

IN THE
Supreme Court of the United States

COMMONWEALTH OF KENTUCKY,

v.

N.C., A CHILD UNDER EIGHTEEN

**On Petition for Writ of Certiorari to the
Supreme Court of Kentucky**

**AMICI CURIAE BRIEF OF
KENTUCKY SCHOOL BOARDS ASSOCIATION AND
NATIONAL SCHOOL BOARDS ASSOCIATION ET AL.
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

Neeru Gupta*
D. Glenn Brock
Suzann Wilcox Jiles
Kathryn L. Ams
Brandon O. Moulard
Samantha P. Smith
Nelson Mullins Riley &
Scarborough, LLP
201 17th St., NW, Ste. 1700
Atlanta, GA 30363
(404) 322-6109
nina.gupta@nelsonmullins.com

Arthur L. Coleman
Teresa E. Taylor
EducationCounsel, LLC
101 Constitution Ave., NW
Suite 900
Washington DC 20001
(202) 545-2912

David A. Baird
Teresa T. Combs

Francisco M. Negrón, Jr.

Frankfort, KY 40601
(502) 783-1018

1680 Duke Street
Alexandria, VA 22314
(703) 838-6722

* Counsel of Record

ADDITIONAL AMICI CURIAE

—

Statutes and Regulations

Other Authorities

Ctrs. for Disease Control & Prevention, U.S. Dep't of

ò

, .CATORS0 0 5 364.39 636.22 Tm [(U)5(REAU)6()-12(O)6(F)-3
SR N.48ITIE.93205.37 621.82 1 0 0 1 158.42-D 0311.45T3914.81/3967 636

AMICI CURIAE

Amici represent elementary and secondary education organizations committed to the educational achievement of students in environments that are at all times safe and secure. These organizations adhere to principles and policies that promote and ensure student safety. In short, they view student safety and school security as critical components of an orderly and effective educational setting.

As acknowledged many times by this Court, school administrators may use their professional judgment, based on their experience in the uniquely complex school setting, as they maintain a safe and secure school environment and, when necessary, carry out student discipline. The Kentucky Supreme Court's holding in *N.C. v. Commonwealth*, 396 S.W.3d 852 (Ky. 2013), presents an overly rigid, bright-line standard that acknowledges neither the uniqueness of the school setting nor the need to preserve administrators' judgment when acting to promote student safety. That decision stretches *Miranda* beyond its intended purpose. *Amici* urge this Court to grant review and overturn the Kentucky Supreme Court's decision.

¹ No counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. In accordance with Supreme Court Rule 37.2(a), counsel for both parties received timely notice of *amici*'

Established in 1936, the
("KSBA") is a nonprofit
organization dedicated to enhancing public school
board leadership by providing advocacy,
consultation, professional development, and other
school-based support services. KSBA is comprised of
nearly 900 local school board members, who, in turn,

The *N.C.* decision will have a substantial negative impact on school officials' ability to maintain a safe and secure school environment suitable for instruction and learning. The decision creates an overly rigid legal standard that will inhibit school administrators' ability to maintain safety, order, and discipline and uncover wrongdoing on school premises,² including wrongdoing that may pose immediate threats of harm to students. The implications of this standard are particularly troubling in light of the continuing presence of violence and criminal activity within schools. The Kentucky Supreme Court's ruling ignores the

discipline situations. In dangerous circumstances, they inevitably blur. Application of the standard announced in *N.C.* threatens to create a spectrum of undesirable outcomes that do not serve schools' legitimate safety interests, including (most importantly) the students' and staff members' welfare.

This Court's review would avert the threat of these undesirable outcomes and would resolve the disagreement among state and federal courts on the important constitutional question raised by the *N.C.* case. Specifically, several state courts have determined, in direct conflict with the *N.C.* decision, that *Miranda* warnings are not required when an SRO is present and participates in the questioning of a student for potential criminal activity that occurred at school. See, e.g., *the7v7T1 Mpa44d of R*

N.C. and the hundreds of similar situations that occur daily in American public schools.

School staff must have the ability to discuss disciplinary concerns informally and quickly with students so that they can respond immediately, knowledgeably, and effectively to ensure student and staff safety. In contrast, the formal and intimidating posture of being "read your rights" when meeting with school officials and SROs creates a dynamic that undermines a free flow of often important information that school officials may need to respond to dangerous conditions and is likely to produce a chilling effect on students' willingness to cooperate with school staff. Students are typically *the* source of information for school administrators, and unnecessary barriers to student cooperation, such as the rule presented in *N.C.*, will substantially impede school staff members' ability to

students who remained agitated after a fight, called the school's SRO to help search one student's book bag for weapons. *In re Ana E.*, 2002 WL 264325 (N.Y. Fam. Ct. 2002). The SRO found a knife in the bag, and was able to prevent the fight from escalating into a much more serious (and dangerous) situation. *Id.* Similarly, a school administrator in Virginia, acting on a tip and with the SRO present, was able to stop a series of thefts at the school after questioning a student. *J.D. v. Commonwealth*, 591 S.E.2d 721 (Va. Ct. App. 2004). In each of these cases, the state court ruled that the informal questioning of students did not require *Miranda* warnings and produced positive results for the schools (and students) in question. These cases are but three examples of how an SRO, carrying out his or her duties as a member of the school community, can have a substantial impact on student safety.

