No. 425A21-2 District 10

SUPREME COURT OF NORTH CAROLINA

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HOKE COUNTY BOARD OF EDUCATION, *et al.*, Plaintiffs-Appellants, Cross-Appellees, and CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Plaintiff-Intervenor-Appellant, Cross-Appellee, and RAFAEL PENN; *et al.* Plaintiff-Intervenors-Appellants, Cross-Appellees, v. STATE OF NORTH CAROLINA, Defendant-Appellant, Cross-Appellee, and STATE BOARD OF EDUCATION, Defendant-Appellee, and CHARLOTTE-MECKLENBURG BOARD OF EDUCATION, Realigned Defendant-Appellant, Cross-Appellee, and PHILIP E. BERGER, in his official Capacity as President *Pro Tempore* of the North Carolina	)	From Wake County No. COA22-86, No. 95-CVS-1158

Senate, and TIMOTHY K. MOORE, in his official capacity as Speaker of the North Carolina House of Representatives,
Intervenor Defendants-Appellants,
Cross-Appellees.

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BRIEF OF DEFENDANT-APPELLANT STATE OF NORTH CAROLINA

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BRIEF OF DEFENDANT-APPELLANT
STATE OF NORTH CAROLINA

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ISSUES PRESENTED

I. Following two decades of deference to the legislative and executive branches to develop a remedy for an ongoing violation of the State's constitutional duty to provide all students a sound basic education, was the trial court correct to order the relevant state actors to take measures to ensure compliance with our State's Constitution, including ordering them to use available state funds in that effort?

II. If the Supreme Court determines that the trial court's order of 10 November 2021 was in error, what specific remedies are appropriate to ensure compliance with the State's constitutional duty to provide all children the opportunity to obtain a sound basic education?

III. Does the trial court's 26 April 2022 Amended Order, which incorporates a writ of prohibition issued by the Court of Appeals in a separate appeal, fall within the scope of this Court's 21 March 2022 Remand Order?

INTRODUCTION

In 1997, this Court unanimously held in this case that the State "has the duty of providing the children of every school district with access to a sound basic education." *Leandro v. State*, 346 N.C. 336, 353 (1997) (*Leandro I*). In 2004, this Court unanimously affirmed the trial court's ruling that there was an ongoing failure by the State to meet that duty. While rejecting certain specific remedies the trial court had ordered as of that time, this Court nevertheless made clear that "[c]ertainly, when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied, and if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it." *Hoke Cnty. Bd. of Educ. v. State*, 358 N.C. 605, 642 (2004) (*Leandro II*).

The primary question before this Court now is whether, after more than 17 years of the State's failing to meet its obligation (including periods of legislative control by both parties), we have finally arrived at the point where the judicial measures this Court forecast in 1997 and 2004 are needed to

fulfill "the duty of the State." The trial court concluded that we are at that point, and therefore ordered a detailed equitable remedy — the Comprehensive Remedial Plan. That Plan was the product of an extensive, open, collaborative, bipartisan process that started in 2017, and is supported by a voluminous record.

While the State executive branch defendants participated in the process that led to the Plan and have taken action within their purview to implement it, the legislature declined to adopt the Comprehensive Remedial Plan, or any other plan that would fully remedy the ongoing constitutional violation. The trial court, finding that the State was holding in reserve more than sufficient unappropriated money to fund the Plan through its third year, ordered the appropriate state actors to make the necessary monetary transfers to carry out the Plan. In doing so, the trial court did no more than this Court previewed might be necessary in its unanimous 1997 and 2004 decisions in this case: It provided relief by imposing a specific remedy and instructed the relevant state actors to implement it. *Leandro II*, 358 N.C. at 642.

It should never be considered routine for the judicial branch to be put in the position of having to order such a remedy, but this case is unique in our State's history. Of course, it would have been far preferable for the legislature to have taken sufficient measures to fulfill the "duty of the State to guard and maintain" the people's right to a sound basic education. And it remains possible that the legislature may choose to satisfy its constitutional obligations here—a decision that could moot the pending appeal. But regrettably, as things stand today, this Court's previous rulings lead to the inescapable conclusion that the State's constitutional duty to our children has remained unfulfilled for nearly two decades. It is in precisely these kinds of circumstances that our courts are "called upon to exercise its inherent constitutional power to fashion a common law remedy for a violation of a particular constitutional right." *Corum v. Univ. of N. Carolina*, 330 N.C. 761, 784 (1992). In this extraordinary situation, where the State has failed for so long to adequately comply with a core constitutional obligation despite so many opportunities to cure that failure, the extraordinary measures adopted by the court below were appropriate and necessary.

But while the remedial measures ordered below are extraordinary, they are not unprecedented. This Court has explained that "reach[ing] toward[] the public purse" can be appropriate when necessary to ensure that the State adequately fulfills core constitutional obligations. *See In re Alamance Cnty. Ct. Facilities,* 329 N.C. 84, 100-01 (1991). Here, too, the Court should be willing to take measures necessary to fulfill the State's explicit constitutional duty to "guard and maintain" the right to a sound, basic education, N.C. Const. art. I, § 15.

STATEMENT OF THE GROUNDS FOR APPELLATE REVIEW

This Court has granted the State's petition for discretionary review. This Court therefore has jurisdiction pursuant to section 7A-31(b) of the General Statutes and Rule 15 of the North Carolina Rules of Appellate Procedure.

STATEMENT OF THE CASE AND THE FACTS

A. *Leandro I* and *Leandro II* establish the State's constitutional obligations to educate North Carolina's children.

More than twenty-eight years ago, students, guardians, and school boards from five low-wealth counties sued the State and the State Board of Education (collectively "State Defendants"), alleging that the State

Defendants failed to provide students in those counties with the education promised by Article I, § 15 and Article IX, § 2 of our Constitution.[1] The State moved to dismiss Plaintiffs' complaint, which the trial court denied. This Court affirmed, holding that "the right to education provided in the state constitution is a right to a sound basic education." *Leandro I*, 346 N.C. at 345.

This Court remanded for a determination of whether the State had fulfilled its duty to protect that basic right. *Id.* at 357. If the State fails to meet its constitutional obligations, this Court explained, the trial court must "enter a judgment granting declaratory relief and such other relief as needed to correct the wrong while minimizing the encroachment upon the other branches." *Id.*

The trial court found that the State had, in fact, denied students their right to a sound basic education, and ordered the State to remedy that failure. With respect to at-risk children in Hoke County, the trial court ordered the State to specifically supply the resources necessary to ensure

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[1] Later, students, guardians, and school boards from six urban school districts, as well as students who attended high school in the Charlotte-Mecklenburg School System, intervened.

that "at-risk" children have an equal opportunity to obtain a sound basic education.

This Court affirmed the trial court's conclusion "that the State had failed in its constitutional duty to provide certain students with the opportunity to attain a sound basic education." *Leandro II*, 358 N.C. at 608. The Court also affirmed the trial court's conclusion that the State was not providing at-risk children in Hoke County an equal opportunity to obtain a sound basic education. *Id.* at 642.

However, the Court reversed a portion of the trial court's order that required the State to supply certain resources to remedy the constitutional violation. *Id.* Although a court could "impos[e] a specific remedy," *Leandro II* explained, it should do so only after "the offending branch of government or its agents either fail to [satisfy their constitutional obligation] or have consistently shown an inability to do so." *Id.* The Court again remanded the case to the trial court, this time "challeng[ing]" the State to comply with its order. *Id.* at 649.

This case was last before this Court in in 2013. *Hoke Cnty. Bd. of Educ. v. State*, 367 N.C. 156 (2013). At that time, this Court considered the State's

appeal from a trial court order finding two provisions of the General Assembly's pre-kindergarten program unconstitutional in light of *Leandro I* and *II*. *Leandro III*, 367 N.C. at 158. After the trial court's order, but before this Court ruled on the State's appeal, the General Assembly responded by substantially altering and repealing the portions of the statute the trial court identified as unconstitutional. *See id.* at 158-59. This Court explained that "[w]hen, as here, the General Assembly revises a statute in a 'material and substantial' manner, with the intent 'to get rid of a law of dubious constitutionality,' the question of the act's constitutionality becomes moot." *See id.* at 159 (quoting *State v. McCluney*, 280 N.C. 404, 405-07 (N.C. 1972)). The Court concluded its opinion by reminding the parties that its "mandates in *Leandro [I]* and *Hoke County* [*Leandro II*] remain in full force and effect." *Hoke Cnty. Bd. of Educ. v. State*, 367 N.C. 156, 160 (2013) (*Leandro III*).

B. The trial court finds that the State has continued to fail to comply with *Leandro I*.

In the seventeen years after *Leandro II*, the trial court held more than twenty compliance hearings. (*See, e.g.*, R p 1306 n.1) During those hearings, the trial court reviewed data about teachers and principals, the academic performance of each school, and the resources available to at-risk students.

In that time, the trial court has never found the State fully compliant with *Leandro I*.

In 2018, when the State Board of Education moved to be released "from the remedial jurisdiction" of the trial court (R p 1300), the trial court denied the motion, finding that "[t]here is an ongoing constitutional violation of every child's right to receive the opportunity for a sound basic education." (R p 1305) No party appealed that order.

C. The State again attempts to comply with *Leandro I*.

In 2018, the State agreed to work with Plaintiffs, relevant state actors, and other stakeholders in order to ensure compliance with *Leandro I*. (R p 1634) The trial court lauded this action, declaring that it was "encouraged that the parties to this case . . . are in agreement that the time has come to take decisive and concrete action . . . to bring North Carolina into constitutional compliance so that all students have access to the opportunity to . . . obtain a sound basic education." (R p 1634)

The State and Plaintiffs sought court approval to engage an independent expert to outline a plan that would finally bring the State into compliance with *Leandro I* in January 2018. (R p 1641) In March of that year,

the trial court appointed WestEd, "a non-profit, non-partisan, educational research, development, and service organization" to assist the parties' endeavor to ensure compliance with *Leandro I*. (R pp 1641-42)

WestEd worked with the Friday Institute for Educational Innovation at North Carolina State University, the Learning Policy Institute (a non-profit research institute focused on education policy), and other stakeholders, including the parties, to develop a proposed plan that would ensure that the State would, upon implementation, be in compliance with *Leandro I*. (R p 1642) On 21 January 2020, the trial court entered a consent order that adopted "the detailed findings, research, and recommendations of" the WestEd Report. (R p 1634) On 21 March 2021, based on the findings of the WestEd Report, which the Court adopted in its earlier findings and ordered the State to incorporate, the State developed the Comprehensive Remedial Plan. The trial court then adopted that Plan. The Comprehensive Remedial Plan identified "discrete, individual action steps to be taken to achieve the overarching constitutional obligation to provide all children the opportunity to obtain a sound basic education in a public school" over an eight-year period, from 2021 to 2028. (R p 1688) It "includes implementation timelines

for each action step, as well as the estimated additional state investment necessary for each of the actions." (R p 1690) The Comprehensive Remedial Plan represents the first and only effort by any party to set out an exhaustive strategy to achieve compliance with *Leandro I*.[2] (R p 1831)

On 11 June 2021 the trial court ordered the State to implement "the Comprehensive Remedial Plan . . . in full and in accordance timelines set forth therein." (R p 1684) No party appealed that order. The State Defendants remain under an obligation to take each action described in the Comprehensive Remedial Plan.

D. The trial court orders state actors to transfer state funds necessary to implement years two and three of the Comprehensive Remedial Plan.

The State lacked the funds necessary to fully enact the Comprehensive Remedial Plan. Echoing *Leandro II*, on 7 June 2021, the trial court warned that if the State "fails to implement the actions described in the Comprehensive Remedial Plan . . . it will then be the duty of [the trial court]

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[2] While the parties crafted the Plan, "the COVID-19 pandemic struck and dramatically altered the landscape for" students. (R p 1690) The Remedial Plan thus recognizes that "the pandemic has exacerbated many of the inequities and challenges that are the focus of the *Leandro* case." (R p 1690)

to enter a judgment granting declaratory relief and such other relief as needed to correct the wrong." (R p 1683) When still more time elapsed without the State obtaining the funds necessary to fully implement the Comprehensive Remedial Plan, the trial court ordered the parties to provide an update on the State's efforts to secure the funding necessary to implement the upcoming years two and three of the Comprehensive Remedial Plan. (R p 1817) In that order, the Court warned the State that it was contemplating taking specific action to secure the State's compliance.

