

SUPREME COURT OF NORTH CAROLINA

REBECCA HARPER; AMY CLARE OSEROFF;)
DONALD RUMPH; JOHN ANTHONY BALLA;)
RICHARD R. CREWS; LILY NICOLE QUICK;)
GETTYS COHEN, JR.; SHAWN RUSH;)
JACKSON THOMAS DUNN, JR.; MARK S.)
PETERS; KATHLEEN BARNES; VIRGINIA)
WALTERS BRIEN; and DAVID DWIGHT)
BROWN)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House Standing)
Committee on Redistricting; SENATOR)
WARREN DANIEL, in his official capacity as Co-)
Chair of the Senate Standing Committee on)
Redistricting and Elections; SENATOR RALPH)
HISE, in his official capacity as Co-Chair of the)
Senate Standing Committee on Redistricting and)
Elections; SENATOR PAUL NEWTON, in his)
official capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; SPEAKER OF THE NORTH)
CAROLINA HOUSE OF REPRESENTATIVES,)
TIMOTHY K. MOORE; PRESIDENT PRO)
TEMPORE OF THE NORTH CAROLINA)
SENATE, PHILIP E. BERGER; THE NORTH)
CAROLINA STATE BOARD OF ELECTIONS;)
and DAMON CIRCOSTA, in his official capacity)

Wake County

NORTH CAROLINA LEAGUE OF)
CONSERVATION VOTERS, INC.; HENRY M.)
MICHAUX, JR.; DANDRIELLE LEWIS;)
TIMOTHY CHARTIER; TALIA FERNÓS;)
KATHERINE NEWHALL; R. JASON PARSLEY;)
EDNA SCOTT; ROBERTA SCOTT; YVETTE)
ROBERTS; JEREANN KING JOHNSON;)
REVEREND REGINALD WELLS;)

YARBROUGH WILLIAMS, JR.; REVEREND)
DELORIS L. JERMAN; VIOLA RYALS)
FIGUEROA; and COSMOS GEORGE)

v.)

REPRESENTATIVE DESTIN HALL, in his)
official capacity as Chair of the House Standing)
Committee on Redistricting; SENATOR)
WARREN DANIEL, in his official capacity as Co-)
Chair of the Senate Standing Committee on)
Redistricting and Elections; SENATOR RALPH)
E. HISE, in his official capacity as Co-Chair of the)
Senate Standing Committee on Redistricting and)
Elections; SENATOR PAUL NEWTON, in his)
official capacity as Co-Chair of the Senate)
Standing Committee on Redistricting and)
Elections; REPRESENTATIVE TIMOTHY K.)
MOORE, in his official capacity as Speaker of the)
North Carolina House of Representatives;)
SENATOR PHILIP E. BERGER, in his official)
capacity as President Pro Tempore of the North)
Carolina Senate; THE STATE OF NORTH)
CAROLINA; THE NORTH CAROLINA STATE)
BOARD OF ELECTIONS; DAMON CIRCOSTA,)
in his official capacity as Chairman of the North)
Carolina State Board of Elections; STELLA)
ANDERSON, in her official capacity as Secretary)
of the North Carolina State Board of Elections;)
JEFF CARMON III, in his official capacity as)
Member of the North Carolina State Board of)
Elections; STACY EGGERS IV, in his official)
capacity as Member of the North Carolina State)
Board of Elections; TOMMY TUCKER, in his)
official capacity as Member of the North Carolina)
State Board of Elections; and KAREN BRINSON)
BELL, in her official capacity as Executive)
Director of the North Carolina State Board of)
Elections)

ORDER

After careful consideration of the Court's 23 December 2021 administrative order relating to recusal motions, the arguments advanced for and against the request for my recusal in this case, and an examination of the provisions of the Code of Judicial Conduct and other authorities in light of the relevant facts, I have concluded that there is no reasonable basis for questioning my ability to fairly and impartially decide this case. As a result, I have elected to retain responsibility for evaluating the merits of the recusal motion and conclude that it should be denied.

