NO. 261A18-3 TENTH JUDICIAL DISTRICT

SUPREME COURT OF NORTH CAROLINA

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NORTH CAROLINA STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, Plaintiff-Appellant, v. TIM MOORE, in his official capacity, PHILIP BERGER, in his official capacity, Defendant-Appellees.	)	From Wake County No. COA19-384

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PLAINTIFF - APPELLANT'S SUPPLEMENTAL RESPONSE BRIEF

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PLAINTIFF - APPELLANT'S SUPPLEMENTAL RESPONSE BRIEF

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Plaintiff the North Carolina State Conference of the NAACP ("NC NAACP") respectfully submits this brief in keeping with this Court's Order of September 28, 2021. The NC NAACP hereby responds to legislative Defendants' brief, and the amicus briefs of the John Locke Foundation and Professor John Orth.

INTRODUCTION

To administer justice without favoritism is not an easy promise to make. And yet, it is a promise relied upon by litigants entering North Carolina's courts every day. More than a century ago, it was the urgent cause of winning and protecting the fundamental rights of people of color in this country that spurred the birth of the National Association for the Advancement of Colored People ("NAACP"). From the toils of that pursuit, historically to the present day, Plaintiff NC NAACP is uniquely positioned to understand the power expressed to litigants by the guarantee of a fair tribunal.

In the context of our shared history of abhorrent American slavery and racial subjugation enforced by law, an impartial judiciary is a bedrock prerequisite to even slow advancements in the legal enforcement of the constitutionally protected rights of minorities. After decades of work for equal justice, Plaintiff brings hard-earned perspective on the dangers to minority rights and the public trust when impartial justice—and public perception of impartial justice—is missing from our system of courts.

In response to this Court's briefing order, the NC NAACP and six *amici* [1] submitted a sampling of the nation's best understandings of how to approach the issues of judicial disqualification facing this Court. Briefing responded comprehensively to questions ranging from modern-day practical considerations to insights derived from centuries of legal debate on how to best preserve the rule of law, promote public confidence in the judiciary, and secure impartial justice. Submissions aligned with the NC NAACP's position represent the combined works and considered recommendations of preeminent state and national experts, scholars, practitioners, and impacted parties.

These voices, without exception, commend to this Court (i) the need to adopt clear, transparent, and fair rules or procedures governing judicial disqualification, and (ii) the adoption of a rule that does not ask an individual justice to be the sole arbiter of their own bias.

The choice of how to promulgate these rules, the level of detail necessary under present conditions, and the procedural guardrails best suited to preserve impartial justice, adhere to ethical obligations, and promote judicial efficiency are all decisions squarely within this Court's authority. To argue otherwise, as legislative Defendants and its two *amici* do, is to ignore the law, United States Supreme Court precedent, and this Court's own past practice and holdings.

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[1] Amici whose positions align with Plaintiff's recommendations include: (1) the North Carolina Legislative Black Caucus, (2) North Carolina Professors of Constitutional Law, (3) North Carolina Professors of Professional Responsibility, (4) Scholars of Judicial Ethics and Professional Responsibility, (5) Former Chairs of the North Carolina Judicial Standards Commission, and (6) the Brennan Center for Justice at New York University School of Law.

Decisions the Court reaches here will send a message with historic significance to future litigants seeking recourse from the judiciary in North Carolina. The NC NAACP and supporting *amici* recommend that this Court take a course of action that signals an unambiguous, unified, and strengthened commitment to the constitutional guarantee of due process, to the Code of Judicial Conduct, and to independent, fair, and impartial justice. The message is needed. Evidence before the Court demonstrates that continuing the *status quo* risks confusion, inconsistency, an untenable erosion of public trust in the judiciary, and actual violations of due process and the standards set forth in the Code of Judicial Conduct.

I. This Court has the Authority to Enact Disqualification Procedures that Enable Litigants to Vindicate Their Right to a Fair Tribunal.

The primary dispute between the NC NAACP and legislative Defendants centers on this Court's authority to promulgate disqualification procedures for the Court itself to follow. Legislative Defendants argue that this Court has no power to govern itself in this way and that decisions regarding disqualification should ultimately rest with the legislature, and thus with Defendants themselves. Legislative Defendants are wrong. The North Carolina Constitution and existing state statutes vest this Court with broad authority to govern its own actions. Legislative Defendants' arguments misdirect the Court with reliance on impeachment and other unrelated issues that are disciplinary in nature and that fail to address the question before the Court.

