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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

Candace Eidson, on behalf of herself and her minor child; Coneitra Miller on behalf of herself and her minor child; Joy Brown on behalf of herself and her minor children; Crystal Rouse, on behalf of herself and her minor children; Amanda McDougald Scott, on behalf of herself and her minor child; Penny Hanna, on behalf of herself and her minor children; the South Carolina State Conference of the NAACP; and The South Carolina Education Association,
.....Petitioners,

v.

South Carolina Department of Education; Ellen Weaver, in her official capacity as State Superintendent of Education; South Carolina Office of the Treasurer; and Curtis M. Loftis, Jr., in his official capacity as State Treasurer of South Carolina,
.....Respondents.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiffs bring this action for declaratory and injunctive relief challenging the constitutionality of the Education Scholarship Trust Fund school voucher program (“Voucher Program”), enacted by the South Carolina Legislature’s passage of SB 39 this past spring. The Voucher Program will use public funds for the direct benefit of private schools in violation of the South Carolina Constitution.

2. Just three years ago in *Adams v. McMaster*, 432 S.C. 225, 851 S.E.2d 703 (2020), this Court ruled that article XI, section 4 of the South Carolina Constitution prohibits the State from using “public funds for the direct benefit of private educational institutions” and held unconstitutional the use of federal COVID aid to fund a private school voucher program. *Id.* at 244, 851 S.E.2d at 713. The voucher program at issue in *Adams* was limited to one-time payments to private schools to support students attending those schools.

3. The SB 39 Voucher Program uses far more public funds to pay for private school tuition than the one-time grant program in *Adams*. Under the SB 39 Voucher Program, the State will distribute vouchers annually beginning in the 2024-25 school year to pay for private school tuition expenses on behalf of thousands of students. And those funds will come not from federal aid but directly from the state treasury.

4. The Voucher Program violates the South Carolina Constitution in at least four ways.

5. First, as in *Adams*, the Voucher Program uses public funds for the direct benefit of private schools in violation of article XI, section 4 of the South Carolina Constitution.

6. Second, by paying for the education of certain South Carolina school children in private schools that are not free of charge and open to all, the Voucher Program violates the Constitution's education mandate in article XI, section 3, which requires the State to provide for the education of its children through a "system of free public schools open to all children" or other public educational institutions.

7. Third, through the Voucher Program, the General Assembly has unconstitutionally expanded the authority of the office of the Superintendent of Education beyond its sole constitutionally-defined role as "the chief administrative officer of the public education system," in violation of article XI, section 2 of the South Carolina Constitution.

8. Fourth, the Voucher Program lacks a sufficient public purpose, in violation of article X, sections 5 and 11 of the South Carolina Constitution, because it uses public funds to finance nonpublic education at private schools that are not required to provide clear education benefits either to the students who attend or to the public at large, and that are expressly authorized by statute to discriminate against students.

9. Plaintiffs seek declaratory and injunctive relief declaring the Voucher Program unconstitutional and enjoining the State from implementing the Voucher Program.

PARTIES

10. Candace Eidson is a South Carolina citizen and taxpayer, a resident of Simpsonville, and the parent of a tenth grader who attends Greenville public schools. Candace's child is autistic, has an Individualized Educational Plan (IEP), and receives special education services through her public school. As a strong supporter of public education who regularly volunteers in her local public schools, Candace opposes public funding of private schools, because she believes voucher programs undermine the State's commitment to its constitutional system of public schools. Her opposition is particularly strong here, because the private schools the Voucher Program benefits would be permitted to discriminate against students like her daughter or require waiver of rights under the Individuals with Disabilities Education Act (IDEA) in exchange for admission.

11. Coneitra Miller is a South Carolina citizen and taxpayer, a resident of Fairfield County, and the parent of a tenth grader in the Fairfield County School District. She and her child identify as Black or African American. Coneitra opposes private school vouchers because they fail to adequately serve students in rural communities like hers, undermine support for rural public schools, and fund schools that are not open to all students.

