

SUPREME COURT OF NORTH CAROLINA

\*\*\*\*\*

NORTH CAROLINA LEAGUE OF	)	
CONSERVATION VOTERS, INC., et al.,	)	
Plaintiffs-Appellants,	)	
	)	
REBECCA HARPER, et al.,	)	
Plaintiffs-Appellants, and	)	
	)	
COMMON CAUSE,	)	
Plaintiff-Intervenor-Appellant,	)	
	)	
v.	)	<u>From Wake County</u>
	)	21 CVS 015426
	)	21 CVS 500085
REPRESENTATIVE DESTIN HALL, in his	)	
official capacity as Chair of the House Standing	)	
Committee on Redistricting, et al.,	)	
	)	
Defendants-Appellees.	)	
	)	

\*\*\*\*\*

**LEGISLATIVE DEFENDANTS' MOTION FOR CLARIFICATION**

\*\*\*\*\*

It has come to Legislative Defendants' attention that Tim Longest, a candidate for the 34th House District in the North Carolina House of Representatives, remains a law clerk to Justice Hudson. It would be a clear conflict of interest for anyone in the judicial branch to have meaningful involvement in litigation over legislative district boundaries while, at the same time, running for legislative office. Accordingly, Legislative Defendants presume Mr. Longest has been walled off from any activity in the remedial phase of this appeal. However, Legislative Defendants have no way to ascertain whether this in fact occurred. Accordingly, they respectfully request an assurance from Justice Hudson that Mr. Longest has been appropriately screened from any involvement in this matter. Alternatively, if this assurance cannot be made, Legislative Defendants move for Mr. Longest's recusal from this matter. Counsel for Legislative Defendants have conferred with counsel for the Plaintiffs regarding this motion. Plaintiffs take no position on the relief sought in this motion.

## **BACKGROUND**

1. This case involves state constitutional challenges to North Carolina's State House, Senate, and Congressional redistricting plans. In February 2022, this Court held for the first time that so-called "partisan gerrymandering" violates the North Carolina Constitution. *Harper v. Hall*, 2022-NCSC-17, ¶ 2, 380 N.C. 317, 321, 868 S.E.2d 499, 509. The Court reasoned that so-called gerrymandering violates "the core principle of republican government that the voters should choose their representatives, not the other way around." *Id.* ¶ 85, 868 S.E.2d at 525 (citation and alterations omitted). The Court assured the public that this new foray into politics

would not involve “stepping outside of our role as judicial officers and into the policymaking realm.” *Id.* ¶ 7, 868 S.E.2d at 510. Justice Hudson wrote the opinion for the Court.

The case was remanded for the Superior Court to oversee a remedial process. The General Assembly enacted new redistricting plans for House, Senate and Congressional elections. The Superior Court found that the Remedial House and Senate plans do not violate the rule announced in *Harper* but that the Remedial Congressional plan does. Appeals were taken from all rulings, and all plans are before the Court again. The Court denied motions to stay the Superior Court’s rulings as to all of these plans. The Court has since made additional significant decisions concerning this appeal, including ordering expedited argument on July 28, 2022, over the dissent of three Justices. *See Harper v. Hall*, 874 S.E.2d 902, 904 (N.C. 2022). Argument is set for Tuesday, October 4.

2. Tim Longest has been a law clerk to Justice Hudson since August 2020. *See* Exhibit 1, LinkedIn Profile for Tim Longest (visited Sept. 28, 2022). On July 26, 2022, the Wake County Democratic Party appointed him to be the Democratic candidate running in HD-34 in Wake County in November 2022. *See* Exhibit 2, Screenshot of Tim Longest Facebook Post, July 26, 2022 (visited Sept. 28, 2022). On August 2, 2022, Mr. Longest reported filed his paperwork to obtain listing on the general-election ballot in that district. *See* Exhibit 3, Screenshot of Tim Longest Facebook Post, August 2, 2022 (visited Sept. 28, 2022).

