

SUPREME COURT OF NORTH CAROLINA

HOKE COUNTY BOARD OF
EDUCATION, *et al.*,

Plaintiffs,

And

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION, *et al.*,

Plaintiff-Intervenors,

v.

STATE OF NORTH CAROLINA and
STATE BOARD OF EDUCATION,

Defendants.

From Wake County

MOTION FOR LEAVE TO FILE NEW BRIEF AS AMICI CURIAE
ADVOCATES FOR CHILDREN’S SERVICES OF LEGAL AID OF NORTH
CAROLINA; AMERICAN CIVIL LIBERTIES UNION OF NORTH
CAROLINA LEGAL FOUNDATION; CHILDREN’S LAW CENTER OF
CENTRAL NORTH CAROLINA; CHILDREN’S LAW CLINIC AT DUKE
LAW SCHOOL; COUNCIL FOR CHILDREN’S RIGHTS; DISABILITY
RIGHTS NORTH CAROLINA; NORTH CAROLINA CENTRAL
UNIVERSITY SCHOOL OF LAW CIVIL LITIGATION CLINIC; NORTH
CAROLINA JUSTICE CENTER; NORTH CAROLINA RURAL
EDUCATION WORKING GROUP; SOUTHERN COALITION FOR
SOCIAL JUSTICE; AND UNC CENTER ON POVERTY, WORK AND
OPPORTUNITY

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

Pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, the following organizations, *Advocates for Children's Services of Legal Aid of North Carolina; American Civil Liberties Union of North Carolina Legal Foundation; Children's Law Center of Central North Carolina; Children's Law Clinic at Duke Law School; Council for Children's Rights; Disability Rights North Carolina; North Carolina Central University School of Law Civil Litigation Clinic; North Carolina Justice Center; North Carolina Rural Education Working Group; Southern Coalition for Social Justice; and UNC Center on Poverty, Work and Opportunity*, hereby move this Court for leave to file an *amici curiae* brief in support of the Appellees. The proposed brief is being filed conditionally herewith. In support of their motion, proposed *amici* respectfully show the following:

I. NATURE OF AMICI INTEREST

The interests of proposed *amici* in this case are summarized as follows:

1. **Advocates for Children's Services** ("ACS") is a specialized project of Legal Aid of North Carolina, which is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity. ACS represents children from low-wealth families, with a particular focus on ensuring that at-risk children are provided their constitutional right to the opportunity to

obtain a sound basic education, a right at the core of our State's constitutional democracy. ACS, therefore, has a strong interest in the provision of high-quality pre-kindergarten to at-risk prospective enrollees, who may be unable to access their fundamental right to education without it.

2. **The American Civil Liberties Union of North Carolina Legal Foundation** (“ACLU-NCLF”) is a statewide, nonprofit, nonpartisan organization with approximately 10,000 members dedicated to defending the constitutional rights of all North Carolinians through educational programs, public statements, opinion letters to public officials, and litigation. ACLU-NCLF is deeply devoted to the protection and enhancement of fundamental rights under the state and federal constitutions, including the state constitutional right to a sound basic education. ACLU-NCLF has filed numerous *amicus curiae* briefs in students’ rights cases throughout the state.

3. **The Children's Law Center of Central North Carolina** (“CLC”) is a nonprofit located in Forsyth County. The mission of the CLC is to provide children with quality legal advocacy focusing on domestic violence issues, high conflict custody cases, and ensuring access to education. CLC’s ultimate goal is to enable children to grow up in safe environments and to become emotionally healthy adults. The CLC is committed to this Court’s decision that all children,

particularly at-risk children, are entitled to the opportunity to obtain a sound basic education.

4. **The Children's Law Clinic at Duke Law School** is a clinical education program that functions as a community law office specializing in legal issues related to children, particularly issues involving the education and disability rights of low-income and at-risk children. The Clinic advocates enhancing educational opportunities by enforcing the statutory and constitutional rights of children in North Carolina. Representing children at all levels of their educational journeys, the Clinic is persuaded by its experience that an enriched early childhood and preschool experience is an absolute prerequisite for at-risk children to obtain a sound basic education.

