

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
95 CVS 1158

HOKE COUNTY BOARD OF)
EDUCATION, et al.,)
)
Plaintiffs,)
and)
)
CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)
)
Plaintiff-Intervenor,)
and)
)
RAFAEL PENN, et al.,)
)
Plaintiff-Intervenors,)
v)
)
STATE OF NORTH CAROLINA and)
the STATE BOARD OF)
EDUCATION,)
)
Defendants,)
and)
)
CHARLOTTE-MECKLENBURG)
BOARD OF EDUCATION,)
)
Realigned Defendant,)
and)
)
PHILIP E. BERGER, in his official)
capacity as President *Pro Tempore* of)
and TIMOTHY K. MOORE, in his)
official capacity as Speaker of the)
North Carolina House of)
Representatives,)
)
Intervenor-Defendants.)

AFFIDAVIT OF LINDA COMBS AND JIM DOLAN
IN SUPPORT OF THE OFFICE OF STATE CONTROLLER'S
INITIAL BRIEF

Now comes Dr. Linda Combs and Jim Dolan, after being duly sworn, and state as follows:

- 1) We serve as the North Carolina State Controller and the Chief Deputy State Controller in the Office of State Controller and are familiar with the practices and procedures of the Office of State Controller with regard to the receipt of funds and the disbursement of funds arising from the 2021 Appropriation Act, 2021 N.C. Sess. Laws 180.
- 2) Dr. Combs was unanimously confirmed by the General Assembly as North Carolina's State Controller in 2014. She previously served as Controller of the United States. As Controller, Executive Office of the President, Office of Management and Budget, she worked on the widest possible range of issues at the highest levels of government.
 - a) She routinely briefed the President of the United States on the status of financial management in the Federal departments, and frequently testified before numerous Congressional oversight committees. She was responsible for establishing financial management policies and requirements for the Executive branch of the Federal government, totaling \$2.7 trillion in revenue.
 - b) Key selected accomplishments as Controller of the United States included:
 - i) Reduced audit completion time (from five months) to 45 days from end of fiscal year for the entire Federal Government.
 - ii) Reduced improper payments by \$9 billion.

- iii) Disposed of \$4.5 billion of unneeded real property.
 - c) During her career she has worked for three U.S. Presidents and has earned five Senate confirmations. In previous positions, Combs has been the Chief Financial Officer at the Environmental Protection Agency (\$8 billion budget) where she led that agency to obtain a clean audit opinion with no material weaknesses, and received the highest honor awarded—the prestigious Crystal Eagle Award from the President.
 - d) As Assistant Secretary of the Department of Transportation (\$58 billion budget), she led that agency to be the first Federal Department to install a single core financial system Department-wide, resulting in the Department of Transportation being designated a Federal Financial Center of Excellence. Dr. Combs also held Assistant Secretary or equivalent COO roles at the Departments of Treasury, Veterans Affairs, and Education.
 - e) She holds a doctorate from Virginia Tech, undergraduate and master's degrees from Appalachian State University, and is a graduate of the Program for Senior Managers at Harvard University.
 - f) Dr. Combs was recently awarded the 2022 Distinguished Service Award from the National Association of State Comptrollers for her lifetime of distinguished service.
- 3) Jim Dolan is currently the Chief Deputy State Controller which is the Chief Operating Officer for the Office of the State Controller (OSC). He has served in this position since 2014. Jim has had 23 years private sector experience in the

IT industry that included leadership positions in accounting, financial planning, product pricing, and forecasting.

