

STATE OF NORTH CAROLINA

File No. 13-CVS-

WAKE County

In The General Court of Justice
District Superior Court Division

Name of Plaintiff(s)
Rev. Robert Richardson, III, Rev. Michael and Delores Galloway, Steven W. Sizemore, and the North Carolina School Boards Association

Address
City, State, Zip

CIVIL SUMMONS

ALIAS AND PLURIES SUMMONS (ASSESS FEE)

VERSUS

G.S. 1A-1, Rules 3, 4

Name of Defendant(s)
The State of North Carolina, The North Carolina State Board of Education and The North Carolina State Education Assistance Authority

Date Original Summons Issued

Date(s) Subsequent Summon(es) Issued

To Each of The Defendant(s) Named Below:

Name And Address of Defendant 1
Grayson Kelley
Chief Deputy Attorney General
North Carolina Department of Justice
114 W. Edenton Street
P.O. Box 629
Raleigh, NC 27602-0629

Name And Address of Defendant 2
Katie Cornetto
General Counsel
North Carolina State Board of Education
6302 Mail Service Center
Raleigh, NC 27609-6302

Name And Address of Defendant 3
Steve Brooks
Executive Director
North Carolina State Education Assistance Authority
10 T.W. Alexander Drive
P.O. Box 14103
Research Triangle Park, NC 27709

A Civil Action Has Been Commenced Against You!

You are notified to appear and answer the complaint of the plaintiff as follows:

- 1. Serve a copy of your written answer to the complaint upon the plaintiff or plaintiff's attorney within thirty (30) days after you have been served. You may serve your answer by delivering a copy to the plaintiff or by mailing it to the plaintiff's last known address, and
2. File the original of the written answer with the Clerk of Superior Court of the county named above.

If you fail to answer the complaint, the plaintiff will apply to the Court for the relief demanded in the complaint.

Name And Address of Plaintiff's Attorney (If None, Address of Plaintiff)
Robert F. Orr / Edwin M. Speas, Jr.
Poyner Spruill LLP
Post Office Box 1801
Raleigh, NC 27602-1801

Date Issued DEC 16 2013 Time 10 AM

Signature [Signature]
Deputy CSC Assistant CSC Clerk of Superior Court

ENDORSEMENT (ASSESS FEE)
This Summons was originally issued on the date indicated above and returned not served. At the request of the plaintiff, the time within which this Summons must be served is extended sixty (60) days.

Date of Endorsement Time AM PM

Signature
Deputy CSC Assistant CSC Clerk of Superior Court

NOTE TO PARTIES: Many Counties have MANDATORY ARBITRATION programs in which most cases where the amount in controversy is \$15,000 or less are heard by an arbitrator before a trial. The parties will be notified if this case is assigned for mandatory arbitration, and, if so, what procedure is to be followed.

FILED

STATE OF NORTH CAROLINA

2013 DEC 16 AM 10:07

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

COUNTY OF WAKE

WAKE COUNTY, C.S.C.

13 CVS \_\_\_\_\_

REVEREND ROBERT RICHARDSON, III,  
REVEREND MICHAEL and DELORES  
GALLOWAY, STEVEN W. SIZEMORE, and  
THE NORTH CAROLINA SCHOOL  
BOARDS ASSOCIATION,

Plaintiffs,

v.

THE STATE OF NORTH CAROLINA, THE  
NORTH CAROLINA STATE BOARD OF  
EDUCATION, and THE NORTH CAROLINA  
STATE EDUCATION ASSISTANCE  
AUTHORITY,

Defendants.

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

In support of this request for Declaratory Judgment and Injunctive Relief, Plaintiffs  
allege and say:

Preliminary Statement

1. For almost 150 years the North Carolina Constitution has required the State, through the General Assembly and the State Board of Education, to establish, maintain and fund a general and uniform system of public schools. Under the Constitution, this system has three defining characteristics. First, it must be open to every child in the State without regard to race, color, national origin, religion, ability or disability. Second, it must be available to all students free of tuition. Third, it must be funded and operated at a level sufficient to provide every student the opportunity to obtain a sound basic education.

