
CHARLOTTE-MECKLENBURG BOARD OF
EDUCATION.

From Wake County

INTRODUCTION

This Court should deny Legislative Leaders' renewed motion for leave to brief additional issues and their petition for writ of certiorari. The motion is nearly identical to one that this Court denied last Friday. It should be denied for the same reasons the State gave previously. In short, the motion is an attempt to circumvent the appellate rules governing rehearing petitions and asks this Court to order briefing on issues that this Court already resolved.

Additionally, because this Court's March 3, 2023 Order reinstating the Writ of Prohibition further delays compliance with the North Carolina Constitution, the Court should act swiftly to resolve any outstanding appellate issues related to the writ. To that end, the State respectfully requests that the Court identify any such issues and set an expeditious briefing and argument schedule.¹

I. The Court Should Deny Legislative Leaders' Renewed Motion.

Legislative Leaders' renewed motion is defective for the same reasons the last one was. As the State previously explained, the motion is an untimely request to rehear *Leandro IV*. State's Resp. at 10-11, *Hoke Cnty. Bd. of Educ. v.*

¹ The State does not oppose permitting Legislative Leaders to intervene permissively in case No. 425A21-1.

State, No. 425A21-1 (N.C. Feb. 21, 2023). Moreover, the additional briefing that Legislative Leaders request is unnecessary because *Leandro IV* already definitively resolved the issues that Legislative Leaders identify. *Id.* at 13-22. For the reasons given in the State’s response to Legislative Leaders’ prior motion, this Court should deny the renewed motion.

II. This Court Should Expeditiously Resolve Any Outstanding Issues.

No matter how it rules on Legislative Leaders’ renewed motion, this Court should expeditiously resolve any outstanding issues related to the Writ of Prohibition. In its March 3, 2023 Order, this Court dissolved the stay of the Writ of Prohibition, reinstating the writ “until this Court has an opportunity to address the remaining issues in this case.” But the writ, which this Court already determined was legally erroneous, prevents the trial court from transferring the recalculated funds necessary to provide all children their constitutionally guaranteed right to a sound basic education.²

² Contrary to Legislative Leaders’ argument, these appellate proceedings do not divest the trial court of jurisdiction over this Court’s remand order in *Leandro IV*. See Mot. at 3 n.1. The writ prohibits the November 2021 Order’s transfer directive; it “does not impact the trial court’s finding that these funds are necessary.” *In re 10 Nov. 2021 Order*, No. P21-511 (N.C. Ct. App. Nov. 30, 2021).

Accordingly, the State requests that this Court identify any outstanding issues regarding the Writ of Prohibition on which the Court requires further briefing. The Court's guidance is necessary because, as the State has explained previously, *Leandro IV* appeared to resolve all of the material issues on which the Controller and Legislative Leaders seek additional briefing. State's Resp. at 13-22, *Hoke Cnty. Bd. of Educ. v. State*, No. 425A21-1 (N.C. Feb. 21, 2023).

Additionally, the State requests that the Court set an expeditious briefing schedule on any issues that it believes warrant further attention. Because the parties have already submitted extensive briefing in this litigation, and because any further briefing will relate exclusively to the writ, an extended briefing schedule is unnecessary. The State thus proposes the following timeline:

Opening briefs shall be filed **21 days** after this Court's order on Legislative Leaders' renewed motion.

Response briefs shall be filed **21 days** after the deadline for the filing of opening briefs.

Reply briefs shall be filed **10 days** after the deadline to file response briefs.

Oral Argument shall be scheduled promptly.

CONCLUSION

For the reasons stated above and in the State's prior response, the State asks this Court to deny Legislative Leaders' renewed motion and petition and order prompt briefing on any outstanding issues involving the Writ of Prohibition.

Electronically submitted this 10th day of March, 2023.

JOSHUA H. STEIN
ATTORNEY GENERAL

Electronically Submitted
Amar Majmundar
Senior Deputy Attorney General
N.C. State Bar No. 24668
Email: amajmundar@ncdoj.gov

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

Sarah G. Boyce
Deputy Attorney General and
General Counsel
N.C. State Bar No. 56896
Email: sboyce@ncdoj.gov

Ryan Y. Park
Solicitor General
N.C. State Bar No. 52521
Email: rpark@ncdoj.gov

South A. Moore
Assistant General Counsel
N.C. State Bar No. 55175
Email: smoore@ncdoj.gov

N.C. Department of Justice
P.O. Box 629
Raleigh, N.C. 27602
Phone: (919) 716-6820

Counsel for State of North Carolina

CERTIFICATE OF SERVICE

I do hereby certify that on this day a copy of the foregoing Brief was filed and served upon the following parties by email to the addresses shown below:

Melanie Black Dubis
Scott E. Bayzle
PARKER POE ADAMS & BERNSTEIN LLP
301 Fayetteville Street, Suite 1400
(27601)
P.O. Box 389
Raleigh, NC 27602-0389
melaniedubis@parkerpoe.com
scottbayzle@parkerpoe.com

H. Lawrence Armstrong, Jr.
ARMSTRONG LAW, PLLC
119 Whitfield Street
Enfield, NC 27823
hla@hlalaw.net

Neal Ramee
David Nolan
THARRINGTON SMITH, LLP
P.O. Box 1151
Raleigh, NC 27602
nramee@tharringtonsmith.com
dnolan@tharringtonsmith.com

David Hinojosa
LAWYERS COMMITTEE FOR CIVIL
RIGHTS UNDER LAW
1500 K. Street NW, Suite 900
Washington, DC 20005
ehaddix@lawyerscommittee.org
dhinojosa@lawyerscommittee.org

Matthew Tulchin
Tiffany Lucas
NORTH CAROLINA DEPARTMENT OF
JUSTICE
114 W. Edenton Street
Raleigh, NC 27603
MTulchin@ncdoj.gov
TLucas@ncdoj.gov

Thomas J. Ziko
Legal Specialist
STATE BOARD OF EDUCATION
6302 Mail Service Center
Raleigh, NC 27699-6302
Thomas.Ziko@dpi.nc.gov

Matthew F. Tilley
Russ Ferguson
WOMBLE BOND DICKINSON (US) LLP
One Wells Fargo Center, Suite 3500
301 S. College Street
Charlotte, NC 28202-6037
Matthew.tilley@wbd-us.com
Russ.ferguson@wbd-us.com
Clark.goodman@wbd-us.com

Christopher A. Brook
PATTERSON HARKAVY LLP
100 Europa Dr., Suite 420
Chapel Hill, NC 27517
cbrook@pathlaw.com

Michael Robotti
BALLARD SPAHR LLP
1675 Broadway, 19th Floor
New York, New York 10019
robottim@ballardspahr.com

Robert N. Hunter, Jr.
HIGGINS BENJAMIN, PLLC
301 North Elm Street, Suite 800
Greensboro, NC 27401
rnhunterjr@greensborolaw.com

Jane Wettach
CHILDREN'S LAW CLINIC DUKE
UNIVERSITY LAW SCHOOL
P.O. Box 90360 Durham, NC 27708
wettach@law.duke.edu

John Charles Boger
104 Emerywood Place
Chapel Hill, NC 27516
johncharlesboger@gmail.com

This the 10th day of March, 2023.

/s/ Amar Majmudar
Amar Majmudar
Senior Deputy Attorney General
NC State Bar No. 24668
NORTH CAROLINA DEPARTMENT OF JUSTICE
P.O. Box 629
Raleigh, North Carolina 27602
AMajmudar@ncdoj.gov
Counsel for State of North Carolina