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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education,Respondent.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Last spring, the General Assembly enacted the Education Scholarship Trust Fund (“ESTF”) Program to provide thousands of parents heading up low-income families with additional means to exercise their fundamental, federal constitutional right to direct the education and upbringing of their children. The ESTF scholarships help parents provide their children with the diverse educational resources they require, from textbooks and tutoring to tuition and fees for private and out-of-district public schools.

2. Until recently, parents could use—and did use—the scholarships for tuition and fees at their children’s private schools. The scholarships empowered parents who used them for that expense to exercise their fundamental right to send their children to private school—a right specifically protected by the Due Process Clause of the Fourteenth Amendment. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535 (1925).

3. That changed in September 2024 when the South Carolina Department of Education (“Department”) adopted a policy and practice singling out parents who would use the scholarships to pay for private school tuition and fees and prohibiting them from doing so. For these parents, the change has thwarted the purpose of the scholarships, as the scholarships were what made it possible for them to afford the education that was best for their children.

4. The Department adopted this policy and practice in response to the South Carolina Supreme Court’s decision in *Eidson v. South Carolina Department of Education*, 444 S.C. 166, 906 S.E.2d 345 (2024). In that case, this Court held that allowing parents to use scholarships to pay for private tuition and fees violates the state constitution’s prohibition on public funds being “used for the direct benefit of any religious or other private educational institution.” S.C. Const. art. XI, § 4. This Court simultaneously upheld all the many other educational purchases that a parent can make under the program, from public and private providers alike. *Eidson*, 444 S.C. at 194.

5. The Department’s policy and practice, which it adopted to comply with Article XI, Section 4, impose great injury and tremendous hardship on low-income parents who believe a private school is the best educational option for their children. These parents now face the prospect of enduring great financial hardship to keep their children in school or withdraw their children from the educational setting they know is best for their children.

6. Meanwhile, parents who use the scholarship for practically any other kind of educational expense for their children—tuition and fees for out-of-district public schools; homeschool curricula; tutoring; computers and other technologies; and so on—can continue to do so without the state penalizing their choice of education for their children.

7. The Department's policy and practice violate the federal Constitution. First, they target and penalize parents who exercise their right to send their children to a private school, in violation of the Due Process Clause of the Fourteenth Amendment. Second, they treat similarly situated parents and children differently because of how some parents exercise their fundamental liberty interest in directing the education and upbringing of their children, in violation of the Equal Protection Clause of the Fourteenth Amendment. Third, to the extent that the source of substantive protection for the right of parents to direct the education and upbringing of their children is the Privileges or Immunities Clause, rather than (or in addition to) the Due Process Clause, of the Fourteenth Amendment, they abridge a privilege or immunity of citizenship.

PARTIES

8. Plaintiff Yamilette Albertson lives in Bluffton, South Carolina, with her family. With the help of scholarships from the ESTF Program, she was able to send her children—Y., A., and J.—to a private school. Because she can no longer use the scholarships to pay for tuition and fees to send her children to private school, she brings this action on her own behalf and on behalf of her children.

9. Plaintiff Constantine Shulikov lives in Moore, South Carolina, with his family. With the help of scholarships from the ESTF Program, he was able to send his children A., E., P., N., and V. to a private school. Because he can no longer use the scholarships to pay tuition and fees to send his children to private school, he brings this action on his own behalf and on behalf of his children.

10. Defendant is Ellen Weaver, who is the South Carolina State Superintendent of Education. She is sued only in her official capacity.

11. By law, the State Superintendent of Education “shall . . . [o]rganize, staff and administer a State Department of Education.” S.C. Code Ann. § 59-3-30. The Department has numerous duties, including “administer[ing] the [ESTF Program]” and approving scholarship expenses. *Id.* § 59-8-120.

12. As the official charged with “organiz[ing], staff[ing] and administer[ing]” the Department, S.C. Code Ann. § 59-3-30, Defendant Weaver has the responsibility and practical ability to ensure that the Department’s regulations, policies, practices, customs, and powers are implemented in accordance with the U.S. Constitution.

