

TWENTY-SIXTH DISTRICT

From Mecklenburg County
No. 22 CVS 6443

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Proposed *amici curiae* the North Carolina Association of Independent Schools (“NCAIS”) and the Southern Association of Independent Schools (“SAIS”; collectively, “Amici Associations”) hereby submit this Brief in support

of Defendants-Appellees Charlotte Latin School, Inc. (“Latin”) *et al.*, as *amici curiae*.¹

INTEREST AND POSITION OF AMICI CURIAE

NCAIS is a nonprofit association of almost 90 independent schools across the State. Its mission is to promote educational excellence and empower its member schools—and their students and faculty—to thrive. In support of its mission, NCAIS engages in both public and legislative advocacy to promote independent school issues and needs. NCAIS works at the State level to protect the rights of independent schools to function as self-governing, mission-driven organizations free from governmental intrusion.

Members of the NCAIS include the following independent schools:

- Al-Iman School (Raleigh, NC);
- Asheville Christian Academy (Swannanoa, NC);
- Asheville School (Asheville, NC);
- B’nai Shalom Day School (Greensboro, NC);
- Bishop McGuinness Catholic High School (Kernersville, NC);
- Cannon School (Concord, NC);
- Cape Fear Academy (Wilmington, NC);

¹ Pursuant to N.C. App. R. 28(i)(2), Amici Associations state that no person or entity other than Amici Associations, their members, or their counsel, directly or indirectly wrote this brief or contributed any money for its preparation.

- Cary Academy (Cary, NC);
- Defendant-Appellee Charlotte Latin School (Charlotte, NC);
- Gaston Day School (Gastonia, NC);
- Hope Academy (Concord, NC);
- Montessori School of Raleigh (Raleigh, NC);
- Noble Academy (Greensboro, NC);
- Ravenscroft School (Raleigh, NC);
- Rocky Mount Academy (Rocky Mount, NC); and
- Winston Salem Christian School (Winston Salem, NC).

And many others, publicly listed online on NCAIS's website. The total number of students enrolled in NCAIS member schools in 2022-2023 exceeded 40,000 students. In sum, NCAIS and its members work with all interested parties to promote the rights and interests of independent schools, including before the State legislature and on matters of public policy that implicate NCAIS's mission.

SAIS is the largest regional independent school association in the United States, with 398 member K-12 schools from fourteen states (approximately 220,000 students in total). Nearly half its schools are religious. SAIS's mission is to strengthen SAIS's member schools by providing accreditation processes, professional growth opportunities, and leadership development programs.

Unlike the Moms for Liberty groups for various counties, or Concerned Private School Parents of Charlotte, NCAIS and SAIS are not tied to specific issues but have long and established track records of a broad-based approach to providing the highest quality educational opportunities for students and promoting independence for private schools throughout the southeastern United States, including in North Carolina.

Amici Associations are not parties to this appeal and have no direct stake in its outcome but offer this *amici curiae* brief in support of Defendants-Appellees. Amici Associations do so in order to promote the interests of independent schools based on their missions and commitment to independent education in North Carolina. They are concerned on behalf of their members, stakeholders, and the public about the possible implications of this case. Specifically, Plaintiffs-Appellants Doug Turpin and Nicole Turpin (“the Turpins”) allege baseless theories to transform a routine contract dispute about private school governance into a challenge to bedrock aspects to freedom of contract and the rights of private associations to organize themselves without government interference. Recognizing the Turpins’ claims would upend decades of settled law upholding broad freedom of contract for private parties, like the Turpins and Latin. It would encourage litigation of disputes between independent schools and parents on socially divisive issues and topics as such disputes likely would become actionable under the Turpins’ far-

reaching theories. By way of example, those opposed to a religious-based private curriculum could embrace the Turpins' far-reaching legal theories and invoke them to challenge schools that have sectarian components to their curriculum and community rules.

This Court should not entertain the Turpins' invitation to overturn bedrock aspects of the right of private contracts and private associational rights. Nothing more than a straightforward analysis of a contract between two parties is needed to decide this case. This Court should affirm.

