

STATE OF NORTH CAROLINA

COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
13 CVS 16484

REVEREND ROBERT RICHARDSON, III,
MICHAEL and DELORES GALLOWAY,
STEVEN W. SIZEMORE, THE NORTH
CAROLINA SCHOOL BOARDS
ASSOCIATION, ALAMANCE-
BURLINGTON BOARD OF EDUCATION,
ASHEBORO CITY BOARD OF EDUCATION,
CATAWBA COUNTY BOARD OF
EDUCATION, CHAPEL HILL-CARRBORO
CITY BOARD OF EDUCATION,
CHATHAM COUNTY BOARD OF
EDUCATION, CLEVELAND COUNTY
BOARD OF EDUCATION, COLUMBUS
COUNTY BOARD OF EDUCATION,
CRAVEN COUNTY BOARD OF
EDUCATION, CURRITUCK COUNTY
BOARD OF EDUCATION, DAVIDSON
COUNTY BOARD OF EDUCATION,
DURHAM PUBLIC SCHOOLS BOARD OF
EDUCATION, EDENTON-CHOWAN
BOARD OF EDUCATION, GATES
COUNTY BOARD OF EDUCATION,
GRAHAM COUNTY BOARD OF
EDUCATION, HALIFAX COUNTY BOARD
OF EDUCATION, HARNETT COUNTY
BOARD OF EDUCATION, HYDE COUNTY
BOARD OF EDUCATION, LEE COUNTY
BOARD OF EDUCATION, LENOIR
COUNTY BOARD OF EDUCATION,
LEXINGTON CITY BOARD OF
EDUCATION, MACON COUNTY BOARD
OF EDUCATION, MARTIN COUNTY
BOARD OF EDUCATION, MOUNT AIRY
CITY BOARD OF EDUCATION, NEWTON-
CONOVER CITY BOARD OF EDUCATION,
ONSLOW COUNTY BOARD OF
EDUCATION, ORANGE COUNTY BOARD
OF EDUCATION, PAMLICO COUNTY
BOARD OF EDUCATION, PERSON
COUNTY BOARD OF EDUCATION, PITT

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WAKE COUNTY, C.S.C.

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

COUNTY BOARD OF EDUCATION, POLK
COUNTY BOARD OF EDUCATION,
ROCKINGHAM COUNTY BOARD OF
EDUCATION, RUTHERFORD COUNTY
BOARD OF EDUCATION, SCOTLAND
COUNTY BOARD OF EDUCATION,
STANLEY COUNTY BOARD OF
EDUCATION, SURRY COUNTY BOARD
OF EDUCATION, VANCE COUNTY
BOARD OF EDUCATION, WARREN
COUNTY BOARD OF EDUCATION,
WASHINGTON COUNTY BOARD OF
EDUCATION, WHITEVILLE CITY BOARD
OF EDUCATION and YANCEY COUNTY
BOARD OF EDUCATION,

Plaintiffs,

v.

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

Defendants.

In support of this First Amended Complaint for Declaratory Judgment and Injunctive Relief, Plaintiffs allege and say:

Preliminary Statement

1. For more than 150 years, the North Carolina Constitution has required the State through the General Assembly and the State Board of Education, to establish, maintain and fund a general and uniform system of public schools. Under the Constitution, this system has three defining characteristics. First, it must be open to every child in the State without

regard for race, color, national origin, religion or ability. Second, it must be available to all students free of tuition. Third, it must be funded and operated at a level sufficient to provide every student the opportunity to obtain a sound basic education.

2. Separate from the public schools are private schools not funded or controlled by the State. By virtue of their independence from the State, these private schools have had the freedom to choose the students they will admit and to establish standards reflective of the values of the entities controlling those schools.
3. The General Assembly's recent decision to provide public funds to support those private schools raises substantial legal questions whether that decision carried with it the obligation by the General Assembly, as the representative body for all North Carolinians, to assure that those public funds are expended for the good of all citizens without discrimination. This lawsuit seeks to resolve those important questions.

