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Defendants.

[illegible]

From Wake County

STATE-APPELLANT’S  
CONDITIONAL MOTION  
FOR LEAVE TO FILE A REPLY BRIEF

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Defendant-Appellant, the State of North Carolina, hereby conditionally moves the Court pursuant to Rules 28(h)(4) and 37 of the North Carolina Rules of Appellate Procedure for leave to file a reply brief. In support of this Conditional Motion, the State shows the Court:

1. In an Order entered on 8 March 2013, the Court allowed the State's petition for discretionary review of the decision of the North Carolina Court of Appeals in this matter. The New Brief for the State-Appellant was filed electronically on 20 May 2013. On 24 July 2013, four Appellee Briefs were filed in this case, along with four *amicus* briefs in support of the Appellees.

2. Rule 28(h) of the North Carolina Rules of Appellate Procedure governs the filing of a reply brief. An "Order Adopting Amendments to the North Carolina Rules of Appellate Procedure" was entered by the Court on 28 February 2013. In addition to various other changes, Rule 28(h) was rewritten to provide that "[w]ithin fourteen days after an appellee's brief has been served on an appellant, the appellant may file and serve a reply brief." The Order provides that "[t]hese amendments to the North Carolina Rules of Appellate Procedure shall be effective 15 April 2013."

3. The State prepared and electronically filed a Reply Brief in this case on 12 August 2013 in conformity with the amended Rule 28(h). The Clerk's office subsequently notified counsel for the Appellant that a Motion seeking leave to file a reply brief may be necessary because the provisions of the amended Rule 28(h) would apply only to cases in which the Notice of Appeal was filed after 15 April 2013, the effective date of the amendment.

4. The State urges the Court to declare the “State-Appellant’s Reply Brief” that was filed and served on 12 August 2013 timely and proper under the terms of Rule 28(h) as amended effective 15 April 2013. Such a ruling would render moot the State’s Conditional Motion for Leave to File a Reply Brief.

5. Alternatively, if this matter is not governed by the terms of Rule 28(h) as amended, the State respectfully submits this Conditional Motion for Leave to File a Reply Brief under the terms of Rule 28(h)(4) as it existed prior to the recently adopted amendment.

6. Former Rule 28(h)(4) provides that, within fourteen days after service of notification that a case has been scheduled for oral argument, an appellant may file and serve a motion for leave to file a Reply Brief, and additionally that the proposed reply brief may be submitted with such motion.

7. The State believes that it would be beneficial for its position on the various arguments and issues set forth in the Appelles’ briefs to be available for consideration as the Court prepares to decide the important constitutional issues presented in this case. The State’s proposed Reply Brief addresses issues arising from the briefs of the Appellees and their *amici* including whether the Court of Appeals erroneously affirmed the trial court’s order mandating the provision of pre-kindergarten services

on a state-wide basis, as well as additional matters regarding the Court's review of the decision of the Court of Appeals for other errors of law.

WHEREFORE, the Defendant-Appellant respectfully requests that this Court grant the State's request for relief by either accepting for filing the previously submitted "State-Appellant's Reply Brief" pursuant to Rule 28(h) of the North Carolina Rules of Appellate Procedure as amended effective 15 April 2013 or, alternatively, by allowing the State's Conditional Motion and thereby accept for filing the "State-Appellant's Reply Brief" pursuant to Rule 28(h)(4) of the North Carolina Rules of Appellate Procedure.

Respectfully submitted, this the 14<sup>th</sup> day of August, 2013.

ROY COOPER  
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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **STATE-APPELLANT'S CONDITIONAL MOTION TO FILE A REPLY BRIEF** upon all other parties to this cause by:

- [X] Transmitting a copy hereof to each said party via email transmittal; and
- [X] Depositing a copy hereof, first class postage pre-paid in the United States mail, properly addressed to:

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Further, the undersigned has this day served the foregoing **STATE-APPELLANT'S CONDITIONAL MOTION TO FILE A REPLY BRIEF** upon amici in this cause by:

[X] Transmitting a copy hereof to each said amici via email transmittal.

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This the 14<sup>th</sup> day of August, 2013.

Electronically Submitted

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