

FILED

NORTH CAROLINA

2014 JUN 13 PM 4:33

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

WAKE COUNTY, C.S.C. FILE NO.

BY _____)
ALICE HART, RODNEY ELLIS, JUDY)
CHAMBERS, JOHN HARDING LUCAS,)
MARGARET ARBUCKLE, LINDA)
MOZELL, YAMILE NAZAR, ARNETTA)
BEVERLY, JULIE PEEPLES, W.T. BROWN,)
SARA PILAND, DONNA MANSFIELD,)
GEORGE LOUCKS, WANDA KINDELL,)
VALERIE JOHNSON, MICHAEL WARD, T.)
ANTHONY SPEARMAN, BRITTANY)
WILLIAMS, RAEANN RIVERA, ALLEN)
THOMAS, JIM EDMONDS, SASHA)
VRTUNSKI, PRISCILLA NDIAYE, DON)
LOCKE, and SANDRA BYRD,)
Plaintiffs,)
v.)
STATE OF NORTH CAROLINA and)
NORTH CAROLINA STATE)
EDUCATIONAL ASSISTANCE)
AUTHORITY,)
Defendants.)

AMENDED COMPLAINT

INTRODUCTION

1. This civil action is a state constitutional challenge to the private school voucher program passed by the General Assembly and signed into law by Governor Pat McCrory in 2013. Section 8.29 of the Current Operations and Capital Improvements Appropriations Act of 2013, Session Law 2013-360 ("the Voucher Legislation"), creates an expansive voucher program that will send taxpayer money to unaccountable private schools in violation of the North Carolina Constitution.

THE PARTIES

2. Plaintiff Alice Hart is a taxpayer and resident of Buncombe County, North Carolina. She worked for over 36 years in the North Carolina public schools as a teacher, principal, and administrator. She was the 1985 North Carolina Principal of the Year. She retired as Assistant Superintendent of Buncombe County Schools. Her two children attended the Buncombe County Schools. She currently volunteers at the public elementary school where her grandson is enrolled. Plaintiff Hart pays various types of taxes to the State of North Carolina, including sales and income taxes.

3. Plaintiff Rodney Ellis is a taxpayer and resident of Wake County, North Carolina. He is the President of the North Carolina Association of Educators. He is a 16-year veteran of the Winston-Salem/Forsyth County Schools, and taught at a public charter school for two years. He has four children, two who graduated from Winston-Salem/Forsyth County Schools, and two, ages 13 and 10, who are students in the Wake County public school system. Plaintiff Ellis pays various types of taxes to the State of North Carolina, including sales and income taxes.

4. Plaintiff Judy Chambers is a taxpayer and resident of Mecklenburg County, North Carolina. She is the mother of a sixth grade student in the Charlotte-Mecklenburg Schools. She has been a teacher in the Charlotte-Mecklenburg Schools, including for children with special needs. Her father, acclaimed civil rights lawyer Julius Chambers, spent decades working to integrate and improve North Carolina public schools. Plaintiff Chambers pays various types of taxes to the State of North Carolina, including sales and income taxes.

5. Plaintiff Dr. John Harding Lucas is a taxpayer and resident of Durham County, North Carolina. For more than 60 years, Dr. Lucas was an education administrator and leader in North Carolina schools. He was instrumental in founding the North Carolina Association of Educators, integrating the white North Carolina Education Association and the black North Carolina Teachers Association. He was elected to the first school board of the newly merged public school system in Durham County and has served as President of Shaw University. Lucas Middle School in Durham and other community institutions bear his name. In November 2013, Governor McCrory gave Dr. Lucas the North Carolina Award for Public Service, the state's highest civilian honor. Plaintiff Lucas pays various types of taxes to the State of North Carolina, including sales and income taxes.

6. Plaintiff Margaret Arbuckle is a taxpayer and resident of Guilford County, North Carolina. She was the Executive Director of the Guilford Education Alliance from 2005 to 2013. She served as a Guilford County Commissioner from 1992 to 1996. She was Associate Director of UNCG's Center for Youth, Family and Community Partnerships, a founding board member of the Guilford Partnership for Children–Smart Start, and chairwoman of the North Carolina Child Advocacy Institute. She was named the Greensboro News & Record's Woman of the Year in 2013. Plaintiff Arbuckle pays various types of taxes to the State of North Carolina, including sales and income taxes.