12. Joy Brown is a South Carolina citizen and taxpayer, a resident of Charleston, and the mother of a third grader and a fifth grader in the Charleston County School District. She and her children identify as Asian American. As former Vice President of Advocacy for the South Carolina PTA, Joy believes the State is obliged to honor its sacred constitutional commitment to

public schools, and is prohibited from funding private schools that are not accountable to the public or that decline to serve all students.

13. Crystal Rouse is a resident of Charleston and an educator in the Charleston County School District. She is also the parent two children, a second grader and a ninth grader, who attend Charleston County public schools. Crystal and her children identify as Black or African American. As an educator and parent, Crystal opposes private school vouchers because they compromise public school funding sources, and support schools that do not serve all students and are not accountable to the public."

14. Amanda McDougald Scott is a South Carolina citizen and taxpayer, a resident of Greenville County, and the parent of a second grader in Greenville County Schools. Amanda opposes private school vouchers because they threaten public school funding and because they fund schools that are not free and open to all students.

15. Penny Hanna is a South Carolina citizen and taxpayer and a resident of Berkeley County. She and her wife are the parents of two children, grades nine and eleven, in Berkeley County Schools. Penny is strongly opposed to private school vouchers because she believes they compromise public school funding sources, that they fund schools that are not accountable to the public, and she knows that many private schools have policies that explicitly exclude the children of LGBTQ families like Penny's from enrolling.

16. The South Carolina State Conference of the NAACP ("South Carolina NAACP") is a nonprofit, nonpartisan membership organization based in South Carolina. The South Carolina NAACP has over 12,000 members and comprises nearly 50 branches across the State. The South Carolina NAACP was chartered in 1939 and is the oldest civil rights group in South Carolina. The South Carolina NAACP advocates to ensure the educational, political, social, and economic

rights of all persons and to eliminate exclusion and discrimination in every aspect of society. Throughout its history, the South Carolina NAACP has demonstrated commitment to public education and advocated for equal educational opportunities for all students in South Carolina. Because of this commitment, the South Carolina NAACP and its members have an interest in supporting and protecting public schools and oppose the transfer of public funds to private schools that actively exclude and discriminate against children and their families.

17. Plaintiff The South Carolina Education Association (“The SCEA”) is a voluntary membership association organized under section 501(c)(6) of the Internal Revenue Code. Members of The SCEA include teachers, administrators and support staff employed in public schools throughout the State of South Carolina, as well as aspiring and retired educators. The core purpose of The SCEA, and the life’s work of its members, is to advance the cause of public education so that all South Carolina Students may succeed academically and learn the skills they will need to be successful and productive citizens. As such, The SCEA and its members have a direct interest in the funding and operation of public schools, and oppose the use of public funds to benefit private schools that operate in a manner inconsistent with the promise of public education.

18. Defendant South Carolina Department of Education is a division of the State government, and has been charged with administering the Voucher Program.

19. Defendant Ellen Weaver is the State Superintendent of Education and is sued in her official capacity. The State Superintendent of Education is a constitutionally-created office, the duties of which are defined and limited by article XI, section 2 of the South Carolina Constitution. The State Superintendent is neither appointed by, nor subordinate to, the Governor or General Assembly; rather, the State Superintendent is an independent official elected by the voters of South

Carolina. The Superintendent administers the State Department of Education, which is responsible for the administration of the Voucher Program and has “general supervision over and management of all public-school funds provided by the State and Federal Governments,” including funds appropriated for the Program. S.C. Code Ann. §§ 59-3-30, 59-8-120.

20. Defendant South Carolina Office of the Treasurer is the division of the South Carolina government charged with administering the state treasury.

21. Defendant Curtis M. Loftis, Jr. is the State Treasurer of South Carolina and is sued in his official capacity. As State Treasurer, Defendant Loftis is responsible for directing the transfer of public funds from the state treasury to fund the vouchers provided under the Voucher Program.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-20 (2023). The Supreme Court may take original jurisdiction over this action pursuant to South Carolina Appellate Court Rule 245.

23. This action relates to a matter of public interest and public importance in several respects: it involves the unconstitutional expenditure of millions of dollars in public funds that will continue, and likely expand, should this Court not intervene, and it advances private rather than public purposes. For these reasons, guidance from this Court is needed on what Articles X and XI prohibit in terms of state funding for private education and the administration of that funding.

