STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18CVS009806-910

NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Plaintiff,

v.

TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity,

Defendants.

ORDER

THIS MATTER coming on to be heard and being heard before the undersigned three-judge panel upon remand from the North Carolina Supreme Court and Defendants' "Amended Motion for Dispositive Ruling" pursuant to N.C.G.S. § 1A-1, Rule 12(c), filed on 18 July 2024. The adverse party to this action received notice required by Rule 65 of the North Carolina Rules of Civil Procedure. The Court heard arguments on this Motion via Webex on 24 October 2024 and thereafter took the matter under advisement. Present for the hearing were Kimberly Hunter and Spencer Scheidt from the Southern Environmental Law Center for Plaintiff and D. Martin Warf and Cassie A. Holt from Nelson Mullins Riley & Scarborough, LLP for Defendants.

PROCEDURAL HISTORY

1. Plaintiffs filed this action on 06 August 2018 seeking, *inter alia*, declaratory judgment that two proposed constitutional amendments embodied in 2018 N.C. Sess. Laws 128 (the proposed Voter ID Amendment) and 2018 N.C. Sess. Laws 119 (the proposed Tax Cap Amendment) were void *ab initio* on a number

of bases, including that the North Carolina General Assembly lacked authority to pass the acts as the General Assembly was a usurper body. Compl. 95; *see also* First Am. Compl. 95; Second Am. Compl.

2. The trial court determined the raised claims constituted a "facial challenge to the validity of an act of the General Assembly" and transferred the case to a three-judge panel pursuant to N.C.G.S. § 1-267.1.

3. On 21 August 2018, both parties argued their motions before the three-judge panel. The three-judge panel determined that:

> 11 . . . this claim by the NC NAACP in this action constitutes a collateral attack on acts of the General Assembly and, as a result, is not within the jurisdiction of this three-judge panel. [N.C.G.S.] § 1-267.1. We therefore decline to consider NC NAACP's claim that the General Assembly, as presently constituted, is a "usurper" legislative body.
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> 12. Furthermore, even if NC NAACP's claim on this point was within this three-judge panel's jurisdiction, the undersigned do not at this stage accept the argument that the General Assembly is a "usurper" legislative body. And even if assuming NC NAACP is correct, a conclusion by the undersigned three-judge panel that the General Assembly is a "usurper" legislative body would result only in causing chaos and confusion in government; in considering the equities, such a result must be avoided. *See Dawson v. Bowmar*, 322 F.2d 445 (6th Cir. 1963). For the reason stated above, we decline to invalidate any acts of the General Assembly as a "usurper" legislative body.

Order on Injunctive Relief pp. 6-7., No. 18-CVS-9805 (N.C. Super. Ct. Aug. 21, 2018).

4. On 19 September 2018, Plaintiff filed a second amended complaint asking the trial court to grant relief by declaring:

    1. Under *Covington*, the General Assembly ceased to be a legislature with any *de jure* or *de facto* lawful authority and assumed usurper status

(*North Carolina v. Covington*, 585 U.S. 969, 138 S. Ct. 2548 (2018) (Per Curiam);

2. A usurper legislature may not place constitutional amendments on the ballot;

3. The vague and intentionally misleading questions appearing on the ballot for the amendment in Sessions Laws 2018-119, 128, and 132 violate the General Assembly's responsibility to place the proposed constitutional amendment before the people;

4. The vague and incomplete language in Session Laws 2018-128, 132, and 133 does not amount to a proposal to be presented to the public;

5. Session Laws 2018-119, 128, 132, and 133 void ab initio; and

6. Preliminary and permanent injunctive relief should be issued prohibiting the inclusion of the amendments on the ballot.

5. The proposed Amendments both made it on to the November 2018 ballot and were enacted by the People of North Carolina as amendments to our Constitution.

6. In light of the three-judge panel's determination that Plaintiffs' Legislative Usurper Claim was a collateral attack on an act of the General Assembly, this matter was set to be reviewed in the normal course of Wake County Superior Court.

