18CV009586

STATE OF NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

NORTH CAROLINA SCHOOL BOARDS ASSOCIATION; WAKE COUNTY BOARD OF EDUCATION; DURHAM PUBLIC SCHOOLS BOARD OF EDUCATION; JOHNSTON COUNTY BOARD OF EDUCATION; BUNCOMBE COUNTY BOARD OF EDUCATION; EDGECOMBE COUNTY BOARD OF EDUCATION; LENOIR COUNTY BOARD OF EDUCATION; GUILFORD COUNTY BOARD OF EDUCATION; ROBESON COUNTY BOARD OF EDUCATION; CUMBERLAND COUNTY BOARD OF EDUCATION; WATAUGA COUNTY BOARD OF EDUCATION; HALIFAX COUNTY BOARD OF EDUCATION; PITT COUNTY BOARD OF EDUCATION; ORANGE COUNTY BOARD OF EDUCATION; NEW HANOVER COUNTY BOARD OF EDUCATION; HENDERSON COUNTY BOARD OF EDUCATION; CHARLOTTE-MECKLENBURG BOARD OF EDUCATION; CHAPEL HILL-CARRBORO BOARD OF EDUCATION; WINSTON-SALEM/FORSYTH COUNTY BOARD OF EDUCATION; ELIZABETH CITY-PASQUOTANK BOARD OF EDUCATION; and IREDELL-STATESVILLE BOARD OF EDUCATION,

Plaintiffs,

vs.

DALE R. FOLWELL, State Treasurer; LINDA M. COMBS, State Controller; CHARLES PERUSSE, State Budget Director; WILLIAM COBEY, Chairman of the State Board of Education; MARK JOHNSON, State Superintendent of Public Instruction; JOSH STEIN, Attorney General of North Carolina; RONALD G. PENNY, Secretary of the North Carolina Department of Revenue; JAMES H. TROGDON III, Secretary of the North Carolina Department of Transportation; TORRE JESSUP, North Carolina Commissioner of Motor Vehicles; MARGARET SPELLINGS, President of the

COMPLAINT

University of North Carolina; MICHAEL S. REGAN, Secretary of the North Carolina Department of Environmental Quality; ANTHONY M. COPELAND, Secretary of the North Carolina Department of Commerce; MANDY COHEN, Secretary of the North Carolina Department of Health and Human Services; and LOCKHART TAYLOR, Assistant Secretary of the North Carolina Division of Employment Security; each of whom is sued in his or her official capacity only;

Defendants.

Plaintiffs, complaining of Defendants, allege:

1. Plaintiffs are the North Carolina School Boards Association ("NCSBA") and the boards of education for Wake, Durham, Johnston, Buncombe, Edgecombe, Lenoir, Guilford, Robeson, Cumberland, Watauga, Halifax, Pitt, Orange, New Hanover, and Henderson counties, as well as the boards of education for Charlotte-Mecklenburg, Chapel Hill-Carrboro, Winston-Salem/Forsyth County, Elizabeth City-Pasquotank, and Iredell-Statesville ("BOE Plaintiffs" and, together with NCSBA, "Plaintiffs"). Plaintiff NCSBA is an incorporated association representing all county and city school boards in the state. The BOE Plaintiffs are the governing bodies of the public school systems for the referenced counties. As provided in N.C.G.S. 115C-40, the BOE Plaintiffs are bodies corporate.

2. Defendants are state officers, each of whom are sued in his or her official capacity.

3. Defendant Dale R. Folwell is the State Treasurer of North Carolina and in that capacity is authorized pursuant to N.C.G.S. 147-71 to collect and receive all money and property of the state not held by some person under authority of law. He is sued in his official capacity only.

4. Defendant Linda M. Combs is the State Controller of North Carolina and in that capacity is authorized by 143B-426.37, -426.39, and -426.40G to issue warrants for payment of money by the State Treasurer; to maintain a state accounting system "designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds"; and to keep records of all expenditures and revenues of state agencies. She is sued in her official capacity only.

5. Defendant Charles Perusse is the State Budget Director and in that capacity heads the Office of State Budget and Management, which is responsible for administration of the Civil Penalty and Forfeiture Fund, and for transferring moneys from that fund to the State School Technology Fund, pursuant to N.C.G.S. 115C-457.1, -457.2 and -457.3. He is sued in his official capacity only.