2. Separate from the public schools are private schools not funded or controlled by the State. By virtue of their independence from the State, these private schools have had the freedom to choose the students they will admit and to establish standards reflective of the values of the entities controlling those schools.
3. The General Assembly's recent decision to provide public funds to support those private schools raises substantial legal questions about whether that decision carried with it the obligation by the General Assembly, as the representative body for all North Carolinians, to assure that those public funds are expended for the good of all citizens without discrimination. This lawsuit seeks to resolve those important questions.

#### Nature of this Action

4. The action is brought pursuant to the Declaratory Judgment Act, N.C. Gen. Stat. § 1-253, *et seq.*, seeking a declaration as to the constitutionality of legislation enacted by the 2013 Session of the General Assembly appropriating public funds to pay tuition and fees at private schools for certain students. This challenged legislation is hereinafter referred to as the "Voucher Legislation."

#### Parties

5. Plaintiff Reverend Robert Richardson, III, is a North Carolina citizen and taxpayer residing in Hertford County. He has two children who attend public schools in Hertford County. His rights as a citizen, taxpayer and parent are impaired by the Voucher Legislation and he is therefore designated a plaintiff in this lawsuit.
6. Plaintiff Steven Sizemore is a North Carolina citizen and taxpayer residing in Buncombe County. He has three children who attended and graduated from public schools in

Buncombe County. He is a former member and chairman of the Buncombe County Board of Education. His rights as a citizen and taxpayer are impaired by the Voucher Legislation and he is therefore designated a plaintiff in this lawsuit.

7. Plaintiff Reverend Michael Galloway and his wife Delores Galloway are North Carolina citizens and taxpayers residing in Rockingham County. They have two children, one of whom attends the Rockingham County Schools and one of whom recently graduated from the Rockingham County Schools. Their rights as citizens, taxpayers and parents are impaired by the Voucher Legislation and they are therefore designated plaintiffs in this lawsuit.
8. Plaintiff North Carolina School Boards Association (NCSBA) is a voluntary nonprofit, nonpartisan membership association for local boards of education in North Carolina. All 115 local boards of education in the State, as well as the Board of Education of the Eastern Band of the Cherokee Nation, are members of the NCSBA. The capacity of the members of NCSBA to meet their obligations to students and the capacity of the NCSBA to meet its obligations to its members are impaired by the Voucher Legislation and the NCSBA is therefore designated a plaintiff in this lawsuit.
9. The State of North Carolina is a sovereign State of the United States. It has consented to be sued in this Court and has conferred on the Judicial Branch of the State the power and duty to declare invalid and unenforceable acts of the Legislative Branch of the State that violate the State's Constitution. As such, the State is a party affected by the declaration requested and is therefore designated a defendant in this lawsuit.

10. The North Carolina State Board of Education is an agency of Defendant State created by the State Constitution and charged by the Constitution with the duty, among others, "to supervise and administer the free public school system and the funds provided for its support." N.C. Const. Art. IX, Sec. 5. The General Assembly has imposed on the State Board of Education the duty to administer the reductions in the State School Fund required by the Voucher Legislation. As such, the North Carolina State Board of Education is a party affected by the declaration requested and it is therefore designated a defendant in this lawsuit.
11. The North Carolina State Education Assistance Authority is an agency of the Defendant State established by the General Assembly. The General Assembly has imposed on the Authority the duty to administer the Voucher Legislation. As such, the North Carolina State Education Assistance Authority is a party affected by the declaration requested and it is therefore designated a defendant in this lawsuit.

