

NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
25CV004705-910

JOSHUAH. STEIN, in his official
capacity as GOVERNOR OF THE
STATE OF NORTH CAROLINA,

Plaintiff,

v.

DESTIN C. HALL, in his official
capacity as SPEAKER OF THE
NORTH CAROLINA HOUSE OF
REPRESENTATIVES, and PHILIP E.
BERGER, in his official capacity as
PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE,

Defendants.

**THE NORTH CAROLINA
STATE TREASURER'S
CONSENT MOTION
TO INTERVENE**

Bradford B. Briner, in his official capacity as North Carolina State Treasurer (the “Treasurer”), by and through counsel, respectfully moves this Court, pursuant to Rule 24(b) of the North Carolina Rules of Civil Procedure, to allow the Treasurer to permissively intervene as a Defendant in this proceeding. In support of this motion, the Treasurer shows the following:

1. A party may permissively intervene when the party’s “claim or defense and the main action have a question of law or fact in common.” N.C. Gen. Stat. § 1A-1, Rule 24(b). In addition, a court may permit intervention “[w]hen a party to an action relies for ground of claim or defense upon any statute . . . administered by a . . . State governmental officer.” *Id.*

2. First, the Treasurer seeks to defend Session Law 2024-57’s provisions that authorize his office to appoint a member to the North Carolina Utilities Commission. This issue is one of the central legal questions raised in the Governor’s complaint, which contends that our

constitution prohibits the General Assembly from granting the Treasurer the legal duty of appointing one of the five members of the Utilities Commission. Therefore, the Treasurer's defense of the legislation has questions of law or fact in common with the main action. *Id.*, Rule 24(b)(2).

3. Second, the Governor claims that only his office—and not the Treasurer's office—can appoint a fifth member to the Utilities Commission. The relevant provisions of Session Law 2024-57, unless held invalid by a court, empower the Treasurer to make such an appointment and thereby require the Treasurer to administer this statutory appointment power. Therefore, the Governor's claims about the appointment, and the Legislative Defendants' defenses, are grounded in legislation that is administered by the Treasurer. *See* N.C. Gen. Stat. § 1A-1, Rule 24(b)(2).

4. Another requirement of Rule 24 is that intervention cannot unduly delay or prejudice the parties to the action. *See id.* To determine whether intervention is timely, courts look to the following factors: “(1) the status of the case, (2) the possibility of unfairness or prejudice to the existing parties, (3) the reason for the delay in moving for intervention, (4) the resulting prejudice to the applicant if the motion is denied, and (5) any unusual circumstances.” *Procter v. City of Raleigh Bd. of Adjustment*, 133 N.C. App. 181, 183, 514 S.E.2d 745, 746 (1999).

5. As evidenced by the consent of both the Governor and Legislative Defendants, the Treasurer's intervention is timely and will not delay or prejudice the adjudication of the issues in the action. Indeed, all five factors weigh in favor of intervention.

6. First, up to this point, no meaningful activity has occurred in the lawsuit. The court recently appointed a three-judge panel to adjudicate this case. With the parties anticipating that the panel will soon set a briefing schedule and hearing date, now is the time for the Treasurer to intervene. *Accord Hoke Cnty. Bd. of Educ. v. State*, 382 N.C. 694, 699, 896 S.E.2d 720, 728 (2022)

(finding no delay where the moving party “had no immediate interest or other reason to intervene earlier”).

7. Second, because no parties have filed briefs or otherwise presented arguments yet, the intervention will not be unfair or prejudicial to any of the parties.

8. The third factor supports intervention because the Treasurer has not delayed in moving to intervene. The action was filed on 7 February 2025 and remained essentially dormant until the Governor filed a motion for injunctive relief on 21 April 2025. The Treasurer is requesting to intervene less than 10 days after this first sign of activity in the case.

9. With respect to the fourth factor, the Treasurer could suffer significant prejudice if he is not permitted to intervene. The Treasurer is directly impacted by this litigation: the outcome of this case will determine the scope of the Treasurer’s statutory duties. The Treasurer also has arguments that are unique to his constitutional office and, therefore, different from the perspective of the other parties.

10. Fifth, this case presents important questions concerning the separation of powers and the appointment of a member to the Utilities Commission—questions to which the Treasurer is a central figure in light of the challenged legislation. Given the Treasurer’s unique interest in this important case, intervention is especially appropriate.