7. Plaintiff Linda Mozell is a taxpayer and resident of Guilford County, North Carolina. She is the Co-founder of Parents Supporting Parents, a grassroots organization whose mission is to partner with parents, community organizations and schools in the Guilford County school system to assure the academic success of the children in Guilford County. She is the guardian of her 13-year-old niece, who attends Guilford County Schools. Plaintiff Mozell pays various types of taxes to the State of North Carolina, including sales and income taxes.

8. Plaintiff Yamile Nazar is a taxpayer and resident of Guilford County, North Carolina. She is a founding the Piedmont-Triad Latino Partnership, an economic development organization. She was a Supervisory Division Manager in the City of Greensboro Human Relations department. Her 11-year-old daughter attends Guilford County Schools. Plaintiff Nazar pays various types of taxes to the State of North Carolina, including sales and income taxes.

9. Plaintiff Rev. Arnetta Beverly is a taxpayer and resident of Guilford County, North Carolina. She is the Senior Minister at St. Matthews United Methodist Church in Greensboro. She has served congregations across North Carolina for over two decades. She was the first African-American elected to the City Council of Lexington, North Carolina. Her two sons attended and graduated from North Carolina public schools. Plaintiff Beverly pays various types of taxes to the State of North Carolina, including sales and income taxes.

10. Plaintiff Rev. Julie Peebles is a taxpayer and resident of Guilford County, North Carolina. She is Pastor of the United Church of Christ in Greensboro. She is Co-chair of the Greensboro Faith Leaders Council and on the Governing Board of North Carolina Council of Churches. Her two daughters attended and graduated from North Carolina public schools.

Plaintiff Peebles pays various types of taxes to the State of North Carolina, including sales and income taxes.

11. Plaintiff W.T. Brown is a taxpayer and resident of Cumberland County, North Carolina. He has been a teacher and principal in the North Carolina public schools. He was the Associate Superintendent for the Cumberland County Schools, was a member of the UNC Board of Governors, and is a member of the Fayetteville State University Board of Trustees. An elementary school in Cumberland County is named after him. Plaintiff Brown pays various types of taxes to the State of North Carolina, including sales and income taxes.

12. Plaintiff Sara Piland is a taxpayer and resident of Cumberland County, North Carolina. She has been a teacher, coach, and Assistant Superintendent in North Carolina public schools. She is currently an Eastover Town Commissioner. Plaintiff Piland pays various types of taxes to the State of North Carolina, including sales and income taxes.

13. Plaintiff Donna Mansfield is a taxpayer and resident of Cumberland County, North Carolina. She has served as Chair of the Partnership for Children of Cumberland County. She has an 11-year-old son who attends Cumberland County Schools. She is active with her local PTO. Plaintiff Mansfield pays various types of taxes to the State of North Carolina, including sales and income taxes.

14. Plaintiff George Loucks is a taxpayer and resident of Cumberland County, North Carolina. He retired after serving 26 years in the U.S. Army. He has two children who attend the Cumberland County Schools, and his younger child has special needs. He currently works as an Instructor Assistant at his younger son's elementary school. Plaintiff Loucks pays various types of taxes to the State of North Carolina, including sales and income taxes.

15. Plaintiff Wanda Kindell is a taxpayer and resident of Cumberland County, North Carolina. She has been a teacher in Cumberland County Schools for over twenty years and has served as the President of the Cumberland County Association of Educators. She also works as a realtor. Plaintiff Kindell pays various types of taxes to the State of North Carolina, including sales and income taxes.

16. Plaintiff Valerie Johnson is a taxpayer and resident of Durham County, North Carolina. She has two children, ages 18 and 9, who are students in the Durham Public Schools. Before becoming an attorney, she was a third grade teacher in the Chapel Hill-Carrboro City

Schools. Both her parents were public school teachers in Vance County. Plaintiff Johnson pays various types of taxes to the State of North Carolina, including sales and income taxes.

17. Plaintiff Michael Ward is a taxpayer and resident of Wake County, North Carolina. He was the North Carolina Superintendent of Public Instruction from 1997 to 2004. He has been a teacher, coach, high school principal, and local superintendent in North Carolina public schools. In 1994, he was recognized as the North Carolina Superintendent of the Year. His two children attended and graduated from North Carolina public schools. Plaintiff Ward pays various types of taxes to the State of North Carolina, including sales and income taxes.

