

FILED

STATE OF NORTH CAROLINA
COUNTY OF WAKE

2021 APR 27 AM 9:50
WAKE COUNTY, C.S.C.

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

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

PLAINTIFFS,)

v.)

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

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)

JANET NUNN, CHRISTOPHER and)
NICHOLE PEEDIN, and KATRINIA)
POWERS,)

INTERVENOR-DEFENDANTS.)
_____)

LEGISLATIVE
INTERVENOR-DEFENDANTS'
FIRST AMENDED MOTION TO
DISMISS
PURSUANT TO RULE 12(b)(1)
AND WITHDRAWAL OF MOTION TO
DISMISS UNDER 12(b)(6) AND MOTION
TO STAY DISCOVERY

Legislative Intervenor-Defendants, Philip E. Berger, President Pro-Tem of the Senate, and Timothy K. Moore, Speaker of the House (together, the "Legislative Defendants") file this First Amended Motion to Dismiss pursuant to N.C.G.S. §1A-1, Rule 12(b)(1) for lack of subject matter

jurisdiction and Withdrawal of their Motion to Dismiss under Rule 12(b)(6). Plaintiffs' Complaint is devoid of any factual allegations showing that they suffered or are likely to suffer harm as a result of the matters alleged in their Complaint. They have failed to show the existence of a case or controversy, and as such, they lack standing to bring this action.


Legislative Defendants further request that this First Amended Motion to Dismiss be heard along with Defendants' Amended Motion to Dismiss and both groups' Motions to Transfer at the next scheduled hearing in this case, which is set for Thursday, May 6, 2021 at 2:00 p.m.

WHEREFORE, Legislative Defendants request that this Court dismiss Plaintiffs' Complaint, with prejudice, in its entirety, as against all parties, and tax the costs of this litigation to the Plaintiffs.

FURTHER, Legislative Defendants hereby WITHDRAW (i) their initial Motion to Dismiss Pursuant to Rules 12(b)(1) and (6) and (ii) their Motion to Stay Discovery, filed jointly with the Nunn Intervenor-Defendants.

This is the 27th day of April, 2021.

Respectfully submitted,



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*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 below by sending an e-mail to the addresses below on this 27th day of April, 2021.

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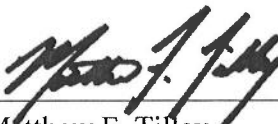
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Matthew F. Tilley

STATE OF NORTH CAROLINA

File No.

20-CVS-8346

WAKE County

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In The General Court Of Justice
[] District [X] Superior Court Division

Name Of Plaintiff
TAMIKA WALKER KELLEY, et al.

VERSUS

WAKE COUNTY, N.C. MOTION COVER SHEET

Name Of Defendant
THE STATE OF NORTH CAROLINA, ET AL.

BY

Rule 5(b), Rules of Practice For Superior and District Courts

Name And Address Of Attorney Or Party, If Not Represented (complete for initial appearance or change of address)

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[] Initial Appearance in Case

[] Change of Address

MOTION

Table with 3 columns: Type of Motion, By (Identify Party), and Against (Identify Party). Includes rows for DISM and multiple 'All' entries.

Date
04/27/2021

Signature Of Attorney/Party
Matthew F. Tilley

NOTE: All filings in civil actions shall include as the first page of the filing a cover sheet summarizing the critical elements of the filing in the format prescribed by the Administrative Office of the Courts...

TYPES OF MOTIONS

Add Additional Party (ADDP)
 Amend (AMND)
 Assert Right Of Access (ARAS)
 Attorney Fee (ATFE)
 Change Of Venue (CHVN)
 Claim Exemptions (CDEX)
 Compel (CMPL)
 Consolidation (CNSL)
 Contempt (CNTP)
 Continue (CNTN)
 Court Costs (COST)
 Default Judgment (DEFJ)
 Deposition (DEPO)
 Designate A Mediator (DSMD)
 Disburse Funds (DFND)
 Dismiss (Involuntary) (DISM)
 Entry Of Default (EODF)
 Ex Parte Restraining (EXPR)
 Exempt From Arbitration (EXAR)
 Exempt/Waive Mediation (EXMD)
 Extension Of Time (EXTM)
 Failure To Join Necessary Party (FJNP)
 Failure To State A Claim (FASC)
 Implementation Of Wage Withholding In Non-IV-D Cases (OTHR)
 Improper Venue/Division (IMVN)
 In Limine (ILIM)
 In The Cause (INTC)
 Increase Bond (INBN)
 Insufficiency Of Process (INPR)
 Insufficiency Of Service Of Process (INSP)
 Interplead (INTP)
 Intervene (INTR)
 Join (JOIN)
 Judgment On Pleading (JOPL)
 Jury View (JRVW)

Lack Jurisdiction (Subject Matter) (LJSM)
 Lack Jurisdiction (Person) (LJPN)
 Limit Deposition (LDEP)
 Modification Of Alimony (MALI)
 Modification Of Child Support In IV-D Actions (MSUP)
 Modification Of Custody (MCUS)
 Modification Of Support (MSUP)
 Modification Of Visitation (MVIS)
 More Definite Statement (Rule 12) (MDST)
 Motion For Out-Of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter
 New Trial (NTRL)
 Objection Of Exemptions Claimed (OEXC)
 Other (OTHR) *(describe on front)*
 Petition To Sue As Indigent (OTHR)
 Preliminary Injunction (PREL)
 Quash (QUSH)
 Release From Stay Of Execution (RSEX)
 Sanctions (SANC)
 Selection Of Mediator By Agreement (SMAP)
 Set Aside (VCMD)
 Sever Issues Or Claims (SICL)
 Show Cause (SHOW)
 Special Practice In NC (ADMP)
 Stay Of Execution (STEX)
 Strike (STRK)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Summary Judgment (SUMJ)
 Supplemental Procedures (SUPR)
 Temporary Restraining Order (TROR)
 Transfer (TRFR)
 Vacate/Modify Judgment Or Order (VCMD)
 Voluntary Dismissal With Or Without Prejudice (VOLD)
 Withdraw As Counsel (WDCN)

FEES IN G.S. 7A-308 APPLY

Assert Right Of Access (ARAS)
 Substitution Of Trustee (Judicial Foreclosure) (RSOT)
 Supplemental Procedures (SUPR)

PRO HAC VICE FEES APPLY

Motion For Out-of-State Attorney To Appear In NC Courts In A Civil Or Criminal Matter