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| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS |
| | ) | FOR THE NINTH JUDICIAL CIRCUIT |
| COUNTY OF CHARLESTON | ) | CASE NO: 2022-CP-10-05451 |
| | ) | |
| CASEY DOE, and JESSIE NOE, on their own behalf and on behalf of their minor children, A.N., B.N., and C.N., | ) | **ORDER GRANTING IN PART AND DENYING IN PART SOUTH CAROLINA FREEDOM CAUCUS'S MOTION FOR RECONSIDERATION** |
| Plaintiffs, | ) | |
| v. | ) | |
| CHARLESTON COUNTY SCHOOL DISTRICT and ANITA HUGGINS, in her official capacity as Superintendent of the Charleston County School District, | ) | |
| Defendants. | ) | |



This matter comes before the Court on the South Carolina Freedom Caucus's Motion for Reconsideration of the Order Granting in Part and Denying in Part Defendants' Motion to Strike and for Partial Dismissal ("Order"). Having carefully reviewed and considered all submissions before the Court, the Court hereby grants in part and denies in part the Motion for Reconsideration. The Court reconsiders its Order under Rule 59(e), SCRCP, for the purpose of rendering additional rulings, as provided herein, and finds both that the South Carolina Freedom Caucus has failed to establish constitutional standing and that the public importance exception does not apply to the within action.

## BACKGROUND

The South Carolina Freedom Caucus, a legislative special interest caucus comprised of seventeen members of the South Carolina House of Representatives (the "Caucus"), brought this action against CCSD and then-Superintendent Donald Kennedy, contending that the reading curriculum currently taught in certain Charleston County public schools violates state law. On

November 28, 2022, the Caucus filed the original Complaint. Defendants requested and received an extension of time to file their response and, on January 27, 2023, they filed a motion to dismiss. On April 3, 2023, the Caucus added as plaintiffs Casey Doe, a CCSD teacher, and Jessie Noe, on his or her own behalf and on behalf of his or her minor children, A.N., B.N., and C.N., and filed an Amended Complaint. Plaintiffs allege that the 2022-2023 Appropriations Bill H. 5150, Part 1B Section 1, H630, § 1.93 ("H. 5150") precludes schools from using state funds to "indoctrinate students or staff in any way" of "Critical Race Theory-Derived Ideas." Am. Compl., ¶ 2. They allege that CCSD nonetheless "continues to develop and use curricula promoting" the "beliefs" of "Critical Race Theory-Derived Ideas." *Id.* at ¶ 6. Plaintiffs further allege that "one of the School District's enablers is EL Education, which supplies curricula and professional training for many schools in the District." *Id.* at ¶ 7. EL Education "is a company that seeks 'to transform public schools and districts' to provide 'equitable outcomes' through a language arts curriculum, professional development, and school design services.'" *Id.* at ¶ 19. CCSD "recently announced that it was adopting EL Education's curriculum in at least 52 schools, including in 23 of 34 elementary schools during the 2022-2023 school year." *Id.* at ¶ 22. "According to its website describing its curriculum, EL Education is an 'antiracist organization' that 'built [their] curriculum with equity in mind." *Id.* at ¶ 23. The curriculum "aims to force students to 'develop antiracist practices and perspectives' and 'uncover different kinds of oppression,' including those 'internalized' within a student"; and "'[a] central goal of the EL Education curriculum is to' make students 'ethical people,' which EL defines as having the [sic] 'the same characteristics [as] people committed to antiracism'; EL's 'ethical' principals appear to consist of 'antiracism,' 'social justice, environmental stewardship, and healthy, equitable communities.'" *Id.* at ¶ 24.

