

4709 Cornus Drive  
Wilmington, NC 28412

FILED

November 19, 2021

2021 NOV 19 A 11:45

NEW HANOVER CO., C.S.C.

BY \_\_\_\_\_

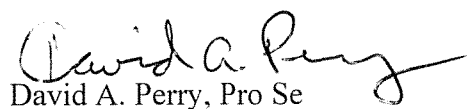
New Hanover County Superior Court  
Attn: Jan Kennedy, Clerk  
PO Box 2023  
Wilmington, NC 28402

Dear Ms. Kennedy:

Today I am submitting the Plaintiff's Objection to the Defendant's Motion for an Extension of Time. I request that you have a judge review my objection before any action is taken or Order issued on Defendant New Hanover County Board of Education's Motion for an Extension of Time.

If you have any questions, then please let me know. I can be reached via phone at: 910-617-2873 or via email at: dperrync@icloud.com

Sincerely,

  
David A. Perry, Pro Se

A TRUE COPY  
CLERK OF SUPERIOR COURT  
NEW HANOVER COUNTY  
BY: *Jeanne M. Heckart*  
Deputy Clerk of Superior Court

1 STATE OF NORTH CAROLINA  
2 NEW HANOVER COUNTY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. 21 CVS 003915

2021 NOV 19 A 11:45

4 DAVID A. PERRY,  
5 PLAINTIFF,

NEW HANOVER CO., C.S.C.  
BY \_\_\_\_\_

OBJECTION TO THE DEFENDANT'S  
MOTION FOR EXTENSION OF TIME

7 vs.

8 NEW HANOVER COUNTY BOARD OF  
EDUCATION;

9 NEW HANOVER COUNTY SHERIFF'S  
10 OFFICE;

11 DEFENDANTS;

12 HERE COMES THE PLAINTIFF, David A. Perry, Pro Se, who hereby objects to  
13 the Motion for Extension of Time filed by the Defendant, the New Hanover County Board of  
14 Education, on November 16, 2021.

16 In support of this objection, the Plaintiff makes the following points:

- 17 1. The Plaintiff filed this action on October 14, 2021. Contrary to the Defendant's motion,  
18 the Affidavit of Service clearly indicates that all Defendants in this case were served on  
19 October 18, 2021 (not October 19, 2021).
- 20 2. Pursuant to NC Rules of Civil Procedure, G.S. 1A-1, Rule 12(a)(1) the Defendant has 30  
21 days to answer a complaint. Therefore, the Defendant had until November 17, 2021 to  
22 file an answer. However, since the Defendant was served the complaint by mail, NC  
23 Rules of Civil Procedure, G.S. 1A-1, Rule 6(e) is applicable, and 3 days of additional  
24 time must be allowed. Therefore, the Defendant had until November 20, 2021 to file an  
25 answer. However, since November 20, 2021 is a Saturday, NC Rules of Civil Procedure,  
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27

28 OBJECTION TO THE DEFENDANT'S MOTION FOR EXTENSION OF TIME

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NEW HANOVER COUNTY  
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Deputy Clerk of Superior Court

1 G.S. 1A-1, Rule 6(a) applies, and therefore the Defendant had until November 22, 2021  
2 to file an answer.

- 3 3. However, since the Defendant filed a Motion to Dismiss, the time computations for  
4 filing an answer to the complaint have changed. NC Rules of Civil Procedure, G.S. 1A-  
5 1, Rule 12(a)(1)(a) states:

7 The responsive pleading shall be served within 20 days after notice  
8 of the court's action in ruling on the motion or postponing its  
9 disposition until the trial on the merits;

10 As correctly stated in the Defendant's motion, Judge Harrell denied the Defendant's  
11 Motion to Dismiss at the November 2, 2021 hearing on the matter. Therefore, the  
12 Defendant is required to not only file an answer by November 22, 2021, but that answer  
13 also needs to be served upon the Plaintiff by then. Since Judge Harrell personally served  
14 his Order to the Defendant on November 2, 2021, NC Rules of Civil Procedure, G.S. 1A-  
15 1, Rule 6(e) is inapplicable, and since November 22, 2021 does not fall on a weekend or  
16 on a holiday, NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(a) is also inapplicable.

