the right to withdraw it at any time prior to the close of business on the third business day prior to the date on which the right to file for that office expires under the terms of subsection (b) of this section.

SECTION 4.(d) Certificate That Candidate Is Registered Voter. – Candidates shall file along with their notice a certificate signed by the chair of the board of elections or the director of elections of the county in which they are registered to vote, stating that the person is registered to vote in that county, and if the candidacy is for superior court judge or district court judge, and the county contains more than one superior court district or district court district, stating the judicial district of which the person is a resident. In issuing such certificate, the chairman or director shall check the registration records of the county to verify such information. During the period commencing 36 hours immediately preceding the filing deadline, the State Board of Elections and Ethics Enforcement shall accept, on a conditional basis, the notice of candidacy of a candidate who has failed to secure the verification ordered herein subject to receipt of verification no later than three days following the filing deadline. The State Board of Elections and Ethics Enforcement shall prescribe the form for such certificate and distribute it to each county board of elections no later than the last Monday in December of 2017.

SECTION 4.(e) Candidacy for More Than One Office Prohibited. – No person may file a notice of candidacy for more than one office or group of offices described in

subsection (a) of this section, or for an office or group of offices described in subsection (a) of this section and an office described in G.S. 163-106(c), for any one election. If a person has filed a notice of candidacy with a board of elections under this section or under G.S. 163-106(c) for one office or group of offices, then a notice of candidacy may not later be filed for any other office or group of offices under this section when the election is on the same date unless the notice of candidacy for the first office is withdrawn under subsection (c) of this section.

SECTION 4.(f) Notice of Candidacy for Certain Offices to Indicate Vacancy. – In any election in which there are two or more vacancies for the office of justice of the Supreme Court, judge of the Court of Appeals, superior court judge, or district court judge to be filled by nominations, each candidate shall, at the time of filing notice of candidacy, file with the State Board of Elections and Ethics Enforcement a written statement designating the vacancy to which the candidate seeks election. Votes cast for a candidate shall be effective only for election to the vacancy for which the candidate has given notice of candidacy as provided in this subsection.

A person seeking election for a specialized district judgeship established under G.S. 7A-147 shall, at the time of filing notice of candidacy, file with the State Board of Elections and Ethics Enforcement a written statement designating the specialized judgeship to which the person seeks nomination.

SECTION 4.(g) Residency Requirements. – No person may file a notice of candidacy for superior court judge or district court judge unless that person is at the time of filing the notice of candidacy a resident of the judicial district as it will exist at the time the person would take office if elected. This subsection implements Section 9(1) of Article IV of the North Carolina Constitution, which requires regular superior court judges to reside in the district for which elected, and Section 10 of Article IV of the North Carolina Constitution, which requires every district court judge to reside in the district for which elected.

SECTION 4.(h) Filing Fees. – Candidates shall pay filing fees as required by G.S. 163-107 and G.S. 163-107.1.

SECTION 4.(i) Failure of Candidates to File; Death or Other Disqualification of a Candidate; No Withdrawal From Candidacy. –

- (1) Insufficient number of candidates. – If when the filing period expires, candidates have not filed for an office to be filled under this section, the State Board of Elections and Ethics Enforcement shall extend the filing period for five days for any such offices.
- (2) Vacancies; reopening filing. – If only one or two candidates have filed for a single office, or the number of candidates filed for a group of offices does not exceed twice the number of positions to be filled, and thereafter a remaining candidate dies or otherwise becomes disqualified before the election and before the ballots are printed, the State Board of Elections and Ethics Enforcement shall, upon notification of the death or other disqualification, immediately reopen the filing period for an additional five days during which time additional candidates shall be permitted to file for election. If the ballots have been printed at the time the State Board of Elections and Ethics Enforcement receives notice of the candidate's death or other disqualification, the Board shall determine whether there will be sufficient time to reprint them before the election if the filing period is reopened for three days. If the Board determines that there will be sufficient time to reprint the ballots, it shall reopen the filing period for three days to allow other candidates to file for election.
- (3) Later vacancies; ballots not reprinted. – If the ballots have been printed at the time the State Board of Elections and Ethics Enforcement receives notice of a candidate's death or other disqualification, and if the Board determines

that there is not enough time to reprint the ballots before the election if the filing period is reopened for three days, then regardless of the number of candidates remaining for the office or group of offices, the ballots shall not be reprinted and the name of the vacated candidate shall remain on the ballots. If a vacated candidate should poll the highest number of votes in the election for a single office or enough votes to be elected to one of a group of offices, the State Board of Elections and Ethics Enforcement shall declare the office vacant and it shall be filled in the manner provided by law.

- (4) No withdrawal permitted of living, qualified candidate after close of filing. – After the close of the candidate filing period, a candidate who has filed a notice of candidacy for an office under this section, who has not withdrawn notice before the close of filing as permitted by subsection (c) of this section, who remains alive, and has not become disqualified for the office may not withdraw his or her candidacy. That candidate's name shall remain on the ballot, any votes cast for the candidacy shall be counted in primary or election, and if the candidate wins, the candidate may fail to qualify by refusing to take the oath of office.
- (5) Death, disqualification, or failure to qualify after election. – If a person elected to the office of justice of the Supreme Court, judge of the Court of Appeals, or superior or district court judge dies or becomes disqualified on or after election day and before that person has qualified by taking the oath of office, or fails to qualify by refusing to take the oath of office, the office shall be deemed vacant and shall be filled as provided by law.

SECTION 4.(j) Ballot Order. – For the 2018 general election, the State Board of Elections and Ethics Enforcement shall place elections for the offices elected as provided in this section with other partisan offices, as provided in G.S. 163-165.6(b)(3). Order of candidates for those offices shall be determined as provided in G.S. 163-165.6(c).

SECTION 4.(k) Determination of Election Winners. – A general election for all candidates seeking office as provided in this section shall be held on November 6, 2018. In the general election, the candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the State Board of Elections and Ethics Enforcement shall determine the winner by lot.

SECTION 5. This act becomes effective January 1, 2018, and applies to all primaries and elections held on or after that date.

In the General Assembly read three times and ratified this the 5th day of October, 2017.

s/ Philip E. Berger
President Pro Tempore Officer of the Senate

s/ David R. Lewis
Presiding Officer of the House of Representatives

VETO Roy Cooper
Governor

Became law notwithstanding the objections of the Governor at 10:50 a.m. this 17th day of October, 2017.

s/ James White
House Principal Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NORTH CAROLINA DEMOCRATIC PARTY; et al.

(b) County of Residence of First Listed Plaintiff Wake

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

J. Wallace, M. Calabria, D. Lee, Wallace & Nordan, LLP, PO Box 12065,
Raleigh NC 27605, (919)782-9322 and E. Speas, & C. Mackie, Poyner
Spruill LLP, PO Box 1801, Raleigh NC 27602, (919)783-6400**DEFENDANTS**PHILLIP E. BERGER, in his official capacity as PRESIDENT PRO
TEMPORE OF THE NORTH CAROLINA SENATE; et al.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. 1983

Brief description of cause:

Plaintiffs seek a declaration that Section 4(a) of S.L. 214 is unconstitutional, and further relief.

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____

AMOUNT _____

APPLYING IFP _____

JUDGE _____

MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.