

NO.

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

HART, ET AL.

Plaintiffs-Appellees,

v.

STATE OF NORTH CAROLINA, ET AL.

Defendants,

CYNTHIA PERRY, GENNELL CURRY,
THOM TILLIS, and PHIL BERGER

Intervenor-Defendants-Appellants.

From Wake County
No. 13-CVS-16771

RICHARDSON, ET AL.

Plaintiffs-Appellees,

v.

STATE OF NORTH CAROLINA, ET AL.

Defendants,

CYNTHIA PERRY, GENNELL CURRY,
THOM TILLIS, and PHIL BERGER

Intervenor-Defendants-Appellants.

From Wake County
No. 13-CVS-16484

**EMERGENCY MOTION FOR TEMPORARY STAY PENDING APPEAL,
PETITION FOR WRIT OF SUPERSEDEAS, AND MOTION FOR
SUSPENSION OF THE RULES**

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**EMERGENCY MOTION FOR TEMPORARY STAY PENDING APPEAL,
PETITION FOR WRIT OF SUPERSEDEAS, AND MOTION FOR
SUSPENSION OF THE RULES**

TO THE HONORABLE NORTH CAROLINA COURT OF APPEALS:

Defendants State of North Carolina and the North Carolina State Education Assistance Authority and Intervenor-Defendants-Appellants Cynthia Perry, Gennell Curry, Thom Tillis, and Phil Berger, (collectively the “Petitioners”), pursuant to Rule 23 of the North Carolina Rules of Appellate Procedure, respectfully petition this Court to issue a temporary stay and a writ of supersedeas. On August 21, 2014, Judge Robert Hobgood permanently enjoined the North Carolina Opportunity Scholarship Program (hereinafter, “the Program”). At the conclusion of the hearing, the Superior Court denied the Parent-Intervenors’ (hereinafter, “the Parents”) motion for a temporary stay of the order.¹ The Petitioners now petition this Court to suspend the North Carolina Rules of Appellate Procedure per Rule 2, temporarily stay the Superior Court’s injunction pending a response from the Plaintiffs to this Petition, stay the Superior Court’s oral order pending issuance of the final order, and stay the Superior Court’s final order pending appeal of the same. In support of this petition, the Petitioners show the following:

¹ The Petitioners have attached the Superior Court’s order denying the Parents’ Motion to Stay the Permanent Injunction and the transcript of the Superior Court’s order as dictated by Judge Hobgood at the August 21, 2014 hearing.

FACTS

The Opportunity Scholarship Program, N.C.G.S. 115C-562.1, *et seq.*, provides scholarship grants of up to \$4,200 for income-eligible children, presently attending public school, to attend a nonpublic school of their choice. All 4,209 students who applied for the Program and met the initial eligibility criteria were offered an Opportunity Scholarship. (McDuffie Aff. ¶ 5.) As of August 21, 2014, 1,878 applicants had accepted the Opportunity Scholarship. (McDuffie Aff. ¶ 6.) These schoolchildren were in the process of making, or already had made, arrangements to attend such nonpublic schools. On August 18, 2014, the Defendant North Carolina State Education Assistance Authority, (“SEAA”) the agency administering the Program, initiated the first of a series of planned fund disbursements for 363 students who had enrolled for this school year at 78 nonpublic schools. (McDuffie Aff. ¶ 9.) When the Superior Court issued its Order on August 21, 2014, the SEAA complied with the Court’s Order and halted the disbursement process for these 363 students. (McDuffie Aff. ¶ 9.) Meanwhile, the SEAA had been engaged in an ongoing, back-and-forth process with applicants and nonpublic schools to continue to process scholarships grants and prepare for fund disbursements, which are done in batches. There were 212 applicants in line for the next disbursement. (McDuffie Aff. ¶ 9.)

REASONS WHY THIS WRIT SHOULD ISSUE

The Superior Court's action has thrown the educational future of these students into turmoil. The Superior Court originally issued a preliminary injunction in this case on February 28, 2014, and denied a temporary stay pending appeal of that order. This Court denied the Parents' Petition for Writ of Supersedeas and Temporary Stay on April 2, 2014, and the Parents filed a Petition for Writ of Supersedeas and Temporary Stay with the North Carolina Supreme Court immediately thereafter. On May 14, 2014, the North Carolina Supreme Court granted the Parents' Petition for Writ of Supersedeas and temporarily stayed the Superior Court's order, which allowed implementation of the Program to resume.