#### Jurisdiction and Venue

12. This Court has jurisdiction over the subject matter of this action pursuant to N.C. Gen. Stat. § 1-253, *et seq.*, the Uniform Declaratory Judgment Act.
13. This Court has jurisdiction over the parties pursuant to N.C. Gen. Stat. § 1-75.4.
14. Venue is proper in this Court pursuant to N.C. Gen. Stat. § 1-82.

#### General Allegations

15. The Voucher Legislation was enacted by the General Assembly on July 25, 2013, as part of the Current Operations and Capital Appropriations Act. 2013 Session Law 360, Sections 8.29. Governor McCrory signed that Act into law on July 26, 2013. The

legislation establishes a program to provide vouchers—denominated “scholarship grants” in the legislation—in amounts up to \$4,200 per year for certain students to attend private elementary and secondary schools beginning with the 2014-15 school year.

16. Upon information and belief, Defendants have begun implementation of the Voucher Legislation.
17. The General Assembly did not make any findings describing the need, purpose or justification for the Voucher Legislation.
18. These vouchers are funded by taxes paid by individuals and corporations and other public revenues (hereinafter “taxpayer money”) and forwarded directly to the private schools in which voucher recipients enroll. To be eligible to benefit from a voucher during the 2014-2015 school year, a student must reside in a household with an income level not in excess of the eligibility cutoff for the federal free and reduced lunch program and fit within certain other prescribed categories. Under the current legislation, beginning in the 2015-16 school year eligible students must reside in households with income not in excess of 133 percent of the eligibility cutoff for the federal free and reduced lunch program.
19. Eligibility to receive a voucher funded by taxpayer money is not limited to students who are performing poorly in the public schools or who have been assigned to a poorly performing public school. Any eligible student at any public school can receive a \$4,200 voucher paid for by taxpayer money.
20. All private church schools and schools of religious charter and all qualified non-public schools identified by the Division of Nonpublic Education in the State Department of

Administration (hereinafter collectively, "private schools") are eligible to enroll voucher recipients and receive taxpayer money.

21. There are approximately 698 private schools in North Carolina in which approximately 96,000 students are enrolled. Upon information and belief, the quality of education provided by these private schools varies greatly. There is no state oversight to ensure that students in those schools receive an adequate education or the opportunity to obtain a sound basic education.
22. The Voucher Legislation does not establish any substantive educational standards that must be met by a private school before it is permitted to enroll a voucher recipient and accept and spend taxpayer money. For example, the Voucher Legislation does not require private schools to employ qualified teachers to instruct voucher recipients; does not require private schools to provide an adequate curriculum for voucher recipients; and does not require private schools to instruct voucher recipients for any minimum period each day or each year.
23. Private schools that enroll more than 25 voucher recipients are required to make public aggregate standardized test performance information. Private schools that enroll fewer than 25 voucher recipients are not required to make such aggregate test results public. Further, the Voucher Legislation does not require private schools to select tests that are valid measures of student achievement and does not establish any means for protecting taxpayer money by prohibiting voucher recipients from enrolling in private schools that do not provide adequate educational opportunities for their students.

24. Upon information and belief, most of the 698 private schools in North Carolina do not have open student admission practices or policies. Further, upon information and belief, some of the schools that do not have open admission practices or policies weigh race or other arbitrary and capricious factors in making student admission decisions and some weigh the religious affiliation of applicants in making student admission decisions. The Voucher Legislation, however, does not forbid private schools from rejecting voucher recipients for discriminatory reasons and provides no means for assuring taxpayer money is expended in a non-discriminatory manner.
25. The Voucher Legislation appropriates \$10,000,000.00 in taxpayer money to the Defendant State Education Assistance Authority to distribute to private schools enrolling voucher recipients during the 2014-15 school year. According to the Legislative Fiscal Note prepared for an earlier version of the Voucher Legislation, the General Assembly intends to appropriate \$50,000,000 per year to the program in future years.
26. The Voucher Legislation further directs the Defendant State Board of Education to reduce the State School Fund allotments to local school administrative units. These reductions will equal the per pupil allocation for average daily membership multiplied by the number of voucher recipients who attended the public schools in the local school system the previous semester. During the 2012-13 school year, the average per pupil allocations for public school systems from the State ranged from \$4,870.35 per year to \$12,871.75 per year.