During a hearing on 18 October 2021, the State reported that because the General Assembly had not yet enacted a budget, the State had not secured the funds necessary to implement years two and three of the Comprehensive Remedial Plan. (R p 1820) The Court again warned that it was considering what actions to take to secure the State's compliance, and directed Plaintiffs "to submit proposed order(s) and supporting legal authorities" that addressed the remedial measures available to the Court to secure full compliance. (R pp 1820-21)

After considering Plaintiffs' submission and the State's response, the trial court entered an order directing the State Treasurer, State Controller,

and State Budget Director to "take the necessary actions to transfer the total amount of funds necessary to effectuate years 2 & 3 of the Comprehensive Remedial Plan, from the unappropriated balance within the General Fund to the state agents and state actors with fiscal responsibility for implementing the Comprehensive Remedial Plan." (R p 1841) The trial court observed that the General Assembly had not enacted a budget, (R p 1833), but that the State had sufficient reserve funds to cover the cost of implementing years two and three of the Comprehensive Remedial Plan. (R p 1331)

The trial court found that, taken together, Article I, § 15 and Article IX, §§ 2, 6, and 7 constituted an appropriation made by law – *i.e.*, by the Constitution itself. It further found that the State had failed to remedy the ongoing constitutional violations despite years of deference from the courts. Therefore, the trial court ordered the relevant state actors to transfer state funds consistent with the Constitution's directive to fund the right to education. (R p 1838) According to the trial court, because implementation of years two and three of the Comprehensive Remedial Plan was necessary to ensure that children receive a sound basic education, the Constitution

required the State to devote the funds set forth in those years of the Comprehensive Remedial Plan. *Id.*

The trial court, however, made two final attempts to defer to the political branches. First, it stayed its order for thirty days "to permit the other branches of government to take further action consistent with the findings and conclusions of this Order." (R p 1842) Second, the trial court scheduled a hearing to amend its order in light of the subsequently enacted state budget. (R pp 1843-45)

Before the trial court could hold that hearing, however, the Controller sought and obtained a writ of prohibition from the Court of Appeals. *In re the 10 Nov. 2021 Order in Hoke Cnty. Bd. of Educ. v. State*, (No. P21-511) Order at 2-3 (Nov. 30, 2021). The Court of Appeals' order, which included a dissent by Judge Arrowood, prohibited the trial court from enforcing the 10 November 2021 Order. *Id.* at 2. Plaintiffs appealed the Writ of Prohibition based on Judge Arrowood's dissent, and sought discretionary review of additional issues.

On 8 December 2021, the State filed a notice of appeal from the trial court order. On 14 February 2022, the State filed a petition for discretionary

review of the trial court's order prior to determination by the North Carolina Court of Appeals.

E. This Court remands to the trial court to determine the effect of the State Budget on the trial court's order.

On 21 March 2022, this Court granted the State's petition for discretionary review and held Plaintiffs' appeal from the Court of Appeals' Writ of Prohibition in abeyance. (Remand Order at 1) The Court then remanded the case to the trial court "for a period of no more than thirty days for the purpose of allowing the trial court to determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted in its" November Order. (Remand Order at 2) The Court instructed the trial court "to make any necessary findings of fact and conclusions of law and to certify any amended order that it chooses to enter with this Court on or before the thirtieth day following the entry of this order." (Remand Order at 2) The Court would issue a briefing schedule for the State's appeal, it explained, "[a]s soon as the trial court has certified to this Court any amended order that it chooses to enter." (Remand Order at 2)

After this Court's remand order, the trial court held several hearings with the parties and invited briefing on the effect of the State Budget on the trial court's November Order. On 26 April 2022, the trial court issued its amended order. The amended order reduced the amount of state funds to be transferred to relevant state agencies to reflect the amounts the State Budget appropriated those agencies for substantially similar purposes. *See* 26 Apr. Order ¶¶ 50-56.

However, the amended order departed from the trial court's 10 November 2021 Order in one significant way. Whereas the 10 November 2021 Order directed the State Treasurer, State Controller, and Office of State Budget and Management ("OSBM") to transfer state funds to specific the N.C. Department of Health and Human Services ("DHHS"), the N.C. Department of Public Instruction ("DPI"), and the University of North Carolina ("UNC") System, the trial court's 26 April 2022 Order merely included "a judgment that the DHHS, DPI, and UNC System have and recover from the State the sums set forth." 26 Apr. Order ¶ 57. That change was necessary, the trial court explained, because the Court of Appeals' 30

November 2021 Order prohibiting the trial court from ordering state officials to transfer state funds was "binding on the trial court." 26 Apr. Order ¶ 27.

On 20 May 2022, the State renewed its request that this Court set an expedited briefing schedule for this appeal. In its renewed motion, the State added a third issue to be briefed: "Whether the trial court's 26 April 2022 Amended Order falls within the scope of this Court's 21 March 2022 Remand Order." This Court granted the State's renewed motion.

SUMMARY OF THE ARGUMENT

More than twenty-five years after this litigation commenced, the trial court sought to secure the State's compliance with its constitutional duty to provide students with a sound basic education when it ordered the State to implement the Comprehensive Remedial Plan. That Plan is the only remedy any party to this appeal has proposed that comports with this Court's holdings in *Leandro I* and *II*, and no party has appealed the trial court's adoption of the Plan.

However, insufficient funding has prevented the State from fully implementing the Plan so far. Although the State's General Fund contains amounts exceeding the cost of implementation—even after funding the

remainder of the State's budget—the General Assembly elected not to appropriate funds to implement years two and three of the Plan. The trial court repeatedly deferred to the State's efforts to secure funding to implement the Plan, including delaying issuance of its order to allow for the traditional budgetary process to run its course, but did so to no effect. Accordingly, after repeated warnings, the trial court ordered state actors to transfer the funds necessary to implement the Plan to the state agencies tasked with implementing it.

While the funding mechanism found in the trial court's 10 November 2021 Order is atypical, under the unique circumstances of this case, the order is correct. That is so for three reasons. First, the order follows logically from this Court's instruction in *Leandro II* that "when the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied, and if the offending branch of government or its agents either fail to do so or have consistently shown an inability to do so, a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it." 358 N.C. at 642.

Second, the order correctly recognizes that public education is subject to unique treatment under our Constitution. The right to a public education is set forth in the Declaration of Rights, where it is accompanied by an express declaration of the duty of "the State" to "guard and maintain" that right. Moreover, the enactment history of our Constitution confirms that the framers intended to ensure sufficient support for public education irrespective of the machinations of the political branches.

Third, although deference to the political branches means that any determination of a constitutional directive to spend state funds will be exceedingly rare, several features of this case combine to confirm that the trial court's order is appropriate. These features include:

(1) There is an explicit textual commitment in the Constitution of an affirmative governmental duty to provide for education as a basic government function, and repeated judicial determinations, including by this Court, that that duty has not been fulfilled;

(2) There is an extensive record of more than two decades of deference to the political branches' efforts to fulfill the State's constitutional duty, but those efforts have been unsuccessful;

(3) The state funds at issue are to be used to ensure prospective compliance with the Constitution; and,

(4) There are sufficient funds available in the state treasury to comply with the order, and no need for the General Assembly to raise additional funds.

Although the State believes that the 10 November 2021 Order was correct, if this Court disagrees, the State respectfully submits that this Court provide guidance as to what other remedies may be available, due to the importance of the court system as a last line of defense for fundamental constitutional principles.

Finally, on remand from this Court, the trial court in its 26 April 2022 Order excised the part of the 10 November 2021 Order that directed certain state actors to transfer funds to certain agencies. The State respectfully submits that that was error. In making this decision, the trial court exceeded the scope of this Court's remand order, incorrectly applied law of the case doctrine, and violated longstanding precedent holding that a later superior court judge may not overrule an earlier superior court judge's ruling on the same issue in the same case.

For these reasons, the State asks this Court to affirm the trial court's 26 April 2022 Order except to the extent it overruled the trial court's 10 November 2021 Order directing the State Treasurer, State Controller, and

OSBM to transfer to state agencies the state funds necessary to implement to Comprehensive Remedial Plan. The State asks this Court to amend the 26 April 2022 Order to direct the State Treasurer, State Controller, and OSBM to transfer funds to the state agencies detailed in the order and in the amount the order specifies.

ARGUMENT

Standard of Review

"A trial court's conclusions of law are reviewed *de novo* . . . ." *Chappell v. N.C. Dep't of Transp.*, 374 N.C. 273, 281 (2020). A trial court's findings of fact, meanwhile, should not be disturbed if "there is evidence to support them." *Pulliam v. Smith*, 348 N.C. 616, 625 (1998) (quoting *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342 (1975)).

Discussion of Law

I. The Trial Court Properly Ordered State Actors to Transfer Funds to Implement Years Two and Three of the Comprehensive Remedial Plan.

The trial court's 10 November 2021 Order requiring funding of years two and three of the Comprehensive Remedial Plan is correct for at least three reasons. First, it flows directly from this Court's previous rulings in this case that where there is a sustained failure by the State to fulfill its

constitutional duty to provide a sound basic public education for all students, a court can require state actors to take specific actions to remedy the constitutional violation. Second, the trial court's order respects and aligns with our Constitution's text, structure, and history. Our Constitution does not merely recognize a right to public education, but declares it "the duty of the State to guard and maintain that right." N.C. Const. art. I, § 15. And it prescribes specific ways in which education is to be funded. *Id.* art. IX, §§ 2, 6, 7. The history of these provisions establishes that they were intended to protect the right to public education from nullification through inadequate funding. Finally, the trial court's order comports with the other limits our Constitution and this Court's precedents place on spending state funds.

Because the trial court properly ordered state actors to transfer state funds pursuant to our Constitution, this Court should affirm the trial court's order.

A. An order to state actors to transfer funds necessary to implement years two and three of the Comprehensive Remedial Plan flows logically from *Leandro I* and *II*.

The trial court's 10 November 2021 Order adheres to this Court's previous holdings in this case; holdings that were unanimous and that "remain in full force and effect." *Hoke Cnty. Bd. of Educ. v. State*, 367 N.C. 156, 160 (2013) (*Leandro III*).

In *Leandro I,* this Court made clear that the legislative and executive branches were primarily responsible, in the first instance, for fulfilling the State's duty. 346 N.C. at 357. But the Court emphasized that "the judicial branch has its duty under the North Carolina Constitution," *id.*, and that if the State did not comply with the Court's holding, a court could enter an order granting relief "needed to correct the wrong." *Id.*

Similarly, in *Leandro II*, affirming the trial court's 2002 ruling after trial that the Plaintiffs had established an ongoing constitutional violation, this Court acknowledged the continuing need to "minim[ize] encroachment on the other branches of government," and "challenge[d]" the political branches to comply with constitutional standard set forth in *Leandro I*. *See Leandro II*, 358 N.C. at 610, 649. But the Court reiterated that the courts are the last line

of defense. If "the State fails to live up to its constitutional duties, a court is empowered to order the deficiency remedied." 358 N.C. at 642. And specifically, "a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant state actors to implement it." *Id.*

Those holdings are in keeping with longstanding principles defining the essential judicial role under our Constitution. In *Bayard v. Singleton*, 1 N.C. (Mart.) 5 (1787), this Court recognized judicial review well before *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803). *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 2021 NCSC 6, ¶14. "It is the state judiciary," this Court has explained, "that has the responsibility to protect the state constitutional rights of the citizens." *Corum*, 330 N.C. at 783. "[T]his obligation to protect the fundamental rights of individuals is as old as the State." *Id.*

This Court's precedent also support the specific remedy ordered by the trial court on 10 November 2021. This Court has recognized that when insufficient funding threatens the State's ability to carry out a core function of government and fundamental constitutional duty, a court may "reach

towards the public purse," as long as it does so no more than necessary to fulfill that duty. *In re Alamance Cnty. Ct. Facilities*, 329 N.C. 84, 100-01 (1991).

Although the amounts at issue in this case certainly exceed those in *Alamance County,* the essential legal principles are the same. In *Alamance County*, this Court considered a trial court's order to transfer available state funds to pay for necessary repairs to the county courthouse, which had fallen into such disrepair as to threaten the administration of justice. *Id.* at 90-91. In those circumstances, this Court held that a trial court could use "its inherent power to reach towards the public purse" to ensure the continued administration of justice. *Id.* at 100. The Court cautioned, however, that in exercising this authority, the trial court should not unnecessarily encroach on the exclusive authority of another branch, and may do so no more than necessary to ensure the State fulfills its constitutional duty to execute a basic function of government. *Id.* at 100-01.

Because it is the judicial branch's responsibility to protect constitutional rights and enforce constitutional duties, its authority may "overlap" with that of the legislative branch when a lack of funding prevents the State from executing a basic duty of government, such as providing a

functional court system. *See id.* at 96-97. Even then, courts must exercise "as much concern for its potential to usurp the powers of another branch as for the usurpation it is intended to correct." *Id.* at 100. As a result, efforts by the political branches to voluntarily comply with a constitutional obligation should receive deference from this Court. *See, e.g.*, *Leandro III*, 367 N.C. at 159 (explaining that the General Assembly's revisions to a statute establishing a pre-kindergarten program, an earlier version of which a trial court found continued to violate *Leandro I* and *II*, was voluntary compliance that mooted the appeal).

