

FILED

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

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SUPERIOR COURT DIVISION

COUNTY OF WAKE

WAKE CO., C.S.C.

20 CVS 12297

BY \_\_\_\_\_

CHARLOTTE CENTER FOR LEGAL  
ADVOCACY; LEGAL AID OF NORTH CAROLINA,  
INC.; DONALD GARRIS;  
E.E.; and RONSHELL PARKER,

Plaintiffs,

v.

NORTH CAROLINA DEPARTMENT  
OF REVENUE; and  
RONALD G. PENNY, in his official capacity  
as SECRETARY OF THE  
NORTH CAROLINA DEPARTMENT  
OF REVENUE,

Defendants.

ORDER

THIS CAUSE came on to be heard before the undersigned judge on November 6, 2020 on the Motion for Preliminary Injunction filed by Plaintiffs

Charlotte Center for Legal Advocacy, Legal Aid of North Carolina, Inc., Donald Garris, E.E., and Ronshell Parker ("Plaintiffs") as to Defendants the North Carolina Department of Revenue ("DOR" or the "Department") and Ronald G. Penny, in his official capacity as Secretary of the North Carolina Department of Revenue (collectively, "Defendants"). The parties, through counsel, have advised the Court that, without any admission of liability or waiver of defenses on the part of

Defendants, they have agreed to the terms of a preliminary injunction as set forth below.

This Court, for purposes of this Order and by agreement of the parties, finds as follows:

1. Plaintiffs filed their Complaint and Motion for Preliminary Injunction (the “Complaint and Motion”) on October 28, 2020.

2. Plaintiffs served the Complaint and Motion on Defendants on October 29, 2020.

3. Plaintiffs served expedited discovery requests on Defendants on October 30, 2020.

4. Defendants agreed to respond to Plaintiffs’ expedited discovery requests by 5:00 pm on the day before the hearing on Plaintiffs’ Motion for Preliminary Injunction to avoid a motion for expedited discovery.

5. Plaintiffs’ Complaint brings an as-applied constitutional challenge to the Extra Credit Grant Program established by Session Law 2020-97 under the Equal Protection Clause and procedural due process guarantee of the North Carolina Constitution.

6. Session Law 2020-97 allocates about \$440 million in federal coronavirus relief funding to the Extra Credit Grant Program, which provides grants of \$335 to North Carolina families with children under 17 designed “to help families with qualifying children in North Carolina by providing economic support to assist with

virtual schooling and child-care costs during the COVID-19 pandemic.” S.L. 2020-97, § 4.12.(a).

7. “[F]amilies with qualifying children in North Carolina” are defined by the statute as families that resided in North Carolina for the entire 2019 calendar year and had a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, during that period. *Id.* § 4.12.(d).

8. The General Assembly designated the Department of Revenue to administer the program. *See id.* § 4.12.(b).

9. Pursuant to Section 4.12.(a) of Session Law 2020-97, the Department is entitled to use “up to \$5,000,000 of the funds allocated [to the Extra Credit Grant Program] for the administration of the grant program.”

10. The Department has no discretion to deny an Extra Credit Grant to any eligible family, but instead “must provide a one-time grant to an individual that meets the conditions” of the statute by December 15, 2020. *Id.* § 4.12.(b), (c).

11. Plaintiffs allege that the statutory process for distributing Extra Credit Grants as set forth in Session Law 2020-97 discriminates against low-income families because eligible middle- and high-income families receive Extra Credit Grants automatically as long as they filed state income tax returns for 2019, while eligible low-income families that did not file state income tax returns for 2019 solely because their incomes were too low to trigger filing requirements receive Extra Credit Grants

only if they applied by October 15 on a form created by the Secretary of Revenue. *Id.* § 4.12.(d)(2).

12. Plaintiffs allege that this income-based distinction has no justification as applied to low-income families who are eligible to receive Extra Credit Grants, did not apply by the deadline, and about whom the State has the information needed to determine their eligibility to receive Extra Credit Grants.