Nature of this Action

4. The action is brought pursuant to the Declaratory Judgment Act, N.C. Gen. Stat. § 1-253 et seq., seeking a declaration as to the constitutionality of legislation enacted by the 2013 Session of the General Assembly appropriating public funds to pay tuition and fees at private schools for certain students. This challenged legislation is hereinafter referred to as the "Voucher Legislation."

Parties

5. Plaintiff Reverend Robert Richardson, III, is a North Carolina citizen and taxpayer residing in Hertford County. He has two children who attend public schools in Hertford County. His rights as a citizen, taxpayer and parent are impaired by the Voucher Legislation and he is therefore designated a plaintiff in this lawsuit.
6. Plaintiff Steven Sizemore is a North Carolina citizen and taxpayer residing in Buncombe County. He has three children who attended and graduated from public schools in Buncombe County, and is a former member and chairman of the Buncombe County Board of Education. His rights as a citizen, taxpayer and parent are impaired by the Voucher Legislation and he is therefore designated a plaintiff in this lawsuit.
7. Plaintiffs Michael and Delores Galloway are North Carolina citizens and taxpayers residing in Rockingham County. They have two children, one of whom attends the Rockingham County Schools and one of whom recently graduated from the Rockingham County Schools. Their rights as citizens, taxpayers and parents are impaired by the Voucher Legislation and they are therefore designated plaintiffs in this lawsuit.
8. Plaintiff North Carolina School Boards Association (NCSBA) is a voluntary membership association for local boards of education in North Carolina. All 115 local boards of education in the State, as well as the Board of Education of the Eastern District of the Cherokee Nation, are members of the NCSBA. The capacity of the members of NCSBA to meet their obligations to students and the capacity of the NCSBA to meet its obligations to its members are impaired by the Voucher Legislation and the NCSBA is therefore designated a plaintiff in this lawsuit.

9. Plaintiff Alamance-Burlington Schools Board of Education is a public agency created by law to supervise and administer the public schools in the Alamance and Burlington for the benefit of the citizens of Alamance County and Burlington. It is comprised of members elected by the citizens of Alamance County and Burlington. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
10. Plaintiff Asheboro City Board of Education is a public agency created by law to supervise and administer the public schools in the City of Asheboro for the benefit of the citizens of Asheboro. It is comprised of members elected by the citizens of Asheboro. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
11. Plaintiff Catawba County Board of Education is a public agency created by law to supervise and administer the public schools in Catawba County for the benefit of the citizens of Catawba County. It is comprised of members elected by the citizens of Catawba County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
12. Plaintiff Chapel Hill-Carrboro City Board of Education is a public agency created by law to supervise and administer the public schools in Chapel Hill and Carrboro for the benefit of the citizens of Chapel Hill and Carrboro. It is comprised of members elected by the citizens of Chapel Hill and Carrboro. The capacity of the Board to meet its obligations to

citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

13. Plaintiff Chatham County Board of Education is a public agency created by law to supervise and administer the public schools in Chatham County for the benefit of the citizens of Chatham County. It is comprised of members elected by the citizens of Chatham County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
14. Plaintiff Cleveland County Board of Education is a public agency created by law to supervise and administer the public schools in Cleveland County for the benefit of the citizens of Cleveland County. It is comprised of members elected by the citizens of Cleveland County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
15. Plaintiff Columbus County Board of Education is a public agency created by law to supervise and administer the public schools in Columbus County for the benefit of the citizens of Columbus County. It is comprised of members elected by the citizens of Columbus County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
16. Plaintiff Craven County Board of Education is a public agency created by law to supervise and administer the public schools in Craven County for the benefit of the

citizens of Craven County. It is comprised of members elected by the citizens of Craven County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

