

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

FILED  
IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20-CVS-8346

2020 NOV 16 A 10:56

TAMIKA WALTER KELLY, KRISTY  
MOORE, AMANDA HOWELL, KATE  
MEININGER, ELIZABETH  
MEININGER, JOHN SHERRY, AND  
RIVCA RACHEL SANOGUEIRA,

WAKE CO. C.S.C.  
W

PLAINTIFFS,

v.

THE STATE OF NORTH CAROLINA,  
NORTH CAROLINA STATE  
EDUCATION ASSISTANCE  
AUTHORITY,

**LEGISLATIVE  
INTERVENOR-DEFENDANTS'  
RESPONSE IN SUPPORT OF  
MOTION TO STAY**

DEFENDANTS, *and*

PHILIP E. BERGER *in his official  
capacity as President Pro Tempore of  
the North Carolina Senate, and*  
TIMOTHY K. MOORE *in his official  
capacity as Speaker of the North  
Carolina House of Representatives,*

INTERVENOR-  
DEFENDANTS.

Legislative Intervenor-Defendants, Philip E. Berger, in his official capacity as President Pro Tempore of the North Carolina Senate, and Timothy K. Moore, in his official capacity as Speaker of the North Carolina House of Representatives (“Legislative Intervenor-Defendants”), submit this response to the Motion For Clarification or in the Alternative Motion to Stay of the

Nunn Intervenor-Defendants filed on October 23, 2020. The Legislative Intervenor-Defendants respond as follows:

The Legislative Intervenor Defendants are in agreement with the Nunn Intervenor-Defendants that all proceedings in this case should be stayed pending the outcome of their appeal of this Court's order denying the Nunn Intervenor-Defendants' Motion to Intervene. As the motion explains, N.C. Gen. Stat. § 1-294 provides that "[w]hen an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure." Since the Nunn Intervenor-Defendants properly and timely appealed this Court's order denying them intervention, this case should, therefore, be stayed until that appeal is resolved.

Furthermore, even if this Court were to conclude that an automatic stay is not required under these circumstances by N.C. Gen. Stat. § 1-294, the Legislative Intervenor-Defendants submit that this Court should exercise its discretion to stay the case pending the resolution of the appeal to promote judicial economy and the interest of justice in the case. The Legislative Intervenor-Defendants believe that the Nunn Intervenor-Defendants represent the substantial interests of those parents whose children benefit from the Opportunity Scholarship Program. Were the case to proceed in parallel with the Nunn appeal, the Court and the other parties would be deprived of this substantial unrepresented interest. Moreover, if the case is not stayed, the Nunn Intervenor-Defendants could be prejudiced by an inability to participate in ongoing proceedings, including motions practice and discovery, which would carry-on without the important voice of the parents whose children are served by the Program. Finally, it promotes judicial economy to have a final ruling on which parties are parties to the case before entering into other motions practice. If the Nunn Intervenor-Defendants are allowed into the case at a later date, they might

bring motions to undo this Court's actions taken in the meantime, and that would not be a good use of this Court's time or of the time of the other parties in the case.

For the above stated reasons, the Legislative Intervenor-Defendants submit that the Court should grant the Motion of the Nunn Intervenor-Defendants and stay further proceedings in this case pending the resolution of their appeal.

This is the 16th day of November, 2020.

Respectfully submitted,



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*\*Pro Hac Vice motions granted*

*Attorneys for Intervenor-Defendants*

*Philip E. Berger and Timothy K. Moore*

## CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been sent to the attorneys listed below by depositing the same in the First Class mail, postage prepaid, at the following addresses and by sending an e-mail to the e-mail addresses below on this 16th day of November, 2020.

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