The issue raised by the motion seeking my recusal is the extent to which my "impartiality may reasonably be questioned," North Carolina Code of Judicial Conduct Canon 3.C(1), on the theory that I have "such a personal bias, prejudice or interest" that I "would be unable to rule impartially," *State v. Fie*, 320 N.C. 626, 627 (1987), in this case, which arises from a challenge to the lawfulness of Congressional and legislative districts established by the General Assembly. I was not elected from and am not seeking reelection in any of the districts that are at issue in this case (or any other district, for that matter) and, for that reason, I have no personal interest in how this case is decided.

Aside from the fact that the Code of Judicial Conduct requires recusal only when my impartiality can "reasonably" be questioned under Canon 3.C(1), rather than whether there is "the slightest concern about my impartiality," I am unable to see how either the Court's 8 December 2021 decision to stay further filing and postpone the primary or any decision that the Court might make concerning the merits of this case in the future will have any substantial or measurable impact upon

my ability to obtain reelection to the Court later this year. Simply put, any attempt to determine the effect of the 8 December 2021 order upon the outcome of this year's judicial elections is nothing more than an exercise in speculation, particularly given that the 8 December 2021 order has the same effect upon my reelection campaign that it does upon the campaigns of every other candidate who has announced or will announce that he or she intends to seek election to the seat on the Court that I now occupy. As a result, the present situation differs markedly from the one at issue in *Faires v. State Board of Elections*, 368 N.C. 825 (2016), which addressed the constitutionality of a statute that would, if upheld, have prevented anyone from running against a previously elected member of the Court, including a member of the Court who was seeking reelection that year.

The prior decisions of this Court do not require that its members recuse themselves in cases involving the lawfulness of Congressional and legislative districts heard during the year in which they are seeking election or reelection. *Pender County v. Bartlett*, 361 N.C. 491 (2007), supports, rather than undercuts, my decision to deny the recusal motion. Although Justice Hudson did not participate in *Pender County*, she was not yet a member of the Court when the case was argued, and this Court's opinion provides no indication that her decision to recuse herself stemmed from the fact that she had been on the ballot in 2006. 361 N.C. at 511. In addition, then-Chief Justice Parker and then-Justices Martin and Timmons-Goodson, all of whom ran for reelection in 2006, participated in deciding *Pender County*. 361 N.C. at 493.

A similar pattern can be seen in other redistricting-related cases since *Pender*

County. For example, then-Justice Newby does not appear to have recused himself when the Court (1) entered an order on 11 May 2012 expediting appellate review of a redistricting-related discovery order, *Dickson v. Rucho*, 366 N.C. 206, 208 (2012), and (2) filed an opinion on 25 January 2013 addressing the lawfulness of that order on the merits, *Dickson v. Rucho*, 366 N.C. 332 (2013), despite the fact that he was a candidate for reelection to the Court in 2012. Similarly, neither Justice Hudson, then-Chief Justice Martin, nor then-Justice Beasley recused themselves from the Court's 19 December 2014 decision in *Dickson v. Rucho*, 367 N.C. 542 (2014), even though all three of them sought election or reelection in 2014. Thus, the established practice at this Court is for justices who are in the process of running for election or reelection to participate in deciding redistricting-related cases like this one.

Finally, I note that no other justice is available to serve in my stead if I recuse myself. For that reason, members of this Court occupy a different position than members of the trial bench and the Court of Appeals, all of whom can be replaced by other judges if they refrain from participating in a particular case. In light of that fact, the members of this Court, including me, have an obligation to accept the responsibility that results from hearing and deciding controversial cases unless a provision of the Code requires them to do otherwise. In my opinion, no such obligation exists here.

As a result, I do not believe that there is any reasonable basis for believing that any interest that I may have, including my hope of being reelected, will preclude me from fairly and impartially deciding this case. On the contrary, I am satisfied that I

can decide this case fairly and impartially and that there is no reasonable basis for believing otherwise. Thus, the Legislative Defendant's recusal motion is denied.

This the 31st day of January 2022.



Samuel J. Ervin, IV
Associate Justice

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 31st day of January 2022.



AMY FUNDERBURK
Clerk, Supreme Court of North Carolina



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

Copy to:

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