In the following weeks, the SEAA conducted a lottery and awarded 4,209 scholarships to North Carolina low-income families. Many of those families have now enrolled their children in one of the approximately 306 private schools that have signed up to participate in the Program. The SEAA was in the process of disbursing funds for 363 children, with another 212 children waiting in the wings for the next batch of fund disbursements. The SEAA stopped the fund disbursement for 363 children yesterday, on August 21, 2014, when the Superior Court announced its decision in open court. The Superior Court's action ended the

SEAA's ability to send the scholarship proceeds to the private schools participating in the Program.

Absent an immediate stay by this Court, the parents, their children, and the private schools that have contracted to educate those children are left in limbo, uncertain as to whether the schools will be paid for providing services to the parents' children. The families participating in this Program are low-income families whose children are eligible for free and reduced-price lunches under the federal school lunch program. It is likely that they cannot afford to pay for private school educations without the scholarship funds. They may be forced to remove their children from the private schools that they have already started to attend and return to their assigned public schools. The private schools will likely be forced to terminate their contracts with the parents.

The Parents argued in their previous Petitions for Writ of Supersedeas and Temporary Stay to this Court and to the North Carolina Supreme Court that the claims of both sets of Plaintiffs are without merit. The Parents believe that the action of the North Carolina Supreme Court in granting the temporary stay of the Superior Court's previous order indicates that the Court agrees with this assessment. The Superior Court's permanent injunction granting all of the claims of both sets of Plaintiffs erred in interpreting various provisions of the North

Carolina Constitution and appellate decisions of the North Carolina courts interpreting those provisions.

Included among the claims on which the Superior Court based its permanent injunction are several claims which the Plaintiffs plainly lack standing to pursue. These include the claims that the Program discriminates against individuals on the basis of religion and that the Program is limited to low-income families and thus does not include all students. Under this Court's decision in *Saine v. State*, 210 N.C. App. 594, 709 S.E.2d 379 (2011), this Court affirmed the dismissal of similar claims. *Saine* forecloses the Plaintiffs' standing to bring these claims because the taxpayer or school district plaintiffs are not personally affected in any way.

In addressing the merits of the Plaintiffs' claims, the Superior Court's Oral Order mischaracterized the Program as siphoning money from the public school system to private schools and accused the General Assembly of seeking to *evade* its obligations under North Carolina Constitution Article IX, Section 2 to provide, through a general and uniform system of public education the sound, basic education called for in *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997). The Superior Court viewed the Program as delegating the responsibility to provide a sound, basic public education to private schools and reduced the role of the parents to that of serving as funnels through which public education dollars flowed to "unaccountable private schools." In point of fact, the Opportunity Scholarship

Program serves to *supplement* the general and uniform system of public schools by providing low-income families additional educational opportunities for their children, similar to the charter schools that this Court found to supplement the traditional public schools in its decision in *Sugar Creek Charter School, Inc. v. State*, 214 N.C. App. 1, 712 S.E.2d 730 (2011).

As it did in its opinion granting the preliminary injunction, the Superior Court accepted the Plaintiffs' view that the General Assembly's funding of K-12 education is limited exclusively to the system of public schools. Viewing the Program as assistance to private schools in contravention to this requirement, the Superior Court held that the Program also violated the public purpose clause of the North Carolina Constitution's taxing and spending power in Article V, Section 2(1) and 2(7). This holding conflicts with the recognition of the North Carolina appellate courts in *State Education Assistance Authority v. Bank of Statesville*, 276 N.C. 576, 174 S.E.2d 551 (1970); *Hughey v. Cloninger*, 297 N.C. 86, 253 S.E.2d 898 (1979); and *Saine v. State*, 210 N.C. App. 594, 709 S.E.2d 379 (2011), that the plenary power of the General Assembly extends to aiding private educational institutions and students attending such institutions. In Article IX, Section 1, the Constitution commands the General Assembly to "encourage the means of education." This command is not limited to public education.

