

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF WAKE

2021 JUL 28 PM 2:24

SUPERIOR COURT DIVISION

20 CVS 8346

WAKE CO., C.S.C.

TAMIKA WALKER KELLY, KRISTY  
MOORE, AMANDA HOWELL, ~~KATE~~  
MEININGER, ELIZABETH MEININGER,  
JOHN SHERRY, and RIVCA RACHEL  
SANOGUEIRA,  
Plaintiffs,

v.

STATE OF NORTH CAROLINA and  
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*,  
Intervenor-Legislative Defendants,

JANET NUNN, CHRISTOPHER and  
NICHOLE PEEDIN, and KATRINIA  
POWERS,  
Intervenor-Defendants.

**ORDER ON PLAINTIFFS' MOTION  
TO AMEND**

THIS MATTER came before the Court upon Plaintiffs' Motion to Amend the Pleadings filed June 21, 2021.

Section 1-294 of the North Carolina General Statutes states that “[w]hen an appeal is perfected . . . it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein.” N.C.G.S. § 1-294.

This Court finds that Plaintiffs' Motion to Amend presents a matter that is embraced within the May 7, 2021, order, signed by Judge G. Bryan Collins, Jr., denying State and


Legislative Defendants’ respective motions for transfer to a three-judge panel. That order found that the complaint presents only as-applied constitutional challenges, as opposed to facial challenges. Plaintiffs’ Motion seeks to amend the language in the complaint that was largely at issue before the Court and is now the subject of Defendants’ appeal of that order.

“An appeal is not perfected until it is docketed in the appellate court, but when it is docketed, the perfection relates back to the time of notice of appeal, so any proceedings in the trial court after the notice of appeal are void for lack of jurisdiction.” *Ponder v. Ponder*, 247 N.C. App. 301, 305, 786 S.E.2d 44, 47 (2016). While the current appeal of the May 7, 2021 Order has not been perfected, the stay will relate back to the notice of appeal. For all intents and purposes, N.C.G.S. § 1-294 applies now.

As such, the Court concludes that Plaintiffs’ Motion to Amend is stayed pursuant to N.C.G.S. § 1-294.

For the foregoing reasons, this Court declines to rule on Plaintiffs’ Motion to Amend the Pleadings at this time. Plaintiffs may renew their motion following the disposition of Defendants’ appeal on the merits or a determination by the Court of Appeals that the May 7, 2021 Order is not immediately appealable, and that appeal is thereby dismissed.

This the 29<sup>th</sup> day of July, 2021.

  
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Honorable A. Graham Shirley  
Superior Court Judge Presiding

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served on the persons indicated below via e-mail transmission addressed as follows:

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This the 28<sup>th</sup> day of July 2021.



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