

**NORTH CAROLINA COURT OF APPEALS**

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)  
 LATONYA SILVER, )  
 individually and as guardian ad )  
 litem of BRIANNA SILVER, )  
 LARRY SILVER III, and )  
 DOMINICK SILVER; BRENDA )  
 SLEDGE, individually and as )  
 guardian ad litem of ALICIA )  
 JONES; FELICIA SCOTT, )  
 individually and as guardian ad )  
 litem of JAMIER SCOTT; )  
 COALITION FOR )  
 EDUCATION AND )  
 ECONOMIC SECURITY; )  
 HALIFAX COUNTY BRANCH )  
 #5401, NATIONAL )  
 ASSOCIATION FOR THE )  
 ADVANCEMENT OF )  
 COLORED PEOPLE, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )

From Halifax County  
No. 15 CVS 767

THE HALIFAX COUNTY  
BOARD OF COMMISSIONERS

Defendant.

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**PLAINTIFF-APPELLANTS' REPLY BRIEF**

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ARGUMENT

I. THE BOCC'S ASSERTION THAT IT HAS NO OBLIGATION OR RESPONSIBILITY TO UPHOLD AND PROTECT THE CONSTITUTIONAL RIGHT TO A SOUND BASIC EDUCATION DEFIES BASIC LEGAL PRINCIPLES

The Defendant-Appellee's ("BOCC") response brief makes clear that there is only one substantive issue before this Court in this appeal: are county boards of commissioners bound by the provisions of the North Carolina Constitution which guarantee the right to a sound basic education? The BOCC's argument to the contrary defies basic principles of constitutional law, the controlling *Leandro* precedents, and the same statutes upon which the BOCC relies to disclaim any constitutional duty to the children of Halifax County.

All government actors are bound to uphold and protect the rights established by the Constitution. Nonetheless, the BOCC asks this Court to hold that an individual's constitutional rights may be violated by certain state actors, but not others. That cannot be right. The BOCC acknowledges that Plaintiffs have a constitutional right to a sound basic education (Defendant-Appellee's Br. p 5), that the BOCC has substantive statutory obligations related to public education (*Id.* pp 13-15), and that the State and the local boards of education have a constitutional responsibility to guarantee the opportunity for a sound basic education (*Id.* pp 9,

16-17), but then ignores the explicit language of N.C. Gen. Stat. § 115C-426(e)<sup>1</sup> which requires the BOCC to meet its obligations “*in conformity with the educational goals and policies of the State and the local board of education,*” which as a matter of law include the opportunity to obtain a sound basic education. Because the BOCC is a state actor bound by the Constitution, Plaintiff-Appellants have stated a claim against the BOCC, and the trial court’s order must be reversed.

A. The BOCC Is Bound to Preserve and Uphold the Rights Established by the State Constitution

While acknowledging that “constitutional responsibility . . . may be exercised by the [BOCC],” (Defendant-Appellee’s Br. p 13), Defendant-Appellee asserts that its statutory responsibility to provide funding—which, in a multi-district county, necessarily includes decisions related to the allocation of resources—has no connection to the Constitution’s guarantee of the opportunity to secure a sound basic education. (Defendant-Appellee’s Br. pp 13-14). The BOCC insists that because the county boards of commissioners were not named as defendants in the *Leandro* cases, neither the substantive holdings of those cases, nor the constitutional obligations they recognized, should apply to county

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<sup>1</sup> Plaintiff-Appellants’ brief contains a typo at page 24 where it references 115C-426(c), which Defendant-Appellee characterizes as a “misstatement of the law.” (Defendant-Appellee’s Br. p 25). Plaintiff-Appellants’ properly quoted 115C-426(e)—not subpart (c).

governing boards. (Defendant-Appellee's Br. pp 21-23). This position defies basic principles of constitutional law.