JURISDICTION AND VENUE

13. Plaintiffs’ action, filed pursuant to 42 U.S.C. § 1983; the Uniform Declaratory Judgments Act, Title 15, Chapter 53 of the Code of Laws of South Carolina; and the Due Process, Equal Protection, and Privileges or Immunities Clauses of the U.S. Constitution, seeks injunctive relief and a declaration that the Department’s policy and practice of prohibiting usage of ESTF Program funds for private school tuition and fees are unconstitutional on their face and as applied to Plaintiffs.

14. This Court possesses jurisdiction over this action under S.C. Code Ann. §§ 14-3-310 and 15-53-20, as well as Article V, Section 5 of the South Carolina Constitution. This Court may take original jurisdiction over this action pursuant to South Carolina Appellate Court Rule 245.

15. Venue in this Court is appropriate because this action is a matter of public interest and constitutional importance that demands to be resolved expeditiously so that Plaintiffs do not suffer further material damage. Rule 245(a), SCACR. If this Court does not entertain their arguments, Plaintiffs will continue to suffer constitutional injury and be forced to either endure

great financial hardship, or more likely, withdraw their children from the private schools that are best for them.

FACTUAL ALLEGATIONS

South Carolina establishes the ESTF Program.

16. On May 5, 2023, South Carolina Governor Henry McMaster signed the ESTF Program into law.

17. The goal of the program is to provide children from low-income families with scholarships that parents can “use to create a customized, flexible education for their child[ren].” *Id.*

18. Starting in the 2024–25 school year, the law directed the Department to provide 5,000 scholarships, worth \$6,000 each, to school-aged children from low-income families (the program is slated to expand to 10,000 students in the 2025–26 school year, and 15,000 students in the 2026–27 school year). S.C. Code Ann. § 59-8-135(A)(1). Parents can use the scholarships for a diverse array of enumerated education-related expenses, as well as “*any other* educational expense approved by the [D]epartment.” *Id.* § 59-8-110 (emphasis added).

19. To obtain a scholarship, a parent is required to apply to the Department on behalf of her child during a short window of time starting on January 15. *Id.* § 59-8-115(c). The Department, which is overseen by the Defendant, *id.* § 59-3-30, is “responsible for keeping records, managing accounts, and disbursing scholarships” to recipients. *Id.* § 59-8-120(B).

20. To be eligible for a scholarship, a student is required to be a school-aged state resident whose household meets certain income requirements. For the 2024–25 school year, the household income requirement is that a student’s household income cannot exceed two hundred percent of the federal poverty guidelines. *Id.* § 59-8-110(4).

21. If a student, via her parent, successfully applies for a scholarship, the Department is required to “enroll and issue award letters” to the student and “disburs[e]” the scholarship “to [the student] for qualifying expenses.” *Id.* § 59-8-120.

22. After a parent takes receipt of the scholarship, the law provides that she can spend the money on a variety of her child’s “qualifying” educational expenses. They include:

- a. “tuition and fees of an education service provider;
- b. textbooks, curriculum, or other instructional materials including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;
- c. tutoring services approved by the department;
- d. computer hardware or other technological devices that are used primarily for a scholarship student’s educational needs and approved by the department or a licensed physician;
- e. tuition and fees for an approved nonpublic online education service provider or course;
- f. fees for approved:
 - i. national norm-referenced examinations, advanced placement examinations, or similar assessments
 - ii. industry certification exams; or
 - iii. examinations related to college or university admission;
- g. educational services for pupils with disabilities from a licensed or accredited practitioner or provider including, but not limited to, occupational, behavioral, physical, and speech-language therapies;

- h. approved contracted services from a public school district, including individual classes, after school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities;
- i. contracted teaching services and education classes approved by the department;
- j. fees for transportation paid to a fee-for-service transportation provider for the scholarship student to travel to and from an eligible provider as defined in this section, but not to exceed seven hundred fifty dollars for each school year;
- k. fees for ESTF account management by private financial management firms approved by the department.” *Id.* § 58-8-110(13).

23. The law also has a “kitchen sink” provision that permits a recipient to spend the scholarship on “any other educational expense approved by the department.” *Id.*

24. Before the Department will approve an application for a scholarship, the parent of a scholarship recipient must sign an annual agreement with the Department in which she promises not to enroll the child as a full-time student in her resident school district. *Id.* § 59-8-115(E)(4)(e).