The Superior Court erred in reading Article I, Section 15, Article IX, Section 1, Article IX, Section 2, and Article IX, Section 6, as limiting the power of the General Assembly to supporting public education only. In addition, despite the Plaintiffs' not suggesting in their briefs that the General Assembly was seeking to evade its responsibilities to low-income students attending the public schools by offering them a way out of those schools, the Superior Court rejected the fact that these scholarships supplement the low-income families' educational opportunities and allow them to make the same educational decisions that their wealthier peers routinely make when sending their children to private schools. Although the Superior Court regards the participating private schools as "unaccountable," these schools would be just as accountable to low-income parents as they are to those parents able to afford their services.

If the Superior Court's injunction is not stayed, the 1,878 children who have affirmatively accepted the scholarships will lose, at least for this semester and probably this school year, the educational opportunities the General Assembly has tried to provide them. Schools for three-hundred and sixty-three (363) of these children were on the verge of receiving the scholarship funds when the Superior Court issued its ruling, causing the SEAA to halt the disbursement process. Nothing in the plain language of the North Carolina Constitution or the decisions of the North Carolina appellate courts requires this result. Accordingly, the

Petitioners respectfully request that this Court suspend its rules in order that it may consider this Petition for Writ of Supersedeas on an expedited basis.

MOTION FOR TEMPORARY STAY

Pursuant to Rule 23(e) of the North Carolina Rules of Appellate Procedure, the Petitioners respectfully apply to this Court for an order temporarily staying enforcement of the Superior Court's Order until determination by this Court of whether it shall issue its writ. In support of this application, Petitioners represent that the Parent-Intervenors sought from and were denied by, the trial court an order to stay pending this Court's review. A temporary stay is necessary to prevent irreparable harm while this Court determines whether it shall issue its Writ of Supersedeas. Petitioners further incorporate and rely on the arguments presented in the foregoing Petition for Writ of Supersedeas in support of their Motion for Temporary Stay. The Petitioners are simultaneously filing a Notice of Appeal and prosecuting that appeal with all possible speed.

Respectfully submitted this the 22nd day of August, 2014.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: [ELECTRONICALLY SUBMITTED]
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*Attorneys for Cynthia Perry and Gennell
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Pursuant to Rule 33(b) of the Rules of Appellate Procedure, I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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Honorable Phil Berger, President Pro
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VERIFICATION

I, Robert T. Numbers, II, after being duly sworn, states:

I am counsel for the Intervenor-Defendants Cynthia Perry and Gennel Curry. The material allegations of the petition are true to my personal knowledge, except those matters stated upon information and belief or sworn to by other individuals and, as to those matters, I believe them to be true.

Pursuant to Appellate Rule 23, I also hereby certify that the documents attached to this Petition for Writ of Supersedeas and Motion for Temporary Stay are true and correct copies of the pleadings and other documents from this matter.

Robert T. Numbers, II

Robert T. Numbers, II

Sworn to and subscribed before me this 22nd day of August, 2014.

Michele W. Goodwin *Michele W. Goodwin*
Notary Public, State of North Carolina
My Commission Expires MICHELE/08-19
Notary Seal



CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date listed below a copy of the foregoing was served on the person(s) listed below via U.S. Mail.

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Dated: August 22, 2014.

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

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NO.

TENTH JUDICIAL DISTRICT

NORTH CAROLINA COURT OF APPEALS

HART, ET AL.

Plaintiffs-Appellees,

v.

STATE OF NORTH CAROLINA, ET AL.

Defendants,

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THOM TILLIS, and PHIL BERGER

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From Wake County
No. 13-CVS-16484

**APPENDIX TO EMERGENCY MOTION FOR TEMPORARY STAY
PENDING APPEAL, PETITION FOR WRIT OF SUPERSEDEAS, AND
MOTION FOR SUSPENSION OF THE RULES**

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NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

WAKE COUNTY

2010 AUG 21 AM 10: 27

ALICE HART, *et al.*,

Plaintiffs

v.

STATE OF NORTH CAROLINA and
NORTH CAROLINA STATE
EDUCATIONAL ASSISTANCE
AUTHORITY,

Defendants

13 CVS 16771

CYNTHIA PERRY, *et al.*

Intervenor-Defendants

REVEREND ROBERT RICHARDSON,
III, *et al.*,

Plaintiffs

v.

