THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr. ..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 ..... Respondents.

FINAL BRIEF OF RESPONDENT EDCHOICE INC., FORMERLY KNOWN AS AND INCORRECTLY IDENTIFIED AS FRIEDMAN FOUNDATION FOR EDUCATIONAL CHOICE, INC.

NELSON MULLINS RILEY & SCARBOROUGH LLP
Christopher J. Daniels
Email: chris.daniels @nelsonmullins.com
Post Office Box 11070
Columbia, SC 29211
(803) 255-9457

BARNES & THORNBURG LLP

Joseph C. Chapelle
Email: joe.chapelle@btlaw.com
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 231-7209

Attorneys for Respondent EdChoice Inc.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against EdChoice Inc. because Mr. Davis failed to serve the Amended Complaint within the time frame required by the trial court's prior order?

2. Was the dismissal of Mr. Davis' claims against EdChoice Inc. further supported by the additional sustaining ground that the Amended Complaint fails to make any factual allegations against EdChoice Inc.

3. Was the dismissal of Mr. Davis' claims against EdChoice Inc. further supported by the additional sustaining ground that the claims Mr. Davis attempts to assert are fatally deficient?

4. Was the dismissal of Mr. Davis' claims against EdChoice, Inc. further supported by the additional sustaining ground that the trial court lacks personal jurisdictional over EdChoice Inc., an Indiana non-profit organization?

5. Did the trial court properly dismiss Mr. Davis' claims against EdChoice Inc. with (rather than without) prejudice because Mr. Davis failed to comply with a prior order of the court, failed timely to serve EdChoice Inc., has already been given an opportunity to amend his Complaint and *still* failed to assert viable claims or to allege facts capable of supporting them, and has identified no new facts in his post-dismissal filings that could remedy his deficient claims?

STATEMENT OF THE CASE

In the interest of economy and efficiency, EdChoice Inc. ("EdChoice") adopts and incorporates by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich. To that statement, EdChoice adds only that it filed its own motion to dismiss on January 29, 2019, and supported that motion with a contemporaneously filed affidavit of Carey E. Folco, Vice President of EdChoice, arguing dismissal was warranted because (1) the lower court lacked personal jurisdiction over EdChoice; and (2) while Plaintiff alleges what he believes EdChoice's mission may be, he does not make any factual allegations against EdChoice or state facts against EdChoice that constitute a cause of action, or that approach the degree of specificity necessary for asserting a valid or plausible claim. Moreover, Plaintiff

impermissibly reasserts several causes of action that were previously dismissed without leave to amend by Judge Benjamin.

STATEMENT OF THE FACTS

EdChoice adopts and incorporates by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich. In addition, EdChoice notes that other than in the amended complaint's caption, it is mentioned in only nine paragraphs of the amended complaint as follows:

- Paragraph 15, alleges Friedman Foundation for Educational Choice, Inc. is an Indiana non-profit and, upon information and belief, that this defendant directs the operations and activities of South Carolina defendants and/or Joe Doe. (R. 34-35);

- Paragraph 24 alleges that Jason Bedrick was "a school choice policy analyst for Defendant Cato and is currently the Director of Policy at Defendant Friedman Foundation. (R. 37.)

- Paragraph 162 alleges that "Defendant Bedrick has at Cato and Friedman Foundation made false and defamatory statements about Plaintiff Davis and his group. (R. 60);

- Paragraph 169, alleges the namesake of Friedman Foundation is the late Dr. Milton Friedman. (R. 61);

- Paragraph 170, alleges Dr. Milton Friedman was an advocate for free markets, particularly private school choice with limited government intervention. (R. 61)

- Paragraph 171, alleges Friedman Foundation primarily advocates for private school choice administered by government entities, which is the opposite of what Dr. Friedman would have wanted or espouses. (R. 61);

- Paragraph 172, alleges Friedman Foundation receives substantial funding from special interest groups who financially benefit from government-run private school choice, including new and experimental educational savings accounts (ESAs). (R. 62);

- Paragraph 173, alleges Friedman Foundation's existence is dependent upon annual fund raising from special interests groups. (R. 62);

- Paragraph 174, alleges that Friedman Foundation no longer follows its original mission of free market and limited government and instead pushes an agenda of special interests. (R. 62);

STANDARD OF REVIEW

EdChoice adopts and incorporates the statement of the standard of review contained in the brief of co-Respondents Cato Institute and Howard S. Rich.