27. In effect, the Voucher Legislation is financed through reductions in the State School Fund and the diversion of those funds to the Defendant State Education Assistance Authority to provide private school vouchers.
28. These reductions will negatively impact the capacity of all local boards of education to fulfill their constitutional and statutory obligations to students and will disproportionately impact local boards of education with smaller student enrollments, such as the Hertford County Board of Education.
29. More than 50 years ago, the General Assembly determined that expending tax dollars to pay tuition and fees at private schools could not be achieved without amending the State Constitution. On July 27, 1956, the General Assembly adopted legislation submitting to the voters for their approval an amendment to the State Constitution providing:

Notwithstanding any other provisions of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for the private education of a child who is assigned against the wishes of his parents, or the person having control of such child, to a public school attended by a child of another race.

N.C. Session Laws, Extra Session 1956, Ch. 1 and 2.

30. This proposed amendment was approved by the voters of the State at a special election on September 8, 1956, and became a part of the Constitution.
31. This amendment, however, does not shield the Voucher Legislation. In 1966 a three-judge federal panel in Hawkins v. State Board of Education declared that this amendment violated federal law and was null and void in its entirety, because it was designed to circumvent the duty to integrate the public schools.

32. As a consequence of the enactment and implementation of the Voucher Legislation, Plaintiffs, separately and collectively, will suffer irreparable injury in the form of:
- (a) Defendants' unconstitutional expenditure of public funds for a nonpublic purpose;
  - (b) Defendants' failure to fulfill their constitutional duty to guard the right to the privilege of education;
  - (c) Defendants' failure to fulfill their constitutional duty to assure that citizens are not subjected to discrimination or arbitrary and capricious conduct;
  - (d) Defendants' unconstitutional diversion of funds from the State School Fund;
  - (e) Diminished educational opportunities provided to students enrolled in the public schools; and
  - (f) Diminished capacity of local boards of education to fulfill their constitutional and statutory obligations to the students enrolled in their schools.

First Request for Declaratory Judgment

33. The foregoing allegations contained in this Complaint are re-alleged and incorporated herein by reference.
34. Article V, Section 2 of the State Constitution provides: "The power of taxation shall be exercised in a just and equitable manner for public purposes only."
35. Providing tax dollars to pay the tuition and fees of selected students attending private schools is not a public purpose. The North Carolina Constitution has expressly set out how taxpayer funds are to be used for the education of the State's children and that is through a general and uniform system of free public schools.
36. Because the Voucher Legislation appropriates tax dollars for a nonpublic purpose, the Voucher Legislation violates Article V, Section 2 of the Constitution.

37. Alternatively, the Voucher Legislation violates Article V, Section 2 of the Constitution because it does not establish substantive educational standards designed to assure that taxpayer money will result in voucher recipients receiving an adequate education or the opportunity for a sound basic education on a nondiscriminatory basis.

Second Request for Declaratory Judgment

38. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
39. Article I of the North Carolina Constitution is entitled “Declaration of Rights.” It sets forth “the great, general, and essential principles of liberty and free government.”
40. Section 15 of Article I declares: “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”
41. The Voucher Legislation does not establish substantive educational standards that must be met by private schools that enroll voucher recipients.
42. By failing to protect those children’s right to the privilege of education, the Voucher Legislation violates the rights of all citizens and taxpayers under Article I, Section 15 of the Constitution.

Third Request for Declaratory Judgment

43. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
44. Under the North Carolina Supreme Court’s decisions in Leandro v State, 346 N.C. 336 (1997) and Hoke County Board of Education v. State, 358 N.C. 625 (2004), the

Defendants are constitutionally obligated to provide the opportunity for a sound basic education for all students enrolled in schools funded by the State.