FACTS

A. The Voucher Program

24. On May 2, 2023, the South Carolina legislature passed SB 39, which created a private school voucher program known as the Education Scholarship Trust Fund (“ESTF”) program. 2023 S.C. Acts 8 (S. 39); S.C. Code Ann. §§ 59-8-110 *et seq.* (2023). This Voucher

Program provides for public funds to be used to pay for the education of South Carolina children at private schools.

25. The Governor signed SB 39 into law on May 4, 2023. 2023 S.C. Acts 8 (S. 39). It went into effect on June 3, 2023. *Id.*

26. The Voucher Program establishes a state fund, the ESTF, which is administered by the South Carolina Department of Education and the State Superintendent. S.C. Code Ann. §§ 59-8-110, 59-8-120. The ESTF consists of monies appropriated to the South Carolina Department of Education, which are drawn from the state treasury. *Id.* §§ 59-8-120, 59-8-125.

27. The Department of Education administers the Voucher Program in every respect, including by creating and administering an application process to approve schools to participate in the Voucher Program, annually certifying a list of approved schools, developing and administering an application process for parents to apply for the Voucher Program on behalf of their children, disbursing funds directly to the approved private schools, and issuing additional rules to oversee the program as needed. *Id.* §§ 59-8-115, 59-8-120, 59-8-140, 59-8-150.

28. The statute also requires the Department of Education to ensure that all Voucher Program private schools are trained in administering the applicable state educational progress assessments and mandates that the Department pay for any training or other costs associated with administering these assessments. *Id.* § 59-8-150(c).

29. To be eligible for the Voucher Program, students must reside in South Carolina, currently attend public schools, and have household incomes below certain thresholds; and parents must agree to comply with certain program requirements including the requirement that, while in the Voucher Program, they not enroll their children full time in their neighborhood public school. *Id.* § 59-8-110(4).

30. Participation in the Voucher Program will grow over time: in the 2024-25 school year, five thousand students whose household income is under two hundred percent of the federal poverty level may participate; in the 2025-26 school year, ten thousand students whose household income is under three hundred percent of the federal poverty level may participate; and in the 2026-27 school year, fifteen thousand students whose household income is under four hundred percent of the federal poverty level may participate. *Id.* § 59-8-135.

31. Currently, over 700,000 students attend public schools in the State of South Carolina.¹ More than half of these public school students are expected to be eligible to apply for the Voucher Program as of the 2026-27 school year, subject to the caps on student participation set forth above.²

B. The Transfer of Public Funds to Private Schools

32. Parents may apply for the Voucher Program on behalf of their eligible children and upon approval of each application, the State Treasurer is required to transfer six thousand dollars to the ESTF. *Id.* §§ 59-8-115, 59-8-120.

33. The Department of Education must create an online account in the name of each participating student and transfer funds from the ESTF to these accounts on a quarterly basis. *Id.* § 59-8-120. These accounts are wholly controlled by the State; neither parents nor students may deposit or withdraw funds from the accounts. *Id.* §§ 59-8-110(2), 59-8-120(A), (G), 59-8-125(A).

34. Voucher Program funds may be used for “qualifying expenses” related to education including the payment of private school tuition and fees. *Id.* §§ 59-8-110(13), 59-8-120(A), (G).

¹ South Carolina Department of Education, *Active Student Headcounts, District Headcount by Grade 2022-23*, <https://ed.sc.gov/data/other/student-counts/active-student-headcounts/>.

² Approximately 60% of South Carolina schoolchildren qualify for free or reduced-price lunch, https://nces.ed.gov/programs/digest/d22/tables/dt22_204.10.asp, which is based on a household income below 185% of federal poverty guidelines, <https://www.fns.usda.gov/cn/fr-020923>.

35. Because private school tuition and fees are the costliest of the enumerated “qualifying expenses,” and because families that send their children to their resident neighborhood public school cannot participate in the Voucher Program, substantial portions of the public funds allocated to the Program will be paid out to private schools for tuition and related fees. *Id.* §§ 59-8-110(13), 59-8-115(E)(4)(e), 59-8-125(E).