A. <u>This Court is Vested with the Authority to Enact Disqualification Procedures through the North Carolina Constitution, the General Statutes, and the Court's Inherent Powers.</u>

As the NC NAACP set out in its opening Supplemental Brief, this Court has exclusive authority under the state Constitution to establish rules of procedure for itself, N.C. Const. art. IV, § 13(2), and has established such rules, such as the Rules of Appellate Procedure. Pl.-Appellant's Suppl. Br. at 20-22. Furthermore, as Defendants acknowledge, this Court has the statutory authority to prescribe standards of judicial conduct for all justices and judges in the state. N.C. Gen. Stat. § 7A-10.1; Def.-Appellees' Suppl. Br. at 9.

The Constitution and state statutes give ample authority to the Supreme Court to promulgate judicial disqualification and recusal procedures through the Court's authority to create rules for appellate procedure. *See, e.g.*, N.C. Gen. Stat. § 7A-33; *see also In re Brown*, 358 N.C. 711, 719 (2004) (confirming this authority). Other jurisdictions that have promulgated such rules for the court of last resort have relied on similar authority and include rules for disqualification as part of their rules on appellate procedure. *See, e.g.*, Tex. R. App. P. 16.3 (prescribing a procedure for consideration of recusal motions at appellate courts in the Texas Rules of Appellate Procedure).

Further, as noted by North Carolina professors of constitutional law in their amicus brief, courts have long had inherent remedial authority, which stems not from any particular statute, but rather from the nature of constitutional governance itself.[2]

[2] Br. of Amici N.C. Professors of Constitutional Law at 13-17.

See Marbury v. Madison, 5 U.S. 137, 163 (1803); *Bayard v. Singleton*, 1 N.C. 5 (1787). There is no dispute that litigants have the right to an impartial tribunal. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Williams v. Pennsylvania*, 579 U.S. 1, 136 S. Ct. 1899 (2016). This Court has inherent authority to vindicate that right. *See Beard v. N.C. State Bar*, 357 S.E.2d 694, 696 (N.C. 1987) ("Through its inherent power the court has authority to do all things that are reasonably necessary for the proper administration of justice.").

B. <u>The Code of Judicial Conduct does not Expressly Provide for the Sole Method of Determining When a Judge or Justice Must be Disqualified.</u>

Defendants' primary argument, that Canon 3 (C)(1) of North Carolina's Code of Judicial Conduct "expressly" provides the sole mechanism for judicial disqualification, can be quickly disregarded. Where Defendants want to argue that the text of the code means that only a judge "himself/herself" can determine if disqualification is necessary, this Court has already ruled to the contrary. *State v. Poole*, 305 N.C. 308, 320, 289 S.E.2d 335, 343 (1982) (requiring a motion to disqualify to be transferred to another judge where there is "sufficient force in the allegations" contained in defendant's motion).

Moreover, Canon 3 (C)(1) merely states that a judge or justice *should* recuse themselves in set circumstances. It does not discuss the procedure that a court must advance if they do not.

C. The Court's Inherent Power to Create Disqualification Procedures Does Not Conflict with Any Constitutional Grant of Authority to the General Assembly.

Defendants next argue that this Court does not have authority to craft procedures governing judicial disqualification because the General Assembly has fully occupied the field by creating the Judicial Standards Commission pursuant to its constitutional authority. Def.-Appellees' Suppl. Br. at 7-15. Defendants point to two sources of authority to support this claim—Sections 15 and 17 of Article IV of the North Carolina Constitution—but primarily rely on Section 17, which authorizes the General Assembly to prescribe a procedure for judicial discipline.[3] But that provision has nothing to say about disqualification procedure—an entirely distinct issue from that of judicial discipline.

Defendants conflate a disciplinary question—what should happen to a judge who knows they are biased but still fails to recuse—with the more fundamental question of who should decide whether a judge's impartiality may reasonably be questioned. The first question is a discrete question of judicial discipline, already well handled by the Judicial Standards Commission. The second speaks to the protections of a litigant's right to a fair tribunal as guaranteed by the Code of Judicial Conduct and the Constitution, as well as to the public's trust in the Court as a fair and unbiased institution.

While it is true that judges who fail to recuse when the Code of Judicial Conduct requires recusal may face discipline from the Judicial Standards

[3] Section 15 provides in its entirety: "The General Assembly is required to provide for an administrative office of the courts to carry out the provisions this Article." N.C. Const. art. IV, § 15.