Here, there can be no question that the trial court, before entering its order, exercised tremendous deference to the political branches, and as much as could reasonably be required. Nearly two decades have passed since this Court warned that the State's continued noncompliance with *Leandro I* may result in a court "imposing a specific remedy." *Leandro II*, 358 N.C. at 642. During that time, the trial court repeatedly found that the State was not satisfying its constitutional duty to provide the State's youth the opportunity to obtain a sound basic education. The trial court gave the State every opportunity to voluntarily comply with *Leandro I* and *II*. For example,

the trial court repeatedly delayed proceedings to allow the political branches to negotiate a budget that would satisfy the State's constitutional obligation and thus obviate the need for the trial court to enter the order below. Even now, the State believes that the preferred method of resolution would be for this appeal to be mooted through enactment of a budget that fulfills the State's duty as directed by the court. *See, e.g.*, *Willis v. Duke Power Co.*, 291 N.C. 19, 30 (1976) ("Should defendant comply . . . the important legal questions it seeks to raise on this appeal and tried to raise in the trial court would be rendered moot."). Absent voluntary and sufficient compliance, however, the trial court's order is an appropriate application of the principles announced in *Alamance County*, and *Leandro I* and *II*.

B. The trial court's order is consistent with our Constitution's unique treatment of education.

Our Constitution declares that the State has a duty to "guard and maintain" the people's right to public education. Our State's history confirms that the framers understood that fulfilling that duty would require sufficient funding for public education.

1. The text and history of our Constitution establish a duty of the State to provide sufficiently for education.

Constitutional interpretation should begin with the text, *State ex rel. Martin v. Preston*, 325 N.C. 438, 449 (1989), and be guided by a "basic principle:" to "giv[e] effect to the intent of the framers." *State v. Webb*, 358 N.C. 92, 94 (2004). "[T]he plain meaning of the phrase" helps this Court "to ascertain its intent." *Town of Boone v. State*, 369 N.C. 126, 132 (2016).

Article I, § 15 of our Constitution's Declaration of Rights provides that "[t]he people have a right to the privilege of education." N.C. Const. art. I, § 15. Article IX, § 2 provides that the State shall have a "general and uniform system of free public schools." N.C. Const. art. IX, § 2(1). This Court has construed those two provisions to mean that, in our State, there is a right to the "opportunity to receive a sound basic education in our public schools." *Leandro I*, 346 N.C. at 347.

The plain text of those provisions is mandatory; the State is constitutionally *required* to do what is necessary to secure that right. Article I, § 15 both provides for "a right to the privilege of education," and further declares that "it is the duty of the State to guard and maintain that right."

N.C. Const. art. I, § 15. While "maintain" has a number of meanings in standard English (both now and in the 1860s), one meaning that aligns with its constitutional context in Section 15 of the Declaration of Rights is "[t]o support . . . financially." *Maintain*, *Black's Law Dictionary* (11th ed. 2019); *see Maintain*, *Webster's American Dictionary of the English Language* (1862) ("to support the expense of"); *Maintain*, *A Dictionary of The English Language* (1865) ("To bear the expense of; to support; to keep up; to supply with what is needed."); *see also In re Hardy*, 294 N.C. 90, 95 (1978) ("Words and phrases of a statute may not be interpreted out of context . . . .").

Article IX, § 2 specifically requires the State to fund education. It states that "[t]he General Assembly shall provide" for the right to education and specifies that the General Assembly is to do so "by taxation and otherwise." *Id.* art. IX, § 2(1). Two other provisions of Article IX further demonstrate the Constitution's commitment to ensuring sufficient funding for public education. Article IX, §§ 6 and 7 require the use of certain funds to support public education. Article IX, § 6 requires the State to use the "proceeds of all lands" and other property given or belonging to the State "*exclusively* for establishing and maintaining a uniform system of free public

schools." N.C. Const. art. IX, § 6 (emphasis added). Similarly, § 7 requires the General Assembly to appropriate funds generated by criminal fines, civil penalties, and forfeitures paid to county courts and state agencies "*exclusively* for establishing and maintaining a uniform system of free public schools." N.C. Const. art. IX, § 7 (emphasis added). The specificity of these provisions reflects the unique status of public education under our Constitution. By directing the General Assembly to maintain schools through taxation, and to direct certain state funds to public schools, the Constitution gives guidance on how the State is to fulfill its duty to "guard and maintain" Article I, § 15's "right to the privilege of education."

The history of these provisions shows that the framers strived to protect public education and ensure that it was adequately provided for. "Constitutional provisions should be construed in consonance with the objects and purposes in contemplation at the time of their adoption." *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 2021-NCSC-6, ¶ 16. "A court should look to the history, general spirit of the times, and the prior and the then existing law in respect of the subject matter of the constitutional provision under consideration, to determine the extent and

nature of the remedy sought to be provided." *Perry v. Stancil*, 237 N.C. 442, 444 (1953) *abrogation on other grounds recognized by Forsyth Memorial Hosp., Inc. v. Chisholm*, 342 N.C. 616, 620 (1996).

Here, North Carolina's constitutional history reveals that its citizens have long cherished public education, but that experience taught them that it was necessary to create explicit constitutional protections for funding public education. The Constitution of 1776 provided "[t]hat a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public." N.C. Const. of 1776 art. XLI. Only three other revolutionary-era state constitutions contained similar provisions. *See* Ga. Const. of 1777 art. LIV; Mass. Const. chapter V, § II; Penn. Const. of 1776 § 44.

Despite Article XLI, public education was not initially prioritized. Several of the State's early governors implored the General Assembly to support the State's schools, but to no avail. In 1805, for example, Governor Turner asked the State House to follow South Carolina's lead and provide "uniform support to one or more well regulated schools in every county."

See Charles L. Coon, The Beginnings of Public Education in North Carolina: A Documentary History 1790-1840, Vol. I at 52.

In 1825, the General Assembly established a "Literary Fund" to support the State's schools. The fund was initially small. *See id.* at 327 (*Raleigh Register*, Comment of Oct. 26, 1827) ("Why has the general establishment of schools expressly directed by our Constitution been neglected so long[] or, if not totally neglected, impeded in its operation by appropriations totally inadequate to the object."). But the Literary Fund eventually accumulated sufficient funds, and, by the start of the Civil War, North Carolina's public schools had grown into an impressive system. *See, e.g.*, N.C. Dep't of Public Instruction, The History of Education in North Carolina 9 (1993) ("By the time the Civil War erupted in 1861, it was generally recognized that North Carolina had one of the best school systems in the South.").

Just after the Civil War, however, the State began defunding public education. First, the General Assembly dipped into the Literary Fund to pay for the state's war debts and invest in defunct Confederate Bonds. John L. Bell, *Samuel Stanford Ashely, Carpetbagger and Educator*, 72 N.C. Hist. Rev. 456, 476 (1995); *see also* M.C.S. Noble, A History of the Public Schools of

North Carolina 49-50 (1930). Then, in 1865, the legislature eliminated the Office of the Superintendent of Common Schools. M.C.S. Noble, *supra*, at 279-80. In 1866, "fearing that the federal government would force integration for black pupils into the statewide school system," the State abolished the public school system entirely. Bell, *supra*, at 476.

Against the backdrop of the abandonment of public education, the State's leaders convened to draft a new constitution. Those who worked on the education provisions focused on ensuring that the political branches could never again threaten the people's right to public education. "Seeing that the legislature could abolish the school system," Samuel Stanford Ashely, the Chairman of the convention's Committee on Education, "insisted that the guarantee of a public-school education for all of North Carolina's children be embedded in the constitution beyond the reach of legislative majorities." Bell, *supra*, at 482.

The provisions in our Constitution obligating the State to provide for public education were explicitly designed to protect public education from the political branches. Ashley added the language in what is presently Article I, § 15 declaring it the State's duty to maintain the right to public

education. *See* N.C. Const. of 1868 art. I, § 27 (same text as N.C. Const. art. I, § 15). Similarly, Ashely drafted the language in Article IX, § 2 commanding the General Assembly to provide for the school system "by taxation and otherwise." *See* N.C. Const. of 1868 art. IX, § 2.

Finally, Ashley proposed that the General Assembly be required to appropriate the proceeds of lands and other property given or belonging to the State, as well as funds generated by criminal fines, civil penalties, and forfeitures "for establishing and perfecting . . . a system of Free Public Schools, *and for no other purposes or uses whatsoever*." N.C. Const. of 1868 art. IX, § 4 (emphasis added). Article IX, § 4 of the 1868 Constitution further provided that these specific funds should be appropriated to public schools *in addition to* "so much of the ordinary revenue of the State as may be necessary" to secure the right of education. *Id.*

Thus, the framers intended not only to dictate that the General Assembly use specific funds to support public education, they further made clear that those mechanisms expressly set forth in the Constitution would not be enough by themselves. Accordingly, the Constitution also required the State to devote any additional revenue that was "necessary" to provide

our State's students with a constitutionally adequate public education. Critically, the requirements of Article IX, § 4 of the 1868 Constitution were a precursor to the similar requirement contained in Article IX, §§ 6 and 7 of our present Constitution. *Compare* N.C. Const. of 1868 art. IX, § 4 *with* N.C. Const. art. IX, §§ 6, 7.

Just fifteen years after the adoption of the 1868 Constitution, this Court understood these new provisions, and particularly Art. IX, § 4 of the 1868 Constitution, as a constitutional commitment of state funds to the extent necessary to secure the right to public education. *See Wake v. Raleigh*, 88 N.C. 120, 122 (1883) (referring to Article IX, § 4 of the 1868 Constitution as a "constitutional appropriation").

Modern constitutional history similarly supports this understanding of the State's duty to provide adequate funding for public education. In 1970, the State's Constitution was redrafted and put to voters. Act of July 2, 1969, ch. 1258, 1969 N.C. Sess. Laws 1461, 1484. Voters ratified this Constitution overwhelmingly, and it took effect July 1, 1971. *See North Carolina Manual*, 1971, at 359-67 (Thad Eure ed., 1971). The 1971 Constitution, like the 1868 Constitution, declared that the State's citizens had the "right to the privilege

of education" and that it was "the duty of the State to guard and maintain that right." N.C. Const. art. I, § 15. Article IX, § 2's requirement that the General Assembly "provide by taxation and otherwise for a general and uniform system of free public schools" is also included in the 1971 Constitution.

The requirements of Article IX, § 4 of the 1868 Constitution, meanwhile, are split into two provisions in the 1971 Constitution. Article IX, § 7 of the 1971 Constitution contains Article IX, § 4 of the 1868 Constitution's requirement that criminal and civil fees and forfeitures collected by the courts be appropriated exclusively to public schools. Article IX, § 6 of the 1971 Constitution, meanwhile, contains the 1868 Constitution's requirement that proceeds from the sale of certain state property, *in addition to other revenue as needed*, be appropriated to the support of public education.[3]

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[3] When interpreting provisions of the 1971 Constitution carried over from the 1868 Constitution, it is important to remember that the drafters of the 1971 Constitution themselves explained that the new constitution did not "impair any present right of the individual citizen" nor "bring about any fundamental change in the power of state . . . government or the distribution of that power." Report of the North Carolina State Constitution Study Commission 10 (1968); *see also* John V. Orth, *North Carolina Constitutional History*, 70 N.C. L. Rev. 1759, 1790 (1992) ("[The 1971 constitution] was instead a good-government measure, long-matured and carefully crafted by the state's leading lawyers and

As this history shows, the framers of our Constitution intended for the Constitution itself to require the political branches to ensure that the State fulfilled its duty to guard and maintain the right to public education by providing sufficient resources for public schools.

2. Nothing in our Constitution nor this Court's precedents prevents our Constitution from directing how state funds should be used.

Nothing in our Constitution nor this Court's precedents prevents our Constitution from directing the State to use available funds to fulfill the State's duty to provide sufficient support for public education. Nevertheless, this Court's admonitions regarding deference to the political branches make clear that any determination of such a constitutional directive should be exceedingly rare. Several features of the current situation combine to make this such a situation:

(1) There is an explicit textual commitment in the Constitution of an affirmative governmental duty to provide for education as a basic government function, and repeated judicial determinations, including by this Court, that that duty has not been fulfilled;

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politicians, designed to consolidate and conserve the best features of the past, not to break with it.").

(2) There is an extensive record of more than two decades of deference to the political branches' efforts to fulfill the State's constitutional duty, but those efforts have been unsuccessful;

(3) The state funds at issue are to be used to ensure prospective compliance with the Constitution; and,

(4) There are sufficient funds available in the state treasury to comply with the order, and no need for the General Assembly to raise additional funds.

a. There is an explicit textual duty and repeated judicial findings that the duty is unfulfilled.

"No money shall be drawn from the State treasury but in consequence of appropriations made by law[.]" N.C. Const. art. V, § 7(1). In certain circumstances, however, the Constitution itself is the "law" that provides that command. *See, e.g., Wake*, 88 N.C. at 122. The text, structure, and purpose of Article V, § 7 support this constitutional principle.