6. Defendant William Cobey is the Chairman of the State Board of Education which controls and directs the State School Technology Fund as provided in N.C.G.S. 115C-102.6D. He is sued in his official capacity only.

7. Defendant Mark Johnson is the State Superintendent of Public Instruction and pursuant to N.C.G.S. 115C-19 is the chief administrative officer of the State Board of Education and is responsible for management of the Department of Public Instruction and its funds subject to the direction, control and approval of the board. He is sued in his official capacity only.

8. Defendant Josh Stein is the Attorney General of North Carolina and pursuant to N.C.G.S. 114-2 is responsible for representing the state in actions by and against state agencies, and is responsible for paying to the Public Settlement Reserve Fund established by Section 18.7, Session Laws 1998-212, all moneys in excess of $75,000 collected by the state or state agencies pursuant to settlement agreements, court orders or judgments. The Attorney General is sued in his official capacity only.

9. Defendant Ronald G. Penny is the Secretary of the North Carolina Department of Revenue and as head of that department is responsible for assuring that all civil fines and penalties owed to the department are collected and are paid to the State Treasurer. He is sued in his official capacity only.

10. Defendant James H. Trogdon III is the Secretary of the North Carolina Department of Transportation and as head of that department is responsible for assuring that all civil fines and penalties owed to the department are collected and are paid to the State Treasurer. He is sued in his official capacity only.

11. Defendant Torre Jessup is the North Carolina Commissioner of Motor Vehicles and as head of that agency is responsible for assuring that all civil fines and penalties owed to the agency are collected and are paid to the State Treasurer. He is sued in his official capacity only.

12. Defendant Margaret Spellings is the President of the University of North Carolina and pursuant to N.C.G.S. 116-14 is the chief administrative officer of the university system and is responsible for executing the policies of the Board of Governors which pursuant to N.C.G.S. 116-11 and -143 sets fees and administers the budget of the university system. She is sued in her official capacity only.

13. Defendant Michael S. Regan is the Secretary of the North Carolina Department of Environmental Quality (formerly the Department of Environment and Natural Resources), and as head of that department is responsible for assuring that all civil fines and penalties owed to the department are collected and are paid to the State Treasurer. He is sued in his official capacity only.

14. Defendant Anthony M. Copeland is the Secretary of the North Carolina Department of Commerce and as head of that department is responsible for assuring that all civil fines and penalties owed to the department are collected and are paid to the State Treasurer. He is sued in his official capacity only.

15. Defendant Mandy Cohen is the Secretary of the North Carolina Department of Health and Human Services and as head of that department is responsible for assuring that all civil fines and penalties owed to the department are collected and are paid to the State Treasurer. She is sued in her official capacity only.

16. Defendant Lockhart Taylor is the Assistant Secretary of the North Carolina Division of Employment Security (formerly the Employment Security Commission) and as such is responsible for assuring that all civil fines and penalties owed to that agency are collected and are paid into the proper fund. He is sued in his official capacity only.

17. Subject matter jurisdiction over this cause and personal jurisdiction over Defendants are conferred upon this Court under and by virtue of N.C. Gen. Stat. §§ 1-47, 1-75.4, 7A-240 and 7A-243.

18. Venue for this cause is properly laid in this Court pursuant to and in accordance with N.C. Gen. Stat. §§ 1-77 and 1-82.

19. On or about August 8, 2008, in an action in the Superior Court of Wake County, civil action number 98-CVS-4982, Plaintiffs obtained a judgment against Defendants or their predecessors in interest for the sum of $747,833,074.00. A copy of said judgment is attached hereto as Exhibit A and incorporated herein by reference ("the Judgment"). The specific sums by Defendant contained in the Judgment are as follows:

a. Defendant Department of Health and Human Services owes $53,955.00.
b. Defendant Department of Commerce owes $11,560.00.
c. Defendant Department of Environmental Quality owes $20,781.00.
d. Defendant Department of Revenue owes $583,340,162.00.
e. Defendant Department of Transportation owes $104,071,323.00.
f. Defendant University of North Carolina owes $42,368,982.00.
g. Defendant Employment Security Commission owes $20,019,408.00.