ARGUMENT

I. The trial court properly dismissed Plaintiff's claims against EdChoice because he failed to file and serve the amended complaint within the time frame required by the trial court's prior order.

EdChoice adopts and incorporates by reference the argument of Cato Institute and Howard S. Rich at pages 12-19 of their brief. As noted in the Order of Judge Early, Plaintiff acknowledged none of new defendants, which includes EdChoice, were served within the 15 day deadline set by Judge Benjamin. (R. 11).

II. Dismissal of Plaintiff's claims is further supported by the additional sustaining ground that the amended complaint fails to state facts that would support any claim against EdChoice.

As set forth in the statement of facts, other than in the amended complaint's caption, EdChoice is mentioned in only nine paragraphs of the amended complaint, none of which allege any action or omission by EdChoice affecting Mr. Davis or injuring him.

Conspicuously absent from these nine references is any factual allegation that could support *any* claim against EdChoice Inc. Rather, most are simply references to Plaintiff's understanding of EdChoice's mission, the principles of economist and professor Milton Friedman, after who EdChoice was originally named, and EdChoice's supposed departure from the philosophy of Professor Friedman. While Plaintiff does allege in Paragraph 162 that co-defendant Bedrick at Friedman Foundation made false and defamatory statements against Plaintiff and his group, there is not a single allegation that any person with actual or apparent authority to act on EdChoice's behalf did, in fact, act on the basis of that authority to harm Plaintiff, nor is there any

allegation that EdChoice Inc. employed, directed, encouraged, or was even aware of any alleged conduct directed at Plaintiff. See argument of defendant/respondent Cato at § II B, incorporated herein by reference.

In the absence of such allegations, no claim may lie against EdChoice Inc., and dismissal of the claims is appropriate. *See generally* the authorities cited in the Brief of Cato Institute and Mr. Rich at Argument II.A; *see also Krych v. Hvass*, 83 F. App'x 854, 855 (8th Cir. 2003) (affirming dismissal of claims when the plaintiff "failed to state any claim whatsoever against Stender and Fitzloff-Meyer because he merely listed these individuals as defendants in his complaint and did not allege they were personally involved in the constitutional violations"); *B. Black v. Lane*, 22 F.3d 1395, 1401 n.8 (7th Cir. 1994) ("The magistrate judge properly dismissed Greer, the Chief Administrative Officer at Menard. Although Greer is named as a defendant, there are no factual allegations involving him other than that he was charged with the administration of Menard and is responsible for all persons at Menard. This is not sufficient personal involvement for the imposition of liability."); *Hunt v. Hedgepath*, No. 8:18-cv-2684-TMC-JDA, 2018 WL 6031317, at *3 (D.S.C. Oct. 22, 2018) (recommending dismissal of *pro se* plaintiff's claims because "Plaintiff has made no specific allegations in the body of his Complaint against these two Defendant, which is required to state a claim" and "[i]n the absence of substantive allegations of wrongdoing against these named Defendants, the Court is unable to liberally construe any type of plausible cause of action arising from the Complaint against them"); *Dupont v. County of Jasper*, No. 2008-CP-27-223, 2011 WL 12565700 (S.C. Ct. of Common Pleas, Jasper County, Hon. Carmen T. Mullen, June 14, 2011) (dismissing County from lawsuit because "the Complaint contains no substantive allegations against the County of Jasper").

III. Dismissal of Plaintiff's claims against EdChoice is further supported by the additional sustaining ground that the claims Plaintiff attempts to assert are fatally deficient.

EdChoice adopts, and incorporates by reference, the arguments and authorities set forth in Section III of Cato Institute and Howard Rich's brief demonstrating that each of the causes of action Plaintiff has attempted to plead are deficient on their face because some of the alleged causes of action do not exist in South Carolina; because they fail to plead necessary elements of the supposed claim; because they fail to allege wrongdoing; and because they include claims Judge Benjamin previously dismissed without leave to replead.

IV. Dismissal is required upon the additional sustaining ground that the trial court lacks personal jurisdictional over EdChoice.

EdChoice is an Indiana non-profit corporation with its one office in Indianapolis, Indiana. (R. 279) The trial court lacks personal jurisdiction over EdChoice under controlling law:

- The court does not have general personal jurisdiction because EdChoice is not "essentially at home" in South Carolina as it is not incorporated in nor has its principal place of business in South Carolina.