Plaintiffs allege that Defendants have violated H. 5150, South Carolina's Equal Protection Clause, South Carolina's Safe School Climate Act, and S.C. Code Ann. § 59-63-40. Plaintiffs seek declaratory relief as to these alleged violations and injunctive relief "enjoining Defendants from continued violations." Am. Compl. at 44. Plaintiffs also ask the Court to award them attorney fees and costs. *Id.*

On January 10, 2024, the Court issued the Order, finding that the Caucus had failed to establish standing to bring this lawsuit and further finding that Casey Doe and Jessie Noe, on their own behalf and on behalf of their minor children, A.N., B.N., and C.N., had sufficiently established standing. The Motion for Reconsideration asks the Court to revisit its Order, specifically to address the matter of whether the Caucus has sufficiently alleged constitutional standing and standing under the public importance exception. For the reasons explained below, the Court clarifies the Court's ruling in the Order and denies the Motion for Reconsideration.

**STANDARD OF REVIEW**

The Caucus moves for relief under 59(e), SCRCP, or, alternatively, Rule 60(b)(1), SCRCP. A Rule 59(e) motion is the proper vehicle to request the trial court to seek reconsideration of issues and arguments. *Elam v. S.C. Dep't of Transp.*, 602 S.E.2d772, 778 (S.C. 2004). A party is often required to present a Rule 59(e) motion for issue preservation purposes. *Id.* A motion to alter or amend is addressed to the sound discretion of the trial court. *See Brinkley v. South Carolina Dept. of Corrections*, 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). Rule 60(b)(1) is the proper vehicle through which to ask the court to relieve a party from a final judgment or order owing to mistake, inadvertence, surprise, or excusable neglect. A Rule 60(b) similarly lies within the sound discretion of the trial court. *Curry v. Carolina Ins. Group of S.C., Inc.*, 832 S.E.2d 760, 768 (S.C. App. 2019).

## LAW AND ANALYSIS

Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. *Pres. Soc'y of Charleston v. S.C. Dep't of Health and Env't Control*, 430 S.C. 200, 845 S.E.2d 481, 486 (2020). "Standing to sue is a fundamental requirement in instituting an action." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999). And a lack of standing deprives the Court of subject matter jurisdiction. *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022).

Standing may be acquired (1) by statute, (2) under the principle of "constitutional standing," or (3) via the "public importance" exception to general standing requirements. *Pres. Soc'y of Charleston*, 845 S.E.2d at 486 (quoting *Freemantle v. Preston*, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012)). In its Motion for Reconsideration, the Caucus makes clear it does not assert statutory standing and it does not assert institutional standing. Instead, it argues it has pled both constitutional standing and public importance standing and it asks the Court to so find.

Constitutional standing mirrors Article III of the United States Constitution and, at a minimum, contains three elements:

> (1) the plaintiff must have suffered an "injury in fact," i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision.

*Pres. Soc'y of Charleston*, 845 S.E.2d at 486 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). Under South Carolina law, "[w]hen no statute confers standing, the elements of constitutional standing must be met." *Id.* at 486-87 (quoting *Youngblood v. S.C. Dep't of Soc. Servs.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013)). The party seeking to establish standing carries the burden of demonstrating each of the three elements. *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001). In limited

circumstances, where a significant public interest is at stake, a court may waive a party's failure to meet the full constitutional standing requirements. *See, e.g., Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n,* 407 S.C. 67, 753 S.E.2d 846 (2014).

