

FILED

STATE OF NORTH CAROLINA <sup>2020 OCT 20 PM 4:14</sup> IN THE GENERAL COURT OF JUSTICE  
COUNTY OF WAKE <sup>WAKE COUNTY, C.S.C.</sup> SUPERIOR COURT DIVISION  
20 CVS \_\_\_\_\_

BT

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.

VERIFIED COMPLAINT AND  
MOTION FOR PRELIMINARY  
INJUNCTION

Plaintiffs Charlotte Center for Legal Advocacy; Legal Aid of North Carolina, Inc.; Donald Garris; E.E.; and Ronshell Parker, bringing an as-applied challenge under the North Carolina Constitution to the Extra Credit Grant provisions of Session Law 2020-97, and seeking (1) a declaratory judgment under N.C. Gen. Stat. § 1-253 *et seq.* of the North Carolina General Statutes and North Carolina Rule of Civil Procedure 57, and (2) a preliminary and permanent injunction under North Carolina Rule of Civil Procedure 65, state as follows:

## INTRODUCTION

1. North Carolina is distributing nearly half a billion dollars in federal coronavirus relief funding by sending \$335 checks to North Carolina families with children under the age of 17.

2. Over a million families—nearly all middle- and high-income families in the State—will receive these “Extra Credit Grants” to cover remote learning and child-care expenses.

3. North Carolina families living in poverty will see little of this largesse. Upon information and belief, only 1 in 14 eligible low-income families will receive a \$335 check from the State, and the rest—over 200,000 eligible low-income families—will receive nothing.

4. That is because the General Assembly chose a discriminatory, irrational, and unconstitutional process for distributing these payments. Under that process, eligible middle- and high-income families will receive grants automatically, including some families with annual incomes exceeding half a million dollars. Families with annual incomes ranging from below \$10,000 to \$20,000, by contrast, will receive grants only if they submitted an application to the Department of Revenue by October 15, 2020.

5. For many low-income families, this application requirement serves no legitimate purpose. That is because the State already has access to the information needed to provide grants to these low-income families without requiring an application, as it is doing for middle- and high-income families.

6. Even worse, the State imposed the application requirement on low-income families without giving them meaningful notice that they needed to apply, and without giving them adequate time to apply even if they happened to learn about the program. Indeed, the October 15 application deadline was less than six weeks after the relevant statute was enacted on September 4, and less than a month after the Department of Revenue first published the application form on or about September 17.

7. As a result, the Department of Revenue reported that it had received 14,910 online applications by the October 15 deadline and 262 paper applications as of October 19, for a total of 15,172 applications. Upon information and belief, even assuming that every application was submitted by a low-income family, this is less than 10% of eligible low-income families. Because the application deadline is now closed, upon information and belief, more than 200,000 low-income families who did not apply will not receive Extra Credit Grants. In contrast, millions of middle- and high-income families will receive these grants, without any action on their part.

8. It would be irrational in any circumstance to send \$335 payments to virtually every middle- and high-income family with children, but to only a tiny percentage of low-income families with children. But that result is particularly irrational here because the stated purpose of the Extra Credit Grants is to “assist with virtual schooling and child-care costs during the COVID-19 pandemic.” Session Law 2020-97, § 4.12.(a). Low-income families were already struggling economically before the pandemic, and they face remote learning and child-care challenges far

more severe than middle- and high-income families with annual incomes as high as \$440,000. The State is thus denying Extra Credit Grants to the families that need them most, and giving Extra Credit Grants to the families that need them least.

9. The State cannot constitutionally establish a process to distribute nearly half a billion dollars in public funds that has, in practice, operated to exclude North Carolina's poorest families—particularly when those funds are supposed to assist with the costs of education and child care. First, by discriminating against low-income families (who are also disproportionately families of color), the Extra Credit Grant Program violates the North Carolina Constitution's guarantee of equal protection. Second, by failing to provide adequate notice and a reasonable opportunity to apply, the program violates the North Carolina Constitution's guarantee of procedural due process.

10. This Court should declare that the Extra Credit Grant Program violates the North Carolina Constitution (a) as applied to low-income families for which the State already has sufficient information to provide an automatic grant, and (b) as applied to low-income families that did not apply for Extra Credit Grants because they did not receive notice of the program in time to submit an application by October 15, 2020. This Court should also enter injunctive relief requiring Defendants to adopt a remedial plan for ensuring that these low-income families receive Extra Credit Grants.

## PARTIES AND JURISDICTION

### A. Plaintiffs

11. Plaintiff Legal Aid of North Carolina, Inc. is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove legal barriers to economic opportunity.

12. Legal Aid provides legal assistance regarding benefits, foreclosure, domestic violence, housing, employment, and disaster relief. Legal Aid provided legal assistance to over 24,000 clients and their families in 2019, but it is not able to provide assistance to every qualified person who requests assistance due to limited resources.

13. Many of Legal Aid's clients are low-income families that could receive Extra Credit Grants only if they applied.

14. Because a payment of \$335 for remote learning and child-care expenses would be extremely important to low-income families, Legal Aid has conducted a statewide education and outreach effort to provide information about the Extra Credit Grant Program to its low-income clients.

15. Legal Aid has also asked law student volunteers in North Carolina to provide information about the Extra Credit Grant Program to Legal Aid's former clients. Those students placed over 1,000 calls and were able to reach over 300 of Legal Aid's former clients prior to the deadline.

16. Despite these extensive efforts, Legal Aid was able to reach only a small fraction of low-income families required to apply for Extra Credit Grants. Given the complexity of the application and the short deadline, Legal Aid was also not able to assist all eligible families with filing the application before the October 15 deadline.

17. Plaintiff Charlotte Center for Legal Advocacy (“Advocacy Center”) supports low-income residents in Charlotte, North Carolina through legal assistance and advocacy.

18. The Advocacy Center has engaged in a robust outreach plan to get the word out about the Extra Credit Grants. This included a month-long social media campaign as well as a Facebook live event with Arthur Bartlett, who directs the Advocacy Center’s Low-Income Taxpayer Clinic.

19. The Advocacy Center’s Low-Income Taxpayer Clinic provides pro bono representation on behalf of low-income taxpayers in tax disputes with the Internal Revenue Service, including audits, appeals, collection matters, and federal tax litigation. The Taxpayer Clinic also educates low-income and ESL taxpayers about taxpayer rights and responsibilities, and identifies and advocates for redressing issues that impact low-income taxpayers.

20. The Advocacy Center has provided information about Extra Credit Grants in both English and Spanish, and it has used its client database and newsletter to send an email blast to people who may qualify for the grants. Since September 14, 2020, the Advocacy Center has also posted information regarding the grants to the “COVID-19” section of its website under “stimulus checks,” and it has been regularly posting information about the grants on social media such as Instagram since September 16.

21. Despite these extensive efforts, the Advocacy Center was able to reach only a small fraction of low-income families required to apply for Extra Credit Grants.

Given the complexity of the application and the short deadline, the Advocacy Center was also not able to assist all eligible families with filing the application before the October 15 deadline.

22. Plaintiff Ronshell Parker is a resident of Mecklenburg County, North Carolina and a United States citizen.

23. Ms. Parker is a single mother with four children, ages eight, three, two, and four months. Each of Ms. Parker's children lives with her full time at a hotel in Charlotte. When Ms. Parker works, her mother is often able to care for Ms. Parker's children. Ms. Parker's eight-year-old ("J.C.") is a student in Charlotte-Mecklenburg Schools. J.C. currently attends school remotely using a laptop provided by Charlotte-Mecklenburg Schools on internet provided by the hotel. Part of the reason Ms. Parker and her family continue to live at the hotel is the free internet access.

24. Ms. Parker currently works at a fast food restaurant and has since April 2020. Ms. Parker filed a state income tax return for 2018 and plans to do so for 2020 if she earns sufficient income. Ms. Parker did not file a state income tax return for 2019. Although she worked about forty hours a week for five months of the year at McDonald's, she earned less than \$10/hour, and her 2019 income was less than \$10,000.

25. Ms. Parker and her children are recipients of Food and Nutrition Services as well as Medicaid.

26. Ms. Parker was unaware of North Carolina's Extra Credit Grant Program and did not apply before the October 15 deadline. Ms. Parker is eligible for

an Extra Credit Grant because she resided in North Carolina for all of 2019, J.C. and her other children are qualifying children, and she did not file a North Carolina income tax return solely because her income was below the threshold for her filing status. Should Ms. Parker receive a \$335 Extra Credit Grant, she would use it towards school supplies, food, clothing, and child care for her children.