The plain meaning of "law" encompasses constitutional provisions. Law is defined as "*all* the rules of conduct established and enforced by the authority, legislation, or custom of a given community, state, or other group," or "*one of* such rules." *Law*, *Webster's New World Dictionary* (2d ed. 1974) (emphasis added). Black's Law Dictionary, meanwhile, defines "law" as "*the aggregate* of legislation, judicial precedents, and accepted legal

principles." *Law*, *Black's Law Dictionary* (11th ed. 2019) (emphasis added). This Court, meanwhile, has repeatedly explained that the North Carolina Constitution is "the supreme *law* of the land." *In re Martin*, 295 N.C. 291, 299 (1978) (emphasis added); *Baxter v. Danny Nicholson, Inc.*, 363 N.C. 829, 832 (2010).

Structure and purpose, too, support the conclusion the Constitution may instruct that funds be spent to provide a basic function of government. Start with structure. If the framers wanted to specify what sorts of "laws" could appropriate funds, they knew how to. For example, elsewhere in the Constitution the framers specified that citizens should only be subject to taxes to which they freely gave consent through "their representatives in the General Assembly." N.C. Const. art. I, § 8; *see also id.* art. II, § 23 ("[n]o law shall be enacted . . . to impose any tax upon the people of the State . . . unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal."); *id.*

art. V, § 2(2) ("Only the General Assembly shall have the power to classify property for taxation."). The text of the Constitution does not similarly limit appropriations, but rather requires only that appropriations be made "by law." This Court should respect the framers' choice of words. *See Town of Warrenton v. Warren County*, 215 N.C. 342, 364 (1939) ("When interpreting the Constitution, Courts should respect framers' choices by giving effect to *all* parts of a constitutional provision and not "presume that the framers of the constitution . . . did not understand the force of language.") (quoting *People v. Purdy* 2 Hill 31, 36 (N.Y. 1841)).

The purpose of Article V, § 7 also supports the trial court's conclusion. This Court has explained that the purpose of Article V, § 7 was to give control over the allocation of the state's expenditures to the people. *Cooper v. Berger*, 376 N.C. 22, 37 (2020). *Cooper v. Berger* involved federal block grant funds, and the question this Court considered was whether the legislative branch or executive branch should decide how to spend those funds. 376 N.C. at 23. The Court held that, because the purpose of Article V, § 7 was to ensure that the people held sufficient control over the State's

finances, the legislature must control how block grant funds are spent. *Id.* at 37.

Here, however, respect for the purpose of Article V, § 7 requires giving effect to how the people chose to allocate funds directly in our Constitution. As this Court previously explained, our Constitution most directly expresses "the will of the people," while "legislators" are "but agents of the people." *State ex rel. Att'y Gen. v. Knight*, 169 N.C. 333, 352 (1915); *see also In re Martin*, 295 N.C. at 299.

As explained in Section I.B.1, *supra*, our Constitution offers both a positive right to education and a command to the State to fund that right. Article I, § 15 provides North Carolinians the "right to the privilege of education." N.C. Const. art. I, § 15. This Court has held that right is one to a sound basic public education. Additionally, the Constitution textually obligates the State to provide the funds necessary to fulfill the State's basic duty to ensure protection of the right to an education. In 2004, this Court affirmed the trial court's determination that that duty was not being fulfilled. The trial court did not err in recognizing the constitutional commitment to

carry out that duty to be sufficient authorization for the use of otherwise unused state funds.

This conclusion is not novel. Other states have concluded that their constitutions allocate specific amounts of state funds to specific state agencies. In *Nelson v. Hawaiian Homes Commission*, 412 P.3d 917 (Haw. 2018), for example, the Hawai'i Supreme Court held that the Hawai'i Constitution appropriates to the Department of Hawaiian Home Lands an amount equivalent to $1.3-to-1.6 million in 1978 dollars. 412 P.3d at 928. In other circumstances, courts have entered orders that expressly require the expenditure of particular funds for particular purposes. *See, e.g.*, *United States v. Sec'y, Fla. Dep't of Corr.*, 828 F.3d 1341, 1348 (11th Cir. 2016) (ordering Florida to provide state prisoners kosher meals and explaining that "the legislature must appropriate enough funds to honor that obligation"); *Buffkin v. Hooks*, 2019 WL 1282785, at *12 (M.D.N.C. Mar. 20, 2019) (ordering the State to expand access to direct-acting antiviral drugs for inmates with chronic hepatitis C).

Likewise, here, the trial court correctly held that our Constitution itself requires the expenditure of certain funds to fulfill the State's duty to provide a sound basic education.

b. There is an extensive record of deference to the political branches, without success in fulfilling the State's constitutional duty.

In *Alamance County*, this Court instructed trial courts reaching toward the public purse to exercise "as much concern for its potential to usurp the powers of another branch as for the usurpation it is intended to correct." 329 N.C. at 100. Trial courts, *Alamance County* explained, should "bow to established procedural methods where these provide an alternative to the extraordinary exercise of its inherent power" and "minimize the encroachment upon [the political branches] in appearance and in fact." *Id.* at 100-01. *Leandro I* and *II* similarly counseled that the political branches should be "grant[ed] every reasonable deference" before a court itself determines "what course of action will lead to a sound basic education." *Leandro I*, 346 N.C. at 357 (cleaned up).

Here, there can be no credible dispute that the trial court has afforded the State "every reasonable deference." *Id.* The trial court ordered the funds

to be transferred and spent only after over two decades of the State's continued noncompliance with *Leandro I*. For the vast majority of this case's pendency, the trial court deferred to the legislative and executive branches to chart a course for compliance with their constitutional duties. "For more than a decade," the trial court explained, it "annually reviewed the academic performance of every school in the State, teacher and principal population data, and the programmatic resources made available to at-risk students" and found that "in way too many school districts across this state, thousands of children in the public schools have failed to obtain and are not now obtaining a sound basic education." (R pp 1825-26) The trial court further found that "[f]or over eleven (11) years and in over twenty (20) compliance hearings, the state demonstrated its inability, and repeated failure, to develop, implement, and maintain any kind of substantive structural initiative designed to remedy the established constitutional deficiencies." (R p 1825)

The trial court continued to defer to the State after the adoption of the Comprehensive Remedial Plan. The trial court deferred to the State regarding how to secure funding to implement the Plan. (R p 1840) The trial

court made repeated efforts to allow the traditional legislative budget process to run its course, including allowing "for extended deliberations between the executive and legislative branches over several months to give the State an additional opportunity to implement the Comprehensive Remedial Plan." (R p 1841) At each hearing, the trial court "put [the] State on notice of forthcoming consequence if it continued to violate students' fundamental rights to a sound basic education." (R p 1841) Further still, the trial court stayed its 10 November 2021 Order for thirty days to allow the State to voluntarily "take further action consistent with the findings and conclusions" of the trial court's order. (R p 20) And the trial court scheduled a hearing to amend its order to account for the subsequently enacted budget. (R pp 1843-45)

Additionally, the trial court's order "bow[ed] to established procedural methods" where possible when effectuating Article I, § 15's constitutional appropriation. *See Alamance Cnty. Ct. Facilities*, 329 N.C. at 100. Again, the trial court gave the political branches ample time to fund the Plan through the traditional budget process before entering its order, stayed its order for thirty days to give the political branches time to fund the Plan, and

scheduled a hearing to amend its order in light of the recently enacted budget.

c. The state funds at issue are to be used to ensure prospective compliance with the Constitution.

This Court has previously held that only the General Assembly can appropriate funds to satisfy a money judgment against the State to compensate for a prior injury. *See Smith v. State*, 289 N.C. 303, 321 (1976) ("In the event plaintiff is successful in establishing his [breach of contract] claim against the State, he cannot, of course, obtain execution to enforce the judgment. The validity of his claim, however, will have been judicially ascertained." (citation omitted)). A court, may, however provide prospective injunctive relief that ensures lawful expenditure of state fund.

Courts may use their equitable authority broadly and flexibly to ensure compliance with the Constitution. *See Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) ("Once a right and a violation have been shown, the scope of a district court's equitable powers . . . is broad, for breadth and flexibility are inherent in equitable remedies."). As this Court recently explained, the fact that an order requiring the State to satisfy a future

obligation "might require the General Assembly to make difficult choices regarding how to allocate resources . . . does not necessarily justify abrogating" the obligation. *See, e.g.*, *Lake v. State Health Plan for Tchrs. & State Emps.*, 2022-NCSC-22, ¶ 66.

The order at issue in this appeal concerns only injunctive relief. The trial court's order merely directs the State to prospectively spend state funds consistent with the Constitution's directive to support education. No party seeks damages for the State's prior non-compliance with *Leandro I*, and no money judgment exists in this case.[4]

d. There are sufficient funds available to comply with the order, and no need to raise additional funds at this time.

Our Constitution is clear that only the General Assembly may raise state funds. *See, e.g.*, N.C. Const. art. I, § 8; *id.* art II, § 23.[5] The trial court's

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[4] Accordingly, this case presents no occasion to consider the wisdom of the Court of Appeals' decision in *Richmond County Board of Education v. Cowell*, 254 N.C. App. 422 (2017). In *Richmond County*, the Board sought "*new* money from the treasury" to make it whole for the *past* harm caused by the State's misappropriation of county court fees. 254 N.C. App. at 428 (emphasis in original). Thus, unlike this case, *Richmond County* concerns retrospective, not prospective, relief.

[5] Relatedly, our Court of Appeals has held that even when the Constitution directs how State funds are to be spent, it cannot direct the State

order comports with this limitation, because it does not direct funds to be raised, nor unavailable funds to be spent.

Instead, as the trial court's order confirms, the State's General Fund currently holds sufficient unreserved funds to remedy the State's ongoing constitutional violation. 26 Apr. Order ¶¶ 43-46. Additionally, after the trial court's 26 April 2022 Order, the Fiscal Research Division of the North Carolina General Assembly announced that it expects General Fund revenue to exceed the certified budget by $6.2 billion. Fiscal Research Division, *North Carolina General Fund Revenue Consensus Forecast: May 2022 Revision* (May 9, 2022), *available at* https://bit.ly/3QyzEUr. Again, the legislature could choose to devote just a fraction of this additional money to fully fund the Comprehensive Remedial Plan. But regardless, this funding makes clear that the State has available to it sufficient funds to satisfy its constitutional obligations.

Leandro I and *II* themselves recognize that the practical availability of funds is a key factor that shapes a court's remedial discretion. In both

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to spend funds that do not exist unreserved in the state treasury. *See Richmond County Board of Education*, 254 N.C. App. at 428 (explaining that courts cannot order the State to spend "*new* money from the State treasury").

decisions, this Court explained that the State does not violate its constitutional obligation to provide a sound basic education when there is a compelling governmental interest that justifies the State's failure. *Leandro II*, 358 N.C. at 610; *Leandro I*, 346 N.C. at 357. The lack of sufficient, unreserved funds to cover the costs of providing a sound basic education likely represents a compelling governmental interest. *See, e.g.*, *Lake*, 2022-NCSC-22, ¶ 66 ("[T]he State always retains the authority to act to protect the public should it be faced with a grievous fiscal emergency."); *cf. id* ("The economic interest of the state may justify . . . interference with contracts . . . ." (quoting *Home Bldg. & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 437 (1934) (cleaned up)). No such showing has been made here.

C. The trial court was correct to order relief against specific executive branch agents of the State.

The State disagrees with the trial court's 26 April 2022 Order in one respect: the order's decision to remove instructions directing specific state actors to take the action necessary to transfer the constitutionally required funds. In the circumstances of this case, it is proper for a court to order state actors to take specific actions necessary to ensure the State complies with this Court's decisions in *Leandro I* and *II*.

There are two reasons why such an order is proper. First, this Court already said as much in *Leandro II*. There, this Court stated that "when the State fails to live up to its constitutional duties . . . a court is empowered to provide relief by imposing a specific remedy and instructing the recalcitrant *state actors* to implement it." *Leandro II*, 358 N.C. at 642 (emphasis added). At the time the Court said these words, no individual state actors were named parties to this case.

Second, even outside this litigation, it is well established that a court order is binding "upon the parties to the action, *their officers, agents, servants, employees*, and attorneys." N.C. Gen. Stat. § 1A-1, 65(d) (emphasis added). The State Treasurer, State Controller, and State Budget Director are agents and employees of the State, a named party in this litigation. An order addressed to those officials is thus entirely appropriate. *See id.* A contrary conclusion would wreak havoc on litigation seeking injunctive relief against the State. If a litigant seeking injunctive relief against the State must join every state actor, employee, or agent who *might* be involved in carrying out the relief that the litigant seeks as a defendant, a prudent litigant will name hundreds of state actors as defendants, including many who later prove to be

irrelevant. This will inconvenience the State just as much as it does litigants: at any time, thousands of state employees could be distracted from their responsibilities by the presence or threat of litigation against them.

II. This Court Must Ensure that the State Complies Its Constitutional Duty to Provide a Sound Basic Education.

The State believes that the trial court's 10 November 2021 Order should be affirmed, with the modifications to the specific allocations as provided for in the trial court's 26 April 2022 Order. If this Court disagrees, however, the State respectfully requests further guidance on how it can come into compliance with *Leandro I* and *II* and ensure satisfaction of its constitutional obligation.