**A. Constitutional Standing**

The Caucus asserts that it "alleges a purely personal injury to itself as an organization: impairment of its missions and an accompanying diversion of its resources." Mot. for Reconsideration, 12 (quoting Am. Compl., ¶ 153). The Caucus describes its interest in this lawsuit as follows: "Since its inception, the Caucus has sought to ensure that students and teachers are protected from racist, ideological instruction and treated with equal dignity and respect. It has also sought to ensure that parents and the public (their constituencies) know what children are taught in public schools." Am. Compl., ¶ 153. *See generally* Mot. for Reconsideration. The Caucus asserts that it seeks to promote general principles such as "the rule of law" and "equal protection for all citizens under the law," and asserts that it "has a significant interest in ensuring that laws enacted by the General Assembly are given effect." Am. Compl., ¶ 11. The Caucus claims that the asserted injury is personal to it in that "[t]he frustration of an organization's mission *is* the personalized injury." Mot. for Reconsideration, 12 (quoting *Garcia v. City of Los Angeles*, 611 F. Supp. 3d 941, 949 (C.D. Cal. 2020)). The Caucus describes the injury as follows: "[the District's] violations injure the Caucus by forcing it to expend additional time and resources to investigate, monitor, and respond to the District and its activities, so the Caucus can fulfill its mission"; and that, "[b]y devoting time and resources in response to the District's indoctrination and violations, the Caucus must divert resources from its normal operations." Am. Compl., ¶ 153. "[I]mpairment of its missions and an accompanying diversion of its resources" is the only injury the Caucus alleges. Mot. for Reconsideration, 12. *See generally* Am. Compl.

The Caucus does not plead facts sufficient to confer constitutional standing to challenge the curricula that is used in CCSD schools. First, the individual members of the Caucus have not pled any injury personal to them. No member professes to live in Charleston County and the Amended Complaint does not allege that any of the Caucus's members are teachers to or parents of children enrolled in a CCSD school that uses the challenged curriculum. As individuals, the Caucus members have not shown what personal stake they have in the curriculum taught in CCSD schools.

Second, the Caucus fails to adequately allege an injury-in-fact personal to it. An organization may demonstrate standing on its own behalf "only if it alleges that it or its members will suffer an individualized injury; a mere interest in a problem is not enough." *Beaufort Realty Co., Inc. v. Beaufort County*, 551 S.E.2d 588, 589 (S.C. App. 2001) (citations omitted). *Accord Energy Research Foundation v. Waddell*, 295 S.C. 100, 367 S.E.2d 419, 420 (S.C. 1988). Standing is most recognizable in cases where the plaintiff is the object of the action. *See, e.g., Raines v. Byrd*, 521 U.S. 811 (1997) (explaining that the individual legislators failed to show a personal stake in dispute because they could not claim they had been "deprived of something to which they *personally* [were] entitled") (emphasis in original). "[I]t is 'substantially more difficult' to establish standing where a challenge to the government action is brought by one who is not the object of the action, but rather seeks to challenge government action or inaction because of alleged illegality." *Beaufort Realty Co.*, 551 S.E.2d at 589 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). To show injury-in-fact, the organization must allege that it suffered a "concrete and demonstratable injury to its activities—with the consequent drain on its resources—that constitutes far more than simply a setback to the organization's abstract social interests." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) (alterations omitted). *See*

*Sierra Club v. Morton*, 405 U.S. 727, 739-40 (1972) ("[A] mere 'interest in a problem,' no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem, is not sufficient [to establish standing]").

The Caucus similarly has not shown what personal stake it has in the curriculum taught in CCSD schools. To begin, the Caucus is not the object of the dispute; rather, the Caucus claims that Defendants are violating South Carolina law with respect to certain classroom instruction provided to children who attend CCSD schools. *Cf. South Carolina Freedom Caucus v. Jordan*, --- F. Supp. 3d ----, 2023 WL 4010391 (D.S.C. 2023) (asserting claims that South Carolina law violated the Caucus's free speech rights under the First and Fourteenth Amendments). *Cf. also Powell v. McCormack*, 395 U.S. 486 (1969) (holding legislator had standing to sue after members barred him from taking his seat and withheld his salary); *Michel v. Anderson*, 14 F.3d 623, 625–26 (D.C. Cir. 1994) (recognizing congressmen had standing to assert dilution of their voting power); *Rangel v. Boehner*, 20 F. Supp. 3d 148, 160 (D.D.C. 2013) (finding representative had sufficiently alleged injury in fact arising from reputational harm to him caused by censure); *Alabama Legislative Black Caucus v. Alabama*, 989 F. Supp. 2d 1227, 1291 (M.D. Ala. 2013) (finding the "Alabama Legislative Black Caucus has organizational standing to maintain its claim of racial gerrymandering because its members reside in nearly every challenged district"); *McConchie v. Scholz*, 567 F. Supp. 3d 861 (N.D. Ill. 2021) (finding plaintiffs who reside in districts that are overrepresented had shown particularized injury of dilution of voting power).