ARGUMENT

Independent schools are private entities. They are not subject to the same rules that regulate public schools. That's a benefit – an aspect of the liberty of private associations – it is not a problem. The private right of association allows independent schools to define their values, mission, and culture as they see fit. Some schools may be conservative, others liberal, more in the middle. Many are religiously affiliated, many are not. Should parents want a different environment or a culture for their children, parents are free to “vote with their feet” and find another school that fits their criteria. Barring that, parents may express their views to schools pursuant to the arrangements and processes that they agree to when joining the school community.

Where private parties use contracts to define and to order their relationships, North Carolina's long-standing freedom of contract permits

them to do so—and our courts must enforce those agreements as written. Moreover, intrusion into this area risks imperiling the freedom to associate—a “cornerstone of our democratic society.” *Libertarian Party of N.C. v. North Carolina*, 365 N.C. 41, 55, 707 S.E.2d 199, 208-09 (2011) (Newby, J., dissenting). If permitted, the Turpins’ legal theories would imperil the First Amendment’s freedom of association by inserting lawyers and courts where they do not belong—to the detriment ultimately of our State’s students.

The Turpins’ lawsuit is really only a routine exercise in contract interpretation. The trial court interpreted the contract at issue to empower Latin to end its relationship with the Turpins because they made the relationship impossible or severely interfered with Latin’s mission. Nothing else is necessary to decide this case, as the remaining bevy of claims brought by the Turpins are naked attempts to litigate a school governance dispute.

Reversing the trial court’s decision dismissing most of the Turpins’ claims would unleash litigation against independent schools. Parents and schools might not agree on many hard issues—police conduct, race, gender, religion, guns, climate change to name a few. Indeed, persons opposed to, for example, a conservative Christian academy, could enroll for the purpose of challenging the school. If the academy attempted to protect its mission, it could be exposed to protracted litigation, like what is at issue here. And the same is true of schools of other beliefs. Weaponizing different legal theories to advance

political or religious agendas in the private school setting only leads to undermining fundamental rights of association and bedrock principles of freedom of contract. Speech will be chilled, and there will be fewer educational options for students as independent schools avoid any controversial topics to manage risk. Ultimately, students would be the real losers.

I. NORTH CAROLINA HAS RECOGNIZED FREEDOM OF CONTRACT FOR DECADES AND NOTHING MORE IS NECESSARY TO DECIDE THIS CASE.

Freedom of contract is a fundamental constitutional right. This has been the law for decades. And, while the Turpins may disagree, this is what defeated their contract claims in the court below.

For well over a century, our appellate courts have recognized that one of the fundamental bedrocks of North Carolina law is freedom of contract. Private parties, generally speaking, have broad freedom to define relationships among themselves by ordinary contract law. Case after case recognizes this fundamental right. *Hlasnick v. Federated Mut. Ins. Co.*, 353 N.C. 240, 243, 539 S.E.2d 274, 276 (2000) (“Indeed, our state’s legal landscape recognizes that, unless contrary to public policy or prohibited by statute, freedom of contract is a fundamental constitutional right.”); *Am. Tours, Inc. v. Liberty Mut. Ins. Co.*, 315 N.C. 341, 350, 338 S.E.2d 92, 98 (1986); *Nationwide Mut. Ins. Co. v. Aetna Life & Cas. Co.*, 283 N.C. 87, 93, 194 S.E.2d 834, 838 (1973); *Hall v. Sinclair Refining Co.*, 242 N.C. 707, 709-10, 89 S.E.2d 296, 398 (1955) (noting that the

principle that “contracting parties” have “freedom to bind themselves as they see fit” is a “broad policy of the law”); *Stephens v. Hicks*, 156 N.C. 239, 244, 72 S.E. 313, 316 (1911); *Ricky Spoon Builders, Inc. v. EmGee LLC*, 882 S.E.2d 110, 115 (2022) (“North Carolina courts recognize that freedom of contract is constitutionally guaranteed and [that] provisions in private contract, unless contrary to public policy or prohibited by statute, must be enforced as written.” (quotation omitted)); *Lexington Ins. Co. v. Tires Into Recycled Energy & Supplies, Inc.*, 136 N.C. App. 223, 225, 522 S.E.2d 798, 800 (1999) (“In general, therefore, parties may bind themselves as they see fit by a contract” (quotation omitted)).