25. The annual agreement also requires the parent to only use the funds for qualifying expenses. *Id.* § 59-8-115(E)(4)(d). If scholarship funds are used for an unauthorized expense, the Department may penalize the parent, and in the case of “substantial misuse” of funds, ensure that the parent is ineligible for the program, or refer the parent to law enforcement. *Id.* § 59-8-145(D), (F).

26. The parent of a scholarship recipient must re-apply for the scholarship sometime between January 15 and March 15. *Id.* § 59-8-115(B)(1). When it disburses scholarships, the Department

will “process applications in the order in which they are received, after a preference has been extended to all prior-year participants and their respective siblings.” *Id.*

The South Carolina Department of Education narrows the ESTF Program.

27. In October 2023, a few months after the program took effect, it was challenged in an original action at the South Carolina Supreme Court. The challengers alleged that the program, on its face, violated the provision of the South Carolina Constitution barring public funds from being “used for the direct benefit of any religious or other private educational institution.” *Eidson*, 444 S.C. at 185 (quoting S.C. Const. art. XI, § 4). The challengers sought to invalidate the program in its entirety.

28. On September 11, 2024, this Court held that allowing scholarship recipients to use public money for private school tuition and fees violated Article XI, Section 4 of the state constitution. *Id.* at 189. Simultaneously, this Court upheld the remaining qualifying expenses. *Id.* at 194. In upholding the legislature’s ability to provide funding for the many other education-related expenses, public and private, this Court stressed the “many possible and hypothetical forms” these expenses could take. *Id.* at 195. In short, this Court held that the state constitution permits a parent to use the scholarship to pay for virtually any educational expense for her child, but that it prohibits one: when a parent “use[s] a scholarship to pay [her] child’s private school tuition.” *Id.* at 186.

29. On the same day this Court issued the ruling, Petitioners received an email from the program administrator sent on behalf of the Department, with the Department’s seal, stating: “Today, the South Carolina Supreme Court ruled that sections of South Carolina’s Education Scholarship Trust Fund (ESTF) program are unconstitutional. The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for

purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools.**” (emphasis in originals). A subsequent email from the administrator, sent on behalf of the Department, with the Department’s seal, advised Petitioners: “[W]hile families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**” (emphasis in originals).

30. In addition to emailing Petitioners regarding this policy, the Department also publicized the policy through the “latest information” link on the Department’s website for the ESTF Program. The link takes the user to the program administrator’s website, which carries the seal of the Department, stating that: “On September 11, 2024, the South Carolina Supreme Court ruled that sections of South Carolina’s Education Scholarship Trust Fund (ESTF) program are unconstitutional. Pursuant to this ruling, and as of September 11, 2024, **ESTF funds may no longer be used for tuition or fee payments to nonpublic schools.**”

31. Today, the Department continues to allow the scholarships’ use for practically any educational choice that a parent would make for her child. For example, parents can use scholarships for tuition and fees to an out-of-district public school. Likewise, they can use scholarships for tutoring; education classes approved by the Department; textbooks, curriculum, and materials for homeschooling; computers and technology for online learning; and more. But if a parent decides to send her child to a private school—that is, if a parent exercises the fundamental, federal constitutional right, recognized in *Pierce*, 268 U.S. at 535, to enroll her child in a private school—then the Department will not allow the scholarship to be used for that choice. Indeed, as noted above, a parent who uses the scholarship to pay for an unauthorized

expense, which now includes a private school's tuition and fees, will be "subject to penalty." S.C. Code Ann. § 59-8-115(E)(4)(d).

INJURIES

The impact of the Department's policy and practice on Yamilette Albertson and her children.

32. Yamilette Albertson is a single mom. For a decade, she served her country as a Marine, where she worked as a recruiter at home and as a utilities engineer in the Middle East. After leaving the Marines, she had a short spell of unemployment before ultimately finding work as an operations manager at a Sherwin-Williams store, where she has worked for seven years. Although money is tight, Yamilette makes enough to support Y., her 17-year-old daughter, and A. and J., her six-year-old twin boys. Her 65-year-old father, a military veteran who is battling cancer, also lives with her.

33. As Y. approached her senior year at public school, Y. and Yamilette concluded that her public school had not done a good job of providing her with post-graduation opportunities. Y. and Yamilette researched the Cross Schools in Bluffton, a local private school, and after going on a tour, they came away impressed. The school offered small class sizes, good career opportunities, a rigorous education, and religious values—all qualities that were missing from Y.'s public school.