- 17 4. NC Rules of Civil Procedure, G.S. 1A-1, Rule 6(b) does empower this Court with the  
18 discretion to extend the time period for the Defendant to answer to the complaint.  
19 However, this does NOT automatically grant the Defendant the right to additional time.  
20 This Court MAY grant additional time, but as Rule 6(b) states, it should be based on  
21 "cause shown." The Defendant's motion simply states that "Counsel for Defendant  
22 Board requires additional time to prepare a responsive pleading." No reason as to why  
23 the Defendant's Counsel is unable to submit a timely answer to the complaint is even  
24 proffered. Nor is any reason given why they need a whopping 30 days of additional time  
25 to complete this task. The Defendant, the New Hanover County Board of Education, is  
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28

1 defended by two attorneys from a very large law firm, Tharrington Smith, LLP. In  
2 addition to attorneys Shive and Weinstein, this law firm has 16 additional attorneys on  
3 staff in their education law practice alone! This does not even take into account the  
4 numerous law clerks and paralegals who work for the firm. In short, there is no reason  
5 short of inattentiveness, that Counsel for the Defendant should need more time to  
6 prepare a responsive pleading. And since no reason was proffered, this Court should not  
7 assume there is any good cause to extend the Defendant's time to file an answer.  
8

9  
10 5. Whether or not the Defendant's motion is "made in good faith and not made for the  
11 purpose of delay," is irrelevant. The fact is that is if this Court decides to grant this  
12 motion, it will cause an unnecessary delay in this case. The New Hanover County Board  
13 of Education decided on November 15, 2021 to extend their mask mandate until at least  
14 December by a 5-2 vote. As is apparent from the discussion held during this meeting, it  
15 is the intention of the majority of school board members to extend their mask mandate  
16 until at least January 2022. This means that the Defendant, and all those similarly  
17 situated individuals who cannot or will not wear a mask, will not be able to fully  
18 participate in school board meetings until at least after the January 4, 2022 regular  
19 meeting of the New Hanover County Board of Education. The result will be that the  
20 Plaintiff, and those similarly situated, will lose their petition, assembly, and Open  
21 Meetings rights for an additional two months for no good reason.  
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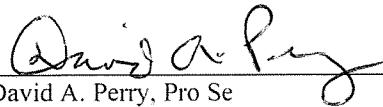
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24 6. The Plaintiff firmly believes that there are little to no issues of fact in this case that will  
25 need to be resolved once the Defendants answer this complaint. This is a case about the  
26 law and our state and federal constitutions, and not about facts. Once answers are  
27 received in this case, the Plaintiff plans to quickly file a brief in support of the case and a  
28

1 motion for this Court to rule on the pleadings. If any facts are in dispute, the Plaintiff  
2 would simply ask for a quick hearing on the very limited set of facts that still might be  
3 contested. If the Defendant's Motion for Extension of Time is denied, there might be  
4 time to get a final resolution on this case by the end of 2021. If the motion is granted,  
5 especially if it is for the full 30 days requested, this case will most certainly not be fully  
6 adjudicated until at least late January or February of 2022.  
7

8 THEREFORE, the Plaintiff beseeches this honorable Court to:  
9

- 10 1. DENY the Motion for Extension of Time submitted by the Defendant, the New  
11 Hanover County Board of Education, and order that the Plaintiff be served with an  
12 answer to the complaint by November 22, 2021.
- 13 2. IN THE ALTERNATIVE, since the Defendant is currently under a 20-day time limit  
14 to file an answer, reduce the requested extension of time from 30 to 20 days, and  
15 order that the Plaintiff be served with an answer to the complaint by December 13,  
16 2021.
- 17 3. Grant whatever other relief this Court finds just and equitable.  
18  
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21 Dated this 19<sup>th</sup> day of November 2021.  
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26 David A. Perry, Pro Se  
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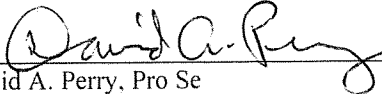
1 **CERTIFICATE OF SERVICE**

2 I certify that a copy of the attached **OBJECTION TO THE DEFENDANT'S**  
3 **MOTION FOR EXTENSION OF TIME** was served upon all Defendants in this case on this  
4 date, via USPS Priority Mail and electronic mail addressed to:  
5

6  
7 THARRINGTON SMITH, L.L.P  
8 Colin A Shive  
9 Maya H Weinstein  
10 150 Fayetteville Street, Suite 1800  
11 PO Box 1151  
12 Raleigh, NC 27602-1151  
13 Email: [cshive@tharringtonsmith.com](mailto:cshive@tharringtonsmith.com)  
14 [mweinstein@tharringtonsmith.com](mailto:mweinstein@tharringtonsmith.com)  
15 *Attorneys for New Hanover County Board of Education*

16 SHARON J. HUFFMAN  
17 Deputy County Attorney  
18 New Hanover County  
19 230 Government Center Drive, Suite 125  
20 Wilmington, NC 28403  
21 Phone: (910) 798-7153 (office)  
22 Fax: (910) 798-7157 (fax)  
23 *Attorney for New Hanover County Sheriff's Office*

24 Dated this 19<sup>th</sup> day of November 2021.

25  
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David A. Perry, Pro Se