5. **The Civil Litigation Clinic at North Carolina Central University School of Law** ("The Clinic") provides free civil legal services to low-income families, children, and adults who live in or near the clinic's location in Durham, NC. The Clinic accepts a variety of civil cases, including education cases. Without the assistance of the Clinic's law students, the low-income children and families served are unlikely to have legal representation when addressing their legal problems. By affording low-income clients with legal assistance, students involved in the Clinic witness first-hand the barriers faced by families living in

poverty. North Carolina's commitment to ensuring the opportunity to obtain a sound basic education is of paramount importance to overcoming these barriers.

6. **Council for Children's Rights** ("the Council") is Charlotte-Mecklenburg's leading advocate for children. The Council's mission is to stand up for every child's right to be safe, healthy, and educated. For children who are in immediate need, the Council intervenes on behalf of children, provides attorneys and advocates to protect the rights and interests of children who find themselves in court in the midst of a custody decision or other judicial action, and connects children and their families with agencies and institutions that can help when these children and families need special services. The Council represents children in a variety of educational contexts, and is committed to ensuring that all children, particularly at-risk children, are provided their constitutional right to a sound basic education.

7. **Disability Rights North Carolina** ("Disability Rights NC") is the state-designated Protection and Advocacy System authorized under federal law to protect and advocate for the rights of individuals with a mental illness or developmental disability. Disability Rights NC represents students who are illegally excluded from public schools because of their disabilities and unidentified special education needs. In recent years, the legal staff has assisted hundreds of at-risk students with disabilities. Disability Rights NC is committed to eliminating

achievement gaps before they arise, and to keeping at-risk students with disabilities in school to ensure their access to a sound basic education.

8. **The North Carolina Justice Center** (“Justice Center”) is a nonprofit, state-wide legal advocacy organization. The mission of the Justice Center is to secure social justice for disadvantaged individuals, children, and communities. The Justice Center is recognized as a forceful advocate for low-income North Carolinians, with a particular expertise in education policy. The Justice Center has conducted extensive research, authored publications, and has been engaged in advocacy and outreach on the importance of early childhood education. The Justice Center has advocated for the expansion of early childhood educational programs as a critical component of providing at-risk children the opportunity to obtain a sound basic education.

9. **The North Carolina Rural Education Working Group** (“The Group”) is a proactive, regional network that advocates and strengthens public policy for rural schools and communities, with a particular emphasis on underserved, neglected, and vulnerable youth. The Rural Education Working Group focuses on finding solutions to problems in rural communities that threaten the provision of a fair and equitable education for all students. The Group has built a strong support network for parents, students, and educators in rural schools to address issues in their communities. The Group has organized communities in

support of legislation that will enable North Carolina's rural students to access a constitutionally-adequate education.

10. **The Southern Coalition for Social Justice** ("SCSJ") is a nonprofit public-interest law organization that represents racial minority and low-income communities in the southern United States. SCSJ has advocated for eliminating the achievement gap in education, which contributes to the increasing economic inequality in America. The achievement gap is also directly related to providing equal access to meaningful employment, implementing fair housing policies, and eliminating criminal justice system disparities. Pre-kindergarten education is critical to closing the achievement gap for students and to reducing the systemic inequality that SCSJ fights to eradicate.

11. **The UNC Center on Poverty, Work and Opportunity** is a non-partisan, interdisciplinary institute designed to study, examine, document, and advocate for proposals, policies, and services to mitigate poverty in North Carolina and the nation. The UNC Center on Poverty is deeply committed to addressing the needs of individuals -- including children -- living in poverty, and to providing a forum to examine innovative and practical ideas to move individuals out of poverty. Educational attainment is a critical component to helping North Carolinians lift themselves out of economic distress.

II. REASONS WHY AN AMICI CURIAE BRIEF IS DESIRABLE

12. *Amici* briefing is desirable because this case presents public policy issues of widespread importance to North Carolina's children and the future of North Carolina's public education system. The Court will be asked to address the scope of the trial court's order and the trial court's authority to order remedial relief when faced with the State's failure to fulfill its constitutional obligation to provide every child in North Carolina with the opportunity to obtain a sound basic education. At issue in the case is the critical need for the State's high-quality pre-kindergarten program for at-risk children and the State's duty under the North Carolina Constitution to ensure the opportunity for all at-risk children to participate in this program.