34. After they visited the school, Yamilette started thinking about how great it would be if all her children could attend the school. The only problem for Yamilette was that sending three children to the school was financially impossible. But after talking with the school's administration, she learned about the ESTF Program, which could provide scholarships for each of her children.

35. Yamilette's children applied for—and received—admission to the school; they also applied for—and received—scholarships from the ESTF Program to pay a major part of the school's tuition. The ESTF scholarships—supplemented with Yamilette's savings and earnings, as well as a part-time job Y. took on to bring more resources to the family—gave Yamilette enough resources to pay for her children's education.

36. Yamilette's children are thriving at school. Y. is excelling academically, she is receiving the religious instruction that Yamilette was unable (but wanted) to provide, and she is making good friends. And she is also learning about career opportunities in a way that she wasn't at public school. While she has long wanted to follow Yamilette's path into the Marines, she is also learning about alternative careers like welding.

37. For their part, the twins are doing great. They are reading in class and engaged in their subjects. A.'s teacher recently told Yamilette that he was one of the top students in class. And Yamilette has observed that, even over a short period of time, J. has matured and developed a real sense of purpose.

38. Unfortunately, all the gains Yamilette's children made are threatened by the Department's policy and practice.

39. When Yamilette learned about the *Eidson* decision and the policy and practice subsequently adopted by the Department, she was shocked. She thought to herself, "How can it be unconstitutional for my children to use a scholarship to go to school?" It did not make sense to her.

40. While Yamilette hopes and expects to be able to rely on her family's resources, as well as help from private donors, to make tuition payments for the remainder of the academic year, she has no guarantee that they will suffice. What *is* guaranteed is that her family will incur great

financial hardships for the remainder of the academic year, as the school charges tuition on an ongoing basis, and she can no longer use the scholarships to pay for it.

41. On January 8, 2025, Yamilette's twin boys will be automatically re-enrolled in school for the 2025–26 year. She has until January 22 to opt her boys out of the automatic re-enrollment; if she exercises that option, then her boys will lose their spots in school, which will be given to children on the school's waitlist. If she does not exercise that option by January 22, but decides by March 21 not to re-enroll her children, then she will be charged a \$1,000 fee, per child (and if she decides after March 21 not to re-enroll her children, she will be charged a \$2,000 fee, per child).

42. In the hope that this lawsuit will cause the Department's policy and practice to be changed or enjoined, and that her boys will once again be able to use the scholarships for their tuition, Yamilette intends to re-apply for the scholarships after the application window opens in mid-January.

43. If the Department's policy and practice are not changed or enjoined, she will be unable to use the ESTF scholarships to pay for tuition and fees at her children's private school. If they are not changed or enjoined, Yamilette will also lose the opportunity to apply for, and receive, ESTF scholarships that she can use to pay for tuition and fees at her children's private school in the future.

44. Thinking about the future has put Yamilette under great financial and psychological strain. If the policy and practice are not enjoined so that the program can operate as the legislature provided, Yamilette will be faced with a choice. She will either have to endure tremendous financial hardship or, more likely, withdraw her children from the Cross Schools and

re-enroll them in public schools—schools that, to her, do not provide the best education for her children—following the conclusion of the school year.

45. As a parent, this is heartbreaking. Yamilette can pull together enough resources so that her oldest daughter will be able to graduate from school, but her twin boys will probably not be so fortunate. She dreads the prospect of having to send her boys back to a public school that isn't right for them, that doesn't deliver the same kind of education, and that doesn't provide the same religious education that Yamilette wishes she could give them. The things she values most for her boys at their private school—better education, one-on-one attention, religious instruction, and professional opportunities—will disappear.

46. The Department, via the program administrator, has advised Yamilette that she cannot use her scholarship funds for tuition and fees, but she can use those funds “for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.” This is cold comfort for Yamilette. She just wants her children to attend the school she believes works for them.

47. Because of the Department's newly adopted policy and practice on using the scholarships to pay for tuition and fees at a private school, Yamilette and her children cannot use the scholarships for the education of their choice simply because it is a private school. Yet, it is only by using the scholarships for the private school's tuition and fees that the school is affordable for her. True, she can still use the scholarships for expenses like textbooks and curricula, which would be particularly useful if she wanted to homeschool her children or hire tutors for them, but she does not. Yamilette is a single mother who works full-time, and it is impracticable, as well as undesirable, for her to use the scholarships for those educational alternatives.

