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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PLANTIFF - APPELLANT'S SUPPLEMENTAL BRIEF

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TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

On September 28, 2021, this Court issued an order asking parties to address how the Court should respond to motions for the disqualification of Supreme Court Justices. Plaintiff-Appellant, the North Carolina State Conference of the NAACP ("NC NAACP"), appreciates the opportunity to provide the information below.

BACKGROUND AND INTRODUCTION

This case arose after the North Carolina General Assembly, which had been declared to be the illegal product of a widespread racial gerrymander, acted to amend North Carolina's Constitution in the final days of the 2018 legislative session.[1] Before the amendments were placed on the ballot, NC NAACP immediately brought suit to prevent the General Assembly from unconstitutionally presenting ballot questions to the people. Because the unlawfully constituted legislature was only able to muster a three-fifths majority by relying on votes from districts tainted by the racial gerrymander, it did not meet North Carolina's constitutional requirement for presenting constitutional amendments for ratification. NC NAACP sought swift preliminary injunctive relief to prevent the harm that could result from illegal presentment of constitutional amendments during the 2018 election. Legislative Defendants opposed that relief, arguing that any amendment approved in the election could later simply be voided if NC NAACP prevailed in its suit.

NC NAACP's claim challenging the General Assembly's authority to propose

[1] *See Covington v. North Carolina ("Covington I")*, 316 F.R.D. 117, 117 (M.D.N.C. 2016), *aff'd,* 137 S. Ct. 2211 (2017) (per curiam).

constitutional amendments was not considered on the merits by the three-judge panel selected to hear NC NAACP's companion claims regarding misleading and incomplete ballot language.[2] Unable to obtain full injunctive relief, the NC NAACP filed a motion for partial summary judgement before the 2018 election. Ultimately, two of the challenged amendments failed in that election and two—those at issue in this case—were approved. After the parties fully briefed and argued the issue, Wake County Superior Court Judge Bryan Collins ruled in NC NAACP's favor in February 2019, declaring the constitutional amendments *void ab initio*. Legislative Defendants appealed, and in September 2020, the Court of Appeals issued three separate opinions, with a majority voting to reverse the opinion of the Superior Court and Judge Reuben Young writing in dissent. The NC NAACP then appealed to this Court.

Shortly after the NC NAACP's notice of appeal was filed, former state Senator Tamara Barringer and former Court of Appeals Judge Philip Berger, Jr. were elected to the North Carolina Supreme Court and sworn in as Justices in January of 2021.

Justice Barringer was a member of the Senate for six years, including when this case was originally filed in August 2018, and was thus a prior party to this case. As a member of the Senate, Justice Barringer had knowledge that the General Assembly was declared to be the product of an illegal racial gerrymander.

[2] On Aug. 18, 2018, a three-judge panel from Wake County Superior Court partially granted NC NAACP's motion for preliminary injunction, finding that elements of the First Judicial Vacancies and First Boards and Commissions amendments were misleading. The three-judge panel also ruled that it did not have jurisdiction to hear NAACP's claim that the General Assembly lacked the authority to propose constitutional amendments. *NC NAACP v. Moore*, Order on Inj. Relief, No. 18-cvs-9806 (Wake Cty. Super. Ct. Aug. 18, 2018).

Nonetheless, she acted to place constitutional amendments on the ballot before the gerrymander had been remedied.[3]

Justice Berger's father, Philip Berger, Sr. ("Senator Berger"), is one of the two named Defendants in this lawsuit. Senator Berger presided over the Senate as President *Pro Tempore* when the Senate sought to amend the Constitution after the illegal gerrymander had been declared and before it had been remedied.[4] Senator Berger continues to preside as President *Pro Tempore* of the Senate today and has decision-making power over this litigation.

Once these two conflicts became apparent, Plaintiff's counsel contacted the Supreme Court clerk and asked if either Justice had voiced an intent to recuse themselves. The clerk indicated that no such intention had been expressed and that recusals would usually be announced after the case had been docketed for argument.

NC NAACP thus continued to brief this case and, once the case was set for argument, inquired again of the Court whether any justices intended to recuse themselves. Upon hearing that no recusals had been declared, the NC NAACP filed a motion to disqualify Justices Barringer and Berger from participating in this case. Two business days before argument was scheduled to take place, the NC NAACP was informed it had been removed from the calendar, and a month later the Court issued

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[3] *See* N.C. Gen. Assembly, Sen. Tamara Barringer Vote History 2017-2018 Session, https://www.ncleg.gov/Legislation/Votes/MemberVoteHistory/2017/S/368 (last visited Nov 3, 2021) (voting on HB 1092 (photo ID amendment), SB 75 (income tax amendment)); Complaint, *NAACP v. Moore*, No. 18-cv-9806 (Wake Cty. Super. Ct. Aug. 6, 2018).

[4] N.C. Gen. Assembly, Sen. Phil Berger Vote History 2017-2018lSession, https://www.ncleg.gov/Legislation/Votes/MemberVoteHistory/2017/S/64 (last visited Nov. 3, 2021) (voting on HB 1092 (photo ID amendment), SB 75 (income tax amendment)).

an order requesting this supplemental briefing.

ARGUMENT

I. THE CHANGING NATURE OF THE JUDICIARY DEMANDS A CLEAR AND TRANSPARENT PROCESS FOR DISQUALIFICATION

The absence of a clear, transparent, and consistent process to govern recusal in the North Carolina Supreme Court undermines constitutional order. Litigants have a constitutional right to a fair tribunal, yet our highest appellate court currently has no system to ensure that right is guaranteed. As recognized by the United States Supreme Court, "[t]he citizen's respect for judgments depends . . . upon the issuing court's absolute probity. Judicial integrity is, in consequence, a state interest of the highest order." *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 889 (2009) (quoting *Republican Party of Minn. v. White*, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring)). In recent years our judiciary has become increasingly politicized and the subject of major political expenditures. In this changing context, it is more important than ever to ensure a clear, transparent, and consistent process for judicial disqualification in which the public can have faith and litigants' rights are protected.[5]

Yet litigants and the public alike are currently left in the dark about nearly every aspect of judicial disqualification in the North Carolina Supreme Court. No unified process governs how to request disqualification of a justice. The Court has not made public how it determines motions for disqualification and is inconsistent in how decisions are announced. Even when justices decide to recuse themselves, no reason

[5] *See generally* Brief for Amici Curiae Brennan Center for Justice at New York University.

for the recusal is generally given. The current informal and opaque system means that if a justice were not to recuse from a case, despite well-established grounds for disqualification, there would be no specified procedure to remedy the violation and enforce the litigants' right to an impartial tribunal.

A) North Carolina does not have consistent procedures and practices governing disqualification.

When the NC NAACP determined that the North Carolina Code of Judicial Conduct required the disqualification of two Justices who made no indication they would recuse themselves, it brought the matter to this Court's attention. In doing so, the NC NAACP was left wholly unguided by past practices or official procedures. The Code of Judicial Conduct anticipates that there will be times when judges and justices must be disqualified. N.C. Code Jud. Conduct Canon 3(C). And the Code makes no distinction between lower courts, appellate courts, and the state Supreme Court. Yet, while a procedure has been established to govern disqualification in the lower courts, the North Carolina Rules of Appellate Procedure include no specific mechanism to seek and secure judicial disqualification. *Compare* N.C. Gen. Stat. §15A-1223 (providing disqualification procedures for judges presiding over criminal trials) *with* N.C. R. App. P. (lacking guidance on recusal and disqualification procedures). No additional guidance or manual that the NC NAACP has been able to identify explains how disqualification is determined at the North Carolina Supreme Court.[6]

[6] On October 7, 2021 counsel for the NC NAACP sent a request to the Supreme Court asking for "any written rules, policies, practices, procedures, and any other memoranda or written information that pertains to [judicial recusal]" to aid in responding to Question 3 posed in the Court's Sept. 28 Order. The Clerk of Court responded via phone call on October

A review of recent cases makes clear that the question of judicial disqualification arises with frequency for the North Carolina Supreme Court. An examination of opinions issued since January 2020 shows that in 28 out of 308 opinions— almost ten percent—one or more justices recused themselves or otherwise did not participate in the case.[7] Yet, there is little to no transparency regarding how the issues of disqualification have been raised and resolved. In some high-profile cases, motions for disqualification have been filed by parties. *See, e.g.*, *Common Cause v. Lewis*, 834 S.E.2d 430 (N.C. 2019) (mem.) (Legislative-defendants' motion to the Supreme Court to recuse Justice Earls "Denied by order of the court"); *Hatcher v. Lee*, 351 N.C. 187, 541 S.E.2d 712 (1999) (mem.) (Motion by plaintiff to recuse Justice Lake "Denied by order of the Court in conference"). From the one-line orders in cases like these, it is not clear whether there is any substantive difference between when the Court acted to "dismiss" a recusal motion or "deny" such a motion. *See, e.g., Dickson v. Rucho,* 749 S.E.2d 897 (N.C. 2013) (mem.). In other cases, the Court appears to have raised the issue on its own motion. For example, this Court recently recognized that having family members who *might* be members of the class action was potential grounds for disqualification. *See Lake v. State Health Plan for Teachers & State Emps.*, 376 N.C. 661, 852 S.E.2d 888 (N.C. 2021).