Here, as the parties to this appeal have noted, the Turpins and Latin had two contracts in place to define their relationships with the Turpins (one for each child). In relevant part, the contracts stated:

A positive, collaborative working relationship between the School and a student’s parent/guardian is essential to fulfillment of the School’s mission. Therefore, the School ***reserves the right*** to discontinue enrollment ***if it concludes*** that the actions of a parent/guardian would make such a relationship impossible or seriously interfere with the School’s mission.

(Doc. Ex. 16 (emphases added).) That plain language, on its face, is crystal clear. Latin had two layers of discretion: first, to conclude that the actions of a parent would make its relationship with that parent impossible or would seriously interfere with Latin’s mission; second, to decide whether to exercise

the right to discontinue enrollment if it so concluded. Latin's counsel rightly summarized this provision below. (T p 13-14 ("Therefore, [Latin] reserves the right to discontinue enrollment if it concludes that the actions of a parent or guardian makes such a relationship impossible or seriously interferes with [Latin's] mission.")) And the trial court correctly interpreted it, as its comments at the hearing reflect. (T p 31-32.)

Put differently, the parties exercised their freedom of contract to give Latin broad discretion as to whether the Turpins' conduct made the relationship between the parties impossible or seriously interfered with Latin's mission. The trial court recognized that this case was a straightforward, routine interpretation of this plain language. Based on those terms, the trial court correctly held that the Turpins' own allegations showed that Latin did not breach the contracts.

Reversing that decision would transform a routine analysis of a contract's plain language into a free-floating referendum of whether one side or the other in a school governance dispute failed to show "courtesy" or "mutual respect." The Court need not engage in that unwieldy inquiry. The contracts empowered Latin to terminate its relationship with the Turpins if, in Latin's discretion, it concluded that the Turpins' conduct caused the relationship to become impossible or severely impaired Latin's mission. The parties were free

to define their relationships in this manner under North Carolina’s bedrock principle of freedom of contract. Full stop.

Fundamentally, *Amici* for the Turpins—as well as the Turpins themselves—suggest that the Turpins somehow had a legal right to prevent Latin from shifting its culture in a more politically liberal direction. Nothing in the contracts created such a right, nor does anything in the state Constitution or elsewhere.² “Mission creep” does not give rise to a viable claim. Rather than simply acknowledge the plain language of the contract they signed, the Turpins attempted to gin up claims for fraud or violation of the Unfair and Deceptive Trade Practices Act. The trial court saw through this. This Court should do the same and should affirm the dismissal of the Turpins’ claims.

Moreover, as noted, our state Constitution—and the First Amendment of the federal Constitution—protect the private right of association. That right permits the Turpins, and other parents, to freely associate with others of their political views and preferences—including in their choice of independent

² The *amici brief* of Moms for Liberty for various counties begins by suggesting that what is at issue in this appeal is whether constitutional constraints in Article I of the Constitution of North Carolina “also apply to private schools.” That’s an easy one. No. *Corum v. Univ. of North Carolina*, 330 N.C. 761, 782, 413 S.E.2d 276, 289 (1992) (the state constitution offers only “protection against state action”); *Bailey v. Flue Cured Tobacco Co-Op Stabilization Corp.*, 158 N.C. App. 449, 456-57, 581 S.E.2d 811, 816 (2003) (constitutional claims against non-state actor failed).

schools. But the remedy if they wish to associate with others is to vote with their feet. Allowing legal remedies in lieu of their exercise of their associational rights is not only unnecessary, but it is counter-productive. It will endanger the right of association through a multiplicity of lawsuits, a development that will only harm our independent schools.

II. INDEPENDENT SCHOOLS ARE ESSENTIAL TO PROMOTING DIVERSE APPROACHES TO EDUCATION AND REVERSING THE TRIAL COURT WILL INCREASE LITIGATION, CHILL SPEECH, AND HARM EDUCATIONAL OPPORTUNITIES.

Amici for the Turpins argue that Latin should not enjoy carte blanche to violate the legal rights of others just because it is a private school. True, but irrelevant.

