

Carolina from the decision of the North Carolina Court of Appeals filed on 02 August 2011, and in the alternative, respectfully petition this Honorable Court to certify for discretionary review that decision.

I. NATURE AND STATUS OF CASE

This case is an extraordinarily important case, one encompassing questions about the classification of public charters schools and where exactly such schools fit within the rubric of the State's general and uniform system of public schools.

A. Procedural History

Sugar Creek Charter School, Inc., et al. filed a First Amended Complaint on 29 April 2010. On 24 May 2010, an order was entered dismissing plaintiffs' case for failure to state a claim upon which relief may be granted under Rule 12(b)(6) of the North Carolina Rules of Civil Procedure. Plaintiffs timely appealed and, on 2 August 2011, Court of Appeals unanimously affirmed the trial court's decision to dismiss Plaintiffs' case.

B. Factual History

Plaintiffs-Appellants are charter school students, parents of charter school students (as parents and taxpayers), and charter schools. Charter school Plaintiffs are "public schools within the local school administrative unit in which they are located." N.C. GEN. STAT. § 115C-238.29A (2010). Student Plaintiffs are public school students. Defendants are the State, various counties, and various county school boards. R pp 50-59.

Plaintiff Sugar Creek Charter School and other public charter school Plaintiffs have been kept from requesting capital funding from county and county school board Defendants. Defendants claim there is no legal authority that would allow a county to appropriate capital funding to charter schools. Plaintiffs brought this action to clarify that, as public schools, charter schools in order to serve their students are entitled to *request* and be *considered* for capital funding from the counties in which the charter school is located. R pp 60-69. Significantly, Plaintiffs do not now nor have they ever maintained that they have an absolute right to capital funding from counties.

II. NOTICE OF APPEAL BASED ON CONSTITUTIONAL QUESTIONS

Petitioners-Appellants file this Notice of Appeal pursuant to N.C. GEN. STAT. § 7A-30, captioned “Appeals of right from certain decisions of the Court of Appeals,” which provides:

Except as provided in G.S. 7A-28, an appeal lies of right to the Supreme Court from any decision of the Court of Appeals rendered in a case:

- (1) Which directly involves a substantial question arising under the Constitution of the United States or of this State, or
- (2) In which there is a dissent.

N.C. GEN. STAT. §7A-30.

Petitioners-Appellants respectfully request that their Notice of Appeal be accepted on the grounds that the decision of the Court of Appeals directly involves but fails to answer substantial questions arising under the Constitution of the State, specifically the Uniform System Clause at Article IX, § 2(1), in that the decision of the Court of Appeals explicitly stated it “s[aw] no reason to decide whether charter schools are or are not parts of the general and uniform public school system.” Slip Op. 30-31. But, in order to justify avoiding that critical question, the Court of Appeals must have assumed, without stating its assumption, that charter schools are constitutionally excluded from consideration for capital funding which is the issue at the core of this case.

The Court of Appeals reasoned that charter schools differ from other public schools and have different statutory funding schemes, and so there was “no basis for constitutional concern arising from the use of differing funding mechanisms.” Slip Op. at 30. The Court of Appeals decision effectively held that a statutory exclusion precludes enforcement of a constitutional provision. Following this reasoning, because the General Assembly treats charter schools differently from other public schools, the funding scheme must be “okay,” and the Court of Appeals did not address Plaintiffs’ argument that the constitution requires that public charter schools be allowed to apply for capital outlay funds.

Put another way, Plaintiffs argue the constitution gives public charter schools the right as part of the uniform system of public schools to apply for

capital outlay funds. The Court of Appeals held that they were not *constitutionally* entitled to apply for capital funding because they were not *statutorily* entitled to apply for capital outlay funding. The holding not only dodges the question of whether public charter schools are part of the uniform system of free public schools, but also implicitly turns the supremacy of the constitution on its head, crowning statutes the de facto law of the land.

Petitioners-Appellants contend that the Court of Appeals' ruling directly involves a substantial question arising under the Article IX, § 2(1). Therefore, Petitioners-Appellants have an appeal of right to the Supreme Court pursuant to N.C. GEN. STAT. § 7A-30(1).

III. REASONS WHY CERTIFICATION FOR DISCRETIONARY REVIEW SHOULD OCCUR IN THE ALTERNATIVE

As noted above, Petitioners-Appellants contend the constitutional issues of this case give rise to an appeal as a matter of right. However, in the alternative, Petitioners-Appellants also respectfully petition the Supreme Court, pursuant to Rule 15 of the North Carolina Rules of Appellate Procedure, to certify for discretionary review the portion of the opinion of the North Carolina Court of Appeals relative to this Petition. In support of this Petition, Petitioners-Appellants show the following:

A. Grounds for Certification

As explained below, two of the three grounds set forth in N.C. GEN. STAT. § 7A-31(c) for certification of a cause for review in the Supreme Court after determination in the Court of Appeals apply in this case:

- (1) The subject matter of the appeal has significant public interest; and
- (2) The cause involves legal principles of major significance to the jurisprudence of the State.