18. Plaintiff Rev. T. Anthony Spearman is a taxpayer and resident of Catawba County, North Carolina. He is the Pastor at Clinton Tabernacle AME Zion Church in Hickory, North Carolina. In 2011, he was named NAACP Minister of the Year in North Carolina. He is a member of the Board of Education of the Hickory Public Schools. Plaintiff Spearman pays various types of taxes to the State of North Carolina, including sales and income taxes.

19. Plaintiff Brittany Williams is a taxpayer and resident of Johnston County, North Carolina. Her eight-year-old daughter attends Johnston County Schools. She provides care to disabled individuals and recently became a guardian ad litem. Plaintiff Williams pays various types of taxes to the State of North Carolina, including sales and income taxes.

20. Plaintiff Raeann Rivera is a taxpayer and resident of Orange County, North Carolina. Her son is in third grade in the Chapel Hill-Carrboro City Schools. She is a Social Worker at her child's elementary school. Plaintiff Rivera pays various types of taxes to the State of North Carolina, including sales and income taxes.

21. Plaintiff Allen Thomas is a taxpayer and resident of Hoke County, North Carolina. After attending and graduating from the public schools in Hoke County, he received his undergraduate degree from East Carolina University, majoring in Rehabilitation Services. He earned a Master's degree in Human Services Executive Leadership from Liberty University. He is employed as a Counselor. Plaintiff Thomas pays various types of taxes to the State of North Carolina, including sales and income taxes.

22. Plaintiff Jim Edmonds is a taxpayer and resident of Buncombe County, North Carolina. His three children attended the Buncombe County Schools. He was a member of the Board of Education of the Buncombe County Schools from 1998 to 2006, and served as Board

Chair in 2005 and 2006. Plaintiff Edmonds pays various types of taxes to the State of North Carolina, including sales and income taxes.

23. Plaintiff Sasha Vrtunski is a taxpayer and resident of Buncombe County, North Carolina. She is President of the Asheville City Schools Foundation. Her son is a fourth grade student in Asheville City Schools. She is a former President of the PTO for her son's school. Plaintiff Vrtunski pays various types of taxes to the State of North Carolina, including sales and income taxes.

24. Plaintiff Priscilla Ndiaye is a taxpayer and resident of Buncombe County, North Carolina. She has custody of two grandchildren who were previously in foster care. Both grandchildren are students in the Asheville City Schools, and one has special needs. Plaintiff Ndiaye pays various types of taxes to the State of North Carolina, including sales and income taxes.

25. Plaintiff Don Locke is a taxpayer and resident of Buncombe County, North Carolina. He is the immediate past board chair of Pisgah Legal Services. He retired as Director of the Graduate Center at UNC Asheville. His three children attended and graduated from the Wake County public schools. Plaintiff Locke pays various types of taxes to the State of North Carolina, including sales and income taxes.

26. Plaintiff Sandra Byrd is a taxpayer and resident of Buncombe County, North Carolina. After teaching high school in Mecklenburg, Wake and Buncombe counties, she became Associate Professor of Education at UNC-Asheville, where she trained teachers for 23 years. She was Assistant Provost at UNC-Asheville from 2005 until she retired in 2011. Her two children attended and graduated from the Asheville City Schools. Plaintiff Byrd pays various types of taxes to the State of North Carolina, including sales and income taxes.

27. Defendant State of North Carolina ("the State"), through its General Assembly, enacts local and general legislation, including the Voucher Legislation.

28. Defendant North Carolina State Education Assistance Authority is an agency of the State created under N.C. Gen. Stat. § 116-203, which is charged, in part, with disbursing funds to private schools under the Voucher Legislation.

JURISDICTION AND VENUE

29. This Court has jurisdiction over the subject matter and the parties to this action because plaintiffs seek declaratory, injunctive, and other relief pursuant to the North Carolina Constitution, the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 *et seq.*, and N.C. Gen. Stat. § 7A-245. Venue is proper in Wake County under N.C. Gen. Stat. §§ 1-77 and 1-82 because plaintiff Ward is a resident of Wake County and the causes of action arose, in part, in Wake County.