48. In short, if Yamilette had chosen to homeschool her children, have them tutored, or have them attend an out-of-district public school, she would be able to use the scholarships for the attendant expenses. But because of the Department's policy and practice, she cannot use her children's scholarships for the education she knows is best for them: private schooling.

The impact of the Department's policy and practice on Constantine Shulikov and his children.

49. Plaintiff Constantine Shulikov and his wife have chosen to send their children A., E., P., N., and V. to Westgate Christian School in Spartanburg. Like Yamilette, Constantine has been penalized by the Department for exercising his constitutional right to direct the education and upbringing of his children by enrolling them in a private school.

50. Constantine works in education. For over two decades, he has worked at one company as an instructional designer. He produces training materials that help fellow employees learn how to do different tasks at work. It is meaningful work that has shown him how people learn and absorb information differently.

51. He is currently the sole breadwinner in his home. His wife educates two of their children at home.

52. Over the years, Constantine and his wife have tried different kinds of schooling for their children. Some of their children have been homeschooled while others have attended public or private school. In each circumstance, Constantine and his wife have simply tried to choose the best education for each of their children, who are individuals with different needs.

53. Last year, A., E., P., N., and V. attended a public charter school. Although the education the school provided was adequate, he and his wife felt like they weren't reaching their full

potential. They wanted something better for them—better teachers, smaller class sizes, and an education that reflected their family’s values.

54. When Constantine and his wife learned about the ESTF Program, it showed them a whole new world of possibilities. They immediately applied for scholarships for A., E., P., N., and V. and started researching schools.

55. The school they eventually settled on was Westgate Christian School. The reason they liked it was because the school had small class sizes, a child-focused education, and religious values that aligned with their family’s. When A., E., P., N., and V. were awarded scholarships, the parents used them to enroll their children at the school.

56. The difference in their children since enrolling in the school has been remarkable. The children are excited about going to school. They love their teachers and the friends they’ve made. Whereas before their children felt lost in the crowd, now they feel like they get one-on-one attention. Each day, their children come home brimming with new ideas, excited to share with their parents what they’ve learned.

57. When Constantine and his wife learned about the *Eidson* decision and the policy and practice subsequently adopted by the Department, they were shocked. Their children had made enormous progress at a school they attended for less than a year, but now that progress was being threatened. After getting a taste of a better education, their kids were now at risk of being sent to schools that weren’t right for them.

58. Constantine’s family received an email from the Department, via the program administrator, that they could use the scholarships for practically any educational expense except tuition and fees at private schools. And like Yamilette, this consolation was meaningless. It is

only by using the scholarships for the private school's tuition and fees that the school is affordable for his family.

59. Like Yamilette, Constantine hopes and expects to be able to rely on his family's resources, as well as help from private donors, to make tuition payments for the remainder of the academic year, but he has no guarantee that they will suffice. What *is* guaranteed is that his family will incur tremendous financial hardships for the remainder of the academic year, as the school charges tuition on an ongoing basis, and he can no longer use the scholarships to pay for it.

60. Like Yamilette, Constantine will soon have to tell the school whether he plans to re-enroll his children in school next year or his children will risk losing their spots to other children. In the hope that this lawsuit will cause the Department's policy and practice to be changed or enjoined, and that his children will once again be able to use the scholarships for their tuition, Constantine intends to re-apply for the scholarships once the application window opens in mid-January.

61. If the Department's policy and practice are not changed or enjoined, he will be unable to use the ESTF scholarships to pay for tuition and fees at his children's private schools. If they are not changed or enjoined, Constantine will also lose the opportunity to apply for, and receive, ESTF scholarships that he can use to pay for tuition and fees at his children's private school in the future.

62. Because Constantine can't use the scholarships to pay for private school, he will either endure great financial hardship or, more likely, withdraw all his children from Westgate at the end of the school year. The scholarships are intended for low-income families and it is extremely unlikely that he would be able to foot the bill for tuition without them. True, the scholarships can be used for expenses like textbooks and curricula, which would be particularly useful if he

wanted to homeschool his children or hire tutors for them, but he does not. While his wife homeschools two of their children, there is no way that she could homeschool all of them. But even if she could, that is not how she and Constantine want to educate each of their children.