7. On 22 February 2019, the Wake County Superior Court, with a single judge presiding, determined the Session Laws and the constitutional amendments then adopted were void *ab initio* because they were passed by a usurper legislature that was not empowered to pass legislation to amend the state's constitution. *See N.C. State Conf. of the NAACP v. Moore*, 382 N.C. 129 (2022). *N.C. State Conf. of NAACP v. Moore*, Order, No. 18 CVS 9806, 2019 *1–2 (N.C. Super. Ct. Feb. 22, 2019).

8. Defendants appealed, and on 15 September 2020, the Court of Appeals issued a split decision reversing the trial court's order. The Court of Appeals held the General Assembly, illegally formed, can perform all its actions or none. The

dissent disagreed, stating the court should have created a narrow ruling disallowing the illegally formed General Assembly from amending the Constitution. Plaintiff appealed to the Supreme Court based on automatic right to appeal.

9. On 19 August 2022, the Supreme Court reversed the Court of Appeals and remanded this matter to the trial court for consideration whether invalidating both the Voter ID and Tax Cap amendments was necessary upon balancing the equities of the situation. *N.C. State Conf. of the NAACP v. Moore*, 382 N.C. 129 (2022).

10. The Supreme Court did not accept Plaintiff's legislative usurper theory and instead applied the *de facto* officer doctrine to this case. *Id.* ("Although we agree with Legislative Defendants that the *de facto* officer doctrine applies in this case . . ."). Our Supreme Court held "the legislature, writ large, did not entirely lack authority to exercise legislative powers–legislators elected due to unconstitutional racial gerrymandering did not, as plaintiff argues, lack any colorable claim to exercise the powers dedicated to the legislature." *Id.* at 159.

11. The Supreme Court fashioned a one-of-a-kind test to determine whether the Session Laws were valid. The trial court must first ask, as a threshold question, whether "the votes of legislators who were elected as result of unconstitutional gerrymandering were potentially decisive," *Moore*, 382 N.C. at 165. Our Supreme Court announced this threshold issue is easily met in this case. *Id.* at 163.

12. Once met, the trial court must then examine if there is substantial risk that the amendment will: "(1) immunize legislators from democratic accountability; (2) perpetuate the ongoing exclusion of category of voters from the political process; or (3) intentionally discriminate against particular category of citizens who were also discriminated against in the political process leading to the legislators' election." *Id.* at 165. The presence of any of these factors requires the panel to invalidate the amendment; the absence of these factors means the amendment must be upheld. *Id.*

13. The dissent, however, argued the issues of this case could not be judicially entertained as they presented a nonjusticiable political question.[1] *Moore*, 382

[1] This Panel does not disagree with the dissent's determination that this case presents a nonjusticiable political question and recognizes this Panel may raise the issue of subject matter jurisdiction, *sua*

N.C. at 173 (2022) (Berger, J., dissenting). Further, the dissent stated the test devised by the majority required policy choices to determine if any of the three factors were present, and questioned which data or methods a lower court was to utilize to make their determinations. *Id.* at 182.

14. Upon the Supreme Court's remand to the trial court, Defendants filed a motion to transfer to a three-judge panel on 9 September 2022, which was granted on 02 August 2023.

15. In the transfer order, the trial court cited *Holdstock v. Duke Univ Health Sys.*, 270 N.C. App. 267 (2020), which was decided after the three-judge panel concluded it did not have jurisdiction to hear the legislative usurper claim. *Holdstock* clarified that a facial challenge is "an attack on the statute itself as opposed to a particular application." *Holdstock*, 270 N.C. App. at 272; *see also Kelly v. State*, 286 N.C. App. 23, 33 (2022) ("[Courts] must look to the scope of relief requested by [p]laintiffs to determine whether [p]laintiffs' claims are properly viewed as a facial or an as-applied challenge.").

16. The trial court, therefore, concluded Plaintiff's claims were always facial, and since the facial challenges were properly raised in the pleading stage, the court with exclusive subject matter jurisdiction over this matter is a three-judge panel. *Id.*

17. The Chief Justice of the North Carolina Supreme Court assigned the current three-judge panel pursuant to N.C.G.S. § 1-267.1 on 14 November 2023. Order, No. 18-CVS-9806-910.