11. Counsel for the Treasurer has conferred with counsel for Plaintiff Governor Joshua H. Stein (the “Governor”) and counsel for Defendants Destin C. Hall and Philip E. Berger (collectively, the “Legislative Defendants”), and the Governor and Legislative Defendants consent to this motion.

12. A copy of a proposed Answer to the Complaint is attached pursuant to Rule 24(c).

WHEREFORE, the Treasurer respectfully moves the Court to grant the Treasurer permissive intervention under North Carolina Rule of Civil Procedure 24(b).

Respectfully submitted, this the 30th day of April, 2025.

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CERTIFICATE OF SERVICE

This certifies that on this day a copy of the foregoing Motion was served on the following via e-mail to addresses of record with the Court, per Rule 5(b)(1)(a) of the N.C. Rules of Civil Procedure:

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This 30th day of April, 2025.

/s/ Craig D. Schauer _____
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BERGER, in his official capacity as
PRESIDENT PRO TEMPORE OF THE
NORTH CAROLINA SENATE,

Defendants.

and

BRADFORD B. BRINER, in his official
capacity as North Carolina State
Treasurer,

Intervenor-Defendant

**PROPOSED ANSWER
OF THE NORTH CAROLINA
STATE TREASURER**

Intervenor-Defendant Bradford B. Briner, in his official capacity as North Carolina State Treasurer (the "Treasurer"), hereby responds to the Complaint of Plaintiff Joshua H. Stein ("Plaintiff") as follows:

FIRST DEFENSE AND ANSWER

1. In response to the allegations contained in Paragraph 1 of the Complaint, the Treasurer admits that Josh Stein was elected Governor of North Carolina on November 5, 2024. The remaining allegations of Paragraph 1 of the Complaint are denied.

2. In response to the allegations contained in Paragraph 2 of the Complaint, the Treasurer admits that more Republican candidates for North Carolina Senate and House were elected than Democrat candidates, that there are not enough Republican-affiliated Representatives to constitute three-fifths of the North Carolina House of Representatives, and that the General Assembly passed Senate Bill 382 in November 2024.

3. The allegations contained in Paragraph 3 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 3 sets forth allegations contrary to law, such allegations are denied.

4. The allegations contained in Paragraph 4 of the Complaint state a legal conclusion, a recitation of the North Carolina Constitution, and a recitation of a commentary on the North Carolina Constitution, none of which require a response. Senate Bill 382 speaks for itself, and, to the extent a response is deemed necessary, or Paragraph 4 sets forth allegations contrary to law, such allegations are denied.

5. The allegations contained in Paragraph 5 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, none of which require a response. The legislation speaks for itself, and, to the extent a response is deemed necessary, or Paragraph 5 sets forth allegations contrary to law, such allegations are denied.

6. The Treasurer admits that the General Assembly enacted Session Law 2024-57 on December 11, 2024 by overriding Governor Cooper's veto of Senate Bill 382.

7. The Treasurer admits that the General Assembly enacted Session Law 2024-49 in September 2024 by overriding Governor Cooper's veto of Senate Bill 166. The Session Law speaks for itself and the remaining allegations of Paragraph 7 inconsistent with that legislation are denied.

8. The allegations contained in Paragraph 8 of the Complaint state a legal conclusion and a recitation of a past North Carolina case law, neither of which require a response. To the extent a response to these allegations is deemed necessary, or Paragraph 8 sets forth allegations contrary to law, such allegations are denied.

9. The allegations contained in Paragraph 9 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 9 sets forth allegations contrary to law, such allegations are denied.

PARTIES AND JURISDICTION

10. The allegations contained in Paragraph 10 of the Complaint are admitted.

11. The allegations contained in Paragraph 11 of the Complaint are admitted.

12. The allegations contained in Paragraph 12 of the Complaint are admitted.

13. The allegations of Paragraph 13 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 13 sets forth allegations contrary to law, such allegations are denied.

14. The Treasurer admits that Plaintiff seeks declaratory and injunctive relief regarding the constitutionality of Sections 3C.1 and 3F.1 of Session Law 2024-57 and Section 5.1 of Session Law 2024-49.

15. The Treasurer admits that Plaintiff argues Sections 3C.1 and 3F.1 of Senate Session Law 2024-57 and Section 5.1 of Session Law 2024-49 are unconstitutional; otherwise, the Treasurer lacks sufficient information to admit or deny the allegations of Paragraph 21 of the Complaint and, therefore, they are denied.