The Caucus asserts the injury it suffers is diversion of its resources. However, guidance from the abundance of caselaw the parties cite in their briefs compels the simple conclusion that a general allegation of a mission and a general allegation of resources diverted from that mission is not enough to plead a personal injury-in-fact. *See, e.g.*, Response to Motion to Dismiss, 12-16.

Bare allegations that purported violations have "undermined" and "acted as an obstacle to" an organization's purpose and message are insufficient to confer standing. *Maryland Shall Issue, Inc. v. Hogan*, 963 F.3d 356, 362 (4th Cir. 2020). As explained by the Fourth Circuit in *Hogan* and elsewhere:

> to determine that an organization that decides to spend its money on educating members, responding to member inquiries, or undertaking litigation in response to legislation suffers a cognizable injury would be to imply standing for organizations with merely "abstract concern[s] with a subject that could be affected by an adjudication."

*Id.* (quoting *Lane v. Holder*, 703 F.3d 668, 675 (4th Cir. 2012) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 (1976)). *See Texas Low Income Housing Information Service v. Carson*, 427 F. Supp. 3d 43, 52-3 (D.D.C. 2019) (explaining that an organization "must plausibly allege that the challenged conduct 'perceptibly impaired its ability to provide services' by causing an 'inhibition of the organization's daily operations," and that it "used its resources to counteract [the alleged] harm").

The Caucus has not alleged the kind of specific, concrete, and particularized personal injury necessary to support constitutional standing. *Cf. Havens Realty Corp.*, 455 U.S. at 379 (holding nonprofit plaintiff had demonstrated organizational standing where its stated purpose was "to make equal opportunity in housing a reality in the Richmond Metropolitan Area," and it alleged that the challenged practices perceptibly impaired its ability to provide housing counseling and referral services, with a consequent drain on its resources).[1]

[1] *Cf. also PETA v. Tri-State Zoological Park of W. Md., Inc.*, 843 Fed. Appx. 493, 496 (4th Cir. 2021) (holding that plaintiff, whose mission is to protect animals from abuse, neglect, and cruelty, had organizational standing to challenge a zoo's inhumane treatment of animals in captivity on the basis of allegations that, as a result of the zoo's conduct, the plaintiff had "devoted its resources to submit complaints about defendants to government agencies, compile and publish information about [defendants'] treatment of animals, and to investigate and monitor" the defendants, which in turn "reduc[ed] its ability to engage in mission related campaigns against other zoos");

For these reasons, on reconsideration of the Order, the Court finds the Caucus does not have constitutional standing as to the claims raised in the Amended Complaint.

**B. The Public Importance Exception to Standing**

The Caucus also asserts that this action qualifies for public importance standing and that "[d]iscrimination in education is of immense public importance" and judicial guidance is needed to address the alleged violations. Mot. for Reconsideration, 14 (citing Response to Motion to Dismiss, 17-22).

Under South Carolina law, subject to certain limitations, "standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Sloan v. Sanford*, 357 S.C. 431, 593 S.E.2d 470, 472 (2004) (citations omitted). Application of

