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CHARLES HEATHERLY, THOMAS SPAMPINATO, W. EDWARD GOODALL, JR., PAUL STAM, WAKE COUNTY TAXPAYERS ASSOCIATION, and THE NORTH CAROLINA FAMILY POLICY COUNCIL, Plaintiffs, WILLIS WILLIAMS, NORTH CAROLINA FAIR SHARE, and NORTH CAROLINA COMMON SENSE FOUNDATION, Plaintiff-Intervenors v. STATE OF NORTH CAROLINA; CHARLES A. SANDERS, BRYAN E. BEATTY, LINDA CARLISLE, ROBERT A. FARRIS, JR., JOHN R. MCARTHUR, JIM WOODWARD, and ROBERT W. APPLETON, Members of the North Carolina Lottery Commission, in their official capacities; NORTH CAROLINA LOTTERY COMMISSION; THOMAS N. SHAHEEN, Executive Director of the North Carolina Education Lottery, in his official capacity; MICHAEL F. EASLEY, Governor of the State of North Carolina, in his official capacity; and RICHARD H. MOORE, Treasurer of the State of North Carolina, in his official capacity, Defendants

No. 317A06-2

SUPREME COURT OF NORTH CAROLINA

363 N.C. 115; 678 S.E.2d 656; 2009 N.C. LEXIS 229

**September 8, 2008, Heard in the Supreme Court
March 20, 2009, Filed**

PRIOR HISTORY: *Heatherly v. State*, 189 N.C. App. 213, 658 S.E.2d 11, 2008 N.C. App. LEXIS 530 (N.C. Ct. App., 2008)

DISPOSITION: [***1] AFFIRMED.

COUNSEL: North Carolina Institute for Constitutional Law, by Jeanette Doran Brooks and Robert F. Orr, for plaintiff-appellants; and North Carolina Justice Center, by Jack Holtzman, for plaintiff-intervenor-appellants Willis Williams and the North Carolina Common Sense Foundation.

Roy Cooper, Attorney General, by Norma S. Harrell and Ronald M. Marquette, Special Deputy Attorneys General, for defendant-appellees.

Williams Mullen, by Charles B. Neely, Jr., for the Tax Foundation, amicus curiae.

OPINION

[**656] [*115] Appeal pursuant to *N.C.G.S. § 7A-30(2)* from the decision of a divided panel of the Court of Appeals, 189 N.C. App. 213, 658 S.E.2d 11 (2008), affirming an order entered 21 March 2006 by Judge Henry W. Hight, Jr. in Superior Court, Wake County. Heard in the Supreme Court 8 September 2008.

[**657] PER CURIAM.

Justice MARTIN did not participate in the consideration or decision of this case. As to the appeal of right based on the dissenting opinion, the remaining members of the Court are equally divided, with three members voting to affirm and three members voting to reverse the decision of the Court of Appeals. Accordingly, the decision of the Court of Appeals is left undisturbed and stands without precedential [***2] value. *See, e.g., Barham v. Hawk*, 360 N.C. 358, 625 S.E.2d 778 (2006).

AFFIRMED.