Mr. Longest has been endorsed by the North Carolina League of Conservation Voters PAC, known as “NCLCV PAC,” an endorsement Mr. Longest has advertised. *See* Exhibit 4, Screenshot of Tim Longest for N.C. House Facebook Post, August 17, 2022 (visited Sept. 29, 2022). NCLCV is among the lead plaintiffs in this lawsuit and is appealing the Superior Court’s ruling concerning legislative districts.

HD-34 is among the districts contested in this case. The General Assembly’s reconfiguration after the *Harper* ruling changed HD-34 from its configuration in the plan originally challenged in 2021. (*compare* 9d R p 84 *with* 9d R p 11827). Plans proposed by Plaintiffs-Appellants at the merits stage would also reconfigure HD-34. (9d R pp 3936; 3960). Thus, this Court’s *Harper* ruling directly impacts the configuration of HD-34, and its ultimately ruling on this appeal will again directly impact its configuration.

3. Legislative Defendants understand that law clerks on this Court generally end their employment in early fall, and they therefore did not understand that Mr. Longest would remain with the Court as of the resolution of this appeal. Legislative Defendants, however, have recently discovered that Mr. Longest apparently remains employed as a law clerk for Justice Hudson even after having filed to run for office. *See* Exhibit 5, North Carolina State Employee Directory Entry for Timothy Longest, at <https://www.nc.gov/employee-detail/63340d208424cc30539080d1> (visited Sept. 29, 2022). As a result, Mr. Longest

will both campaign for HD-34 and serve on the Court that will decide the ultimate boundaries of HD-34, potentially for the remainder of the decade.<sup>1</sup>

Legislative Defendants lack any ability to obtain information on the Court's inner workings, as is proper under the State's separation of powers. They therefore have no way to know whether Mr. Longest is currently involved in this appeal. Legislative Defendants at this time have assumed that this did not occur and that Mr. Longest has been appropriately screened off from this case. They file this motion out of an abundance of caution in order to obtain assurance that such screening has occurred.

## ARGUMENT

I. There can be no serious question that Mr. Longest cannot ethically be involved in this case. For that reason, Legislative Defendants assume this issue has been identified and resolved long ago and that Mr. Longest has already been screened off from any involvement, including in significant case decisions like the July 28 ruling on the motion to expedite, which drew three dissents. After all, “[t]he law clerk is the one person who is always sure to know of a conflict.” *First Interstate Bank of Arizona, N.A. v. Murphy, Weir & Butler*, 210 F.3d 983, 989 (9th Cir. 2000). Out of an abundance of caution, Legislative Defendants demonstrate below why Mr. Longest's participation would plainly be improper.

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<sup>1</sup> Plaintiffs-Appellants' have asked this Court to rule that whatever plan emerges from this appeal remain in place for the remainder of the 2020 decade. That request is improper and unenforceable, for reasons Legislative Defendants have explained. For present purposes, however, the relevant point is that the issue of the boundaries for HD-34 for the remainder of the decade has been raised in this appeal.

A. The Code of Judicial Ethics requires that judges and Justices in this State recuse themselves “in a proceeding in which the judge’s impartiality may reasonably be questioned.” NC R CJC Canon 3(C)(1). This Canon is essential because “a party has a right to be tried before a judge whose impartiality cannot reasonably be questioned.” *State v. Fie*, 320 N.C. 626, 627, 359 S.E.2d 774 (1987). The impartiality inquiry is not limited to whether the judge is *in fact* capable of presiding impartially over the case, but extends to the question whether “a perception could be created in the mind of a reasonable person” that the judge may not be impartial. *Id.* at 628, 359 S.E.2d at 776. Taking this broad approach is essential to our system of justice because “[t]he purity and integrity of the judicial process ought to be protected against any taint of suspicion to the end that the public and litigants may have the highest confidence in the integrity and fairness of the courts.” *Id.* at 628, 359 S.E.2d at 775 (quoting *Ponder v. Davis*, 233 N.C. 699, 706, 65 S.E.2d 356, 360 (1951) (quotation omitted)). Hence, recusal is required where “there exists such a personal bias, prejudice, or interest on the part of the judge that he would be unable to rule impartially, or a showing that the circumstances are such that a reasonable person would question whether the judge could rule impartially.” *Harrington v. Wall*, 212 N.C. App. 25, 29, 710 S.E.2d 364, 367 (2011) (quotation marks and citation omitted).