Commission or the legislature, such discipline is separate from, and subsequent to, a transparent system for determining whether disqualification is warranted. As the NC NAACP noted in its opening Supplemental Brief, the fact that a justice may need to be disqualified from a case does not mean the justice should be disciplined; it means that there are facts that give rise to a reasonable question of impartiality. Pl.-Appellant's Suppl. Br. at 21-22.

Similarly, none of the avenues for judicial discipline described by Defendants provide any relief whatsoever for litigants, and therefore those avenues are insufficient to remedy violations of litigants' rights. *See Matter of Alamance County Court Facilities,* 405 S.E.2d 125, 134 (N.C. 1991) (Noting that parties must have adequate legal remedy and that "[p]unishment of the defendants [which] would not provide the relief to which the plaintiffs are entitled" was not sufficient). If, for example, a litigant had a case decided by a North Carolina Supreme Court panel that included a justice who should have been disqualified, the fact that the justice may later be disciplined or impeached would not assist the litigant.

A Court-imposed procedure would ensure compliance with the State's Code of Judicial Conduct and due process requirements, providing a just remedy for litigants while leaving the entirely separate issue of judicial discipline undisturbed. The procedure would set clear rules and timeframes for litigants seeking judicial disqualification and would ensure more transparency in how and why judicial disqualification decisions are made. Additionally, the procedure would remove the

question of disqualification from the justices in question, ensuring a more impartial adjudication.

Because judicial discipline and judicial disqualification are two entirely separate issues, Defendants' argument that the Court cannot exercise power in a manner that conflicts with power expressly vested in the General Assembly by the Constitution is without merit. *See* Def.-Appellees' Suppl. Br. at 9-15. The Court's ability to create a disqualification procedure—vested in the Court by the Constitution, by statute, and by the Court's inherent power—does not conflict with statutes related to judicial discipline. Thus, both may stand.

II. A Transparent, Consistent Procedure for Judicial Disqualification that Provides Full Court Review of Disqualification Decisions is Good Public Policy.

As noted in the NC NAACP's opening Supplemental Brief, as well as by amici the Brennan Center, Americans increasingly distrust the judiciary's ability to provide impartial justice.[4] Responding to this distrust and greater understanding of the law of recusal, states are trending toward independent review of disqualification motions.[5] This trend reflects a growing understanding that clear, transparent, and consistent processes for judicial disqualification are good public policy, not only to safeguard the public's confidence in the judicial branch, but also to ensure that litigants' rights are protected in an increasingly politicized judicial system.

[4] *See* Br. of Amici Curiae Brennan Center for Justice at New York University at 2-4.
[5] *See id.* at 5-6.

A. Clear Procedures for Judicial Disqualification Will Eliminate Confusion and Foster Confidence in the Judiciary.

Because North Carolina lacks a clear, transparent, and consistent process for Supreme Court disqualification, it is unclear to litigants when and how to seek disqualification of a justice. This case illustrates the confusion that lack of procedure can cause. In their response to Plaintiff's Motion to Disqualify, Defendants stressed the need to presume that justices will follow the Code of Judicial Conduct and act with honesty and integrity in recusing themselves.[6] Yet, it was that very presumption, and deference to the members of this Court, which led the NC NAACP to await the calendaring of oral argument prior to requesting the disqualification of Justices Berger and Barringer.[7] The North Carolina Code of Judicial Conduct is silent as to the timing of recusal and disqualification, and there are no official procedures or publicly available past practices to guide litigants. Transparent rules would provide clarity, prevent confusion, and allow recusal and disqualification decisions to be made in an orderly way.

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[6] Def.'s Resp. to Pl.'s Mot. to Disqualify Justice Barringer and Justice Berger at 15 ("There is a 'presumption of honesty and integrity in those serving as adjudicators.' *Withrow v. Larkin*, 421 U.S. 35, 47 (1975). All judges take an oath to uphold the Constitution and apply the law impartially, and all parties should trust that they will live up to this promise.").

[7] Amici curiae North Carolina Institute for Constitutional Law and The John Locke Foundation suggest that the NC NAACP "waived" their opportunity to move for the disqualification of Justices Berger and Barringer. Not so. In absence of any procedure or formal timelines there can be no assertion that a party waived its right to ask for recusal simply because it did what Defendants and these same amici are requesting: waited for the Justices to recuse of their own accord. The NC NAACP did not bring new information pertaining to bias to the Court's attention. It was well known to all as soon as they were elected that Justice Berger was the son of Senator Beger and that Justice Barringer had previously served in the N.C. Senate.