27. Plaintiff Donald Garris is a resident of Halifax County, North Carolina and a United States citizen. Mr. Garris is married, but he and his wife have lived separately since 2018. Mr. Garris was in a car accident in October 2018 that limited his ability to work. Since the accident, Mr. Garris has received monthly disability payments. Mr. Garris is also a recipient of Food and Nutrition Services and Medicaid.

28. In 2019, Mr. Garris's taxable income was less than \$10,000.

29. Mr. Garris has one daughter ("K.G.") who turned seventeen years old in 2020. K.G. attends high school in Halifax County. K.G. lives with Mr. Garris full time and is currently attending school remotely. K.G. accesses her courses on a laptop that she borrows from a family friend, using internet also paid for in part by a family friend.

30. Mr. Garris was not aware of North Carolina's Extra Credit Grant Program, and did not apply. Mr. Garris is eligible for an Extra Credit Grant because he resided in North Carolina for all of 2019, K.G. was a qualifying child, and he did not file a North Carolina income tax return solely because his income was below the threshold for his filing status. Should Mr. Garris receive a \$335 Extra Credit Grant,



he would use it towards school supplies to assist with K.G.'s remote education, including a computer and/or internet.

31. Plaintiff E.E. is a resident of Mecklenburg County, North Carolina. Plaintiff E.E. is listed by her initials only because she is not a U.S. citizen.

32. E.E.'s husband works in landscaping and earns between \$350 and \$380 per week, but he works much less in the winter months and when it rains. The family lived in North Carolina for all of 2019. E.E. and her husband do not speak English. The family receives Medicaid and Food and Nutrition Services.

33. In 2019, neither E.E. nor her husband filed a state income tax return because their taxable income fell below the North Carolina threshold for filing.

34. E.E. has two daughters ("A.H." and "N.H."), who are both under seventeen years old and enrolled in Charlotte-Mecklenburg Schools, and two other children, one of whom is under seventeen. Her children are U.S. citizens and have Social Security numbers. A.H. and N.H. live with E.E. full time and are currently attending school remotely. A.H. and N.H. access their courses on laptops provided by the school district. The family pays between \$67 and \$72 per month for internet access, but they often have difficulty with the connection. The family does not have a hot spot or other means of internet access.

35. Both A.H. and N.H. qualify for free and reduced lunch. N.H.'s lunch is delivered to the family's home, but A.H.'s school requires families to pick up school lunch in a car. E.E. does not have a car, so she has not been able to get A.H.'s lunch.

E.E. asked the school if she could walk to the pick-up location to get A.H.'s lunch, but she was informed that she had to drive due to social distancing regulations.

36. E.E. was not aware of North Carolina's Extra Credit Grant program, and did not apply. E.E. is eligible for an Extra Credit Grant because her family resided in North Carolina for all of 2019, A.H. and N.H. are qualifying children with Social Security numbers, and her family did not file a North Carolina income tax return solely because their income was below the threshold for their filing status. Should E.E. receive a \$335 Extra Credit Grant, she would use it to pay her family's internet bill so her children can consistently access their remote education classes. She would also use the grant to pay for lunch for A.H.

#### **B. Defendants**

37. Defendant North Carolina Department of Revenue is an executive agency of the State of North Carolina that is headquartered in Wake County, North Carolina. The Department of Revenue is charged with administering the Extra Credit Grant Program. Session Law 2020-97, § 4.12.(b).

38. Defendant Ronald G. Penny is the Secretary of the North Carolina Department of Revenue. Defendant Penny is sued solely in his official capacity.

39. Defendants lack sovereign immunity with respect to the claims asserted herein because Plaintiffs seek declaratory and injunctive relief directly under the North Carolina Constitution, and no other adequate remedy is available or appropriate.

**C. Jurisdiction and Venue**

40. This Court has jurisdiction over the parties and subject matter of this lawsuit.

41. Venue is proper in Wake County Superior Court pursuant to N.C. Gen. Stat. §§ 1-77(2) and 1-82 because this lawsuit is an as-applied constitutional challenge to Session Law 2020-97 adopted by the North Carolina General Assembly in Wake County, and because Defendants' administration of the program at issue occurred in Wake County.

**FACTUAL ALLEGATIONS**

**A. COVID-19 has imposed burdens on North Carolina families with children, particularly in connection with education and child care.**

42. The COVID-19 pandemic has created burdens for many North Carolina families with children, especially in connection with education and child care.

43. North Carolina public schools have shifted, either in full or in part, to remote learning. To participate in remote learning, students need (at minimum) a computer and internet access. Many low-income families are not able to afford a computer or internet access, which has prevented their children from participating in remote learning.

44. The shift to remote learning has imposed child-care burdens as well. In-person schooling and after-school programs are themselves forms of child care. Without them, many families face a child-care gap. And many parents have been forced to fill that gap by paying for additional child care, working less, or even dropping out of the workforce altogether.

**B. North Carolina created the “Extra Credit Grant Program” to provide payments of \$335 to North Carolina families with children to help with these remote learning and child-care issues.**

45. The General Assembly created the Extra Credit Grant Program to help families with children cope with financial burdens relating to remote learning and child care.

46. The funds for this program were allocated from the federal CARES Act, Pub. L. No. 116-136, which the United States Congress passed in an attempt to stabilize the American economy during the pandemic.

47. North Carolina allocated a significant portion of its CARES Act funding in Session Law 2020-97, which was signed into law on September 4, 2020. Sections 3.3(72) and 4.12 of this law allocate about \$440 million to the Extra Credit Grant Program, which provides grants of \$335 to families with children under 17. A true and correct copy of the relevant portions of Session Law 2020-97 is attached as Exhibit A.

48. As the title itself implies, the “Extra Credit” Grant Program was created for educational purposes. The statute expressly provides that “[t]he purpose of this section is to use funds from the Coronavirus Relief Fund 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.” Session Law 2020-97, § 4.12.(a).

49. The “families with qualifying children in North Carolina” are families that resided in the State for the entire 2019 calendar year and had a child under age 17 during that period. *See id.*, § 4.12.(d).

50. The State will provide Extra Credit Grants to families with annual incomes of over half a million dollars—a level of income that puts these families in the top 1% of North Carolina households.<sup>1</sup>

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

52. The Department of Revenue has no discretion to deny a grant to any eligible family. Rather, it “*must* provide a one-time grant to an individual that meets the conditions” of the statute. *Id.* § 4.12.(b) (emphasis added).

53. The Department of Revenue must make payments by December 15, 2020. *Id.* § 4.12.(c).

**C. The Extra Credit Grant Program discriminates against low-income families by requiring them, but not middle- or high-income families, to apply for grants.**

54. Session Law 2020-97 created a process for distributing Extra Credit Grants that discriminates against low-income families on the basis of their income.

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<sup>1</sup> Section 4.12.(d)(1) says that the Department of Revenue must award a grant to an individual who was a resident of the State for the entire 2019 calendar year and reported at least one qualifying child on line 10a of Form D-400. This form references the federal child tax credit. *See* [https://files.nc.gov/ncdor/documents/files/d-400\\_webfill.pdf](https://files.nc.gov/ncdor/documents/files/d-400_webfill.pdf) “(On Line 10a, enter the number of dependent children for whom you were allowed a federal child tax credit.”). The federal child tax credit begins to phase out at \$200,000 (single) or \$400,000 (married filing jointly). 26 U.S.C. § 24(b)(1), (h)(3). The amount at which the credit is completely phased out depends on the number of children, with an increase of \$20,000 per child for single filers or \$40,000 per child for married filers. *Id.* Thus, a married family with three children would still receive a portion of the credit—and thus, an Extra Credit Grant—with annual income up to \$520,000.

55. Eligible middle- and high-income families will receive Extra Credit Grants automatically. So long as these families filed state income tax returns for 2019, they need not take any further action—they will simply receive \$335 checks. *See id.* § 4.12.(c), (d)(1).

56. Eligible low-income families, in contrast, will not receive Extra Credit Grants automatically. Session Law 2020-97 provides that families that did not file state income tax returns for 2019 solely because their incomes were too low to trigger the filing requirement will receive Extra Credit Grants only if they applied by October 15 on a form created by the Secretary of Revenue. *See id.* § 4.12.(d)(2).

57. North Carolina does not require individuals to file state income tax returns if their income falls below \$10,000 if filing single, \$15,000 if filing as head of household, or \$20,000 if filing jointly. N.C. Gen. Stat. §§ 105-153.8 & 105-153.5(a)(1).

