

IN THE SUPREME COURT OF NORTH CAROLINA

No. 384A14

Filed 23 July 2015

REVEREND ROBERT RICHARDSON, III, REVEREND MICHAEL and DELORES GALLOWAY, STEVEN W. SIZEMORE, THE NORTH CAROLINA SCHOOL BOARDS ASSOCIATION, ALAMANCE-BURLINGTON BOARD OF EDUCATION, ASHEBORO CITY BOARD OF EDUCATION, CATAWBA COUNTY BOARD OF EDUCATION, CHAPEL HILL-CARRBORO CITY BOARD OF EDUCATION, CHATHAM COUNTY BOARD OF EDUCATION, CLEVELAND COUNTY BOARD OF EDUCATION, COLUMBUS COUNTY BOARD OF EDUCATION, CRAVEN COUNTY BOARD OF EDUCATION, CURRITUCK COUNTY BOARD OF EDUCATION, DAVIDSON COUNTY BOARD OF EDUCATION, DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION, EDENTON-CHOWAN BOARD OF EDUCATION, GATES COUNTY BOARD OF EDUCATION, GRAHAM COUNTY BOARD OF EDUCATION, HALIFAX COUNTY BOARD OF EDUCATION, HARNETT COUNTY BOARD OF EDUCATION, HYDE COUNTY BOARD OF EDUCATION, LEE COUNTY BOARD OF EDUCATION, LENOIR COUNTY BOARD OF EDUCATION, LEXINGTON CITY BOARD OF EDUCATION, MACON COUNTY BOARD OF EDUCATION, MARTIN COUNTY BOARD OF EDUCATION, MOUNT AIRY CITY BOARD OF EDUCATION, NEWTON-CONOVER CITY BOARD OF EDUCATION, ONSLOW COUNTY BOARD OF EDUCATION, ORANGE COUNTY BOARD OF EDUCATION, PAMLICO COUNTY BOARD OF EDUCATION, PERSON COUNTY BOARD OF EDUCATION, PITT COUNTY BOARD OF EDUCATION, POLK COUNTY BOARD OF EDUCATION, ROCKINGHAM COUNTY BOARD OF EDUCATION, RUTHERFORD COUNTY BOARD OF EDUCATION, SCOTLAND COUNTY BOARD OF EDUCATION, STANLEY COUNTY BOARD OF EDUCATION, SURRY COUNTY BOARD OF EDUCATION, VANCE COUNTY BOARD OF EDUCATION, WARREN COUNTY BOARD OF EDUCATION, WASHINGTON COUNTY BOARD OF EDUCATION, WHITEVILLE CITY BOARD OF EDUCATION, YANCEY COUNTY BOARD OF EDUCATION, ALEXANDER COUNTY BOARD OF EDUCATION, ASHEVILLE CITY BOARD OF EDUCATION, AVERY COUNTY BOARD OF EDUCATION, BERTIE COUNTY BOARD OF EDUCATION, BLADEN COUNTY BOARD OF EDUCATION, CAMDEN COUNTY BOARD OF EDUCATION, CASWELL COUNTY BOARD OF EDUCATION, CHEROKEE COUNTY BOARD OF EDUCATION, CLINTON CITY BOARD OF EDUCATION, CUMBERLAND COUNTY BOARD OF EDUCATION, EDGECOMBE COUNTY BOARD OF EDUCATION, ELIZABETH CITY-PASQUOTANK BOARD OF EDUCATION, FRANKLIN COUNTY BOARD OF EDUCATION, GRANVILLE COUNTY BOARD OF EDUCATION, GUILFORD COUNTY BOARD OF EDUCATION, HAYWOOD

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COUNTY BOARD OF EDUCATION, HERTFORD COUNTY BOARD OF EDUCATION, HICKORY CITY BOARD OF EDUCATION, HOKE COUNTY BOARD OF EDUCATION, JACKSON COUNTY BOARD OF EDUCATION, JONES COUNTY BOARD OF EDUCATION, KANNAPOLIS CITY BOARD OF EDUCATION, MONTGOMERY COUNTY BOARD OF EDUCATION, MOORE COUNTY BOARD OF EDUCATION, MOORESVILLE GRADED SCHOOL DISTRICT BOARD OF EDUCATION, NASH-ROCKY MOUNT BOARD OF EDUCATION, NORTHAMPTON COUNTY BOARD OF EDUCATION, BOARD OF TRUSTEES FOR ROANOKE RAPIDS GRADED SCHOOL DISTRICT, SAMPSON COUNTY BOARD OF EDUCATION, THOMASVILLE CITY BOARD OF EDUCATION, and TRANSYLVANIA COUNTY BOARD OF EDUCATION,  
Plaintiffs

v.