- The court does not have specific personal jurisdiction because Plaintiff's amended complaint alleges no claim against EdChoice that arises out of any allegedly tortious acts or omissions of EdChoice that occurred in South Carolina.

General, or "all-purpose," jurisdiction arises when a defendant's corporate operations within the forum state are of such an extensive nature as to justify a lawsuit on causes of action arising from dealings entirely distinct from those activities. *See Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014). Section 36-2-802 of the South Carolina long-arm statute governs general personal jurisdiction and provides that, "[a] court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing business, or maintaining his or its principal place of business in this State as to any cause of action." S.C. Code Ann. § 36-2-802.

However, that standard is circumscribed by the Due Process Clause of the United States Constitution, and in turn, general jurisdiction has been limited significantly by recent United States Supreme Court precedent. Now, "only a limited set of affiliations with a forum will render a defendant amenable to all-purpose jurisdiction there." *Daimler AG*, 571 U.S. at 137 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915 (2011)).

The United States Supreme Court in *Daimler* revisited what "continuous and systematic" contacts with the forum state are required to render a defendant "at home" in the forum and explained that a corporation's place of incorporation and principal place of business are the paradigm bases for general jurisdiction. *Id.* at 137–38. The Court clarified that a corporation is ***not*** subject to general jurisdiction in every state where it engaged in a substantial, continuous, and systematic course of business. *Id.* ("That formulation, we hold, is unacceptably grasping.").

Further, conducting business in a state—even substantial business—is insufficient to confer general personal jurisdiction. In *Daimler*, the plaintiffs sued a German company in California, arguing that personal jurisdiction was proper on the basis that the defendant's subsidiary's "systematic, continuous, and substantial" contacts could be imputed to the German parent company. The Supreme Court held that general jurisdiction did not exist, even assuming the subsidiary's contacts were extensive and could be imputed to the German company. Instead, a corporation may be subject to general personal jurisdiction ***only*** when its contacts are so "continuous and systematic," judged against its national and global activities, that it is "essentially at home" in the forum. *Id.* at 137–39.

The Court identified two locations where a corporation is "essentially at home": (1) where it is formally incorporated and (2) its principal place of business. *Id.* at 139. The Court made clear that only in an "exceptional case" would a corporation be "essentially at home" in a forum *other*

than that of its domicile. *Id.* at 139, n.19.[1] Accordingly, the test for exercising general personal jurisdiction is whether the corporation is "at home" in the forum state such that it is subject to suit on any and all claims, even claims arising from activities outside of the forum state. *Id.* at 754; *see also Gracious Living Corp. v. Colucci & Gallaher, PC*, 216 F. Supp. 3d 662, 667 (D.S.C. 2016) ("A corporation may be subject to general jurisdiction in the forum where it "is fairly regarded as at home.").

Daimler was recently reaffirmed by the Supreme Court in *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549 (2017). Reversing the Montana Supreme Court's expansive view of general jurisdiction, the *BNSF Railway* Court held that "[t]he Fourteenth Amendment due process constraint described in *Daimler* . . . applies to all state-court assertions of general jurisdiction over nonresident defendants; the constraint does not vary with the type of claim asserted or the business enterprise sued." *Id.* at 1558–59. The Court reiterated that the paradigm bases for exercising general jurisdiction over a corporate defendant in a state where that corporation is "at home" are its place of incorporation and location of its principal place of business. *Id.* at 1558. Even though the railway defendant had over 2,000 miles of railroad track and more than 2,000 employees in Montana, general jurisdiction does not focus solely on the magnitude of a defendant's in-state contacts, and " '[a] corporation that operates in many places can scarcely be deemed at home in all of them.' " *Id.* at 1559 (quoting *Daimler*, 134 S. Ct. at 761).