58. Families with incomes below these thresholds did not violate any law or rule by failing to file state income tax returns for 2019. North Carolina law specifically provides that they are not required to file returns. N.C. Gen. Stat. § 105-153.8.

59. On information and belief, more than 200,000 North Carolina families with children did not file state income tax returns for 2019 because their incomes fell below these thresholds. They include many families with a working parent, as well as parents who are unemployed or disabled.

60. Session Law 2020-97 discriminates against these low-income families because it requires only them to apply for Extra Credit Grants. *See* Session Law 2020-97, § 4.12.(d)(2).

61. This income-based discrimination has no justification as applied to many low-income families: those for whom the information needed to determine eligibility is available to the State.

62. For example, numerous public assistance programs require participating families to provide their names and addresses, along with information about their income and children—the same information needed to determine eligibility for Extra Credit Grants. Ms. Parker, Mr. Garris, and E.E. and her family participate in two such programs—Medicaid and Food and Nutrition Services. Ms. Parker's and E.E.'s daughters also participate in the free & reduced price lunch program through their schools. The State also has sufficient assurance that this information is accurate: Like state income tax return filers, participants in these public assistance programs are required to be truthful, with penalties for providing inaccurate information.

63. Many low-income families file federal tax returns to obtain the benefit of the federal Earned Income Tax Credit and Child Tax Credit. These families often do not file state tax returns because there is no equivalent incentive and because they are not required to do so. Upon information and belief, the State has access to information from federal tax returns and could use this information to identify low-income families eligible for Extra Credit Grants.

64. Some low-income families that did not file North Carolina income tax returns for 2019 filed North Carolina income tax returns for prior years. For example, Ms. Parker filed a return for 2018. The information that the Department of Revenue possesses from her 2018 return—as well as the fact that her 2020 income tax withholdings show she remains a North Carolina resident—are sufficient to demonstrate her eligibility for an Extra Credit Grant, with no need for an application.

65. Upon information and belief, the State could have used information available to it from sources such as public assistance programs, federal tax returns, state tax returns from prior years, and other sources to award automatic grants to low-income families—just as it is using the information that it has gathered from income tax returns to award automatic grants to middle- and high-income families. The General Assembly instead arbitrarily chose to ignore the information that the State already has available to it about low-income families, and to require those families to apply for Extra Credit Grants.

**D. The State neither told low-income families that they needed to apply for Extra Credit Grants nor gave them enough time to do so.**

66. Making matters worse, the State failed to tell most low-income families that they needed to apply for Extra Credit Grants, and gave them little time to apply even if they did happen to learn about the program.

67. Session Law 2020-97 did not require that low-income families be given any notice about the Extra Credit Grant Program. It did not require, for example, that low-income families be told that the State had allocated \$335 to help them with



remote learning and child-care expenses, or that they could receive those funds only if they applied by October 15 on a form prescribed by the Secretary of Revenue.

68. Although Session Law 2020-97 allocated \$5 million for the Department of Revenue's administration of the program, the statute did not designate any of those funds for communication or outreach to low-income families. *See* Session Law 2020-97, § 4.12.(a).

69. Although the Department of Revenue made some efforts to publicize the program, those efforts reached, at most, a small percentage of low-income families.

70. For example, the Department provided information about the program on its website, including links to apply online or to download a paper application to submit by mail. The website also included a phone number that people could call to request a paper copy of the application. According to information received in response to a public records request, as of October 19, 2020, the Department had received just 262 paper applications.

71. Unless low-income families were already aware of the program, however, they had little reason to visit the Department's website. Thus, the website itself was unlikely to make low-income families aware of the program.

72. The Department also made some efforts to publicize the program through social media, print and radio ads, and billboards. It also created an online toolkit for "helping spread the word" about the program, with sample text for others to use in emails or social media posts.

73. On information and belief, these publicity efforts reached few low-income families.

74. Ms. Parker, Mr. Garris, and E.E. did not learn about the Extra Credit Grant program until after the application period had already closed. Consequently, none of them applied to receive an Extra Credit Grant.

75. Plaintiff Legal Aid made hundreds of phone calls to clients about the program. Few had even heard of the program, let alone understood how to apply and when the deadline was.

76. Plaintiff Advocacy Center conducted extensive efforts to reach low-income families entitled to receive Extra Credit Grants. It also found that very few families had even heard of the program.

77. The limited success of the Department's publicity efforts resulted in part from the time constraints that the General Assembly imposed on the program. Session Law 2020-97 was enacted on September 4, only six weeks before the application deadline of October 15. The Department's publicity efforts, and those by third parties, thus had little time to reach low-income families before the application period closed.

78. The time constraints imposed by the General Assembly also made it difficult for low-income families to apply even if they did learn about the program.

79. The Department of Revenue did not make the application form publicly available until on or about September 17—two weeks after the statute was enacted, and less than a month before the October 15 application deadline.

80. A true and correct copy of the Extra Credit Grant Application is attached as Exhibit B.

81. The application is complicated and uses terminology unfamiliar to many applicants. The tax terminology and concepts in the application are particularly challenging for low-income families that are not used to filing income tax returns.

82. On information and belief, the complexity of the application, combined with the short application deadline, prevented many low-income families that learned about the program prior to October 15 from submitting a timely application.

83. The State had no valid justification for failing to tell low-income families that they needed to apply for Extra Credit Grants or for failing to give those families enough time to apply.

84. The State could have provided additional notice to low-income families for a fraction of the total cost of the grants they were eligible to receive. At minimum, the State could have created a broader and more effective outreach program targeted at low-income families. For example, the State could have conducted outreach to recipients of public benefits. The State could also have conducted outreach to parents of students in North Carolina public schools. Such outreach programs would have reached significant numbers of low-income families that were eligible to apply for grants—including Mr. Garris, Ms. Parker, and E.E., who are all parents of children in North Carolina public schools and receive public benefits. Yet the State arbitrarily chose to forgo this approach, and thus to deprive many low-income families of notice.

85. The State also could have provided a later application deadline to (a) allow additional time for low-income families to receive notice and (b) give those families more time to complete and submit applications. Yet the legislature arbitrarily chose to impose an application deadline of October 15, depriving many low-income families of notice and an opportunity to apply.

**E. Few low-income families applied for Extra Credit Grants.**

86. Unsurprisingly, only a small percentage of low-income families applied for Extra Credit Grants by the October 15 deadline.

87. On information and belief, more than 200,000 families were eligible to apply for Extra Credit Grants.

88. Only about 15,000 families applied for Extra Credit Grants by the October 15 deadline.

89. Thus, less than 1 in 14, or about 7%, of eligible low-income families applied to receive these funds.

90. These numbers are so low because most low-income families never learned of the program, and even those families that did learn of the program faced obstacles to applying, including lack of access to the internet and insufficient time to obtain, complete, and submit an application before the deadline.

**F. It is irrational for the State to distribute Extra Credit Grants to the vast majority of middle- and high-income families, but to only a small minority of low-income families—particularly in light of the stated purpose of the program.**

91. Because the General Assembly adopted a discriminatory and arbitrary process for distributing Extra Credit Grants, the State will send \$335 payments to virtually all middle- and high-income families with children under 17, but to only a small percentage of low-income families with children under 17.

92. That result is irrational. A \$335 grant would be far more meaningful for a low-income family than for a middle- or high-income family. Indeed, for a parent earning the state minimum wage of \$7.25 per hour, \$335 is more than a week's worth of wages. It therefore makes little sense to send \$335 payments to nearly all middle- and high-income families, but to few low-income families.

93. That result is also particularly irrational here because the stated purpose of the Extra Credit Grants is to provide "economic support to assist with virtual schooling and child-care costs during the COVID-19 pandemic." Session Law 2020-97, § 4.12.(a).

94. Many middle- and high-income families have incurred little or no financial burden relating to remote learning or child care during the pandemic. Many of these families already have computers and internet access that their children can use for remote learning. Many of these families also have options for supervising their children without paying for child care, such as flexible work schedules, remote working opportunities, or non-working spouses. And even to the extent that some middle- and high-income families have incurred financial burdens relating to remote

learning or child care, many of these families have excess income that can cover these costs. Thus, many middle- and high-income families do not need a grant of \$335 to assist with the costs of remote learning and child care. Indeed, many high-income families might instead use this money, as the Senate President Pro Tem suggested in a press conference about the program, to treat themselves to a babysitter and a night out.