“It is axiomatic” that the provisions of the North Carolina Constitution “must be observed by all” within the state. *In re Trusteeship of Kenan*, 261 N.C. 1, 7, 134 S.E.2d 85, 90 (1964). The fundamental right to a sound basic education is an individual right grounded in the Constitution's Declaration of Rights. *See* N.C. Const. Art. I, § 15 (“The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”); *Leandro v. State* (“*Leandro I*”), 346 N.C. 336, 347, 488 S.E.2d 249, 255 (1997) (concluding that the right to a sound basic education derives from the Declaration of Rights). All government actors are obligated to preserve and protect the individual rights established by the Declaration of Rights, as these rights are secured against the government *generally*, not against any particular government actor or named defendant. As our Supreme Court explained nearly seventy years ago:

During the past 172 years, the organic law of this State has contained the solemn warning that a frequent recurrence to first principles is absolutely necessary to preserve the blessings of liberty. When the representatives of the people of North Carolina assembled in Congress at Halifax on November 12, 1776, for the express purpose of framing a constitution, they possessed an acute awareness of the long and bitter struggle . . . for some substantial measure of freedom and dignity for the individual. They loved liberty and hated tyranny, and were convinced that the government itself must be compelled to respect the inherent rights of the individual if freedom is to be preserved and oppression is to be prevented. In consequence, they inserted in the basic

law a declaration of rights chiefly designed to protect the individual from the State.

*State v. Ballance*, 229 N.C. 764, 768, 51 S.E.2d 731, 733-34 (1949). In recognizing a direct right of action against government actors for violations of the provision of the Declaration of Rights, the Court reiterated:

As a matter of fundamental jurisprudence the Constitution . . . . is the instrument by which “We, the people of the State of North Carolina,” first acknowledge our individual rights and liberties and then create a government to better secure our enjoyment of those rights and liberties. The significant fact is that “We, the people,” created the Constitution and the government of our State in order to limit our actions as the body politic. The Constitution is intended to protect our rights as individuals from our actions as the government.

*Corum v. University of North Carolina Through Bd. Of Governors*, 330 N.C. 761, 787-88, 413 S.E.2d 276, 292-93 (1992). Plaintiff-Appellants are aware of no authority, and the BOCC cites none, establishing that certain state actors may violate, interfere with, or obstruct an individual’s constitutional rights with impunity. *Cf. In re Trusteeship of Kenan*, 261 N.C. at 7, 134 S.E.2d at 90.

The BOCC’s enfeebled interpretation of the *Leandro* holdings not only eliminates any constitutional liability for county governing boards whose actions or inactions impede students’ right to a sound basic education (for refusing to provide sufficient resources to meet its education obligations related to facilities, buses, and classroom and science equipment, for example), but also substantially undermines the ability of any other government actor involved in education to

fulfill its coordinate constitutional and statutory duties to provide a sound basic education. The BOCC asserts in its brief that other agencies have the duty to provide a sound basic education (Defendant-Appellee's Br. pp 9, 16-17), but simultaneously insists that its own responsibility to provide and effectively allocate necessary resources has no bearing on that duty. (Defendant-Appellee's Br. pp 10-11). In such a scenario, even if the local boards of education and the State education authorities were making substantial efforts to provide a sound basic education, the county could obstruct those efforts with impunity—which is the exact claim made by Plaintiffs in this case.

Without the ability to pursue a claim directly under the state constitution, individual students and families have no other remedy to hold the BOCC liable for its constitutional violations. As noted in Plaintiff-Appellants' opening brief, and as the BOCC concedes (Defendant-Appellee's Br. p 25), under N.C. Gen. Stat. § 115C-431, a school board has the authority to pursue an administrative process, including litigation, against the county commissioners to challenge the refusal to provide constitutionally adequate resources for a district to provide a sound basic education.<sup>2</sup> However, individual students and parents have no comparable statutory rights and thus no way to vindicate their constitutional rights against the

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<sup>2</sup> This exact circumstance arose in Halifax County. In 2009, pursuant to N.C. Gen. Stat. § 115C-431, Halifax County Public Schools (HCPS) challenged the constitutionally inadequate funding proposed by the BOCC. Following

county if a school board declines to or is unable to pursue its statutory remedy, other than by direct action under the state constitution.<sup>3</sup>

The issue before the Court is clear and simple. What the BOCC misrepresents as a so-called “lack of candor” is in fact the fundamental dispute at issue in this appeal: whether a board of county commissioners has any legal obligation to preserve, protect, and guarantee the constitutional right to a sound basic education. The BOCC acknowledges that Plaintiff-Appellants have such a right, and does not challenge the sufficiency of Plaintiff-Appellants’ allegations that students in Halifax County are not receiving a sound basic education. (*See, e.g.*, Defendant-Appellee’s Br. pp 18-19). Because the BOCC is a state actor bound by the Constitution, this Court should reverse the trial court’s order and permit this litigation to proceed to discovery.