20. Defendants have willfully and intentionally failed to pay the vast majority of the Judgment. To date, Defendants have paid only $18,133,251.00 in partial satisfaction of the Judgment, approximately two and a half percent of the total, leaving $729,699,823.00 unpaid.

21. In the Judgment, the court noted that Plaintiffs had been "exceptionally patient in pressing their claim for relief for moneys that clearly were owed to them over a long period of time." Indeed, the court further stated that "most of the present lawsuit should not have been necessary," as the issue of whether civil penalties were constitutionally required to go to public schools had previously been decided in a 1996 Supreme Court decision, *Craven Cty. Bd. of Educ. v. Boyles*, 343 N.C. 87.

22. Notwithstanding the clear constitutional mandate, the court in 2008 noted that the issue remained "whether the legislature will appropriate funds to make up for the resources which were required to go to the public schools under Article IX, Section 7 of the Constitution but which were diverted to other purposes by the Defendants."

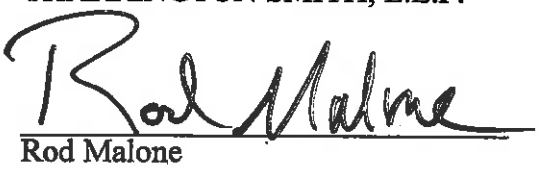
23. In 1976, the Supreme Court stated with respect to payment of judgments against the state that "[i]t has been the policy of this State to meet its valid obligations, and we foresee no change in that policy." *Smith v. State*, 289 N.C. 303, 321.

24. Contrary to the Supreme Court's view of the State's policy, an additional *ten years* have passed since the court noted the exceptional patience of the Plaintiffs in this litigation, and yet the legislature and Defendants have still not fulfilled their constitutional obligation to provide funding to make up for the funds that were diverted to other purposes by the Defendants in violation of the Constitution.

WHEREFORE, Plaintiffs demand judgment against the Defendants in the amount of $729,699,823.00 plus interest thereon from and after the date of this action until paid plus the costs of this action.

This the 1st day of August, 2018.

THARRINGTON SMITH, L.L.P.



Rod Malone
N.C. State Bar No. 19728
Deborah Stagner
N.C. State Bar No. 24543
David Noland
N.C. State Bar No. 53229
Tharrington Smith, LLP
150 Fayetteville Street, Suite 1800
Post Office Box 1151
Raleigh, NC 27602-1151
Telephone: 919.821.4711
Facsimile: 919.861.1338

Attorneys for Plaintiffs

NORTH CAROLINA: IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
WAKE COUNTY: NO. 98-CVS-14158

NORTH CAROLINA SCHOOL BOARDS ASSOCIATION, et al.,
Plaintiffs,

v.

RICHARD H. MOORE, State Treasurer; et al.,
Defendants.

MEMORANDUM OF DECISION AND JUDGMENT

THIS MATTER came on for hearing before the undersigned Judge of Superior Court on December 12, 2007, and February 29, 2008, in the Wake County Superior Court, upon plaintiffs' Motion for Entry of Judgment. Plaintiffs were represented by Michael Crowell, of counsel to the firm Tharrington Smith, LLP, and the defendants were represented by Grayson Kelley, Senior Deputy Attorney General, and W. Dale Talbert, Special Deputy Attorney General, of the Attorney General's office. After considering the briefs submitted by both sides and hearing and considering the arguments of counsel, the Court determines that the time has come to enter judgment in this matter.

Factual and Procedural Background

This case is before the Superior Court upon remand from the North Carolina Supreme Court to enter judgment consistent with its decision of July 1, 2005, *N.C. Schools Bds. Ass'n v. Moore*, 359 N.C. 474 (2005). In that decision the Supreme Court held that under

Article IX, Section 7 of the North Carolina Constitution the public schools are entitled to the clear proceeds of specific civil penalties collected by various state agencies, including the Department of Revenue, Department of Transportation, the campuses of the University of North Carolina, the Department of Commerce, the Employment Security Commission, state-owned mental institutions in the Department of Health and Human Services, and the Department of Environment and Natural Resources. Following the Supreme Court decision, the affected agencies began paying the proceeds of such penalties into the Civil Penalties and Forfeitures Fund, leaving for consideration of this Court the disposition of the clear proceeds of civil penalties collected, but not paid, to the public schools before that date.

