

1 STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

2 COUNTY OF WAKE SUPERIOR COURT DIVISION

3 ALICE HART, ET AL., 13 CVS 16771

4 Plaintiffs,

5 versus

6 STATE OF NORTH CAROLINA

7 and NORTH CAROLINA STATE

8 EDUCATIONAL ASSISTANCE AUTHORITY,

9 Defendant. TRANSCRIPT

10 and

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12 CYNTHIA PERRY and GENNELL CURRY,

13 Intervenor-Defendants.

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15 Transcript of proceedings in the  
16 General Court of Justice, Superior Court Division, Wake County,  
17 North Carolina, at the August 21, 2014 Session, before the  
18 Honorable Robert H. Hobgood, Judge Presiding.

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20 APPEARANCES:

21 EDWIN M. SPEAS, JR.  
22 ROBERT F. ORR  
23 CARRIE V. McMILLAN  
Raleigh, NC 27601  
On behalf of the Richardson plaintiffs

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1 APPEARANCES, continued

2 BURTON CRAIGE  
On behalf of the Hart plaintiffs

3 NARENDRA K. GHOSH  
4 Chapel Hill, NC 27517  
On behalf of the Hart plaintiffs

5 CARLENE McNULTY  
6 CHRISTINE BISCHOFF  
7 Raleigh, NC 27611  
On behalf of the Hart plaintiffs

8 LAUREN M. CLEMMONS  
9 Raleigh, NC 27699  
On behalf of the defendants

10 ROBERT NUMBERS  
11 Raleigh, NC 27601  
On behalf of the defendants

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14 Jacqueline M. Sullivan, RPR, CRR  
15 Official Court Reporter  
Po Box 351  
Raleigh, North Carolina 27602

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I N D E X

WITNESSES

PAGE

None.

E X H I B I T S

No.

Identification

Marked

Admitted

None.

1           DEPUTY SHERIFF: Court is back in session.  
2           Please remain seated. Be quiet, make sure all electronic  
3           devices are on silent or vibrate.

4           THE COURT: Good morning.

5           Madame court reporter, I'm going to dictate an  
6           order into the record and it deals with file numbers 13 CVS  
7           16484 and 16771. I'm not going to dictate the case style  
8           but it is as appears in the record.

9           First I'll note the Court has considered the  
10          state defendants' objections to affidavits and other  
11          evidence of records submitted by the plaintiffs in support  
12          of their motion for summary judgment and the Court has not  
13          considered any inadmissible evidence.

14          The Court recognizes that the repeal of North  
15          Carolina general statute 115(c)-5627(a) renders moot any  
16          claim that the General Assembly discriminated because of  
17          race, color, or national origin but leaves open the  
18          challenge that the OSP does not prohibit discrimination  
19          based on religion required by Article 1, Section 19 of the  
20          North Carolina Constitution.

21          The plaintiffs are entitled to summary judgment  
22          for all of the reasons given in their briefs and oral  
23          arguments.

24          The Court finds from the record beyond a  
25          reasonable doubt that the Opportunity Scholarship Program

1 funds a system of private schools from taxpayer dollars as  
2 an alternative to the public school system in direct  
3 contravention of the North Carolina Constitution, Article  
4 1, Sections 15 and 19, with respect to religion, and that  
5 with respect to religion of the declaration of rights,  
6 Article 9, Sections 1, 2, (1), 6, 7 (V) and the public  
7 purpose clause of Article 5, Section 2 (1) and Section 2  
8 (7).

9 This legislation unconstitutionally:

10 One, appropriates to private schools grades K-12  
11 by use of funds which apparently has gone to the university  
12 system budget. It should be used exclusively for brick and  
13 maintaining a uniform system of free public schools.

14 Two, appropriates education funds in a manner  
15 that does not accomplish a public purpose.

16 Three, appropriates educational funds outside the  
17 supervision and administration of the State Board of  
18 Education.

19 Four, creates a nonuniform system of education.

20 Five, appropriates taxpayer funds to educational  
21 institutions that have no standards, including curriculum  
22 and requirements that teachers and principals be certified.

23 Six, fails to "guard and maintain" the right of  
24 the people to the privilege of education by siphoning money  
25 from the public schools in favor of private schools.

1           And seven, allows funding of nonpublic schools  
2 that discriminate on account of religion.

3           The General Assembly is required by mandate of  
4 the North Carolina Supreme Court to assure that the public  
5 schools grades K-12 meet the Leandro standard of providing  
6 a sound basic education. The General Assembly cannot  
7 constitutionally delegate this responsibility to  
8 unregulated private schools by use of taxpayer Opportunity  
9 Scholarships to low-income parents who have self-assessed  
10 their children to be at risk. Private schools receiving  
11 Opportunity Scholarships are not subject to any  
12 requirements or standards regarding the curriculum that  
13 they teach, are given no requirement for student  
14 achievement, are not obligated to demonstrate any growth in  
15 student performance, and are not even obligated to provide  
16 a minimum amount of instructional time. The Opportunity  
17 Scholarships would provide taxpayer funds to private  
18 schools without regard to whether these schools satisfy  
19 substantive educational standards. Appropriating taxpayer  
20 funds to unaccountable schools does not accomplish a public  
21 purpose, in violation of North Carolina Constitution  
22 Article 5, Sections 2(1) and 2(7).

