

SUPREME COURT OF NORTH CAROLINA

I. BEVERLY LAKE, JOHN B. LEWIS, JR.,)
EVERETTE M. LATTA, PORTER L. MCATEER,)
ELIZABETH S. MCATEER, ROBERT C. HANES,)
BLAIR J. CARPENTER, MARILYN L.)
FUTRELLE, FRANKLIN E. DAVIS, JAMES D.)
WILSON, BENJAMINE E. FOUNTAIN, JR.,)
FAYE IRIS Y. FISHER, STEVE FRED BLANTON,)
HERBERT W. COOPER, ROBERT C. HAYES, JR.,)
STEPHEN B. JONES, MARCELLUS)
BUCHANAN, DAVID B. BARNES, BARBARA J.)
CURRIE, CONNIE SAVELL, ROBERT B.)
KAISER, JOAN ATWELL, ALICE P. NOBLES,)
BRUCE B. JARVIS, ROXANNA J. EVANS, JEAN)
C. NARRON, and all others similarly situated)

v.)

Gaston County)

STATE HEALTH PLAN FOR TEACHERS AND)
STATE EMPLOYEES, a corporation, formerly)
known as the North Carolina Teachers and State)
Employees' Comprehensive Major Medical Plan,)
TEACHERS AND STATE EMPLOYEES')
RETIREMENT SYSTEM OF NORTH CAROLINA,)
a corporation, BOARD OF TRUSTEES of the)
TEACHERS AND STATE EMPLOYEES')
RETIREMENT SYSTEM OF NORTH CAROLINA,)
a body politic and corporate, JANET COWELL, in)
her official capacity as Treasurer of the State of)
North Carolina, and the STATE OF NORTH)
CAROLINA)

ORDER

In light of the quorum requirement contained in N.C.G.S. § 7A-10(a) and the fact that a majority of the members of the Court are potentially disqualified from

participating in the hearing and decision of this case pursuant to Canon 3(C)(1)(c) of the Code of Judicial Conduct on the grounds that one or more persons within the third degree of kinship by either blood or marriage not residing in their households could be a member of the plaintiff class, the Court hereby exercises its discretion to invoke the Rule of Necessity and will proceed to set this case for argument and decision. This decision rests upon the following considerations: (1) the significance of this case to the citizens of North Carolina arising from the large number of potential class members, (2) the potential impact of any decision that the Court might make in this case upon the public fisc, (3) the likelihood that the Court's decision will provide further guidance concerning the extent of the General Assembly's authority to modify the terms and conditions of State employment, and (4) the importance of fulfilling the Court's duty under Article IV of the Constitution of North Carolina to resolve a matter properly presented for its consideration, *see United States v. Will*, 449 U.S. 200, 214 (1980) (stating that "[i]t is well established that actual disqualification of a member of a court of last resort will not excuse such member from performing his official duty if failure to do so would result in a denial of a litigant's constitutional right to have a question, properly presented to such court, adjudicated"); *see also Boyce & Isley, PLLC v. Cooper*, 357 N.C. 655, 656–57 (2003) (invoking the Rule of Necessity in order to permit the making of a decision to grant or deny a petition for discretionary review in an important case by more than a bare quorum of the Court); *Bacon v. Lee*, 353 N.C. 696, 717–18 (2001) (holding that the Governor of North Carolina was permitted to consider death row clemency petitions

despite the Governor's prior tenure as Attorney General); *Long v. Watts*, 183 N.C. 99, 102, 110 S.E. 765, 767 (1922) (determining that the Court must hear a case challenging the application of a statewide income tax to judicial salaries despite the potential impact of that case upon the members of the Court).

The Court further determines that the invocation of the Rule of Necessity will not violate the due process rights of any party to this proceeding. This order is subject to the right of each individual member of the Court to recuse himself or herself from further participation in this matter on his or own initiative pursuant to Canon 3D of the North Carolina Code of Judicial Conduct if additional facts warrant the exercise of such discretion.

By order of the Court in conference, this the 1st day of August 2021.



For the Court

Chief Justice Newby did not participate in the consideration or decision of this matter.

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 18 day of August 2021.



AMY FUNDERBURK
Clerk, Supreme Court of North Carolina

Amy Funderburk

M.C. Hackney
Assistant Clerk, Supreme Court of
North Carolina

Copy to:

North Carolina Court of Appeals

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