Those ethical responsibilities extend to staff and court officials. Canon 3 mandates that judges and Justices “require the [their] staff and court officials . . . to observe the standards of fidelity and diligence that apply to the judge.” NC R CJC Canon 3(B)(1). As a result, “the clerk is forbidden to do all that is prohibited to the

judge,” and “[i]t is the duty of the law clerk ‘as much as that of the trial judge to avoid any contacts outside the record that might affect the outcome of the litigation.’” *Hall v. Small Bus. Admin.*, 695 F.2d 175, 179 (5th Cir. 1983) (citation omitted).

Here, there can be no question that a judicial officer may not, consistent with basic ethical norms, adjudicate a challenge to district boundaries in a redistricting plan while that same officer runs as a candidate for office under that plan. A judicial officer who was a candidate seeking election to a legislative office would have an “interest” in the outcome of a challenge to the boundaries of the legislature’s district boundaries akin to the sort of “interests” created by a judicial officer’s financial or future employment interests. *See, e.g., DeNike v. Cupo*, 958 A.2d 446, 455–56 (N.J. 2008) (finding appearance of impropriety compelling recusal under N.J. Code Jud. Cond. Canon 3(C)(1) where judge continued to preside over case while negotiating post-retirement employment with a litigant’s counsel); *Shell Oil Co. v. United States*, 672 F.3d 1283, 1290, 1294 (Fed. Cir. 2012) (holding judge’s recusal required under 28 U.S.C. § 455(b) due to judge’s wife’s ownership of stock in litigant company, and vacatur of judge’s prior rulings required due to “risk of injustice and risk of undermining the public’s confidence in the judicial process”).

These basic principles are consistent with recusal decisions of Justices of this Court in election-law cases. In one recent case, former Justice Robert H. Edmunds, Jr., “took no part in the consideration or decision of” a case where he was called upon to decide the constitutionality of a law governing judicial retention laws when he was on the ballot that year—resulting in the case being decided by an evenly divided 3-3

court. *See Faires v. State Bd. of Elec.*, 368 N.C. 825, 784 S.E.2d 463, 464 (2016). Justice Ervin, in declining to recuse himself from this case on the basis that he was seeking re-election this year, distinguished *Faires* because *Faires* involved “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.” *Harper v. Hall*, 380 N.C. 274, 276, 867 S.E.2d 322, 325 (2022) (op. of Ervin, J.) (emphasis added).

In other words, while members of this Court have found their recusal from election-law cases is *not* generally required simply because they are seeking re-election that year, that principle does not extend to situations where the litigation directly impacts the office that judicial candidate seeks. That distinction matters here because a judicial officer seeking election to House District 34 will have a direct interest in the outcome of litigation that will affect the district boundaries and partisan “tilt” of the voters contained in that district—as this matter will inevitably do here. The judicial officer’s future incumbency—the result of prevailing in this year’s election—will also matter, to the extent any future remedial proceedings would take “incumbency protection” into account. *See North Carolina League v. Hall*, 2022 WL 2610499, \*7 (N.C. Super. Feb. 23, 2022); *Harper*, 380 N.C. at 388, 2022-NCSC-17, at ¶ 170 (recognizing “incumbency protection” as a “permissible governmental interest”). Hence, it is beyond cavil that a judicial officer could not simultaneously hear a challenge to a legislative redistricting plan while seeking election to that legislative body.



B. Because Justice Hudson (or any other Justice) could not both sit on this case and run for legislative office in HD-34 (or any other district) simultaneously, it is equally clear that Mr. Longest cannot be meaningfully involved, given his candidacy for HD-34. “Law clerks are not merely the judge’s errand runners. They are sounding boards for tentative opinions and legal researchers who seek the authorities that affect decision.” *Hall*, 695 F.2d at 179. “[a] law clerk’s role in [a judge’s] decisionmaking may be quite significant,” and thus “a law clerk’s relationships might cause the impartiality of decisions from that judge’s chambers in which the clerk participates reasonably to be questioned.” *Hamid v. Price Waterhouse*, 51 F.3d 1411, 1416 (9th Cir. 1995). “[A] reasonable person might wonder about a law clerk’s impartiality in cases in which” the clerk has a personal interest, and therefore “[c]lerks should not work on such cases, just as a judge should not hear cases in which” they have personal conflicts. *Hunt v. Am. Bank & Tr. Co. of Baton Rouge, La.*, 783 F.2d 1011, 1015 (11th Cir. 1986). That is the plain import of Canon 3(B)(1), which, as noted, requires judicial officers in this state to hold their employees to the standards governing those officers.