The State's courts are frequently "called upon to exercise its inherent constitutional power to fashion a common law remedy for a violation of a particular constitutional right." *Corum*, 330 N.C. at 784. The court must actually redress the constitutional violation rather than merely punish the violator, *Alamance Cnty.*, 329 N.C. at 102, or enter a judgment recognizing the right, *Sale v. State Highway & Public Works Commission*, 242 N.C. 612, 618 (1955). Exactly how to ensure the State's compliance involves

constitutional questions that only this Court can settle. *Virmani v. Presbyterian Health Servs. Corp.* 350 N.C. 449, 474 (1999).

While the State submits that the trial court's order was correct, alternative means of securing a party's compliance may exist. Whether the Court affirms the trial court's order or pursues a different course of action, the State welcomes this Court's guidance on how to comply with the trial court's order directing the State to implement the Comprehensive Remedial Plan. The State's efforts to comply with *Leandro I* and *II* span decades, with mixed results. *See generally* R p 1825 (trial court finding that "[f]or over eleven (11) years and in over twenty (20) compliance hearings, the state demonstrated its inability, and repeated failure, to develop, implement, and maintain any kind of substantive structural initiative designed to remedy the established constitutional deficiencies"); *see also* R p 1350 (trial court denying State Board of Education's motion to be released from the trial court's remedial jurisdiction after finding that "[t]here is an ongoing constitutional violation"); *Leandro III*, 367 N.C. at 158-59 (recognizing State's voluntary compliance with trial court order related to constitutional requirements for pre-kindergarten programs).

After all, "[i]t is the state judiciary that has the responsibility to protect the state constitutional rights of the citizens." *Corum*, 330 N.C. at 783. Thus, should this Court decide that the 10 November 2021 Order was improper, the State seeks the Court's guidance on how to finally achieve, after nearly twenty-five years of litigation, full compliance with this Court's decisions in *Leandro I* and *II*, as well as the trial court's 11 June 2021 Order.

III. The Trial Court's 26 April 2022 Order Erred by Relying on the Court of Appeals' Entry of a Writ of Prohibition in a Separate Appeal.

The trial court's 26 April 2022 Order was correct except for its incorporation of the Court of Appeals' Writ of Prohibition, which prohibited the 10 November 2021 Order's direction to state officers to transfer funds to certain state agencies. 26 Apr. Order ¶ 55. This is so for two reasons: (1) this Court's Remand Order limited the trial court's consideration of issues to only what effect the enactment of the State budget had on the trial court's 10 November 2021 Order and (2) it is questionable whether the trial court should have relied on the Writ of Prohibition as law of this case. Nor, of course, is the Writ binding on this Court.

The State respectfully submits that the trial court's consideration of the Writ of Prohibition was outside the scope of this Court's Remand Order. The Remand Order directed the trial court to "determine what effect, if any, the enactment of the State Budget has upon the nature and extent of the relief that the trial court granted in its" 10 November 2021 Order. Remand Order at 2. The State understands this direction as directing the trial court to determine what effect the State Budget's appropriations had on the amount of funds the 10 November 2021 Order determined were necessary to be transferred to meet the requirements of years two and three of the Comprehensive Remedial Plan. Nowhere in this Court's Remand Order did it ask the trial court to make any findings of fact or conclusions of law about the effect of the Writ of Prohibition. To the contrary, this Court's Remand Order simultaneously granted appellate review of the Writ of Prohibition. Therefore, the trial court went outside the scope of the limited Remand Order by considering the Writ at all.

Even if this Court intended the Remand Order to include consideration of the Writ, it is questionable whether the trial court must have determined that the Writ required the court to amend the 10 November

2021 Order to remove the directive that state officers transfer funds from the state treasury is wrong. The Remand Order was issued in *Hoke County Board of Education v. State of North Carolina*, No. 425A21-2. The Writ of Prohibition was issued in the collateral proceeding brought by the State's Controller, *In re the 10 November 2021 Order*, No. P21-511, which the Plaintiffs have appealed separately. Any order issued in that case, therefore, does not—and cannot—control as law of *this* case. *See Wetherington v. N.C. Dept. of Public Safety*, 270 N.C. App. 161, 173 (2020) (holding that the law of the case only applies to issues decided in a former proceeding of the instant case); *Taylor v. Abernethy*, 174 N.C. App. 93, 102 (2005) (limiting law of the case only to points presented and necessary for the determination of that case).

Because the Writ of Prohibition does not control this case, the trial court's amended order violates a separate principle of North Carolina law: "one superior judge court may not modify or overrule the judgment of another superior court judge in the same case on the same issue." *Hieb v. Lowery*, 344 N.C. 403, 407 (1996). That is what has occurred here. The 10 November 2021 Order required certain state actors to transfer funds to

certain state agencies. The trial court's amended order, issued by a different superior court judge, negated that original order. That is, the amended order modified the judgment of the prior superior court judge in the same issue on the same case. This was error.

Finally, even if the trial court's reliance on the Writ of Prohibition was procedurally proper, Plaintiffs have appealed the Writ to this Court. The State agrees with Plaintiffs that the Court of Appeals erred by entering the Writ. If this Court vacates the Court of Appeals' Writ of prohibition, the trial court's reliance on that Writ is void.

In sum, the trial court erred in its 26 April 2022 Order to the extent that it amended the direction to certain state officials to transfer funds to certain state agencies. That direction should be reinstated.

CONCLUSION

For the foregoing reasons, the State asks this Court to affirm the trial court's 26 April 2022 Order except to the extent that order overruled the trial court's 10 November 2021 Order directing the State Treasurer, State Controller, and OSBM to transfer to state agencies the state funds necessary to implement to Comprehensive Remedial Plan. Alternatively, the State

respectfully requests this Court's guidance on how the State can implement years two and three of the Comprehensive Remedial Plan and achieve compliance with this Court's rulings in *Leandro I* and *II*.

Electronically submitted this the 1st day of July, 2022.

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North Carolina Constitution

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. . .

§ 15. Education.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

North Carolina Constitution

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No law shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall have been entered on the journal.

North Carolina Constitution

Article V.

Finance.

§ 2. State and local taxation.

(1) Power of taxation. The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.
(2) Classification. Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.
(3) Exemptions. Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.
(4) Special tax areas. Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.
(5) Purposes of property tax. The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to

levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.
(6) Income tax. The rate of tax on incomes shall not in any case exceed seven percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.
(7) Contracts. The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only. (1969, c. 872, s. 1; c. 1200, s. 1; 2018-119, s. 1.)

. . .

§ 7. Drawing public money.

(1) State treasury. No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.
(2) Local treasury. No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

North Carolina Constitution

Article IX.

Education.

§ 2. Uniform System of Schools.

(1) General and uniform system: term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.
(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

. . .

§ 6. State school fund.

The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

§ 7. State County school fund; State fund for certain moneys.

(a) Except as provided in subsection (b) of this section, all moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.
(b) The General Assembly may place in a State fund the clear proceeds of all civil penalties, forfeitures, and fines which are collected by State agencies and which belong to the public schools pursuant to subsection (a) of this section. Moneys in such State fund shall be faithfully appropriated by the General Assembly, on a per pupil basis, to the counties, to be used exclusively for maintaining free public schools. (2003-423, s.1.)

North Carolina Constitution of 1868

Article I.

Declaration of Rights.

§ 27.

The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

North Carolina Constitution of 1868

Article IX.

Education.

§ 2.

The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

. . .

§ 4.

The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State and not otherwise specifically appropriated by the United States or heretofore by this State; also all monies, stocks, bonds, and other property now belonging to any fund for purposes of Education; also the net proceeds that may accrue to the State from sales of estrays or from fines, penalties and forfeitures; also the proceeds of all sales of the swamp lands belonging to the State; also all money that shall be paid as an equivalent for exemptions from military duty; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested, and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting, in this State, a system of Free Public Schools, and for no other purposes or uses whatsoever.

North Carolina Constitution of 1776

The Constitution, or Form of Government

Article XLI.

That a school or schools shall be established by the Legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and all useful learning shall be duly encouraged, and promoted, in one or more universities.

North Carolina General Statutes

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. . .

(d) Form and scope of injunction or restraining order. -- Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts enjoined or restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice in any manner of the order by personal service or otherwise.

. . .

ary first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

"ARTICLE XIV

"MISCELLANEOUS

"Section 1. *Seat of government.* The permanent seat of government of this State shall be at the City of Raleigh.

"Sec. 2. *State boundaries.* The limits and boundaries of the State shall be and remain as they now are.

"Sec. 3. *General laws defined.* Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to that subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every county, city and town, and other unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

"Sec. 4. *Continuity of laws; protection of office holders.* The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto."

Sec. 2. The revision and amendment of the Constitution of North Carolina set out in Section 1 of this Act shall be submitted to the qualified voters of the State at the next general election. That election shall be conducted under the laws then governing general elections in this State.

Sec. 3. At that election, each qualified voter desiring to vote shall be provided a ballot on which shall be printed the following:

☐ FOR revision and amendment of the Constitution of North Carolina."

☐ AGAINST revision and amendment of the Constitution of North Carolina."

Those qualified voters favoring the amendment set out in Section 1 of this Act shall vote by making an X or a check mark in the square beside the statement beginning "FOR", and those qualified voters opposed to that amendment shall vote by making an X or a check mark in the square beside the statement beginning "AGAINST".

Notwithstanding the foregoing provisions of this Section, voting machines may be used in accordance with rules and regulations prescribed by the State Board of Elections.

Sec. 4. If a majority of the votes cast thereon be in favor of the revision and amendment set out in Section 1 of this Act, the Governor shall certify that revision and amendment under the Great Seal of the State to the Secretary of State, who shall enroll that revision and amendment so certified among the permanent records of his office, and the revision and amendment shall become effective on July 1, 1971.

schools for African Americans.[115] He received free railroad passes, as was customary, and was expected to spend a portion of his salary for travel expenses.[116]

In addition to his duties as superintendent of public instruction, Ashley had become a trustee of the University of North Carolina by virtue of his position on the state board of education. The oldest of state universities in the nation had been on a downward course since the end of the Civil War. Student enrollment dropped sharply, and the faculty declined in number from eight to five. Outside sources of financial support were exhausted, and tuition was inadequate to pay even the professors' salaries. In 1867 the university president and all of the faculty submitted their resignations effective for the 1868 fall term.[117] In the meantime the university had been drawn into the political fray of Reconstruction. The new state constitution provided that the state board of education, not the General Assembly as in the past, would elect the university's trustees, one from each county. The board of education also constituted the executive committee of the trustees. Headed by the newly elected Republican governor, William W. Holden, the board of education politicized the university. It accepted the resignations of the president and professors that had been offered in 1867 but withdrawn in 1868, and appointed a new president and faculty—all Republicans. Solomon Pool, the new president, believed that the university's old personnel were disloyal to the Union and that the state had "better close it [the university] than have a nursery of treason, to foster and perpetuate the feelings of disloyalty."[118] Ashley helped secure the appointment of his brother-in-law, J. A. Martling, as professor of English language and literature. Ironically, the star of the new faculty was the one individual most despised by the Chapel Hill white community—Fisk P. Brewer. An 1852 graduate of Yale and a professor of Greek language and literature, Brewer was ostracized by local whites because he had taught in a black school in Raleigh and had resided with a black family upon his arrival in Chapel Hill.[119]

Ashley served on several committees of the board of education, which tried to resuscitate the university. To one committee he had recommended acceptance of the resignations of university president David L. Swain and his faculty. On another committee he asked the General Assembly to appropriate funds to pay the tuition and fees for 120 new normal students who would provide the critical mass of students needed to reopen the university. The Republican General Assembly rejected the proposal,[120] as it had another from one of Ashley's committees that had recommended the admission of women to the university.[121] Yet another of Ashley's ideas—the creation in the university of a normal department for blacks—was also rejected by the legislature.[122]

115. *Dictionary of North Carolina Biography*, s.v. "Hood, James Walker."

116. "The salary was made $1250, with the expectation that $250 per annum would cover your travelling expenses. On the Rail Roads you will undoubtedly receive free passes." S. S. Ashley to J. W. Hood, October 2, 1868, Letter Book, September 4, 1869-March 24, 1870, p. 466, Papers of the Superintendent of Public Instruction, State Archives, Division of Archives and History, Raleigh.

117. Kemp Plummer Battle, *History of the University of North Carolina*, 2 vols. (Raleigh: Edwards and Broughton, 1912), 2:2; Archibald Henderson, *The Campus of the First State University* (Chapel Hill: University of North Carolina Press, 1949), 181-188, 193.

118. Battle, *University of North Carolina*, 2:2-10.

119. Battle, *University of North Carolina*, 2:10-11.

120. Minutes of meeting of the Board of Education, June 30, 1869, Letter Book, June 1869-March 8, 1870, Papers of the Superintendent of Public Instruction.