13. Plaintiffs further allege that excluding low-income families from the distribution of Extra Credit Grants violates the fundamental right to a sound basic education under the North Carolina Constitution because the statute expressly provides that funds are designated for remote learning, and the State cannot exclude low-income families from receiving funds intended for those families to obtain the technology and equipment necessary to access remote learning as required by school districts across the state.

14. Based on these allegations, Plaintiffs allege that Session Law 2020-97 violates the Equal Protection Clause of the North Carolina Constitution.

15. Plaintiffs further allege that Session Law 2020-97 violates the procedural due process guarantee of the North Carolina Constitution because the statute did not require that low-income families be given notice about the Extra Credit Grant Program or that they could receive Extra Credit Grants only if they applied by October 15 on a form prescribed by the Secretary of Revenue. Plaintiffs also allege that, in addition to the lack of notice, the deadline did not permit



low-income families sufficient time to apply for the program using an application from the Department of Revenue that, to comply with the statute, used terms unfamiliar to low-income families who are not required to file state taxes.

16. Because of these alleged constitutional violations, Plaintiffs allege that many low-income families have not received the Extra Credit Grants to which they are entitled.

17. Defendants assert that, in order to increase awareness of the application deadline during the tight turnaround time set forth in the statute, the Department placed statewide radio advertising, newspaper advertising in African American and Spanish-language newspapers, and digital billboards in the state's metro areas. The Department also engaged in robust stakeholder outreach to make eligible individuals aware of the program and the application process.

18. Defendants acknowledge that, despite these efforts, some families that were eligible for Extra Credit Grants did not learn about the program or were not able to apply before the deadline. Defendants further acknowledge that the Department received numerous calls from people seeking to apply for Extra Credit Grants after the expiration of the deadline.

19. Defendants state that, if the funds appropriated for the Extra Credit Grant Program are not distributed by December 30, 2020, they will, by operation of law, revert to the federal government. *See* S.L. 2020-97, § 1.1.(b) ("Notwithstanding any provision of law to the contrary in this act or any other act appropriating funds

from the [Coronavirus Relief] Fund, funds appropriated from the Fund shall (i) remain available to expend until the deadline established by applicable federal law or guidance and (ii) be returned in accordance with that applicable federal law or guidance if unexpended by that deadline.”); 42 U.S.C. § 801 (limiting CARES Act funds to “necessary expenditures incurred due to [COVID-19] incurred during the period that... ends on December 30, 2020”).

20. Defendants represent that DOR has substantial funds allocated for the administration of the Extra Credit Grant Program remaining. Like the money allocated to the Extra Credit Grants Program as a whole, the funds allocated to DOR for administration of the program may be subject to reversion to the federal government.

21. Defendants represent that they believe thousands of applications for Extra Credit Grants were started but not completed.

22. Defendants do not admit to any violations of law and do not waive any defenses they may have to Plaintiffs’ claims. To avoid the burdens of litigation and in recognition of the theoretical possibility that the Court could conclude that Plaintiffs’ claims are likely to succeed on the merits, together with the corresponding risk of disruption to the operations of the Department that could result from entry of an order imposing additional burdens on the Department, however, Defendants will take the following actions to resolve Plaintiffs’ Motion for Preliminary Injunction:

- a) Reopen the deadline for eligible individuals that did not file state

income tax returns for 2019 solely because their incomes were too low to trigger filing requirements, and who have not applied for or received Extra Credit Grants (“Eligible Individuals”), to submit information demonstrating their eligibility to receive Extra Credit Grants through the process set forth in Paragraph 23 of this Order;

b) Extend the deadline for Eligible Individuals and any agency, entity, or individual acting on their behalf to submit information demonstrating their eligibility to receive Extra Credit Grants to DOR on or before December 7, 2020 through the process set forth in Paragraph 23 of this Order;

