No. 342PA19-2 TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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JABARI HOLMES, FRED CULP, DANIEL E. SMITH, BRENDON JADEN PEAY, and PAUL KEARNEY, SR.

v.

TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives; PHILIP E. BERGER, in his official capacity as President Pro Tempore of the North Carolina Senate; DAVID R. LEWIS, in his official capacity as Chairman of the House Select Committee on Elections for the 2018 Third Extra Session; RALPH E. HISE, in his official capacity as Chairman of the Senate Select Committee on Elections for the 2018 Third Extra Session; THE STATE OF NORTH CAROLINA; and THE NORTH CAROLINA STATE BOARD OF ELECTIONS

From N.C. Court of Appeals
19-762

From N.C. Court of Appeals
22-16

From Wake
18CVS15292

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ORDER

This matter comes before the Court on a petition for rehearing filed by the Legislative Defendants.

A petition for rehearing is governed by Rule 31 of the Rules of Appellate Procedure. Under Rule 31, a petition for rehearing "shall state with particularity the

points of fact or law that, in the opinion of the petitioner, the court has overlooked or misapprehended" and must be accompanied by certifications from two qualifying, disinterested attorneys stating "that they consider the decision in error on points specifically and concisely identified." N.C. R. App. P. 31(a).

In exercising our duty and authority to address alleged errors of law, this Court has granted rehearing of cases under both Rule 31 and its historical predecessor, former Rule 44. In *Nowell v. Neal*, this Court provided guidance on when a litigant has satisfied the criteria for rehearing. 249 N.C. 516, 521, 107 S.E.2d 107, 111 (1959). Under a predecessor version of Rule 31 with nearly identical operative language, the Court observed that a recently issued opinion appropriately is reheard if the petitioner makes a satisfactory showing that the opinion may be erroneous: "No petition to rehear was filed. That is the appropriate method of obtaining redress from errors committed by this Court." *Id*.

This Court has consistently allowed a petition for rehearing when the petitioner has made the showing required by *Nowell*. *See*, *e.g.*, *Bailey v. Meadows Co.*, 154 N.C. 71, 69 S.E. 746 (1910) (modifying prior opinion upon grant of rehearing); *Clary v. Alexander Cty. Bd. of Educ.*, 286 N.C. 525, 212 S.E.2d 160 (1975) (withdrawing prior opinion upon grant of rehearing); *Branch Banking & Trust Co. v. Gill*, 293 N.C. 164, 237 S.E.2d 21 (1977) (same); *Lowe v. Tarble*, 313 N.C. 460, 329 S.E.2d 648 (1985) (affirming prior opinion upon grant of rehearing); *Alford v. Shaw*, 320 N.C. 465, 358 S.E.2d 323 (1987) (withdrawing prior opinion upon grant of

rehearing); *Wilson v. State Farm Mut. Auto. Ins. Co.*, 329 N.C. 262, 404 S.E.2d 852 (1991) (withdrawing in part and affirming in part prior opinion upon grant of rehearing); *Swanson v. State*, 330 N.C. 390, 410 S.E.2d 490 (1991) (affirming prior opinion upon grant of rehearing), *vacated and remanded*, 509 U.S. 916 (1993); and *Smith Chapel Baptist Church v. City of Durham*, 350 N.C. 805, 517 S.E.2d 874 (1999) (superseding prior opinion upon grant of rehearing).

We conclude that the petition for rehearing in this matter satisfies the criteria in Rule 31 and allow the petition. The parties are directed as follows:

1. Appellants shall file supplemental briefing with this Court on or before 17 February 2023.

2. Appellees shall file supplemental briefing with this Court on or before 3 March 2023.

3. In their supplemental briefing, the parties shall address the following issues: (1) the issues raised in the petition for rehearing and (2) whether the operation of the challenged statute is impacted by the pending legal challenge to N.C. Const. Art. VI, Sec. 3(2), addressed by this Court in *N.C. State Conf. NAACP v. Moore*, 382 N.C. 129 (2022). The parties also may address any other issues raised in the original petition for discretionary review prior to determination by the Court of Appeals.

This matter will be placed on the 14 March 2023 calendar for rehearing.

By order of the Court in Conference, this the 3rd day of February 2023.