95. By contrast, low-income families are more likely to have incurred financial burdens relating to remote learning and child care during the pandemic. These families are also less likely to have excess income that can cover these costs. And many low-income families may not be able to afford the costs of remote learning and child care at all—with the result that the children in these families have been unable to learn, and that the parents in these families have been forced to work less or drop out of the workforce altogether. These families would therefore be far more likely than middle- and high-income families to use a \$335 grant to assist with the costs of remote learning and child care. For example, with a grant of \$335, low-income families could purchase an inexpensive laptop or provide months of internet service for their children—and thus enable those children to obtain access to an education that they would not otherwise receive.

96. Available data confirms that the impacts of the COVID-19 pandemic, including burdens associated with remote learning and child care, have fallen hardest on low-income families.

97. For example, the data shows that students in homes with annual incomes of less than \$25,000 are ten times more likely to be doing little or no remote learning than their peers from homes with annual incomes of more than \$100,000. The data also shows that 13% of students from low-income families have either no device or no internet, compared to 1% of families with incomes greater than \$50,000.

98. The data also shows that low-income families are more likely to suffer pandemic-induced burdens related to child care. For example, low-income families are more likely to be headed by single parents and less likely to have a non-working spouse who can care for the family's children. Lower-wage workers are also far less likely to be able to work from home (and thus to supervise their children while they work) than higher-wage workers, and less than 10% of the lowest-income earners have jobs that permit them to work remotely. And low-income families are more likely to have suffered job losses during the pandemic—which means that these families also have a disproportionate need to secure child care while they search, apply, and interview for new employment.

99. Mr. Garris has required assistance from family and friends to ensure K.G. is able to attend school remotely. Mr. Garris has been unable to provide K.G. with her own device and requires charitable help from a family friend to provide a computer and pay for internet so that K.G. may attend her classes.

100. Ms. Parker similarly needs assistance with expenses related to remote education and child care. Ms. Parker hopes to move her family into an apartment where she will need to pay for internet access for her daughter.

101. E.E. also needs financial support so her children can access remote learning. The family struggles to pay for internet services and does not own a hot spot, so they lose access to their classes when their connection fails. E.E. also struggles to afford lunch for her daughter since she does not have a car to pick up school lunch for A.H.

102. In short, low-income families like Mr. Garris's, Ms. Parker's, E.E.'s, and many others are *most* in need of economic support to assist with remote learning and child-care costs during the COVID-19 pandemic. Yet the General Assembly adopted a process for distributing grants that makes them and other low-income families *least* likely to receive that vital support. This turns the statute's objective on its head.

103. Additional features of the Extra Credit Grant Program underscore the arbitrariness of the General Assembly's chosen process for distributing funds.

104. For example, thousands of families that lived in North Carolina throughout 2019 have moved out of the State in 2020. Session Law 2020-97 nevertheless requires the Department of Revenue to send those families Extra Credit Grants. *See* Session Law 2020-97, § 4.12.(d) (requiring residency in North Carolina for all of 2019, without requiring current residency).

105. The State will thus send far more Extra Credits Grants to middle- and high-income families that now live in other states than it will send to low-income families here in North Carolina.



**G. The State’s discriminatory process for distributing Extra Credit Grants will also cause disproportionate harm to racial minorities.**

106. Finally, because of the close connection between poverty and race, the flaws of the Extra Credit Grant Program will fall most heavily on minority communities. Over 30% of African-American and Hispanic children in North Carolina live in poverty—roughly triple the rate of white children. The child poverty rate in Native American and multi-racial families is also significantly higher.

107. Thus, although the grants are not expressly tied to a family’s race, a disproportionate number of children of color live in families that will not receive a share of this significant expenditure of public funds.

108. The State’s widespread denial of funds to families of color is particularly problematic because those funds are intended to assist with access to education. The loss of in-person instruction and limited access to remote learning is already disproportionately affecting students of color. Indeed, as a result of the pandemic, Latinx students are projected to lose ten months of academic progress, and Black students are projected to lose nine. Rather than alleviating these disparate effects on learning, the State is exacerbating them by distributing Extra Credit Grants to far more white families than families of color.

**FIRST CLAIM FOR RELIEF:  
Equal Protection under the North Carolina Constitution  
(Strict Scrutiny)**

109. Plaintiffs incorporate and restate the allegations in the foregoing paragraphs by reference.

110. The Equal Protection Clause of the North Carolina Constitution provides that “[n]o person shall be denied the equal protection of the laws.” N.C. Const. art. I, § 19.

111. The Equal Protection Clause prohibits the State from (a) discriminating against a suspect class, or (b) infringing fundamental rights, unless the State satisfies strict scrutiny. To satisfy strict scrutiny, the State must prove that the discrimination or infringement at issue is necessary to achieve a compelling government interest.

112. The Extra Credit Grant Program discriminates against low-income families. Under the program, eligible middle- and high-income families will receive Extra Credit Grants automatically, but eligible low-income families—families with incomes below the very low thresholds for filing state income tax returns—will not receive Extra Credit Grants unless they submitted applications by October 15. *See* Session Law 2020-97, § 4.12.(d). Even worse, the State failed to notify low-income families about the application requirement or to give them enough time to submit applications. As a result, virtually all eligible middle- and high-income families will receive Extra Credit Grants, but less than 10% of eligible low-income families will receive them. The State has therefore singled out low-income families for disparate treatment.

113. Although the North Carolina courts have not yet decided this question, low-income families are correctly understood as a suspect class for purposes of the Equal Protection Clause in the North Carolina Constitution. Low-income families are

marginalized, vulnerable, and disadvantaged. They are also subject to prejudice—prejudice that they are unable to overcome through the political process due to a lack of influence. Families with low incomes also tend to remain families with low incomes from generation to generation. And, at least at present in North Carolina, low-income families are disproportionately families of color. For these reasons, low-income families form a discrete and insular minority, and discrimination against them calls for searching judicial scrutiny.

114. The Extra Credit Grant Program also infringes the fundamental right to a sound basic education—a right that is guaranteed by the North Carolina Constitution. *See* N.C. Const. art. I, § 15; *id.* art. IX, § 2(1). In today’s environment, access to remote learning is vital to a sound basic education. Yet many students in low-income families cannot access remote learning—and thus cannot access a sound basic education. As the statute expresses, Extra Credit Grants are intended to address these challenges and assist with the costs of remote learning. Session Law 2020-97, § 4.12.(a). But the program denies those grants to many students in low-income families. The program thus limits low-income students’ access to public education, and ultimately denies those students the sound basic education that they could receive if their families were provided Extra Credit Grants.

115. Because the Extra Credit Grant Program discriminates against a suspect class and infringes a fundamental right, it is subject to strict scrutiny.

116. As applied to many low-income families, the program fails strict scrutiny because its discrimination against low-income families and infringement of the right to education are not necessary to achieve any compelling government interest.

117. The State has no compelling reason to require many low-income families to apply for Extra Credit Grants. The State already has sufficient information about many of these families to award them Extra Credit Grants automatically. It would be far more efficient for the State to use that existing information to award automatic grants than to process tens or hundreds of thousands of applications.

118. The State also has no compelling reason to require low-income families to apply for Extra Credit Grants without telling them about the application requirement or giving them enough time to apply. The State could have provided notice to far more low-income families (particularly low-income families that participate in public assistance programs) at minimal additional cost. The State could also have done a statewide mailing to all households, as it has done regarding the upcoming election. The State also could have selected a later application deadline without contravening any compelling governmental interest.

119. For these reasons, the Extra Credit Grant Program violates the Equal Protection Clause of the North Carolina Constitution when it is subjected to strict scrutiny.

**SECOND CLAIM FOR RELIEF:  
Equal Protection under the North Carolina Constitution  
(Rational-Basis Review)**

120. Plaintiffs incorporate and restate the allegations in the foregoing paragraphs by reference.

121. In addition to prohibiting the State from discriminating against a suspect class or infringing fundamental rights unless it satisfies strict scrutiny, the Equal Protection Clause of the North Carolina Constitution prohibits the State from discriminating against a non-suspect class if the discrimination fails rational-basis review. Discrimination fails rational-basis review if it lacks a rational relationship to a legitimate government interest.

122. Even if the Extra Credit Grant Program is not subject to strict scrutiny, it is at least subject to rational-basis review because, as explained above, it discriminates against low-income families.

123. For the same reasons that it fails strict scrutiny, the program's discrimination against low-income families also fails rational-basis review.