c) Deposit \$650,000 of the remaining funds allocated to DOR for the administration of the Extra Credit Grant Program to an account to which a third party (the “Administrator”) to be selected by Plaintiffs Charlotte Center for Legal Advocacy and Legal Aid of North Carolina, Inc. (the “Organizational Plaintiffs”) will have access, provided that (i) the Administrator’s use of such funds will be limited to expenses incurred in administration of a program to advertise the continued availability of Extra Credit Grants, notify low-income individuals of the availability of and eligibility requirements for Extra Credit Grants, assist Eligible Individuals in providing information showing they are entitled to receive Extra Credit Grants based on the requirements set forth in Session Law 2020-97 and provide that information to the Department as set forth below, and (ii) DOR shall retain any such funds not used by the Administrator for such purposes;

d) Post prominently on the Department website a notice directing Eligible Individuals to contact the Administrator at a phone number and/or e-mail address to be provided by the Organizational Plaintiffs;

e) Provide the Administrator with contact information in the Department's possession, custody or control regarding applications for Extra Credit Grants that were only partially completed or abandoned, including names, addresses, phone numbers, and email addresses, but not including social security numbers, so that the Administrator may follow up with these applicants to provide assistance in determining potential eligibility;

f) Provide the Administrator with information in the Department's possession, custody or control regarding telephone calls, email, or other correspondence received from people who sought assistance with the application that the Department was not able to provide prior to the deadline or who sought to apply for Extra Credit Grants after the deadline had expired;

g) Identify a point of contact that the Administrator may use to communicate with DOR regarding any technical issues that may arise;

h) Support and cooperate with efforts by the Organizational Plaintiffs and/or the Administrator to obtain from other agencies and/or departments of the State of North Carolina (including, but not limited to, the Department of Health and Human Services) any information in their possession, custody, or control identifying Eligible Individuals; and



i) On or before December 30, 2020, disburse Extra Credit Grants to all Eligible Individuals identified by the Organizational Plaintiffs and/or the Administrator to DOR pursuant to the process outlined herein.

23. In connection with this resolution of their Motion for Preliminary Injunction, Plaintiffs agree to take the following actions:

a) The Organizational Plaintiffs will identify the Administrator to administer a program to advertise the continued availability of Extra Credit Grants, notify low-income individuals of the availability of and eligibility requirements for Extra Credit Grants, assist Eligible Individuals in providing information showing they are entitled to receive Extra Credit Grants based on the requirements set forth in Session Law 2020-97 and provide that information to the Department.

b) The Administrator and/or agents or individuals working on its behalf will ask each Eligible Individual whose identifying information is submitted to DOR to certify and report information showing that he or she meets the eligibility requirements set forth by Session Law 2020-97, including that:

i. The Eligible Individual did not file a 2019 state income tax return solely because his or her gross income for the 2019 taxable year did not exceed the State of North Carolina's filing requirements for the Eligible Individual's filing status, S.L. 2020-97, § 4.12.(d)(2)(a);

ii. The Eligible Individual provides a name and mailing address, and any other information requested by the Department on the Extra Credit

Grants application, S.L. 2020-97, § 4.12.(d)(2)(b);

iii. The Eligible Individual reports that he or she was a resident of the State of North Carolina for the entire 2019 calendar year, S.L. 2020-97, § 4.12.(d)(2)(c); and

iv. The Eligible Individual reports that he or she had at least one “qualifying child” within the meaning of Section 24 of the Internal Revenue Code during the 2019 calendar year, and provides the name, age and social security number of that qualifying child, S.L. 2020-97, § 4.12.(d)(2)(d).

c) Provide DOR with the information collected by the Organizational Plaintiffs and/or the Administrator from Eligible Individuals, including name, address, and reporting of compliance with the statutory eligibility requirements set forth above on or before December 7, 2020 in the format requested by the DOR.

d) Withdraw Plaintiffs’ expedited discovery requests to Defendants.

