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Defendants.

[illegible]

From Wake County

STATE’S RESPONSE TO PLAINTIFFS’  
PETITION FOR DISCRETIONARY REVIEW

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Defendant-Appellant, the State of North Carolina, pursuant to Rule 15 of the North Carolina Rules of Appellate Procedure, responds to the “Petition for Discretionary Review Prior to Determination by the Court of Appeals under N.C.

Gen. Stat. § 7A-31(b)” (“Plaintiffs’ Petition”) filed on 5 January 2012 by Plaintiffs and Plaintiff-Intervenor.

The State filed its own “Petition for Discretionary Review Under N.C.G.S. § 7A-31 Prior to Determination by the Court of Appeals” (“State’s Petition”) on 5 January 2012. The State’s Petition offers as reasons why certification should issue that the subject matter has significant public interest, that the appeal involves principles of major significance to the jurisdiction of the State, and that certification would promote judicial efficiency and the expeditious administration of justice.

Plaintiffs’ Petition urges the Court to accept the case prior to a determination by the Court of Appeals because the subject matter of the appeal has significant public interest, the appeal involves issues of major significance to the jurisprudence of the State, and that further delay will result in substantial harm. Plaintiffs’ Petition declares that “[i]n the event the Court allows this petition for discretionary review, Appellees, in addition to responding to the issues briefed by the State in its appellant brief, intend to present the following issues in its brief for review,” and sets out such purported additional “Issues to be Briefed.” (Pls.’ Pet. at 17-18)

The parties each seek certification of the case for review prior to a determination by the Court of Appeals, albeit for slightly different reasons. The State reaffirms its position that this Court should accept the case for review for the reasons

set forth in its Petition. However, the State does not agree with Plaintiffs' indication that they will present additional issues should this Court certify the matter for discretionary review. The Plaintiffs have not appealed from the trial court's order nor did they file any proposed issues on appeal as to an alternative basis in law within the meaning of Appellate Rule 10(c).

The State is confident that Plaintiffs can fully and completely respond to the matters presented by this appeal in their Appellees' Brief without the addition of the purported "Issues to be Briefed" that were included in their Petition. The State is not aware of any basis in the Rules of Appellate Procedure, or of any precedent, for an Appellee's assertion of "Issues to be Briefed" in addition to those properly brought forward by the Appellant in a petition for discretionary review prior to a determination by the Court of Appeals.

WHEREFORE, the State of North Carolina respectfully requests that this Court certify this case for discretionary review prior to a determination by the Court of Appeals pursuant to North Carolina General Statutes Section 7A-31 and Rule 15 of the North Carolina Rules of Appellate Procedure, limited to the "Issues to be Briefed" properly set forth in the State's Petition.

Respectfully submitted, this the 18<sup>th</sup> day of January, 2012.

ROY COOPER  
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has this day served the foregoing  
STATE'S RESPONSE TO PLAINTIFFS' PETITION FOR DISCRETIONARY  
REVIEW upon all other parties to this cause by:

- ☐ Hand delivering a copy hereof to each said party or to the attorney thereof;
- ☐ Transmitting a copy hereof to each said party via facsimile transmittal; or
- ☒ Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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This the 18th day of January, 2012.

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