STATE OF NORTH CAROLINA, NORTH CAROLINA STATE BOARD OF EDUCATION, and NORTH CAROLINA STATE EDUCATION ASSISTANCE AUTHORITY,

Defendants,

and

CYNTHIA PERRY, GENNELL CURRY, TIM MOORE, and PHIL BERGER,  
Intervenor-Defendants

Appeal pursuant to N.C.G.S. § 7A-27(b)(1) from an order and final judgment granting summary judgment and injunctive relief for plaintiffs entered on 28 August 2014 by Judge Robert H. Hobgood in Superior Court, Wake County. On 14 October 2014, pursuant to N.C.G.S. § 7A-31(a) and (b)(2), and Rule 15(e)(2) of the North Carolina Rules of Appellate Procedure, the Supreme Court on its own initiative certified the case for review prior to determination in the Court of Appeals. Heard in the Supreme Court on 24 February 2015.

*Poyner Spruill LLP, by Edwin M. Speas, Jr. and Carrie V. McMillan; and Tharrington Smith, LLP, by Deborah R. Stagner and Kenneth A. Soo, for*

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*individual and school board plaintiff-appellees;<sup>1</sup> and Robert F. Orr for plaintiff-appellee North Carolina School Boards Association.*

*Roy Cooper, Attorney General, by Lauren M. Clemmons, Special Deputy Attorney General, for defendant-appellants.*

*Institute for Justice, by Richard D. Komer, pro hac vice, Robert Gall, and Renée Flaherty, pro hac vice; and Shanahan Law Group, PLLC, by John E. Branch, III, for parent intervenor-defendant-appellants Cynthia Perry and Gennell Curry.*

*Nelson Mullins Riley & Scarborough, LLP, by Noah H. Huffstetler III and Stephen D. Martin, for legislative officer intervenor-defendant-appellants Tim Moore and Phil Berger.*

*Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., by Daniel F.E. Smith, Jill R. Wilson, and Robert J. King III; and AdvancED, by Kenneth Bergman, for Advance Education, Inc., amicus curiae.*

*American Civil Liberties Union of North Carolina Legal Foundation, by Christopher Brook, for Americans United for Separation of Church and State, American Civil Liberties Union, American Civil Liberties Union of North Carolina Legal Foundation, Anti-Defamation League, Baptist Joint Committee for Religious Liberty, and Interfaith Alliance Foundation, amici curiae.*

*Williamson, Dean, Williamson & Sojka, L.L.P., by Nickolas J. Sojka, Jr.; and Michael A. Rebell, pro hac vice, for Campaign for Educational Equity, Teachers College, Columbia University, amicus curiae.*

*Liberty, Life, and Law Foundation, by Deborah J. Dewart; Thomas C. Berg, pro hac vice, University of St. Thomas School of Law (Minnesota); and Christian Legal Society, by Kimberlee Wood Colby, pro hac vice, for Christian Legal Society; North Carolina Christian School Association; Roman Catholic Diocese of Charlotte, North Carolina; Roman Catholic Diocese of Raleigh, North Carolina; North Carolina Family Policy Council; Liberty, Life, and Law Foundation; Association of Christian Schools International; American*

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<sup>1</sup> Attorneys Speas and McMillan are counsel for all plaintiff-appellees except Chatham County Board of Education, Nash-Rocky Mount Board of Education, Board of Trustees for Roanoke Rapids Graded School District, and Granville County Board of Education. Attorneys Stagner and Soo represent these four entities.

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*Association of Christian Schools; and National Association of Evangelicals, amici curiae.*

*Campbell Shatley, PLLC, by Chad R. Donnahoo; and National School Boards Association, by Francisco M. Negrón, Jr., pro hac vice, for National School Boards Association, amicus curiae.*

*Robinson, Bradshaw & Hinson, P.A., by Richard A. Vinroot and Matthew F. Tilley, for Pacific Legal Foundation, amicus curiae.*

PER CURIAM.

For the reasons stated in *Hart v. State*, \_\_\_ N.C. \_\_\_, \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (2015) (372A14), the decision of the trial court is reversed.

REVERSED.

Justice HUDSON, Justice BEASLEY, and Justice ERVIN dissent for the reasons stated in Justice Hudson's dissenting opinion in *Hart v. State*, \_\_\_ N.C. \_\_\_, \_\_\_, \_\_\_ S.E.2d \_\_\_, \_\_\_ (2015) (372A14). Justice BEASLEY also dissents for the reasons stated in her dissenting opinion in *Hart v. State, id.* at \_\_\_, \_\_\_ S.E.2d at \_\_\_.