FACTS

I. Education under the North Carolina Constitution.

30. The foregoing allegations are incorporated by reference herein.

31. Under the North Carolina Constitution, the provision of public education is a principal obligation of the North Carolina government. Article I, Section 15 of the North Carolina Constitution declares: “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”

32. The means of fulfilling this duty are specified in Article IX of the North Carolina Constitution. Article IX, Section 2(1) requires that the “General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools.” Article IX, Section 6 provides: “The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.” (Emphasis added.)

33. As the North Carolina Supreme Court recognized almost one hundred years ago, “it is manifest that these constitutional provisions were intended to establish a system of public education adequate to the needs of a great and progressive people, affording school facilities of recognized and ever-increasing merit to all the children of the State, and to the full extent that

our means could afford and intelligent direction accomplish.” *Board of Education v. Board of Commissioners of Granville County*, 174 N.C. 469, 93 S.E. 1001 (1917).

34. The Supreme Court more recently stated: “The world economy and technological advances of the twenty-first century mandate the necessity that the State step forward, boldly and decisively, to see that all children, without regard to their socio-economic circumstances, have an educational opportunity and experience that not only meet the constitutional mandates set forth in *Leandro* [*Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 254 (1997)], but fulfill the dreams and aspirations of the founders of our state and nation. Assuring that our children are afforded the chance to become contributing, constructive members of society is paramount.” *Hoke County Board of Education v. State*, 358 N.C. 605, 649, 599 S.E.2d 365, 397 (2004).

35. Under the North Carolina Constitution, the State must provide all students an opportunity to receive a sound basic education, as defined by the Supreme Court in *Leandro v. State*, 346 N.C. 336, 345, 488 S.E.2d 249, 254 (1997). The *Leandro* guarantee, which has not been realized for all at-risk students, will be substantially undermined if scarce educational resources are diverted from public schools

36. Before 2013, the State of North Carolina has never appropriated public taxpayer funds to private schools for the general provision of primary and secondary education.

II. The General Assembly Enacted the Voucher Legislation and Appropriated Taxpayer Funds to the Detriment of Students in Public Schools.

37. On July 25, 2013, the General Assembly passed the Current Operations and Capital Improvements Appropriations Act of 2013 (Session Law 2013-360), a budget bill for fiscal years 2013-14 and 2014-15. On July 26, 2013, Governor Pat McCrory signed the budget bill into law. Section 8.29 of the budget bill (attached as Exhibit A) is the Voucher Legislation that creates an expansive new voucher program for private schools.

38. Before being enacted as part of the budget, the Voucher Legislation was never considered by the full House or Senate of the General Assembly. Because the legislation was not passed as a stand-alone bill, the taxpayers of North Carolina were given little opportunity to consider the legislation and submit public comments before it was passed. The legislation was added to the voluminous budget bill without meaningful public debate or consideration.

39. The new voucher program will be administered by Defendant North Carolina State Education Assistance Authority (“the Authority”). Beginning with the 2014-15 school year, the Authority will award vouchers of up to \$4,200 for eligible North Carolina school children to use at private schools. Traditional public schools and public charter schools are not eligible to receive vouchers under the program.

40. For the 2014-15 school year, students will be eligible for private school vouchers if they (1) attended a public school for the spring semester of the 2013-14 school year; and (2) their family income does not exceed the amount required to qualify for the federal free or reduced-price lunch program. This income ceiling is currently \$43,568 for a family of four.

41. In subsequent years, the eligibility criteria will be broadened. After the 2014-15 school year, students will be eligible for private school vouchers if their family income does not exceed 133% of the amount required to qualify for the federal free or reduced-price lunch program. This income ceiling is currently \$57,945 for a family of four.

42. By February 1, 2014, the Authority will make applications available for private school vouchers for the 2014-15 school year. The Authority will begin selecting students for vouchers by March 1, 2014. The Authority will transfer funds to private schools by means of voucher payments that are endorsed by a student’s parent or guardian to a particular private school.

43. As shown in Section F of the Joint Conference Committee Report on the Continuation, Capital, and Expansion Budgets (attached as Exhibit B), the General Assembly appropriated \$10 million for the new voucher program for fiscal year 2014-15. (Ex. B, page F-12.) A corresponding reduction in funding for public schools in the amount of \$11,797,941 results from the voucher program. (Ex. B, page F-1.)