63. If Constantine had chosen to homeschool his children or hire a tutor or pay the tuition and fees of an out-of-district public school, he would be able to use the scholarship for the attendant expenses. But because he, like Yamilette, chose to enroll his children in a private school, the Department has barred him from using the ESTF Program to pay for his children's education. Like Yamilette, he has been penalized for how he has chosen to educate his children.

FIRST CAUSE OF ACTION

(Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution)

64. By this reference, Plaintiffs incorporate each and every allegation set forth in paragraphs 1 through 63 of this Complaint as though fully set forth herein.

65. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides: "No State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV.

66. Within the liberty protected by the Due Process Clause is the liberty of parents to control and direct the education and upbringing of their children. *Pierce*, 268 U.S. at 535; *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923). This liberty is fundamental, *see, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972), and it includes, specifically, the right of parents to send their children to a private school. *Pierce*, 268 U.S. at 535.

67. The Legislature created the ESTF Program to empower low-income families to exercise their fundamental liberty to direct the education of their children, and to that end, allowed ESTF scholarship funds to be used on a wide and diverse array of education-related expenses, including tuition and fees to attend private schools.

68. The Department's policy and practice, however, single out and exclude one particular use: attendance at a private school.

69. The government cannot penalize citizens by denying or conditioning use of an otherwise available government benefit based upon their exercise of a fundamental, federal constitutional right.

70. The Department's policy and practice penalize parents participating in the ESTF Program when they choose to send their children to a private school—that is, for exercising the fundamental right recognized in *Pierce*. 268 U.S. at 535.

71. The Department has no compelling, substantial, or even legitimate interest in penalizing citizens by denying or conditioning use of an otherwise available government benefit based upon their exercise of a fundamental, federal constitutional right.

72. The Department's policy and practice are not narrowly tailored to achieve, substantially related to, or rationally related to, any governmental interest the Department purports to have.

73. On their face and as applied to Plaintiffs, the Department's policy and practice violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

SECOND CAUSE OF ACTION

(Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution)

74. By this reference, Plaintiffs incorporate each and every allegation set forth in paragraphs 1 through 63 of this Complaint as though fully set forth herein.

75. The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution provides: “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend XIV.

76. The Equal Protection Clause prohibits the government from enacting a law that has the “purpose of inhibiting” the exercise of a constitutional right or establishing a classification that has “the effect of imposing a penalty” on the exercise of a right. *Saenz v. Roe*, 526 U.S. 489, 499 (1999); *see also Att’y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904 (1986) (“Whenever a state law infringes a constitutionally protected right, we undertake intensified equal protection scrutiny of that law.”).

77. Parents have a “fundamental” right to “direct the education and upbringing of their children,” including by choosing to educate their children in a private school. *Glucksberg*, 521 U.S. at 720; *Pierce*, 268 U.S. at 535.

78. South Carolina created the ESTF Program to empower low-income families to exercise this fundamental right to direct the education of their children, providing them scholarships that could be used for virtually any educational expense, including private school tuition and fees. By singling out parents who wish to use ESTF scholarships to pay for their children’s private school education and prohibiting them from doing so, however, the Department’s policy and practice discriminate against parents based on how they exercise a fundamental right.

79. To the extent that the Department maintains that its policy and practice are justified by Article XI, Section 4 of the South Carolina Constitution, which, as interpreted in *Eidson*, prohibits state aid that citizens can use to attend a private school, that justification runs afoul of the federal Constitution. “Central both to the idea of the rule of law and to [the federal] Constitution’s guarantee of equal protection is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.” *Romer v. Evans*, 517 U.S. 620, 633 (1996). “A law declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government is itself a denial of equal protection of the laws in the most literal sense.” *Id.*

80. The Department’s policy and practice only single out and discriminate against one group of beneficiaries: parents who would use the scholarship to send their children to private school. If a parent wants to use the scholarship for the tuition and fees needed to enroll her child in an out-of-district public school, she can. If she wants to use the scholarship to educate her child with tutors, she can. If she wants to use the scholarship for textbooks and curricula so she can homeschool her child, she can. If she wants to use the scholarship for any of the ESTF’s enumerated expenses, as well as “any other educational expense allowed by the [D]epartment,” to educate her child, she can. S.C. Code Ann. § 59-8-110. It is *only* when a parent wants to use the scholarship for private school tuition and fees and facilitate the exercise of her right to send her child to private school that the Department says she cannot.

