

IN THE
Supreme Court of the United States

COMMONWEALTH OF KENTUCKY,

Petitioner,

v.

N.C., A CHILD UNDER EIGHTEEN

Respondent.

**On Petition for Writ of Certiorari to the
Supreme Court of Kentucky**

**AMICI CURIAE BRIEF OF
KENTUCKY SCHOOL BOARDS ASSOCIATION AND
NATIONAL SCHOOL BOARDS ASSOCIATION ET AL.
IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI**

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Kentucky Association of School Superintendents
Kentucky Center for School Safety
Kentucky Educational Development Corporation
Kentucky Valley Educational Cooperative
Minnesota School Boards Association
National Association of School Resource Officers
National Association of Secondary School Principals
Northern Kentucky Cooperative for Education Services,
Inc.
Ohio Valley Educational Cooperative
Southeast South-Central Educational Cooperative, Inc.
West Kentucky Educational Cooperative

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INTEREST OF *AMICI CURIAE*¹

Amici represent elementary and secondary education organizations committed to the educational achievement of students in environments that are at all times safe and secure. These organizations adhere to principles and policies that promote and ensure student safety. In short, they view student safety and school security as critical components of an orderly and effective educational setting.

As acknowledged many times by this Court, school administrators may use their professional judgment, based on their experience in the uniquely complex school setting, as they maintain a safe and secure school environment and, when necessary, carry out student discipline. The Kentucky Supreme Court's holding in *N.C. v. Commonwealth*, 396 S.W.3d 852 (Ky. 2013), presents an overly rigid, bright-line standard that acknowledges neither the uniqueness of the school setting nor the need to preserve administrators' judgment when acting to promote student safety. That decision stretches *Miranda* beyond its intended purpose. *Amici* urge this Court to grant review and overturn the Kentucky Supreme Court's decision.

¹ No counsel for a party authored this brief in whole or in part, and no person other than the *amici curiae* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. In accordance with Supreme Court Rule 37.2(a), counsel for both parties received timely notice of *amici's* intention to file this brief and granted consent; the requisite consent letters have been filed with the Clerk of this Court.

Established in 1936, the **Kentucky School Boards Association** ("KSBA") is a nonprofit organization dedicated to enhancing public school board leadership by providing advocacy, consultation, professional development, and other school-based support services. KSBA is comprised of nearly 900 local school board members, who, in turn, represent the interests of 173 local school districts throughout the state of Kentucky.

The **National School Boards Association** ("NSBA") is a nonprofit organization representing state associations of school boards, and the Board of Education of the U.S. Virgin Islands. Through its member state associations, NSBA represents over 90,000 school board members who govern approximately 13,800 local school districts serving nearly 50 million public school students. NSBA regularly represents its members' interests before Congress and federal and state courts and has participated as *amicus curiae* in numerous cases.

KSBA and NSBA are joined in this brief by 15 organizations whose members include school administrators, educational leaders, school-based law enforcement officers, school safety professionals, and other individuals and organizations committed to advancing public education and improving student safety and security: **American Association of School Administrators, Central Kentucky Educational Cooperative, Green River Regional Educational Cooperative, Kentucky Association of School Administrators, Kentucky Association of School Superintendents, Kentucky Center for School Safety, Kentucky Educational Development**

Corporation, Kentucky Valley Educational Cooperative, Minnesota School Boards Association, National Association of School Resource Officers, National Association of Secondary School Principals, Northern Kentucky Cooperative for Educational Services, Inc., Ohio Valley Educational Cooperative, Southeast South-Central Educational Cooperative, Inc., and West Kentucky Educational Cooperative.

SUMMARY OF HOLDING BELOW

This matter comes before this Court from an Order of the Supreme Court of Kentucky dated April 25, 2013, in which the Court held that N.C., a juvenile student, was entitled to suppression of a confession made to a school administrator, in the presence of a school resource officer, in which he admitted giving a banned substance to another student. The Kentucky Supreme Court granted the suppression of the statement, concluding N.C. was not read his rights in accordance with this Court's decision in *Miranda v. Arizona*, 384 U.S. 436 (1966), prior to giving this confession. A fuller discussion of the Kentucky Supreme Court's decision can be found in Petitioner Commonwealth of Kentucky's Brief in support of its Petition for Writ of *Certiorari*. Brief for Petitioner (No. 13-123).