13. The eleven organizations that join in this *amici* motion are very familiar with the issues presented in this case and with the scope of the parties' presentation of the issues. Many of the *amici* parties have been involved in the *Leandro* case since its inception, having submitted many prior *amici* briefs to the trial court and to the appellate courts, including to the Court of Appeals in 2012. These *amici* parties possess a unique level of knowledge and understanding of this case and the State's constitutional obligation to provide a sound basic education to all at-risk students. Collectively, *amici* have a lengthy history and combined experience of representing and/or advocating for at-risk children, as well as

substantial research and community outreach expertise involving at-risk children and education policy in general.

14. The *amici* parties are well-informed about the decades of scientific research establishing that at-risk children require high-quality pre-kindergarten programs in order to avail themselves of an adequate education. *Amici* are well-versed in national early childhood educational research, evaluations of effective educational interventions for at-risk students, and the efficacy of North Carolina's pre-kindergarten program. The proposed brief discusses this social science research and how it relates to the State's obligation to provide its chosen remedy, a high-quality pre-kindergarten program, to all at-risk children in the state.

III. QUESTIONS OF LAW ADDRESSED BY *AMICI* AND *AMICI'S* POSITION ON THESE ISSUES

15. Movants propose to submit their brief on the following questions of law:

- **Is Pre-Kindergarten, The State's Chosen Remedy For The Constitutional Violation Found To Have Occurred, A Proven, Effective, *Leandro II*-Conforming Remedy?**
- **Did The Trial Court Have The Constitutional Authority And Duty To Order Remedial Relief After The State Refused To Fulfill Its Constitutional Obligation To Provide Every Child In The State With The Opportunity To Obtain A Sound Basic Education?**

- **Does The Constitutional Right To A Sound Basic Education Include Additional Assistance For All At-Risk Prospective Enrollees In The State?**

16. Pre-kindergarten services are amongst the most educationally-sound, empirically-proven, and cost-effective means of providing at-risk children the constitutionally-guaranteed opportunity to obtain a sound basic education. The efficacy of high-quality pre-kindergarten for at-risk children is clearly established by extensive research on the value of early childhood education programming. Such programs help close early achievement gaps and enable at-risk children to succeed in school and in life. The State's choice of pre-kindergarten is a proven, effective, *Leandro II*-conforming remedy for the constitutional violation found to have occurred, and the remedy ordered by the trial court should be upheld by this Court.

17. The brief draws on this Court's decisions in *Leandro v. State*, 346 N.C. 336, 488 S.E.2d 249 (1997) ("*Leandro I*") and *Hoke County Bd. of Educ. v. State*, 358 N.C. 605, 599 S.E.2d 365 (2004) ("*Leandro II*"), as well as U.S. Supreme Court decisions from the school desegregation context, in taking the position that the trial court had the duty and the authority to order remedial relief when faced with constitutional violations that a recalcitrant branch of state government refused to remedy on its own. This brief argues that the trial court

acted within the scope of its authority in ordering pre-kindergarten services for all eligible, at-risk prospective enrollees as the remedy for the constitutional violation found to have occurred.

18. The brief also relies on this Court's decisions in *Leandro I* and *Leandro II* to argue that the constitutional right to the opportunity to obtain a sound basic education applies to all children in the state, irrespective of whether they reside in Hoke County or another school district. Based on this Court's decisions in *Leandro I* and *Leandro II*, the brief argues that the State cannot arbitrarily deny this constitutional right to certain at-risk prospective enrollees.

19. The proposed *amici* parties respectfully request that this Court grant leave to file an *amici* brief in support of Appellees in this case. In their conditionally-filed brief, filed contemporaneously herewith, *amici* argue that pre-kindergarten is a proven, effective remedy, and the trial court had the duty and authority to order remedial relief to all children in North Carolina after the legislature failed to fulfill its constitutional obligation to provide every child in the state with the opportunity to obtain a sound basic education.

Respectfully submitted this 24th day of July 2013.

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**Pursuant to N.C. R. App. P. 33(b),
I, Christine Bischoff, certify that the
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to list their names on this document as if
they had personally signed.**

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she served a copy of the foregoing on all counsel and parties of record by depositing a copy, contained in a first-class envelope, postage pre-paid, into a depository under the exclusive care and custody of the United States Postal Service, addressed as follows:

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This the 24th day of July, 2013.

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