This civil action was initially filed in December 1998 and, as decided by the Supreme Court, is subject to a three-year statute of limitations. Consequently, only the penalties collected from December 1995 to June 30, 2005, are at issue on remand. To simplify matters, the parties have agreed that any calculations and the judgment should be based on civil penalties collected between January 1, 1996, and June 30, 2005.

Pursuant to prior order of this Court, the defendants have estimated the amounts of the civil penalties collected by them from January 1, 1996, to June 30, 2005, subject to the Supreme Court's decision and not paid to the public schools. While the exact dollar amount cannot be known because the agencies' records do not always distinguish between penalties and other collections, the parties have agreed to proceed on the basis that slightly less than $768 million in civil penalties were collected by the affected agencies and not paid to the public schools. Of that total, an estimated $585,741,703 was collected by the Department of Revenue, $114,881,690 by the Department of Transportation, $47,076,647 by the campuses of the University of North Carolina, $20,019,408 by the Employment Security Commission, $11,560 by the Department of Commerce, $59,950 by state-owned mental institutions within the Department of Health and Human Services, and $23,090 by the Department of Environment and Natural Resources (these being penalties assessed against school systems that should have gone to the Civil Penalty and Forfeiture Fund rather than to DENR).

The Civil Penalty and Forfeiture Fund – G.S. 115C- 457.1

Following the Supreme Court's 1996 decision in *Craven Cty. Bd. of Educ. v. Boyles*, 343 N.C. 87 (1996), that certain civil penalties collected by state agencies should go to the public schools, the General Assembly created the Civil Penalty and Forfeiture Fund in G.S. 115C-457.1 *et seq.* and provided that the clear proceeds of all civil penalties collected by state agencies should be paid into the fund and then appropriated to the individual public school units on a per pupil basis. The legislature also declared that such funds should be used exclusively for technology. The same legislation provided that the agencies could withhold the actual costs of collection of the penalties but only up to a maximum of ten percent of the amount collected. The fund took effect September 1, 1997. Accordingly, had the defendant agencies in this lawsuit complied with Article IX, Section 7 of the Constitution the civil penalties collected by them from September 1, 1997, through June 30, 2005, would have been paid into the Civil Penalty and Forfeiture Fund and, pursuant to the mandate of G.S. 115C-457.1, been provided to the public schools to be used for technology.

The $768 million used above represents the total dollar amount of civil penalties collected by the affected agencies from January 1, 1996, through June 30, 2005. Under Article IX, Section 7 the public schools were entitled not to the full amount of the penalties collected but only to the clear proceeds. During that time, the costs of collection which could be retained by the agencies were capped at ten percent. The defendant agencies do not have records to establish the actual costs of collection for the years in question. In the last two years, however, the agencies, under instruction of the Office of State Budget Management have prepared estimates of their actual costs of collection and they argue that the costs for earlier years likely were about the same. In most instances the current actual costs of collection exceed ten percent of the penalties. The Department of Transportation, however, estimates its costs at 9.41 percent and the Department of Revenue estimates that its actual costs of collection are no more than .04 percent. (The actual cost of collecting penalties is certainly lower in that the .04 percent estimate includes the costs for collection of all unpaid taxes and interest as well as penalties.

Plaintiffs nevertheless have consented to the use of the .04 percent figure.) No estimates of the costs of collection were provided by the Employment Security Commission or the Department of Commerce.

Based on the best information available, and with the agreement of the parties, the Court finds that the amounts that should have been paid by the affected agencies to the public schools from January 1, 1996, through June 30, 2005, are ten percent less than the agencies' total collections for all agencies other than the Department of Transportation and Department of Revenue. The Court further finds that the amount that should have been paid by the Department of Transportation is 9.41 percent less than the total civil penalties collected by the department, and that the amount that should have been paid by the Department of Revenue is .04 percent less than the total civil penalties collected by the department. The plaintiffs and the Court, thus, have accepted the highest estimates provided by the agencies for the costs of collection, and for the Employment Security Commission and Department of Commerce the Court has allowed the retention of ten percent of the total amounts collected even though those agencies provided no information about their actual costs.