There also appears to be little consistency about how disqualification is

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11, 2021 pointing counsel to published rules of appellate procedure, the Code of Judicial Conduct, and the published cases that involve judicial recusal, but indicating there were no additional available materials the Court could produce.

[7] Appendix I. (List of opinions issued by the North Carolina Supreme Court since January 2020).

determined. Three former Justices recently explained that during their tenure on the Court, recusal decisions were only made by individual justices.[8] Yet, in *State v. Meyer*, the two Justices who were the subject of the motion did not participate in its consideration, which was instead made by the rest of the Court. 583 S.E.2d 43 (N.C. 2003) (mem.) ("[Chief Justice] Lake and [Justice] Brady recused from voting on this motion [to disqualify Chief Justice Lake and Justice Brady]."). In other cases, decisions about disqualification have been announced as a decision of the Court in conference, without any indication as to who participated in the decision. *See, e.g.*, *Coombs v. Sprint Communications, et al.,* 543 S.E.2d 125 (N.C. 2000) (mem.) ("Motion [to Recuse Justice Martin] Dismissedas Moot by order of the Court inconference….Justice Martin recused"); *Common Cause v. Lewis*, 834 S.E.2d 430 (N.C. 2019) ("Motion [to recuse Justice Earls] Denied by order of the Court in conference[.]"); *Dickson v. Rucho*, 749 S.E.2d 897 (N.C. 2013) (mem.) (plaintiff's motion to recuse Justice Newby "Dismissed by order of the Court in conference"). Even where it appears that individual justices have made the decision themselves, the process is not transparent and no reason for the disqualification is given. *See, e.g.*, *Andrews v. Admin. Office of the Courts*, 572 S.E.2d 425 (N.C. 2002) (denying petition for discretionary review and indicating that Chief Justice Lake and Justice Martin recused from consideration of the petition).

[8] Hon. James G. Exum Jr., Hon. Burley B. Mitchell Jr. & Hon. Mark D. Martin, Opinion, *Former NC Supreme Court Justices: What We Think About Recusal Controversy*, The News & Observer (Oct. 24, 2021), https://www.newsobserver.com/opinion/article255204911.html.

Ultimately, what is most clear from a review of the court's past practices is that the process is neither consistent nor transparent.

B) North Carolina's judicial landscape is changing and becoming more politicized.

Nationwide, judicial races have become increasingly expensive and politicized. A wave of Supreme Court decisions on campaign financing in the late 2000s and early 2010s[9] dramatically increased the amount of money in politics. At the same time, money raised for judicial campaigns had already more than doubled from $83.3 million spent from 1990 to 1999, to $206.9 million from 2000 to 2009.[10]

In North Carolina, judicial spending has followed the national trend, and the General Assembly's decision in 2013 to eliminate the state's Public Campaign Fund exacerbated the problem. The Public Campaign Fund, a public financing program for judicial elections, had been viewed as a model for states seeking to address the concerns raised by private money in judicial elections and was widely utilized in the state. Eighty percent of candidates in contested races for the North Carolina Supreme Court and Court of Appeals participated in the program in general elections from 2004-2012.[11] After its repeal, over $6 million was spent in the 2013-2014 election cycle

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[9] *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185 (2014); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010); *Republican Party of Minn. v. White*, 536 U.S. 765 (2002).

[10] James Sample et al., *The New Politics of Judicial Elections 2000-2009: Decade of Change* (2010), https://www.brennancenter.org/sites/default/files/2019-08/Report_New-Politics-Judicial-Elections-2000-2009.pdf.

[11] *NC Created the Nation's First Voter-Owned Elections Program for Statewide Judicial Races*, Democracy North Carolina, https://democracync.org/judicial-public-financing/ (last visited Oct. 25, 2021); North Carolina Voters for Clean Elections, *Profile of Judicial Public-Financing Program*, 2004-2012, https://democracync.org/wp-content/uploads/2019/07/JudicialPubFinSuccessNCVCE2013.pdf (last visited Oct. 25, 2021).

to influence the outcome of four North Carolina Supreme Court races.[12] Similar amounts were spent in 2015-2016[13] and 2017-2018.[14]

Other steps taken by the General Assembly have further politicized judicial elections and the courts. In 2015, the legislature implemented a requirement that party affiliations of candidates for the Court of Appeals be listed on the ballot.[15] The same year, legislation was passed changing Supreme Court elections from open races to retention elections,[16] a change that commentators suggested favored the sitting conservative majority.[17] The law was ultimately struck down as unconstitutional.[18] In 2018, the legislature moved to a full return to partisan elections for all appellate courts as well as district and superior courts.[19] Legislation was also passed to eliminate judicial primaries,[20] and additional legislation required candidates to

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[12] Jeff Jeffrey, *North Carolina No. 2 in Judicial Election Spending, Report Says*, Triangle Business Journal (Oct. 29, 2015, 2:38 PM), https://www.bizjournals.com/triangle/news/2015/10/29/north-carolina-no-2-in-judicial-election-spending.html.

[13] Alicia Bannon et al., Brennan Ctr. for Justice, *The Politics of Judicial Elections 2015-2016* (2017), https://www.brennancenter.org/sites/default/files/2019-08/Report_New_Politics_of_Judicial_Elections_1516.pdf.

[14] Douglas Keith et al., Brennan Ctr. for Justice, *The Politics of Judicial Elections 2017-2018* (2019), https://www.brennancenter.org/sites/default/files/2019-12/2019_11_Politics%20of%20Judicial%20Elections_FINAL.pdf

[15] N.C. Sess. L. 2015-292.

[16] N.C. Sess. L. 2015-66.

[17] Melissa Price Kromm, Opinion, *NC Retention Law Simply a Move to Guarantee Conservative Court*, The News & Observer (June 18, 2015), https://www.newsobserver.com/article24904384.html.

[18] *Faires v. State Board of Elections*, No. 15 CVS 15903, 2016 WL 865472, at *1 (N.C. Super. Ct. Mar. 4, 2016), *aff'd*, 784 S.E.2d 463 (N.C. 2016) (per curiam).

[19] N.C. Sess. L. 2016-125; N.C. Sess. L. 2017-3.

[20] N.C. Sess. L. 2017-214.

change their political party registration at least 90 days before filing to run for a seat on the judiciary.[21]

The recent legislature-initiated changes politicizing judicial elections alongside the surge in the amount of money pouring into North Carolina's judicial races has increased the possibilities for conflicts of interest and potential questions of bias—as well as increasing the danger of erosion of public confidence in the independence of the judiciary. These changes, independently and in concert with the necessity for clarity and protections of due process, augur in favor of the adoption of rules setting a clear procedure for judicial recusal.

II. CONSTITUTIONAL RIGHTS AND RESPONSIBILITIES DEMONSTRATE THE NEED FOR AN IMPARTIAL TRIBUNAL

Litigants have a right to an impartial tribunal composed of justices free from questions of bias. Justices, by contrast, have no right to hear particular cases, but must do their job when not disqualified.

A) Litigants' right to a fair tribunal requires a procedure for disqualification.

It is well established that litigants have a constitutional right to a fair tribunal. *Caperton*, 556 U.S. at 876; *Ponder v. Davis*, 233 N.C. 699, 703-04, 65 S.E.2d 356, 359 (1951). This includes ensuring that a tribunal is composed of decision-makers free from serious risk of bias. *Id.*

States may require disqualification of judges to protect that right. A fair tribunal is "a basic requirement of due process." *Caperton*, 556 U.S. at 876 (quoting

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[21] N.C. Sess. L. 2018-130.

In re Murchison, 349 U.S. 133, 136 (1955)). The United States Supreme Court has held that, at times, disqualification is necessary to protect this basic right. *Id.* at 886-87 (holding that due process requires disqualification when there is a sufficiently "serious, objective risk of actual bias"). This right may be protected by reversal of a decision reached by a judge or justice who declined to recuse herself despite serious risk of actual bias, *see, e.g., id.*; however, states may also impose recusal requirements to avoid such reversals *ex ante*. *See Pellegrino v. Ampco Sys. Parking*, 789 N.W.2d 777, 784-85 (Mich. 2010) (Hathaway, J., concurring).

The United States Supreme Court has made clear that states may enact disqualification standards broader than what the Constitution requires. The Due Process Clause "demarks only the outer boundaries of judicial disqualifications." *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 828 (1986). Indeed, "Congress and the states . . . remain free to impose more rigorous standards for judicial disqualification." *Id.* This is so because the Supreme Court has recognized that even the appearance of bias—not just actual partiality—serves to undermine public confidence in the judiciary. *Caperton*, 556 U.S. at 889. The Court further emphasized this point when revisiting the issue several years after *Caperton*: "[T]he appearance of bias demeans the reputation and integrity of not just one jurist, but of the larger institution of which he or she is a part"; thus, "[b]oth the appearance and reality of impartial justice are necessary to the public legitimacy of judicial pronouncements and thus to the rule of law itself." *Williams v. Penn.*, 579 U.S. 1, 136 S. Ct. 1899, 1909 (2016). State codes of judicial conduct, therefore, are implemented to maintain

judicial integrity and public confidence in the courts—"a state interest of the highest order." *Caperton*, 556 U.S. at 889 (quoting *Republican Party of Minn.*, 536 U.S. at 793).