e) Consent to a stay of the deadline for Defendants to answer Plaintiffs’ Complaint to thirty (30) days after the expiration of this Order on the date set forth below.

f) Organizational Plaintiffs and the Administrator shall keep all information provided to them regarding applicants confidential, only use such information for purposes of administering the Extra Credit Grant Program, and

destroy all confidential information regarding applicants at the conclusion of the program.

g) Organizational Plaintiffs and the Administrator shall identify a point of contact that DOR may use to communicate with the Administrator regarding any technical issues that may arise.

h) Organizational Plaintiffs and/or the Administrator will regularly advise the Department of the number of Eligible Individuals they locate and respond to any other reasonable requests of the Department in order to minimize the burdens placed on the Department by the extension in this Order.

24. Plaintiffs reserve the right to take such other and further action as may be necessary to the resolution of their claims.

25. Plaintiffs represent that their counsel are providing representation in this matter pro bono and will not seek or receive payment of any costs or fees in connection with their representation of Plaintiffs in this action, including from the administrative funds contributed by DOR pursuant to this Order.

26. Plaintiffs contend that good and sufficient cause exists for entry of this Order, and Defendants agree to the entry of this Order.

27. Defendants do not admit any liability in connection with their consent to this Order, nor do Defendants, by agreeing to entry of this Order, waive any defenses available to them.

WHEREAS, based on the information provided by the parties and by counsel at the hearing, the Court finds that this Order addresses the issues raised and the relief sought by Plaintiffs' Motion for Preliminary Injunction and that entry of this Order is reasonable and appropriate in light of the Court's consideration of the facts and circumstances presented, IT IS THEREFORE ORDERED that:

1. Defendants shall:

a) Reopen the deadline for Eligible Individuals to submit information demonstrating their eligibility to receive Extra Credit Grants through the process set forth in Paragraph 23 of this Order;

b) Extend the deadline for Eligible Individuals and any agency, entity, or individual acting on their behalf to submit information demonstrating their eligibility to receive Extra Credit Grants to DOR through the process outlined in Paragraph 23 of this Order on or before December 7, 2020;

c) Deposit \$650,000 of the remaining funds allocated to DOR for the administration of the Extra Credit Grant Program to an account to which a third party (the "Administrator") to be selected by Plaintiffs Charlotte Center for Legal Advocacy and Legal Aid of North Carolina, Inc. (the "Organizational Plaintiffs") will have access, provided that (i) the Administrator's use of such funds will be limited to expenses incurred in administration of a program to advertise the continued availability of Extra Credit Grants, notify low-income individuals of the availability of and eligibility requirements for Extra Credit Grants, assist Eligible Individuals in



providing information showing they are entitled to receive Extra Credit Grants based on the requirements set forth in Session Law 2020-97 and provide that information to the Department as set forth below, and (ii) DOR shall retain any such funds not used by the Administrator for such purposes;

d) Post prominently on DOR's website a notice directing Eligible Individuals to contact the Administrator at a phone number and/or e-mail address to be provided by the Organizational Plaintiffs;

e) Provide the Administrator with contact information in the Department's possession, custody or control regarding applications for Extra Credit Grants that were only partially completed or abandoned, including names, addresses, phone numbers, and email addresses, but not including social security numbers, so that the Administrator may follow up with these applicants to provide assistance in determining potential eligibility;

f) Provide the Administrator with information in the Department's possession, custody or control regarding telephone calls, email, or other correspondence received from people who sought assistance with the application that the Department was not able to provide prior to the deadline or who sought to apply for Extra Credit Grants after the deadline had expired;

g) Identify a point of contact that the Administrator may use to communicate with DOR regarding any technical issues that may arise;

h) Support and cooperate with efforts by the Organizational Plaintiffs and/or the Administrator to obtain from other agencies and/or departments of the State of North Carolina (including, but not limited to, the Department of Health and Human Services) any information in their possession, custody, or control identifying Eligible Individuals; and

i) Disburse Extra Credit Grants to all Eligible Individuals identified by the Organizational Plaintiffs and/or the Administrator to the Department pursuant the process outlined herein on or before December 30, 2020.