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

Defendants

13 CVS 16484

CYNTHIA PERRY, *et al.*

Intervenor-Defendants

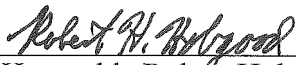
ORDER ON ORAL MOTION TO STAY

This matter has come before the Court on the Parent-Intervenor's oral motion to stay the judgment of this court granting Plaintiffs' Motion for Summary Judgment and permanently enjoining the Opportunity Scholarship Program pending appellate review. The Court having considered the arguments of counsel regarding the motion, is of the opinion that the motion should be denied.

and having made findings beyond a reasonable doubt
RRK

Therefore, it is ordered that the Intervenor-Parents' motion to stay is denied.

Dated: August 21, 2014.



The Honorable Robert Hobgood
Superior Court Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date listed below a copy of the foregoing **ORDER ON ORAL MOTION TO STAY** was served on the person(s) listed below via U.S. Mail.

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Mount Board of Education,
Board of Trustees for Roanoke
Rapids Graded School
District, and Granville County
Board of Education*

Dated: August 21, 2014.

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NO.

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THOM TILLIS, and PHIL BERGER

Intervenor-Defendants-Appellants

From Wake County
No. 13-CVS-16484

**AFFIDAVIT OF ELIZABETH MCDUFFIE IN SUPPORT OF
EMERGENCY MOTION FOR TEMPORARY STAY PENDING APPEAL,
PETITION FOR WRIT OF SUPERSEDEAS AND MOTION FOR
SUSPENSION OF THE RULES**

I, Elizabeth V. McDuffie, being first duly sworn, do hereby depose and state as follows:

1. I am over the age of 18, under no disability, and I am competent to testify as to those matters which are the subject of this litigation. The matters stated herein are based on my personal knowledge.
2. I am presently employed as the Director of the Grants, Training and Outreach Division of the North Carolina State Education Assistance Authority ("Authority"). I am responsible for the implementation of the Opportunity Scholarship Grants Program ("Program") as established in N.C.G.S. 115C-562.1 et seq. The ongoing nature of the award process, together with the back-and-forth communication with parents of students awarded Opportunity Scholarships, was ongoing resulting in changing data such that initial data sets for the Program became outdated over time. The registration process for schools has also been ongoing. The data that I attested to in Superior Court in July 2014 has changed.
3. As of August 20, 2014, 306 nonpublic schools have completed the Program registration process and are listed as a participating school on the Program website.
4. The Authority is not responsible for selecting which nonpublic school an applicant will attend. The parent (or legal guardian) of the applicant is solely responsible for selecting and enrolling the applicant in a registered nonpublic school.
5. All 4,209 students who applied and met the initial eligibility criteria were offered an Opportunity Scholarship.
6. As of August 21, 2014, 1878 applicants had accepted the Opportunity Scholarship.
7. As of August 21, 2014, 206 applicants had declined the Opportunity Scholarship.
8. Before the Authority will disburse an Opportunity Scholarship, the Authority obtains: (a) a certification from the nonpublic school that the student is enrolled at the nonpublic school and the student attended a North Carolina public school for spring 2014; and (b) a fully executed Opportunity Scholarship Program Endorsement Form from the applicant.
9. On August 18, 2014, the Authority initiated the first of a series of planned disbursements for the Program. The total amount of money for the first disbursement was \$724,947 in Opportunity Scholarships for 363 students who had enrolled at 78 nonpublic schools. The disbursement process was stopped as a result of a Superior Court Order permanently enjoining the Program. Prior to this permanent injunction, the Authority was working with applicants and schools to continue to process scholarship grants and prepare for fund disbursements for this school year. Fund disbursements are done in batches and there were 212 applicants in the next batch waiting for fund disbursements.

Further this affiant sayeth not.

This the 22nd day of August, 2014.

Elizabeth V. McDuffie
Elizabeth V. McDuffie

STATE OF NORTH CAROLINA ²⁰⁵
COUNTY OF WAKE ~~Wake~~ ^{Harnett}

Sworn to and subscribed before me
the 22nd day of August, 2014.