The N.C. ruling casts a shadow over the collaborative efforts of school staff and SROs to preserve a secure school environment. School staff must be permitted to apply their unique, specialized knowledge to fluid situations involving student discipline or safety, rather than being required to determine whether including an SRO in a conversation with a student (often a judgment made in a matter of minutes, based on developing circumstances) will have implications for a subsequent juvenile action.³

³ Courts have recognized the importance of allowing the student discipline process to be informal and not overly procedural. This Court has held that "informal" and "rudimentary" due process procedures are expected to occur prior to a student suspension, including oral or written notice

By contrast, the N.C. decision requires a schoolhouse determination of whether *Miranda* rights should be read, even if the student's statements came in response to questions from a school administrator rather than an SRO. This requirement creates the kind of undue interference with school disciplinary procedures against which this Court has specifically warned. In contrast to other state court decisions, e.g., *In the Matter of W.R.*, 675 S.E.2d 342 (N.C. 2009); *State v. J.T.D.*, 851 So. 2d 793 (Fla. Dist. Ct. App. 2003), the Kentucky Supreme Court creates an overly rigid distinction between questioning of students to "avoid potential harm to that student and other students and school personnel" and questioning of students "for the additional purpose of obtaining evidence against the student to use in placing a criminal charge." N.C., 396 S.W.3d at 23.

The Kentucky Supreme Court reached an erroneous decision in part based on its mischaracterization of the role of SROs whose functions differ significantly from those of the traditional law enforcement officer in the community.⁵ Instead of being focused on a search for criminal activity at schools (as the Kentucky Supreme Court surmises), an SRO's roles and responsibilities are a complex mixture of formal and

The employment status of SROs can vary. In Kentucky public schools, for example, 244 SROs are employed through one of three employment arrangements: (1) the school district and local law enforcement agency enter into a memorandum of understanding for the assignment of an SRO at a public school, and the two agencies share responsibility for funding the position; (2) the school district directly employs an SRO and has sole responsibility for funding the position; and (3) the SRO remains an employee of the local law enforcement agency but is simply "assigned" to a public school on a rotating basis. See *N.C.*, 396 S.W.3d at 867-68 (Cunningham, J., dissenting). Regardless of their employment status, SROs are sworn law enforcement officers with peace keeping authority.

OFFICERS, TO PROTECT & EDUCATE: THE SCHOOL RESOURCE OFFICER AND THE PREVENTION OF VIOLENCE IN SCHOOLS 21 (2012).

Schools began using School Resource Officers (SROs) as a visible and essential safety measure in the 1990s, in the wake of 15 highly publicized school shootings and an increased demand for maintaining student safety. NAT'L ASS'N OF SCH. RES. OFFICERS, TO PROTECT & EDUCATE, at 18; Susan Black, *Security and the SRO*, 196 AM. SCH. BD. J. 30 (2009). Their presence in schools was part of interagency collaboration efforts that emerged at that time around child and youth safety issues. By the 2009-2010 school year, 43 percent of public schools reported utilizing security personnel, including SROs. NAT'L CTR. FOR EDUC. STATISTICS & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 86 (2013).

The role of the SRO is multi-faceted. It expands well beyond traditional "law enforcement" and includes a myriad of "education related chores" encompassing everything from consulting school CHCHCH

EDUCATE, at 22-23. As with teachers and other school staff members, SROs can serve as role models for students. They spend time with students during extracurricular activities or extended school-day programs to develop rapport and relationships of trust. See Black, 196 AM. SCH. BD. J. at 31. SROs are very much part of the culture of schools, and can help the school community, as a whole, become more cohesive. THOMAS HUTTON & KIRK BAILEY, SCHOOL POLICIES AND LEGAL ISSUES SUPPORTING SAFE SCHOOLS: EFFECTIVE STRATEGIES FOR CREATING SAFER SCHOOLS AND COMMUNITIES, The Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory, at 22 (2008) ("SROs can develop more cooperative and trusting relationships among students and school officials, as well as help better inform law enforcement agencies about safety issues in schools.").