23           To determine legislative intent the Court may  
24 consider specific enactments of the General Assembly that  
25 reference "scholarship grants" but are not included in part

1 to aid North Carolina general statute Section  
2 15(c)-562.1-15(c)-562.7.

3 The following language appears in the North  
4 Carolina general statute 115(c)-555 (4): "Scholarship  
5 grant funds awarded pursuant to Part A of this article to  
6 eligible students attending a nonpublic school shall not be  
7 considered funding from the State of North Carolina."  
8 Close quote.

9 No where in the North Carolina general statute  
10 115(c)-562.1 through 115(c)-562.7 is there any prerogative  
11 the scholarship grants to come from any source other than  
12 taxpayer funds. The scholarship grant shall not be  
13 considered funding from the State of North Carolina.

14 This Court is at a complete loss to understand  
15 the source of those funds. The old axiom of "follow the  
16 money" can be used in these cases to establish legislative  
17 intent. By doing so the clear legislative intent beyond a  
18 reasonable doubt is to utilize taxpayer money to fund  
19 private schools. The collateral effect, whether intended  
20 or not, is to renew the protection of the Leandro decision  
21 to a sound basic education from the hundreds of students  
22 who have been determined at risk solely by their own  
23 parents.

24 Further, if the applying students are in fact not  
25 at risk as identified by the Leandro decision then there is

1 no compelling state reason to use taxpayer money to fund  
2 their education in private schools. The Court finds beyond  
3 a reasonable doubt that established window of Opportunity  
4 Scholarships violate North Carolina State Constitution  
5 Article 9, Section 6. Unless altered by the vote of the  
6 people in a constitutional amendment through the mechanism  
7 provided by Article 3, Section 3 of the North Carolina  
8 Constitution, Article 9 of the North Carolina Constitution  
9 does not permit a publicly-funded system of private school  
10 vouchers for students in grades K-12 unless a student is  
11 disabled as defined by North Carolina general statute  
12 15(c)-106.3(2). The Opportunity Scholarship program is  
13 unconstitutional beyond a reasonable doubt in violation of  
14 Article 9, Section 6 of North Carolina State Constitution  
15 in that taxpayer funds may not be used to support private  
16 schools grades K-12 and to do so violates the North  
17 Carolina Constitution, Article 9, Section 2(1).

18 It appears to this Court that the General  
19 Assembly is seeking to push at-risk students from  
20 low-income families into nonpublic schools in order to  
21 avoid the cost of providing them a sound, basic education  
22 in public schools as mandated by the Leandro decision. The  
23 Court recognizes the presumption in favor of the  
24 constitutionality of an act of the legislature. However,  
25 appropriating taxpayer funds to be funneled through



1 endorsement by parents to private schools beyond a  
2 reasonable doubt violate Article 5, Section 2(1) of the  
3 North Carolina Constitution in that this legislature has no  
4 substantive requirements that allow the state to fulfill  
5 its obligation to, quote, "guard and maintain," close  
6 quote, the people's right to education as required by  
7 Article 1, Section 15 of the North Carolina Constitution.  
8 The legislation does not require that:

9 One, the private schools receiving OSP funding  
10 provide their students with instruction in any subject.

11 Two, teachers or principals at school receiving  
12 OSP funding be trained, certified or qualified, or,

13 Three, a private school receiving OSP funds be  
14 certified by any public or private agency.

15 The General Assembly fails the children of North  
16 Carolina when they sent with public taxpayer money to  
17 private schools that have no legal obligation to teach them  
18 anything. Without any such obligation this appropriation  
19 is unconstitutional in that it serves only private  
20 interests. The expenditure of public funds raised by tax  
21 action to finance the operation of privately operated,  
22 managed, and controlled schools is prohibited by Article 5,  
23 Section 2(1) of the North Carolina Constitution. Such an  
24 expenditure would require a constitutional amendment  
25 approved by the vote of the citizens of North Carolina

1 through the mechanism provided in Article 3, Section 3 of  
2 the North Carolina Constitution.

3 The Court finds beyond a reasonable doubt that  
4 the General Assembly, by enacting OSP legislation for the  
5 expenditure of public funds for private schools without  
6 substantive standards to ensure that the promised public  
7 good is actually provided cannot be for a public purpose  
8 and is unconstitutional under the North Carolina  
9 Constitution, Article 1, Section 15, and that the General  
10 Assembly has failed in its duty to "guard and maintain" the  
11 right to the privilege of education. The Court notes "If  
12 public schools must provide a sound basic education in  
13 grades K-12, private schools have no such duty."