121. Battle, *University of North Carolina*, 2:7-8.

122. S. S. Ashley, *Report of the Superintendent of Public Instruction of North Carolina for the Year 1869* (Raleigh: M. S. Littlefield, State Printer and Binder, 1869), 94.

the previous year to 65,301 in 1870-1871, and expenditures increased from about $43,000 to over $170,000 for the same period.[153] Despite this success Ashley sensed in late 1870 that "the time is near at hand when it will be best for me to lay down my office as Supt. of Public Instruction for this State." He found the Conservatives to be "exceedingly bitter towards all who have been identified with the reconstruction movements. Towards myself they are intensely bitter, probably on account of my views with reference to the rights of the colored people." Ashley believed that "for the sake of punishing me . . . the Conservatives will not hesitate to break down the system."[154]

Ashley's premonition proved to be correct. In 1871 the legislature reduced his salary from $2,500 to $1,500 and took over the management of the school fund from the board of education.[155] In addition the legislature discontinued Ashley's clerical help and travel funds and eliminated the Reverend James W. Hood's position as assistant superintendent.[156] However "the most mischief" was done by a law that required the school taxes be spent in the county in which they were collected. This restriction destroyed the hope of an equal, statewide standard of education for black and white students in all counties.[157]

If the schools were to be saved, there seemed no hope but for Ashley to resign. "It seems hardly right to have this work broken up, if it can be prevented by my getting out of the way," Ashley wrote in 1870. "If I resign some Southern man can be appointed who is not so obnoxious to the ruling class as myself, and who can secure better than I can, the attention of the people, white people, I mean."[158] In September 1871 Ashley resigned from his position as superintendent of public instruction and immediately departed from North Carolina, never to return.[159]

After a brief respite Ashley resumed his work with the AMA. In New Orleans from 1871 to 1874, he served as president of the new Straight University, an AMA college for African Americans. In 1875 following a bout with dengue fever that nearly took his life, Ashley moved to the more healthful climate of Atlanta where he took charge of the AMA's mission house. His duties involved overseeing the local AMA schools, including Atlanta University, and the establishment of Congregational churches for black communicants. He also served as pastor of the First Congregational Church (Colored) of Atlanta.[160] In 1878 Ashley and his wife, both in poor health, returned to their home in Northborough, Massachusetts, where he became active in local affairs. Besides farming a small plot of land, he was postmaster from 1883 to 1886, clerk of his church, and chairman of the town's school committee. Ashley died of heart disease on October 5, 1887.[161]

153. Marian N. O'Quinn, "Samuel Stanford Ashley: Carpetbagger" (master's thesis, North Carolina State University, 1974), 153.

154. S. S. Ashley to George Whipple, November 23, 1870, AMA Archives.

155. Whitener, "Public Education," 85.

156. O'Quinn, "Ashley," 145-147.

157. Whitener, "Public Education," 86.

158. S. S. Ashley to George Whipple, November 23, 1870, AMA Archives.

159. Whitener, "Public Education," 86.

160. See generally, the correspondence from Louisiana and Georgia, passim, 1873-1878, AMA Archives.

161. Publishing Committee of the National Council of the Congregational Churches of the United States, *Congregational Year Book* [1888] (Boston: Congregational Publishing Society, 1889), 17-18; Kent, *Northborough History*, 149; Trowbridge, *Ashley Genealogy*, 323-324.

amount deposited with the state merely a loan to be returned when called for by the general government. The amount thus received by North Carolina was $1,433,757.39.

In 1840 the legislature directed the public treasurer of the state to furnish a statement of the amount of surplus received from the United States and of the disposition made of it, and also to make a full statement of the Literary Fund "specifying what portion it had received from the general government and what from other sources."

On December 31, 1840, in obedience to the foregoing order of the legislature, Charles L. Hinton, treasurer of the state, reported:

1st Installment, received January, 1837 ..... Deposited in the Bank of the State of North Carolina.	$ 477,919.13
2nd Installment, received in April, 1837 ..... Deposited, $285,000 in the Bank of the State of North Carolina, and $192,919.13 in the Bank of Cape Fear, at Wilmington.	477,919.13
3rd Installment, received, July, 1837 ..... Deposited in the Bank of the State of North Carolina.	477,919.13
Total amount received	$1,433,757.39

Of this amount of surplus received by the state of North Carolina, there was appropriated by acts of the General Assembly:

1st. To defray the civil and contingent expenses of the state government	$ 100,000.00
2nd. For the redemption of the public debt due the United States, in trust for the Cherokee Indians, created for the purpose of paying the state's subscription for the stock in the Bank of the State of North Carolina, which stock continues a part of the fund belonging to the Board of Literature	300,000.00

3rd.	For the payment of stock in the Bank of Cape Fear, subscribed for by the President and Directors of the Literary Fund	$ 300,000.00
4th.	For draining the Swamp Lands of the state under the directions of the Board of Literature Of this sum, $17,971.74 has been expended, the balance loaned to individuals and companies.	200,000.00
5th.	Invested in stock of the Wilmington and Raleigh Rail Road Company, by the board of Internal Improvement	533,757.39
		$1,433,757.39

Funds of the Literary Board

Stock in the Bank of Cape Fear	$ 532,200.00
Stock in the Bank of State of North Carolina	500,000.00
Notes of individuals and corporations	155,943.75
Swamp Improvements	62,829.24
Bonds of Raleigh and Gaston Rail Road Company	140,000.00
Bonds of Wilmington and Raleigh Rail Road Company	85,000.00
Cash on hand	78,007.06
Cape Fear Navigation Company	37,500.00
Roanoke Navigation Company	50,000.00
Stock in Wilmington Rail Road Company	600,000.00
	$2,241,480.05

Amount of Bank Stock paid for from the surplus	$ 600,000.00
Amount of Swamp Lands	200,000.00
Amount of Stock in the Wilmington Rail Road Co.	533,757.39
	$1,333,757.39

Indigent Poor an Undeveloped Resource.—Beginning with Murphey's reports on education in 1816 and 1817, legislative efforts for the establishment of public schools had stressed the importance and the duty of educating both rich and poor. Murphey looked upon the untaught sons and daughters of indigent poor parents as a part of the valu-

provided for the next four years and by that time the masses would be so thoroughly animated by the spirit of education that the taxes would be cheerfully paid to continue to build up the schools from year to year. This plan for providing good schools for a few years and thereby building up a spirit of education among the masses that would lead them to vote a tax and in that way carry on the education of their children in the future, was practically the one which was followed a few years later by the general agent of the Peabody Board in aiding communities to establish schools. His report closes with these words, which may well be quoted here:

> Let us, therefore, with the spirit of men and the faith of Christians "rise up and build." In the beginning of our state the University and the Common Schools were united by a constitutional provision; they should still be regarded as parts of our system. I, therefore, suggest that an appropriation of a few thousand dollars be annually made, for four years, to the University, and, if necessary, this can be done on condition that a certain number of pupils be educated free of tuition

The Action of the Legislature.—The legislature gave no heed to the words of Governor Worth or the recommendations of Superintendent Wiley. Poverty, political doubt and uncertainty, and the fact that the state was still kept out of the Union had a depressing effect upon the legislative mind. The school legislation enacted was destructive of the school system. It abolished the offices of "superintendent of common schools for the state" and of treasurer of the Literary Fund. It placed all money, stocks, bonds, and funds of the Literary Fund in the public treasury for safe keeping. It repealed the law requiring the county court to elect five superintendents of the common schools in the county and required the election of only one superintendent. It made the levying and collecting of taxes for the support and maintenance of common schools discretionary with the county court, and empowered the court to apply any school taxes it might decide to collect, to the aid of subscription schools

in the county. It gave school committees the right to allow subscription schools to be taught in the common school houses by such teachers as were qualified to teach in the public schools, and it authorized school committees to take charge of school buildings in their districts and permit them to be occupied if it were deemed to be necessary to do so in order to insure their preservation.

During the discussion of the bill, several attempts were made in both the Senate and the House to appropriate out of the state treasury sums varying from $25,000 to $100,000 for the benefit of the common schools. Although these attempts were defeated, they received very flattering support when submitted to a vote in either branch of the General Assembly. James E. Moore, of Martin, catching the thought from the recommendation of Wiley, endeavored to insert into the bill an amendment "to borrow for the benefit of the common schools by the hypothecation of stocks &c, belonging to the Literary Fund, money to the amount of $200,000 per annum, at not more than eight per cent interest," which was not adopted. It was, as already stated, the pauperizing effect of the war, the doubtful outlook immediately following it, and the continued military control of the state that checked enthusiasm for any forward movement and prevented the passage of a school law directing the levy and collection of school taxes. But the heart of the General Assembly expressed itself for schools and for the great leader of popular education in the state for the past thirteen years by passing unanimously in both houses this resolution two days after the office of superintendent of common schools had been abolished:

Resolved, That the gratitude of the people of North Carolina is eminently due to the Rev. C. H. Wiley, late Superintendent of Common Schools, for the zeal he has manifested in the cause of popular education, and for the untiring and efficient services which he has rendered to the common schools of the state.

MA-HA'LEB, *n.* [Arabic.] A species of cherry, Cerasus Mahaleb, whose fruit affords a violet dye, and a fermented liquor like kirschwasser. *Ure.*

MA-HOG'A-NY, *n.* A tree of the genus Swietenia, growing in the tropical climates of America; also, its wood, which is of a reddish or brown color, very hard, and susceptible of a fine polish. Of this are made our most beautiful and durable pieces of cabinet furniture.

MA-HOM'ET-AN, } This word, and the name of the
MO-HAM'MED-AN, } Arabian prophet so called, are written in many different ways. The best authorized and most correct orthography seems to be MOHAMMED, MOHAMMEDAN. [See MOHAMMEDAN.]

MA-HOM'ET-AN-ISM, *n.* See MOHAMMEDISM.

MA'HOUND, *n. Formerly*, a contemptuous name for Mohammed and the devil, &c. *Skelton.*

MAID, *n.* A species of skate-fish.

MAID, } *n.* [Sax. *mægth*, from *mæg*, a general name
MAID'EN, } of relation, man, boy, or woman; Goth. *magath*; D. *maagd*; G. *magd*; Ir. *mogh*, a man; Sp. *mozo*, a man-servant, a bachelor; *moza*, a maid; Port. *macho*, a male; Russ. *muj*. It coincides in elements with Sax. *magan*, to be able; Eng. *may*.]

1. An unmarried woman, or a young unmarried woman; a virgin.

2. A female servant. *Dryden.*

3. It is used in composition to express the feminine gender; as in *maid*-servant.

MAID'EN, (mād'n,) *n.* * A maid.

*2. An instrument resembling the guillotine, formerly used for beheading criminals.

3. A machine for washing linen.

MAID'EN, (mād'n,) *a.* Pertaining to a young woman or virgin; as, *maiden* charms.

2. Consisting of young women or virgins.

Amid the *maiden* throng. *Addison.*

3. Fresh; new; unused.

He fleshed his *maiden* sword. *Shak.*

A *maiden speech*; the first speech of a new member in a public body.

MAID'EN, *v. i.* To speak and act demurely or modestly. *Bp. Hall.*

MAID'EN-AS-SIZE', *n.* In *England*, an assize at which no one is condemned to die; *literally*, an assize which is unpolluted with blood. It was usual, at such an assize, for the sheriff to present the judge with a pair of white gloves. *Smart.*

MAID'EN-HAIR, *n.* A species of fern of the genus Adiantum.

MAID'EN-HOOD, } *n.* [Sax. *mægdenhad*, *mædenhad*.]
MAID'EN-HEAD, }

1. The state of being a maid or virgin; virginity.

The modest lore of *maidenhood*. *Milton.*

2. Newness; freshness; uncontaminated state. *Shak.*

MAID'EN-LIKE, *a.* Like a maid; modest. *Shak.*

MAID'EN-LI-NESS, *n.* The behavior that becomes a maid; modesty; gentleness. *Sherwood.*

MAID'EN-LIP, *n.* A plant. *Ainsworth.*

MAID'EN-LY, (mād'n-ly,) *a.* Like a maid; gentle; modest; reserved. *Shak.*

MAID'EN-LY, *adv.* In a maidenlike manner. *Skelton.*

MAID'HOOD, *n.* Virginity; sometimes spelt MAIDENHEAD. *Shak.*

MAID-MA'RI-AN, *n. Originally*, the lady of the May-games in a morris-dance; *afterward*, a character personated by a man in woman's clothes; also, the name of a dance. *Toone. Smart.*

MAID'-PALE, *a.* Pale, like a sick girl. *Shak.*

MAID'-SERV-ANT, *n.* A female servant. *Swift.*

MAIL, *n.* * [Fr. *maille*, a stitch in knitting, a mail; Sp. *malla*, a mesh, net-work, a coat of mail; Port. *id.* and a spot; It. *maglia* and *camaglio*; Arm. *mailh*; D. *maal*; W. *magyl*, a knot, a mesh; *maglu*, to knit, to entangle, to entrap, to form meshes. The sense of *spot*, which occurs in the French and Portuguese, indicates this word to be from the root of L. *macula*, and the Welsh words prove it to be contracted from *magel*.]