17. Plaintiff Currituck County Board of Education is a public agency created by law to supervise and administer the public schools in Currituck County for the benefit of the citizens of Currituck County. It is comprised of members elected by the citizens of Currituck County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
18. Plaintiff Davidson County Board of Education is a public agency created by law to supervise and administer the public schools in Davidson County for the benefit of the citizens of Davidson County. It is comprised of members elected by the citizens of Chatham County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
19. Plaintiff Durham Public Schools Board of Education is a public agency created by law to supervise and administer the public schools in Durham County for the benefit of the citizens of Durham County. It is comprised of members elected by the citizens of Durham County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

20. Plaintiff Edenton-Chowan Board of Education is a public agency created by law to supervise and administer the public schools in the Edenton and Chowan for the benefit of the citizens of Edenton and the Chowan. It is comprised of members elected by the citizens of Edenton and the Chowan. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
21. Plaintiff Gates County Board of Education is a public agency created by law to supervise and administer the public schools in Gates County for the benefit of the citizens of Gates County. It is comprised of members elected by the citizens of Gates County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
22. Plaintiff Graham County Board of Education is a public agency created by law to supervise and administer the public schools in Graham County for the benefit of the citizens of Graham County. It is comprised of members elected by the citizens of Graham County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
23. Plaintiff Halifax County Board of Education is a public agency created by law to supervise and administer the public schools in Halifax County for the benefit of the citizens of Halifax County. It is comprised of members elected by the citizens of Halifax County. The capacity of the Board to meet its obligations to citizens, parents and

students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

24. Plaintiff Harnett County Board of Education is a public agency created by law to supervise and administer the public schools in Harnett County for the benefit of the citizens of Harnett County. It is comprised of members elected by the citizens of Harnett County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
25. Plaintiff Hyde County Board of Education is a public agency created by law to supervise and administer the public schools in Hyde County for the benefit of the citizens of Hyde County. It is comprised of members elected by the citizens of Hyde County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
26. Plaintiff Lee County Board of Education is a public agency created by law to supervise and administer the public schools in Lee County for the benefit of the citizens of Lee County. It is comprised of members elected by the citizens of Lee County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
27. Plaintiff Lenoir County Board of Education is a public agency created by law to supervise and administer the public schools in Lenoir County for the benefit of the citizens of Lenoir County. It is comprised of members elected by the citizens of Lenoir

County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

28. Plaintiff Lexington City Board of Education is a public agency created by law to supervise and administer the public schools in the City of Lexington for the benefit of the citizens of Lexington. It is comprised of members elected by the citizens of Lexington. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
29. Plaintiff Macon County Board of Education is a public agency created by law to supervise and administer the public schools in Macon County for the benefit of the citizens of Macon County. It is comprised of members elected by the citizens of Macon County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
30. Plaintiff Martin County Board of Education is a public agency created by law to supervise and administer the public schools in Martin County for the benefit of the citizens of Martin County. It is comprised of members elected by the citizens of Martin County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

31. Plaintiff Mount Airy City Board of Education is a public agency created by law to supervise and administer the public schools in Mount Airy for the benefit of the citizens of Mount Airy. It is comprised of members elected by the citizens of Mount Airy. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
32. Plaintiff Newton-Conover City Board of Education is a public agency created by law to supervise and administer the public schools in Newton and Conover for the benefit of the citizens of Newton and Conover. It is comprised of members elected by the citizens of Newton and Conover. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
33. Plaintiff Onslow County Board of Education is a public agency created by law to supervise and administer the public schools in Onslow County for the benefit of the citizens of Onslow County. It is comprised of members elected by the citizens of Onslow County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
34. Plaintiff Orange County Board of Education is a public agency created by law to supervise and administer the public schools in Orange County for the benefit of the citizens of Orange County. It is comprised of members elected by the citizens of Orange County. The capacity of the Board to meet its obligations to citizens, parents and