B. Impartial Review of Disqualification Decisions Will Best Ensure Litigants' Right to a Fair Tribunal.

As the NC NAACP set out in the opening Supplemental Brief, evidence demonstrates that individuals are generally the worst arbiters of their own potential for bias and that judges are no exception. Pl.-Appellant's Suppl. Br. at 23-28. For this reason, an increasing number of states are moving towards systems of independent review for judicial disqualification.

i) Defendants' argument against independent review for judicial disqualification is self-contradictory.

Defendants' opposition to independent review for judicial disqualification is premised on a glaring contradiction. Defendants contend that an *individual* justice should be trusted to determine whether there are sufficient grounds for his or her disqualification. Yet, at the same time, they argue that those very same justices—justices entrusted to make good decisions individually—should not be trusted to make such decisions collectively as a multi-member body. Def.-Appellees' Suppl. Br. at 18-21.

Defendants cannot have it both ways. If they trust individual justices to be able to make these decisions in a rational and unbiased way, they must trust the full Court to do the same. Defendants' suggestion that collective action by the Court will result in a "vicious cycle of dysfunction and bitterness" is a disturbing and unfounded formal accusation of our highest judicial institution. Def.-Appellees' Suppl. Br. at 3. By contrast, the NC NAACP makes the straightforward point, backed by decades of experience and science, that individuals are ill-suited to judge their own bias, and

that it is safer—and thus better for the interests of justice—to vest such decisions in a more impartial collective.

ii) The Court should maximize compliance with the Code of Judicial Conduct and requirements of Due Process.

There is no dispute that justices are not allowed under the Code of Judicial Conduct—as well as under the Due Process Clause—to rule in cases in which there is a serious, objective risk of actual bias. The question then is only who is best situated to ensure that justices do not rule on such cases. The concept of "involuntary recusal," while used on occasion in some legal literature, is largely a misnomer. Recusal is neither voluntary or involuntary; it is simply a step that is taken to comply with pre-set rules and standards to preserve an independent judiciary and the rights of litigants.

Disqualification to comply with the Code of Judicial Conduct is not atypical. As NC NAACP pointed out in its principal Supplemental Brief, individual justices or groups of justices recuse themselves or otherwise do not sit in determination of roughly ten percent of all cases that come before the Court. Pl.-Appellant's Suppl. Br. at 6. Defendants cite no evidence that this routine practice has brought the work of the Court to a standstill or diminished the public's confidence in the Supreme Court's ability to render decisions. By contrast, what *could* irreparably damage public confidence in the Court would be if justices, even those believing they were acting in good faith, failed to abide by the standards established by the Code and the Constitution. The key question is how the Supreme Court should best ensure that disqualification occurs when required by law and pre-set rules. The rubric suggested

by the NC NAACP and amici is intended to build upon the best research and practices available to achieve a trusted system for ensuring compliance with constitutional requirements.

Defendants cite to an older 1994 ABA Resolution for support of their position that only the challenged justice should make the recusal decision. Def.-Appellees' Suppl. Br. at 21. Yet they ignore the more recent Resolution—which followed the required disqualification of a state supreme court justice in *Caperton*—recommending a process for independent assessment of grounds for disqualification. ABA Resolution 105C (Aug. 11-12, 2014) (encouraging all states to adopt judicial disqualification procedures that are transparent and "include a mechanism for the timely review of denials to disqualify or recuse *that is independent of the subject judge*") (emphasis added). As the NC NAACP explained in its opening brief, much has changed in the past three decades. The *Caperton* and *Williams* cases brought the issues surrounding judicial disqualification into sharper focus, judicial races have become increasingly political, and social science studies have demonstrated how difficult it is to impartially judge one's own case. Pl.-Appellant's Suppl. Br. at 8-12, 23-28. Defendants' views are out of line with this more up-to-date recommendations of the ABA and leading scholarship in the field.

iii) The reasonable person standard governs judicial disqualification.

Defendants completely disregard that the reasonable person standard governs all disqualification questions under North Carolina law. If the Court were to adopt NC NAACP's proposal, the Court, when faced with a disqualification inquiry, would

consider whether objective circumstances could *reasonably* call into question the potential for bias or impartiality of one or more of their colleagues. Judges routinely employ this sort of objective inquiry when considering the actions of parties to lawsuits. Defendants have offered no evidence to support their contention that justices are somehow uniquely suited to carry out this kind of analysis on themselves, yet are completely unable to make that determination about one another.