124. For the same reasons that the State lacks any compelling government interest in doing so, the State also lacks any legitimate government interest in requiring many low-income families to apply for Extra Credit Grants, or in failing to tell them about the application requirement or to give them enough time to apply.

125. Denying Extra Credit Grants only to eligible low-income families is particularly irrational because those families need the grants the most. As Session Law 2020-97 itself states, the purpose of the grants is to assist with the costs of remote learning and child care. Low-income families need \$335 grants to assist with

the costs of remote learning and child care far more than middle- and high-income families. Put differently, the marginal impact of \$335 grants is far greater for low-income families than for middle- or high-income families. Yet the program awards grants to wealthier families automatically, while leaving poorer families to fend for themselves.

126. At the very least, it is irrational for the State to require low-income families to apply for Extra Credit Grants without ensuring they are aware of the program or giving them sufficient time to apply. An application requirement that low-income families cannot satisfy—either because they do not know about it or do not have enough time to meet it—is no better than an outright denial of benefits.

127. For these reasons, the Extra Credit Grant Program also violates the Equal Protection Clause of the North Carolina Constitution when it is subjected to rational-basis review.

**THIRD CLAIM FOR RELIEF:  
Procedural Due Process under the North Carolina Constitution**

128. Plaintiffs incorporate and restate the allegations in the foregoing paragraphs by reference.

129. The Law of the Land Clause of the North Carolina Constitution provides that “[n]o person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.” N.C. Const. art. I, § 19.

130. The Law of the Land Clause prohibits the State from, among other things, depriving persons of their liberty or property without procedural due process.

131. The requirements of procedural due process include notice and a meaningful opportunity to be heard.

132. The Extra Credit Grant Program violates the Law of the Land Clause because it deprives persons of their liberty and property without procedural due process, including notice and a meaningful opportunity to be heard.

133. The program deprives persons of their liberty because, as explained above, it infringes the state constitutional right to a sound basic education.

134. The program also deprives persons of their property. Every person who satisfies the eligibility criteria in the statute has a legitimate claim of entitlement to a grant, and thus has a property interest in the grant. Yet the program denies grants to low-income persons who do not apply for them. It therefore deprives those persons of their property interests in the grants.

135. The program deprives these persons of their liberty and property interests without notice. Session Law 2020-97 has no mechanism for notifying these persons that they are eligible to receive a grant, and that they will be denied a grant if they do not apply. And the State has failed to provide that notice to most low-income families. The program therefore fails to provide notice to most low-income families they are being denied their liberty and property interests.

136. The program also deprives low-income families of their liberty and property interests without a meaningful opportunity to be heard. Session Law 2020-97 was enacted on September 4; the Department of Revenue issued the application form on or about September 17; and applications were due on October 15. The

resulting application period was so short that many low-income families did not have a meaningful opportunity to apply—and thus a meaningful opportunity to be heard.

137. The Extra Credit Grant Program therefore violates the rights of low-income persons to procedural due process under the North Carolina Constitution.

### **MOTION FOR PRELIMINARY INJUNCTION**

Plaintiffs hereby move the Court for entry of a preliminary injunction under North Carolina Rule of Civil Procedure 65 ordering Defendants to create and implement a remedial plan for ensuring that eligible low-income families receive Extra Credit Grants.

1. Plaintiffs are likely to succeed on the merits of their claims that the exclusion of low-income families from the distribution of federal coronavirus relief funds under the Extra Credit Grant Program violates the Equal Protection and Law of the Land Clauses of the North Carolina Constitution.

2. Without injunctive relief, Plaintiffs will suffer irreparable harm. Despite the fact that they are eligible for these grants, Plaintiffs Parker, Garris, and E.E.—together with hundreds of thousands of other low-income North Carolina families—will not receive their share of funds allocated to provide economic support for remote learning and child care. Depriving these families of funds that they need *now* for remote learning and child care will harm them immediately, and that harm cannot be undone later. Plaintiffs Legal Aid and Advocacy Center will also suffer irreparable harm because they will be unable to assist their clients and the communities they serve in obtaining Extra Credit Grants.



3. Injunctive relief is also necessary to protect Plaintiffs' rights and preserve the status quo during the course of litigation. Session Law 2020-97 provides that the Department of Revenue must award the grants by December 15, 2020, and "in no event may an award be issued on or after January 1, 2021." Session Law 2020-97, § 4.12(c). Thus, absent injunctive relief, Plaintiffs Parker, Garris, and E.E. will be permanently deprived of the opportunity to obtain \$335 Extra Credit Grants. The Court should enter an injunction to prevent these deadlines from interfering with Plaintiffs' ability to litigate their claims.

4. The balancing of equities supports entry of an injunction. The loss of \$335 payments to over 200,000 low-income North Carolina families—\$65 million or more in federal relief funds for remote learning and child care directed to those most affected by the pandemic—far outweighs the administrative burden on Defendants of working to provide Extra Credit Grants to low-income families.

5. The public interest supports entry of an injunction. Without relief from this Court, tens of millions of dollars that would otherwise go to low-income North Carolina families are likely to revert to the federal government. Not only would an injunction provide significant benefit to low-income families, it would do so at minimal cost to the State.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray that the Court:

1. Declare that the Extra Credit Grant Program violates the North Carolina Constitution (a) as applied to low-income families for which the State

already has sufficient information to provide an automatic grant, and (b) as applied to low-income families that did not apply for Extra Credit Grants because they did not receive notice of the program in time to submit an application by October 15, 2020;

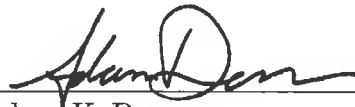
2. Enter a preliminary injunction requiring Defendants to adopt a remedial plan for ensuring that eligible low-income families receive Extra Credit Grants and preserving federal coronavirus relief funds for those grants;

3. Enter a permanent injunction ensuring that eligible low-income families receive Extra Credit Grants;

4. Award Plaintiffs costs and expenses pursuant to applicable law; and

5. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted this 28<sup>th</sup> day of October, 2020.



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**VERIFICATION**

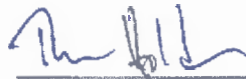
**STATE OF NORTH CAROLINA**

**COUNTY OF MECKLENBURG**

I, Thomas Holderness, state that I have read the Verified Complaint in this action and confirm that the allegations in it are true and correct based upon information known to me personally, information set forth in public sources, and information provided to me by persons with personal knowledge, except for those allegations which are made on information and belief, which I believe to be true.

Pursuant to the Order of the Supreme Court of North Carolina, Emergency Directive 5, in lieu of a notarized signature, I affirm, under the penalties for perjury, that the foregoing representations are true.

October 28, 2020



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**Thomas Holderness**

# **EXHIBIT A**

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

SESSION LAW 2020-97  
HOUSE BILL 1105

AN ACT TO PROVIDE ADDITIONAL AND REVISED USES FOR FEDERAL CORONAVIRUS RELIEF FUNDS, TO PROVIDE FUNDING FOR DISASTER RECOVERY, AND TO MAKE OTHER REVISIONS OF LAW.

The General Assembly of North Carolina enacts:

**PART I. TRANSFER, APPROPRIATION, AND USE OF REMAINING CORONAVIRUS RELIEF FUNDS**

**TRANSFER AND APPROPRIATION OF CORONAVIRUS RELIEF FUNDS**

**SECTION 1.1.(a)** Section 3.1 of S.L. 2020-4, as amended by Section 1 of S.L. 2020-32 and Section 1.1(b) of S.L. 2020-80, reads as rewritten:

"**SECTION 3.1.** Transfer of Funds from Reserves to Relief Fund. – The State Controller shall transfer the sum of ~~one two billion seven three hundred ninety five sixty three million nine three hundred eighty eight ninety thousand twenty nine six hundred forty six~~ dollars ~~(\$1,795,988,029) (\$2,363,390,646)~~ for the 2019-2020 fiscal year from the Reserve established in Section 2.1 of this act, and the sum of three hundred million dollars (\$300,000,000) for the 2019-2020 fiscal year from the Local Government Coronavirus Relief Reserve established in Section 2.3 of this act, to the Fund established in Section 2.2 of this act. All interest earned on funds held in the Reserve shall be transferred to the Coronavirus Relief Fund."

