

No. 89PA22

DISTRICT THREE-A

SUPREME COURT OF NORTH CAROLINA

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ERIC STEVEN FEARRINGTON,  
CRAIG D. MALMROSE,

Plaintiffs,

v.

CITY OF GREENVILLE, PITT  
COUNTY BOARD OF  
EDUCATION,

Defendants.

From the Court of Appeals

No. COA20-877

From Pitt County

No. COA 20-441

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MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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TO THE HONORABLE NORTH CAROLINA SUPREME  
COURT:

The North Carolina Institute for Constitutional Law (“NCICL”) moves, under Rule 28(i), for leave to file the accompanying amicus curiae brief in support of Plaintiffs<sup>1</sup>.

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<sup>1</sup> Undersigned counsel emailed counsel of record on 2 August 2023 informing them of its intent to file this Motion and brief. No counsel of record has responded stating it did not consent to this Motion.

1. Interest of Amicus Curiae. Amicus North Carolina Institute for Constitutional Law (“NCICL”) is a 501(c)(3) corporation established to conduct research, and to educate and advise the general public, policy makers, and the Bar on the rights of citizens under the constitutions of the State of North Carolina and the United States of America. NCICL engages in litigation as necessary to further these goals. Its mission is to ensure compliance with constitutional restraints on government and protect the rights of North Carolinians. Throughout its history, NCICL has worked to ensure government compliance with educational provisions and has addressed education funding in both litigation and general, academic writing. NCICL remains committed to safeguarding sound education and constitutional principles. It thus has a strong interest in this Court’s ruling in this case.

2. Reasons Why this Brief is Desirable. This amicus brief is desirable because the additional briefing in the form of amicus briefs would help inform the Court of the legal framework within which to consider the fundamental legal issues, a framework which is bigger than any one case or scenario. In particular, this amicus brief includes historical information and context which Amicus believes may not be

fully briefed by the parties, but which would be valuable to the Court.

Public education and its funding remain an ongoing constitutional issue, drawing attention of the public, lawmakers, and the courts.

Defendant-Appellants City of Greenville (“The City”) and Pitt County Board of Education (“The Board”) invite an interpretation of Article IX, § 7 that cannot be reconciled with constitutional text and that would render the Fines and Forfeitures Clause impotent.

Amicus argues in its Brief, filed contemporaneously with this Motion, that because the Board receives less than the clear proceeds of civil penalties collected by the City’s RLCEP, the RLCEP violates The Fines and Forfeitures Clause, and this Court should so hold.

Amicus does not believe that arguments as framed by Amicus and many authorities cited in support thereof have been or will be argued to this Court.

3. Issue of Law to be Addressed. The amicus brief addresses the historical development of the Fines and Forfeitures Clause to help provide context for the Red-Light Camera Enforcement Program and Interlocal Agreement at issue are contrary to the Clause. The amicus brief also argues that allowing the agreement between the City and the

Board to continue would incentivize poor public policy.

4. Timeliness. The brief is timely under Rule 28(i)(3) because Defendants' brief is due 7 August 2023, following a previously granted extension of time.

5. Rule 28(i)(2) Statement. No person or entity other than amicus curiae and its counsel, directly or indirectly, either wrote this brief or contributed money for its preparation. The proposed brief of amicus is attached.

WHEREFORE, The North Carolina Institute for Constitutional Law respectfully asks this Court to accept the accompanying brief as the brief of amicus curiae in support of Plaintiffs.

Respectfully submitted, this the 7th day of August 2023.

Electronically submitted  
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## CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing document was served upon all counsel listed below via email and by filing the same with the Court's electronic filing system:

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Respectfully submitted, this the 7th day of August 2023.

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