

NO. 384A14

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

	)	
RICHARDSON, et al.,	)	
	)	
PLAINTIFFS-APPELLEES,	)	
v.	)	<u>From WAKE County</u>
	)	13-CVS-16484
	)	COA 14675
	)	
STATE OF NORTH CAROLINA, et al.,	)	
	)	
DEFENDANTS,	)	
	)	
AND	)	
	)	
PERRY, ET AL.,	)	
	)	
DEFENDANT-INTERVENOR-	)	
APPELLANTS	)	
	)	
	)	

BRIEF OF AMICUS CURIAE
NATIONAL SCHOOL BOARDS ASSOCIATION

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TENTH DISTRICT

From WAKE County
13-CVS-16484
COA 14675

INTEREST OF THE *AMICUS*

The National School Boards Association ("NSBA") is a nonprofit organization representing state associations of school boards, and the Board of Education of the U.S. Virgin Islands. Through its member state associations, NSBA represents over 90,000 school board members who govern approximately 13,800 local school districts serving nearly 50 million public school students. NSBA regularly represents its members' interests before Congress and federal and state

STATEMENT OF FACTS

Amicusadopts the Statement of the Facts of the citizen and school board plaintiffs.

STATEMENT OF ISSUES

Whether the statute authorizing the use of public funds to provide vouchers to low income students to attend private schools, including sectarian schools, on which the State has imposed no minimum curricular or teacher qualification standards is prohibited by the North Carolina constitution? N.C. Const. Arts. I, § 15; V, § 2(1); IX, § 2.

can enroll their child in a new private school with the capacity to provide a quality education, at their own expense; leave the child in a private setting that provides deficient educational services; or enroll the child in public school, having lost precious educational time. The possibility of such harm is substantial given that many private schools lack sufficient qualified/certified staff and other resources. The experience with voucher programs in other states ~~by~~² well establishes that certain students are especially at risk, including children with physical, mental, and emotional challenges and those with limited English proficiency.

The North Carolina Voucher Program allows public funds to be used to enroll a child in a private school, the quality of which is unknown to the parents, taxpayers and the state³. Despite this lack of oversight, voucher programs like North

² See, e.g. Scott S. Greenberger, Voucher Lessons Learned THE BOSTON GLOBE, February 26, 2001, at A1; Julie Mead, Publicly Funded School Choice Options in Milwaukee: An Examination of the Legal Issues RESEARCH BRIEF NO. 9 (Public Policy Forum, Milwaukee, WI) 1 (July 21, 2000); Barbara Minerva, Vouchers: Special Ed Students Need Not Apply, RETHINKING SCHOOLS (Public Policy Forum, Milwaukee, WI) (Winter 2003), available at http://www.rethinkingschool.org/special_reports/voucher_report/voucher182.shtml; Tom Held, School choice program shuts out disabled, federal complaint says JOURNAL SENTINEL, June 7, 2011, available at <http://www.jsonline.com/news/education/123374903.html>

³ Private schools must annually maintain attendance and disease immunization records for students, administer self-selected nationally standardized tests, and comply with fire, safety, sanitation and immunization laws but are otherwise exempt from state laws regarding education. N.C. GEN. STAT. §§ 115C554 and

Carolina's funnel millions of dollars in taxpayer funds to private institutions with no assurance that the State or its citizens will get any return on their investment. The North Carolina Voucher Program does not contain any mechanism for the state to recoup money from private schools that expel or otherwise fail to educate voucher students. Therefore, in addition to funneling money to these schools, the Voucher Program provides no recompense to anyone if the school fails to meet its obligations. In contrast, states regulate every aspect of traditional public schools, from curriculum to procurement to assessment, to assure the responsible use of public money and the adequate education of its students. Voucher programs abandon these safeguards and, in so doing, abandon any sincere effort to assure that the publicly funded education provided by schools receiving vouchers actually meets public needs.