Notary Public, State of North Carolina
County of Harnett
Kim A. Sawyer

Kim A. Sawyer / Kim A. Sawyer
Notary Public

My commission expires: ^{KAS} ~~May 23, 2017~~
February 28, 2017

1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

2 COUNTY OF WAKE SUPERIOR COURT DIVISION

3 ALICE HART, ET AL., 13 CVS 16771

4 Plaintiffs,

5 versus

6 STATE OF NORTH CAROLINA

7 and NORTH CAROLINA STATE

8 EDUCATIONAL ASSISTANCE AUTHORITY,

9 Defendant. TRANSCRIPT

10 and

11

12 CYNTHIA PERRY and GENNELL CURRY,

13 Intervenor-Defendants.

14

15 Transcript of proceedings in the
16 General Court of Justice, Superior Court Division, Wake County,
17 North Carolina, at the August 21, 2014 Session, before the
18 Honorable Robert H. Hobgood, Judge Presiding.

19

20 APPEARANCES:

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22 ROBERT F. ORR
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25

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14 ROBERT NUMBERS
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16 On behalf of the defendants

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Jacqueline M. Sullivan, RPR, CRR
Official Court Reporter

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I N D E X

WITNESSES

PAGE

None.

E X H I B I T S

No.

Identification

Marked

Admitted

None.

1 DEPUTY SHERIFF: Court is back in session.
2 Please remain seated. Be quiet, make sure all electronic
3 devices are on silent or vibrate.

4 THE COURT: Good morning.

5 Madame court reporter, I'm going to dictate an
6 order into the record and it deals with file numbers 13 CVS
7 16484 and 16771. I'm not going to dictate the case style
8 but it is as appears in the record.

9 First I'll note the Court has considered the
10 state defendants' objections to affidavits and other
11 evidence of records submitted by the plaintiffs in support
12 of their motion for summary judgment and the Court has not
13 considered any inadmissible evidence.

14 The Court recognizes that the repeal of North
15 Carolina general statute 115(c)-5627(a) renders moot any
16 claim that the General Assembly discriminated because of
17 race, color, or national origin but leaves open the
18 challenge that the OSP does not prohibit discrimination
19 based on religion required by Article 1, Section 19 of the
20 North Carolina Constitution.

21 The plaintiffs are entitled to summary judgment
22 for all of the reasons given in their briefs and oral
23 arguments.

24 The Court finds from the record beyond a
25 reasonable doubt that the Opportunity Scholarship Program

1 funds a system of private schools from taxpayer dollars as
2 an alternative to the public school system in direct
3 contravention of the North Carolina Constitution, Article
4 1, Sections 15 and 19, with respect to religion, and that
5 with respect to religion of the declaration of rights,
6 Article 9, Sections 1, 2, (1), 6, 7 (V) and the public
7 purpose clause of Article 5, Section 2 (1) and Section 2
8 (7).

9 This legislation unconstitutionally:

10 One, appropriates to private schools grades K-12
11 by use of funds which apparently has gone to the university
12 system budget. It should be used exclusively for brick and
13 maintaining a uniform system of free public schools.

14 Two, appropriates education funds in a manner
15 that does not accomplish a public purpose.

16 Three, appropriates educational funds outside the
17 supervision and administration of the State Board of
18 Education.

19 Four, creates a nonuniform system of education.

20 Five, appropriates taxpayer funds to educational
21 institutions that have no standards, including curriculum
22 and requirements that teachers and principals be certified.

23 Six, fails to "guard and maintain" the right of
24 the people to the privilege of education by siphoning money
25 from the public schools in favor of private schools.

1 And seven, allows funding of nonpublic schools
2 that discriminate on account of religion.

3 The General Assembly is required by mandate of
4 the North Carolina Supreme Court to assure that the public
5 schools grades K-12 meet the Leandro standard of providing
6 a sound basic education. The General Assembly cannot
7 constitutionally delegate this responsibility to
8 unregulated private schools by use of taxpayer Opportunity
9 Scholarships to low-income parents who have self-assessed
10 their children to be at risk. Private schools receiving
11 Opportunity Scholarships are not subject to any
12 requirements or standards regarding the curriculum that
13 they teach, are given no requirement for student
14 achievement, are not obligated to demonstrate any growth in
15 student performance, and are not even obligated to provide
16 a minimum amount of instructional time. The Opportunity
17 Scholarships would provide taxpayer funds to private
18 schools without regard to whether these schools satisfy
19 substantive educational standards. Appropriating taxpayer
20 funds to unaccountable schools does not accomplish a public
21 purpose, in violation of North Carolina Constitution
22 Article 5, Sections 2(1) and 2(7).