/s/ Allen, J.
For the Court

Order of the Court

Justices Morgan and Earls dissent as set out in the attached statement.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 3rd day of February 2023.

Grant E. Buckner
Clerk of the Supreme Court

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No. 342PA19-2 – Holmes v. Moore

Justice MORGAN dissenting.

I respectfully dissent from this Court's allowance of the Petition for Rehearing. There is no aspect of the case at issue which is presented by petitioners in their Petition for Rehearing which meets the historically and purposely high standards to qualify for this Court's exceedingly rare extension of the opportunity for a party which has already been fully heard by this Court through written submissions and oral arguments—followed by a studious and thorough analysis of the matters at issue which culminates in this Court's issuance of its binding opinion—to be afforded yet another opportunity to be heard by this Court upon the party's original unsuccessful efforts. The allowance of this extraordinary remedy to petitioners in this case, under the existent circumstances, may serve to foment concerns that North Carolina's highest state court is engaged in the determination of challenging and legitimate legal disputes with a perceived desire to reach outcomes which are inconsistent with this Court's well-established principles of adherence to legal precedent, stare decisis, and the rule of law.

Rule 31 of the North Carolina Rules of Appellate Procedure governs the subject of "Petition for Rehearing." Rule 31(a) states, in pertinent part: "The petition shall state with particularity the points of fact or law that, in the opinion of the petitioner, the court has overlooked or misapprehended and shall contain such argument in support of the petition as petitioner desires to present." In my view, in light of the

exhaustive coverage and discussion of the subject matter of the case as addressed by this Court in its written opinion, there is no factual or legal component of this case which was overlooked; in my view, while the matters in controversy in this case were exacting, there is no factual or legal component of this case which was misapprehended by this Court. In sum, there is nothing demonstrably remarkable or sensational about petitioners' arguments in this case under North Carolina Appellate Rule 31 which warrants the colossal distinction to join the scant few cases for rehearing which span the twenty-one decades of this Court's resolution of this state's most significant cases, when the mammoth majority of such cases were duly considered to fail to satisfy the Court's elevated standards for a petition for rehearing to be granted.

As support for this observation, I note that petitioners have cited only four occasions in which this Court has found it to be appropriate to allow a case to be reheard: (1) *Bailey v. Meadows Co.*, 152 N.C. 603, 603, 68 S.E. 11, 12, *modified on reh'g*, 154 N.C. 71, 71, 69 S.E. 746, 747 (1910), a case addressing employer liability for employee injury; (2) *Clary v. Alexander Cnty. Bd. of Educ.*, 285 N.C. 188, 195, 203 S.E.2d 820, 825 (1974), *op. withdrawn sub nom. Clary v. Alexander Cnty. Bd. of Educ.*, 286 N.C. 525, 533, 212 S.E.2d 160, 165 (1975), a personal injury case; (3) *Branch Banking & Tr. Co. v. Gill*, 286 N.C. 342, 352, 211 S.E.2d 327, 335 (1975), *on reconsideration*, 293 N.C. 164, 190, 237 S.E.2d 21, 37 (1977), a case based on contract law; and (4) *Alford v. Shaw*, 318 N.C. 289, 349 S.E.2d 41 (1986), *on reh'g*, 320 N.C.

465, 358 S.E.2d 323 (1987), a case arising out of corporate law. It is readily ascertainable from the subject areas of the law which spawned these cases that there were no characteristics about any of them which contained or otherwise harbored any considerations which rendered this Court's allowance of petitions for rehearing in those cases to be peculiar or questionable, whereas such astonishment looms for me in the present case where petitioners merely reassert the same contentions which they unsuccessfully argued, albeit now rehashing these positions before a Supreme Court of North Carolina which has a different judicial composition than that which existed when the case was originally decided by this Court.

In *Weisel v. Cobb*, this Court opined:

> As the highest principles of public policy favor a finality of litigation, rehearings are granted by us only in exceptional cases, and then every presumption is in favor of the judgment already rendered. . . . A partial change in the personnel of the Court affords no reason for a departure from the rule, but rather emphasizes the necessity of its application[.]

122 N.C. 67, 69-70 (1898).

I respectfully dissent.

Justice EARLS joins in this dissent.