Allowing a justice to unilaterally decide that litigants' reasonable concerns regarding questions of partiality are not worth heeding, undermines the integrity of the judiciary. A justice determining, on their own, that recusal is not warranted, with no transparency and no formal process, leaves litigants with no way to gauge whether their concerns have been heard and properly adjudicated.

B) Disqualification is still appropriate for judges on a court of last resort.

Sitting on a court of last resort does not exempt justices from compliance with the Code of Judicial Conduct or from being disqualified from cases where their participation conflicts with those ethical rules and the requirements of due process. No matter the level of the court, if a judge or justice's impartiality may reasonably be questioned in a case, the judge or justice may not hear it.

Particular concerns arise in connection with disqualification at a court of last resort because, unlike at trial courts or panels of lower appellate courts, there is no alternative avenue for litigants to receive final review if the court of last resort cannot hear a case. Thus, when a sufficiently large number of justices are disqualified such that the court's quorum is not met, litigants have nowhere else to turn. In those instances, the rule of necessity can be employed to ensure that litigants can be heard. *Lake v. State Health Plan for Teachers and State Emps.*, 861 S.E.2d 335 (N.C. 2021); N.C. Gen. Stat. § 7A-10(a). This rule provides that "actual disqualification of a

member of a court of last resort will not excuse such member from performing his official duty if failure to do so would result in a denial of a litigant's constitutional right to have a question, properly presented to such court, adjudicated." *Boyce & Isley, PLLC v. Cooper*, 357 N.C. 655, 588 S.E.2d 887 (2003) (mem.) (quoting *United States v. Will*, 449 U.S. 200, 214 (1980)). The rule of necessity, therefore, recognizes—and resolves—the fairness concerns that arise when a court of last resort would otherwise be unable to hear a case, leaving no other avenue for relief.

C) A justice must fulfill her obligation to adjudicate if she is not disqualified.

The "duty to sit" is a now largely outdated principle that a judge has a "duty to *sit* where *not disqualified* which is equally as strong as the duty to *not sit* where *disqualified*."[22] *Laird v. Tatum*, 409 U.S. 824, 837 (1972) (Rehnquist, J., declining to recuse himself) (emphasis added). In other words, unless disqualified, judges continue to have a duty to do what they were elected or appointed to do and cannot simply decline to hear a case without justification. This basic responsibility is expressed in the Code of Conduct for United States Judges. Canon 3A(2) ("A judge should hear and decide matters assigned, unless disqualified . . . ."). The duty, however, is by definition limited to when a judge is otherwise qualified to hear the

[22] As discussed by the Scholars of Legal Ethics and Professional Responsibility in their amicus brief, there is disagreement as to whether this duty persists at all in any form, but widespread agreement that it has no significance where a judge or justice is disqualified from the adjudication.

case.[23] The duty, then, "simply [] underscore[s] that . . . disqualification should not be used as an excuse to . . . dodg[e] difficult or unpleasant cases." Charles Geyh, *Judicial Disqualification: An Analysis of Federal Law* at 16, Federal Judicial Center, 3rd ed. (2020).

As noted by Justice Rehnquist, even at a court of last resort such as the United States Supreme Court, the duty to sit is "obviously not a reason for refusing to disqualify oneself where in fact one deems himself disqualified." *Laird*, 409 U.S. at 838. As discussed above, the doctrine of necessity overcomes any concerns that might otherwise be presented at courts of last resort.

In considering how to manage recusal issues in the future, any vestigial duty to sit does not undercut the requirement that justices not consider cases when faced with legitimate grounds for disqualification. Rather, any such duty simply weighs in favor of a transparent process so that qualified judges continue to carry out their obligation to hear and decide matters.

D) Justices do not have a constitutional right to hear every case before the Court.

Justices do not have an individual constitutional right to hear all cases before the court, nor do they have a right to hear any particular case. Rules requiring the recusal of sitting judges for conflicts of interest date back to the founding era and, despite this long history, "there do not appear to have been any serious challenges to

[23] *See* Brief for Amici Curiae Brennan Center for Justice at New York University at 10, (The Fourth Circuit noted that current recusal standards "abolish[] the rule that courts should resolve close questions of disqualification in favor of a judge's so-called duty to sit.").

judicial recusal statutes as having unconstitutionally restricted judges' First Amendment rights." *Nev. Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 123-24 (2011). Thus, while it is true that candidates for *judicial office* have constitutional rights that cannot be abridged without a sufficiently strong justification, *see, e.g.*, *Republican Party of Minn.*, 536 U.S. at 788 (holding that a state canon of judicial conduct barring judicial candidates from announcing certain views violated the First Amendment); *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 444 (2015) (applying strict scrutiny to a restriction on speech by judicial candidates but upholding the restriction), rules governing disqualification for sitting judges are "a different matter" from restrictions on speech during judicial elections. *Nev. Comm'n on Ethics*, 564 U.S. at 124 n.3.

In fact, as the Seventh Circuit has explained, a state rule requiring disqualification to preserve judicial impartiality "does not present a constitutional issue at all." *Bauer v. Shepard*, 620 F.3d 704, 718 (7th Cir. 2010) (discussing an Indiana judicial conduct rule providing that a judge's failure to recuse when required to do so was grounds for discipline), *cert. denied*, 131 S. Ct. 2872 (2011) (mem.). Indeed, "[t]he state, as an employer, may control how its employees perform their work" because "[n]o public employee is entitled to do any particular task." *Id.* The state, by contrast, *is* "entitled to protect litigants by assigning impartial judges before the fact." *Id.* Moreover, the state has an interest in maintaining the public's confidence in an impartial judiciary. *See* N.C. Code of Jud. Conduct Canon 2(A) (requiring judges to conduct themselves at all times in ways that "promote[] public

confidence in the integrity and impartiality of the judiciary").

While no federal or state courts in North Carolina have reached this precise issue, other courts have reached similar conclusions to those of the *Bauer* court. The Eighth Circuit in *In re Kemp* confirmed that judges do not have a constitutional right to hear certain cases; the court held that a judge had "no right to hear specific categories of cases," found no source for a purported property interest in presiding over specific types of cases, and stated that "[e]ven if [the judge] had a property interest in discharging his job duties, those duties do not include presiding over cases where he has actual or apparent bias." 894 F.3d 900, 906-09 (8th Cir. 2018), *cert. denied*, 139 S. Ct. 1176 (2019) (mem.). That a judge is elected, rather than appointed, does not alter these rules. *See Bauer*, 620 F.3d at 706 (concerning elected and appointed judges); *In re Kemp*, 894 F.3d at 903 (concerning an elected judge). And indeed, the Justices at issue in both *Williams* and *Caperton* were elected.

III. OTHER JURISDICTIONS ARE MOVING TOWARDS IMPARTIAL PROCEDURES TO RESOLVE DISQUALIFICATION

Most state and federal courts employ similar standards to determine when judicial recusal is appropriate. Federal courts are governed by statute, 28 U.S.C. §§ 144, 455, and by the Federal Code of Judicial Conduct. Many state courts have adopted the ABA's Model Code of Judicial Conduct, which also informed the Federal Code and the substantive standards set forth in 28 U.S.C. § 455. Like North Carolina, the vast majority of jurisdictions, for example, require disqualification whenever a judge's impartiality might reasonably be questioned, such as when a family member is a party or when the judge has a direct financial interest in the matter. *See, e.g.*,

Model Code of Jud. Conduct Canon 2 (Am. Bar Ass'n 2020); N.C. Code Jud. Conduct Canon 3(C)(1); 28 U.S.C. § 455(b).

Jurisdictions differ significantly, however, in their procedures for raising and resolving judicial disqualification. There is little consistency across the nation as to how disqualification should be raised, adjudicated, and announced to the public. Like North Carolina, many states have yet to adopt written procedures.[24]

In recognition of this gap, in 2014 the ABA passed a resolution 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*." ABA Resolution 105C (Aug. 11-12, 2014) (emphasis added).[25] This resolution included a call for states to consider the effects of campaign expenditures and contributions made during judicial elections on judicial impartiality. *Id.* A report accompanying the resolution highlights the importance of transparency and independent procedures to "eliminate any perception of bias." ABA Resolution 105C Report at 1.

Additionally, in light of the Supreme Court's decision in *Caperton*, state courts of last resort have begun to recognize that a procedure for mandatory disqualification of a justice, when necessary to safeguard litigants' rights, is not only prudent, but constitutionally required. *See, e.g.*, *State v. Allen*, 778 N.W.2d 863, 908 (Wis. 2010)

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[24] *See* Dmitry Bam, *Making Appearances Matter: Recusal and the Appearance of Bias*, 2011 B.Y.U. L. Rev. 943, 994 (2011).

[25] *Available at* https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/aug-14-judicial-disqualification.authcheckdam.pdf.