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*Defenders of Wildlife v. Boyles*, 608 F. Supp. 3d 336, 343 (D.S.C. 2022) (finding that plaintiff, whose mission is to protect threatened wildlife, had organizational standing based on its allegations that the defendant's actions had caused it to divert "resources for investigation, research, education, and public advocacy to address the challenged horseshoe crab containment practices," and that a "mission-based project . . . the Tennessee Duck River endangered mussel project," had suffered as a result); *Garcia v. City of Los Angeles*, 611 F. Supp. 3d 941, 947 (C.D. Cal. 2020) (finding that plaintiff organization, which was founded "to form connections between housed and unhoused residents of Koreatown, and to advocate for housing and shelters in their community," and to engage in "weekly outreach efforts," sufficiently pled standing where it alleged that the city's "enforcement of the Ordinance impairs and frustrates [the organization's] mission to form connections by causing homeless residents to move around or be displaced from the neighborhood, making it difficult for [the organization] to stay in contact with them," and further alleged that it "has had to devote significant resources to counteract the City's practices, including by replacing tents, blankets, or other items that were destroyed by the City and helping unhoused residents locate seized property, rather than advocating for shelters or connecting with neighbors"); *Moya v. U.S. Dep't of Homeland Sec.*, 975 F.3d 120, 129-30 (2d Cir. 2020) (finding plaintiff organization, whose mission was to assist eligible individuals to naturalize, had sufficiently pled standing where it alleged a diversion of its resources: "its sole DOJ-accredited representative must work with physicians to supplement and revise N-648 disability waiver forms," and "attend[ ] the naturalization interviews for clients who require an N-648 disability waiver request," which additional work required the DOJ-accredited representative "at a minimum, [to spend] twice as much time servicing clients who require N-648 waiver requests, leaving less time for YMPJ's other clients").

the exception "is determined by the competing policy concerns underlying the exception"; which concerns are as follows:

> Citizens must be afforded access to the judicial process to address alleged injustices. On the other hand, standing cannot be granted to every individual who has a grievance against a public official. Otherwise, public officials would be subject to numerous lawsuits at the expense of both judicial economy and the freedom from frivolous lawsuits.

*Carnival Corp.*, 753 S.E.2d at 853 (quoting *Sloan*, 593 S.E.2d at 472). "The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance." *Bodman v. State*, 403 S.C. 60, 742 S.E.2d 363, 367 (2013) (citation omitted).

The public importance exception exists to create a pathway to the judicial process where none otherwise exists. The dismissal of the Caucus from this action does not close the courthouse door to the claims. Doe and Noe, on their own behalf and on behalf of A.N., B.N., and C.N., are named Plaintiffs who, at the pleading stage, have adequately demonstrated standing. These parties are in a position to seek the judicial guidance that the Amended Complaint asserts is necessary.

Furthermore, the Court is not persuaded that the issues presented in this lawsuit require the requisite future guidance necessary for applying the public importance exception. The Amended Complaint asserts that Defendants have violated H. 5150—a budget proviso, South Carolina's Equal Protection Clause, South Carolina's Safe School Climate Act, and S.C. Code Ann. § 59-63-40. The lawsuit does not implicate a critical question that the General Assembly has failed to address. *Cf. Evins v. Richland County Historic Preservation Commission*, 341 S.C. 15, 532 S.E.2d 876 (2000) (holding that individual possessed standing to question validity of property conveyance); *Baird v. Charleston County*, 511 S.E.2d at 75 (holding individual doctors had

standing to challenge County's authority to issue hospital bonds); *Thompson v. South Carolina Commission on Alcohol and Drug Abuse*, 267 S.C. 463, 229 S.E.2d 718 (1976) (holding plaintiffs had standing given the "wide concern" of the questions posed, including whether the violation of a certain state statute rendered a person a patient or a criminal, depending on which county the person was in). Nor would resolution of the claims reach beyond the named Defendants and the use of EL Education curriculum in CCSD schools.

For these reasons, on reconsideration of the Order, the Court finds the public interest exception does not apply here.

**CONCLUSION**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the South Carolina Freedom Caucus's Motion for Reconsideration is GRANTED IN PART, as described herein, and otherwise **DENIED**.

**AND IT IS SO ORDERED.**

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Charleston Common Pleas

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| **Case Caption:** | South Carolina Freedom Caucus , plaintiff, et al VS School District Charleston County , defendant, et al |
| **Case Number:** | 2022CP1005451 |
| **Type:** | Order/Other |

It is so ordered.

/s Roger M. Young, Sr. S.C. Circuit Judge 2134