students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

35. Plaintiff Pamlico County Board of Education is a public agency created by law to supervise and administer the public schools in Pamlico County for the benefit of the citizens of Pamlico County. It is comprised of members elected by the citizens of Pamlico County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
36. Plaintiff Person County Board of Education is a public agency created by law to supervise and administer the public schools in Person County for the benefit of the citizens of Person County. It is comprised of members elected by the citizens of Person County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
37. Plaintiff Pitt County Board of Education is a public agency created by law to supervise and administer the public schools in Pitt County for the benefit of the citizens of Pitt County. It is comprised of members elected by the citizens of Pitt County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
38. Plaintiff Polk County Board of Education is a public agency created by law to supervise and administer the public schools in Polk County for the benefit of the citizens of Polk County. It is comprised of members elected by the citizens of Polk County. The capacity

of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

39. Plaintiff Rockingham County Board of Education is a public agency created by law to supervise and administer the public schools in Rockingham County for the benefit of the citizens of Rockingham County. It is comprised of members elected by the citizens of Rockingham County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
40. Plaintiff Rutherford County Board of Education is a public agency created by law to supervise and administer the public schools in Rutherford County for the benefit of the citizens of Rutherford County. It is comprised of members elected by the citizens of Rutherford County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
41. Plaintiff Scotland County Board of Education is a public agency created by law to supervise and administer the public schools in Scotland County for the benefit of the citizens of Scotland County. It is comprised of members elected by the citizens of Scotland County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
42. Plaintiff Stanley County Board of Education is a public agency created by law to supervise and administer the public schools in Stanley County for the benefit of the

citizens of Stanley County. It is comprised of members elected by the citizens of Stanley County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

43. Plaintiff Surry County Board of Education is a public agency created by law to supervise and administer the public schools in Surry County for the benefit of the citizens of Surry County. It is comprised of members elected by the citizens of Surry County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

44. Plaintiff Vance County Board of Education is a public agency created by law to supervise and administer the public schools in Vance County for the benefit of the citizens of Vance County. It is comprised of members elected by the citizens of Vance County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

45. Plaintiff Warren County Board of Education is a public agency created by law to supervise and administer the public schools in Warren County for the benefit of the citizens of Warren County. It is comprised of members elected by the citizens of Warren County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.

46. Plaintiff Washington County Board of Education is a public agency created by law to supervise and administer the public schools in Washington County for the benefit of the citizens of Washington County. It is comprised of members elected by the citizens of Washington County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
47. Plaintiff Whiteville City Board of Education is a public agency created by law to supervise and administer the public schools in the City of Whiteville for the benefit of the citizens of Whiteville. It is comprised of members elected by the citizens of Whiteville. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
48. Plaintiff Yancey County Board of Education is a public agency created by law to supervise and administer the public schools in Yancey County for the benefit of the citizens of Yancey County. It is comprised of members elected by the citizens of Yancey County. The capacity of the Board to meet its obligations to citizens, parents and students is impaired by the Voucher Legislation and the Board is therefore designated a plaintiff in this lawsuit.
49. Defendant State of North Carolina is a sovereign State of the United States. It has consented to be sued in this Court and has conferred on the Judicial Branch of the State the power and duty to declare invalid and unenforceable acts of the Legislative Branch of

the State that violate the State's Constitution and as such is a party affected by the declaration requested and is therefore designated a defendant in this lawsuit.

50. Defendant North Carolina State Board of Education is an agency of Defendant State created by the State Constitution and charged by the Constitution with the duty, among others, "to supervise and administer the free public school system and the funds provided for its support." N.C. Const. Art. IX, Sec. 5. The General Assembly has imposed on the State Board of Education the duty to administer the reductions in the State School Fund required by the Voucher Legislation. As such the North Carolina State Board of Education is a party affected by the declaration requested and it is therefore designated a defendant in this lawsuit.

51. Defendant North Carolina State Education Assistance Authority is an agency of the Defendant State established by the General Assembly. The General Assembly has imposed on the Authority the duty to administer the Voucher Legislation. As such the North Carolina State Education Assistance Authority is a party affected by the declaration requested and it is therefore designated a defendant in this lawsuit.

Jurisdiction and Venue

52. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Uniform Declaratory Judgment Act.

53. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.

54. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

General Allegations

55. The Voucher Legislation was enacted by the General Assembly on July 25, 2013, as part of the Current Operations and Capital Appropriations Act. 2013 Session Law 360, Sections 8.29 (a) - (h). Governor McCrory signed that Act into law on July 26, 2013. The legislation establishes a program to provide state funds for use at private schools to certain students through the use of vouchers - - denominated “scholarship grants” in the legislation - - in amounts up to \$4,200 per year to attend private elementary and secondary schools beginning with the 2014 school year.
56. Upon information and belief, Defendants have begun implementation of the Voucher Legislation.
57. The General Assembly did not make any findings describing the need, purpose or justification for the Voucher Legislation.
58. These vouchers are funded by taxes paid by individuals and corporations and other public revenues (hereinafter “taxpayer money”), and forwarded directly to the private schools in which voucher recipients enroll. To be eligible to benefit from a voucher during the 2014-2015 school year, a student must reside in a household with an income level not in excess of the eligibility cutoff for the federal free and reduced lunch program and fit within certain other prescribed categories. In subsequent school years under the current legislation, eligible students must reside in households with income not in excess of 133 percent of the eligibility cutoff for the federal free and reduced lunch program.
59. Eligibility to receive a voucher funded by taxpayer money is not limited to students who are performing poorly in the public schools or who have been assigned to a poorly

performing public school. Any student at any public school who meets the eligibility criteria can receive a \$4,200 voucher paid for by taxpayer money.

60. All private church schools and schools of religious charter and all qualified non-public schools identified by the Division of Nonpublic Education in the State Department of Administration (hereinafter collectively, “private schools”) are eligible to enroll voucher recipients and receive taxpayer money.
61. There are approximately 698 private schools in North Carolina in which approximately 96,000 students are enrolled. Upon information and belief, the quality of education provided by these private schools varies greatly. Some students in some of those schools do not receive an adequate education and some students do not have the opportunity to obtain a sound basic education
62. The Voucher Legislation, however, does not establish any substantive educational standards that must be met by a private school before it is permitted to enroll a voucher recipient and accept and spend taxpayer money. For example, the Voucher Legislation does not require private schools to employ qualified teachers to instruct voucher recipients; does not require private schools to provide an adequate curriculum for voucher recipients; and does not require private schools to instruct voucher recipients for any minimum period each day or each year.
63. Private schools that enroll more than 25 voucher recipients are required to make public aggregate standardized test performance information but enrollment of any lesser number of voucher recipients excuses private schools of the duty to make such aggregate test results public. Further, the Voucher Legislation does not require that private schools

select tests that are valid measures of student achievement and does not establish any means for protecting taxpayer money by prohibiting voucher recipients from enrolling in private schools that do not provide adequate educational opportunities for their students.

64. Upon information and belief, most of the 698 private schools in North Carolina do not have open student admission practices or policies. Further, upon information and belief, some of the schools that do not have open admission practices or policies weigh race or other arbitrary and capricious factors in making student admission decisions and some weigh the religious affiliation of applicants in making student admission decisions. The Voucher Legislation, however, does not forbid private schools from rejecting voucher recipients for discriminatory reasons and provides no means for assuring taxpayer money is expended in a non-discriminatory manner.
65. The Voucher Legislation appropriates \$10,000,000.00 in taxpayer money to the Defendant State Education Assistance Authority to distribute to private schools enrolling voucher recipients during the 2014-15 school year. Upon information and belief, the General Assembly anticipates this appropriation increasing to \$40,000,000.00 for the 2015-16 school year.
66. The Voucher Legislation further directs the Defendant State Board of Education to reduce the State School Fund allotments to local school administrative units in which voucher recipients reside. These reductions will equal the average per student allotment for the local school board multiplied by the number of voucher recipients who previously attended the public schools in the local school system. The average per pupil allotments

for public school systems from the State School Fund range from \$4,696.68 per year to \$13,469.68 per year.