81. For all purposes relevant to the ESTF Program and the Equal Protection Clause, a parent who would use the scholarship for private school tuition and fees is similarly situated to a parent who would use the scholarship for the tuition and fees needed to enroll her child in an out-of-district public school.

82. For all purposes relevant to the ESTF Program and the Equal Protection Clause, a parent who would use the scholarship for private school tuition and fees is similarly situated to a parent who would use the scholarship to educate her child with tutors.

83. For all purposes relevant to the ESTF Program and the Equal Protection Clause, a parent who would use the scholarship for private school tuition and fees is similarly situated to a parent who would use the scholarship for textbooks and curricula so she can homeschool her child.

84. For all purposes relevant to the ESTF Program and the Equal Protection Clause, a parent who would use the scholarship for private school tuition and fees is similarly situated to a parent who would use the scholarship for any of the ESTF's enumerated expenses, as well as "any other educational expense allowed by the [D]epartment," to educate her child. S.C. Code Ann. § 59-8-110.

85. The Department has no compelling, substantial, or even legitimate interest in a policy and practice that single out and treat parents who would use the scholarship for their children's private school's tuition and fees differently from parents who would use the scholarship for the tuition and fees needed to enroll their children in an out-of-district public school.

86. The Department has no compelling, substantial, or even legitimate interest in a policy and practice that single out and treat parents who would use the scholarship for their children's private school's tuition and fees differently from parent who would use the scholarship to educate their children with tutors.

87. The Department has no compelling, substantial, or even legitimate interest in a policy and practice that single out and treat parents who would use the scholarship for their children's private school's tuition and fees differently from parents who would use the scholarship to homeschool their children.

88. The Department has no compelling, substantial, or even legitimate interest in a policy and practice that single out and treat parents who would use the scholarship for their children's private school's tuition and fees differently from parents who would use the scholarship for any of the ESTF's enumerated expenses, or for "any other educational expense allowed by the [D]epartment," to educate their children. S.C. Code Ann. § 59-8-110.

89. Indeed, the Department has no compelling, substantial, or even legitimate interest for singling out and discriminating against one group of citizens, or making it more difficult for one group of citizens than for all others to seek aid from the government, especially when that one group is defined by their exercise of a constitutional right.

90. The Department's policy and practice are not narrowly tailored to achieve, substantially related to, or rationally related to, any governmental interest Defendant purports to have.

91. On their face and as applied to Plaintiffs, the Department's policy and practice barring scholarships from being used for tuition and fees at private schools discriminate based on how parents choose to educate their children and therefore violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

THIRD CAUSE OF ACTION

(Violation of the Privileges or Immunities Clause of the Fourteenth Amendment to the United States Constitution)¹

92. By this reference, Plaintiffs incorporate each and every allegation set forth in paragraphs 1 through 63 of this Complaint as though fully set forth herein.

¹ This claim may be foreclosed by current U.S. Supreme Court precedent, *see Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872), but Plaintiffs assert it to preserve it for eventual review by that Court.

93. The Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution provides: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.” U.S. Const. amend XIV.

94. The Privileges or Immunities Clause protects “those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States.” *Snowden v. Hughes*, 321 U.S. 1, 6 (1944).

95. Some U.S. Supreme Court justices have opined that this Clause, rather than (or in addition to) the Due Process Clause, is the source of protection for substantive constitutional rights—including unenumerated rights—against the states.²

96. Among the unenumerated substantive rights that citizens possess is the right of parents to control and direct the education and upbringing of the children under their control, including by sending them to a private school. *See, e.g., Washington v. Glucksberg*, 521 U.S. 702, 720 (1997); *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972); *Pierce*, 268 U.S. at 535.

97. The Legislature created the ESTF Program to empower low-income families to exercise their fundamental liberty to direct the education of their children, and to that end, allowed ESTF scholarship funds to be used on a wide and diverse array of education-related expenses, including tuition and fees to attend a private school.