After the costs of collection are subtracted, the amounts of civil penalties collected by the affected agencies that should have been paid to the Civil Penalty and Forfeiture Fund but were not, are as follows: Department of Revenue $583,340,162; Department of Transportation $104,071,323; UNC campuses $42,368,982; Employment Security Commission $18,017,467; state-owned mental institutions $53,955; Department of Commerce $10,404; Department of Environment and Natural Resources $20,781. The total amount of the clear proceeds due from all the agencies is $747,883,074.

There is no question that civil penalties collected by the affected agencies from September 1, 1997, through June 30, 2005, should have been paid to the Civil Penalty and Forfeiture Fund and that the appropriate remedy for this Court to order is that the penalties improperly retained by the agencies, minus the costs of collection as described above, be paid into the fund. The defendants argue, however, that civil penalties collected by the agencies between January 1, 1996, and August 31, 1997, should go directly to the boards

of education for the counties in which the penalties were collected, and further that only boards which are named plaintiffs in this action may share in those proceeds. It appears that approximately $91.5 million of the total $768 million in civil penalties collected from January 1996 through June 2005 was collected during the period of January 1, 1996, to August 31, 1997.

In making their argument about the pre-September 1, 1997, civil penalties the defendants misconstrue the Supreme Court's decision in the *Craven County* case in 1996 as having affirmatively decided that all penalties collected before the enactment of G.S. 115C-457.1 *et seq.* were to go to the individual counties. As the decision of July 1, 2005, in this case shows, though, the Supreme Court did not view Article IX, Section 7 in that manner. In upholding the General Assembly's authority to create the Civil Penalty and Forfeiture Fund the Court rejected the argument that civil penalties had to go to counties where collected, an argument based on the constitutional language that penalties "shall belong to and remain in the several counties . . . ."

The Supreme Court decided instead that "the use of the phrase 'several counties' suggests that the drafters intended that the funds not stay in one particular county, but rather in the 'several counties' of the State of North Carolina." This Court is bound by the Supreme Court's construction of Article IX, Section 7 and therefore concludes as a matter of law that the civil penalties collected before September 1, 1997, and not paid according to the law existing before September 1, 1997 (the effective date of the Civil Penalty and Forfeiture Fund) are to be shared among the several counties of the state rather than be paid only to the counties of collection. Reduced to essentials, those monies that were not paid according to then existing law, are to be paid into the Civil Penalty and Forfeiture Fund and distributed according to G.S. 115C-457.1. The Court, in making this determination, does so with the full knowledge that Article IX, Section 7 of the North Carolina Constitution was amended effective January 1, 2005, which amendment provided in pertinent part as follows:

(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures and fines which are collected by State agencies and which

belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

As a practical matter, directing the pre-September 1, 1997, civil penalties to the Civil Penalty and Forfeiture Fund be shared by all the school systems in the state is the only reasonable alternative and is in line with the procedure authorized by the Constitutional Amendment to Article IX, Section 7 effective January 1, 2005. Since this case was remanded a number of additional local boards of education have intervened so that the named plaintiffs now include almost all the larger school systems in the state and almost all the school districts which have UNC campuses or have Department of Transportation vehicle weigh stations. Moreover, defendants have acknowledged the difficulty and expense of trying to determine in 2008 where penalties were collected in 1996. The administrative costs of such a venture would be a waste of time and money and the Court fails to see where the end result would be a precise and accurate one, if undertaken. When difficulties arise in determining where penalties are collected the most common sense and equitable solution is for the penalties to go to a central fund and be shared based on student enrollment (ADM), as directed by the General Assembly in its wisdom when it created the Civil Penalty and Forfeiture Fund in 1996.

Having determined the foregoing issues, it now is appropriate for this Court to enter judgment on remand as directed by the Supreme Court. The Court wishes this case had not reached this point. The Court has encouraged negotiations between the plaintiffs and the Legislative and Executive branches because in the end the issue is whether the legislature will appropriate funds to make up for the resources which were required to go to the public schools under Article IX, Section 7 of the Constitution but which were diverted to other purposes by the defendants. In these proceedings the plaintiffs often have expressed their willingness to settle on a lesser amount than the total which was improperly withheld from the schools from 1996 to 2005. The plaintiffs have been exceptionally patient in pressing their claim for relief for moneys that clearly were owed to

belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools.