16. The allegations of Paragraph 16 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 16 sets

forth allegations contrary to law, in particular political questions, such allegations about subject matter jurisdiction are denied.

FACTS REGARDING SENATE BILL 382 AND SENATE BILL 166

17. The allegations contained in Paragraph 17 of the Complaint state a recitation of case law which does not require a response. To the extent a response to these allegations is deemed necessary, or Paragraph 17 sets forth allegations contrary to law, such allegations are denied.

18. The allegations contained in Paragraph 18 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, none of which require a response. To the extent a response is deemed necessary, or Paragraph 18 sets forth allegations contrary to law, such allegations are denied.

19. The allegations contained in Paragraph 19 of the Complaint state a legal conclusion and recitation of case law, neither of which require a response. To the extent a response to these allegations is deemed necessary, or Paragraph 19 sets forth allegations contrary to law, such allegations are denied.

20. The allegations contained in Paragraph 20 of the Complaint state a recitation of case law which does not require a response. To the extent a response to these allegations is deemed necessary, or Paragraph 20 sets forth allegations contrary to law, such allegations are denied.

21. The allegations contained in Paragraph 21 of the Complaint state a recitation of the North Carolina Constitution which does not require a response. To the extent a response is deemed necessary, or Paragraph 21 sets forth allegations contrary to law, such allegations are denied.

22. The allegations contained in Paragraph 22 of the Complaint state a legal conclusion and a recitation of a commentary on the North Carolina Constitution, neither of which require a

response. To the extent a response is deemed necessary, or Paragraph 22 sets forth allegations contrary to law, such allegations are denied.

23. The allegations contained in Paragraph 23 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 23 sets forth allegations contrary to law, such allegations are denied.

24. The allegations contained in Paragraph 24 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 24 sets forth allegations contrary to law, such allegations are denied.

25. The Treasurer lacks sufficient information to admit or deny the allegations of Paragraph 25 of the Complaint and, therefore, they are denied.

26. The allegations contained in Paragraph 26 of the Complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 26 sets forth allegations contrary to law, such allegations are denied.

27. The allegations of Paragraph 27 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 27 sets forth allegations contrary to N.C. Gen. Stat. § 163-9, as amended by Senate Bill 382, such allegations are denied.

28. The allegations of Paragraph 28 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute and state a legal conclusion. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed

necessary, or Paragraph 28 sets forth allegations contrary to the North Carolina Constitution or N.C. Gen. Stat. § 163-9, as amended by Senate Bill 382, such allegations are denied.

29. The allegations contained in Paragraph 29 of the Complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 29 sets forth allegations contrary to law, such allegations are denied.

30. The allegations contained in Paragraph 30 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 30 sets forth allegations contrary to law, such allegations are denied.

31. The allegations contained in Paragraph 31 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 31 sets forth allegations contrary to law, such allegations are denied.

32. The allegations contained in Paragraph 32 of the Complaint state a recitation of the current North Carolina Constitution, a legal conclusion, and a recitation of the North Carolina Constitution of 1868, none of which require a response. To the extent a response is deemed necessary, or Paragraph 32 sets forth allegations contrary to law, such allegations are denied.

33. The allegations contained in Paragraph 33 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 33 sets forth allegations contrary to law, such allegations are denied.

34. The allegations contained in Paragraph 34 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 34 sets forth allegations contrary to law, such allegations are denied.

35. The allegations contained in Paragraph 35 of the Complaint state a legal conclusion and recitation of case law, none of which require a response. To the extent a response is deemed necessary, or Paragraph 35 sets forth allegations contrary to law, such allegations are denied.

36. The allegations contained in Paragraph 36 of the Complaint state a recitation of case law and a legal conclusion, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 36 sets forth allegations contrary to law, such allegations are denied.

37. The allegations contained in Paragraph 37 of the Complaint state a recitation of case law which does not require a response. To the extent a response is deemed necessary, or Paragraph 37 sets forth allegations contrary to law, such allegations are denied.

38. The allegations contained in Paragraph 38 of the Complaint state a recitation of a past North Carolina Session Law which does not require a response. The Session Law speaks for itself and the remaining allegations of Paragraph 38 inconsistent with that legislation are denied.

39. The allegations contained in Paragraph 39 of the Complaint state a recitation of case law which does not require a response. To the extent a response is deemed necessary, or Paragraph 39 sets forth allegations contrary to law, such allegations are denied.

