

SUPREME COURT OF NORTH CAROLINA

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HOKE COUNTY BOARD OF  
EDUCATION; et al., Plaintiffs

From N.C. Court of Appeals  
22-86 23-788

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

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**ORDER**

Through counsel, plaintiffs moved the undersigned and this Court to consider whether recusal is required in a motion filed November 21, 2023. The motion contains an argument identical in substance, and similar in terms of structure and verbiage, to a motion filed herein by the same plaintiffs' counsel on July 15, 2022. The previous motion was denied in a special order entered on August 19, 2022.

Plaintiffs' counsel has not alleged that there has been a change in circumstances, the law, the Code of Judicial Conduct, or the administrative orders of this Court since denial of the previous motion that would warrant a different outcome here. Nor has plaintiffs' counsel alleged that the jurisdictional issue now squarely before the Court in any way implicates participation by the undersigned due to prior service as an attorney, personal knowledge of disputed facts, or fiduciary relationship or financial interest.

The undersigned is of the opinion that the substance of this motion was previously addressed. However, members of this Court should strive to fortify public trust, and unilateral action in this matter could undermine public confidence. Erring on the side of prudence, and because it appears the filing may violate Rule 34(a) of the Rules of Appellate Procedure, the undersigned refers this motion to the Court for resolution.

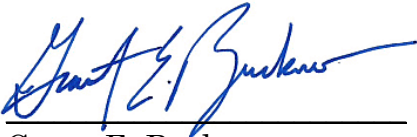
This the 5th day of February, 2024.

Order

**Berger, J.**  
Philip E. Berger, Jr.,  
Associate Justice

WITNESS my hand and the seal of the Supreme Court of North Carolina, this  
the 5th day of February 2024.



  
Grant E. Buckner  
Clerk of the Supreme Court

Copy to:

North Carolina Court of Appeals

Mr. 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, Senior 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 Board of Education - (By Email)

Mr. David Noland, Attorney at Law, For Charlotte-Mecklenburg Board of Education - (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. Elizabeth M. Haddix, Attorney at Law, For Penn, Rafael, 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. Christopher A. Brook, Attorney at Law, For Penn, Rafael, et al. - (By Email)

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

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

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

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

Ms. Sarah G. Boyce, Deputy Solicitor General, For State of N.C. - (By Email)

Mr. South A. Moore, Assistant General Counsel, For State of N.C. - (By Email)

Ms. Maya Brodziak, Attorney at Law, Pro Hac Vice, For Penn, Rafael, et al. - (By Email)

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

HOKE COUNTY BOARD OF EDUCATION, ET AL. V. STATE OF NORTH CAROLINA, ET AL.

No. 425A21-3

*Order*

Mr. Chavis Jones, Attorney at Law, Pro Hac Vice, For Penn, Rafael, et al. - (By Email)  
Mr. Michael Robotti, Attorney at Law, Pro Hac Vice, For Penn, Rafael, et al. - (By Email)  
Mr. W. Clark Goodman, Attorney at Law, For Berger, Philip E., et al. - (By Email)  
Ms. Lindsay V. Smith, Attorney at Law, For State of N.C. - (By Email)  
Ms. Jane R. Wettach, Attorney at Law, For Professors & Long-Time Practitioners of Constitutional  
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