² *See, e.g., Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 240, n.22 (2022) (“Some scholars and Justices have maintained that the Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights.”); *Troxel v. Granville*, 530 U.S. at 80 (Thomas, J., concurring in the judgment) (explaining that the right of parents to direct the upbringing of their children is “fundamental,” but suggesting that the Privileges or Immunities Clause, rather than the Due Process Clause, is the right vehicle for recognizing the right); *McDonald v. City of Chicago*, 561 U.S. 742, 809–12, 851, n.20 (2010) (Thomas, J., concurring in part, and concurring in the judgment) (arguing that the Due Process Clause cannot “define the substance” of a constitutional right, but the Privileges or Immunities Clause can).

98. The Department’s policy and practice, however, single out and exclude one particular use: attendance at a private school.

99. The government cannot penalize citizens by denying or conditioning use of an otherwise available government benefit based upon their exercise of a fundamental, federal constitutional right.

100. The Department’s policy and practice penalize parents participating in the ESTF Program when they choose to send their children to a private school—that is, for exercising the fundamental right recognized in *Pierce*. 268 U.S. at 535.

101. The Department has no compelling, substantial, or even legitimate interest in penalizing citizens by denying or conditioning use of an otherwise available government benefit based upon their exercise of a fundamental, federal constitutional right.

102. The Department’s policy and practice are not narrowly tailored to achieve, substantially related to, or rationally related to, any governmental interest the Department purports to have.

103. To the extent the Privileges or Immunities Clause, rather than (or in addition to) the Due Process Clause, is the source of protection for the right to direct the education and upbringing of one’s children, the Department’s policy and practice, on their face and as applied, violate the Clause.

PRAYER FOR RELIEF

Plaintiffs respectfully request the following relief:

- A. A declaratory judgment by the Court that the Department’s policy and practice prohibiting the use of ESTF scholarship funds for tuition and fees at private schools violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

- B. A declaratory judgment by the Court that the Department's policy and practice prohibiting the use of ESTF scholarship funds for tuition and fees at private schools violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution;
- C. A declaratory judgment by the Court that the Department's policy and practice prohibiting the use of ESTF scholarship funds for tuition and fees at private schools violate the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution;
- D. A temporary injunction and a permanent injunction prohibiting the Department from enforcing its policy and practice prohibiting parents from using ESTF scholarship funds on tuition and fees at private schools;
- E. A temporary injunction and permanent injunction requiring the Department to allow parents to use ESTF scholarship funds to pay for tuition and fees at private schools, in accordance with the ESTF Program itself;
- F. Pursuant to 42 U.S.C. § 1988, an award of attorneys' fees, costs, and expenses; and
- G. Any other legal and equitable relief the Court may deem appropriate and just.

Dated: December 5, 2024

Respectfully submitted,

/s/ Matthew P. Cavedon
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**Pro Hac Vice Applications Pending*

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Dec 05 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

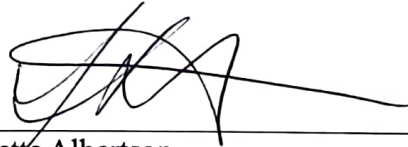
Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education,Respondent.

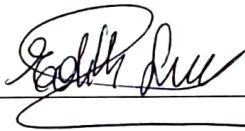
VERIFICATION

PERSONALLY appeared before me Yamilette Albertson, who being first sworn, deposes
and says that she is a Petitioner in the foregoing action; that she has read the foregoing
Complaint for Declaratory and Injunctive Relief, knows the contents therefor, and that the same
are true and correct of her own knowledge, saving and excepting as to those matters alleged
therein on information and belief, and as to those, she believes them to be true.



Yamilette Albertson

SWORN to and subscribed before me this 4 day of December, 2024.



Notary Public in and for the State of South Carolina.

My commission expires 02/16/2027.



RECEIVED

Dec 05 2024

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education,Respondent.

VERIFICATION

PERSONALLY appeared before me Constantine Shulikov, who being first sworn,
deposes and says that he is a Petitioner in the foregoing action; that he has read the foregoing
Complaint for Declaratory and Injunctive Relief, knows the contents therefor, and that the same
are true and correct of his own knowledge, saving and excepting as to those matters alleged
therein on information and belief, and as to those, he believes them to be true.

Constantine Shulikov

Constantine Shulikov

SWORN to and subscribed before me this 4th day of December, 2024.

Christine Brock

Notary Public in and for the State of South Carolina.

My commission expires June 24, 2025