36. Despite purporting to create accounts for students, the Voucher Program at no point places funds in the hands of parents or students; instead, the funds flow from the state treasury to Department of Education-controlled accounts to private schools. *Id.* § 59-8-120. The only role that parents play is selecting the private school to which the State transfers these public funds. *Id.*

37. Parents cannot deposit their own funds into these so-called “individual” accounts, schools cannot refund or rebate funds to parents, and although parents can view these accounts through an online portal, they cannot move funds on their own or even be reimbursed for legitimate out-of-pocket expenses using funds in the account. *Id.* §§ 59-8-120, 59-8-125. If there are funds remaining in the account when the student leaves the program, they revert to the ESTF. *Id.* § 59-8-125(F).

38. Voucher Program funds that are used to pay private school tuition and fees remain under the control of the State up to the point they are transferred to the private school. *Id.* § 59-8-120.

39. The Voucher Program places no restrictions on the use of these funds by the private school. The public funds transferred through the Voucher Program provide a direct benefit to the private school by flowing directly to the private school to be put to any use chosen by that school.

40. The Voucher Program reduces state funding for the public schools. When students withdraw from their neighborhood public schools and enroll in private schools using Voucher

Program funds, their public school districts' funding under the State's enrollment-based school funding formula will be reduced.

C. Voucher Program Private Schools are not Subject to the Same Accountability and Nondiscrimination Standards as Public Schools

41. SB 39 expressly provides that private schools that receive public funds from the Voucher Program remain "autonomous" and do not become "an agent of the state or federal government" by virtue of receiving such funds. *Id.* § 59-8-150(F). Neither the Department of Education nor any other state agency is permitted to regulate the educational program of a private school that accepts Voucher Program funds. *Id.*

42. Private schools that will be eligible to receive public funds under the Voucher Program need not be open to all students. Although private schools participating in the Voucher Program are prohibited from discriminating on the basis of race, color, or national origin, they are not prohibited from excluding or discriminating against students on any other basis they choose, including religion, sexual orientation, gender identity, past academic performance, standardized test scores, disciplinary history, or disability status. *Id.* § 59-8-150(A)(3). And, as a rule, South Carolina private schools are not open to all students and reserve the right to exclude students on one or more of these bases.

43. Private schools are not required to alter their creeds, practices, admissions policies, or curriculums to receive public funds through the Voucher Program. *Id.* § 59-8-150(F)(5). As a condition of participating in the Program, parents and students must agree to comply with the private school's prescribed curriculum, dress code, and other requirements of enrolled students, and must consent to diminished rights under the Individuals with Disabilities Education Act (IDEA).

44. Most private schools eligible to receive public funds from the Voucher Program are not open to all, and they can and will bar entry to students based on a variety of factors including the student’s religion, sexual orientation, gender identity, past academic performance, standardized test scores, disciplinary history, or disability status.

45. Private schools that will receive public funds from the Voucher Program are not subject to the same health and safety requirements imposed on public schools, and unlike public schools, there are no building safety standards specifically in place for private schools.

46. Private schools receiving public funds from the Voucher Program need not comply with the same academic standards imposed on public schools.

47. While private schools receiving Voucher Program funds must have a curriculum that “includes” courses set forth in the state’s diploma requirements, they are not required to comply with all diploma requirements applicable to public schools, such as offering Advanced Placement (AP) classes and providing at least 120 hours of instruction per credit unit. *Id.* § 59-8-140.

48. The Department of Education may delegate to a “qualified organization” the authority to administer the Voucher Program, but what constitutes a “qualified organization” is not defined by SB 39. *Id.* § 59-8-120(H). Despite the name, a “qualified organization” is not required to have any particular qualifications or expertise in education administration. Such organizations need not be non-profit entities, nor are they required to have any particular safeguards in place to protect against financial malfeasance or ensure compliance with educational privacy laws.

FIRST CAUSE OF ACTION

(Violation of article XI, section 4 of the South Carolina Constitution)

49. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 48 as if set forth verbatim.