SUMMARY OF THE ARGUMENT

The *N.C.* decision will have a substantial negative impact on school officials' ability to maintain a safe and secure school environment suitable for instruction and learning. The decision creates an overly rigid legal standard that will inhibit school administrators' ability to maintain safety, order, and discipline and uncover wrongdoing on school premises,² including wrongdoing that may pose immediate threats of harm to students. The implications of this standard are particularly troubling in light of the continuing presence of violence and criminal activity within schools. The Kentucky Supreme Court's ruling ignores the realities of the school environment and fundamentally misapprehends the unique and indispensable role of the School Resource Officer (SRO) – mistaking the SRO as a traditional law enforcement officer situated within a school building.

Additionally, the Kentucky Supreme Court's opinion is premised on a false dichotomy that posits interrogations for "school discipline and safety purposes" as separate and distinct from interrogations used "for the additional purpose of gathering evidence" in support of a criminal charge. The opinion ignores the fact that these objectives often (and necessarily) intersect with one another—especially in complex, often fast-moving school

² *Amici* distinguish and do not address situations that involve on campus interviews relating to the commission of off campus crimes, given that this Court has addressed such situations in detail in *J.D.B v. North Carolina*, 564 U.S. ---, 131 S. Ct. 2394 (2011).

discipline situations. In dangerous circumstances, they inevitably blur. Application of the standard announced in *N.C.* threatens to create a spectrum of undesirable outcomes that do not serve schools' legitimate safety interests, including (most importantly) the students' and staff members' welfare.

This Court's review would avert the threat of these undesirable outcomes and would resolve the disagreement among state and federal courts on the important constitutional question raised by the *N.C.* case. Specifically, several state courts have determined, in direct conflict with the *N.C.* decision, that *Miranda* warnings are not required when an SRO is present and participates in the questioning of a student for potential criminal activity that occurred at school. *See, e.g., In the Matter of W.R.*, 675 S.E.2d 342 (N.C. 2009); *State v. J.T.D.*, 851 So. 2d 793 (Fla. Dist. Ct. App. 2003). The *N.C.* opinion decides an important question of federal law which concerns the applicability of *Miranda* warnings within school settings that this Court has not yet settled. Accordingly, pursuant to Supreme Court Rule 10(b) and (c), *amici* respectfully request that this Court grant the petition for writ of *certiorari*.

ARGUMENT

I. THE KENTUCKY SUPREME COURT'S DECISION IMPOSES AN OVERLY RIGID RULE THAT FAILS TO RECOGNIZE THE IMPORTANCE OF PRESERVING SCHOOL ADMINISTRATORS' REASONABLE JUDGMENTS WHEN RESPONDING TO OFTEN QUICKLY EVOLVING THREATS TO STUDENT SAFETY.

This case presents a tension “between the rights of a juvenile accused of a crime and the needs of school officials to maintain order in the schools and protection for the other children.” *N.C.*, 396 S.W.3d at 855. Schools are complex, fast-paced environments that require quick decision-making by school administrators, particularly when school safety is involved. Preserving an environment that is safe, secure, and, therefore, conducive to learning is paramount to schools. School leaders' appropriate judgments on such matters must be preserved.

This Court has specifically acknowledged the difficulty and importance of the school administrator's role when quick decisions need to be made, particularly when the danger is “serious and palpable,” such as when drugs or other dangerous elements are present. *Morse v. Frederick*, 551 U.S. 393, 408, 409-10 (2007) (“School principals have a difficult job, and a vitally important one . . . [the principal in *Morse*] had to decide to act – or not act – on the spot.”). This recognition has clear parallels to

N.C. and the hundreds of similar situations that occur daily in American public schools.

School staff must have the ability to discuss disciplinary concerns informally and quickly with students so that they can respond immediately, knowledgeably, and effectively to ensure student and staff safety. In contrast, the formal and intimidating posture of being "read your rights" when meeting with school officials and SROs creates a dynamic that undermines a free flow of often important information that school officials may need to respond to dangerous conditions and is likely to produce a chilling effect on students' willingness to cooperate with school staff. Students are typically *the* source of information for school administrators, and unnecessary barriers to student cooperation, such as the rule presented in *N.C.*, will substantially impede school staff members' ability to obtain the information necessary to taking effective action when addressing issues of student safety and discipline.