18. On 12 January 2024, Plaintiff filed a Motion to Remand to a single judge in Wake County, which this Panel denied in an Order dated 12 April 2024.

19. Defendants filed a Motion for Summary Judgment on 02 July 2024, followed by an Amended Motion for Dispositive Ruling on 18 July 2024.

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sponte, whenever it becomes apparent that it lacks subject matter jurisdiction; however, to do so under the current procedural posture of this case would effectively overrule the *Moore* majority, which this Panel cannot do.

20. Defendants' "Amended Motion for Dispositive Ruling" pursuant to N.C.G.S. § 1A-1, Rule 12(c) was heard via Webex on 24 October 2024 and this Panel thereafter took the matter under advisement.

21. On 02 December 2024, Defendants filed a Motion for Protective Order. Plaintiff filed a Motion to Preserve Evidence on 11 December 2024. This Court granted both motions on 30 December 2024.

STATEMENT OF THE CASE[2]

1. As stated, this matter is before this Panel upon remand from the Supreme Court's opinion in *Moore*, 382 N.C. 129 (2022). Therefore, we must obey the Court's mandate to execute a new three-part test to determine whether "the de facto officer doctrine should be applied to shield the acts proposing the Voter ID and / or Tax Cap Amendments from retroactive invalidation." *Id.* at 166.

2. It is clear the Supreme Court's rationale in crafting its new three-factor test is to protect North Carolina citizens from legislative acts that would substantially threaten popular sovereignty or democratic self-rule. *Moore,* 382 N.C. at 162.

3. The Supreme Court in *Moore* has tasked this court to make evidentiary determinations by fashioning a test requiring this court to make significant policy considerations. This Panel must consider substance of each legislative action and weigh the policy implications of each action without express provisions of our constitution to address these matters.

4. At no point did the *Moore* majority abrogate or minimize the presumptions of validity and constitutionality we must accord our General Assembly's actions.

5. As such, this three-factor equitable test is not adjudicated in a vacuum. Rather, to prevail, Plaintiff must show "that there are no circumstances under which the[se] statute[s] might be constitutional." *Hart v. State*, 368 N.C. 122, 126 (2015) (quotation omitted).

6. The *Moore* majority further states, upon remand, the parties "remain bound" to the findings of fact entered by the trial court on 22 February 2019.

7. "[I]t is well established . . . that no appeal lies from one Superior Court judge to another; that one Superior Court judge cannot correct another's errors of

[2]The *Moore* majority assigns this Panel an unprecedented task to reconcile a mandate from our Supreme Court with established case law governing a facial challenge to a legislative action.

law; and that ordinarily one judge may not modify, overrule, or change the judgment of another Superior Court Judge previously made in the same action." *State v. Woolridge,* 357 N.C. 544, 549 (2003).

8. Accordingly, this Panel must also follow long-standing precedent framing the parameters of a facial challenge.

APPLICABLE LAW

9. "When a government action is challenged as unconstitutional, the courts have a duty to determine whether the action exceeds constitutional limits." *Maready v. City of Winston-Salem,* 342 N.C. 708, 716 (1996).

10. "[A] facial challenge to the constitutionality of an act . . . is the 'most difficult challenge to mount successfully.' " *Hart v. State*, 368 N.C. 122, 131 (2015) (quoting *Beaufort Cty. Bd. of Educ. v. Beaufort Cty. Bd. of Comm'rs,* 363 N.C. 500, 502 (2009)).

11. Our state constitution vests all political power in the people. N.C. Const. art. I, § 2. The people exercise that power through the legislative branch, which is closest to the people and is most accountable to the people through the most frequent elections. *See Id.* art. I, § 9.

12. The people, through the express language of their constitution, have assigned specific tasks to, and expressly limited the powers of, each branch of government. Only the people can amend it. *See Id.* art. XIII, § 2.

