

No. 425A21-2

TENTH DISTRICT

SUPREME COURT OF NORTH CAROLINA

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

and

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,
Plaintiff Intervenor,

and

RAFAEL PENN, et al.,
Plaintiff Intervenors,

v.

STATE OF NORTH CAROLINA,
Defendant,

and

STATE BOARD OF EDUCATION,
Defendant,

and

CHARLOTTE-MECKLENBURG
BOARD OF EDUCATION,
Realigned Defendant,

From Wake County
No. 95 CVS 1158

and

PHILIP E. BERGER, in his official
capacity as President *Pro Tempore* of
the North Carolina Senate, and

TIMOTHY K. MOORE, in his official
capacity as Speaker of the North
Carolina House of Representatives,
Intervenor Defendants.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

TO THE HONORABLE SUPREME COURT OF NORTH CAROLINA:

The undersigned *amici curiae* respectfully move the Court, pursuant to Rule 28(i) of the North Carolina Rules of Appellate Procedure, for leave to file an *amicus curiae* brief in support of the arguments advanced by Plaintiffs and Plaintiff Intervenor in their roles as appellees. The proposed *amici* are conditionally filing their *amici curiae* brief contemporaneously with this motion.¹ The proposed *amici*

¹ Pursuant to Rule 37(c) of the North Carolina Rules of Appellate Procedure, the undersigned counsel have informed the parties to this litigation of their intended filing of this motion, and counsel for the Plaintiffs, all Plaintiff Intervenor, Defendant the State of North

timely file this motion within the time allowed for Plaintiffs and Plaintiff Intervenor to file their appellees' briefs.

In support of their motion, the proposed *amici* set forth below the nature of their interest, the reasons why the brief is desirable, the issues of law to be addressed in the brief, and the position of *amici curiae* on those issues.

NATURE OF *AMICI CURIAE*'S INTEREST

The *amici* submitting this brief are recognized leaders in the North Carolina business community, all of whom have dedicated their professional efforts to building and serving enterprises that contribute to our state's economic progress and stability. *Amici* are attentive to the impact of a sound basic education on the future of the North Carolina's youth and our state economy. In particular, *amici* are concerned that failure to improve public schools will negatively affect our students' ability to thrive in the workplace—and by extension our collective economic condition. *Amici* also rely on quality education so that they can draw from a skilled and talented local work force to support their

Carolina, Defendant the State Board of Education, and Intervenor Defendants Berger and Moore consented.

business efforts. Improving education in the state is vital for *amici* and businesses who seek to maintain and grow their business interests in North Carolina.

The full list of business leaders submitting this brief as *amici* is attached as Exhibit A.

REASONS WHY AN *AMICUS* BRIEF IS DESIRABLE

Given their experience as business leaders in the state, *amici* have a particular interest in and understanding of the way that improved education will affect our economy and the future of business in North Carolina. Much of the discourse concerning the *Leandro* litigation has focused on the broad, general societal benefits of improved public education. Receiving far less attention are the attendant economic benefits, benefits that run throughout our citizens' lives. *Amici* seek to bring their expertise to bear on this topic through a brief focused on the importance of quality education to the health and growth of our state economy.

ISSUES OF LAW TO BE ADDRESSED IN THE *AMICUS* BRIEF

If permitted to participate in this matter, *amici* will present argument concerning the correct legal interpretation of the education

provisions of the North Carolina Constitution. In particular, *amici* will address the framers' intent to preserve the right to a sound basic education in part to ensure economic prosperity for individual students and the state as a whole. *See Perry v. Stancil*, 237 N.C. 442, 444, (1953) (to determine the intent of the framers, and thus the correct interpretation of a constitutional provision, the Court must consider the "history [and] general spirit of the times" existing when the provision was adopted), *abrogation on other grounds recognized by Forsyth Memorial Hosp., Inc. v. Chisolm*, 342 N.C. 616, 620 (1996).

The brief will also discuss the undeniable link between improved educational opportunities and economic prosperity. It will further highlight the overwhelming consensus within our state government and among social scientists concerning the impact of quality education on improved economic outcomes. In light of the history and empirical data linking quality education with improved financial conditions, *amici* will argue that the remedy ordered by the trial court was the practical and constitutionally appropriate means for the State to guard and maintain the fundamental right to a sound basic education as interpreted by the Court's prior decisions and mandated by the Constitution.

POSITION OF *AMICI* ON ISSUES OF LAW

Amici contend that the history surrounding adoption of the key constitutional provisions shows that the framers secured the right to a sound basic education in part because of the importance it holds for the development of a robust economy that benefits all citizens. This understanding of the constitution is reinforced by interpretations by all three branches of the North Carolina government. The proposition that quality education is essential for a healthy economy is confirmed by social science research.

The Comprehensive Remedial Plan represents the trial court's efforts to enforce the right to a sound basic education by preparing a plan of action necessary to satisfy the State's obligation to every child in North Carolina. (R p 2134). This plan is more than appropriate at this time; it is necessary to bring our educational services up to the standard required by our State Constitution. (R p 2134). Our students need these improvements so that they can thrive and compete in a modern society and economy that demands more specialized skills. As a state, we need our students to realize these benefits so that we can collectively achieve the economic success that comes from adequate education.

Providing funding sufficient to implement the Comprehensive Remedial Plan is essential for moving our economy forward.