C. As stated, Legislative Defendants assume that none of this seeming appearance of a conflict has materialized into a mature conflict because they assume Justice Hudson and Mr. Longest have resolved it. “Isolation of law clerks usually ameliorates the appearance of impropriety.” *In re Nazi Era Cases Against German Defendants Litig.*, 153 F. App’x 819, 826 (3d Cir. 2005); *but see Amstadter v. Bank of Am.*, No. 2:09-cv-2826, 2009 WL 5206640, at \*2–3 (E.D. Cal. Dec. 22, 2009)

(recognizing that, depending on how judges conduct their business, even isolation may not cure a conflict). Legislative Defendants therefore accept it is likely that, “[i]f a clerk has a possible conflict of interest it is the clerk, not the judge, who must be disqualified.” *Hamid*, 51 F.3d at 1416 (quoting *Hunt*, 783 F.2d at 1016).

Legislative Defendants should not be left to take it on faith that a proper walling-off procedure has in fact been implemented. The proper response is disclosure of the facts relevant to Mr. Longest’s conflict, which Legislative Defendants presume will be solemn assurances that Justice Hudson “has undertaken measures to screen” Mr. Longest from this case, “has not discussed the case at bar with” Mr. Longest, and that Mr. Longest “has not had and will not have any involvement whatsoever with [Justice Hudson’s] decisions in the case.” *United States v. Ruff*, No. 03-cr-1027, 2006 WL 208870, at \*3 (N.D. Iowa Jan. 25, 2006), *aff’d*, 472 F.3d 1044 (8th Cir. 2007); *see also Trammel v. Simmons First Bank of Searcy*, 345 F.3d 611, 613 (8th Cir. 2003) (holding that conflict was resolved by actual assurances that the law clerk was walled off from the case); *United States v. DeTemple*, 162 F.3d 279, 286 n.2 (4th Cir. 1998) (similar holding).

II. If Mr. Longest has not been screened from this case since filing to run for office, in addition to seeking his recusal, Legislative Defendants have little choice but to seek Justice Hudson’s recusal. While “isolation . . . usually ameliorates” the conflict, *In re Nazi Era Cases*, 153 F. App’x at 826, a failure to isolate imputes the clerk’s conflict to a judge, much as a conflict of one attorney is attributable to those in the same firm, *see, e.g., Hall*, 695 F.2d at 178 (recusal required of judge based on

conflicted law clerk's involvement, *inter alia*, in drafting opinion); *Miller Indus., Inc. v. Caterpillar Tractor Co.*, 516 F. Supp. 84, 88 (S.D. Ala. 1980) (similar); *see also In re Horne*, No. 13-cv-258, 2014 WL 1370151, \*4-5 (S.D. Ala. Apr. 8, 2014) (disqualification due to a law clerk's conflict required if clerk "makes a substantial contribution to the outcome of the case"). If Mr. Longest has taken a meaningful role in Justice Hudson's deliberation over significant case events since that filing, including oral-argument preparation, and other opinion drafting or decision-making, then the only remedy curing this conduct will be complete recusal of Justice Hudson from further involvement in this case.<sup>2</sup>

## CONCLUSION

Legislative Defendants respectfully request that Justice Hudson take appropriate steps to disclose the facts relevant to the conflict of interest of Mr. Longest and take appropriate measures to cure any conflict that may have come into existence at any time. Legislative Defendants reserve the right to seek additional relief depending on the results of this motion.

Respectfully submitted, this the 30th day of September, 2022.

