

TENTH DISTRICT

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

Defendant North Carolina Rules Review Commission (“RRC”), hereby appeals to the Supreme Court of North Carolina from an order of the Court of Appeals dated March 2, 2016. The Court of Appeals’ order is attached hereto as Attachment A. The order dismissed the RRC’s appeal because the Notice of Appeal was not filed with the Supreme Court, and “pursuant to N.C. Gen. Stat. § 7A-27(a1), this Court is without jurisdiction to hear the appeal.”

The RRC's appeal presented the Court of Appeals with a substantial constitutional question of whether the RRC's construction of the North Carolina Constitution as subjecting the North Carolina State Board of Education ("SBOE") to the rulemaking provisions of the North Carolina Administrative Procedure Act ("APA") N.C. Gen. Stat. § 150B-1 *et seq.* was correct. The Court of Appeals should have reached and decided all issues necessary for determination of the appeal. In dismissing the RRC's appeal, the Court of Appeals misunderstood the scope of its appellate jurisdiction, and failed to decide the constitutional issue before it, thereby essentially deciding this constitutional question in favor of the SBOE.

In the event the Court finds the constitutional question to be substantial, the RRC intends to present the following issues in its brief for review:

1. Did the Superior Court err in granting summary judgment in favor of the SBOE and in failing to grant summary judgment in favor of Defendants-Appellants RRC and State of North Carolina?

Respectfully submitted, this the 28th day of March, 2016.

TROUTMAN SANDERS LLP

Electronically submitted

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*Counsel for Defendant-Appellant North Carolina
Rules Review Commission*

CERTIFICATE OF SERVICE

The undersigned attorney for Defendant-Appellant North Carolina Rules Review Commission hereby certifies that on this day the foregoing document was served upon counsel for all parties in this action by depositing a copy thereof in the United States mail, First Class, postage pre-paid, and addressed as follows:

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For Plaintiff-Appellee N.C. State Board of Education

This the 28th day of March, 2016.

Electronically submitted
Christopher G. Browning, Jr.

ATTACHMENT A



North Carolina Court of Appeals

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No. 15-1229

NORTH CAROLINA STATE BOARD
OF EDUCATION,

Plaintiff,

v.

THE STATE OF NORTH CAROLINA
and THE NORTH CAROLINA RULES
REVIEW COMMISSION,

Defendants.

ORDER

The following order was entered:

The motion filed in this cause by plaintiff-appellee on 26 January 2016 and designated 'Plaintiff-Appellee North Carolina State Board of Education's Motion to Dismiss' is allowed because, pursuant to N.C. Gen. Stat. § 7A-27(a1), this Court is without jurisdiction to hear the appeal. Appeal dismissed.

By order of the Court this the 2nd of March 2016.

WITNESS my hand and official seal this the 2nd day of March 2016.

Daniel M. Horne Jr.
Clerk, North Carolina Court of Appeals

Copy to:

Mr. Christopher G. Browning, Jr., Attorney at Law, For The North Carolina Rules Review Commission
Mr. Amar Majmundar, Special Deputy Attorney General, For The State of North Carolina
Ms. Olga Vysotskaya de Brito, Assistant Attorney General
Hon. Robert F. Orr, Attorney at Law, For North Carolina State Board of Education
Mr. Andrew H. Erteschik, Attorney at Law, For North Carolina State Board of Education
Hon. Jennifer Knox, Clerk of Superior Court

A TRUE COPY
CLERK OF THE COURT OF APPEALS
OF NORTH CAROLINA

BY Audra Scoggins
DEPUTY CLERK
15 March 2016