40. The allegations contained in Paragraph 40 of the Complaint state a recitation of case law which does not require a response. To the extent a response is deemed necessary, or Paragraph 40 sets forth allegations contrary to law, such allegations are denied.

41. The allegations contained in Paragraph 41 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 41 sets forth allegations contrary to law, such allegations are denied.

42. The allegations contained in Paragraph 42 of the Complaint are denied.

43. The allegations contained in Paragraph 43 of the Complaint state a recitation of a North Carolina statute which does not require a response. To the extent a response to these allegations is deemed necessary, or Paragraph 43 sets forth allegations contrary to law, such allegations are denied.

44. The allegations of Paragraph 44 of the Complaint state a legal conclusion and recitation of North Carolina statute, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 44 sets forth allegations contrary to law, such allegations are denied.

45. The allegations of Paragraph 45 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 45 sets forth allegations contrary to N.C. Gen. Stat. § 62-10, as amended by Senate Bill 382, such allegations are denied.

46. The allegations of Paragraph 46 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 46 sets forth allegations contrary to N.C. Gen. Stat. § 62-10, as amended by Senate Bill 382, such allegations are denied.

47. The allegations of Paragraph 47 of the Complaint state a recitation of North Carolina statute and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 47 sets forth allegations contrary to law, such allegations are denied.

48. The allegations contained in Paragraph 48 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 48 sets forth allegations contrary to law, such allegations are denied.

49. The allegations contained in Paragraph 49 of the Complaint state a recitation of the North Carolina Constitution and a legal conclusion, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 49 sets forth allegations contrary to law, such allegations are denied.

50. The allegations contained in Paragraph 50 of the Complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 50 sets forth allegations contrary to law, such allegations are denied.

51. The allegations contained in Paragraph 51 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 51 sets forth allegations contrary to law, such allegations are denied.

52. The Treasurer admits that Senate Bill 382, among other things, establishes that one member of the Utilities Commission will be elected by and from the members of the Commission to serve as chairman for three years. The legislation speaks for itself and the remaining allegations of Paragraph 52 inconsistent with that legislation are denied.

53. The allegations of Paragraph 53 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 53 sets forth allegations contrary to N.C. Gen. Stat. § 62-10 as amended by Senate Bill 382, such allegations are denied.

54. The allegations of Paragraph 54 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 54 sets forth allegations contrary to N.C. Gen. Stat. § 62-10(f), as amended by Senate Bill 382, such allegations are denied.

55. The allegations of Paragraph 55 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 55 sets forth allegations contrary to N.C. Gen. Stat. § 62-10 as amended by Senate Bill 382, such allegations are denied.

56. The allegations contained in Paragraph 56 of the complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 56 sets forth allegations contrary to law, such allegations are denied.

57. The allegations contained in Paragraph 57 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 57 sets forth allegations contrary to law, such allegations are denied.

58. The allegations contained in Paragraph 58 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 58 sets forth allegations contrary to law, such allegations are denied.

59. The allegations of Paragraph 59 of the Complaint state a recitation of North Carolina statute which does not require a response. To the extent a response is deemed necessary, or Paragraph 59 sets forth allegations contrary to law, such allegations are denied.

60. The allegations of Paragraph 60 of the Complaint state a legal conclusion and a recitation of North Carolina statute, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 60 sets forth allegations contrary to law, such allegations are denied.

61. The allegations of Paragraph 61 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 61 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

62. The allegations of Paragraph 62 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 62 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

63. The allegations of Paragraph 63 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and Session Law speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 63 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

64. The allegations contained in Paragraph 64 of the Complaint state a recitation of the North Carolina Constitution which does not require a response. To the extent a response is deemed necessary, or Paragraph 64 sets forth allegations contrary to law, such allegations are denied.

65. The allegations of Paragraph 65 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 65 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

66. The allegations contained in Paragraph 66 of the Complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 66 sets forth allegations contrary to law, such allegations are denied.

67. The allegations of Paragraph 67 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 67 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

68. The allegations of Paragraph 68 of the Complaint discuss modifications to one statute by the passage of legislation amending that statute. The allegations of Paragraph 68 of the Complaint also state a legal conclusion and a recitation of case law, none of which require a response. The Statute and legislation speak for themselves. To the extent a response to these allegations is deemed necessary, or Paragraph 68 sets forth allegations contrary to N.C. Gen. Stat. § 143-136, as amended by Senate Bill 166, such allegations are denied.