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them over a long period of time. Indeed, the issue of whether the constitution requires civil penalties to go to the public schools was decided in the *Craven County* case in 1996 and most of the present lawsuit should not have been necessary. To date, however, it appears that the parties have not been willing to reach a mutually agreeable resolution. That being the case, the Court has no remaining option other than to enter judgment in favor of the plaintiffs pursuant to the decision of the North Carolina Supreme Court. At this point, the plaintiffs have been successful in establishing their claim against the State defendants for diverting funds that were required to be paid to them under the Constitution, Article IX, Section 7; and the Court and the parties have determined the amount of funds that had been diverted/withheld from the Civil Penalty and Forfeiture Fund within the applicable period of the statute of limitations, less the clear proceeds. Accordingly, judgment should now be entered for the reasons and in the amounts hereafter set forth:

DECISION

Determination of the Amount of "Clear Proceeds"

Pursuant to the Supreme Court's decision of July 1, 2005, the public schools are entitled to the clear proceeds of the civil penalties identified in that opinion and collected by defendants Department of Revenue, Department of Transportation, University of North Carolina campuses, Department of Commerce, Employment Security Commission, state-owned mental institutions of the Department of Health and Human Services, and Department of Natural and Economic Resources from January 1, 1996, through June 30, 2005.

The total of such penalties is $767,814,048. The total per agency is $585,741,703 from the Department of Revenue; $114,881,690 from the Department of Transportation; $47,076,647 from the campuses of the University of North Carolina; $20,019,408 from the Employment Security Commission; $59,950 from the state-owned mental institutions; $11,560 from the Department of Commerce; and $23,090 from the Department of Environment and Natural Resources. Defendants are entitled to retain from such civil penalties the actual costs of collection up to a maximum of ten percent of the penalties. The amounts then remaining after the actual costs of collection are the "clear proceeds"

referred to in Article IX, Section 7 of the North Carolina Constitution.

For the Department of Revenue, the actual cost of collection of the civil penalties is .04 percent of the penalties. For the Department of Transportation, the actual cost of collection is 9.41 percent of the penalties. For all the remaining agencies, the actual cost of collection is ten percent or more of the penalties and, therefore, the costs of collection to be retained by the agencies are limited to ten percent. After the costs of collection are subtracted, the clear proceeds of the civil penalties collected by the defendant agencies from January 1, 1996, through June 30, 2005, are **$747,883,074**. The amounts per individual agencies are as follows: Department of Revenue $583,340,162; Department of Transportation $104,071,323; UNC campuses $42,368,982; Employment Security Commission $18,017,467; state-owned mental institutions $53,955; Department of Commerce $10,404; Department of Environment and Natural Resources $20,781.

The Court concludes as a matter of law, based upon the decision of the North Carolina Supreme Court in this case on July 1, 2005 and Article IX, Section 7 of the Constitution of North Carolina and the $747,883,074 in clear proceeds of civil penalties collected by the defendant state agencies from January 1, 1996, through June 30, 2005, belong to and should be paid to the public schools of the state by payment to the Civil Penalty and Forfeiture Fund established by the General Assembly in G.S. 115C-457.1 and that judgment should be entered against the defendants reflecting this determination.

A judgment is the final determination of the rights of the parties and in formulating its judgment "the Court is required to recognize both the legal and equitable rights of the parties, and to frame *the judgment* so as to determine all of the rights of the parties, as well equitable as legal." *Hutchinson v. Smith*, 68 N.C. 354 (1873). The Court's inherent constitutional power includes the authority to craft an appropriate remedy for a constitutional violation. *In re Alamance County Court Facilities*, 329 N.C. 84 (1991). The remedy for a constitutional violation depends on the facts of each case, but the trial court at a minimum should attempt to reinstate the plaintiffs to their prior status or a comparable status so that they are made whole. *Corum v. University of North Carolina*, 330 N.C. 761, 784, *cert. denied*, 506 U.S. 985 (1992). In doing so, the trial court "must minimize the

encroachment upon other branches of government — in appearance and in fact — by seeking the least intrusive remedy available and necessary to right the wrong." *Id.*; *Leandro v. State*, 346 N.C. 336, 357 (1997). However, "when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied; and if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it." *Hoke Cty. Bd. of Educ. v. State*, 358 N.C. 605, 642 (2004).

