

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

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12 CYNTHIA PERRY and GENNELL CURRY,

13 Intervenor-Defendants.

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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:

21 EDWIN M. SPEAS, JR.
22 ROBERT F. ORR
23 CARRIE V. McMILLAN
Raleigh, NC 27601
On behalf of the Richardson plaintiffs

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1 APPEARANCES, continued

2 BURTON CRAIGE
On behalf of the Hart plaintiffs

3 NARENDRA K. GHOSH
4 Chapel Hill, NC 27517
On behalf of the Hart plaintiffs

5 CARLENE McNULTY
6 CHRISTINE BISCHOFF
7 Raleigh, NC 27611
On behalf of the Hart plaintiffs

8 LAUREN M. CLEMMONS
9 Raleigh, NC 27699
On behalf of the defendants

10 ROBERT NUMBERS
11 Raleigh, NC 27601
On behalf of the defendants

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13 Jacqueline M. Sullivan, RPR, CRR
14 Official Court Reporter
15 Po Box 351
Raleigh, North Carolina 27602

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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

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

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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.

ROBERT T. NUMBERS, II, ESQ.
P.O. Box 831
Raleigh, North Carolina 27602

LAUREN CLEMMONS, ESQ.
P.O. Box 629
Raleigh, NC 27602

Jacqueline M. Sullivan, RPR, CRR
P.O. Box 665
Raleigh, NC 27602
919-792-5203