

No. 425A21

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

HOKE COUNTY BOARD OF)
EDUCATION, et al.,)
Plaintiffs,)

and)
)

CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)
Plaintiff-Intervenor)

and)
)

RAFAEL PENN, et al.,)
Plaintiff-Intervenors,)

v.)
)

STATE OF NORTH CAROLINA)
and STATE BOARD OF)
EDUCATION,)

and)
)

CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)
Realigned Defendant.)

From the Court of Appeals
No. P21-511

NOTICE OF UPCOMING FILING

**TO THE HONORABLE SUPREME COURT OF NORTH
CAROLINA:**

The State of North Carolina respectfully notifies this Court that, pursuant to N.C.G.S. § 7A-31, the State will soon file a Petition for Discretionary Review without prior review of the Court of Appeals (“bypass petition”). As more fully described below, the bypass petition arises from the same case and implicates the same issues that are presented by Plaintiffs’ and Plaintiff-Intervenor’s instant appeal and Petition for Discretionary Review (collectively, “Plaintiffs’ appeal”), as well as the oppositional pleadings filed by Intervenor Combs.

Plaintiffs’ appeal stems from a writ of prohibition issued by the North Carolina Court of Appeals to prevent the execution of an order entered by the trial court. The State has noticed an appeal of that same trial court order, has assembled the Record on Appeal, and upon docketing of the case on appeal, intends to file its bypass petition as soon as next week. Should this Court grant Plaintiffs’ Petition in this case, and the State’s forthcoming Petition, it may be appropriate to require the parties to coordinate briefing schedules to aid the Court in efficient resolution of both appeals.

Respectfully, the State shows further that:

The Trial Court's 10 November Order

1. On 10 November 2021, the Honorable W. David Lee entered an order in *Hoke County Board of Education v. State of North Carolina* (95 CVS 1158, Wake County) that addressed the constitutional mandate recognized by this Court in *Hoke County Board of Education v. State*, 358 N.C. 605 (2004) (“*Leandro II*”), and specifically, the State’s obligation to provide each child with a sound, basic education.

2. In that order, Judge Lee concluded that the state Constitution includes an appropriation requiring funding for the State’s educational system.

The Writ of Prohibition

3. In response to Judge Lee’s 10 November 2021 order, on 24 November 2021 Respondent Combs filed a Petition for Writ of Prohibition, Temporary Stay and Writ of Supersedeas with the North Carolina Court of Appeals.

4. On 30 November 2021, a panel of the Court of Appeals filed an order granting the Writ of Prohibition. The Honorable Chris Dillon and the Honorable Jefferson Griffin authored the majority opinion, while the Honorable John Arrowood offered a dissent.

Plaintiffs' and Plaintiff-Intervenors' Appeal

5. In response to the Writ of Prohibition, on 16 December 2021 Plaintiffs and Plaintiff-Intervenors filed with this Court a Notice of Appeal, Petition for Discretionary Review, and Petition for Writ of Certiorari.

6. On 28 December 2021, Respondent Combs filed her Response to Plaintiffs' appeal.

The State's Appeal

7. Previously, on 7 December 2021, the State noticed its own appeal from the trial court's 10 November 2021 order ("State's appeal").

8. The State believes that the Record on Appeal related to its appeal of Judge Lee's 10 November 2021 order will be settled within four days of this notice.

9. Promptly after settling the Record on Appeal, and pursuant to Appellate Rule 15(b), the State will file its bypass petition with this Court.

The Organization of Appellate Matters

10. The State's appeal, and the Plaintiffs' appeal, raise the same issues: whether and how a court may compel State actors to meet the

Constitutional requirement to educate the State's children, a requirement which was reiterated in *Leandro II*.

11. The State urges this Court to accept the State's Bypass Petition when it is filed. The State's appeal and Plaintiffs' appeal present a synchronicity of issues and parties, and the interests of justice and judicial economy are best served by the consolidation of these matters for this Court's review pursuant to Appellate Rule 40.

12. If so consolidated, the State submits that future briefing should be organized and scheduled such that the presentation of issues and arguments to the Court is orderly and cohesive. Pursuant to Appellate Rules 2, 18(f), and 27(c), the parties should collaborate and submit an expedited briefing schedule that delineates the appellate roles assumed by the respective litigants, and an alignment of filing deadlines.

13. In light of the commonality of issues, a consolidation of appeals and the organization of briefing schedules would avoid duplicative briefing and would not prejudice any party.

WHEREFORE, the State respectfully notifies this Court of its intent to file a bypass petition that involves the same issues as Plaintiffs' appeal as early as next week. Should this Court grant the State's bypass petition

and accept Plaintiffs' appeal, the State respectfully requests that the Court require consolidated briefing in both appeals.

Respectfully submitted, this the 18th day of January, 2022.

JOSHUA H. STEIN
ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the forgoing Notice was served on the parties to this action by depositing a copy of same on the date shown below with the United States Mail, first-class postage prepaid, and email, addressed as follows:

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This the 18th day of January, 2022.

/s/ Amar Majmundar

Amar Majmundar

Senior Deputy Attorney General