Numerous cases, including *N.C.*, illustrate the notion that interviews with students are important tools to preserve safety on campus, particularly when situations involve drugs, weapons, or serious crimes. In the case at hand, the conversation between the student, the principal, and the SRO resulted in the student admitting to giving two hydrocodone pills (a scheduled narcotic) to another student. *N.C.*, 396 S.W.3d at 854. With this information, the principal was able to reach the other student, preventing drug use on campus and a potential medical emergency. *Id.* In like manner, a guidance counselor in New York, facing a pair of

students who remained agitated after a fight, called the school's SRO to help search one student's book bag for weapons. *In re Ana E.*, 2002 WL 264325 (N.Y. Fam. Ct. 2002). The SRO found a knife in the bag, and was able to prevent the fight from escalating into a much more serious (and dangerous) situation. *Id.* Similarly, a school administrator in Virginia, acting on a tip and with the SRO present, was able to stop a series of thefts at the school after questioning a student. *J.D. v. Commonwealth*, 591 S.E.2d 721 (Va. Ct. App. 2004). In each of these cases, the state court ruled that the informal questioning of students did not require *Miranda* warnings and produced positive results for the schools (and students) in question. These cases are but three examples of how an SRO, carrying out his or her duties as a member of the school community, can have a substantial impact on student safety.

The *N.C.* ruling casts a shadow over the collaborative efforts of school staff and SROs to preserve a secure school environment. School staff must be permitted to apply their unique, specialized knowledge to fluid situations involving student discipline or safety, rather than being required to determine whether including an SRO in a conversation with a student (often a judgment made in a matter of minutes, based on developing circumstances) will have implications for a subsequent juvenile action.³

³ Courts have recognized the importance of allowing the student discipline process to be informal and not overly procedural. This Court has held that "informal" and "rudimentary" due process procedures are expected to occur prior to a student suspension, including oral or written notice

This Court has specifically recognized that maintaining school order and safety "requires a certain degree of flexibility in school disciplinary procedures, and we have respected the value of preserving the informality of the student-teacher relationship." *New Jersey v. T.L.O.*, 469 U.S. 325, 339-40 (1985).⁴ Just as this Court refused in *T.L.O.* to require a school official to obtain a criminal search warrant for a suspected violation of school rules or criminal law, applying *Miranda* to students in the manner contemplated by the Kentucky Supreme Court "unduly interfere[s] with the maintenance of the swift and informal disciplinary procedures needed in the schools" and also "frustrate[s] the governmental purpose." *Id.* at 340 (*citing Camara v. Municipal Court*, 387 U.S. 523, 532-33 (1967) (internal citation marks omitted)).

of the charges, an explanation of the evidence, and an opportunity to present the student's side of the story. *Goss v. Lopez*, 419 U.S. 565, 581-83 (1975). These procedures allow for an informal chat with students even minutes after the behavior—which, as the Court noted, is the embodiment of an educational best practice. *Id.* at 582-83. The Court specifically refused to impose criminal procedures, such as the opportunity to have legal counsel or to call witnesses, for these "countless" suspensions because imposing "trial-type procedures" would be overwhelming. *Id.* at 583. More importantly, the Court determined that "formalizing the suspension process and escalating its formality and adversary nature may not only make it too costly as a regular disciplinary tool but also destroy its effectiveness as part of the teaching process." *Id.*

⁴ Similarly, courts have recognized that it is easy to envision "numerous scenarios where it would be prudent and proper to have a law enforcement officer present" in the school setting due to the "threatening world surrounding our schools." *State v. J.T.D.*, 851 So.2d 793, 797 (Fla. Dist. Ct. App. 2003).

By contrast, the *N.C.* decision requires a schoolhouse determination of whether *Miranda* rights should be read, even if the student's statements came in response to questions from a school administrator rather than an SRO. This requirement creates the kind of undue interference with school disciplinary procedures against which this Court has specifically warned. In contrast to other state court decisions, *e.g.*, *In the Matter of W.R.*, 675 S.E.2d 342 (N.C. 2009); *State v. J.T.D.*, 851 So. 2d 793 (Fla. Dist. Ct. App. 2003), the Kentucky Supreme Court creates an overly rigid distinction between questioning of students to "avoid potential harm to that student and other students and school personnel" and questioning of students "for the additional purpose of obtaining evidence against the student to use in placing a criminal charge." *N.C.*, 396 S.W.3d at 23.