While private schools must follow the law, that truism does not mean *the Turpins* stated a viable claim against *Latin*. More important, permitting the Turpins' threadbare claims to proceed in this case—as *Amici* urge this Court to do—would only threaten the broad range of North Carolina's independent schools and only increase tedious litigation. It will not “clarify” the market for independent schools, but on the contrary, will incentivize schools to avoid hard issues entirely for fear of litigation. At its core, the Turpins' lawsuit seeks to weaponize the law to transform a dispute concerning a school's governance and culture into a legal battle royale.

As a result, reversing the court below would only harm the variety and range of North Carolina's private and independent schools. People across the political spectrum hold passionate views on many things—race, diversity, gender, religion, climate change, taxes, and on and on. Permitting lawsuits based on such views will only incentivize independent schools like Latin to avoid hard issues entirely. Independent schools will have every reason to avoid issues that might lead to burdensome and expensive litigation with parents who take different viewpoints. Speech by teachers, students, and parents alike will be chilled for fear that others of different views might accuse the school of “mission creep,” or twist words into legal ammunition. Ultimately, the real losers are students, who miss the chance to develop skills needed for civil discourse on complex, divisive issues—skills too often lacking today but crucial to the proper functioning of our Republic.

In 2021-2022, there were 828 independent schools with over 115,000 students in North Carolina. (**Exhibit A**, 2022 North Carolina Private School Statistics, State of North Carolina, Department of Administration.) Those hundreds of private and independent schools should be permitted to shape their values and culture as they see fit. If some parents do not like the direction that they perceive a school to take, they should vote with their feet and seek a new school (from among the 800+ in North Carolina) or engage in the kind of respectful discourse that Latin encouraged. And while independent schools

must follow the law, a run-of-the-mill dispute about school culture does not support the bevy of legal claims that the Turpins tried to allege. Litigation is too blunt a tool to address what is best served by respectful dialogue.³ This Court should affirm the dismissal of the Turpins' baseless allegations.

CONCLUSION

The trial court's order should be affirmed.

Respectfully submitted this the 26th Day of July, 2023.

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³ *Amici curiae* Moms for Liberty argue that affirming the trial court's order would mean "no parent, regardless of how civil and respectful their tone, can engage their child's school without fear of reprisal." That generalization rings hollow. For starters, it defies the record in *this* appeal, which does not reflect a civil or respectful tone from the Turpins. Nor is there any suggestion that *other parents* protesting Latin's culture were similarly treated. More importantly, outside a contract between parents and a school, there simply is no legally enforceable right to "engage" a private school. The Turpins' *legal* relief, if any, must come from their contracts with Latin—but under the contracts, Latin had discretion to discontinue enrollment in the circumstances if the Turpins' conduct made their relationship impossible or seriously interfered with Latin's mission. The parties were free to define their relationship in this manner.

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I certify that all of the attorneys listed below have authorized me to list their names on this document as if they had personally signed it.

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CERTIFICATE OF COMPLIANCE

Under Rule 28(j) of the North Carolina Rules of Appellate Procedure, I certify that this brief, prepared using a 13-point proportionally spaced font with serifs, contains no more than 3,750 words (excluding covers, captions, indexes, tables of authorities, certificates of service, this certificate of compliance, counsel's signature block, and appendices), as reported by the word-processing software.

This the 26th Day of July, 2023.

/s/ Christopher G. Smith
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CERTIFICATE OF SERVICE

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EXHIBIT A

2022

North Carolina Private School Statistics

*Information from the 2021–2022 School Year
Published July 2022*



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NORTH CAROLINA PRIVATE SCHOOL ENROLLMENT BY GRADES *

2021-2022 School Term

5K – 10,844	3 – 9,232	6 – 9,528	9 – 8,183	12 – 6,875
1 – 9,771	4 – 8,953	7 – 9,346	10 – 7,674	
2 – 9,335	5 – 9,104	8 – 9,281	11 – 7,185	

*Total: 115,311***NORTH CAROLINA PRIVATE SCHOOL ENROLLMENT BY SEX ***

2021-2022 School Term

Female students	57,268	49.7%
<u>Male students</u>	<u>58,043</u>	<u>50.3%</u>
Total students	115,311	100.0%

NORTH CAROLINA PRIVATE SCHOOL ENROLLMENT BY TYPE *

2021-2022 School Term

Independent schools	35,373	30.7%
<u>Religious schools</u>	<u>79,938</u>	<u>69.3%</u>
Total students	115,311	100.0%

