

SUPREME COURT OF NORTH CAROLINA

HOKE COUNTY BOARD OF
EDUCATION; et al., Plaintiffs

From N.C. Court of Appeals
22-86

and

From Wake
95CVS1158

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,
Plaintiff-Intervenor

and

RAFAEL PENN, et al., Plaintiff-
Intervenors

v.

STATE OF NORTH CAROLINA
and the STATE BOARD OF
EDUCATION, Defendants

and

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,
Realigned Defendant

and

PHILIP E. BERGER, in his
official capacity as President Pro
Tempore of the North Carolina
Senate, and TIMOTHY K.
MOORE, in his official capacity
as Speaker of the North Carolina
House of Representatives,
Intervenor-Defendants

ORDER

On 15 December 2021, Plaintiffs filed a Notice of Appeal, Petition for Discretionary Review, and Petition for Writ of Certiorari seeking this Court's review of the Court of Appeals' 30 November 2021 Writ of Prohibition. These petitions and subsequent filings from Plaintiff-Intervenors, Legislative Defendants, and the State Controller in December 2021 and January 2022 were filed under case number 425A21, later designated as 425A21-1.

On 14 February 2022, Defendant State of North Carolina filed with this Court a Petition for Discretionary Review Prior to Determination by the Court of Appeals in this matter. In its petition, the State requested that this Court "consolidate this appeal with Plaintiffs' appeal in case number 425A21, and suspend the appellate rules as necessary to facilitate a prompt decision on this filing and appeal." This petition and subsequent responses by Plaintiffs, Plaintiff-Intervenors, and Legislative Defendants were filed under case number 425A21-2.

On 21 March 2022, this Court addressed these petitions in two separate orders. In the first order, the Court addressed the various December 2021 and January 2022 petitions from Plaintiffs, Plaintiff-Intervenors, Legislative Defendants, and the State Controller. This order directed these petitions to be "held in abeyance, with no further action, including the filing of briefs, to be taken until further order of the Court."

In the second order, the Court addressed the State's 14 February 2022 petition and subsequent responses. This order allowed the State's and Plaintiffs' petitions,

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but remanded the case to the trial court “for a period of no more than thirty days for the purpose of allowing the trial court to determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted in its 11 November 2021 Order.” This Order did not specifically address the State’s request to consolidate the State’s appeal numbered 425A21-2 with Plaintiffs’ appeal numbered 425A21-1.

On 26 April 2022, the trial court issued its order on remand. In their subsequent briefing and oral arguments to this Court in 425A21-2, the parties addressed the merits of both the trial court’s November 2021 and April 2022 Orders and the Court of Appeals’ 30 November 2021 Writ of Prohibition.

Now, on our own motion, the Court hereby treats the Writ of Prohibition filed 30 November 2021 by the Court of Appeals in 425A21-1 as consolidated with 425A21-2 to the extent necessary for the Court to address the arguments pertaining to the Writ made by the parties here; further, we hereby stay the Writ of Prohibition pending any further filings in 425A21-1 pertaining to issues not already addressed in the opinion filed on this day in 425A21-2. The State’s motion to consolidate is otherwise dismissed as moot.

By order of the Court in conference, this the 2nd day of November 2022.

/s/ Hudson, J.
Associate Justice

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WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 4th day of November 2022.



A handwritten signature in blue ink, reading "Grant E. Buckner".

Grant E. Buckner
Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals

Hon. Robert Neal Hunter, Jr., Attorney at Law, For Combs, Linda, State Controller - (By Email)

Judge Michael L. Robinson, Attorney at Law - (By Email)

Mr. Amar Majmundar, Special Deputy Attorney General, For State of N.C. - (By Email)

Mr. Matthew Tulchin, Special Deputy Attorney General, For State of N.C. - (By Email)

Ms. Tiffany Y. Lucas, Deputy General Counsel, For State of N.C. - (By Email)

Mr. Thomas J. Ziko, Attorney at Law, For State Board of Education - (By Email)

Mr. Neal A. Ramee, Attorney at Law, For Charlotte-Mecklenburg Schools - (By Email)