**SECTION 1.1.(b)** Section 3.2 of S.L. 2020-4, as amended by Section 2 of S.L. 2020-32 and Section 1.1(c) of S.L. 2020-80, reads as rewritten:

"**SECTION 3.2.** Appropriation of Funds from Relief Fund to OSBM. – There is appropriated from the Fund to OSBM the sum of two billion ~~ninety five six hundred sixty three million nine three hundred eighty eight ninety thousand twenty nine six hundred forty six~~ dollars ~~(\$2,095,988,029) (\$2,663,390,646)~~ in nonrecurring funds for the 2019-2020 fiscal year to be allocated and used as provided in Section 3.3 of this act. The funds appropriated in this section shall not revert at the end of the 2019-2020 fiscal year ~~but year~~. Notwithstanding any provision of law to the contrary in this act or any other act appropriating funds from the Fund, funds appropriated from the Fund shall (i) remain available to expend until December 30, 2020, 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."

**SECTION 1.1.(c)** Section 2.3 of S.L. 2020-4, as amended by Section 1.1(a) of S.L. 2020-80, reads as rewritten:

"**SECTION 2.3.** The State Controller shall establish a Local Government Coronavirus Relief Reserve (Local Reserve) in the General Fund to maintain certain federal funds transferred from the Reserve established in Section 2.1 of this act that are eligible to mitigate the impact of the COVID-19 outbreak in North Carolina on the revenue of local governments. The State Controller shall transfer the sum of three hundred million dollars (\$300,000,000) from the Reserve to the Local Reserve. Funds that are reserved in the Local Reserve do not constitute an "appropriation made by law," as that phrase is used in Section 7(1) of Article V of the North Carolina



Constitution. All interest earned on funds held in the Local Reserve shall be transferred to the Coronavirus Relief Fund."

#### USE OF CORONAVIRUS RELIEF FUNDS

**SECTION 1.2.** Section 3.3 of S.L. 2020-4, as amended by Section 3 of S.L. 2020-32, Section 4 of S.L. 2020-49, Section 1.1(d) of S.L. 2020-80, Section 3B(b) of S.L. 2020-88, and Section 4.9(a) of S.L. 2020-91, reads as rewritten:

**"SECTION 3.3.** Allocations of Funds. – OSBM shall allocate the funds appropriated in Section 3.2 of this act as follows:

- ...
- (3) ~~\$370,000,000~~ \$237,500,000 to OSBM to be used for the continuity of operation needs across State government. As referenced in Section 2.2 of this act, expenditures incurred during the period that begins on March 1, 2020, and ends on December 30, 2020, are eligible for funding under this subdivision. Expenditures eligible under this subdivision may include, but are not limited to, covering overtime costs at mental health institutions, prisons, community corrections, juvenile facilities, and veterans homes; covering costs of pay provided to employees of the Division of Adult Correction and Juvenile Justice at the Department of Public Safety in accordance with The Communicable Disease Emergency Policy established by the Office of State Human Resources; covering costs of in-home monitoring for all nonviolent juvenile offenders and nonviolent, elderly, health-compromised, and near-release adult offenders; covering costs of personal protective equipment, COVID-19 testing, and hygienic supplies for the Division of Adult Correction and Juvenile Justice at the Department of Public Safety; rent and utility assistance; purchasing critical information technology equipment and software licenses; enhancing telepresence services in public safety facilities and the court system; and purchasing emergency sanitation and hygienic supplies. Provided that the United States Department of Labor does not approve additional funding for the Customer Call Center operated by the Division of Employment Security, funds may also be used to hire additional time-limited staff in the Customer Call Center to meet the unprecedented demand for services. Up to two million dollars (\$2,000,000) of the funds allocated in this subdivision may be used to establish a temporary North Carolina Pandemic Recovery Office in accordance with Section 4.3 of this act. Up to five hundred thousand dollars (\$500,000) of the funds allocated in this subdivision may be further allocated to the Office of the State Auditor to perform the requirements set forth in Section 1.8 of this act. OSBM shall provide a report to the Joint Legislative Commission on Governmental Operations no later than August 15, 2020, detailing the allocation of funds under this subdivision. The report shall include which State agencies received allocations, the amounts disbursed, the amount spent in the 2019-2020 fiscal year, and for what purposes the funds were used by fund code and line-item detail.
  - (4) ~~\$300,000,000 to OSBM to allocate to the General Maintenance Reserve in the Highway Fund for the Department of Transportation; provided that OSBM shall not transfer these allocated funds to the Department for use until the guidelines in "Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments," dated April 22, 2020, are revised by the United States Department of the Treasury to authorize the use of funds from the Coronavirus Relief Fund for the purpose of replacing lost revenue due to the~~

- Centers for Disease Control and Prevention. Funds allocated pursuant to this subdivision may also be used to provide COVID-19 testing for public schools.
- (64) ~~\$5,000,000~~ \$22,000,000 to the Department of Public Instruction to hold in reserve and to award as grants, in the discretion of the Department, to public school units that apply for funds to provide access to services for exceptional children who have lost critical services as a result of school closures related to COVID-19. Of these funds, the Department is encouraged to use at least seventeen million dollars (\$17,000,000) for in-person services for qualifying children.
- ...
- (70) \$4,300,000 to OSBM to be allocated to the Children's Advocacy Centers (CACNC) of North Carolina, Inc., a nonprofit corporation, ~~to~~ of which at least seventy-five percent (75%) shall be distributed to child advocacy centers in this State that are in good standing with CACNC to cover the cost of increased child caseloads and the statewide provision of more effective and available virtual counseling assist with increased costs due to the COVID-19 pandemic.
- ...
- (72) \$440,541,000 to the Department of Revenue for grants awarded by the Department pursuant to Section 4.12 of this act.
- (73) \$2,000,000 to OSBM to allocate to the Carolina Small Business Development Fund, a community development financial institution, to be used for business advisory services to and deploying capital to small businesses in North Carolina to assist those businesses with losses due to a disruption of services resulting from the COVID-19 pandemic. Funding provided in this subdivision shall be used for financial assistance, business solutions and research, technology for applications for and reporting on aid, underwriting and loan servicing, technical assistance and advisory services, consulting for technical assistance workshops, and marketing and communication regarding services.
- (74) \$3,750,000 to OSBM to be allocated in the form of a grant to CAGC Foundation, Inc., a nonprofit organization, to be used in accordance with Section 4.14 of this act.
- (75) \$87,000,000 to the Department of Commerce, Division of Employment Security, to be credited to the Unemployment Insurance Trust Fund and used to provide the increased benefit amount payable under G.S. 96-14.2(e). If the increased benefits paid under G.S. 96-14.2(e) exceed \$87,000,000, then there is appropriated from the General Fund to the Unemployment Insurance Trust Fund an amount equal to the amount of increased benefits paid under G.S. 96-14.2(e) less \$87,000,000. The intent of the General Assembly is to hold harmless the Unemployment Insurance Trust Fund for any increased benefits paid under G.S. 96-14(e).
- (75a) \$50,000,000 to the OSBM to fulfill any outstanding State match requirement due to FEMA under the federal Lost Wage Assistance program at the close of that program. If this amount falls short of the State match required under the Lost Wages Assistance program, then OSBM is authorized to use funds allocated under Section 3.3(3) of S.L. 2020-4 to meet the remainder of the State match requirement. If any funds allocated under this subdivision are not needed to meet the outstanding State match requirement at the close of the federal Lost Wage Assistance program, then they are allocated to be used for the continuity of operation needs across State government, in accordance with Section 3.3(3) of S.L. 2020-4.



- a. \$5,899,330 to Alliance Behavioral Healthcare.
  - b. \$9,166,016 to Cardinal Innovations Healthcare.
  - c. \$4,027,152 to Eastpointe.
  - d. \$4,375,407 to Partners Behavioral Health Management.
  - e. \$4,631,095 to Sandhills Center.
  - f. \$5,292,267 to Trillium Health Resources.
  - g. \$4,608,733 to Vaya Health.
- (115) \$30,000,000 to the Department of Information Technology to use for the Growing Rural Economies with Access to Technology Fund to provide funding for a special supplementary GREAT Act grant process in accordance with Section 4.17 of this act."

**SECTION 1.3.** S.L. 2020-4 is amended by adding the following new sections to read:

**"EXTRA CREDIT GRANT PROGRAM**

**"SECTION 4.12.(a)** Purpose, Use, Appropriation. – The purpose of this section is to use funds from the Coronavirus Relief Fund 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. The Department of Revenue may use up to \$5,000,000 of the funds allocated in subdivision (72) of Section 3.3 of this act for the administration of the grant program and shall use the remainder of the funds to provide grants under this program. If the amount of grants awarded under this program exceeds the amount of funds allocated under this act for this program, then there is appropriated from the General Fund for the 2020-2021 fiscal year to the Department of Revenue an amount equal to the amount of grants awarded under this program less the amount of funds allocated under this section from the Coronavirus Relief Fund for this program.