Notwithstanding the foregoing, the ultimate remedy in this case boils down simply to money and the Court has no authority to appropriate money from the State Treasury despite the constitutional violation which has occurred and been judicially determined by the Supreme Court of North Carolina in this case. The Supreme Court, in *Smith v. State, 289 N.C. 303 (1976)* stated:

> ***In the event plaintiff (a state employee whose contract with the State had been allegedly breached) is successful in establishing his claim against the State, he cannot, of course, obtain execution to enforce the judgment. (citations omitted) The validity of his claim, however, will have been judicially ascertained. The judiciary will have performed its function to the limit of its constitutional powers. Satisfaction will depend upon the manner in which the General Assembly discharges its constitutional duties. 321, supra. (emphasis added).***

As of this time, the validity of the plaintiffs' claims has been judicially ascertained and the amount of funds that should have been paid to the public schools pursuant to Article IX, Section 7 of the North Carolina Constitution has been judicially determined.

A monetary Judgment in those amounts against the defendants is the appropriate remedy in this case. However, as the Supreme Court held in *Smith v. State, supra.* the satisfaction of the monetary judgment will depend "upon the manner in which the General Assembly discharges its constitutional duties." *Smith, 321.* This Court and the North Carolina Supreme Court have performed their function to the limit of their constitutional powers.

As a result, the ultimate responsibility for the satisfaction of this judgment will depend on the manner in which the General Assembly discharges its constitutional duties. Because of this constitutional separation of power, this Court can do no more than enter the judgment. The remaining chapter in this case, at least at this point, is in the hands of the General Assembly. Here's why.

The Court recognizes that although the defendants are the parties who must be ordered to pay into the Civil Penalty and Forfeiture Fund the moneys that should have been paid to the public schools but were improperly retained by the agencies for their own use, ultimately it is the General Assembly that will decide whether to appropriate sufficient funds to those agencies to allow them to make the required payments without disrupting their ongoing operations. The Court also recognizes that the General Assembly has final responsibility for state appropriations to the public schools and can use that power to determine the net benefit the schools derive from this judgment.

However, because of the constitutional limitations and the separation of power between the judicial, legislative and executive branches of government, the Court does not have the authority to direct the manner and means by which the judgment is to be satisfied or the amount of time in which it is done. Satisfaction will depend on the manner in which the General Assembly elects to carry out is constitutional duty. On a final point, the Court concludes as a matter of law that the plaintiffs are not entitled to receive interest on the amounts of the clear proceeds which should have been but were not paid to the Civil Penalty and Forfeiture Fund from January 1, 1985, to June 30, 2005.

IT IS, THEREFORE, ORDERED ADJUDGED AND DECREED that:

1. **Defendant Department of Health and Human Services owes $53,955.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C- 457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Department of Health and Human Services in the amount of $53,955.00.**

2. **Defendant Department of Commerce owes $11,560.00, which amount**

should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Department of Commerce in the amount of $11,560.00.

3. Defendant Department of Environment and Natural Resources owes $20,781.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Department of Environment and Natural Services in the amount of $20,781.00.

4. Defendant Department of Revenue owes $583,340,162.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Department of Revenue in the amount of $583,340,162.00.

5. Defendant Department of Transportation owes $104,071,323.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Department of Transportation in the amount of $104,071,323.00.

6. Defendant University of North Carolina owes $42,368,982.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section 7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant University of North Carolina in the amount of $42,368,982.00.

7. Defendant Employment Security Commission owes $20,019,408.00, which amount should have been paid into the Civil Penalty and Forfeiture Fund for distribution to the public schools pursuant to G.S. 115C-457.1 and Article IX, Section

7 of the North Carolina Constitution, and judgment is hereby entered against the Defendant Employment Security Commission in the amount of $20,019,408.00.

8. Moneys paid into the Civil Penalty and Forfeiture Fund pursuant to this judgment shall be treated as the General Assembly mandated in G.S. 115C-457.3 before its amendment in 2007 and before the amendment to Article IX, Section 7 of the North Carolina Constitution, effective January 1, 2005.

9. This Court retains jurisdiction over this matter, including, but not limited to, any pending issues relating to plaintiffs' motion for attorney's fees

This 8th day of August, 2008.

Howard E. Manning, Jr.
Superior Court Judge

CERTIFIED TRUE COPY FROM ORIGINAL
Clerk of Superior Court, Wake County
By: Assistant Deputy Clerk of Superior Court
Date: 7/31/18