45. This obligation arises under Article I, Section 15 of the Constitution and applies to all entities receiving State tax dollars to educate children of compulsory attendance age.
46. The Voucher Legislation does not establish substantive educational standards guarding the voucher recipients' right to have the opportunity to obtain a sound basic education.
47. By failing to protect voucher recipients' right to the constitutionally mandated opportunity to obtain a sound basic education, the Voucher Legislation violates the rights of all citizens and taxpayers under Article I, Section 15 of the Constitution.

Fourth Request for Declaratory Judgment

48. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
49. Among the "great, general, and essential principles of liberty and free government" guaranteed by Article I of the Constitution is the principle that no person shall be "subjected to discrimination by the State because of race, color, religion, or national origin" or denied participation in publicly funded programs for other arbitrary or capricious reasons. N.C. Const. Article I, Section 19.
50. The Voucher Legislation does not prevent private schools, upon receiving funds from the taxpayers of this State through these vouchers, from deciding to admit or not admit voucher recipients (or non-voucher students) based on their race, color, religion, national origin or for other arbitrary and capricious reasons prohibited by the constitution, and therefore does not guard the right of voucher recipients to the privilege of education.

51. By failing to prohibit private schools from discriminating on the basis of race, color, religion or national origin in the admission of voucher recipients, or otherwise arbitrarily or capriciously denying them admission, the Voucher Legislation violates the rights of all citizens and taxpayers under Article I, Sections 15 and 19 of the Constitution.

Fifth Request for Declaratory Judgment

52. The foregoing allegations of this Complaint are re-alleged and incorporated herein by reference.
53. Article IX, Section 6 of the North Carolina Constitution requires that funds placed in the State School Fund “shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of public schools.”
54. Under the Voucher Legislation, the State School Fund will be reduced in proportion to the number of eligible students awarded vouchers and those funds will then be used to support private schools, resulting in decreased funding for educational services in the State’s general and uniform free public school system.
55. Reducing the State School Fund violates Article IX, Section 6 of the Constitution. Using the State School Fund for any purpose other than support of the uniform system of public schools also violates Article IX, Section 6 of the Constitution.

Sixth Request for Declaratory Judgment

56. The foregoing allegations of the Complaint are re-alleged and incorporated herein by reference.

57. The Voucher Legislation provides for the use of taxpayer funded vouchers by only a limited and select number of “eligible” students of elementary or secondary education age.
58. As a result of these eligibility requirements, most students of elementary or secondary education age cannot receive a voucher paid for by the taxpayers of the State to attend a private school. Furthermore, because private schools by their very purpose can choose to admit only select students, even children eligible for vouchers have no guarantee that they will be admitted to the private school of their choice.
59. Art. IX, Sec. 2. (1) of the North Carolina Constitution requires that the educational benefits guaranteed to the children of the State seeking a free elementary and secondary education paid for by taxpayers of the State include “equal opportunities” that are provided to all students.
60. Based upon the limitations imposed by the Voucher Legislation, the children of the State seeking a free elementary and secondary education paid for by the taxpayers of North Carolina do not have equal opportunities to secure a voucher nor, upon receiving one, to attend the private school of their choice. Thus, the Voucher Legislation violates the provisions of Article IX, Section 2(1) of the Constitution.

Prayer for Relief

Wherefore, Plaintiffs respectfully request that the Court:

- (a) Declare that the Voucher Legislation violates the North Carolina Constitution;
- (b) Declare that the Voucher Legislation is null, void and unenforceable;
- (c) Enjoin Defendants from implementing the Voucher Legislation;

- (d) Should the Court determine that the Voucher Legislation is constitutional, declare that those private schools accepting taxpayer dollars are subject to the same educational standards and constitutional provisions prohibiting discrimination as the general uniform system of free public schools provided by the State; and
- (e) Grant the Plaintiffs such other relief as may be just and proper.

This the 16th day of December, 2013.

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