**"SECTION 4.12.(b)** Extra Credit Grant Program. – There is created the Extra Credit Grant Program to be administered by the Department of Revenue. The Department must provide a one-time grant to an individual that meets the conditions of this section.

The Department must include with each grant award an explanatory insert provided by the State Controller. The insert must specify that the grant award is intended to assist with the additional virtual schooling or child care expenses incurred due to COVID-19. The insert cannot include the name of an elected official.

**"SECTION 4.12.(c)** Grant Award. – The grant amount is three hundred thirty-five dollars (\$335.00) per eligible individual. For purposes of this section, spouses who filed a joint 2019 State income tax return are considered one eligible individual. The Department of Revenue must award the grants as soon as practicable, but no later than December 15, 2020. If an individual meets all the requirements of this section for a grant award, but the return is not processed by the Department on or before December 15, 2020, then the Department may issue a grant award to the individual upon the processing of the return but in no event may an award be issued on or after January 1, 2021. The Department cannot disclose information regarding individual grants awarded under this program except as allowed for tax information in G.S. 105-259(b)(1)-(55). The Department may report on the aggregate grant awards provided under this program.

A grant may be issued by direct deposit if the individual received a 2019 State tax refund by direct deposit. In such circumstances, the direct deposit should be to the account to which the individual's 2019 State tax refund was deposited. If the Department becomes aware that such account is no longer associated with the individual or that the owner of the account has not remitted the grant to the individual entitled to the grant, then the Department may demand that the recipient of the deposit return the grant. In such circumstances, the Department may also reissue the grant to the individual by virtue of a check mailed to the address on the individual's 2019 State income tax return. Grants issued by checks will be mailed to the address on the individual's 2019 State income tax return unless an updated address is available or the address

on the individual's application. Checks issued by the Department under this subsection are valid for 90 days.

**"SECTION 4.12.(d) Eligibility.** – The Department of Revenue must award a grant to the following individuals:

- (1) Automatic grant award. – An individual who filed a 2019 State income tax return on or before October 15, 2020, as provided under G.S. 105-263 and meets both of the following conditions:
  - a. The taxpayer reported on Form D-400 that either the taxpayer or, if filing a joint return, the taxpayer's spouse, was a resident of the State for the entire 2019 calendar year.
  - b. The taxpayer reported at least one qualifying child on line 10a of Form D-400.
- (2) Application for grant award. – An individual who applied for a grant under this program on a form prescribed by the Secretary of Revenue postmarked on or before October 15, 2020, and meets all the following conditions:
  - a. The applicant did not file a 2019 State income tax return solely because the applicant's gross income for the 2019 taxable year did not exceed the State filing requirements for the taxpayer's filing status.
  - b. The applicant provides a name, mailing address, and any other information required by the Secretary.
  - c. The applicant reports that the applicant was a resident of the State for the entire 2019 calendar year.
  - d. The applicant reports the applicant had at least one child that met the conditions of a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, for the 2019 calendar year. The applicant must include the name, age, and social security number of the qualifying child. A child can only be claimed as a qualifying child by one applicant.

#### **"TEMPORARY FLEXIBILITY FOR TRANSPORTATION ALLOTMENT**

**"SECTION 4.13.** For the 2020-2021 school year, local school administrative units may use funds provided from the transportation allotment for the following additional purposes related to the COVID-19 pandemic:

- (1) School nutrition.
- (2) School- and community-based child care.
- (3) Sanitizing schools and buses.
- (4) In order to facilitate in-person instruction, personal protective equipment that meets applicable federal standards and guidelines from the Centers for Disease Control and Prevention.
- (5) Remote instruction.

#### **"CONSTRUCTION PPE & EDUCATION**

**"SECTION 4.14.(a)** The General Assembly finds that the coronavirus pandemic requires enactments that promote the general welfare, serve the public interest, and further the public purpose of helping to better protect our citizens from the coronavirus.

**"SECTION 4.14.(b)** The funds allocated in subdivision (74) of Section 3.3 of this act to the Office of State Budget and Management (OSBM) shall be used to provide grants to CAGC Foundation, Inc., (Foundation), a nonprofit organization, as follows:

- (1a) The sum of \$3,000,000 in the form of a grant to the Foundation to be used to make subgrants to entities listed in subdivision (2) of this subsection and as authorized under the federal CARES Act and U.S. Treasury Department

# **EXHIBIT B**

# NC-1105 Application for Extra Credit Grant Program

DOR  
Use  
Only

### Part 1. Applicant Information

Individual's First Name	M.I.	Individual's Last Name	Individual's Social Security Number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Spouse's First Name	M.I.	Spouse's Last Name	Spouse's Social Security Number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Mailing Address

City  State  Zip Code  Contact Phone Number

### Part 2. Eligibility

1. I certify that I am eligible to receive a grant as provided under the Extra Credit Grant Program because I meet all of the following conditions:

- a. I did not file a 2019 North Carolina individual income tax return solely because my gross income for the 2019 taxable year did not exceed the State's filing requirement for my filing status. (See instructions.)  Yes  No

Filing Requirements Chart	
Filing Status	A Return is Required if Federal Gross Income Exceeds
Single .....	\$ 10,000
Married - Filing Jointly .....	\$ 20,000
Married - Filing Separately	
If spouse <u>does not claim</u> itemized deductions .....	\$ 10,000
If spouse <u>claims</u> itemized deductions .....	0
Head of Household .....	\$ 15,000
Qualifying Widow(er)/Surviving Spouse .....	\$ 20,000
Nonresident alien (regardless of filing status) .....	\$ 0

- b. I was a resident of North Carolina for the entire 2019 calendar year.  Yes  No
- c. I had at least one child that met the conditions of a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, for the 2019 calendar year.  Yes  No

2. Enter the qualifying child's name, social security number, age, and relationship to you. (**Important:** If you had more than one child that met the conditions of a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, for the 2019 calendar year, you must complete and attach Form NC-1105-1 to include the identifying information for each qualifying child.)

First Name of Qualifying Child	Last Name of Qualifying Child	
<input type="text"/>	<input type="text"/>	
Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant (son, daughter, stepchild, eligible foster child, etc.)
<input type="text"/>	<input type="text"/>	<input type="text"/>

I declare and certify that I have examined this application and accompanying forms and statements and to the best of my knowledge and belief, it is true, correct, and complete.

Your Signature \_\_\_\_\_ Date \_\_\_\_\_ Spouse's Signature \_\_\_\_\_ Date \_\_\_\_\_

**MAIL TO: North Carolina Department of Revenue, P.O. Box 471, Raleigh NC 27602-0471**

## Instructions for Form NC-1105

## General Information

**Purpose of Form NC-1105.** Use Form NC-1105 to apply for the payment authorized under the Extra Credit Grant Program, if you did not file a 2019 North Carolina individual income tax return, Form D-400, solely because your gross income (and your spouse's gross income, if applicable) for 2019 did not exceed the State's filing requirement for your filing status. The purpose of the Extra Credit Grant Program is 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. The payment amount is a one-time award of \$335.00 per eligible applicant.

**Important: DO NOT submit Form NC-1105 if you file your 2019 North Carolina individual income tax return, Form D-400, on or before October 15, 2020.** If you timely file Form D-400 and you meet all of the eligibility requirements for the grant, the Department will automatically award you the grant. In addition, if you applied for the Extra Credit Grant Program online, **DO NOT** submit Form NC-1105 and any accompanying forms and statements by paper.

**Eligibility Requirements.** In order to be eligible to apply for a grant, you must timely file Form NC-1105 and certify on the application that you meet all of the conditions listed below:

1. You did not file a 2019 North Carolina individual income tax return, Form D-400, solely because your gross income (and your spouse's gross income, if applicable) for 2019 did not exceed the State's filing requirement for your filing status.

**Important: If your gross income (and your spouse's income, if applicable) for 2019 does exceed the State's filing requirement for your filing status, you may still qualify for the grant if you file your North Carolina individual income tax return, Form D-400, on or before October 15, 2020.**

2. You were a resident of North Carolina for the entire 2019 calendar year.
3. You had at least one child that met the conditions of a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, for the 2019 calendar year.