In carrying out many of these functions, SROs will necessarily interact with students and have conversations in which students may divulge information that could be relevant to a subsequent investigation or juvenile proceeding. The Kentucky Supreme Court's decision could deter such beneficial interactions and limit the effectiveness of SROs in promoting school safety due to uncertainty over when *Miranda* warnings must be given.

ò

Within the student safety and school discipline context, SROs are an invaluable resource because they possess specialized training in weapons

weapon on school property." N

that "school resource officers should be treated as part of the school administrative team and not as outside police officers entering school grounds to conduct an investigation." *M.D. v. State*, 65 So.3d 563, 565 (Fla. Dist. Ct. App. 2011). See also *Wilson v. Cahokia Sch. Dist. # 187*, 470 F. Supp. 2d 897 (S.D. Ill. 2007) (search of student on school grounds by an SRO at the request of school officials should be deemed a search by a school employee and thus subject to the reasonableness standard, rather than probable cause standard); *D.J. v. State*, 877 N.E. 2d 500 (Ind. App. Ct. 2007) (SRO's pat

Questioning of students to address safety and disciplinary issues should be judged with a similar recognition, and *amici* urge this Court to grant review and provide clarification on these issues.

This Court's clarification of these issues is particularly pressing in light of the need for safer schools. Public schools reflect the communities that they serve; all the problems and concerns found in a school's surrounding communities can reliably be found in the school as well. Students and faculty alike are at risk on campus as public schools are frequently the site of crime, including violent crime.⁸ Though rates of violence and victimization have fallen since the early 1990s (due, at least in part, to the adoption of safety strategies like the placement of SROs in schools⁹), incidents of violence and crime

⁸ The federal government responded to the unfortunate but undeniable reality of increased violence in schools through a new designation in the 2004 amendments to the Elementary and Secondary Education Act: the "persistently dangerous school." 20 U.S.C. § 7912 (2012). States were directed to develop criteria, such as number of weapons seized, number of reported assaults, number of homicides, student surveys, indicia of gang presence, and physical fights on school grounds. See U.S. DEP'T OF EDUC., UNSAFE SCHOOL CHOICE OPTION NON-REGULATORY GUIDANCE, sections B-4, B-6, (2004). States were

at schools remain concerning. NAT'L CTR. FOR EDUC.
STATISTICS, I

recent year for which statistics are available), 16.6 percent of children nationwide carried a weapon on to school property at least one day in the month before the survey – and 5.1 percent carried a gun; 7.4 percent were threatened or injured with a weapon on school property during the 12 months before the survey; 5.1 percent drank alcohol and 5.9 percent used marijuana on school property at least once in the month before the survey; 25.6 percent were offered, sold, or were given illegal drugs on school property in the year before the survey; 20.1 percent were bullied on school property in the year before the survey; 12 percent were in a physical fight on school property during the year before the survey; 5.9 percent did not go to school at least one day in the month before the survey because they felt it was unsafe to be at school or to travel to and from school; and 26.1 percent had their property stolen or deliberately damaged at least once in the year before the survey. Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Human Services, *Youth Risk*

The Kentucky Supreme Court has mischaracterized the role of the SRO in today's public schools, ignored a long line of judicial decisions regarding the role of school administrators and the use of *Miranda* warnings in a school context, and issued a decision that forgets that school safety is not a given and must be actively safeguarded. By requiring *Miranda* warnings to be given to students who are in the mere presence of an SRO when being questioned about suspected, potential criminal activity, the Kentucky Supreme Court has undermined the safety of students, school staff, and the community at large. The vast majority of American children spend a significant portion of their time at a public school. They deserve to learn and grow in a safe, secure environment. The Kentucky Supreme Court's decision undermines this central mission of public education—to provide that environment and (1 0 0 1 200.481(safe,)1 0 0)4(onment)-91(atmp)5(r(p)4(end)sne

Respectfully Submitted,

Neeru Gupta*
D. Glenn Brock
Suzann Wilcox Jiles
Kathryn L. Ams
Brandon O. Moulard
Samantha P. Smith
Nelson Mullins Riley &
Scarborough, LLP
201 17th Street NW
Suite 1700
Atlanta, GA 30363
(404) 322-6109

Arthur L. Coleman
Teresa E. Taylor
EducationCounsel LLC
101 Constitution Ave., NW
Suite 900
Washington, D.C. 20001
(202) 545-2912

David A. Baird
Teresa T. Combs
Kentucky School
Boards Association
260 Democrat Drive
Frankfort, KY 40601
(502) 783-1018

Francisco M. Negrón, Jr.
Naomi E. Gittins
National School
Boards Association
1680 Duke Street
Alexandria, VA 22314
(703) 838-6722

*Counsel of Record

August 28, 2013