13. The people act through the General Assembly. *State ex rel. Ewart v. Jones*, 116 N.C. 570 (1895) ("[T]he sovereign power resides with the people and is exercised by their representatives in the General Assembly").

14. Unlike the Federal Constitution, "a state constitution is in no matter a grant of power. All power which is not limited by the Constitution inheres in the people, and an act of a State legislature is legal when the Constitution contains no prohibition against it." *McIntyre v. Clarkson*, 254 N.C. 510, 515, (1961) (quoting *Lassiter v. Northampton Cty. Bd. of Elections*, 248 N.C. 102, 112, (1958), aff'd, 360 U.S. 45, 79 S. Ct. 985, (1959)).

15. The presumptive constitutional power of the General Assembly to act is consistent with the principle that a restriction on the General Assembly is in fact a restriction on the people. *Baker v. Martin*, 330 N.C. 331, 336 (1991).

16. Thus, this Panel presumes that legislation is constitutional, and a constitutional limitation upon the General Assembly must be express and demonstrated beyond a reasonable doubt. *Hart*, 368 N.C. at 126 (2015).

17. Plaintiff must prove not only that our General Assembly's actions have a disparate impact on a protected class, but also that our General Assembly acted with discriminatory intent. *Hunter v. Underwood*, 471 U.S. 222, 227 (1985).

18. Finally, in order to prevail on a facial challenge, Plaintiff must establish "no set of circumstances exists under which the act would be valid and *may not rely on mere speculation*." *State v. Bryant*, 359 N.C. 554, 564 (2005) (cleaned up) (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)) (emphasis added).

19. Because this is a facial challenge, a strong presumption of constitutionality applied to the challenged acts of the General Assembly which cannot be overcome by mere speculation.

20. While we recognize the mandate of our Supreme Court, we also acknowledge we are bound by subsequent case law and the long tradition of separation of powers. The Supreme Court's holding in *Holmes* and the presumption of constitutionality directly impacts our analysis in applying the three-part test set forth in *Moore*. *See Holmes v. Moore*, 384 N.C. 426 (2023).

21. The circumstances and posture of this case are unique. Because this is a case of first impression, this Panel is concerned with how it should proceed in analyzing the two amendments at issue where it is bound by competing mandates which carry different analytic frameworks and burdens of proof.

22. This Court must now attempt to reconcile the established framework for facial challenges to legislative acts with *Moore's* new three-factor test for the validity of constitutional amendments proposed by a gerrymandered, yet still *de facto* General Assembly and Defendant's Motion for Judgement on the Pleadings.

JUDGMENT ON THE PLEADINGS

1. As to timeliness, a Rule 12(c) motion for judgment on the pleadings must be made '[a]fter the pleadings are closed but within such time as not to delay trial." N.C.G.S. § 1A-1, Rule 12(c).

2. " 'A motion for judgment on the pleadings [pursuant to Rule 12(c)] should not be granted unless the movant clearly establishes that no material issue of fact remains to be resolved and that he is entitled to judgment as a matter of law.' " *Fox v. Johnson*, 243 N.C. App. 274, 283 (2015) (quoting *B. Kelley Enters. Inc. v. Vitacost.com, Inc.,* 211 N.C. App. 592, 593 (2011)).

3. When considering a Rule 12(c) motion, "[a]ll allegations in the nonmovant's pleadings, except conclusions of law, legally impossible facts, and matters not admissible in evidence at trial, are deemed admitted by the movant for purposes of the motion." *Id.* (quoting *Ragsdale v. Kennedy*, 286 N.C. 130, 137 (1974)).

4. Defendants contend in our reviewing the three-part test set forth by our Supreme Court in *Moore,* this Panel should note the members of our General Assembly who passed these amendments are the identical members who, in a special session in December 2018, also passed the legislation to implement the Voter ID Amendment. Defendant's Memorandum of Law in Support of Dispositive Motion, P. 4, No. 18-CVS-9806.