II. THE KENTUCKY SUPREME COURT'S DECISION LIMITS THE ABILITY OF PUBLIC SCHOOLS TO USE SCHOOL RESOURCES OFFICERS (SROS) AS AN EFFECTIVE AND ESSENTIAL COMPONENT TO PROTECT STUDENTS AND KEEP SCHOOLS SECURE.

A. SROs fulfill a complex set of duties at schools that range from instructional and counseling responsibilities to public safety and law enforcement functions.

The Kentucky Supreme Court reached an erroneous decision in part based on its mischaracterization of the role of SROs whose functions differ significantly from those of the traditional law enforcement officer in the community.⁵ Instead of being focused on a search for criminal activity at schools (as the Kentucky Supreme Court surmises), an SRO's roles and responsibilities are a complex mixture of formal and

⁵ The employment status of SROs can vary. In Kentucky public schools, for example, 244 SROs are employed through one of three employment arrangements: (1) the school district and local law enforcement agency enter into a memorandum of understanding for the assignment of an SRO at a public school, and the two agencies share responsibility for funding the position; (2) the school district directly employs an SRO and has sole responsibility for funding the position; and (3) the SRO remains an employee of the local law enforcement agency but is simply "assigned" to a public school on a rotating basis. *See N.C.*, 396 S.W.3d at 867-68 (Cunningham, J., dissenting). Regardless of their employment status, SROs are sworn law enforcement officers with peace keeping authority.

informal duties that are described as a "triad" model; the SRO has public safety- and law enforcement-related duties, but also serves as an educator and informal counselor.⁶ NAT'L ASS'N OF SCH. RES.

⁶ The following list of SRO duties comes from an example SRO job description:

1. Provide law enforcement and police services to the school, school grounds and areas adjacent to the school. Investigate allegations of criminal incidents per police department policies and procedures. Enforce state and local laws and ordinances. Make appropriate referrals to juvenile authorities or other governmental agencies.
2. Work to prevent juvenile delinquency through close contact and positive relationships with students. In addition the SRO shall develop crime prevention programs and conduct security inspections to deter criminal or delinquent activities. The SRO should monitor crime statistics and work with local patrol officers and students together to design crime prevention strategies
3. Establish and maintain a close partnership with school administrators in order to provide for a safe school environment. Assist school officials with their efforts to enforce Board of Education policies and procedures. Ensure school administrator safety by being present during school searches, which may involve weapons, controlled dangerous substances or in such cases that, the student's emotional state may present a risk to the administrator. Assist school administrators in emergency crisis planning and building security matters. Provide a course of training for school personnel in handling crisis situations, which may arise at the school.
4. Be visible within the school community. Attend and participate in school functions. Build working relationships with the school's staff as well as with student and parent groups.
5. Develop and implement classes in law-related education to support the educational efforts of the faculty. Work closely with teachers in designing and presenting law-related topics and the role of police in our society.

OFFICERS, TO PROTECT & EDUCATE: THE SCHOOL RESOURCE OFFICER AND THE PREVENTION OF VIOLENCE IN SCHOOLS 21 (2012).

Schools began using School Resource Officers (SROs) as a visible and essential safety measure in the 1990s, in the wake of 15 highly publicized school shootings and an increased demand for maintaining student safety. NAT'L ASS'N OF SCH. RES. OFFICERS, TO PROTECT & EDUCATE, at 18; Susan Black, *Security and the SRO*, 196 AM. SCH. BD. J. 30 (2009). Their presence in schools was part of interagency collaboration efforts that emerged at that time around child and youth safety issues. By the 2009-2010 school year, 43 percent of public schools reported utilizing security personnel, including SROs. NAT'L CTR. FOR EDUC. STATISTICS & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 86 (2013).