III. The Voucher Program Has No Standards or Accountability.

44. Private schools that receive vouchers are subject to almost no restrictions or obligations. *See* Exhibit A; N.C. Gen. Stat. § 115C-547 *et seq.* These private schools can be operated by inexperienced and unaccredited institutions, can hire unqualified and unsafe teachers and employees, can teach using haphazard and unproven methods, can fail to improve student knowledge and performance in any measurable way, and can discriminate in admission and

treatment of students on the basis of religion, socioeconomic status, or physical or mental disability.

45. Private schools that receive vouchers are not required to be accredited by the State Board of Education or any other state or national institution. There is no requirement that individuals, institutions, or companies that own or operate private schools have any experience or expertise in education. Owners and operators of private schools are not subject to open meeting laws or any other requirements to ensure that important decisions are explained and held accountable to parents and the public.

46. In contrast, traditional public schools are administered by local boards of education, composed of popularly elected board members, and obligated to conduct public meetings. N.C. Gen. Stat. § 115C-35 *et seq.* Public charter schools can only be administered by non-profit corporations whose applications are approved by the State Board of Education. N.C. Gen. Stat. § 115C-238.29B. The State Board of Education can only approve applications if the charter school will operate in an educationally and economically sound manner and must review the operations of each charter school at least every five years. N.C. Gen. Stat. § 115C-238.29D.

47. Private schools that receive vouchers are not required to employ teachers who are licensed by the State Board of Education. Private school teachers are not required to have any particular credentials, degrees, experience, or expertise in education. Private schools are not required to monitor, evaluate, or measure the performance of their teachers in any way.

48. In contrast, traditional public schools are required to employ teachers licensed by the State Board of Education in the subject area that they teach. N.C. Gen. Stat. §§ 115C-295, 115C-296. Public charter schools must employ licensed teachers in at least 50% of teaching positions and teachers in core subject areas must be college graduates. N.C. Gen. Stat. § 115C-238.29F(e)(1). In licensing teachers, the State Board of Education sets minimum criteria for the approval or accreditation of teacher education programs; establishes criteria for entry-level teacher licenses or certificates, including minimum scores on standardized tests; requires local boards of education to closely monitor the performance of licensed teachers; and requires licensed teachers to advance their skills through continuing education. 16 N.C. Admin Code § 6C.0102 *et seq.*

49. Private schools that receive vouchers are required to conduct a criminal background check only for the staff member with the highest decision-making authority. No

criminal background check is required for any other teacher or employee. Private schools are not required to determine whether their teachers and employees have criminal records.

50. In contrast, traditional public schools and public charter schools conduct criminal background checks for all employees and the teacher licensure process continually monitors teachers for conduct that endangers the educational mission. *See* N.C. Gen. Stat. §§ 115C-238.29F(e)(1), 115C-332; 16 N.C. Admin Code § 6C.0312.

51. Private schools that receive vouchers are not subject to any requirements regarding the curriculum that they teach. Private schools are not obligated to meet the requirements of the Common Core curriculum or any other recognized standard for the education of children.

52. In contrast, traditional public schools are required to teach a rigorous curriculum established by the State Board of Education. N.C. Gen. Stat. § 115C-81; N.C. State Bd. Of Educ. Policy GCS-F-000 *et seq.* Public charter schools are required to design educational programs that meet standards established by the Board of Education. N.C. Gen. Stat. § 115C-238.29F(d)(2).

53. Private schools that receive vouchers are not subject to any requirements for student achievement. Private schools must administer a “nationally standardized test” of their choosing, but there is no requirement that this test measure any particular level of educational achievement. The “nationally standardized test” must measure students in the areas of English and mathematics, but is not required to measure student proficiency in science, history, social studies, or any other subject. Private schools are not obligated to demonstrate any growth in student performance due to their teaching as measured by their chosen test. Private schools with fewer than 25 students receiving vouchers are not obligated to make their test results public, and no private schools are obligated to reveal test results for their students who do not receive vouchers. Private schools are thus unaccountable to the public regarding student achievement.