N.C. GEN. STAT. § 7A-31(c).

1. This Case Involves a Matter of Significant Public Interest.

This case presents matters of significant public interest for multiple reasons. The public is closely following a variety education issues. Recent months have seen intense public interest in school performance and funding. The legacy of the Leandro decision still garners front-page news as the public follows funding for prekindergarten programs. Standardized testing results and graduation rates likewise grab headlines and often dominate water cooler conversation. Charter schools have been one way parents and students have sought to address some of the public education crisis.

The State has recently lifted the cap on the number of charter schools. Plaintiffs maintain that charter schools are entitled to be considered for capital outlay funding from the counties in which they are located. The public has through enactments of the General Assembly expressed its will that North Carolina have

more charter schools. Capital funding for those schools as well as existing charter schools like Plaintiffs has to come from somewhere. This case could have a serious impact on the future of North Carolina's public school system including charter schools. Counties, charter schools, parents, and students need and deserve to know whether public charter schools are part of the uniform system and whether they are allowed to ask for capital outlay funding. Future funding of both traditional and public charter schools could be affected by the answers to those questions.

Additionally, recent years have seen nearly unprecedented public interest in the use of public money. Taxpayers and voters are tuning in more than ever to determine where their tax dollars are being spent. With this increased public scrutiny comes significant public interest in places and programs which are ineligible for public money. Taxpayers want to know not only where their money is spent but also where it is *not* spent. Right now, that includes capital expenses for public charter schools.

2. This Case Involves Legal Principles of Major Significance to State Jurisprudence

Having the Court of last resort hear this appeal and petition ensures all branches of government will have a full and exact understanding of what the State Constitution means. For many of the reasons this case is appealable as of right on the grounds that it involves substantial constitutional questions, discussed above, it also involves legal principles of major significance to state jurisprudence.

Discussion of Why Certification Should Issue

Simply put, this appeal asks two straightforward questions: 1) whether public charter schools are part of the “general and uniform system of free public schools” in North Carolina, and if so, 2) whether public charter schools and the students they serve are entitled to ask for capital funding. Those questions are more important than ever in light of recent legislation lifting the cap on the number of charter schools. N.C. Sess. L. 2011-164. Yet, the Court of Appeals decided not to decide that question because the General Assembly had, in the court’s view, decided it for them by enacting partially different statutory funding schemes and protocols.

B. Questions Presented for Review

In the event that the Court allows Petitioners-Appellants’ Petition for Discretionary Review, Petitioners-Appellants present the following questions for review:

- (1) Whether the Court of Appeals erred in affirming the trials court’s decision to grant the Defendants’ motions to dismiss under Rule 12(b)(6) and determination that there is no statutory or constitutional authority under which counties or county school boards may allocate capital funding to public charter schools?
- (2) Whether public charter schools are part of the “general and uniform system of free public schools” within the mean of Article IX, § 2(1) of the North Carolina Constitution?
- (3) Whether public charter schools, as part of the “general and uniform system of free public schools,” may apply and be considered for capital funding from counties and/or county school boards?

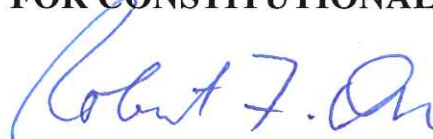
Granting discretionary review of the above questions will permit full briefing on the matters contained in this Petition. The judgment of the Court of Appeals significantly and negatively impacts the constitution and jurisprudence of North Carolina by sidestepping the question of whether public charter schools are part of the uniform system of public schools and whether they are allowed to be considered for capital funding by counties.

IV. CONCLUSION

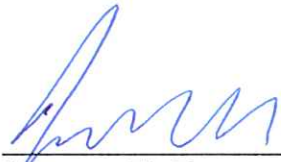
For the reasons stated above, the circumstances of this appeal fully satisfy the requirements of N.C. GEN. STAT. §§ 7A-30(1) and 7A-31(b). Petitioners-Appellants therefore respectfully request that this Court accept this Notice of Appeal on grounds that the judgment of the Court of Appeals directly involves substantial questions arising under the Constitution of this State. In the alternative, Petitioners-Appellants respectfully request that this Court certify this matter for discretionary review and determine the above noted important questions presented.

This the 17th day of August, 2011.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that I have served a copy of the foregoing Notice of Appeal and Petition for Discretionary Review upon counsel of record in this action by depositing a copy thereof in the United States mail, postage prepaid, and addressed as follows:

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This the 17th day of August, 2011.



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