5. Our rules of evidence state "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." N.C.G.S. § 8C-1, Rule 201(b).

6. In ruling on a motion under Rule 12(c), the Court may properly consider matters of which judicial notice may be taken. *See Wood v. J. P. Stevens & Co.*, 297 N.C. 636, 641 (1979) *Zloop, Inc. v. Parker Poe Adams & Bernstein, LLP,* 2018 NCBC LEXIS 16, 14 (N.C. Super. Ct. Feb. 16, 2018) *cert. dismissed* 371 N.C. 475 (2018) ("[A] court may properly consider matters of which it may take judicial notice without converting a Rule 12(c) motion to one for summary judgment.").

7. "[A] court may take judicial notice, whether requested or not and at any stage of the proceeding, of facts capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned." *Addison*

v. Moss, 122 N.C. App. 569, 571, *review denied,* 345 N.C. 179 (1996); *See* also N.C. R. Evid. 201(b)

8. It is within the court's discretion to take judicial notice, even when not requested by a party. *Id.* at Rule 201(c); *State v. McDougald,* 38 N.C. App. 244, 248 (1978), *appeal dismissed, review denied*, 296 N.C. 413 (1979).

9. As such in our discretion, we take Judicial Notice the legislative body that passed the session laws enacting the amendments at issue are the identical body of legislators who enacted the enabling legislation for the Voter ID laws challenged in *Holmes*.

ANALYSIS

1. As the *Moore* majority further states, upon remand, the parties "remain bound" to the findings of fact entered by the trial court in its 22 February 2019 order.

2. However, in its 22 February 2019 order, the trial court failed to indicate the burden of proof it used to find these facts. *N.C. State Conf. of NAACP v. Moore*, Order, No. 18 CVS 9806, 2019 WL 2331258 (N.C. Super. Ct. Feb. 22, 2019).

3. "When the constitutionality of a legislative act depends on the existence or nonexistence of certain facts or circumstances, [a court] will presume the existence or nonexistence of such facts or circumstances, if reasonable, to give validity to the statute." *Hart*, 368 N.C. at 131 (2015).

4. Also, upon this Panel's review of the official transcript of the hearing prior to the entry of the trial court's 22 February 2019 order, it is clear Plaintiff offered *no evidence* to support the trial court's findings.[3] *Id.*

5. This Panel cannot reconcile the unsupported findings of fact set forth in the trial court's 22 February 2019 order with our Supreme Court's subsequent analysis and holding in *Holmes. Holmes v. Moore*, 384 N.C. 426 (2023). Namely, the Supreme Court upheld Voter ID enabling legislation and therefore, the trial court's 22 February 2019 findings of fact are now "legally impossible facts" for the purpose of Defendants' motion. Pursuant to Rule 12(c),

[3] We acknowledge the majority refers to the trial court's findings as "unobjected to findings." However, during oral argument on 24 October 2024, Defendants clarified those findings only related to the issue of Plaintiff's standing, as that was the only issue before the 22 February 2019 trial court.

this Panel is not bound by legally impossible facts. *See Fox v. Johnson*, 243 N.C. App. 274, 283 (2015)

6. Finally, we cannot ignore *Moore's* cautionary instruction to consider whether "invalidating a challenged constitutional amendment will *engender significant confusion.*" *Moore*, 382 N.C. at 198, n. 7 (emphasis added).

7. The likelihood of chaos and confusion resulting from retroactive invalidation will vary upon the circumstances of each case, but *Moore* instructs us to consider "whether the constitutional amendment has been implemented through enabling legislation that has already taken effect, whether the public has relied upon changes in the law introduced by the amendment, and whether there has been a significant lapse in time in between passage of the constitutional amendment and the successful challenge to the legislators' authority." *Id.*

A. <u>N.C. Sess. Law 2018-128 (Voter ID Amendment)</u>

1. Defendants contend this Panel should retroactively strike the voter ID amendment only if there is no set of circumstances under which N.C. Sess. Law 2018-128 would pass *Moore's* three-part test.

2. In *Holmes,* our Supreme Court found and concluded there is insufficient evidence to show, beyond a reasonable doubt, our General Assembly acted with discriminatory intent in passing the Voter ID laws. *Holmes*, 384 N.C. at 460 (2023).