54. In contrast, traditional public schools and public charter schools administer comprehensive end-of-grade and end-of-course standardized tests, measuring reading comprehension, mathematics, and science. The results of these tests must be extensively published, in both aggregated and disaggregated forms, allowing for accountability for entire school districts, individual schools, and subgroups within each school. The publication of the

achievement data is one of the State's tools for ensuring that public schools are accountable to the public. *See* N.C. Gen. Stat. § 115C-174.10 *et seq.*; N.C. Gen. Stat. § 115C-238.29F(d)(3).

55. Private schools that receive vouchers are not prohibited by the Voucher Legislation from discriminating in the admission of students on the basis of race, gender, family income or wealth, disability, or religion. The Voucher Legislation does not include any enforcement or accountability provisions to ensure that institutions receiving vouchers do not exclude minority students, disabled students, or students from poor families.

56. In contrast, traditional public schools must accept all students. N.C. Gen. Stat. § 115C-378. Public charter schools cannot discriminate on the basis of race, ethnicity, national origin, gender, or disability. N.C. Gen. Stat. § 115C-238.29F(g)(5). The population of a charter school should reasonably reflect the racial and ethnic composition of the general population in the area. N.C. Gen. Stat. § 115C-238.29F(g)(5).

57. Private schools that receive vouchers are not obligated to admit or accommodate students with mental or physical disabilities. Private schools are not obligated to comply with the federal Individuals with Disabilities Education Act or to provide disabled students with an individualized, appropriate education.

58. In contrast, traditional public schools and public charter schools must comply with the Individuals with Disabilities Education Act and are obligated to provide disabled students with an individualized, appropriate education. 20 U.S.C. § 1400 *et seq.*; N.C. Gen. Stat. § 115C-106 *et seq.*; N.C. Gen. Stat. § 115C-238.29F(d)(4).

59. Private schools that receive vouchers can suspend or expel students at any time, without limitation, disrupting their education. Private schools are not required to provide any due process protections to students.

60. In contrast, traditional public schools and public charter schools may not suspend or expel students without due process. N.C. Gen. Stat. § 115C-390 *et seq.*; N.C. Gen. Stat. § 115C-238.29F(d)(5).

61. Private schools that receive vouchers are not obligated to provide transportation for students nor required to make any accommodation for potential students for whom inability to obtain transportation to school would prevent their attendance. Private schools are not obligated to participate in the National School Lunch Program, which provides free and reduced-priced lunch to students from low-income families.

62. In contrast, all traditional public school districts provide transportation services and public charter schools must provide transportation or a transportation plan so that transportation is not a barrier to attendance. N.C. Gen. Stat. § 115C-238.29F(h). Traditional public schools must participate in the National School Lunch Program. N.C. Gen. Stat. § 115C-264(a).

FIRST CLAIM FOR RELIEF

Article IX, Sections 2(1) and 6 of the North Carolina Constitution: Funding Exclusively for Free Public Schools

63. The foregoing allegations are incorporated by reference herein.

64. Article I, Section 15 of the North Carolina Constitution provides: “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”

65. Article IX, Section 2(1) of the North Carolina Constitution states that the “General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools.”

66. Article IX, Section 6 of the North Carolina Constitution provides: “The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.” (Emphasis added.)

67. Under these provisions, the State is prohibited from appropriating public funds to private schools for primary or secondary education.

68. Under these provisions, the State is prohibited from transferring public funds from free public schools to any other institutions outside the control of the public school system.

69. The Voucher Legislation violates Article I, Section 15 and Article IX, Sections 2(1) and 6 of the North Carolina Constitution because it appropriates revenue paid by North Carolina taxpayers to private schools for primary and secondary education.

70. The Voucher Legislation violates Article I, Section 15 and Article IX, Sections 2(1) and 6 of the North Carolina Constitution because it transfers revenue paid by North Carolina taxpayers from free public schools to private schools.

SECOND CLAIM FOR RELIEF

Article V, Section 2(1) and 2(7) of the North Carolina Constitution:
Funding for the Public Purpose of Education

71. The foregoing allegations are incorporated by reference herein.

72. Article V, Section 2(1) of the North Carolina Constitution provides: “The power of taxation shall be exercised in a just and equitable manner, for public purposes only.”

73. Article V, Section 2(7) of the North Carolina Constitution provides: “The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.”