The hypotheticals that Defendants raise are easily answered with reference to the Code of Judicial Conduct and the application of the reasonable person standard. *See* Def.-Appellees' Suppl. Br. at 18. Would a justice be subject to disqualification on the mere suspicion that the justice would vote on party lines? Under the Code, the answer is a resounding "no." Such a suspicion, absent additional, objective facts, would not support disqualification under the reasonable person standard pursuant to the Code. There is no reason to anticipate that justices would abuse a clear, transparent, and consistent process. Allowing the Court to make these determinations and provide written explanations for their decisions can only enhance the credibility of the process.

iv) This case highlights the need for transparent disqualification procedures.

This case highlights the importance of establishing a transparent and fair process for adjudicating contested disqualification issues. The overwhelming consensus from amici with expertise in judicial ethics who have reviewed this case is that the objective evidence demonstrates that Justices Berger and Barringer should

recuse themselves.[8] Yet, they did not. Nowhere have Defendants explained why it would be superior to allow challenged justices to hear a case under these circumstances and wait for potential disciplinary hearings after the fact to determine whether those justices made a mistake.

Defendants' approach raises the stakes for justices with conflicts: Instead of facing disqualification in any given case, they would face disciplinary proceedings for failing to follow the Code of Judicial Conduct, casting doubt on the legitimacy of any decision in which they took part. While the Defendants characterize the process in Michigan as having engendered "partisan acrimony," they do so without support, and they do not address how much more acrimonious it would be for justices to be referred to the Judicial Standards Commission for failing to recuse when the Code requires it. Nor have they explained how it would heal partisan rifts for justices to serve on cases where they do not possess the impartiality required by law.

Defendants have lost sight of the fundamental purpose of the Code of Judicial Conduct and due process protections: They are necessary to protect the rights of litigants to a fair and impartial tribunal and to ensure that the public retains confidence in the judiciary. Defendants, by focusing instead on the outdated notion that justices have a right to sit in individual cases, have strayed from the central questions before this Court.

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[8] Br. of Amici Curiae N.C. Professors of Professional Responsibility at 2-9; Br. of Amici Curiae N.C. Professors of Constitutional Law at 2, 16.

C. The History of the Court and Disqualification in North Carolina Supports the Court Creating a More Orderly Approach.

The questions the Court has posed to the parties in this matter arose because no clear, consistent written rule exists to govern how disqualification should be decided in the Supreme Court, nor does any rule exist to govern how such decisions should be announced.[9] The NC NAACP discussed the lack of clear process, as well as the lack of transparency, in Plaintiff's opening supplemental brief. Pl.-Appellant's Suppl. Br. at 5-8. Defendants concede the same by noting that out of 3,823 orders and opinions entered between 1832 and October 7, 2021, in which there was some indication that a justice had recused, been asked to recuse, been disqualified, or otherwise did not participate, more than a third—1,646—give no indication as to whether the non-participation was due to recusal or some other circumstance. Def.-Appellees' Suppl. Br. at 27. And as the NC NAACP demonstrated, even where it is clear that a judge has been disqualified, it is unclear how the decision was made and why. Pl.-Appellant's Suppl. Br. at 6. The need for a more transparent process is clear.

Even Defendants' approach to disqualification has been inconsistent. In November 2019, Legislative Defendants requested that Justice Anita Earls "be recused" from participating in *Common Cause v. Lewis*,[10] stating that she "should not participate in this case."[11] The phrasing, "be recused" suggests something different

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[9] *See* Pl.-Appellant's Suppl. Br. at 5-8; Def.-Appellees' Suppl. Br. at 26-28; Br. of Amicus N.C. Professors of Constitutional Law at 17.

[10] *Common Cause v. Lewis*, 373 N.C. 258, 834 S.E.2d 425 (2019), Motion to Recuse Justice Earls at 5 ("The integrity of this proceeding will not be served by Justice Earls' participation, and the General Assembly respectfully requests that she be recused from this case.")

[11] *Common Cause v. Lewis*, 373 N.C. 258, 834 S.E.2d 425 (2019), Motion to Recuse Justice Earls at 36 (""Legislative Defendants respectfully submit that Justice Earls should not participate in this case.")

than the Justice making the determination herself and is opposite from the approach Defendants now argue for. Likewise, the following year, in *Holmes v. Moore*, legislative Defendants moved to have former North Carolina Court of Appeals Judge Christopher Brook recuse himself from participating or, in the alternative, "for the en banc Court to order Judge Brook to recuse from this case."[12] This procedure is in line with what then NC NAACP has suggested here: requiring impartial review where a judge fails to recuse themselves. The approach is directly at odds with Defendants' stated concern that impartial review by the full court would undermine the institution and mean the court would "likely come to be seen as a fundamentally partisan body." Def.-Appellees' Suppl. Br. at 18-20.