*1. A coat of steel net-work, formerly worn for defending the body against swords, poniards, &c. The mail was of two sorts, chain and plate mail; the former consisting of iron rings, each having four others inserted into it; the latter consisting of a number of small lamins of metal, laid over one another like the scales of a fish, and sewed down to a strong linen or leathern jacket. *Cyc.*

2. Armor; that which defends the body.

We strip the lobster of his scarlet *mail*. *Gay.*

We read also of shirts of *mail* and gloves of *mail*.

3. In *ships*, a square machine composed of rings interwoven, like net-work, used for rubbing off the loose hemp on lines and white cordage.

4. A rent. [Sax. *mal*.] Also, a spot. [*Obs.*]

MAIL, *n.* [Fr. *malette*; Ir. *mala*; Fr. *malle*; Arm. *mal*.]

1. A bag for the conveyance of letters and papers, particularly letters conveyed from one post-office to another, under public authority.

2. The coach or carriage in which the mail is conveyed.

MAIL, *v. t.* To put on a coat of mail or armor; to arm defensively. *Shak.*

2. To prepare for transmission by the mail from one post-office to another. We say, letters were *mailed* for Philadelphia.

MAIL'A-BLE, *a.* Usually admitted, or proper to be admitted, into the mail.

MAIL'-CLAD, *a.* Clad with a coat of mail. *Scott.*

MAIL'-COACH, *n.* A coach that conveys the public mails.

MAIL'ED, *pp.* Covered with a coat of mail or with armor; prepared for transmission by the mail.

2. *a.* In *zoölogy*, protected by an external coat or covering of scales or hard substances. *Humble.*

3. Spotted; speckled. *Sherwood.*

MAIL'ING, *ppr.* Investing with a coat of mail; preparing for transmission by the mail.

MAIL'-STAGE, *n.* The stage or coach for conveying the mails; a mail-coach. *America.*

MAIL'-SHEATH-ED, *a.* Sheathed with a coat of mail. *Scott.*

MAIM, *v. t.* [Old Fr. *mahemer*, or *mahaigner*; Arm. *mahaigna*, *mahagnein*.]

1. To deprive of the use of a limb, so as to render a person less able to defend himself in fighting, or to annoy his adversary. *Blackstone.*

2. To deprive of a necessary part; to cripple; to disable.

You *maimed* the jurisdiction of all bishops. *Shak.*

MAIM, *n.* [Written in law language MAYHEM.]

1. The privation of the use of a limb or member of the body, so as to render the sufferer less able to defend himself or to annoy his adversary.

2. The privation of any necessary part; a crippling.

Surely there is more cause to fear lest the want thereof be a *maim*, than the use of it a blemish. *Hooker.*

3. Injury; mischief. *Shak.*

4. Essential defect.

A noble author esteems it to be a *maim* in history. [*Not used.*] *Hayward.*

MAIM'ED, *pp.* or *a.* Crippled; disabled in limbs; lame.

MAIM'ED-NESS, *n.* A state of being maimed. *Bolton.*

MAIM'ING, *ppr.* Disabling by depriving of the use of a limb; crippling; rendering lame or defective.

MAIN, *a.* [Sax. *mægn*, strength, force, power, from *magan*, to be able or strong, that is, to strain or stretch, Eng. *may*, *might*. If *g* is radical in the L. *magnus*, this may be of the same family; Goth. *mickels*; Eng. *much*.]

1. Principal; chief; first in size, rank, importance, &c.; as, the *main* branch or tributary stream of a river; the *main* timbers of an edifice.

2. That which has most power in producing an effect, or which is mostly regarded in prospect; as, a *main* design; a *main* object.

Our *main* interest is to be as happy as we can, and as long as possible. *Tillotson.*

3. Mighty; vast; as, the *main* abyss. *Milton.*

4. Important; powerful.

This young prince, with a train of young noblemen and gentlemen, not with any *main* army, came over to take possession of his patrimony. *Davies.*

MAIN, *n.* Strength; force; violent effort; as in the phrase, "with might and *main*." *Dryden.*

2. The gross; the bulk; the greater part.

The *main* of them may be reduced to language and an improvement in wisdom. *Locke.*

3. The ocean; the great sea, as distinguished from rivers, bays, sounds, and the like

He fell, and struggling in the *main*. *Dryden.*

4. The continent, as distinguished from an isle. We arrived at Nantucket on Saturday, but did not reach the *main* till Monday. In this use of the word, *land* is omitted; *main* for *main land*.

5. A hamper. *Ainsworth.*

6. A course; a duct. *Act of Parliament.*

For the main; *in the main*; for the most part; in the greatest part.

MAIN, *n.* [L. *manus*, hand; Fr. *main*.]

A hand at dice. We throw a merry *main*.

And lucky *mains* make people wise. [*Not used.*] *Prior.*

2. A match at cock-fighting.

MAIN'-DECK, *n.* The deck next below the spar-deck in frigates and seventy-fours. *Totten.*

MAIN'-KEEL, *n.* The principal keel, as distinguished from the false keel.

MAIN'-LAND, *n.* The continent; the principal land, as opposed to an *isle*. *Dryden.*

MAIN'LY, *adv.* Chiefly; principally. He is *mainly* occupied with domestic concerns.

2. Greatly; to a great degree; mightily. *Bacon.*

MAIN'MAST, *n.* The principal mast in a ship or other vessel.

MAIN'OR, *n.* [Old Fr. *manovere*, *meinour*, L. *a manu*, from the hand or in the work.]

The old law phrase, *to be taken as a thief with the mainor*, signifies to be taken in the very act of killing venison or stealing wood, or in preparing so to do; or it denotes the being taken with the thing stolen upon him. *Blackstone.*

MAIN'PERN-A-BLE, *a.* That may be admitted to give surety by mainpernors; that may be mainprized.

MAIN'PERN-OR, *n.* [Old Fr. *main*, the hand, and *prendre*, to take; *pernon*, *pernet*, for *prenon*, *prenet*.]

In *law*, a surety for a prisoner's appearance in court at a day. *Mainpernors* differ from *bail*, in that a man's *bail* may imprison or surrender him before the stipulated day of appearance; *mainpernors* can do neither; they are bound to produce him to answer all charges whatsoever. *Blackstone.*

MAIN'PRIZE, *n.* [Fr. *main*, hand, and *prendre*, *pris*, to take.]

1. In *law*, a writ directed to the sheriff, commanding him to take sureties for the prisoner's appearance, and to let him go at large. These sureties are called *mainpernors*. *Blackstone.*

2. Deliverance of a prisoner on security for his appearance at a day

MAIN'PRIZE, *v. t.* To suffer a prisoner to go at large, on his finding sureties, mainpernors, for his appearance at a day.

MAIN'PRIZ-ED, *pp.* Bailed; suffered to go at large, upon giving security for appearance.

MAIN'SAIL, *n.* The principal sail in a ship. The mainsail of a ship or brig is extended by a yard attached to the mainmast, and that of a sloop, by the boom.

MAIN'SHEET, *n.* The sheet that extends and fastens the mainsail.

MAIN'SWEAR, *v. i.* [Sax. *manswerian*; *man*, evil, and *swerian*, to swear.

To swear falsely; to perjure one's self. *Blount.*

MAIN-TAIN', *v. t.*† [Fr. *maintenir*; *main*, hand, and *tenir*, to hold; L. *manus* and *teneo*.]

1. To hold, preserve, or keep in any particular state or condition; to support; to sustain; not to suffer to fail or decline; as, to *maintain* a certain degree of heat in a furnace; to *maintain* the digestive process or powers of the stomach; to *maintain* the fertility of soil; to *maintain* present character or reputation.

2. To hold; to keep; not to lose or surrender; as, to *maintain* a place or post.

3. To continue; not to suffer to cease; as, to *maintain* a conversation.

4. To keep up; to uphold; to support the expense of; as, to *maintain* state or equipage.

What *maintains* one vice would bring up two children. *Franklin.*

5. To support with food, clothing, and other conveniences; as, to *maintain* a family by trade or labor.

6. To support by intellectual powers, or by force of reason; as, to *maintain* an argument.

7. To support; to defend; to vindicate, to justify; to prove to be just; as, to *maintain* one's right or cause.

8. To support by assertion or argument; to affirm.

In tragedy and satire, I *maintain* that this age and the last have excelled the ancients. *Dryden.*

MAIN-TAIN', *v. i.* To affirm a position; to assert.

MAIN-TAIN'A-BLE, *a.* That may be maintained, supported, preserved, or sustained.

2. That may be defended or kept by force or resistance; as, a military post is not *maintainable*.

3. That may be defended by argument or just claim; vindicable; defensible.

MAIN-TAIN'ED, *pp.* Kept in any state; preserved; upheld; supported; defended; vindicated.

MAIN-TAIN'ER, *n.* One who supports, preserves, sustains, or vindicates.

MAIN-TAIN'ING, *ppr.* Supporting; preserving; upholding; defending; vindicating.

MAIN-TAIN'OR, *n.* One who aids others with money, or maintains a suit in which he has no interest.

MAIN'TE-NANCE, *n.* Sustenance; sustentation; support by means of supplies of food, clothing, and other conveniences; as, his labor contributed little to the *maintenance* of his family.

2. Means of support; that which supplies conveniences.

Those of better fortune not making learning their *maintenance*. *Swift.*

3. Support; protection; defense; vindication; as, the *maintenance* of right or just claims.

4. Continuance; security from failure or decline.

Whatever is granted to the church for God's honor and the *maintenance* of his service, is granted to God. *South.*

5. In *law*, an officious intermeddling in a suit in which the person has no interest, by assisting either party with money or means to prosecute or defend it. This is a punishable offense. But to assist a poor kinsman, from compassion, is not *maintenance* *Brande.*

MAIN'TOP, *n.* * The top of the mainmast of a ship or brig.

MAIN'YARD, *n.* The yard on which the mainsail is extended, supported by the mainmast.

MAIS'TER, for MASTER, is obsolete. *Spenser.*

MAIS'TRESS, for MISTRESS, is obsolete. *Chaucer.*

Mān'-keel, *n.* (*Naut.*) The principal keel, as distinguished from the false keel.

Mān'-land, *n.* The continent; the principal land; — opposed to *island*. *Dryden.*

Mān'ly, *adv.* 1. Chiefly; principally.

2. Greatly; to a great degree; mightily; absolutely; entirely. *Bacon.*

Mān'mast, *n.* (*Naut.*) The principal mast in a ship or other vessel.

Mān'or, *n.* [O. Eng. *mainour*, *maynovre*, Norm. Fr. *manour*, *meinoure*, O. Fr. *manuvre*, *manuvre*, *manoeuvre*, work of the hand, handwork, from Lat. *manus*, hand, and *opera*, work; It. *manovra*, Sp. *maniobra*. See MANŒUVER.] (*O. Eng. Law.*) A thing stolen found in the hands of the thief who stole it.

☞ A thief was said to be "taken with the *manor*," when he was taken with the thing stolen upon him, that is, *in his hands*. *Wharton. Bouvier.*

Mān'per-na-ble, *a.* [O. Fr. *main*, hand, and *prendable*, for *prendable*, that may be taken, pregnable. See *infra*.] (*Law.*) Capable of being admitted to give surety by mainpernors; able to be mainprized.

Mān'per-nor, *n.* [O. Fr. *main*, hand, and *pernor*, for *preneur*, a taker, from *prendre*, to take; O. Fr. *pernes*, for *prenes*.] (*Law.*) A surety for a prisoner's appearance in court at a day.

☞ *Mainpernors* differ from *bail* in that a man's *bail* may imprison or surrender him before the stipulated day of appearance; *mainpernors* can do neither; they are bound to produce him to answer all charges whatsoever. *Blackstone.*

Mān'prīse, *n.* [Fr. *main*, hand, and *prise*, a taking, from *prendre*, p. p. *pris*, to take, from Lat. *prehendere*, *prehensum*.] (*Law.*) (*a.*) A writ directed to the sheriff, commanding him to take sureties, called *mainpernors*, for the prisoner's appearance, and to let him go at large. This writ is now obsolete. *Wharton.* (*b.*) Deliverance of a prisoner on security for his appearance at a day.

Mān'prīze, *v. t.* [*imp.* & *p. p.* MAINPRIZED; *p. pr.* & *vb. n.* MAINPRIZING.] (*Law.*) To suffer to go at large, on his finding sureties, or mainpernors, for his appearance at a day; — said of a prisoner.

Mān'sāil, *n.* (*Naut.*) The principal sail in a ship.

Mainsail of a Sloop.

☞ The *mainsail* of a ship or brig is extended by a yard attached to the mainmast, and that of a sloop by the boom.