2. The Organizational Plaintiffs shall:

a) Identify the Administrator to administer a program to advertise the continued availability of Extra Credit Grants, notify low-income individuals of the availability of and eligibility requirements for Extra Credit Grants, assist Eligible Individuals in providing information showing they are entitled to receive Extra Credit Grants based on the requirements set forth in Session Law 2020-97 and provide that information to the Department.

b) Ensure that the Administrator and/or agents or individuals working on its behalf will ask each Eligible Individual whose identifying information is submitted to DOR to certify and report information showing that he or she meets the eligibility requirements set forth by Session Law 2020-97, including that:

i. The Eligible Individual did not file a 2019 state income tax

return solely because his or her gross income for the 2019 taxable year did not exceed the State of North Carolina's filing requirements for the Eligible Individual's filing status, S.L. 2020-97, § 4.12.(d)(2)(a);

ii. The Eligible Individual provides a name and mailing address, and any other information requested by the Department on the Extra Credit Grants application, S.L. 2020-97, § 4.12.(d)(2)(b);

iii. The Eligible Individual reports that he or she was a resident of the State of North Carolina for the entire 2019 calendar year, S.L. 2020-97, § 4.12.(d)(2)(c); and

iv. The Eligible Individual reports that he or she had at least one "qualifying child" within the meaning of Section 24 of the Internal Revenue Code during the 2019 calendar year, and provides the name, age and social security number of that qualifying child, S.L. 2020-97, § 4.12.(d)(2)(d).

c) Provide DOR with the information collected by the Organizational Plaintiffs and/or the Administrator from Eligible Individuals, including name, address, and reporting of compliance with the statutory eligibility requirements set forth above on or before December 7, 2020 in the format requested by the DOR.

d) Withdraw Plaintiffs' expedited discovery requests to Defendants.

e) Keep all information provided to them and/or the Administrator

regarding applicants confidential, only use such information for purposes of administering the Extra Credit Grant Program pursuant to this Order, and destroy all confidential information regarding applicants at the conclusion of the program.

f) Identify a point of contact that DOR may use to communicate with the Administrator regarding any technical issues that may arise.

g) The Organizational Plaintiffs and/or the Administrator will regularly advise the Department of the number of Eligible Individuals they locate and respond to any other reasonable requests of the Department in order to minimize the burdens placed on the Department by the deadline extension in this Order.

3. This Order shall only apply to the provisions of the Extra Credit Grant Program regarding applications for grant awards under S.L. 2020-97, § 4.12.(d)(2), and shall not apply to automatic grant awards under S.L. 2020-97, § 4.12(d)(1) or any other aspect or operation of the Extra Credit Grant Program.

4. Defendants' time to answer Plaintiffs' Complaint shall be extended for a period of thirty (30) days after the expiration of this Order as set forth below.

5. This Order shall remain in effect through and including December 31, 2020 and may be extended by the Parties or modified by further Order of this Court.

6. The Parties shall provide the Court with a joint status report within ten (10) days of the expiration of this Order.



SO ORDERED, this the 6<sup>th</sup> day of November.

  
\_\_\_\_\_  
Superior Court Judge

**Plaintiffs:**


CHARLOTTE CENTER FOR LEGAL ADVOCACY

LEGAL AID OF NORTH CAROLINA, INC.

DONALD GARRIS

E.E.


RONSHELL PARKER

By:  \_\_\_\_\_ November 5, 2020  
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Counsel for Plaintiffs

**Defendants:**

NORTH CAROLINA DEPARTMENT OF REVENUE

SECRETARY RONALD G. PENNY, in his official capacity

By:  \_\_\_\_\_ 11/6/2020  
Counsel for Defendants Date