(Abrahamson, C.J., writing separately) ("Those high courts which have, in the past, chosen not to review the recusal decisions of individual justices must now contend with how they will guarantee due process in the wake of *Caperton*."); *id*. at 909.

The notion that a full court can disqualify an individual justice is not new. *See id.* at 905 (discussing cases as early as 1793 in which state supreme courts determined whether recusal of a particular justice was appropriate); *id.* at 905 n.40 (collecting additional cases in which state supreme courts have "explicitly exercised or reserved the authority of the state's highest court to disqualify one or more of its own members"). Indeed, in *Caperton* itself, the West Virginia Supreme Court justice whose disqualification was sought recognized that the West Virginia high court had authority to remove him from the case under United States Supreme Court precedent. *See Caperton v. A.T. Massey Coal Co., Inc.*, 679 S.E.2d 223, 301 (W. Va. 2008) (Benjamin, Acting C. J., concurring) (noting the authority of the full court to recuse him under *Lavoie,* 475 U.S. at 821-22), *rev'd*, 556 U.S. at 890.

In light of this backdrop, some states have begun to clarify the issue and codify rules and procedures. In 2009, for example, Michigan amended its court rules to provide a clear procedure for recusal motions at the state Supreme Court. Mich. Ct. R. 2.003(D)(3)(b). As one justice of the Michigan court explained, the rule "was designed to specifically address disqualification in keeping with the standards and principles enunciated in *Caperton*." *Pellegrino*, 789 N.W.2d at 785. Under the Michigan rule, if a justice determines that there are possible grounds for disqualification, or if a party moves for the justice's disqualification, the justice may

decide not to participate and must publish an explanation for the decision. Mich. Ct. R. 2.003(D)(3)(b). If a justice denies the motion for disqualification, a party may move for the motion to be decided by the full court *de novo*. *Id.* The court must also publish its reasons for granting or denying the motion. *Id.* The rule was adopted by the Michigan Supreme Court by a vote of the justices. Like the North Carolina Constitution, the Michigan Constitution authorizes the state Supreme Court to promulgate rules of procedure for the court. Mich. Const. art. VI, § 5.

Even before the Supreme Court ruled in *Caperton*, Texas had established similar rules governing disqualification. There, once a party files a motion for disqualification of a justice, that justice must either remove himself or herself from the case entirely or certify the issue to the full court to decide the motion *en banc*, without the participation of the challenged justice. Tex. R. App. P. R. 16.3. This rule was also promulgated by the state Supreme Court. *Allen*, 778 N.W.2d at 907 (Abrahamson, C.J., writing separately).[26] Other states are increasingly grappling with the problem illuminated in *Caperton* and moving to provide procedures for independent review of judicial recusal motions in courts of last resort.[27]

While courts nationwide are at various stages in adopting procedures, the overall trend is towards more transparency and removing judges and justices from

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[26] *See also Texas Court Rules: History & Process*, Texas Judicial Branch, https://www.txcourts.gov/rules-forms/rules-standards/texas-court-rules-history-process/ (last visited Nov. 1, 2021) (discussing the Texas Supreme Court's rulemaking authority).

[27] Matthew Menendez & Dorothy Samuels, Brennan Ctr. for Justice, *Judicial Recusal Reform: Toward Independent Consideration of Disqualification* 9 n.47 (2016), https://www.brennancenter.org/our-work/research-reports/judicial-recusal-reform-toward-independent-consideration-disqualification [hereinafter *Judicial Recusal Reform*] (listing fifteen states providing for independent review of such motions in courts of last resort).

being the deciders of their own impartiality—in harmony with the axiomatic principle that no person shall be a judge in their own case.

IV. CONSISTENT, TRANSPARENT PROCEDURES FOR RECUSAL ARE NECESSARY TO MAINTAIN CONSTITUTIONAL ORDER AND FAITH IN THE JUDICIARY IN NORTH CAROLINA

The current lack of consistent, transparent procedure to address recusal issues at the North Carolina Supreme Court can be remedied by the establishment of procedures from the Court itself, which has authority to establish such procedures. To ensure continued faith in our judiciary, the Court should adopt a process in which individual justices are not judges of their own case, litigants have a clear procedure for raising disqualification issues, and the reasons for judicial disqualification or non-disqualification are made clear to the public.

A) The North Carolina Supreme Court has authority to establish recusal procedures for itself.

The North Carolina Supreme Court has the authority to establish a procedure governing disqualification of justices. The Court has exclusive authority to establish rules of procedure for itself. N.C. Const. art. IV, §13(2) ("The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division."); *see In re Brown*, 599 S.E.2d 502, 503 (N.C. 2004) (recognizing the "unique constitutional and statutory responsibilities of [the North Carolina Supreme Court] to promulgate rules of appellate procedure, as well as rules and standards of conduct for the judiciary"). The only enumerated limitation on this authority is that the Court may not enact any rule abridging substantive rights or limiting the right to trial by

jury. N.C. Const. art. IV, § 13(2).

The Court has exercised its rulemaking authority to promulgate the North Carolina Rules of Appellate Procedure, which both provide procedural rules for parties arguing before the appellate courts and outline how the courts will make certain determinations. N.C. R. App. P.; *see State v. Tutt*, 615 S.E.2d 688 (N.C. App. 2005) (discussing the fact that the Rules of Appellate Procedure were promulgated pursuant to the Court's article IV, section 13 authority).

Further, the Court may prescribe standards of judicial conduct for all justices and judges of the state. N.C. Gen. Stat. § 7A-10.1 ("The Supreme Court is authorized, by rule, to prescribe standards of judicial conduct for the guidance of all justices and judges of the General Court of Justice."). The Court has already exercised this authority to promulgate the Code of Judicial Conduct, which sets forth the standards judges and justices currently use in considering disqualification. *See* N.C. Code Jud. Conduct Canon 3(C).

Contrary to the concerns set out by amicus Professor John Orth, the Court's authority to promulgate rules on disqualification in no way infringes on separation of powers or violates N.C. Const. art. IV, § 17. *Cf.* Orth Amicus Br. at 4. While it is true that the General Assembly is responsible for the removal of judges via impeachment and address, N.C. Const. Art. IV, § 17 (1), *disqualification* of a judge from a particular case is not equivalent to permanent removal from the Court.

Nor is disqualification a disciplinary action. The fact that a justice may be removed from a case where she may reasonably be perceived to have bias does not

mean the judge has done anything wrong. And regardless, the Supreme Court *is* the authoritative decisionmaker on the removal of judges for disciplinary reasons. The Judicial Standards Commission, created by the General Assembly pursuant to the state Constitution, may not remove justices unilaterally—it may only recommend to the Supreme Court that a justice be removed. N.C. Const. art. IV, § 17(2); N.C. Gen. Stat. § 7A-376(b). Removing a judge as disciplinary action "falls within the exclusive jurisdiction of the Supreme Court '[u]pon recommendation of the Commission.'" *N.C. State Bar v. Tillett*, 794 S.E.2d 743, 748-49 (N.C. 2016).

Provisions of the Constitution specifying the size of the Court and the length of justices' terms, N.C. Const. art. IV §§ 6, 16, are similarly irrelevant to the Court's authority to require disqualification of a justice for a particular case. Justices have long recused from individual cases when necessary under the Code of Judicial Conduct. A rule providing for the full Court to make disqualification determinations—a practice apparently utilized by this court in the past, both historically and recently—no more violates the Constitution than an individual justice's decision to recuse would.

Thus, this Court has the authority to require the disqualification of a justice who chooses not to recuse himself or herself. This authority derives from the Constitution and governing statutes of the state. Indeed, as the United States Supreme Court made clear in *Caperton*, this Court *must* have the authority to require disqualification, at least as necessary to safeguard a litigant's constitutional due process rights. *Caperton*, 556 U.S. at 872.

B) Recusal is governed by the Code of Judicial Conduct.

The standards for when a justice should be disqualified from a case have already been established by this Court and set out in the Code of Judicial Conduct. N.C. Code Jud. Conduct Canon 3(C). This canon should continue to guide judicial recusal in North Carolina and should be amended and updated as appropriate. As noted by the Former Chairs of the North Carolina Judicial Standards Commission in their amicus brief, the North Carolina Code of Judicial Conduct was adopted in 1973 by the Supreme Court and applies to "all justices and judges of the General Court of Justice." Brief for the Former Chairs of the North Carolina Judicial Standards Commission at 5-6, *N.C. NAACP v. Moore*, No. 261A18-3, (N.C. Oct. 28, 2021). The Supreme Court has made several amendments to the Code, and could amend the Code further. Just as with previous amendments, all changes would need to be adopted by the whole conference of the Court.

C) Justices should not judge their own cases.

The rule that the Due Process Clause requires recusal when the judge has a direct and substantial financial interest in a case "reflects the maxim that '[n]o man is allowed to be a judge in his own cause.'" *Caperton,* 556 U.S. at 876–77 (quoting The Federalist No. 10, p. 59 (J. Cooke ed.1961) (J. Madison)) (citing John P. Frank, *Disqualification of Judges*, 56 Yale L.J. 605, 611–12 (1947)). That maxim similarly supports a rule that would require judicial disqualification to be decided by someone other than the challenged judge or justice. As the United States Supreme Court has observed, "[b]ias is easy to attribute to others and difficult to discern in oneself," *Williams*, 579 U.S. at 13, a finding supported by social science research.