74. The transfer of taxpayer funds to private schools without any accountability or requirements ensuring that students will actually receive an education is not for the purpose of education or for any other public purpose.

75. Distributing taxpayer funds to schools in an arbitrary and capricious manner unrelated to educational objectives is not a valid exercise of constitutional authority. *See Leandro v. State*, 346 N.C. 336, 353, 488 S.E.2d 249, 258 (1997).

76. The Voucher Legislation violates Article V, Sections 2(1) and 2(7) of the North Carolina Constitution because it transfers revenue paid by North Carolina taxpayers to private schools without any accountability or requirements ensuring that students will actually receive an education and thus does not accomplish any public purpose.

THIRD CLAIM FOR RELIEF

Article IX, Section 5 of the North Carolina Constitution: Supervision by the State Board of Education

77. The foregoing allegations are incorporated by reference herein.

78. Article IX, Section 5 of the North Carolina Constitution provides: “The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations thereto, subject to laws enacted by the General Assembly.”

79. Under this provision, the State Board of Education must supervise and administer all taxpayer funds provided for primary and secondary education.

80. The Voucher Legislation violates Article IX, Section 5 of the North Carolina Constitution because it appropriates revenue paid by North Carolina taxpayers to private schools for the ostensible purpose of primary and secondary education without those funds being supervised by the Board of Education and without any other means of accountability.

FOURTH CLAIM FOR RELIEF

Article IX, Section 2(1) of the North Carolina Constitution: Non-Uniform School System

81. The foregoing allegations are incorporated by reference herein.

82. Article IX, Section 2(1) of the North Carolina Constitution states that the “General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools.”

83. Under this provision, the State must provide a uniform system of public schools for primary and secondary education.

84. The Voucher Legislation violates Article IX, Section 2(1) of the North Carolina Constitution because it appropriates revenue paid by North Carolina taxpayers to private schools for the ostensible purpose of primary and secondary education, thus creating a non-uniform system of schools for primary and secondary education.

FIFTH CLAIM FOR RELIEF

Article I, Section 19 and Article V, Section 2(1) of the North Carolina Constitution: Funding in Furtherance of Discrimination

85. The foregoing allegations are incorporated by reference herein.

86. Article I, Section 19 of the North Carolina Constitution provides that no person shall be “subjected to discrimination by the State because of race, color, religion, or national origin.”

87. Article V, Section 2(1) of the North Carolina Constitution provides: “The power of taxation shall be exercised in a just and equitable manner, for public purposes only.”

88. Under these provisions, the State is not permitted to circumvent the constitutional prohibition on discrimination by outsourcing the functions of public schools to state-funded private schools that are allowed to discriminate.

89. The transfer of taxpayer funds to private schools that are permitted to discriminate on the basis of race, color, religion, or national origin is not spending “in a just and equitable manner” and is not for any public purpose.

90. The Voucher Legislation violates Article I, Section 19 and Article V, Section 2(1) of the North Carolina Constitution because it transfers revenue paid by North Carolina taxpayers to private schools that are permitted to discriminate against students and applicants on the basis of race, color, religion, or national origin.

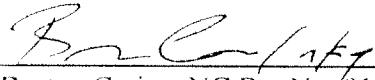
PRAYER FOR RELIEF

WHEREFORE, plaintiffs request that the Court:

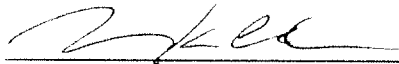
- (1) Declare that the Voucher Legislation is unconstitutional under the North Carolina Constitution;
- (2) Enter a preliminary and permanent injunction enjoining implementation and enforcement of the Voucher Legislation;
- (3) Award plaintiffs costs pursuant to N.C. Gen. Stat. § 1-263;
- (4) Award such other and further legal and equitable relief as this Court deems necessary, just, and proper.

This the 13th day of January, 2014.

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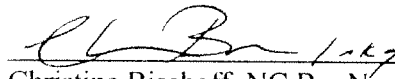
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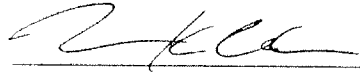
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Amended Complaint was served on all parties by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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This the 13th day of January, 2014.



Narendra K. Ghosh
Counsel for Plaintiffs