B. The BOCC’s Acknowledged Powers and Responsibilities for Public Education Must Be Exercised Consistent with the Constitution

The BOCC acknowledges that it has substantial statutory powers and constitutional duties related to the allocation of educational resources in Halifax

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mandatory mediation, which ended in an impasse, HCPS declined to pursue the matter to litigation because of a lack of funds. *See* “County, schools millions apart Mediation enters second phase,” *Roanoke Rapids Daily Herald* July 14, 2009.

<sup>3</sup> In fact, the absence of any adequate statutory or common law remedy is a condition precedent to bringing the direct constitutional claims made by Plaintiffs. *See Corum*, 330 N.C. at 782, 413 S.E.2d at 289; *Craig v. New Hanover County Bd. of Educ.*, 363 N.C. 334, 678 S.E.2d 351 (2009).

County. (Defendant-Appellees' Br. pp 13-16). It insists, however, that those obligations are completely discretionary and without any *Leandro*-compliant constitutional context. At the same time, the BOCC recognizes that the complementary educational responsibilities of the State and local boards of education *do* have a constitutional dimension. The BOCC's inconsistent arguments ignore the plain language of N.C. Gen. Stat. §§ 115C-426(e) and 115C-431(c), which require the BOCC to exercise its discretion to allocate resources and provide for Halifax County's public schools "in conformity with the educational goals and policies of the State." *See also Leandro I*, 346 N.C. at 347, 488 S.E.2d at 254-55 (holding that the right to a sound basic education is recognized in the comprehensive scheme for education established in Chapter 115C); *Beaufort County Bd. of Educ. v. Beaufort County Bd. of Comm'rs*, 363 N.C. 500, 511, 681 S.E.2d 278, 286 (2009) (Newby, J., concurring) ("This provision [115C-426(e)] must be read in light of Article IX Section 2 of the North Carolina Constitution and our holdings in *Leandro* and *Hoke County*.").

Ignoring the integrated policies and practices codified in Chapter 115C, the BOCC also discounts its statutory authority over one of the most critical aspects of its resource allocation obligations: the organization of school districts within the county. Contrary to the BOCC's argument that N.C. Gen. Stat. § 115C-68.1 "substantially exceeds the local funding role mandated by the state constitution"

(Defendant-Appellee's Br. p 15), this statute embraces the BOCC's responsibilities for resource allocation and the particular challenges to meeting those responsibilities which may exist in a multi-district county. The carefully constructed provisions of this statute recognize and effectively balance the constitutional obligations of county commissioners, the potentially conflicting interests of individual school boards, and the foundational principle of local control over education.

The BOCC insists that its constitutional mandate is minimal, but the authority and duties it concedes that it has are absolutely essential to the functioning of a constitutionally sufficient school system, and provide the building blocks of a sound basic education: the construction and maintenance of school facilities, provision of classroom equipment, instructional supplies, school libraries, school buses, repairs and maintenance, and the organizations of districts within the county. The BOCC's failure to discharge its duties in any of these realms is devastating to the constitutional rights of the schoolchildren of Halifax County. Only the BOCC has the unique power among other governmental actors to carry out these responsibilities, and to ensure that schools throughout Halifax County have the specific organizational and financial components necessary to reach the constitutional standard. The General Assembly delegated specific

educational duties to county governments, and the BOCC must carry out those duties in a *Leandro*-compliant manner.

Critically, the BOCC's *Leandro*-governed statutory authority also explicitly includes the authority to redress the injuries alleged in this litigation: the unique discretion to organize school districts within the county. *See* N.C. Gen. Stat. § 115C-68.1. Under Section 115C-68.1(a), the BOCC is the only governing body with the unilateral authority to initiate, prepare, and develop a consolidation plan.<sup>4</sup> That same statute *expressly prohibits* local boards of education from participating in BOCC-initiated school district reorganizations, a clear affirmation that the BOCC's responsibility to allocate resources includes the obligation to organize the county's school districts. *Id.* § 115C-68.1(c).

No other reading of Chapter 115C is reasonable. When read in conformity with the BOCC's constitutional obligation under *Leandro*, the purpose of Section 115C-68.1 becomes clear: if the BOCC does not have the power to merge school districts, a county—such as Halifax County, which wastes scarce educational resources by duplicating costs between three low-enrollment school districts (*see* R

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<sup>4</sup> The BOCC challenges the Plaintiff-Appellants' reference to its power to merge districts in the county as "unilateral" because the State Board of Education ultimately must approve the county's plan. However, the State BOE's role is administrative: the State BOE has no power to unilaterally create or initiate a merger plan, and can only develop one in response to the voluntary dissolution of a city school district. N.C. Gen. Stat. § 115C-68.2.

pp 13, 25)—might be forced to bear a constitutional obligation it could not possibly discharge because it would not have the power to correct the foundational problem: the inefficient structure of the county’s school districts.