As reflected in the 2014 ABA Resolution 105C, there is an emerging consensus that judges are ill-suited to determine whether they should decide motions that include "allegations of an appearance of partiality."[28] Independent consideration of motions for disqualification are essential for "avoiding the appearance of impropriety," which is "as important to developing public confidence in the judiciary as avoiding impropriety itself."[29] Whenever the inquiry centers around considerations about whether a "reasonable person" would question the impartiality of the judge, "the challenged judge is perhaps the last person who should rule on the motion." *Id*. at note 60.

Without an independent process for evaluating requests for disqualification, "challenged judges themselves determine whether there are adequate grounds to question their own impartiality—a task for which, research and common-sense suggest, they are wholly unsuited."[30] The *Caperton* and *Williams* cases themselves, instances where state supreme court justices refused to recuse themselves despite extreme evidence of apparent bias, "demonstrate how challenged judges . . . are ill-suited to effectively analyze the situation." *Id*. at 4.

These observations are consistent with the findings from psychological research that make self-evaluation of potential bias particularly challenging for judges. "Numerous social science studies have shown that judges, like all people, are

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[28] Leslie W. Abramson, *Deciding Recusal Motions: Who Judges the Judges?*, 28 Val. U. L. Rev. 543, 559 (1994); *see also* Menendez & Samuels, *Judicial Recusal Reform*.

[29] *Id.* at 559 (quoting *United States v. Hollister,* 746 F.2d 420, 425-26 (8th Cir. 1984)).

[30] Menendez & Samuels, *Judicial Recusal Reform*, at 1.

prone to certain cognitive errors, including a tendency to see oneself and one's conduct in the best light."[31] The "limitations inherent in judging one's own biases" have been well-documented by psychological researchers, who have "shown that individuals experience an illusion of objectivity: People believe they are objective, see themselves as more ethical and fair than others, and experience a 'bias blind spot,' the tendency to see bias in others but not in themselves."[32] The bias blind spot is a key challenge facing judges who are asked to rule on motions questioning their potential bias or impartiality.[33] Numerous "studies show that individuals perceive their personal connections to a given issue as a source of useful information improving accuracy, while viewing the personal connections of others as evidence of bias."[34] There is no evidence that judges are immune from these human tendencies:

> Although judges may believe themselves free of bias, the bias blind spot, like unconscious bias, is simply a human phenomenon, and therefore, again, one from which judges

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[31] *Id.* at 4 (citing Dmitry Bam, *Recusal Failure*, 18 N.Y.U. J. Legis. & Pub. Pol'y 631, 644 (2015) ("judges are human beings subject to the same temptations and influences as the rest of us")(citing Chris Guthrie et al., *Inside the Judicial Mind*, 86 Cornell L. Rev. 777, 829 (2001) (demonstrating "that judges rely on the same cognitive decision-making process as laypersons and other experts, which leaves them vulnerable to cognitive illusions that can produce poor judgments"); Daniel Hinkle, *Cynical Realism and Judicial Fantasy*, 5 Wash. U. Juris. Rev. 289, 297 (2013) ("[J]udges are humans who are subject to the same biases and flaws that all humans are susceptible of when making decisions.")

[32] Jennifer K. Robbenolt & Matthew Taskin, *Can Judges Determine Their Own Impartiality?*, 41 Monitor on Psychol. 24 (2010) (internal citations omitted).

[33] Menendez & Samuels, *Judicial Recusal Reform*, at 4.

[34] *Id.* (citing Geyh, *Why Judicial Disqualification Matters. Again*, at 708-9); *see also* Emily Pronin *et al.*, *The Bias Blind Spot: Perceptions of Bias in Self Versus Others*, 28 Personality & Soc. Psychol. Bull. 369-70 (2002); Joyce Ehrlinger *et al.*, *Peering into the Bias Blind Spot: People's Assessments of Bias in Themselves and Others*, 31 Personality & Soc. Psychol. Bull. 680, 681 (2005) ("People seem to suffer from a 'bias blind spot,' or the conviction that one's own judgments are less susceptible to bias than the judgments of others").

> are not immune. One study, in which judges attending a conference were the subjects, found that ninety-seven percent of participating judges ranked themselves in the top fifty percent of those in attendance in their ability to "avoid racial prejudice in decisionmaking." A survey of administrative agency judges yielded similar results—more than ninety-seven percent of those surveyed ranked themselves in the top fifty percent for avoiding bias. These results are consistent with the bias blind spot assessment, in which "[p]eople tend to believe that their own judgments are less prone to bias than those of others."[35]

In fact, judges, given their oaths and external commitment to ideals of impartiality, may be even more susceptible to the bias blind spot than others. Research has found that "when individuals believe that they are objective, this self-perceived objectivity can have the ironic consequence of actually rendering the individual more susceptible to bias."[36]

The "bias blind spot" has particular applicability to judicial recusal because judicial recusal is unique. It is "only in that context that judges '[are] asked to assess themselves. It is this difference in the subject of the evaluation that gives rise to the Bias Blind Spot and causes judges to misapply the law.'"[37] There is no evidence that

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[35] Debra Lyn Bassett, *Three Reasons Why The Challenged Judge Should Not Rule On A Judicial Recusal Motion*, 18 N.Y.U. J. Legis. & Pub. Pol'y 659, 671 (2015).

[36] *Id*. at 672 (citing Eric Luis Uhlmann & Geoffrey L. Cohen, *"I Think It, Therefore It's True": Effects of Self-Perceived Objectivity on Hiring Discrimination*, 104 Organizational Behav. & Hum. Decision Processes 207, 208 (2007) ("[A]n important disinhibitor of discrimination is decision-makers' sense of personal objectivity. When people believe that they are objective, they feel licensed to act on biases whose influence they may have otherwise suppressed . . . .").

[37] Bassett at 673 (quoting Melinda A. Marbes, *Refocusing Recusals: How the Bias Blind Spot Affects Disqualification Disputes and Should Reshape Recusal Reform*, 32 St. Louis U. Pub. L. Rev. 235, 251 (2013)("The problem is that when a jurist is asked to be unbiased about his own biases, most judges simply are not able to do it—they cannot see their minds fooling them").

being aware of this phenomenon lessens its impact on decision-making. Nor is the "bias blind spot" the only unconscious bias that creates difficulty when judging one's own actions when challenged.[38]

Currently, the only recourse against a justice who declines to recuse themselves, in the face of stark circumstances that objectively call into question their impartiality, is to seek disciplinary proceedings. N.C. Code of Jud. Conduct Preamble; Canon 1. Such extreme recourse would be burdensome to all involved and would fail to address the ultimate issue of assuring a fair tribunal in the first instance. Instead, an orderly and transparent process that provides for an independent judicial review, that results in a reasoned decision, and that protects litigants and the appearance of impartiality is essential for the public acceptance of judicial decision-making. *See, e.g., Petrey v. Holliday*, 178 Ky. 410, 423 (Ky. Ct. App. 1917) (holding that the "public generally have the right to feel that there is no favoritism in the courthouse; that there all men stand equal before the law, and that there justice will be dispensed to all with an even hand"); ABA Resolution 105C Report at 4.

And indeed, elsewhere in the North Carolina judiciary we recognize that judges should not be the final arbiters of their own impartiality. In North Carolina trial courts, once a prima facie case for disqualification is made, the issue is referred to another superior court judge to decide. *Cmty. Mgmt. Corp. v. Sarver*, 258 N.C. App. 204 (2018) ("If there is sufficient force to the allegations contained in a recusal motion

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[38] Jon P. McClanahan, *Safeguarding the Propriety of the Judiciary*, 91 N.C. L. Rev. 1951, 1974-82 (2013) (noting that "false consensus effect and egocentric bias, status quo bias, anchoring effect, and confirmation bias" also can interfere with objectively evaluating one's own potential for harboring bias).

to proceed to find facts, or if a reasonable man knowing all of the circumstances would have doubts about the judge's ability to rule on the motion to recuse in an impartial manner, the trial judge should either recuse himself or refer the recusal motion to another judge."). *See also State v. Poole*, 305 N.C. 308, 320, 289 S.E.2d 335, 343 (1982); *Bank v. Gillespie*, 291 N.C. 303, 311, 230 S.E.2d 375, 380 (1976).

Supreme Court justices face the same obstacles as trial court judges when it comes to determining their own impartiality. They should not be the judges of their own case; the full court is far better placed to determine whether there are objective grounds for disqualification.

V. PRINCIPLES OF TRANSPARENCY AND IMPARTIALITY SHOULD GOVERN RULES ON DISQUALIFICATION

As established above, the North Carolina Supreme Court has authority to establish rules to govern disqualification. Below are some of the principles that should guide the adoption of such rules.

A) Justices cannot judge their own case.

In keeping with the findings of Section IV C above, justices are ill-suited to be the judges of whether their own impartiality may reasonably be questioned. Any disqualification rule should place all contested disqualification questions as a matter for the full court to adjudicate. The justice whose bias is at issue in the matter should not participate in the process. The disqualification question could be initiated either by the justice herself or by a party with concerns about that justice's impartiality.