**NELSON MULLINS RILEY &  
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*Electronically Submitted*

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<sup>2</sup> Depending on the outcome of this motion, Legislative Defendants may also seek relief from prior rulings in this action.

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N.C. R. App. P. 33(b) Certification:

I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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## CERTIFICATE OF SERVICE

It is hereby certified that on this the 30th day of September, 2022, the foregoing was served on the individuals below by email:

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## Top Skills

Public Speaking

Research

Editing

## Honors-Awards

Argonaut, Order of the Golden Fleece

# EXHIBIT 1

## Tim Longest

Judicial Law Clerk at Supreme Court of North Carolina  
Raleigh-Durham-Chapel Hill Area

## Experience

Supreme Court of North Carolina  
Judicial Law Clerk for Justice Robin E. Hudson  
August 2020 - Present (2 years 2 months)

North Carolina Court of Appeals  
Judicial Law Clerk for Chief Judge Linda M. McGee  
February 2019 - August 2020 (1 year 7 months)  
Raleigh-Durham, North Carolina Area

NC Department of Justice  
Legal Extern, Office of the Solicitor General of North Carolina  
January 2018 - April 2018 (4 months)

North Carolina General Assembly  
NC Senate Legal Intern to Sen. Jay Chaudhuri  
January 2017 - August 2017 (8 months)  
Raleigh, NC

Committee to Elect Graig Meyer  
Campaign Intern  
September 2016 - November 2016 (3 months)  
Chapel Hill, NC

Southern Coalition for Social Justice  
Voting Rights Legal Intern  
May 2016 - August 2016 (4 months)

Jamie Kirk Hahn Foundation  
Jamie Kirk Hahn Foundation Fellow  
May 2015 - August 2015 (4 months)

Committee to Elect Kim Hanchette  
Campaign Manager  
September 2014 - November 2014 (3 months)  
Raleigh, NC



McSurely & Turner

Firm Manager

July 2013 - August 2014 (1 year 2 months)

Chapel Hill, NC

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## Education

University of North Carolina School of Law

Doctor of Law (J.D.), with honors · (2015 - 2018)

University of North Carolina at Chapel Hill

Bachelor of Arts (BA), Philosophy · (2009 - 2013)

## EXHIBIT 2



**Tim Longest**

July 26 · 🌐



Tonight, members of the County Executive Committee of the [Wake County Democratic Party](#) appointed me to serve as the Democratic candidate on the ballot running to represent House District 34 of the North Carolina General Assembly in the November general election. I am humbled and honored by the trust they placed in me as part of a new generation stepping forward to lead our state toward a better future. And I am honored to follow Representative [Grier Martin](#), who stepped down following a distinguished career of service in the General Assembly. I will take no vote for granted and I look forward to earning the support of the voters of House District 34.



158

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## EXHIBIT 3

**Tim Longest**  
August 2 · 🌐

Donate here to support my campaign: <https://secure.actblue.com/donate/tim-longest-for-nc>


Friends, today I joined the ballot as the Democratic candidate for House District 34 in the NCGA. With less than 100 days to go, I need your help to field a grassroots campaign to defend this seat, secure [Governor Roy Cooper's](#) veto, including to protect abortion access, and win a Democratic majority for working families, public schools, and civil rights. At 31, I'll also be one of NC's ... [See more](#)




 36


2 Comments 6 Shares


## EXHIBIT 4

**Tim Longest - NC House District 34**August 17 · 🌐...

I'm proud to receive my first endorsement from the [NC League of Conservation Voters](#) Conservation PAC. As representative for House District 34, I will be a fighter for clean air and water, holding polluters accountable, and protecting our state's beautiful green spaces and wildlife for future generations. I know the climate crisis, one of the greatest threats we face, is already here. It's time for North Carolina to take the lead in tackling it. Chip in here to join the fight:... [See more](#)



 See how the average temperature in your area is changing.  
[Explore Climate Science Info](#)×

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**EXHIBIT 5**

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**Supreme Court**

State of North Carolina

**Supreme Court**  
**Supreme Court 7**

**Timothy Longest**

919-831-5872 (tel:919-831-5872)

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State employees: If you have concerns about your contact information, please contact your Human Resources office.