50. Article XI, Section 4 of the South Carolina Constitution states: “No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.” S.C. Const. art. XI, § 4.

51. The Voucher Program unconstitutionally appropriates public funds from the state treasury and transfers them through State-controlled accounts to pay for tuition and fees at private schools.

52. The monies paid to private schools through the Voucher Program provide a direct benefit to the private schools in violation of article XI, section 4.

SECOND CAUSE OF ACTION

(Violation of article XI, section 3 of the South Carolina Constitution)

53. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 48 as if set forth verbatim.

54. Article XI, section 3 of the South Carolina Constitution states: “The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.” S.C. Const. art. XI, § 3.

55. The Voucher Program uses public funds to subsidize private schools that are not part of the system of free public schools and are not public institutions of learning, are not open to all children in the State, and are not subject to the same academic standards or accountability as

the system of free public schools, in violation of Article XI, Section 3 and the education mandate set forth therein.

THIRD CAUSE OF ACTION
(Violation of article XI, section 2 of the South Carolina Constitution)

56. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 48 as if set forth verbatim.

57. Article XI, section 2 of the South Carolina Constitution creates the office of the State Superintendent of Education and defines the scope of the Superintendent’s authority: “There shall be a State Superintendent of Education who shall be the chief administrative officer of the public education system of the State and shall have such qualifications as may be prescribed by law.” S.C. Const. art. XI, § 2.

58. The Constitution grants the General Assembly the power to prescribe the qualifications of the State Superintendent but contains no grant of authority to the General Assembly to expand, restrict, or otherwise alter the Superintendent’s duties.

59. By imposing on the Superintendent certain management, implementation and oversight responsibilities for the Voucher Program, the General Assembly has granted the Superintendent administrative authority over a state-funded private education program and thus expanded the duties of the office of State Superintendent in contravention of article XI, section 2 of the Constitution.

FOURTH CAUSE OF ACTION
(Violation of article X, sections 5 and 11 of the South Carolina Constitution)

60. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 48 as if set forth verbatim.

61. Article X, section 5 of the South Carolina Constitution states: “Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.” S.C. Const. art. X, § 5.

62. Article X, section 11 of the South Carolina Constitution states: “The credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution.” S.C. Const. art. X, § 11.

63. In *South Carolina Public Interest Foundation v. South Carolina Department of Transportation*, the Court held that “all taxes levied must be used towards a public purpose.” 421 S.C. 110, 123, 804 S.E.2d 854, 861 (2017).

64. The Voucher Program authorizes the expenditure of public dollars to fund nonpublic education in private schools that are not academically accountable, are not open to all, and are expressly entitled to exclude students on an array of grounds, including religion, sexual orientation, gender identity, past academic performance, standardized test scores, disciplinary history, or disability status.

65. By using public funds to pay for private schools that are not accountable to the public and not open to all students, the Voucher Program lacks the requisite public purpose under article X, sections 5 and 11, to permit this expenditure of public funds.

PRAYER FOR RELIEF

66. Plaintiffs repeat and re-allege each of the allegations of paragraphs 1 through 48 as if set forth verbatim.

67. Pursuant to S.C. Code. Ann. § 15-53-20, the Court should declare that the Voucher Program is unconstitutional under article XI, section 4 of the South Carolina Constitution.

68. Pursuant to S.C. Code. Ann. § 15-53-20, the Court should declare that the Voucher Program is unconstitutional under article XI, section 3 of the South Carolina Constitution.

69. Pursuant to S.C. Code. Ann. § 15-53-20, the Court should declare that the Voucher Program is unconstitutional under article XI, section 2 of the South Carolina Constitution.

70. Pursuant to S.C. Code. Ann. § 15-53-20, the Court should declare that the Voucher Program is unconstitutional under article X, sections 5 and 11 of the South Carolina Constitution.

71. Pursuant to S.C. Code. Ann. § 15-53-120, the Court should enter a permanent injunction enjoining the Defendants from any further actions related to the establishment, implementation, or administration of the Voucher Program and any further relief necessary to conform the Defendants' conduct to the law and effectuate the orders and judgment of this Court.

Respectfully submitted,

s/William Tinkler

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