Straightforward disqualification issues could be dealt with via recusal by the challenged justice, waiver by the parties, or prompt action from the Court. More

difficult questions would involve briefing and, where necessary, findings of fact. Just as in the lower courts, parties seeking disqualification of a justice would bear the burden to make a prima facie case "through substantial evidence" that the justice's impartiality might reasonably be questioned. *In re Faircloth*, 153 N.C. App. 565, 570, 571 S.E.2d 65, 69 (2002). This information could be submitted to the court via briefs, affidavits, and other evidence. The justice whose impartiality is at issue would then have the opportunity to rebut the allegations through evidence of their own. *See Topp v. Big Rock Found., Inc.*, 221 N.C. App. 64, 74-75 (2012) (Hunter, Robert C., dissenting), *rev'd and dissent adopted*, 366 N.C. 369 (2013). The Court has the power to adjudicate these facts, as necessary, to determine if disqualification is warranted.[39]

B) Transparency is required in order to foster faith in the judiciary.

A disqualification rule must create a clear and transparent process by which all recusal decisions could be determined. Such a process should establish clear timelines and procedures for raising disqualification questions. This kind of well-

[39] Appellate Courts frequently engage in fact finding on issues such as jurisdiction, the extent of potential harm underpinning a petition for supersedeas, or to correct a fundamental error of the lower court. A similar approach could be taken here. (*See* Joan Steinman, *Appellate Courts As First Responders: The Constitutionality and Propriety of Appellate Courts' Resolving Issues in the First Instance*, 87 Notre Dame L. Rev. 1521 (2012); John C. Godbold, *Fact Finding by Appellate Courts--An Available and Appropriate Power*, 12 Cumb. L. Rev. 365, 365-70 (1982); Robert J. Martineau, *Considering New Issues on Appeal: The General Rule and the Gorilla Rule*, 40 Vand. L. Rev. 1023 (1987)). Fact finding is particularly appropriate when the institutional competence of the appellate court as applied to the specific matter before them would be aided by fact finding, as it would here. (*See* Chad M. Oldfather, *Appellate Courts, Historical Facts, and the Civil-Criminal Distinction*, 57 Vand. L. Rev. 437 (2004)).

explained process would promote administrative efficiency for the courts and provide clarity to litigants.

C) Decisions and reasons for recusal or disqualification should be transparent and consistent.

All decisions about recusal or disqualification should be made public, along with a brief explanation as to why the Court determines a justice must be disqualified or sit for a case. This increased transparency promotes public trust in the judiciary. By announcing reasons for disqualification, justices would also ensure greater consistency in disqualification decisions.

CONCLUSION

For the reasons stated above, the NC NAACP respectfully suggests that the North Carolina Supreme Court join the growing number of courts across the country that have adopted clearly defined rules governing judicial disqualification. Specifically, the NC NAACP recommends the Court adopt rules that place disqualification decisions before the full court and require full transparency about disqualification decisions and the reasons behind them. The adoption of such rules will serve to protect all litigants' constitutional right to a fair tribunal and safeguard public confidence in the North Carolina judiciary and in this Court as an esteemed, independent, and impartial protector of our democracy and rule of law.

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APPENDIX I

North Carolina Supreme Court Opinions
Published January 2020-October 2021

Date	Case Number	Case Name	Justice(s) Did Not Participate
January 24, 2020	110A19-1	In re: K.N.	No
January 24, 2020	159A19-1	In re: C.J.	No
January 24, 2020	172A19-1	In re: J.H., Z.R., A.R., D.R.	No
January 24, 2020	229A19-1	In re: S.D.C.	No
February 28, 2020	139A18-1	SciGrip, Inc., et al. v. Osae, et al.	No
February 28, 2020	**140A19-1**	**In re: D.W.P and B.A.L.P.**	**Justice Davis**
February 28, 2020	153A19-1	N.C. Department of Revenue v. Graybar Electric Company, Inc.	No
February 28, 2020	160A19-1	Vizant Technologies, LLC v. YRC Worldwide Inc.	No
February 28, 2020	168A19-1	Cardiorentis AG v. Iqvia Ltd. and Iqvia RDS, Inc.	No
February 28, 2020	183PA16-2	The City of Charlotte v. University Financial Properties, LLC, et al.	No
February 28, 2020	188A19-1	State v. Jeffery Martaez Simpkins	No
February 28, 2020	196A19-1	State v. David Leroy Carver	No
February 28, 2020	197A19-1	In re: S.E., S.A., J.A., and V.W.	No
February 28, 2020	1PA19-1	Rouse v. Forsyth County DSS	No
February 28, 2020	219A19-1	Cogdill, et al. v. Sylva Supply Company, Inc., et al.	No
February 28, 2020	220A19-1	In re: J.M., J.M., J.M., J.M., J.M.	No

February 28, 2020	239A18-1	State v. Neil Wayne Hoyle	No
February 28, 2020	242A19-1	In re: J.S.	No
February 28, 2020	257PA18-1	State v. Sydney Shakur Mercer	No
February 28, 2020	288PA18-1	State v. Edward M. Alonzo	No
February 28, 2020	290A19-1	Boles, et al. v. Town of Oak Island	No
February 28, 2020	293A19-1	State v. Adam Richard Carey	No
February 28, 2020	34PA14-2	State v. George Lee Nobles	No
February 28, 2020	360A18-1	Beem USA Limited-Liability Limited Partnership, et al. v. Grax Consulting LLC	No
February 28, 2020	365A16-2	State v. David Michael Reed	No
February 28, 2020	42A19-1	Accardi v. Hartford Underwriters Insurance Company	No
February 28, 2020	78A19-1	Jones v. Jones	No
February 28, 2020	**82A14-2**	**State v. Sethy Tony Seam**	**Justices Ervin and Davis**
April 3, 2020	124PA19-1	Preston v. Movahed, et al.	No
April 3, 2020	150A19-1	In re: S.D.	No
April 3, 2020	**188A18-2**	**Banyan GW, LLC v. Wayne Preparatory Academy Charter School, Inc., et al.**	**Justice Davis**
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April 3, 2020	212A19-1	In re: E.B.M., Z.A.M.	No
April 3, 2020	227A19-1	In re: N.P.	No
April 3, 2020	231A19-1	In re: K.N.K.	No
April 3, 2020	259A19-1	In re: C.J.C.	No
April 3, 2020	273A19-1	In re: B.C.B.	No

April 3, 2020	278A19-1	Railroad Friction Products Corporation v. NC Department of Revenue	No
April 3, 2020	339A18-1	New Hanover County Board of Education v. Stein, et al.	No
April 3, 2020	369PA18-1	Cabarrus County Board of Education v. Department of State Treasurer, et al.	No
April 3, 2020	371PA18-1	Cabarrus County Bd. of Ed. v. Bd. of Trustees Teachers' & State Employees' Retirement System, et al.	No
April 3, 2020	398PA18-1	Town of Pinebluff v. Moore County, et al.	No
April 3, 2020	434PA18-1	PHG Asheville, LLC v. City of Asheville	No
April 3, 2020	75PA19-1	State v. Adam Warren Conley	No
April 3, 2020	79PA18-1	State v. Kenneth Vernon Golder	No
May 1, 2020	142PA18-1	DTH Media Corporation, et al. v. Folt, et al.	No
May 1, 2020	258A19-1	In re: A.G.D. and A.N.D.	No
May 1, 2020	263PA18-1	State v. Cedric Theodis Hobbs, Jr.	No
May 1, 2020	**267PA19-1**	**Winston Affordable Housing, L.L.C. v. Roberts**	**Justice Davis**
May 1, 2020	340A19-1	State v. Shawn Patrick Ellis	No
May 1, 2020	360A19-1	State v. Nicholas Omar Bailey	No
May 1, 2020	51PA19-1	Chappell v. NC Department of Transportation	No
May 1, 2020	6A19-1	State v. Patrick Mylett	No
June 5, 2020	129A19-1	In re: F.S.T.Y., A.A.L.Y.	No

June 5, 2020	147PA18-1	Chambers v. The Moses H. Cone Memorial Hospital, et al.	No
June 5, 2020	170A19-1	State v. Melvin Lamar Fields	No
June 5, 2020	**181A93-4**	**State v. Rayford Lewis Burke**	**Justice Ervin**
June 5, 2020	201A19-1	State v. David Alan Keller	No
June 5, 2020	206A19-1	State v. Ben Lee Capps	No
June 5, 2020	216A19-1	Draughon v. Evening Star Holiness Church of Dunn, et al.	No
June 5, 2020	230A19-1	In re: A.J.T.	No
June 5, 2020	274A19-1	In re: L.T.	No
June 5, 2020	281A19-1	In re: I.N.C. and E.R.C.	No
June 5, 2020	292A19-1	In re: C.R.B. and C.P.B.	No
June 5, 2020	295A19-1	In re: A.L.S.	No
June 5, 2020	300A19-1	In re: J.M.J.-J.	No
June 5, 2020	314A19-1	In re: C.V.D.C. and C.D.C.	No
June 5, 2020	319PA18-1	Winkler, et al. v. NC State Board of Plumbing, Heating & Fire Sprinkler Contractors	No
June 5, 2020	**32A19-1**	**State v. Quintin Sharod Taylor**	**Justice Davis**
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June 5, 2020	406PA18-1	State v. Cory Dion Bennett	No
June 5, 2020	437PA18-1	Chavez, et al. v. Carmichael	No
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July 17, 2020	233A19-1	In re: A.B.C.	No
July 17, 2020	272A19-1	In re: M.C., M.C., M.C.	No
July 17, 2020	277A19-1	In re: J.J.B., J.D.B.	No
July 17, 2020	298A19-1	In re: J.O.D.	No
July 17, 2020	299A19-1	In re: S.M.M.	No
July 17, 2020	301A19-1	In re: M.A., B.A., A.A.	No