---

[1] In referencing an "exceptional case," the Supreme Court specifically discussed *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 448 (1952), in which the defendant, Benguet, was incorporated under the laws of the Philippines, where it operated gold and silver mines. During World War II when Japanese occupied the Philippines, Benguet's president moved to Ohio, where he kept an office, maintained the company's files, and oversaw the company's activities, which had been suspended in the Philippines. The Court held that Ohio courts could exercise general personal jurisdiction over Benguet without offending due process because "Ohio was the corporation's principal, if temporary, place of business." *Id.*

EdChoice does not have the required contacts with South Carolina to support the exercise of general jurisdiction. EdChoice is not incorporated in South Carolina and does not maintain its principal place of business in South Carolina. *See* Affidavit of Carey E. Folco, paragraphs 4, 7. (R. 279) Thus, South Carolina is not a "paradigm all-purpose forum" in which EdChoice may be subjected to general personal jurisdiction. In addition, plaintiff has not and cannot plead facts demonstrating that EdChoice has such substantial contacts in South Carolina that it is "at home" in this state. South Carolina is not the center of EdChoice's activities, and EdChoice does not maintain consistent substantial contacts in South Carolina sufficient for the insertion of general jurisdiction. The sworn affidavit from Carey E. Folco confirms the lack of qualifying South Carolina contacts under the long arm statute as alleged by Plaintiff. Among other facts set forth in the affidavit, EdChoice confirms that it: (i) is not licensed to do business in South Carolina; (ii) does not engage in any commercial activities; (iii) has not contracted to supply services for profit or things in South Carolina; (iv) does not have any interests in, use, or possess real property in South Carolina; (v) has not contracted to insure any person, property, or risk in South Carolina; and (vi) has not engaged in any persistent course of conduct, derived substantial revenue from goods used or consumed or services rendered in South Carolina. (R. 279)

Specific jurisdiction is appropriate only when the plaintiff's cause of action is related to or arises out of the defendant's contacts with the forum. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014). In other words, a defendant's forum-related activities must constitute the reason for the alleged injuries.

Recently, in *Bristol-Myers Squibb Co. v. Superior Court of California*, 137 S. Ct. 1773 (2017), the United States Supreme Court clarified the narrow scope of specific personal jurisdiction. In that case, the Court emphasized that "specific jurisdiction is confined to the

adjudication of issues deriving from, or connected with, the very controversy that establishes jurisdiction." *Id.* at 1780. Stated another way, "for a state to exercise specific jurisdiction, 'the *suit*' must 'aris[e] out of or relat[e] to the defendant's contacts with the *forum*.'" *Id.* at 1780 (modifications and emphasis in original) (*citing Daimler*, 134 S. Ct. at 754). "When there is no such connection, specific jurisdiction is lacking regardless of the extent of a defendant's unconnected activities in the State." *Id.* at 1781; *see also Goodyear*, 564 U.S. at 931, n.6 ("[E]ven regularly occurring sales of a product in a State do not justify the exercise of jurisdiction over a claim unrelated to those sales").

Applying those well-settled principles, the *Bristol-Myers Squibb* Court rejected the California Supreme Court's "sliding scale approach" in which extensive unrelated contacts with a jurisdiction were deemed sufficient to support specific jurisdiction even in the absence of related contacts. According to the Supreme Court, the "sliding scale" approach—in which "the more wide ranging the defendant's forum contacts, the more readily is shown a connection between the forum contacts and the claim"—incorrectly relaxes the required connection between the forum and the specific claims at issue. *Id.* at 1781. The Court held that the sliding scale approach is a "loose and spurious form of general jurisdiction." *Id.*; *see also Walden*, 571 U.S. at 289–91(holding that Nevada courts lacked specific jurisdiction over claims against an out-of-state defendant—even though the plaintiffs were Nevada residents and "suffered foreseeable harm in Nevada"—because the relevant conduct occurred entirely in Georgia, and thus, the mere fact that the tortious conduct affected plaintiffs with connections to the forum state did not suffice to authorize jurisdiction).

Here, the amended complaint, as noted above, contains no allegations of any South Carolina acts by EdChoice that resulted in the subject incident and/or Plaintiffs' claims. "A minimum contacts analysis requires a court to find that the defendant directed its activities to a

resident of this State and that the cause of action arises out of or relates to those activities." *S. Plastics Co. v. S. Commerce Bank*, 310 S.C. 256, 260, 423 S.E.2d 128, 131 (1992) *(emphasis added)*. Further, a defendant's minimum contacts must be such that "he could reasonably anticipate being haled into court" in South Carolina. *Id.* at 491-92, 611 S.E.2d at 508. *(citing World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286 (1980)). Without such minimum contacts, the court lacks the power to adjudicate the action. *Id. (citing Southern Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 131).The Court must determine whether such minimum contacts exist between a defendant and the forum state "such that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Moosally v. W.W. North & Co.*, 358 S.C. 320, 330, 594 S.E.2d 878, 883 (Ct. App. 2004) (citing *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985)).