The role of the SRO is multi-faceted. It expands well beyond traditional "law enforcement" and includes a myriad of "education related chores" encompassing everything from consulting school

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6. Work with guidance counselors and other student support staff to assist students and to provide services to students involved in situations where referrals to service agencies are necessary. Assist in conflict resolution efforts.
 7. Initiate interaction with students in the classroom and general areas of the school building. Promote the profession of police officer and be a positive role model. Increase the visibility and accessibility of police to the school community.

School Safety Net, Ctr. for Tech. in Educ., Johns Hopkins Univ., School Resource Officer Job Description, http://cte.jhu.edu/courses/ssn/sro/ses1_act4_pag1.shtml (last visited Aug. 26, 2013) (citing Bedford Police Dep't, School Resource Officers).

staff to monitoring hallways to teaching classes to (most importantly) supporting students and keeping them safe. *N.C.*, 396 S.W.3d at 868 (Cunningham, J., dissenting) (*citing* DAVID C. MAY & YANFEN CHEN, KY. CTR. FOR SCH. SAFETY, SCHOOL RESOURCE OFFICERS IN KENTUCKY: WHO ARE THEY AND WHAT DO THEY DO? (2009)). While providing a visible law enforcement presence to enhance school safety, SROs frequently function as part of a school administrative team, deliver classroom instruction in law- and safety-related topics, and serve as informal advisors and conflict mediators for students and staff. For instance, SROs listen to student concerns about bullying (not traditionally a criminal or law enforcement concern) and take these concerns to school administration for resolution. They serve as liaisons among parents, community members, teachers, school officials, and students to identify the roots of problems at schools and to seek out collaborative solutions.⁷ They develop healthy lifestyle programs for students. They may conduct at-home visits to parents of at-risk youth to assist families in providing needed support. And, for students in special circumstances (such as those who have suffered sexual abuse), they provide counseling and referrals to additional support services. NAT'L ASS'N OF SCH. RES. OFFICERS, TO PROTECT &

⁷ A holistic approach has emerged as a response to the complex problems of school safety and child welfare. Rather than allowing individual agencies to pursue separate strategies for different aspects of these problems, groups of child-centered agencies established collaborative, interdisciplinary strategies to help improve outcomes for at-risk children and provide comprehensive solutions for improving communities.

EDUCATE, at 22-23. As with teachers and other school staff members, SROs can serve as role models for students. They spend time with students during extracurricular activities or extended school-day programs to develop rapport and relationships of trust. See Black, 196 AM. SCH. BD. J. at 31. SROs are very much part of the culture of schools, and can help the school community, as a whole, become more cohesive. THOMAS HUTTON & KIRK BAILEY, SCHOOL POLICIES AND LEGAL ISSUES SUPPORTING SAFE SCHOOLS: EFFECTIVE STRATEGIES FOR CREATING SAFER SCHOOLS AND COMMUNITIES, The Hamilton Fish Institute on School and Community Violence & Northwest Regional Educational Laboratory, at 22 (2008) ("SROs can develop more cooperative and trusting relationships among students and school officials, as well as help better inform law enforcement agencies about safety issues in schools.").

In carrying out many of these functions, SROs will necessarily interact with students and have conversations in which students may divulge information that could be relevant to a subsequent investigation or juvenile proceeding. The Kentucky Supreme Court's decision could deter such beneficial interactions and limit the effectiveness of SROs in promoting school safety due to uncertainty over when *Miranda* warnings must be given.

B. With specialized training concerning weapons and drugs, SROs enhance school safety – with a demonstrably positive impact.

Within the student safety and school discipline context, SROs are an invaluable resource because they possess specialized training in weapons and drugs. As law enforcement officers, SROs know how to identify and handle weapons and to search individuals. NAT'L ASS'N OF SCH. RES. OFFICERS, TO PROTECT & EDUCATE at 23-24. This training allows weapons to be located and removed in a manner least likely to harm any party involved. Correspondingly, SROs are trained to identify drugs, to recognize symptoms of individuals under the influence of drugs or alcohol or in danger of overdosing on drugs, and to understand generally the effects of drugs and alcohol. *Id.* With this knowledge and training, an SRO is an often vital presence during the questioning of a student by a school official when there is a suspicion that weapons, drugs, or alcohol are involved.