In both cases, Defendants apparently believed that a request for disqualification was appropriate and did not appear concerned that such requests would "poison" the deliberations of the Court or interfere with its "ability to fulfill its constitutionally assigned role in a professional and effective manner." Def.-Appellees' Suppl. Br. at 18-20. Nor did Defendants frame the requests as amounting to what Amici North Carolina Institute for Constitutional Law and The John Locke Foundation misleadingly now call "the temporary removal of a Justice from office."[13]

Additional historic context comes from the decision by this Court in 2016 to establish a rule to set in place "fill in justices."[14] Whether the Court had the

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[12] *Holmes v. Moore,* 270 N.C. App. 7, 840 S.E.2d 244 (2020), Motion to Recuse Judge Brook at 1.

[13] Br. for Amici Curiae North Carolina Institute for Constitutional Law and The John Locke Foundation at 12.

[14] *See* N.C. R. App. P. 29.1 (rescinded Dec. 8, 2016), https://ncapb.foxrothschild.com/wp-content/uploads/sites/102/2016/11/2016Rule291amendment.pdf; *See Supreme Court OKs Appointing*

constitutional authority to make this particular change is immaterial.[15] What is revealing with regard to the questions before the Court today is that the rule made explicit reference to justices who had been "Recused or Disqualified," demonstrating that as recently as five years ago, the Court thought it unremarkable that justices could be disqualified by means other than recusal.[16] This, and other decisions made by the Court detailed in Plaintiff's opening brief, show that Defendants are simply incorrect when they argue that North Carolina has consistently left the decision to individual justices.

CONCLUSION

Plainitff NC NAACP commends the Court for taking time to consider needed safeguards to protect judicial impartiality and independence. Care is needed because of the irreplaceable role the judiciary plays in North Carolina's constitutional democracy. The NC NAACP recognizes the extraordinary service members of North Carolina's judiciary confer to the public as stewards of North Carolina's Consitutional Democracy. Our system of courts offers a litigant—regardless of societal station—a venue to enforce her right to protection against violations of the law, including

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"Substitute Justice" to Fill In, Associated Press, Nov. 15, 2016, https://apnews.com/article/1c1f9112f53e4cc096ceb0390ada2a14; Mark Binker, *NC Supreme Court Withdraws Fill-in Justice Rule*, WRAL (Dec. 9, 2016), https://www.wral.com/nc-supreme-court-withdraws-fill-in-justice-rule/16326079/.

[15] Scholars raised questions about whether the North Carolina Constitution permits the Court to create a rule that allows additional justices—other than those duly elected and serving—to hear cases. *See* Mark Binker, *New Rule to Avoid Supreme Court Deadlocs Raises Questions*, WRAL (Nov. 16, 2016), https://www.wral.com/new-rule-to-avoid-supreme-court-deadlocks-raises-questions/16235027/; John V. Orth, *NC Supreme Court's New Rule Could End Equally Split Rulings*, The News & Observer (Nov. 17, 2016), https://www.newsobserver.com/article115261653.html.

[16]Notably, Professor John Orth who filed an amicus in support of Defendants in this matter also discussed the rule in terms of when a Justice who "recuses or [is] disqualified." ." Orth, *supra* note 15.

violations committed by majoritarian actors. Elsewhere in society, such actors may rely on undue favor by way of political, economic, or social power to act without fear of consequence. But in a system of truly impartial and independent courts, our judiciary ensures the fair administration of justice to all, regardless of station.

As set forth in its initial briefing and reinforced by amici submissions reviewing the weight of the law, nationwide best practices, and practical considerations in the administration of fair justice, the NC NAACP recommends that this Court adopt formal rules to clarify a unified approach to judicial recusal and disqualification. The rules can provide unified procedures for recusal and disqualification, and can ensure there is transparency in how disqualification decisions are made and announced. The rules should require impartial review of disqualification decisions by the full Court, with the justice whose impartiality is questioned excused from the decisionmaking. In this way the Court can best ensure it continues to administer justice in a way that is fair and unbiased, and has the respect of the public.

Respectfully submitted this 23rd day of November 2021.

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