23 To determine legislative intent the Court may
24 consider specific enactments of the General Assembly that
25 reference "scholarship grants" but are not included in part

1 to aid North Carolina general statute Section
2 15(c)-562.1-15(c)-562.7.

3 The following language appears in the North
4 Carolina general statute 115(c)-555 (4): "Scholarship
5 grant funds awarded pursuant to Part A of this article to
6 eligible students attending a nonpublic school shall not be
7 considered funding from the State of North Carolina."
8 Close quote.

9 No where in the North Carolina general statute
10 115(c)-562.1 through 115(c)-562.7 is there any prerogative
11 the scholarship grants to come from any source other than
12 taxpayer funds. The scholarship grant shall not be
13 considered funding from the State of North Carolina.

14 This Court is at a complete loss to understand
15 the source of those funds. The old axiom of "follow the
16 money" can be used in these cases to establish legislative
17 intent. By doing so the clear legislative intent beyond a
18 reasonable doubt is to utilize taxpayer money to fund
19 private schools. The collateral effect, whether intended
20 or not, is to renew the protection of the Leandro decision
21 to a sound basic education from the hundreds of students
22 who have been determined at risk solely by their own
23 parents.

24 Further, if the applying students are in fact not
25 at risk as identified by the Leandro decision then there is

1 no compelling state reason to use taxpayer money to fund
2 their education in private schools. The Court finds beyond
3 a reasonable doubt that established window of Opportunity
4 Scholarships violate North Carolina State Constitution
5 Article 9, Section 6. Unless altered by the vote of the
6 people in a constitutional amendment through the mechanism
7 provided by Article 3, Section 3 of the North Carolina
8 Constitution, Article 9 of the North Carolina Constitution
9 does not permit a publicly-funded system of private school
10 vouchers for students in grades K-12 unless a student is
11 disabled as defined by North Carolina general statute
12 15(c)-106.3(2). The Opportunity Scholarship program is
13 unconstitutional beyond a reasonable doubt in violation of
14 Article 9, Section 6 of North Carolina State Constitution
15 in that taxpayer funds may not be used to support private
16 schools grades K-12 and to do so violates the North
17 Carolina Constitution, Article 9, Section 2(1).

18 It appears to this Court that the General
19 Assembly is seeking to push at-risk students from
20 low-income families into nonpublic schools in order to
21 avoid the cost of providing them a sound, basic education
22 in public schools as mandated by the Leandro decision. The
23 Court recognizes the presumption in favor of the
24 constitutionality of an act of the legislature. However,
25 appropriating taxpayer funds to be funneled through

1 endorsement by parents to private schools beyond a
2 reasonable doubt violate Article 5, Section 2(1) of the
3 North Carolina Constitution in that this legislature has no
4 substantive requirements that allow the state to fulfill
5 its obligation to, quote, "guard and maintain," close
6 quote, the people's right to education as required by
7 Article 1, Section 15 of the North Carolina Constitution.
8 The legislation does not require that:

9 One, the private schools receiving OSP funding
10 provide their students with instruction in any subject.

11 Two, teachers or principals at school receiving
12 OSP funding be trained, certified or qualified, or,

13 Three, a private school receiving OSP funds be
14 certified by any public or private agency.

15 The General Assembly fails the children of North
16 Carolina when they sent with public taxpayer money to
17 private schools that have no legal obligation to teach them
18 anything. Without any such obligation this appropriation
19 is unconstitutional in that it serves only private
20 interests. The expenditure of public funds raised by tax
21 action to finance the operation of privately operated,
22 managed, and controlled schools is prohibited by Article 5,
23 Section 2(1) of the North Carolina Constitution. Such an
24 expenditure would require a constitutional amendment
25 approved by the vote of the citizens of North Carolina

1 through the mechanism provided in Article 3, Section 3 of
2 the North Carolina Constitution.

3 The Court finds beyond a reasonable doubt that
4 the General Assembly, by enacting OSP legislation for the
5 expenditure of public funds for private schools without
6 substantive standards to ensure that the promised public
7 good is actually provided cannot be for a public purpose
8 and is unconstitutional under the North Carolina
9 Constitution, Article 1, Section 15, and that the General
10 Assembly has failed in its duty to "guard and maintain" the
11 right to the privilege of education. The Court notes "If
12 public schools must provide a sound basic education in
13 grades K-12, private schools have no such duty."