Mr. David Nolan, Attorney at Law, For Charlotte-Mecklenburg Schools - (By Email)

Mr. H. Lawrence Armstrong, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Ms. Melanie Black Dubis, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Mr. Scott B. Bayzle, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Ms. Kellie Z. Myers, Trial Court Administrator - (By Email)

Ms. Jaelyn D. Miller, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Mr. Matthew F. Tilley, Attorney at Law, For Berger, Philip E., et al. - (By Email)

Mr. Russ Ferguson, Attorney at Law, For Berger, Philip E., et al. - (By Email)

Mr. W. Clark Goodman, Attorney at Law, For Berger, Philip E., et al. - (By Email)

Mr. David Hinojosa, Attorney at Law, For Penn, Rafael, et al. - (By Email)

Mr. Christopher A. Brook, Attorney at Law, For Penn, Rafael, et al. - (By Email)

Mr. Michael Robotti, Attorney at Law, Pro Hac Vice, For Penn, Rafael, et al. - (By Email)

N.C. Supreme Court Clerk - (By Email)

Mr. Scott E. Bayzle, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Ms. Jane Wettach, Attorney at Law, For Professors and Long-Time Practitioners of Constitutional and Education Law - (By Email)

Ms. Catherine G. Clodfelter, Attorney at Law, For Hoke County Board of Education, et al. - (By Email)

Mr. W. Swain Wood, First Assistant Attorney General, For State of N.C. - (By Email)

Mr. Ryan Y. Park, Solicitor General, For State of N.C. - (By Email)

Ms. Sripriya Narasimhan, Deputy General Counsel, For State of N.C. - (By Email)

Mr. Michael A. Ingersoll, Attorney at Law, For Berger, Philip E., et al. - (By Email)

Ms. Elizabeth Lea Troutman, Attorney at Law, For N.C. Justice Center - (By Email)

Mr. Eric M. David, Attorney at Law, For N.C. Justice Center - (By Email)

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Mr. Daniel F.E. Smith, Attorney at Law, For N.C. Justice Center - (By Email)
Ms. Kasi W. Robinson, Attorney at Law, For N.C. Justice Center - (By Email)
Mr. Richard B. Glazier, Attorney at Law, For N.C. Justice Center - (By Email)
Mr. Mathew Ellinwood, Attorney at Law, For N.C. Justice Center - (By Email)
Ms. Peggy D. Nicholson, Attorney at Law, For Duke Children's Law Clinic, et al. - (By Email)
Ms. Crystal M. Grant, Attorney at Law, For Duke Children's Law Clinic, et al. - (By Email)
Mr. David Sciarra, Attorney at Law, Pro Hac Vice, For Duke Children's Law Clinic, et al. - (By Email)
Mr. John R. Wester, Attorney at Law, For North Carolina Business Leaders - (By Email)
Mr. Adam K. Doerr, Attorney at Law, For North Carolina Business Leaders - (By Email)
Mr. Erik R. Zimmerman, Attorney at Law, For North Carolina Business Leaders - (By Email)
Mr. Patrick H. Hill, Attorney, For North Carolina Business Leaders - (By Email)
Ms. Emma W. Perry, Attorney at Law, For North Carolina Business Leaders - (By Email)
Mr. William G. Hancock, Jr., Attorney at Law, For North Carolina Business Leaders - (By Email)
Ms. Jeanette K. Doran, Attorney at Law, For North Carolina Institute for Constitutional Law and the John Locke Foundation - (By Email)
Mr. South A. Moore, General Counsel Fellow, For State of N.C. - (By Email)
Mr. Marcus Pollard, Attorney at Law, For Education Justice Alliance, et al. - (By Email)
Mr. Raymond Albert Starling, Attorney at Law - (By Email)
West Publishing - (By Email)
Lexis-Nexis - (By Email)

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Justice BERGER dissenting.

For the reasons stated in the dissenting opinion in 425A21-2, I dissent from this order which summarily disposes of 425A21-1 which was appealed of right.

Chief Justice NEWBY and Justice BARRINGER join in this dissent.