Second, even if the required contacts exist, the Court must find that the exercise of personal jurisdiction is "reasonable" or "fair." *Cockrell v. Hillerich & Bradsby Co.*, 363 S.C. 485, 491, 611 S.E.2d 505, 508 (2005). Under the "fairness prong," the Court must consider four factors: "(1) the duration of the activity of the nonresident within the state; (2) the character and circumstances of the commission of the nonresident's acts; (3) the inconvenience resulting to the parties by conferring or refusing to confer jurisdiction over the nonresident; and (4) the State's interest in exercising jurisdiction." *Id.*

Plaintiff's claims fail both the minimum contacts test and the fairness test. Most importantly, for this Court to exercise special personal jurisdiction over EdChoice, Plaintiff must show that his claims arose out of EdChoice's activities in South Carolina. *S Plastics Co.*, 310 S.C. at 260, 423 S.E.2d at 508. Plaintiff cannot satisfy that requirement. As set forth in the affidavit of Carey E. Folco, EdChoice has not transacted any business or other activities in South Carolina

related to the event which forms the basis for Plaintiff's claim in this action. (R. 281) EdChoice has provided grants to South Carolina entities, but those grants are specifically restricted by agreement to charitable activities solely. (R. 280) Plaintiff has not pled facts showing that EdChoice's activities in South Carolina are connected in any way to the plaintiff's claims.

Moreover, having EdChoice litigate in South Carolina would be inconvenient and unduly burdensome for EdChoice. EdChoice is an Indiana charity. The costs of litigation in South Carolina would unduly burden it. "[T]he unique burdens place upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders." *Asahi Metal Industry Co., Ltd. v. Superior Court*, 480 U.S. 102, 114 (1987).

Finally, it would be unfair to have EdChoice defend a lawsuit in South Carolina.

V. The trial court properly dismissed Plaintiff's claims with (rather than without) prejudice because he failed to comply with a prior order of the court, failed timely to serve EdChoice, was given an opportunity to amend his Complaint and *still* failed to assert viable claims or to allege facts capable of supporting them, and has identified no new facts in his post-dismissal filings that could remedy his deficient claims.

EdChoice adopts, and incorporates by reference, the argument set forth in Section IV of the brief of Cato Institute and Howard Rich in support of its argument that the trial court properly dismissed Plaintiff's claims with prejudice.

CONCLUSION

For the foregoing reasons, EdChoice respectfully requests this Court affirm the trial court's order dismissing Plaintiff's purported claims against it

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

Christopher J. Daniels
SC Bar No. 1538
E-Mail: chris.daniles@nelsonmullins.com
Post Office Box 11070
Columbia, SC 29211
(803) 255-9457

And

Joseph C. Chapelle
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204

Attorneys for Respondent EdChoice Inc. formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc.

June 15, 2020

Columbia, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for EdChoice Inc. f/ka/ and Incorrectly Identified as Friedman Foundation for Educational Choice, Inc., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by **Electronic Mail** and or U. S. Mail to the following address(es):

Pleadings:

Final Brief of Respondent EdChoice Inc. f/k/a and Incorrectly Identified as Friedman Foundation for Educational Choice, Inc.

Counsel Served:

Jefferson Davis, Jr. **Via US Mail and Electronic mail** 403 McCarter Avenue Greenville, SC 29615 **Pro Se Plaintiff**	J. Kenneth Carter, Jr., Esquire Ross C. DuRant, Esquire P.O. Box 1473 Columbia, SC 29201 **Attorneys for Ellen Weaver, Oran P. Smith, Palmetto Promise Institute and Jim DeMint**
Douglas W. MacKelcan, Esquire Skyler C. Wilson, Esquire Carlock, Copeland & Stair, LLP 40 Calhoun St. Suite 400 Charleston, SC 29401-3531 **Attorneys for Stephen D. Kirkland**	Kenneth A. Davis, Esquire Tierney F. Dukes, Esquire Boykin & Davis, LLC 220 Stoneridge Dr., Suite 100 P.O. Box 11844 Columbia, SC 29210 **Attorneys for SC Education Oversight Committee and Melanie Barton**