CONCLUSION

For the foregoing reasons, *amici* respectfully request that the Court grant them leave to file the accompanying *amici curiae* brief in this matter.

Respectfully submitted this 27th day of July, 2022.

Electronically Submitted

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N.C. R. App. P. 33(b) Certification: I certify that all the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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Business Leaders*

EXHIBIT A

Listed below, in alphabetical order, are the North Carolina Business Leaders who submit this brief as *amici curiae*.

Adam Abram

Chairman, James River Group Holdings, Ltd.

Sepi Asefnia

President & CEO, Sepi Engineering, Inc.
Chair, NC Chamber

James Babb

Former President & CEO, Jefferson Pilot Communications

Rye Barcott

Managing Partner and Co-Founder, Double Time Capital

Ronald J. Bernstein

Retired CEO, Liggett Vector Brands

Crandall Bowles

Former Chair & CEO, Springs Industries

Erskine Bowles

Co-Founder, Carousel Capital
President Emeritus, University of North Carolina

Thomas W. Bradshaw, Jr.

Retired Managing Director, Citigroup
Former Chair, NC Citizens for Business & Industry (now NC Chamber)
Former Chair, Raleigh Chamber of Commerce
Former Chair, Public School Forum of North Carolina

John R. Bratton

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Samuel T. Bratton

CEO and President, Wake Stone Corporation

Theodore D. Bratton

Chairman, Wake Stone Corporation

Jack Clayton

President of Business Strategy, TowneBank

Sue W. Cole

Managing Partner, Sage Leadership & Strategy, LLC

Former Mid-Atlantic CEO, U.S. Trust Company

Sandra Wilcox Conway

Former Manager, Excellence in Education, The First Union Foundation

Peter Conway

Founder (Retired), Trinity Partners

John Cooper

Chair, Mast General Store

Don Curtis

Founder & CEO, Curtis Media Group

Richard L. “Dick” Daugherty

Former Vice President & Senior North Carolina Executive, IBM

Former Chair, NC Citizens for Business & Industry (now NC Chamber)

Emeritus Board of Directors, Research Triangle Park

Charter Board of Directors, Public School Forum of North Carolina

Bert Davis

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James M. Deal, Jr.

Former Chair, Watauga County Board of Education

Former Chair, Watauga Board of County Commissioners

Former Chair, Board of Trustees, Appalachian State University

Clay Dunnagan

Founder and Manager, Anchor Capital

John Ellison, Jr.

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Frank E. Emory Jr.

EVP, Chief Administrative Officer, Novant Health

Ken Eudy

Founder and Former CEO, Capstrat

Jim Fain

Retired Bank Executive

Former Secretary, North Carolina Department of Commerce

Anthony Foxx

Former Mayor of Charlotte

Former US Transportation Secretary

Paul Fulton

Former President, Sara Lee Corporation

Former Dean, Kenan-Flagler Business School

Chairman Emeritus, Bassett Furniture Industries

Founder and Chair, Higher Education Works

Hannah Gage

Former Owner, Cape Fear Broadcasting Company

Former Chair, UNC Board of Governors

Alston Gardner

Managing Director, DGI Capital, LLC

Patti Gillenwater

President and CEO, Elinvar Leadership Solutions

James F. Goodmon

Chair & CEO, Capitol Broadcasting Company

James and Ann Goodnight

SAS Institute

Greg Hatem

Founder & CEO, Empire Properties and Empire Eats

Barnes Hauptfuhrer

Former CEO, Chapter IV Investors, LLC

Former Co-Head, Corporate & Investment Banking, Wachovia Corp.

Melody Riley Johnson

Director, Strategic Accounts, Johnson & Johnson Medical Devices

Steven J. Levitas

Senior Vice President, Pinegate Renewables

Elizabeth Martin

Producer, Wild Violet Media, LLC

Easter A. Maynard

Board Chair, Golden Corral Corporation

James H. Maynard

Board Chair/Founder, Investors Management Corporation

Founder, Golden Corral Corporation

Hugh L. McColl, Jr.

Former Chair & CEO, Bank of America

Dr. Bill McNeal

Author (with Tom Oxholm): *A School District's Journey to Excellence:
Lessons From Business and Education*

Former Superintendent, Wake County Schools

National Superintendent of the Year

Carlton Midyette
Venture Capital Investor

Thomas B. Oxholm
Executive Vice President, Wake Stone Corporation
Former member, Wake County Board of Education
Author (with Dr. Bill McNeal): *A School District's Journey to Excellence:
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Former President & Publisher, The News & Observer
Co-Founder, Journalism Funding Project

Thomas W. Ross
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Retired Superior Court Judge

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Founder and CEO, Wood Pile LLC

Sherwood Smith
Former Chair, NC Citizens for Business & Industry (now NC Chamber)
Former Chair, Triangle Universities Center for Advanced Studies, RTP
Charter Board Member, Public School Forum of North Carolina

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Retired Business Executive

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CERTIFICATE OF SERVICE

Pursuant to Rule 26 of the North Carolina Rules of Appellate Procedure, I hereby certify that the foregoing Motion for Leave to File Brief as *Amici Curiae* has been filed with the Clerk of the North Carolina Supreme Court by electronic submission. I further certify that a copy of this document has been duly served upon the following by email:

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This the 27th day of July, 2022.

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