Mān'-sheet, *n.* (*Naut.*) The sheet that extends and fastens the mainsail.

Mān'spring, *n.* The principal or most important spring in a piece of mechanism, especially the moving spring of a watch or clock; hence, the chief or most powerful motive; the efficient cause of action.

Mān'-stāy, *n.* 1. (*Naut.*) The stay extending from the foot of the foremast to the maintop.

2. Main support; principal dependence.

Mān'swear, *v. i.* [A-S. *mānswerian*, to forswear, from *mān*, sin, wickedness, crime, and *swerian*, to swear. Cf. A-S. *mānāth*, a wicked oath, perjury; Ger. *meineid*.] To swear falsely; to perjure one's self. [*Obs.*] *Blount.*

Main-tān', *v. t.* [*imp.* & *p. p.* MAINTAINED; *p. pr.* & *vb. n.* MAINTAINING.] [Fr. *maintenir*, from *main*, Lat. *manus*, hand, and *tenir*, Lat. *tenere*, to hold; It. *mantenere*, Pr. & Sp. *mantener*, Pg. *manter*.]

1. To hold or keep in any particular state or condition; to support; to sustain; to uphold; to keep up; not to suffer to fall or decline; as, to *maintain* a certain degree of heat in a furnace; to *maintain* the digestive process or powers of the stomach; to *maintain* the fertility of soil; to *maintain* present character or reputation.

2. To keep possession of; to hold and defend; not to surrender or relinquish. "When Bedford, who our only hold *maintained*." *Daniel.*

3. To continue; not to suffer to cease or fail.

Maintain talk with the duke. *Shak.*

4. To bear the expense of; to support; to keep up; to supply with what is needed. "Glad, by his labor, to *maintain* his life." *Stirling.*

What *maintains* one vice would bring up two children. *Franklin.*

5. To support by assertion or argument; to defend by intellectual means; to affirm and stand ready to defend.

Syn. — To assert; vindicate; allege. See ASSERT.

Main-tān', *v. i.* To affirm a position; to assert.

In tragedy and satire I *maintain* that this age and the last have excelled the ancients. *Dryden.*

Main-tān'a-ble, *a.* Capable of being maintained, upheld, or kept up; sustainable; defensible; vindicable.

Main-tān'er, *n.* One who maintains, supports, preserves, sustains, or vindicates.

Main-tān'or, *n.* (*Crim. Law.*) One who, not being interested, maintains or supports a cause depending between others, by furnishing money, &c., to either party. *Bouvier. Wharton.*

Mān'te-nançe (Synop., § 130), *n.* [O. Fr. *maintenance*, Pr. *mantenensa*, O. Sp. *mantenencia*, *mantenencia*, Pg. *manutenencia*. See *supra*.]

1. The act of maintaining, supporting, upholding, defending, or keeping up; sustenance; support; defense; vindication.

Whatever is granted to the church for God's honor and the *maintenance* of his service, is granted to God. *South.*

2. That which maintains or supports; means of sustenance; supply of necessaries and conveniences.

Those of better fortune not making learning their *maintenance*. *Swift.*

3. (*Crim. Law.*) An officious intermeddling in a cause depending between others, by assisting either party with money or means to prosecute or defend it. See CHAMPERTY. *Brande. Wharton.*

Cap of maintenance, a cap formerly worn by a duke as a part of the insignia appropriate to his rank; also, a fur cap worn by the lord mayor of London on state occasions. [*Eng.*]

Mān'-tōp, *n.* (*Naut.*) The top of the mainmast of a ship or brig.

Mān'yārd, *n.* (*Naut.*) The yard on which the mainsail is extended, supported by the mainmast.

Mās'ter, *n.* Master. [*Obs.*] *Spenser.*

Mās'tress, *n.* Mistress. [*Obs.*] *Chaucer.*

Māize, *n.* [Sp. *maiz*, Fr. *maïs*, from *mahiz* or *mahis*, in the language of the Island of Hayti.] (*Bot.*) A plant and its fruit, of the genus *Zea* (*Z. mays*); Indian corn.

Maize (*Zea mays*).

Mā-jes'tic, *a.* Of majestic

Mā-jes'tic-al, } appearance;

having dignity. [*Obs.*] *Pococke.*

Ma-jĕs'tic, *a.* [From Eng. *majesty*, q. v.]

1. Possessing or exhibiting majesty; of august dignity, stateliness, or imposing grandeur; lofty; princely; noble.

In his face
Sat meekness, heightened with *majestic* grace. *Milton.*

2. Splendid; grand.

Get the start of this *majestic* world. *Shak.*

3. Elevated; lofty; stately.

The least portions must be of the epic kind; all must be grave, *majestic*, and sublime. *Dryden.*

Syn. — August; splendid; grand; sublime; magnificent; imperial; regal; royal; pompous; stately; lofty; dignified; elevated.

Ma-jĕs'tic-al, *a.* Majestic. [*Rare.*]

If I were ever to fall in love again (which is a great passion, and therefore I hope I have done with it), it would be, I think, with prettiness, rather than with *majestical* beauty. *Cowley.*

Ma-jĕs'tic-al-ly, *adv.* With majesty; with dignity or grandeur; with a lofty air or appearance.

Ma-jĕs'tic-al-ness, *n.* State or manner of being majestic.

Māj'es-ty, *n.* [Lat. *majestas*, from *majus*, an old word for *magnus*, great; Fr. *majesté*, Pr. *majestat*, Sp. *magestad*, It. *maestà*, *maestà*.]

1. Grandeur; exalted dignity, whether proceeding from rank, character, or bearing; imposing loftiness; stateliness; — usually applied to the rank and dignity of sovereigns.

The Lord reigneth: he is clothed with *majesty*. *Ps.* xciii. 1.
The voice of the Lord is full of *majesty*. *Ps.* xxix. 4.
When he showed the riches of his glorious kingdom and the honor of his excellent *majesty* many days. *Esth.* i. 4.

2. Hence, used with the possessive pronoun, the title of a king or queen, in this sense taking a plural; as, their *majesties* attended the concert.

3. Dignity; elevation of manner; loftiness of style.

The first in loftiness of thought surpassed,
The next in *majesty*. *Dryden.*

Ma-jŏl'i-cā, *n.* A kind of fine pottery or earthen ware with painted figures, first made in Italy in the sixteenth century.

☞ The term is said to be derived from Majorca, which was an early seat of this manufacture. *Heyse.*

Mā'jor, *a.* [Lat. *major*, comparative of *magnus*, great; Fr. *majeur*, O. Fr. *major*, Pr. *majer*, *major*, Sp. *mayor*, Pg. *maior*, *mayor*, It. *maggiore*.]

1. Greater in number, quantity, or extent; as, the *major* part of the assembly; the *major* part of the revenue; the *major* part of the territory.

2. Of greater dignity; more important.

My *major* vow lies here. *Shak.*

Major interval (*Mus.*), an interval greater by a half-step (semitone) than the *minor* interval of the same denomination; thus, a *major third* is an interval of two steps (tones), while a *minor third* consists of a step and a half-step (tone and semitone). — *Major mode*, that mode in which the third and sixth tones of the scale form *major* intervals with the tonic or key-note; in the *minor mode*, those intervals are *minor*. — *Major premise* (*Logic*), that premise of a syllogism which contains the major term. — *Major term*, that term of a syllogism which forms the predicate of the conclusion.

Mā'jor, *n.* 1. (*Mil.*) An officer next in rank above a captain and below a lieutenant-colonel; the lowest field officer.

2. (*Civil Law.*) A person of full age.

3. The mayor of a town. See MAYOR.

4. (*Logic.*) That premise which contains the major term; it is the first proposition of a regular syllogism; as, No unholy person is qualified for happiness in heaven [the major]. Every man in his natural state is unholy [minor]. Therefore, no man in his natural state is qualified for happiness in heaven [conclusion or inference].

☞ In hypothetical syllogisms, the hypothetical premise is called the *major*.

Aid-major (*Mil.*), an officer appointed to act as major on certain occasions. — *Brigade-major*. See BRIGADE. — *Drum-major*. (*a.*) The first drummer in a regiment, who has authority over the other drummers. (*b.*) A noisy, convivial entertainment. [*Obs.*] See DRUM. — *Fife-major*, the first or chief fifer in a military band. — *Sergeant-major*, a non-commissioned officer, subordinate to the adjutant.

Majorat (mā'zhō-rä'), *n.* [Fr. *majorat*, L. Lat. *majoratus*, from Lat. *major*. See *supra*.]

1. The right of succession to property according to age; — so termed in some of the countries of continental Europe.

2. (*Fr. Law.*) Property, landed or funded, so attached to an hereditary title of honor as to descend with it. *Brande.*

Mā'jor-ate, *n.* The office or rank of a major.

Mā'jor-ā'tion, *n.* [L. Lat. *majoratio*, from *majorare*, to augment, from Lat. *major*. See *supra*.] Increase; enlargement. [*Obs.*] *Bacon.*

Ma-jōr'can, *n.* (*Geog.*) A native or inhabitant of Majorca.

Ma-jōr'can, *a.* (*Geog.*) Of or pertaining to Majorca, or its inhabitants.

Mā'jor-dō'mo, *n.* [Sp. *mayordomo*, It. *maggiordomo*, Pr. *maiordome*, Fr. *majordome*, L. Lat. *majordomus*, from Lat. *major*, greater, and *domus*, house.] A man who holds the place of master of the house; a steward; also, a chief minister.

Mā'jor-gĕn'er-al, *n.* See GENERAL.

Ma-jŏr'i-ty, *n.* [L. Lat. *majoritas*, from Lat. *major*, greater; Fr. *majorité*, Pr. *majoritat*, O. Sp. *mayoridad*, N. Sp. *mayoria*, Pg. *maioridade*. See MAJOR.]

1. The quality or condition of being major or greater; superiority; high rank; specifically, (*a.*) The military rank of a major. (*b.*) The condition of being of full age, or authorized by law to manage one's own concerns.

2. The greater number; more than half; as, a *majority* of mankind.

3. [Lat. *majores*.] Ancestors; ancestry. [*Obs.*]

4. The amount by which a greater thing or part exceeds the less; especially, the number by which the votes for a successful candidate exceed those for other candidates; as, he is elected by a *majority* of five hundred votes.

Māj'oun, *n.* See MADJOUN.

Ma-jus'cu-læ, *n. pl.* [Lat. *majusculus*, somewhat greater or great, diminutive of *major*, *majus*, greater; It. *majuscolo*, Sp. *mayusculo*, Fr. *majuscule*. See MAJOR.] (*Diplomatics.*) Capital letters, as they are found in Latin manuscripts of the sixth century and earlier.

Ma-jus'cule, *n.* [See MAJUSCULÆ.] A capital letter used in ancient Latin manuscripts. See MAJUSCULÆ.

Māk'a-ble, *a.* Capable of being made or done; feasible. [*Obs.*]

Māke, *v. t.* [*imp.* & *p. p.* MADE; *p. pr.* & *vb. n.* MAKING.] [A-S. *macian*, O. Sax. *mækōn*, O. Fries. *makia*, D. & L. Ger. *maken*, N. H. Ger. *machen*, O. H. Ger. *machōn*, to join, fit, prepare, make, Dan. *mage*, to frame, fashion, make, Sw. *måka*, to move, remove.]

1. To cause to exist; to bring into being; to produce; to frame; to fashion; to create; hence, in various specific uses or applications, (*a.*) To form of materials; to cause to exist in a certain form; to construct; to fabricate.

He . . . fashioned it with a graving tool, after he had *made* it a molten calf. *Ex.* xxxii. 4.

(*b.*) To produce, as something artificial, unnatural, or false.

And Art, with her contending, doth aspire
To excel the natural with *made* delights. *Spenser.*

(*c.*) To bring about; to be the cause or agent of; to effect, do, perform, or execute; — often used with a noun to form a phrase equivalent to the simple verb that corresponds to such noun; as, to *make* complaint, for to complain; to *make* record of, for to record; to *make* abode, for to abide, &c.

Call for Samson, that he may *make* us sport. *Judg.* xvi. 25.
Wealth *maketh* many friends. *Prov.* xix. 4.
I will neither plead my age nor sickness in excuse of the faults which I *make*. *Dryden.*

(*d.*) To gain, as the result of one's efforts; to get, as profit; to make acquisition of; to have accrue to one; as, to *make* money; to *make* a large profit; rarely, to have result to one as a loss or misfortune; to suffer.

He accuses Neptune unjustly who *makes* shipwreck a second time. *Bacon.*

(*e.*) To find, as the result of calculation or computation; to ascertain by enumeration; to find the number or amount of, by reckoning, weighing, measurement, and the like; as, he *made* the weight about fifty pounds. (*f.*) To pass over the distance of; to travel over; as, the ship *makes* ten knots an hour; he *made* the distance in one day. (*g.*) To put in a desired or desirable condition; to cause to thrive.

Who *makes* or ruins with a smile or frown. *Dryden.*