3. The Supreme Court noted a showing of discriminatory intent is a heavy burden:

> Constitutional deference and the presumption of legislative good faith caution against casting aside legislative policy objectives on the basis of evidence that could be fairly interpreted to demonstrate that a law was enacted in spite of, rather than because of, any alleged racially disproportionate impact. To that end, a challenge to a presumptively valid and facially neutral act of the legislature under Article I, Section 19 of the North Carolina Constitution cannot succeed if it is supported by speculation and innuendo alone.

Holmes, 384 N.C. at 439.

4. Accordingly, the Court clarified to succeed in a facial challenge to the implementing legislation, "the challenger must prove beyond a reasonable doubt that: (1) the law was enacted with discriminatory intent on the part of the legislature, and (2) the law actually produces a meaningful disparate impact along racial lines." *Id.*

5. Even though *Holmes* addresses the voter ID laws themselves, and not their enabling amendments, we find and conclude *Holmes* controls.

6. The people of North Carolina ratified the Voter ID Amendment on 6 November 2018 with a total of 2,049,121 (55.49%)[4] voters voting in favor.

7. The Voter ID Amendment neither immunized legislators from democratic accountability, nor did it extend legislative terms. It did not alter House and Senate district lines, the qualifications for office, change election dates or reduce the number of votes needed to win legislative office.

8. Moreover, the Voter ID amendment has been implemented through enabling legislation that has already taken effect, and the public has clearly relied upon changes in the law introduced by the amendment as it was implanted in the last three elections after the Supreme Court in *Holmes* upheld voter ID.

9. At the time of *Moore's* publication, our Supreme Court did not have the benefit of the factual findings underlying the *Holmes* decision. To retroactively invalidate the session law enabling the Voter ID Amendment would entrench chaos and confusion especially when the Voter ID Law was upheld by the Supreme Court.

10. Accordingly, N.C. Sess. Law 2018-128 survives *Moore's* three-part test as a matter of law, when considered in light of *Holmes.*

B. <u>N.C. Sess. Law 2018-119 (Tax Cap Amendment):</u>

1. Under *Moore*, "[a]mendments that constitutionalize a particular policy choice, but do not alter the way the people's sovereign power is allocated, channeled,

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[4] 11/06/2018 Official General Election Results – Statewide, N.C. Bd. Of Elections, https://er.ncsbe.gov/?election_dt=11/06/2018&county_id=0&office=REF&contest=0. Additionally, the first three-judge panel determined that the ballot language for the Voter ID Amendment was not misleading. Order on Injunctive Relief pp. 51, No. 18-CVS-9805 (N.C. Super. Ct. Aug. 21, 2018).

and exercised by the people's representatives, do not typically threaten principles of popular sovereignty and democratic self-rule." *Id.* at 164.

2. The income tax, not available to the federal government until 1913, was always constitutional in North Carolina as Article V, Section 2(6) is a limitation, not a grant, of power and sets the maximum state of income taxation of net income. John v. Orth & Paul M. Newby, The North Carolina State Constitution 50 (G. Alan. Tarr ed., 2d ed. 2013).

3. The Appendices attached to Defendant's "Memorandum of Law in Support of Dispositive Motion" set forth uncontroverted facts concerning the history of North Carolina's "cap" on the income tax rate. In our discretion, we take judicial notice of these historical facts set forth in Defendants' Appendix E pursuant to N.C.G.S. § 8C-1, Rule 201(c).

4. It is clear from Appendix E that North Carolina has implemented some sort of "cap" on State income tax rates since 1920. Over the years, the cap on income tax rates has gone from six percent to ten percent and now back down to seven percent as a result of our voters' ratification the Tax Cap Amendment stemming from N.C. Sess. Law 2018-119 in 2018. Defendant's Memorandum of Law in Support of Dispositive Motion, App. E, No. 18-CVS-9806.

5. It "is the responsibility of the General Assembly to determine the public policy of the State." *See Rhyne v. K-Mart Corp.,* 358 N.C. 160, 169 (2004) (holding that the legislative branch is, "without question," the policymaking agency of the State).