SROs have had a demonstrably positive impact on schools. Studies suggest that the presence of an SRO in a public school can lead to a significant reduction in the number of students arrested for criminal behavior by deterring it. For instance, in a 2009 study comparing 13 middle and high schools with an SRO and 13 without an SRO over a three year period (controlling for economic disadvantage), the schools with an SRO experienced "a 52.3 percent decrease in the arrest rate for assaults and a 72.9 percent decrease in arrests involving possession of a

weapon on school property." NAT'L ASS'N OF SCH. RES. OFFICERS, TO PROTECT & EDUCATE at 25 (*citing* M.T. Theriot, *School Resource Officers and the Criminalization of Student Behavior*, 37 J. CRIM. JUST. 280, 280-87 (2009)). The Congressional Research Service has determined that the presence of an SRO can deter assault and the presence of weapons on school grounds, finding that "the expansion of SRO programs coincided with a decrease in reported serious violent victimizations of students while at school and generally lower numbers of violent deaths and homicides in schools." See Nathan James & Gail McCallion, *School Resource Officers: Law Enforcement Officers in Schools* 26 (Congressional Research Service, 2013).

C. Recognizing the unique, positive role SROs play in schools, many state courts have ruled that SROs should be treated as school officials, rather than traditional police officers, under constitutional standards.

Recognizing the unique role of the SRO as distinct and separate from traditional law enforcement, many state courts have ruled that SROs are "school officials" central to the educational mission of the school and not police officers in the context of the Fourth Amendment. As such, they are not required to show "probable cause" when searching a student, only "reasonable suspicion", the standard established for a school official's search by the Court in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). A Florida District Court of Appeals found

that "school resource officers should be treated as part of the school administrative team and not as outside police officers entering school grounds to conduct an investigation." *M.D. v. State*, 65 So.3d 563, 565 (Fla. Dist. Ct. App. 2011). *See also Wilson v. Cahokia Sch. Dist. # 187*, 470 F. Supp. 2d 897 (S.D. Ill. 2007) (search of student on school grounds by an SRO at the request of school officials should be deemed a search by a school employee and thus subject to the reasonableness standard, rather than probable cause standard); *D.J. v. State*, 877 N.E. 2d 500 (Ind. App. Ct. 2007) (SRO's pat-down search of student analyzed under "reasonableness" standard); *In re William V.*, 111 Cal. App. 4th 1464 (Cal. Ct. App. 2003) (SRO identified as a "school official" for purposes of Fourth Amendment and thus held to "reasonableness" standard); *Russell v. State*, 74 S.W.3d 887 (Tex. App. 2002) (SRO's search of student analyzed under "reasonableness" standard); *In re Josue T.*, 989 P.2d 431 (N.M. Ct. App. 1999) (reasonableness standard applied to an SRO who searched a student at the request of another school official because the SRO was present at school in furtherance of school's objective to maintain safe and proper educational environment); *State v. Angela D.B.*, 564 N.W.2d 682 (Wis. 1997) (search of student by SRO, at request of and in conjunction with other school officials, subject to reasonableness standard, rather than probable cause standard); *but see State v. Meneese*, 282 P.3d 83 (Wash. 2012); *State v. Scott*, 630 S.E.2d 563 (Ga. App. Ct. 2006). Many state courts recognize that SROs are members of the school administrative team – not law enforcement officers foreign to the school environment.

Questioning of students to address safety and disciplinary issues should be judged with a similar recognition, and *amici* urge this Court to grant review and provide clarification on these issues.

D. Violence and crime on school campuses underscore the ongoing need for SROs.

This Court's clarification of these issues is particularly pressing in light of the need for safer schools. Public schools reflect the communities that they serve; all the problems and concerns found in a school's surrounding communities can reliably be found in the school as well. Students and faculty alike are at risk on campus as public schools are frequently the site of crime, including violent crime.⁸ Though rates of violence and victimization have fallen since the early 1990s (due, at least in part, to the adoption of safety strategies like the placement of SROs in schools⁹), incidents of violence and crime

⁸ The federal government responded to the unfortunate but undeniable reality of increased violence in schools through a new designation in the 2004 amendments to the Elementary and Secondary Education Act: the "persistently dangerous school." 20 U.S.C. § 7912 (2012). States were directed to develop criteria, such as number of weapons seized, number of reported assaults, number of homicides, student surveys, indicia of gang presence, and physical fights on school grounds. *See* U.S. DEP'T OF EDUC., UNSAFE SCHOOL CHOICE OPTION NON-REGULATORY GUIDANCE, sections B-4, B-6, (2004). States were then required to permit students attending a designated "persistently dangerous school" to attend a safe school. 20 U.S.C. § 7912.