M. Dawes Cooke, Jr., Esquire Justin Novak, Esquire Barnwell Whaley P.O. Drawer H Charleston, SC 29402 **Attorney for SC Educational Credit for Exceptional Needs Children Fund and Randy Page**	Geoffrey K. Chambers, Esquire 411 Walnut St. No. 10646 Green Cove Springs, FL 32043 **Attorney for SC Educational Credit for Exceptional Needs Children Fund and Randy Page**
Mark S. Barrow, Esquire Sweeny, Wingate & Barrow, PA P.O. Box 12129 Columbia, SC 29211 **Attorneys for Palmetto Family Council and Palmetto Family Alliance**	Martin S. Driggers, Jr., Esquire Sweeny, Wingate & Barrow, PA 115 Cargill Way, Suite B Hartsville, SC 29550 **Attorneys for Palmetto Family Council and Palmetto Family Alliance**
William H. Davidson, II, Esquire Michael B. Wren, Esquire Davidson, Wren & Plyler, P.A. 1611 Devonshire Dr. Second Floor P.O. Box 8568 Columbia, SC 29202 **Attorneys for SC Dept. of Revenue and Rick Reames**	Joseph M. McCulloch, Esquire Kathy R. Schillaci, Esquire McCullouch & Schillaci 1513 Hampton St. P.O. Box 11623 Columbia, SC 29211 **Attorneys for First Tuesday Strategies, LLC**
Andy Haselden, Esquire Howser, Newman & Besley, L.L.C. P.O. Box 12009 Columbia, SC 29211 **Attorney for SC Department of Labor, Licensing and Regulation and Doris Cubitt**	Miles Coleman, Esquire Nelson Mullins Riley & Scarborough LLP Poinsett Plaza 104 South Main St. Suite 900 Greenville, SC 29601 **Attorney for SCRG Foundation, Cato Institute and Howard Rich**

Jennifer F. Nutter, Esquire Hood Law Firm, LLC 172 Meeting St. P.O. Box 1508 Charleston, SC 29402 **Attorney for Institute of Management Consultants USA**	Mark V. Gende, Esquire Brandon R. Gottschall, Esquire Sweeny, Wingate and Barrow, P.A. P.O. Box 12129 Columbia, SC 29211 **Attorney for South Carolinians for Responsible Government and Philip Cease**
Benjamin Mustian, Esquire BPM Law Firm, LLC 141 Pelham Dr., Suite F #108 Columbia, SC 29209 **Attorney for First Impressions Inc. d/b/a Richard Quinn & Associates**	Jason P. Luther. Esquire South Carolina Department of Revenue P.O. Box 12265 Columbia, SC 29211 **Attorney for SC Dept. of Revenue**
Alan Jones, Esquire Turner Padget Graham & Laney, P.A. P.O. Box 1473 Columbia, SC 29202 **Attorney for Tony Denny**	James Goldin, Esquire Nelson Mullins Riley & Scarborough LLP P.O. Box 11070 Columbia, SC 29211 **Attorney for Access Opportunity South Carolina**
Chad Connelly – **Via US Mail Only** 107 Connelly Dr. Prosperity, SC 29217 **Self-Represented Respondent**	John McCormick – **Via US Mail Only** 12 Vaughns Mill court Simpsonville, SC 29681 **Self-Represented Respondent**
Nate Leupp – **Via US Mail Only** 114 Oak Dr. Greer, SC 29650 **Self-Represented Respondent**	

Tricia Morris
Administrative Assistant

June 15, 2020

Tricia Morris

From: Tricia Morris on behalf of Chris Daniels
Sent: Monday, June 15, 2020 1:33 PM
To: jdavis@apogeetax.com; kcarter@turnerpadget.com; rdurant@turnerpadget.com; dmackelcan@carlockcopeland.com; swilson@carlockcopeland.com; kdavis@boykinlawsc.com; tdukes@boykinlawsc.com; mdc@barnwell-whaley.com; jnovak@barnwell-whaley.com; geoffrey@cperlgroup.com; msb@swblaw.com; wdavidson@dml-law.com; joe@mccullochlaw.com; ahaselden@hnblaw.com; Miles Coleman; jennifer.nutter@hoodlaw.com; mvg@swblaw.com; brg@swblaw.com; bpmlawsc@gmail.com; jason.luther@dor.sc.gov; agjones@turnerpadget.com; Jamey Goldin; msd@swblaw.com; mwren@dml-law.com; kathy@mccullochlaw.com
Cc: Chris Daniels (chris.daniels@nelsonmullins.com)
Subject: Davis v. Weaver, et al.- Service of Final Brief of EdChoice Inc.
Attachments: 2020.06.15 Final Brief of Respondent EdChoice Inc.pdf