- a) Mr. Dolan started his State career in North Carolina's Office of State Budget and Management (OSBM) in 2005 where he was responsible for developing business cases for IT investments and he co-managed an IT infrastructure consolidation effort. He joined the Office of State Controller in 2008 as a member of the executive team and managed the operations of the Enterprise Resource Planning (ERP) Human Resource / Payroll System.
- 4) In his current capacity as Chief Deputy, he oversees the operations of the office and leads a team that is replacing the North Carolina Accounting System (NCAS) and Cash Management Control System (CMCS) with the North Carolina Financial System (NCFS).
- a) Mr. Dolan has a Bachelor of Science degree in Accounting from Bryant University and an MBA from Rider University. He is a graduate of the Government Chief Information Officer program at UNC Chapel Hill School of Government and holds a foundation level ITIL certification in IT service management.
- 5) On November 10, 2021, Superior Court Judge David Lee ordered that OSBM, the State Controller, and the Treasurer are directed to transfer \$1.7 billion dollars out of the state treasury and "treat the forgoing funds as an appropriation."
- 6) Compliance with the order could have subjected the State Controller and her staff to criminal liability and the possibility of impeachment by the General

Assembly. Based upon the position the Attorney General took in this matter, the State Controller did not believe he or a member of his staff could represent the State Controller and her Office in this matter. Therefore, pursuant to NC Gen Stat. 147-17 and 114-2.3, the State Controller requested and was granted permission from the Attorney General and the Governor to seek outside counsel.

- 7) The State Controller is seeking a declaration from the Court regarding the authority for compliance with the Order from Judge David Lee dated November 10, 2021. In addition, the State Controller, while willing to follow the legal orders of the court, does not know how she can comply with the Order as written because she has no statutory means to do so. Therefore, the State Controller took action to protect and maintain the fiscal integrity of the State of NC and the independent office of the State Controller.
- 8) On March 25, 2022, the Court requested that, in addition to other issues one or more of the parties believes is relevant to this Court's compliance with the Supreme Court's Order of Remand, the parties provide to the Court in their filings, information (in the form of admissible evidence) and legal argument regarding the following subjects:
 - a) Subject 1: The amount of the funds appropriated in the 2021 Appropriations Act, 2021 N.C. Sess. Laws 180, that directly fund the various programs and initiatives called for in the Comprehensive Remedial Plan.
 - i) OSC has three primary roles in the appropriation/budget/cash flow for the State of North Carolina:

- (1) First - OSC is the maintainer and custodian and the system of record of cash; NCGS 143B-426.37.
- (2) Second - OSC only moves money to various accounts when directed by general statute. NCGS 143C-1-1(b) and Article V, Section 7(1) of the NC Constitution.
- (3) Third - OSC checks funds availability at the budget code level within the North Carolina Financial System (NCFS) to ensure adequate budget prior to paying vendors. (OSC Statewide Accounting Division, Central Compliance EPay Process).

ii) Responsibility for tracking finances at the program level is the responsibility of each agency and the Office of State Budget Management – not OSC.

b) Subject 2: The amount of funds remaining in the General Fund currently both in gross and net of appropriations in the 2021 Appropriations Act;

i) Due to the nature of these funds, the balance fluctuates daily¹. Relying on any one day's balance could cause a misimpression that the amount on any one given day would be available for uses not appropriated.

¹ June 2021 – March 28, 2022 - General Fund – Top Cash Line & Unreserved Fund Balance by Week (Exhibit 1).

- ii) Directives to move unplanned/unappropriated monies at any given time would most likely cause a cash deficit position for the State.
- iii) As of March 31, 2022, the total cash balance (gross) was \$8,920,192,187 and the Unreserved Cash Balance (net) was \$3,845,896,284.²
- iv) The projected Unreserved Cash Balance at the end of the fiscal year 2021-2022 (net) will be \$2,362,641,444 (\$2.4 Billion).³
- v) The projected Unreserved Cash Balance at the end of the fiscal year 2022-2023 (net) will be \$3,604,638 (\$3.6 Million).⁴
- vi) The affidavit filed by OSBM illustrates ending balances slightly different than illustrated here. The reason for this is that Session Law 2021-180 (Appropriations Act) General Fund Availability Statement began with a prior year ending fund balance of \$6,330,906,829. The actual figure was \$6,313,053,021, a difference of \$17,853,808. This resulted in Fiscal Research projecting unappropriated fund balances remaining of \$2,487,245,252 and \$128,208,446 for fiscal years 2021-2022 and 2022-2023 respectively. Subsequently, Session Law 2021-189 (Technical Corrections Bill) was passed on December 6, 2021. This legislation continued with \$6,330,906,829 as the prior year ending fund balance resulting in projected unappropriated fund balances remaining of \$2,380,495,525 and \$21,458,446 for fiscal years 2021-2022 and 2022-2023.