69. The allegations contained in Paragraph 69 of the Complaint state a legal conclusion and a recitation of case law, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 69 sets forth allegations contrary to law, such allegations are denied.

70. The allegations contained in Paragraph 70 of the Complaint state a legal conclusion and a recitation of the North Carolina Constitution, neither of which require a response. To the extent a response is deemed necessary, or Paragraph 70 sets forth allegations contrary to law, such allegations are denied.

71. The allegations contained in Paragraph 71 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 71 sets forth allegations contrary to law, such allegations are denied.

COUNT 1: DECLARATORY JUDGMENT (FACIAL CHALLENGE)
Section 3C.1 of Senate Bill 382 (Judicial Vacancies Provision) Facially Violates
Article IV, Section 19 of the North Carolina Constitution

72. The Treasurer restates and incorporates by reference the preceding paragraphs of this Answer, as if fully set forth herein.

73. The Treasurer admits that Plaintiff argues Section 3C.1 of Senate Bill 382 is unconstitutional; otherwise, the Treasurer lacks sufficient information to admit or deny the allegations of Paragraph 73 of the Complaint and, therefore, they are denied.

74. The allegations of Paragraph 74 of the Complaint are denied.

75. The allegations of Paragraph 75 of the Complaint are denied.

76. The allegations of Paragraph 76 of the Complaint are denied.

COUNT 2: DECLARATORY JUDGMENT (FACIAL CHALLENGE)
Section 3F.1 of Senate Bill 382 (North Carolina Utilities Commission) Facially
Violates the Separation of Powers, Vesting, and Faithful Execution Clauses of the
North Carolina Constitution

77. The Treasurer restates and incorporates by reference the preceding paragraphs of this Answer as if fully set forth herein.

78. The Treasurer admits that Plaintiff argues Section 3F.1 of Senate Bill 382 is unconstitutional; otherwise, the Treasurer lacks sufficient information to admit or deny the allegations of Paragraph 78 of the Complaint and, therefore, they are denied.

79. The allegations of Paragraph 79 of the Complaint are denied.

80. The allegations of Paragraph 80 of the Complaint are denied.

81. The allegations of Paragraph 81 of the Complaint are denied.

COUNT 3: DECLARATORY JUDGMENT (FACIAL CHALLENGE)
**Senate Bill 166 (Building Code Council) Facially Violates the Separation of Powers,
Vesting, Faithful Execution Clauses of the North Carolina Constitution**

82. The Treasurer restates and incorporates by reference the preceding paragraphs of this Answer as if fully set forth herein.

83. The Treasurer admits that Plaintiff argues Section 5.1 of Senate Bill 166 is unconstitutional; otherwise, the Treasurer lacks sufficient information to admit or deny the allegations of Paragraph 83 of the Complaint and, therefore, they are denied.

84. The allegations of Paragraph 84 of the Complaint state a legal conclusion which does not require a response. To the extent a response is deemed necessary, or Paragraph 84 sets forth allegations contrary to law, such allegations are denied.

85. The allegations of Paragraph 85 of the Complaint are denied.

86. The allegations of Paragraph 86 of the Complaint are denied.

SECOND DEFENSE
(Motion to Dismiss 12(b)(1) and 12(b)(6))

The Treasurer moves the Court, pursuant to N.C. Gen. Stat. § 1A-1, Rules 12(b)(1) and 12(b)(6), to dismiss Plaintiff's claim (a) due to lack of subject matter jurisdiction and (b) on the grounds that the Complaint fails to state a claim upon which relief may be granted. First, the Court lacks subject matter jurisdiction over Plaintiff's claim because, among other things, Plaintiff's

claim presents nonjusticiable political questions. Second, Plaintiff's claim fails to state a claim as a matter of law.

RESERVATION OF RIGHTS

The Treasurer reserves the right to respond further to Plaintiff's allegations and to amend his Answer to assert other affirmative defenses.

WHEREFORE, the Treasurer prays that the Court:

1. Deny and dismiss all of Plaintiff's claims in this action with prejudice;
2. Dissolve and vacate any interlocutory injunction;
3. Tax all costs of this action, including attorneys' fees as allowed by law, against Plaintiff; and
4. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this the _____ day of ____, 2025.

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