14 "We conclude that Article 1, Section 15(a) and
15 Article 9, Section 2 of the North Carolina Constitution
16 confined to guarantee every child of this state an
17 opportunity to receive a sound basic education in the
18 public schools, close quote. Leandro versus State, 346 NC
19 App 347, 488 cite 2d at 255 (1997), close parens.

20 The children of North Carolina suffer no
21 prejudice by attending public schools. Wherefore, it is
22 ordered based on findings beyond a reasonable doubt that
23 the plaintiffs' motion for summary judgment is allowed.
24 The defendant's motion for summary judgment is denied. The
25 Opportunity Scholarship program as enacted is beyond a

1 reasonable doubt unconstitutional under the Constitution of
2 North Carolina. The plaintiffs' public schools grade K-12
3 and the taxpayers of North Carolina will suffer irreparable
4 harm if the state is not permanently enjoined from making
5 unconstitutional disbursement of taxpayer funds to parents
6 for the enrollment of their children in private school.
7 The Court issues a permanent injunction to any further
8 implementation of the Opportunity Scholarship program.

9 This is so ordered this, the 21st day of August,
10 2014 at 10:23 a.m.

11 Mr. Orr is charged with the responsibility of
12 drawing the order.

13 MR. ORR: Yes, your Honor.

14 THE COURT: Of course the defendants have the
15 absolute right to appeal.

16 MR. NUMBERS: Robert Numbers of the Wake County
17 bar on behalf of the parents.

18 We would like to request that you enter a stay of
19 your order until the appellate process is concluded because
20 of what the impact of interrupting the program at this time
21 would have on the recipient having received their
22 education.

23 THE COURT: Having made findings beyond a
24 reasonable doubt the defendant's request for stay is
25 denied.

1 MR. NUMBERS: I have an order to that effect if
2 you'd like to sign it.

3 THE COURT: All right.

4 MS. CLEMMONS: Your Honor, I need clarification
5 on behalf of my client, the Education Assistance Authority.
6 Is your order effective immediately as of 10:23 a.m.?

7 THE COURT: Yes.

8 MR. CLEMMONS: Okay. And there is currently, as
9 I understand it, there's actually money going through an
10 electronic system that we can't stop, so how do you want to
11 address that?

12 THE COURT: That would have to be addressed by
13 the attorney general to recover the money.

14 MS. CLEMMONS: So is that going to be in the
15 order?

16 THE COURT: You draw that order, I'll sign it.

17 MS. CLEMMONS: Well, I don't know, your Honor,
18 that -- I just don't know where we are in the process so I
19 can't, I mean, if your Honor orders that that's what we...

20 THE COURT: What my order is, there's to be no
21 funds disbursed under the Opportunity Scholarship program
22 as of 10:23 a.m. this morning.

23 MS. CLEMMONS: Okay. Thank you, your Honor.

24 THE COURT: I have another matter that's a
25 hearing this morning. Is there anything further in this

1 matter for this Court?

2 MR. CRAIGE: No, your Honor.

3 MR. NUMBERS: No, your Honor.

4 THE COURT: Because once I start the other
5 matter, which I've already interrupted, I don't want to
6 have to stop it again.

7 All right. We're going to take a five-minute
8 recess before I begin the next matter on the Court's
9 docket.

10 MR. ORR: Thank you, your Honor.

11 DEPUTY SHERIFF: Court will be in recess for five
12 minutes.

13 (Proceedings concluded at about 10:30 a.m.)

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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the August 21, 2014 Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of the action.

This 21st day of August, 2014.

JACQUELINE M. SULLIVAN, RPR, CRR
Official Court Reporter
PO Box 351
Raleigh, NC 27602

Jacqueline M. Sullivan, RPR, CRR
Official Court Reporter

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 16771

ALICE HART,

versus

STATE OF NORTH CAROLINA, et al.,

Defendant.

CERTIFICATE
OF DELIVERY

.....

This is to certify that the transcript of the proceedings at the August 21, 2014 Session of Wake County Superior Court was ordered by Robert T. Numbers, II, on August 21, 2014, comprising 14 pages, and was delivered electronically and by U.S. Mail, postage pre-paid, to Robert T. Numbers, II and Lauren Clemmons, listed below, on the 21st day of August, 2014.

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