67. In effect, the Voucher Legislation is financed through reductions in the State School Fund and the diversion of those funds to the Defendant State Education Assistance Authority to support private school vouchers.
68. These reductions will negatively impact the capacity of all local board of education's to fulfill their constitutional and statutory obligations to students and will disproportionately impact local boards of education with smaller student enrollments such as the Hertford County Board of Education.
69. More than 50 years ago, the General Assembly determined that expending tax dollars to pay tuition and fees at private schools could not be achieved without amending the State Constitution. On July 27, 1956, the General Assembly adopted legislation submitting to the voters for their approval an amendment to the State Constitution providing:

Notwithstanding any other provisions of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of his parents, or the person having control of such child, to a public school attended by a child of another race.

N.C. Session Laws, Extra Session 1956, Ch. 1 and 2

70. This proposed amendment was approved by the voters of the State at a special election on September 8, 1956, and became a part of the Constitution.
71. This amendment, however, does not shield the Voucher Legislation. In 1966 a three-judge federal panel in Hawkins v. State Board of Education declared that this amendment

violated federal law and was null and void in its entirety because it was designed to circumvent the duty to integrate the public schools.

72. As a consequence of the enactment and implementation of the Voucher Legislation, Plaintiffs, separately and collectively, will suffer irreparable injury in the form of:

- (a) Defendants' unconstitutional expenditure of public funds for a nonpublic purpose;
- (b) Defendants' failure to honor their constitutional duty to guard the right to the privilege of education;
- (c) Defendants' failure to honor their constitutional duty to assure that citizens are not subjected to discrimination or arbitrary and capricious conduct;
- (d) Defendants' unconstitutional diversion of funds from the State School Fund;
- (e) Diminished educational opportunities provided to students enrolled in the public schools; and
- (f) Diminished capacity of local school boards to fulfill their constitutional and statutory obligations to the students enrolled in their schools.

First Request for Declaratory Judgment

73. The foregoing allegations contained in this Complaint are re-alleged and incorporated herein by reference.

74. Article V, Section 2 of the State Constitution provides: "The power of taxation shall be exercised in a just and equitable manner for public purposes only."

75. Providing tax dollars to pay the tuition and fees of selected students attending private schools is not a public purpose. The North Carolina Constitution has expressly set out how taxpayer funds are to be used for the education of the children of North Carolina, and that is through a general and uniform system of free public schools.

76. Because the Voucher Legislation appropriates tax dollars for a nonpublic purpose the Voucher Legislation violates Article V, Section 2 of the Constitution.
77. Alternatively, the Voucher Legislation violates Article V, Section 2 of the Constitution because it does not establish substantive educational standards designed to assure that taxpayer money will result in voucher recipients receiving an adequate education or a sound basic education.

Second Request for Declaratory Judgment

78. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
79. Article I of the North Carolina Constitution is entitled “Declaration of Rights”. It sets forth “the great, general, and essential principles of liberty and free government”.
80. Section 15 of Article I 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”.
81. The Voucher Legislation does not establish substantive educational standards that must be met by private schools choosing to allow voucher recipients to enroll.
82. By failing to protect those children’s right to the privilege of education, the Voucher Legislation violates Article I, Section 15 of the Constitution and constitutes arbitrary and capricious legislation that violates Article I, Section 19 of the Constitution.

Third Request for Declaratory Judgment

83. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.

84. Under the North Carolina Supreme Court's decisions in Leandro v State, 346 NC 336 (1997) and Hoke County Board of Education v. State, 358 N.C. 625 (2004), the Defendants are constitutionally obligated to provide the opportunity for a sound basic education for all students enrolled in schools funded by the State.
85. This obligation arises under Article I, Section 15 of the Constitution and applies to all entities receiving State tax dollars to educate children of compulsory attendance age.
86. The Voucher Legislation does not establish substantive educational standards guarding the voucher recipients' right to have the opportunity to obtain a sound basic education.
87. By failing to protect the right of those selected children receiving taxpayer funds through the Voucher Legislation to the constitutionally mandated opportunity to obtain a sound basic education, the Voucher Legislation violates those children's right to the privilege of education under Article I, Section 15 of the Constitution, and constitutes arbitrary and capricious legislation that violates Article I, Section 19 of the Constitution

Fourth Request for Declaratory Judgment

88. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
89. Among the "great, general and essential principles of liberty and free government" guaranteed by Article I of the Constitution is the principle that no person shall be "subjected to discrimination by the State because of race, color, religion or national origin" or denied participation in publicly funded programs for other arbitrary or capricious reasons. N.C. Const. Article I, Section 19.