14 "We conclude that Article 1, Section 15(a) and  
15 Article 9, Section 2 of the North Carolina Constitution  
16 confined to guarantee every child of this state an  
17 opportunity to receive a sound basic education in the  
18 public schools, close quote. Leandro versus State, 346 NC  
19 App 347, 488 cite 2d at 255 (1997), close parens.

20 The children of North Carolina suffer no  
21 prejudice by attending public schools. Wherefore, it is  
22 ordered based on findings beyond a reasonable doubt that  
23 the plaintiffs' motion for summary judgment is allowed.  
24 The defendant's motion for summary judgment is denied. The  
25 Opportunity Scholarship program as enacted is beyond a

1 reasonable doubt unconstitutional under the Constitution of  
2 North Carolina. The plaintiffs' public schools grade K-12  
3 and the taxpayers of North Carolina will suffer irreparable  
4 harm if the state is not permanently enjoined from making  
5 unconstitutional disbursement of taxpayer funds to parents  
6 for the enrollment of their children in private school.  
7 The Court issues a permanent injunction to any further  
8 implementation of the Opportunity Scholarship program.

9 This is so ordered this, the 21st day of August,  
10 2014 at 10:23 a.m.

11 Mr. Orr is charged with the responsibility of  
12 drawing the order.

13 MR. ORR: Yes, your Honor.

14 THE COURT: Of course the defendants have the  
15 absolute right to appeal.

16 MR. NUMBERS: Robert Numbers of the Wake County  
17 bar on behalf of the parents.

18 We would like to request that you enter a stay of  
19 your order until the appellate process is concluded because  
20 of what the impact of interrupting the program at this time  
21 would have on the recipient having received their  
22 education.

23 THE COURT: Having made findings beyond a  
24 reasonable doubt the defendant's request for stay is  
25 denied.

1 MR. NUMBERS: I have an order to that effect if  
2 you'd like to sign it.

3 THE COURT: All right.

4 MS. CLEMMONS: Your Honor, I need clarification  
5 on behalf of my client, the Education Assistance Authority.  
6 Is your order effective immediately as of 10:23 a.m.?

7 THE COURT: Yes.

8 MR. CLEMMONS: Okay. And there is currently, as  
9 I understand it, there's actually money going through an  
10 electronic system that we can't stop, so how do you want to  
11 address that?

12 THE COURT: That would have to be addressed by  
13 the attorney general to recover the money.

14 MS. CLEMMONS: So is that going to be in the  
15 order?

16 THE COURT: You draw that order, I'll sign it.

17 MS. CLEMMONS: Well, I don't know, your Honor,  
18 that -- I just don't know where we are in the process so I  
19 can't, I mean, if your Honor orders that that's what we...

20 THE COURT: What my order is, there's to be no  
21 funds disbursed under the Opportunity Scholarship program  
22 as of 10:23 a.m. this morning.

23 MS. CLEMMONS: Okay. Thank you, your Honor.

24 THE COURT: I have another matter that's a  
25 hearing this morning. Is there anything further in this

1 matter for this Court?

2 MR. CRAIGE: No, your Honor.

3 MR. NUMBERS: No, your Honor.

4 THE COURT: Because once I start the other  
5 matter, which I've already interrupted, I don't want to  
6 have to stop it again.

7 All right. We're going to take a five-minute  
8 recess before I begin the next matter on the Court's  
9 docket.

10 MR. ORR: Thank you, your Honor.

11 DEPUTY SHERIFF: Court will be in recess for five  
12 minutes.

13 (Proceedings concluded at about 10:30 a.m.)

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CERTIFICATION OF TRANSCRIPT

This is to certify that the foregoing transcript of proceedings taken at the August 21, 2014 Session of Wake County Superior Court is a true and accurate transcript of the proceedings taken by me and transcribed by me. I further certify that I am not related to any party or attorney, nor do I have any interest whatsoever in the outcome of the action.

This 21st day of August, 2014.

JACQUELINE M. SULLIVAN, RPR, CRR  
Official Court Reporter  
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STATE OF NORTH CAROLINA  
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
13 CVS 16771

ALICE HART,

versus

STATE OF NORTH CAROLINA, et al.,

Defendant.

CERTIFICATE  
OF DELIVERY

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This is to certify that the transcript of the proceedings at the August 21, 2014 Session of Wake County Superior Court was ordered by Robert T. Numbers, II, on August 21, 2014, comprising 14 pages, and was delivered electronically and by U.S. Mail, postage pre-paid, to Robert T. Numbers, II and Lauren Clemmons, listed below, on the 21st day of August, 2014.

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