C. The BOCC’s Constitutional Obligation to Provide a Sound Basic Education Is Not Minimized or Eliminated by Complementary Obligations of the State or Local Boards of Education

In addition to its assertion that it has no constitutional role or responsibility for a sound basic education, the BOCC repeatedly argues that the State and local school boards are the *only* entities with constitutional obligations and responsibilities to the public school K-12 students in Halifax County. (*See* Defendant-Appellee’s Br. pp 11, 16-20). Plaintiff-Appellants recognize that other government actors and agencies are also bound by constitutional and statutory duties related to education; that fact does not, however, relieve, preclude, or preempt the BOCC’s unique *Leandro*-controlled obligations.

Plaintiff-Appellants’ injuries, as alleged in the Complaint, derive directly from the BOCC’s decision to maintain a three-district resource allocation system. (R pp 24-29). The Complaint expressly alleges that the limited achievements of intervention by State Department of Public Instruction demonstrates that more State resources alone cannot cure the constitutional violations in Halifax County. (R pp 29-31). That is because the BOCC’s maintenance of three separate, racially

identifiable, and inefficiently resourced school districts is the fundamental impediment to the provision of the opportunity for a sound basic education.

The complementary *Leandro* obligations held by the State and local school boards do not obviate, relieve, or otherwise impact the BOCC's specific *Leandro*-governed responsibilities, which include funding school programs, allocating resources to schools, maintaining school facilities, establishing the budget for the public school system, and ultimately determining the organization of the system of public education in the County. (See Defendant-Appellee Br. pp 13-16; Plaintiff-Appellants Br. pp 24-27). Additionally, the interconnected responsibilities of the State Board of Education and the local school districts do not extinguish or undercut the specific delegation of authority to the BOCC or its duty to exercise that authority in conformity with the Constitution. See *Hoke County Bd. of Educ. v. State (Leandro II)*, 358 N.C. 605, 635, 599 S.E.2d 365, 389 (2004).

Under the comprehensive constitutional and statutory scheme that governs education in North Carolina, the State, county, and local school boards each have specific obligations and responsibilities to provide children with the opportunity to secure a sound basic education. These obligations are unique but interrelated. And while any one of these entities may independently undermine the provision of the opportunity for a sound basic education by failing to fulfill its particular duties, this case is specifically about the BOCC's failure to adequately and efficiently allocate

the resources necessary to fulfill its constitutional obligations to Halifax County students. (R pp 25-31, 37-39). The Complaint thus states a claim for relief and the trial court's order should be reversed.

### CONCLUSION

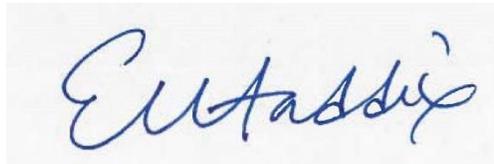
The issue before the Court is straightforward: whether a board of county commissioners has any legal obligation to protect and uphold the constitutional right to an opportunity for a sound basic education. The Complaint states a claim upon which relief can be granted because such boards, like all government actors, are bound by the North Carolina Constitution in general and the Declaration of Rights in particular. For the reasons described above and in Plaintiffs-Appellant's opening brief, the trial court's order should be reversed and the case remanded to allow for the development of a full evidentiary record.

Respectfully submitted, this the 18<sup>th</sup> day of July, 2016.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing PLAINTIFF-  
APPELLANTS REPLY BRIEF was served upon the Defendant-Appellee in the  
matter by placing a copy of same in the U.S. Mail, first-class postage paid,  
addressed to:

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Halifax, NC 27839

This the 18<sup>th</sup> day of July, 2016.



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CERTIFICATION OF COMPLIANCE

Pursuant to Appellate Rule 28(j)(2)(B), the undersigned certifies that PLAINTIFF-APPELLANTS' BRIEF uses proportional type and contains no more than 3,750 words.

UNC CENTER FOR CIVIL RIGHTS

A handwritten signature in black ink, appearing to read "Mark Dorosin". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

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