6. When our General Assembly establishes or amends tax rates, it is implementing public policy. *See In re Martin*, 186 N.C. App. 567, 572 (2007) (Geer, J. dissenting) ("The Commission and the majority opinion have improperly imposed their view of appropriate public policy—fairness to individual taxpayers—to override other public policies promoted by the statute's plain language such as equality of taxation and reduction of tax rates."), *rev'd per curiam for the reasons stated in the dissent*, 362 N.C. 339 (2008).

7. There is no forecast of evidence that a change in the "income tax cap" threatens our State's "principles of popular sovereignty and democratic self-rule." *Moore,* 382 N.C. at 164.

8. Because amending our Constitution to lower the rate of the "income tax cap" does not relate to legislative terms in office or district lines, only the third prong of the three-part test remains: Whether there is a "substantial risk" the amendment to lower the "income tax cap" *intentionally* discriminates against race?

9. Paragraph 33 of the trial court's 22 February 2019 order, which states a lower tax rate "*over time . . . tends* to" lead to racial discrimination does not survive the third prong of *Moore's* three-part test, as a matter of law, when viewed in light of *Holmes*. That finding is, at best, a speculative forecast of a disparate impact along racial lines. Additionally, that finding falls short of evidence of *intentional racial discrimination* that must be found beyond a reasonable doubt under *Holmes*.[5]

10. Finally, the "income tax cap" applies equally to all North Carolina citizens, regardless of race. Paragraph 33 of the 22 February 2019 order does not, as a matter of law, survive the "under no set of circumstances" test required by the facial challenge before this Court.

CONCLUSIONS OF LAW

1. Pursuant to N.C.G.S. § 1-267.1 this Court has exclusive subject matter jurisdiction.

2. As a matter of law, after considering all allegations contained in Plaintiff's pleadings, except for conclusions of law and legally impossible facts, Plaintiff's pleadings fail to establish that "no set of circumstances exists under which the act(s) would be valid." As such, Plaintiff's pleadings have failed to satisfy the burden of proof as to facial unconstitutionality.

3. As a matter of law, after considering all allegations contained in Plaintiff's pleadings except for conclusions of law and legally impossible facts, Plaintiff fails to meet its burden of proof of beyond a reasonable doubt that the legislature enacted the Voter ID Amendment with discriminatory intent and

[5] Plaintiff asserts further discovery is essential to allow Plaintiff an opportunity to find evidence of intentional discrimination. However, considering the age of this case, the strong presumption of validity given to legislative actions, and the high standard of evidence required by *Holmes* to prove intent beyond a reasonable doubt, such discovery, at best, appears to be little more than a "fishing expedition."

that the legislation actually produces a meaningful disparate impact along racial lines.

4. As a matter of law, after considering all allegations contained in Plaintiff's pleadings, except for conclusions of law and legally impossible facts, Plaintiff fails to meet its burden of proof of beyond a reasonable doubt that the legislature enacted Tax Cap Amendment with discriminatory intent and the legislation actually produces a meaningful disparate impact along racial lines.

5. Defendants' 12(c) Motion for Judgment on the Pleadings is granted.

6. Furthermore, even when applying the new three-part test, Plaintiffs cannot meet their burden of proof, beyond a reasonable doubt, as to any of *Moore's* "substantial risk" factors.

BASED UPON THE FOREGOING, IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. Defendants' 12(C) Motion for Judgment on the Pleadings as to N.C. Sess. Law 2018-128 (Voter ID Amendment) is granted; and

2. Defendants' 12(C) Motion for Judgment on the Pleadings as to N.C. Sess. Law 2018-119 (Tax Cap Amendment) is granted.

SO ORDERED, this the 5 day of September, 2025.

9/5/2025 2:07:18 PM

James G. Bell, Superior Court Judge

9/5/2025 2:12:33 PM

Michael D. Duncan, Superior Court Judge

9/5/2025 2:17:53 PM

Cindy King Sturges, Superior Court Judge