NUMBER OF NORTH CAROLINA PRIVATE SCHOOLS BY TYPE **

2021-2022 School Term

Independent schools	297	35.9%
<u>Religious schools</u>	<u>531</u>	<u>64.1%</u>
Total schools	828	100.0%

** These figures do not include special school or home school data.**** These figures include special school but not home school data.*

North Carolina
PRIVATE SCHOOL ENROLLMENT BY COUNTIES *
 2021-2022 School Year

Alamance	1894	Franklin	259	Pamlico	68
Alexander	328	Gaston	2235	Pasquotank	670
Alleghany	31	Gates	1	Pender	160
Anson	10	Graham	0	Perquimans	0
Ashe	0	Granville	37	Person	110
Avery	115	Greene	124	Pitt	1836
Beaufort	532	Guilford	6509	Polk	26
Bertie	383	Halifax	490	Randolph	787
Bladen	114	Harnett	571	Richmond	305
Brunswick	693	Haywood	188	Robeson	428
Buncombe	3966	Henderson	1097	Rockingham	391
Burke	230	Hertford	466	Rowan	1126
Cabarrus	2220	Hoke	123	Rutherford	344
Caldwell	199	Hyde	24	Sampson	864
Camden	0	Iredell	1430	Scotland	314
Carteret	507	Jackson	154	Stanly	546
Caswell	0	Johnston	867	Stokes	271
Catawba	1761	Jones	0	Surry	148
Chatham	241	Lee	828	Swain	74
Cherokee	26	Lenoir	1056	Transylvania	176
Chowan	6	Lincoln	292	Tyrrell	0
Clay	53	Macon	61	Union	3254
Cleveland	153	Madison	116	Vance	467
Columbus	175	Martin	0	Wake	20873
Craven	1370	McDowell	399	Warren	19
Cumberland	5327	Mecklenburg	19516	Washington	0
Currituck	69	Mitchell	70	Watauga	128
Dare	115	Montgomery	125	Wayne	1394
Davidson	1333	Moore	1498	Wilkes	254
Davie	74	Nash	1224	Wilson	1235
Duplin	125	New Hanover	3464	Yadkin	64
Durham	5392	Northampton	180	Yancey	72
Edgecombe	0	Onslow	1884		
Forsyth	4953	Orange	1224		

Grand Statewide Total – 115,311

** These figures do not include data from special schools or home schools.*

**NC Division of Non-Public Education
Number of Private Schools by County
School Year: 2021-2022**

Alamance	10	Franklin	3	Pamlico	1
Alexander	4	Gaston	9	Pasquotank	5
Alleghany	1	Gates	1	Pender	3
Anson	1	Graham	0	Perquimans	0
Ashe	0	Granville	1	Person	2
Avery	2	Greene	1	Pitt	17
Beaufort	3	Guilford	36	Polk	1
Bertie	2	Halifax	6	Randolph	7
Bladen	2	Harnett	6	Richmond	5
Brunswick	8	Haywood	5	Robeson	8
Buncombe	35	Henderson	17	Rockingham	8
Burke	5	Hertford	4	Rowan	13
Cabarrus	12	Hoke	7	Rutherford	7
Caldwell	1	Hyde	1	Sampson	7
Camden	0	Iredell	16	Scotland	3
Carteret	7	Jackson	2	Stanly	7
Caswell	0	Johnston	8	Stokes	3
Catawba	12	Jones	0	Surry	3
Chatham	7	Lee	4	Swain	2
Cherokee	2	Lenoir	5	Transylvania	5
Chowan	2	Lincoln	5	Tyrrell	0
Clay	1	Macon	2	Union	19
Cleveland	3	Madison	4	Vance	3
Columbus	3	Martin	0	Wake	93
Craven	11	McDowell	2	Warren	2
Cumberland	33	Mecklenburg	96	Washington	0
Currituck	2	Mitchell	2	Watauga	2
Dare	3	Montgomery	4	Wayne	10
Davidson	9	Moore	13	Wilkes	2
Davie	1	Nash	7	Wilson	11
Duplin	8	New Hanover	21	Yadkin	3
Durham	41	Northampton	2	Yancey	3
Edgecombe	1	Onslow	18	Total	828
Forsyth	27	Orange	6		