July 17, 2020	303A19-1	In re: N.G.	No
July 17, 2020	329A19-1	In re: K.L.T.	No
July 17, 2020	336A19-1	In re: J.C.L.	No
July 17, 2020	389A19-1	In re: K.R.C.	No
July 17, 2020	395PA19-1	In re: J.S., C.S., D.R.S., D.S.	No
July 17, 2020	402A19-1	In re: R.A.B.	No
July 17, 2020	431A19-1	In re: W.I.M.	No
August 14, 2020	**113A19-1**	**Orlando Residence, LTD. v. Alliance Hospitality Management, LLC, et al.**	**Justice Morgan**
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August 14, 2020	132PA18-2	Desmond v. The News & Observer Publishing Company, et al.	No
August 14, 2020	14A20-1	In re: E.F., I.F., H.F., Z.F.	No
August 14, 2020	**217A19-1**	**In re: E.J.B., R.S.B.**	**Justice Davis**
August 14, 2020	279A19-1	Global Textile Alliance, Inc. v. TDI Worldwide, LLC, et al.	No
August 14, 2020	294A18-1	State v. Jeffery Daniel Waycaster	No
August 14, 2020	2A19-1	State v. John Thomas Coley	No
August 14, 2020	312A19-1	Ha, et al. v. Nationwide General Insurance Company	No
August 14, 2020	31PA19-1	Gyger v. Clement	No
August 14, 2020	326PA18-1	Da Silva v. WakeMed, et al.	No
August 14, 2020	365A19-1	In re: K.L.M., K.A.M., and K.L.M.	No
August 14, 2020	380A19-1	In re: J.A.E.W.	No
August 14, 2020	390A19-1	In re: L.E.W.	No

August 14, 2020	411A94-6	State v. Marcus Reymond Robinson	No
August 14, 2020	94PA19-1	State v. James A. Cox	No
August 14, 2020	99PA19-1	Walker v. K&W Cafeterias, et al.	No
September 25, 2020	11A19-1	State v. Tyler Deion Greenfield	No
September 25, 2020	**130A03-2**	**State v. Quintel Martinez Augustine**	**Justice Ervin**
September 25, 2020	**18PA19-1**	**Savino v. The Charlotte-Mecklenburg Hospital Authority, et al.**	**Justice Davis**
September 25, 2020	21A20-1	In re: L.M.M.	No
September 25, 2020	221A19-1	State v. Anton Thurman McAllister	No
September 25, 2020	290PA15-2	State v. Jeffrey Tryon Collington	No
September 25, 2020	314PA20-1	N.C. Bowling Proprietors Association, Inc. v. Roy A. Cooper, III	No
September 25, 2020	401A19-1	In re: J.D.C.H., J.L.C.H.	No
September 25, 2020	409A19-1	In re: S.J.B.	No
September 25, 2020	429A19-1	In re: E.B.	No
September 25, 2020	**441A98-4**	**State v. Tilmon Charles Golphin**	**Chief Justice Beasley**
September 25, 2020	476A19-1	In re: Z.K.	No
September 25, 2020	548A00-2	State v. Christina Shea Walters	No
September 25, 2020	**69A06-4**	**State v. Terraine Sanchez Byers**	**Justice Ervin**
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November 20, 2020	10A20-1	In re: S.E.T.	No

November 20, 2020	123A20-1	In re: D.L.A.D.	No
November 20, 2020	18A20-1	In re: A.S.T.	No
November 20, 2020	191A20-1	In re: G.L., I.L.	No
November 20, 2020	255A19-1	In re: K.H.	No
November 20, 2020	354A19-1	In re: C.B., J.B., E.O. C.O., M.O.	No
November 20, 2020	369A19-1	In re: A.H.F.S., R.S.F.S., and C.F.S.	No
November 20, 2020	379A19-1	In re: A.S.M.R. and M.C.R.	No
November 20, 2020	397A19-1	In re: O.W.D.A.	No
November 20, 2020	39A20-1	In re: X.P.W. and B.W.	No
November 20, 2020	413A19-1	In re: E.C., C.C., N.C.	No
November 20, 2020	452A19-1	In re: A.J.P.	No
November 20, 2020	461A19-1	In re: K.C.T.	No
November 20, 2020	462A19-1	In re: S.M., J.M., S.M., A.M., I.M., S.M.	No
November 20, 2020	474A19-1	In re: N.M.H.	No
November 20, 2020	491A19-1	In re: K.S.D-F., K.N.D-F.	No
November 20, 2020	87A20-1	In re: R.L.O., L.P.O., C.M.O.	No
December 11, 2020	11A20-1	In re: B.E. and J.E.	No
December 11, 2020	122A20-1	In re: R.L.D.	No
December 11, 2020	153A20-1	In re: A.L.S. and M.A.W.	No
December 11, 2020	188A20-1	In re: C.A.H.	No
December 11, 2020	208A20-1	In re: A.P.	No
December 11, 2020	231A20-1	In re: S.D.H., S.J.J.	No

December 11, 2020	271A18-1	State ex rel. Utilities Commission v. Attorney General	No
December 11, 2020	27A20-1	In re: K.D.C. and A.N.C.	No
December 11, 2020	339A19-1	In re: D.M., M.M., D.M.	No
December 11, 2020	401A18-1	State ex rel. Utilities Commission v. Attorney General	No
December 11, 2020	41A20-1	In re: Z.O.G.-I.	No
December 11, 2020	451A19-1	In re: K.P.-S.T., B.T.-F.T.	No
December 11, 2020	54A20-1	In re: N.K.	No
December 11, 2020	59A20-1	In re: Q.B.	No
December 11, 2020	67A20-1	In re: A.M.O.	No
December 11, 2020	68A20-1	In re: A.K.O. and A.S.O	No
December 11, 2020	88A20-1	In re: T.N.C., D.M.C.	No
December 11, 2020	92A20-1	In re: J.S., J.S., J.S.	No
December 18, 2020	**141A19-1**	**State v. Jeff David Steen**	**Justice Davis**
December 18, 2020	151PA18-1	State v. Rama Dion Benjamin Crump	No
December 18, 2020	156A17-2	DiCesare, et al. v. The Charlotte-Mecklenburg Hospital Authority	No
December 18, 2020	189A19-1	State v. Kenneth Calvin Chandler	No
December 18, 2020	241PA19-1	Parkes v. Hermann	No
December 18, 2020	249PA19-1	Ashe County v. Ashe County Planning Board, et al.	No
December 18, 2020	268A19-1	In re: R.D.	No

December 18, 2020	276A19-1	In re: B.L.H.	No
December 18, 2020	**300A93-3**	**State v. Norfolk Junior Best**	**Justice Ervin**
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December 18, 2020	319A19-1	In re: A.L.L.	No
December 18, 2020	324A19-1	State v. Jack Howard Hollars	No
December 18, 2020	343A19-1	In re: J.D.	No
December 18, 2020	356A19-1	In re: K.M.W. and K.L.W.	No
December 18, 2020	383A19-1	Newman v. Stepp	No
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December 18, 2020	392A19-1	State v. Bruce Wayne Glover	No
December 18, 2020	**396A19-1**	**In re: J.M.**	**Justice Davis**
December 18, 2020	400A19-1	State v. Carolyn D. Bonnie Sides	No
December 18, 2020	407A19-1	Crescent University City Venture, LLC v. Trussway Manufacturing Inc., et al.	No
December 18, 2020	426A18-1	Zander, et al. v. Orange County, NC, et al.	No
December 18, 2020	430A19-1	In re: J.J.H., K.L.R., J.J.H., S.S.S., and J.M.S.	No
December 18, 2020	458A19-1	In re: W.K. and N.K.	No
December 18, 2020	484A19-1	State v. David William Warden II	No
December 18, 2020	65A20-1	In re: J.C.	No
December 18, 2020	8A19-1	State v. Jimmy Lee Farmer	No