Counsel and Mr. Davis:

Pursuant to Rule 211(a), SCACR, and section (g)(3) the Supreme Court's Order dated May 29, 2020, please find attached for service upon you a copy of the Final Brief of Respondent EdChoice Inc., formerly known as and incorrectly identified as Friedman Foundation for Educations Choice, Inc. and the Certificate of Compliance related to same. Pursuant to section (g)(2) of the Supreme Court's May 29 Order, a copy of these documents will also be served on Mr. Davis as well as Mr. Connelly, Mr. McCormick and Mr. Leupp by postal mail today. These documents will be filed with the supreme Court by electronic mail later today.

Chris

NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

Christopher J. Daniels
T 803.255.9457 F 803.255.9106
chris.daniels@nelsonmullins.com

1320 Main Street | 17th Floor
Columbia, SC 29201
T 803.799.2000 F 803.256.7500
nelsonmullins.com

June 15, 2020

Via Electronic Mail – ctappfilings@sccourts.org

The Honorable Jenny A. Kitchings
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RE: Jefferson Davis, Jr., v. Ellen Weaver, et al.
Civil Action No. 2018-CP-40-02425
Appellate Case No. 2019-000648
Our File No. 033687/01500

Dear Ms. Kitchings:

Pursuant to Rule 211, SCACR, and sections (c)(6), (d), (f), and (g)(2) and of (3) of the Supreme Court's Order dated May 29, 2020, please find attached PDF copies of the Final Brief of Respondent EdChoice Inc., formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc. in the above referenced matter, a Certificate of Compliance related to same, and Proof of Service of same. Pursuant to the aforementioned Supreme Court Order, we do not plan to submit hard copies of these documents to the Court unless the Court requests. We ask that you file the attached documents and if possible, return an electronic version to us bearing the Court's file stamp.

Very truly yours,

Christopher J. Daniels

CJD:ljs
Attachments

cc: Jefferson Davis, Jr., Pro Se (via electronic mail and U.S. mail)
J. Kenneth Carter, Jr., Esquire (via electronic mail)
Ross C. DuRant, Esquire (via electronic mail)
Douglas W. MacKelcan, Esquire (via electronic mail)
Skyler C. Wilson, Esquire (via electronic mail)
Tierney Dukes, Esquire (via electronic mail)
Kenneth A. Davis, Esquire (via electronic mail)
M. Dawes Cooke, Jr., Esquire (via electronic mail)
Justin Novak, Esquire (via electronic mail)
Geoffrey K. Chambers, Esquire (via electronic mail)
William H. Davidson, II, Esquire (via electronic mail)
Michael B. Wren, Esquire (via electronic mail)
Mark S. Barrow, Esquire (via electronic mail)
Martin S. Driggers, Jr., Esquire (via electronic mail)
Andy Haselden, Esquire (via electronic mail)
Joseph M. McCullogh, Esquire (via electronic mail)
Kathy R. Schillaci, Esquire (via electronic mail)
Jennifer F. Nutter, Esquire (via electronic mail)
Miles Coleman, Esquire (via electronic mail)
Benjamin Mustian, Esquire (via electronic mail)
Jason P. Luther, Esquire (via electronic mail)
Alan Jones, Esquire (via electronic mail)
James Goldin, Esquire (via electronic mail)
Mark V. Gende, Esquire (via electronic mail)
Brandon R. Gottschall, Esquire (via electronic mail)
Chad Connelly (via U.S. mail only)
John McCormick (via U.S. mail only)
Nate Leupp (via U.S. mail only)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr. ..... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40..... Respondents.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that the Final Brief of Respondent EdChoice Inc., formerly known as and incorrectly identified as Friedman Foundation for Educational Choice, Inc. complies with Rule 211(b), SCACR.

Nelson Mullins Riley & Scarborough, LLP

By: _____
Christopher J. Daniels
SC Bar No. 1538
E-Mail: chris.daniels@nelsonmullins.com
Post Office Box 11070
Columbia, SC 29211
(803) 255-9457

Barnes & Thornburg, LLP
Joseph C. Chapelle
Email: joe.chapelle@btlaw.com
11 South Meridian Street
Indianapolis, Indiana 46204
(317) 231-7209

Attorneys for Respondent EdChoice Inc.

June 15, 2020
Columbia, SC