² OSC Daily Cash Report – March 31, 2022 (Exhibit 2)

³ Page 18 of the NCGA 2021 Legislative Session Budget and Fiscal Policy Highlights document. (Exhibits 3 and 4)

⁴ Page 18 of the NCGA 2021 Legislative Session Budget and Fiscal Policy Highlights document. (Exhibits 3 and 4)

vii)The North Carolina General Assembly Legislative Session Budget and Fiscal Policy Highlights⁵, published January 20, 2022, adjusted the prior year ending fund balance to \$6,313,053,021 to match the actual figure. The adjustment, \$17,853,808, was made to the Actual Over Collections in that document's Appendix A, Revised General Fund Availability Statement.

c) Subject 3: The effect of the appropriations in the 2021 Appropriations Act allows OSC to transfer funds to the Department of Health and Human Services, Department of Public Instruction, and the University of North Carolina System as provided in the Act. OSC had no such authority until the budget was certified on January 28, 2022. OSC does not have a procedure or the legal authority to move any funds without an appropriation. Directives to move unplanned/unappropriated monies at any given time would most likely cause a cash deficit position for the State. Past revenue performance and cash balances are no certain indicators of future revenue performance and cash balances. OSC relies on economists in the Legislature's Fiscal Research Division and OSBM to do projections.

9) Because the budgeting and cash management processes in State government are complex, the Office of the State Controller is providing Exhibits 5-9 which outline its operational flow and use of funds.

⁵ NCGA 2021 Legislative Session Budget and Fiscal Policy Highlights document. (Exhibit 4)

FURTHER AFFIANTS SAYETH NOT.

Linda Combs
LINDA COMBS

Sworn to and subscribed before me
this 7th day of April, 2022.

Kourtney Garcia

My Commission Expires: July 19, 2024



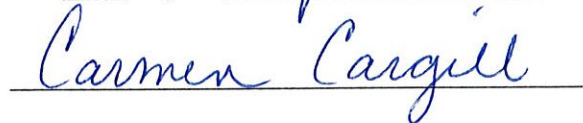
FURTHER AFFIANTS SAYETH NOT.



JIM DOLAN

Sworn to and subscribed before me

this 7 day of April, 2022.



Carmen Cargill

CARMEN CARGILL
Notary Public, North Carolina
Wake County
My Commission Expires
April 21, 2026

[SEAL]

My Commission Expires: 4/21/2026

EXHIBITS

1. June 2021 – March 28, 2022 - General Fund – Top Cash Line & Unreserved Fund Balance by Week (Prepared by OSC).
2. OSC Daily Cash Report – March 31, 2022 (Prepared by OSC)
3. Pages 17-18 highlighted - NCGA 2021 Legislative Session Budget and Fiscal Policy Highlights (Prepared by Fiscal Research Division – January 20, 2022).
4. Full Document - NCGA 2021 Legislative Session Budget and Fiscal Policy Highlights (Prepared by Fiscal Research Division – January 20, 2022).
5. Appropriation/Budget/Cash Flow Chart (Prepared by OSC).
6. Appropriation/Budget/Cash Flow Chart with dates and balances (Prepared by OSC).
7. Appropriations, Budget, and Cash Flow Processes in North Carolina (Prepared by OSC)
8. Budgeting and Expenditure of Appropriated Funds (Prepared by OSC)
9. Use of General Fund Unreserved Fund Balance and the Savings Reserve (Prepared by OSC)

CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2022, a copy of the foregoing was served electronically and will be served upon the following in compliance with BCR 3.9:

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This 8th day of April, 2022.



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