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February 5, 2021	214A20-1	In re: S.R.F.	No
February 5, 2021	**231A18-1**	**The Committee to Elect Dan Forest v. Employees Political Action Committee (EMPAC)**	**Justices Berger and Barringer**
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March 12, 2021	178A20-1	In re: Z.J.W.	No
March 12, 2021	190A20-1	Gay v. Saber Healthcare Group, L.L.C., et al.	No
March 12, 2021	22A20-1	Red Valve, Inc., et al. v. Titan Valve, Inc., et al.	No
March 12, 2021	**259A20-1**	**Lauziere v. Stanley Martin Communities, LLC, et al.**	**Justice Berger**
March 12, 2021	280A19-1	In re: N.P.	No
March 12, 2021	**29A20-1**	**Griffin v. Absolute Fire Control, Inc., et al.**	**Justice Berger**
March 12, 2021	**31PA20-1**	**JVC Enterprises, LLC, et al. v. City of Concord**	**Justice Berger**
March 12, 2021	385PA19-1	Raleigh Housing Authority v. Winston	No
March 12, 2021	**406A19-1**	**Chisum v. Campagna, et al.**	**Justices Berger and Barringer**
March 12, 2021	447A19-1	State v. Ryan Kirk Fuller	No
March 12, 2021	475A19-1	In re: Q.P.W.	No

March 12, 2021	478A19-1	In re: Eldridge	No
March 12, 2021	73A20-1	State v. Corbett and Martens	No
March 19, 2021	127A20-1	In re: H.A.J. and B.N.J.	No
March 19, 2021	186A20-1	In re: J.S., B.S., and B.S.	No
March 19, 2021	193A20-1	In re: R.D.M., Z.A.M., J.M.B., and J.J.B.	No
March 19, 2021	196A20-1	In re: C.R.L., K.W.D.	No
March 19, 2021	230A20-1	In re: B.T.J.	No
March 19, 2021	248A20-1	In re: G.G.M. and S.M.	No
March 19, 2021	249A20-1	In re: S.M.	No
March 19, 2021	252A20-1	In re: L.N.G., L.P.G., and L.A.D.	No
March 19, 2021	275A20-1	In re: M.C.T.B.	No
March 19, 2021	308A20-1	In re: A.R.P.	No
March 19, 2021	69A20-1	In re: A.M.L., G.J.L., B.J.B., J.E.B., T.R.B., Jr.	No
March 19, 2021	91A20-1	In re: I.R.M.B.	No
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April 16, 2021	436A20-1	In re: C.M., K.S., J.S., M.A.S., and K.S.	No
April 16, 2021	438A19-1	In re: G.B., M.B., A.O.J.	No
April 16, 2021	480A20-1	In re: J.B.	No
April 16, 2021	486PA19-1	State v. Melvin and Baker	No
April 16, 2021	49A20-1	State v. Faye Larkin Meader	No
April 16, 2021	77A19-1	In re: George	No
April 16, 2021	78A20-1	State .v. William Lee Scott	No

April 16, 2021	8A20-1	State v. Harley Aaron Allen	No
April 23, 2021	224A20-1	In re: D.A.A.R. and S.A.L.R.	No
April 23, 2021	232A20-1	In re: T.M.L. and A.R.L.	No
April 23, 2021	243A20-1	In re: M.L.B.	No
April 23, 2021	24A20-1	In re: A.W.	No
April 23, 2021	262A20-1	In re: J.E., F.E., and D.E.	No
April 23, 2021	271A20-1	In re: A.R.W., H.N.W., and S.L.W.	No
April 23, 2021	280A20-1	In re: M.J.B. III, G.M.B., and J.A.B.	No
April 23, 2021	289A20-1	In re: L.R.L.B.	No
April 23, 2021	291A20-1	In re: N.B., N.M.B., M.R.	No
April 23, 2021	321A20-1	In re: P.M., A.M., N.M.	No
April 23, 2021	332A20-1	In re: M.S.A.	No
April 23, 2021	351A20-1	In re: G.D.H., J.X.W.	No
April 23, 2021	**363PA17-2**	**In re: J.M. & J.M.**	**Justice Berger**
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June 11, 2021	**14A21-1**	**In re: J.P.**	**Justice Ervin**
June 11, 2021	**261A20-1**	**State v. Charles Blagg**	**Justice Berger**
June 11, 2021	279A20-1	State v. Demon Hamer	No
June 11, 2021	320A20-1	McGuire v. LORD Corporation	No
June 11, 2021	326PA19-1	Cheryl Lloyd Humphrey Land Investment Company, LLC v. Resco Products, Inc., et al.	No
June 11, 2021	**345PA19-1**	**Crazie Overstock Promotions, LLC v. State of NC, et al.**	**Justice Berger**
June 11, 2021	**376A19-1**	**State v. Ervan L. Betts**	**Justice Berger**
June 11, 2021	399A20-1	Diamond Candles, LLC v. Winter, et al.	No
June 11, 2021	403A20-1	In re: I.K.	No

June 11, 2021	421PA19-1	State v. Thomas Allen Cheeks	No
June 11, 2021	436A19-1	Window World of Baton Rouge, et al. v. Window World, Inc., et al.	No
June 11, 2021	60A20-1	Deminski v. The State Board Of Education, et al.	No
June 11, 2021	71A20-1	State v. Brandon Scott Goins	No
June 11, 2021	76A20-1	In re: M.J.R.B., Z.M.B., N.N.T.B., S.B.	No
June 18, 2021	192A20-1	In re: M.S.E. and K.A.E.	No
June 18, 2021	20A20-1	In re: E.S. and E.S.S.	No
June 18, 2021	276A20-1	In re: T.A.M. and K.R.M.	No
June 18, 2021	322A20-1	In re: B.S.	No
June 18, 2021	343A20-1	In re: M.S., W.S., E.S.	No
June 18, 2021	344A20-1	In re: J.E.E.R.	No
June 18, 2021	347A20-1	In re: I.J.W.	No
June 18, 2021	353A20-1	In re: Z.R., J.R., A.L.M.W.	No
August 13, 2021	115A04-3	State v. Scott David Allen	No
August 13, 2021	184A20-1	State v. Fabiola Rosales Chavez	No
August 13, 2021	187PA20-1	State v. Shanna Cheyenne Shuler	No
August 13, 2021	242A20-1	NC Farm Bureau Mutual Insurance Company, Inc. v. Lunsford	No
August 13, 2021	296A19-1	Wells Fargo Bank, N.A. v. Stocks, et al.	No
August 13, 2021	303A20-1	Long v. Fowler, et al.	No
August 13, 2021	307PA20-1	Mucha v. Wagner	No
August 13, 2021	311A20-1	In re: Harris Teeter, LLC	No
August 13, 2021	348A20-1	Carolina Mulching Co, L.L.C. v. Raleigh-Wilmington	No

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August 13, 2021	**3A20-1**	**State v. Bryan Xavier Johnson**	**Justice Berger**
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August 13, 2021	461A20-1	State v. John Fitzgerald Austin	No
August 27, 2021	218A20-1	In re: M.A.	No
August 27, 2021	339A20-1	In re: Z.G.J.	No
August 27, 2021	370A20-1	In re: A.L.	No
August 27, 2021	371A20-1	In re: S.C.L.R.	No
August 27, 2021	418A20-1	In re: A.P.W., A.J.W., H.K.W.	No
August 27, 2021	446A20-1	In re: A.C.	No
August 27, 2021	449A20-1	In re: J.E.H., J.I.H., K.T.B., Q.D.B., I.T.B.	No
August 27, 2021	451A20-1	In re: J.L.F.	No
August 27, 2021	459A20-1	In re: K.N. & K.N.	No
August 27, 2021	473A20-1	In re: D.M. & A.H.	No
August 27, 2021	489A20-1	In re: A.S.D.	No
August 27, 2021	494A20-1	In re: M.J.M. and A.M.M.	No
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September 24, 2021	233A20-1	State v. Johnathan Ricks	No
September 24, 2021	292A20-1	State v. Donald Eugene Hilton	No
September 24, 2021	364A20-1	In re: M.Y.P.	No
September 24, 2021	37A21-1	In re: M.R.J.	No

September 24, 2021	382A20-1	In re: D.T.H.	No
September 24, 2021	39A21-1	In re: J.D.D.J.C., J.D.R.D.C.	No
September 24, 2021	411A20-1	In re: B.J.H. and J.E.H.	No
September 24, 2021	48A21-1	In re: K.B. & G.B.	No
September 24, 2021	500A20-1	In re: K.J.E.	No
September 24, 2021	501A20-1	In re: L.H., I.H.	No
September 24, 2021	528A20-1	In re: D.J.	No
September 24, 2021	5A21-1	In re: T.M.B.	No
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October 29, 2021	155PA20-1	State v. John D. Graham	No
October 29, 2021	**284PA20-1**	**State v. Jeremy Wade Dew**	**Justice Berger**
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October 29, 2021	334PA19-2	State v. Tenedrick Strudwick	No
October 29, 2021	408A20-1	State v. Michael Eugene Wright	No
October 29, 2021	416A20-1	In re: Z.M.T.	No
October 29, 2021	429A20-1	Bandy, et al. v. A Perfect Fit For You, Inc., et al.	No
October 29, 2021	460A20-1	In re: B.R.L.	No
October 29, 2021	471A20-1	In re: O.E.M.	No
October 29, 2021	515A20-1	Plantation Building of Wilmington, Inc. v. Town of Leland	No
October 29, 2021	56PA20-1	Copeland v. Amward Homes Of N.C., Inc., et al.	No