In an effort to assuage such concerns, voucher proponents contend that research overwhelmingly shows that voucher programs uniformly improve student performance. Research on the aggregate effect of voucher programs shows most voucher students do no better than public school students. In fact, when comparing students with similar socioeconomic status, research shows that public school

Independent Schools or receives no funding from the State of North Carolina (the "scholarship" funds at issue here are not considered state funding for this purpose). N.C. GEN. STAT. § 115G555.

students outperform their private school counterparts.⁴ In a synthesis of research on the efficacy of voucher programs, the Center on Education Policy concluded that “[a]chievement gains for voucher students are similar to those of their public school peers. . . . While some studies have found limited test score gains for voucher students in certain subject areas or grade levels, these findings are inconsistent among studies, and the gains are either not statistically significant, not clearly caused by vouchers, or not sustained in the long run.”⁵ As to the assertion that voucher programs spur public schools to improve, the CEP report stated that no clear conclusions about cause and effect can be drawn.⁶ Even if the voucher proponents’ characterization of the research accurately portrayed the aggregate effect of voucher programs in general, it reveals little about the likelihood that the North Carolina Voucher Program will produce a similar positive outcome and even less about the educational benefits that any particular private school in North Carolina will provide to a child.

II. The North Carolina Voucher Program Harms Public Education.

A. The North Carolina Voucher Program undermines the significant role of public education in America.

Public education plays a critical role in American society. The judiciary's recognition of that role was forcefully expressed by the United States Supreme Court in *Brown v. Board of Education*

Today, education is perhaps the most important function ~~of state~~ local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is the principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust ~~to~~ normally to his environment.

347 U.S. 483, 493 (1954). The Brown Court's emphasis was not on education in general, regardless of source, but on education ~~function~~ of state and local government, i.e., as a public responsibility serving the public

These same themes have echoed throughout school law jurisprudence. For instance, the High Court has concluded that "public school teachers may be regarded as performing a task 'that [goes] to the heart of representative government'" and that public schools "are an 'assimilative force' by which diverse and conflicting elements in our society are brought together on a broad but common ground." *Ambach v. Norwick*, 441 U.S. 68, 756 (1979) (quoting *Sugarman v. Douglass*, 413 U.S. 634, 647 n.6 (1973)); see also, e.g., *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 681

(1986) (internal citations omitted) (“[Public] education must prepare pupils for citizenship in the Republic.... It must inculcate the habits and manners of civility as values. . . indispensable to the practice of self-government in the community and the nation.”); Plyler v. Doe

71, 91 (Wash. 1978) concluding that “the constitution has created a ‘duty’ that is supreme, preeminent or dominant” to provide an adequate education with “sufficient funds”).⁷

Likewise, this Court has recognized North Carolina students’ constitutional right to an opportunity to receive a sound basic education. *Beandro v. State of N.C.* 346 N.C. 336, 351, 488 S.E.2d 249, 257 (1997). The North Carolina Voucher Program fails to meet the state’s constitutional obligations. Providing taxpayer funds to private schools without making any effort to hold those private schools accountable for meeting state standards contravenes the public’s interest in funding an adequate education for all students.

B.

schools, the voucher scheme constitutes a severe threat to the quality of public education programs.

The impact of this diversion is amplified in North Carolina where public schools have been underfunded for years, and the 2008 recession forced further reductions in education funding. North Carolina has consistently ranked near the bottom in per pupil spending. In 2010 (the latest year for which data are available), North Carolina ranked 43rd. See U.S. CENSUS BUREAU, G10-ASPEF, PUBLIC EDUCATION FINANCES: 2010 Table 11 (June 2012), <http://www.census.gov/prod/2012pubs/g10-aspef.pdf>. Although overall funding has increased by \$60 million since 2008, restoring a portion of the recessionary cuts, “the funding available for classroom activities (text books, transportation, teacher assistants, teachers’ salaries) has been reduced by over \$1 billion.” In addition, funding for classroom materials and instructional supplies has been cut by nearly 47% since fiscal year 2008.⁸ By 2013-2014 state per pupil funding in North Carolina public schools, adjusted for inflation, remained 8.6% less than in 2008. See M. Leachman and C. Ma, Most States Funding Schools Less than Before the Recession (Center on Budget and Policy Priorities, May 2014), <http://www.cbpp.org/files/9-12-13sfp.pdf>. North Carolina is not alone. For fiscal year 2014, at least five states provided less

⁸ Quick Facts: 2013-2015 State Budget Impact (Public School First NC, Sept. 22, 2014), available at <http://www.publicschoolsfirstnc.org/wp-content/uploads/2013/09/13-14-The-Impact-of-the-2013-15-State-Budget.pdf>.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing pursuant to Rule 26(c) by electronic mail addressed to the following persons at the following addresses, which are the last email addresses known to me:

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