90. The Voucher Legislation does not prevent private schools upon receiving funds from the taxpayers of this State through these vouchers from deciding to admit or not admit voucher recipients (or non-voucher students) based on their race, color, religion, national origin or for other arbitrary and capricious reasons constitutionally prohibited, and therefore does not guard the right of voucher recipients to the privilege of education.
91. By failing to prohibit private schools from discriminating on the basis of race, color, religion or national origin in the admission of voucher recipients, or otherwise arbitrarily or capriciously denying them admission, the Voucher Legislation violates Article I, Sections 15 and 19 of the Constitution.

Fifth Request for Declaratory Judgment

92. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
93. Article IX, Section 6 of the North Carolina Constitution requires that funds placed in the State School Fund “shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of public schools.”
94. Under the Voucher Legislation, the State School Fund will be reduced in proportion to the number of eligible students awarded vouchers and those funds will then be used to support private schools resulting in decreased funding for educational services in the State’s general and uniform free public school system.
95. Reducing the State School Fund violates Article IX, Section 6 of the Constitution. Using the State School Fund for any purpose other than support of the uniform system of public schools also violates Article IX, Section 6 of the Constitution.

Sixth Request for Declaratory Judgment

96. The foregoing allegations of the Complaint are re-alleged and incorporated herein by reference.
97. The Voucher Legislation provides for the use of taxpayer funded vouchers by only a limited and select number of “eligible” students of elementary or secondary education age.
98. As a result of these eligibility requirements, most students of elementary or secondary education age cannot receive a voucher paid for by the taxpayers of the State to attend a private school. Furthermore, since private schools by their very purpose can choose to admit whom they choose, even children eligible for vouchers have no guarantee that they will be admitted to the private school of their choice.
99. Art. IX, Sec. 2. (1) of the North Carolina Constitution requires that the educational benefits guaranteed to the children of the State seeking a free elementary and secondary education paid for by taxpayers of the State include “equal opportunities” that are provided to all students.
100. Based upon the limitations imposed by the Voucher Legislation, the children of the State seeking a free elementary and secondary education paid for by the taxpayers of North Carolina do not have equal opportunities to secure a voucher nor, upon receiving one to attend the private school of their choice. Thus the Voucher Legislation violates the provisions of Article IX, Section 2(1) of the Constitution.

Prayer for Relief

WHEREFORE, Plaintiffs respectfully request that the Court:

- (a) declare that the Voucher Legislation violates the North Carolina Constitution;
- (b) declare that the Voucher Legislation is null, void and unenforceable;
- (c) enjoin Defendants from implementing the Voucher Legislation;
- (d) enjoin Defendants to secure repayment of all funds expended to implement the Voucher Legislation, to deposit those funds in the State School Fund and to file an accounting with the Court detailing all funds expended and all funds recovered;
- (e) should the Court determine that the Voucher Legislation is constitutional, declare that those private schools accepting taxpayer dollars are subject to the same educational standards and constitutional provisions prohibiting discrimination as the general uniform system of free public schools provided by the State;
- (f) order Defendants to pay plaintiffs' attorney fees and costs;
- (g) grant Plaintiffs such other relief as may be just and proper.

This the 15th day of January, 2014.

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By: Robert F. Orr / CVM with express permission of RFO

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing ***FIRST AMENDED COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF*** by depositing a copy thereof in an envelope bearing sufficient postage in the United States mail, addressed to the following persons at the following addresses which are the last addresses known to me:

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