⁹ In addition to the placement of SROs, American schools have adopted a range of other safety and security measures. Schools

at schools remain concerning. NAT'L CTR. FOR EDUC. STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 iv (2013). In 2009-10 (the most recent year for which statistics are available), an estimated 1.9 million crime incidents took place at school, with 85 percent of public schools recording at least one crime that occurred on school grounds. *Id.* at iv-v. In 2011, students experienced 1,246,000 nonfatal victimizations at school, with 648,600 thefts and 597,500 violent victimizations.¹⁰ *Id.* at iv. Since 2001, students are more likely to be victimized while at school than away from school. *Id.* at 10. In addition to violent crime, public schools continue to face the presence of weapons, drugs, and bullying on school grounds. *Id.* at vi, 5. The Centers for Disease Control reports that, nationwide in 2011 (the most

have increasingly required the use of monitored and controlled access to school buildings and grounds. They issue picture identification to staff members. They almost universally require any visitor to sign in at the front office and obtain identification. They install and use emergency classroom telephones and security cameras to monitor school grounds. They utilize random sweeps for contraband and random dog sniffs to search for drugs. NAT'L CTR. FOR EDUC. STATISTICS & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2012 viii, 84 (2013).

¹⁰ According to the National Center for Education Statistics, "theft" includes all attempted and completed thefts, excluding motor vehicle thefts. Further, "thefts" does not include robbery, in which the threat or use of force is involved. "Violent victimizations" includes serious violent crimes and simple assault. "Serious violent victimization" includes rape, sexual assault, robbery, and aggravated assault. See NAT'L CTR. FOR EDUC. STATISTICS, & BUREAU OF JUSTICE STATISTICS, INDICATORS OF SCHOOL CRIME AND SAFETY: 2011 n. 10-12 (2012).

recent year for which statistics are available), 16.6 percent of children nationwide carried a weapon on to school property at least one day in the month before the survey – and 5.1 percent carried a gun; 7.4 percent were threatened or injured with a weapon on school property during the 12 months before the survey; 5.1 percent drank alcohol and 5.9 percent used marijuana on school property at least once in the month before the survey; 25.6 percent were offered, sold, or were given illegal drugs on school property in the year before the survey; 20.1 percent were bullied on school property in the year before the survey; 12 percent were in a physical fight on school property during the year before the survey; 5.9 percent did not go to school at least one day in the month before the survey because they felt it was unsafe to be at school or to travel to and from school; and 26.1 percent had their property stolen or deliberately damaged at least once in the year before the survey. Ctrs. for Disease Control & Prevention, U.S. Dep't of Health & Human Services, *Youth Risk Behavior Surveillance – United States, 2011*, 61 MORBIDITY & MORTALITY WEEKLY REP. 1, 6-10, 18, 20, 24 (2012). Coupled with an increased awareness of the vulnerability of school children after horrific recent incidents such as the shooting in Newtown, Connecticut, these statistics indicate that crime and violence in schools remain a serious concern, and that schools will continue to need and use SROs, undiminished by the restraints placed on them under the *N.C* decision, in the years to come.

CONCLUSION

The Kentucky Supreme Court has mischaracterized the role of the SRO in today's public schools, ignored a long line of judicial decisions regarding the role of school administrators and the use of *Miranda* warnings in a school context, and issued a decision that forgets that school safety is not a given and must be actively safeguarded. By requiring *Miranda* warnings to be given to students who are in the mere presence of an SRO when being questioned about suspected, potential criminal activity, the Kentucky Supreme Court has undermined the safety of students, school staff, and the community at large. The vast majority of American children spend a significant portion of their time at a public school. They deserve to learn and grow in a safe, secure environment. The Kentucky Supreme Court's decision undermines this central mission of public education—to provide that environment and nurture that learning and growth. *Amici* respectfully request that the United States Supreme Court grant a writ of *certiorari* and reverse the Kentucky Supreme Court's decision.

Respectfully Submitted,

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