*(For more information on each eligibility requirement, see the "Specific Line Instructions for Form NC-1105," below.)*

**When and Where to File.** In order for your application to be timely filed, Form NC-1105 must be postmarked no later than October 15, 2020. Mail your completed application to the following address:

N.C. Department of Revenue  
Extra Credit Grant Program  
P.O. Box 471  
Raleigh NC 27602-0471

Late applications will not be accepted. If you meet all of the eligibility requirements, the Department will mail your grant to the address provided on your application.

**Assistance.** If you have any questions about this application, you may call the North Carolina Department of Revenue Customer Interaction Center at 1-877-252-3052 (8:00 am until 5:00 pm EST, Monday through Friday). Additional information, including the option to file your application online, is available on the Department's website, [www.ncdor.gov](http://www.ncdor.gov).

## Specific Line Instructions for Form NC-1105

**Part.1 Applicant Information.** Enter your name, social security number, and address in the spaces provided. Enter your spouse's name and social security number in the designated space, if applicable. **Important:** Be sure to enter your **entire nine digit** social security number(s) in the appropriate space. Disclosing your social security number on your application is a requirement to receive a grant under the Extra Credit Grant Program. Moreover, a missing social security number can cause your grant to be denied.

**Part 2. Eligibility.** To be eligible for the grant, you must answer "Yes" to each of the following conditions. If you do not answer "Yes" to each condition, **you are not eligible to apply for the grant** and should not submit the form to the Department.

**Line 1a. 2019 North Carolina Filing Requirement.** To determine if you meet this condition, you must perform the following three steps:

**Step 1 - Choose your 2019 filing status.** In general, if you filed a 2019 federal income tax return, you must choose the same filing status you selected on your federal income tax return. If you did not file a 2019 federal income tax return, you must choose the filing status you would have been entitled to if you had filed a 2019 federal income tax return. You must select one of the following:

**Married Filing Jointly.** If you are married and both you and your spouse agree to a joint return, you may choose "married filing jointly" as your filing status. You may also choose this filing status if your spouse died during 2019 and you did not remarry before the end of 2019.

**Married Filing Separately.** If you are married, and you and your spouse do not agree to a joint return, you must choose "married filing separately" as your filing status, unless you qualify to choose "head of household" as your filing status.

**Head of Household.** If you meet all of the following requirements, you may choose "head of household" as your filing status:

- You are unmarried or considered unmarried on the last day of 2019.
- You paid more than half of the cost of keeping up a home for 2019.
- A qualifying person lived with you in the home for more than half of 2019 (except for temporary absences, such as school).

**Qualifying Widower/Surviving Spouse.** If you meet all of the following requirements, you may choose "qualifying

widower/surviving spouse" as your filing status:

- You were entitled to file a joint return with your spouse for the year your spouse died.
- Your spouse died in 2017 or 2018 and you didn't remarry before the end of 2019.
- You have a child or stepchild (not a foster child) whom you can claim as a dependent or could claim as a dependent except that, for 2019:
  - a. The child had gross income of \$4,200 or more,
  - b. The child filed a joint return, or
  - c. You could be claimed as a dependent on someone else's return.
- The child lived in your home the entire 2019 calendar year, except for temporary absences, such as school.
- You paid more than half the cost of keeping up a home for the year.

**Single.** If you are unmarried or considered unmarried and you do not qualify for another filing status, you must choose "single" as your filing status.

If you need help determining which filing status you should choose or who is considered a "qualifying child" for purposes of your 2019 filing status, see [federal Publication 17, Tax Guide 2019](#) or [federal Publication 501 for 2019](#).

**Step 2 - Calculate your 2019 gross income.** To calculate your 2019 gross income, total all of items of income you (and your spouse, when applicable) received in 2019. Items of income include all money, goods, property, and services received during 2019, unless the item of income is exempt from tax. (For more information on what types of income are taxable, see [federal Publication 17, Tax Guide for 2019](#).)

**Step 3 - Compare your 2019 gross income to the Filing Requirements Chart.** If your 2019 gross income is equal to or less than the amount of gross income shown on the Filing Requirements Chart for your filing status (see page 1 of this application), you do not have a 2019 North Carolina filing requirement. You should answer "Yes" to question 1a.

If your 2019 gross income is more than the amount shown on the Filing Requirements Chart for your filing status, you must answer "No." You cannot apply for the grant using this application. You must file a North Carolina D-400 individual income tax return for tax year 2019. You will receive a grant automatically if you file your 2019 return on or before October 15, 2020 and you meet all of the eligibility requirements.

**Note:** If you were a nonresident alien, you cannot apply for the grant if your gross income for 2019 equals or exceeds \$1.00. A nonresident alien is an alien (not a U.S. Citizen) who has not passed the green card test or the substantial presence test. (For more information on the green card test and the substantial presence test, see [federal publication 519, U.S. Tax Guide for Aliens for 2019](#).) **Important:** Nonresident aliens may still qualify for the grant if the nonresident alien files a 2019 North Carolina individual income tax return, [Form](#)

[D-400](#), on or before October 15, 2020, and meets all of the eligibility requirements.

**Line 1b. Residency Requirement.** To meet this condition, you must report that you were a resident of North Carolina for the entire 2019 calendar year. You were a resident of North Carolina for the entire 2019 calendar year if you were domiciled in North Carolina for all of calendar year 2019, or if you resided in North Carolina during all of calendar year 2019 for other than a temporary or transitory purpose. If you were a resident of North Carolina for the entire 2019 calendar year, you should answer "Yes" to question 1b. (If you need help determining if you were a North Carolina resident for 2019, see the [2019 Personal Taxes Bulletin](#)).

**Line 1c. Qualifying Child.** To meet this condition, you must report that you had at least one qualifying child, as that term is defined in [Section 24 of the Internal Revenue Code](#), for the 2019 calendar year. In general, a child is a qualifying child if the child meets all of the following conditions:

1. The child is your son, daughter, stepchild, eligible foster child, brother, sister, stepbrother, stepsister, half-brother, half-sister, or a descendant of these individuals, which includes your grandchild, niece, or nephew.
2. The child was under age 17 at the end of 2019.
3. The child did not provide over half of his or her own support for 2019.
4. The child lived with you for more than half of 2019.
5. The child is claimed as a dependent on your 2019 federal tax return.
6. The child does not file a joint 2019 federal tax return.
7. The child was a U.S. citizen, U.S. national, or U.S. resident alien.

If you have at least one qualifying child, as the term is defined in Section 24 of the Internal Revenue Code, for 2019, you should answer "Yes" to question 1c. (If you need help determining if your child is a qualifying child, see [federal Publication 972 for tax year 2019, Child tax Credit and Credit for Other Dependents](#))

**Line 2. Qualifying Child Identifying Information.** If you reported you had a qualifying child for the 2019 calendar year, you are required to include the name, social security number, and age of the qualifying child. You should also include the child's relationship to you. For example son, daughter, stepchild, eligible foster child, etc.

**Important:** If you have more than one qualifying child for calendar year 2019, you must complete and attach [Form NC-1105-1](#) to this form. Form NC-1105-1 reports the identifying information for each qualifying child. (If you need help determining if your child is a qualifying child, see [federal Publication 972 for tax year 2019, Child tax Credit and Credit for Other Dependents](#).)

**Signature and Verification. Your application is not considered a valid application unless you sign it.** Before signing the form, you should review the application and any accompanying forms, schedules and statements and verify that they are true, correct and complete. Be sure to date your application,

# NC-1105-1 Qualifying Child Information for Extra Credit Program

DOR  
Use  
Only

You must attach this form to your Application for the Extra Credit Grant Program, Form NC-1105, if you had more than one child that met the conditions of a qualifying child, as that term is defined in Section 24 of the Internal Revenue Code, for the 2019 calendar year.

Part 1. Applicant Information			
Individual's First Name	M.I.	Individual's Last Name	Individual's Social Security Number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Spouse's First Name	M.I.	Spouse's Last Name	Spouse's Social Security Number
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Part 2. Qualifying Child Information <i>(Enter the qualifying child's name, social security number, age, and the relationship to applicant.)</i>			
Child 1	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 2	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 3	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 4	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 5	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 6	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	
Child 7	First Name of Qualifying Child	Last Name of Qualifying Child	
	<input type="text"/>	<input type="text"/>	
	Social Security Number of Qualifying Child	Age of Qualifying Child	Relationship of Qualifying Child to Applicant <i>(Ex. son, daughter, stepchild, eligible foster child, etc.)</i>
<input type="text"/>	<input type="text"/>	<input type="text"/>	