

State of Vermont

Superior Court

Civil Division

Washington Unit

Case No.: _____

Kollene Caspers, on behalf of herself and her daughter, C.C.2;

Michele Orosz, on behalf of herself and her children N.O. and B.O.

Plaintiffs,

v.

State of Vermont;

Zoie Saunders, in her official capacity as Vermont Secretary of Education

Defendants

Complaint for Declaratory Judgment and Injunctive Relief

Plaintiffs KOLLENE CASPERS and MICHELE OROSZ, by and through their attorneys, Deborah T. Bucknam, Esq. and the Liberty Justice Center, bring this Complaint for Declaratory and Injunctive Relief and Damages against Defendants State of Vermont and Zoie Saunders, in her official capacity as Vermont Secretary of Education. Plaintiffs allege the following:

Introduction

1. In nearly 40% of Vermont towns, particularly those where public schools are too remote, schoolchildren can attend independent schools with publicly funded tuition assistance. This investment in students' futures is enabled by Vermont's town tuitioning system, which has run continuously since the mid-1800s.

2. Vermont's investment in town tuitioning is a natural extension of two constitutional duties the State owes to its citizens. First, "Vermont children have a fundamental right to education under the Education Clause of the Vermont Constitution." *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, P11 (Vt. 2023). Second, under the Constitution's Common Benefits Clause, the State is required to guarantee "not only that everyone enjoy equality before the law or have an equal voice in government but also that everyone have an equal share in the fruits of the common enterprise." *Baker v. State*, 170 Vt. 194, 208 (1999) (quoting W. Adams, *The First American Constitutions* 188 (1980)). Taken together, the Common Benefits Clause and the Education Clause mean that providing educational services in an unequal manner, based on the "mere fortuity of a child's residence," is unconstitutional. *Brigham v. State*, 166 Vt. 246, 265 (1997) (*Brigham I*).

3. On July 1, 2025, the governor signed Act 73 into law. Act 73 amends 16 V.S.A. § 828 to impose drastic new restrictions on the Vermont tuitioning system.

4. Specifically, Act 73 prohibits school tuitioning vouchers from being spent at any school created after July 1, 2025. 16 V.S.A. § 828(a)(2). Act 73 also bans the use of school tuitioning vouchers at schools which did not have "at least 25 percent

of [their] student enrollment composed of students attending on a district-funded tuition . . . during the 2023–2024 school year.” *Id.*

Injury

5. In violation of the Common Benefits Clause of the Vermont Constitution, Act 73 arbitrarily denies access to town tuitioning for students who desire to attend a school that primarily accepts students who do not request access to the Vermont tuitioning system. In fact, under the regime imposed by Act 73, if a school is desirable for parents of children not eligible for school tuitioning, the children who *are* eligible for school tuitioning are automatically excluded.

6. Separately, Act 73 violates the rights of these students’ parents under the Common Benefits Clause because the parents’ access to receive tuition assistance for their students’ education has been stripped away while similarly situated parents retain the benefits of town tuitioning.

Parties

7. KOLLENE CASPERS is a resident of Georgia, Vermont, and the loving mother of C.C.1 and C.C.2. C.C.1 is a sophomore at Rice Memorial High School in Burlington, Vermont, where he receives town tuitioning, and C.C.2 is in eighth grade at Georgia Elementary & Middle School, a public school.

8. Kollene and her children moved to Georgia, Vermont, from Ohio when C.C.1 was in fifth grade. C.C.1 is an unusually bright student, and Georgia Elementary & Middle School’s academics were far less robust than what he had received in Ohio public schools. Lacking any enriched education programs to offer C.C.1, Georgia Elementary & Middle School simply bumped him up a grade.

9. After graduating from eighth grade, C.C.1 lacked a local public high school and was thus eligible for town tuitioning. He opted to attend Rice Memorial High School in Burlington, Vermont. Rice offers C.C.1 the accelerated programs he craves and allows him to excel academically.

10. Like her brother, C.C.2 is unusually bright and wants to achieve academic excellence. She has been disappointed by the lack of enriched education at Georgia Elementary & Middle School and has been eager to attend Rice upon graduation from eight grade.

11. Under Act 73, C.C.1 will be able to continue to receive town tuitioning to attend Rice, but C.C.2 will not be eligible, even though the two students are siblings who live in the same house and are less than two years apart in age.

12. Under Act 73, Kollene will have to come up with between \$15,000 and \$18,000 if she wants her daughter to have the same opportunities the State provides free of charge to her son.

13. Like Kollene, MICHELE OROSZ is also a former Ohioan who has moved to Georgia, Vermont. She is the loving mother of three children: sixteen-year-old P.O., fifth grader N.O., and third grader B.O.

14. P.O. is a junior at Rice, where he is excelling with the demanding academic curriculum. Michele uses town tuitioning to provide this education to P.O., as Georgia lacks a public high school of its own and Rice is the only option with a reasonable commute that provides an enriched education for gifted students.

15. N.O. and B.O. both attend Georgia Elementary & Middle School. Both students hope to one day follow in their older sibling's footsteps and attend Rice. Act 73 has stripped them of this opportunity.

16. Under Act 73, Michele will have to spend between \$30,000 and \$36,000 to give N.O. and B.O. the same opportunity the State gives P.O. for free, even though P.O., N.O., and B.O. are all siblings who live in the same house.

Additional Factual Background

17. The Plaintiffs incorporate by reference all preceding paragraphs.

18. Prior to the passage of Act 73, 16 V.S.A. § 828 (hereinafter § 828) explicitly gave Vermont school boards authorization to cover tuitioning for students to attend independent schools. Act 73 drastically changed § 828 to deny public tuition benefits to children attending certain targeted independent schools, a complete departure from Vermont policy dating back to 1869.

19. Act 73 amended § 828, imposing an arbitrary, labyrinthine new formula for determining which students at which schools can still receive town tuitioning. The new § 828 states that “[a] school district shall not pay the tuition of a student except to” attend “an approved independent school” that:

- (A) is located in Vermont;
- (B) is [certified compliant with the Act] on or before July 1, 2025;
- (C) is located within either:
 - (i) a supervisory district that does not operate a public school for some or all grades as of July 1, 2024; or
 - (ii) a supervisory union with one or more member school districts that does not operate a public school for some or all grades as of July 1, 2024;

- (D) had at least 25 percent of its student enrollment composed of students attending on a district-funded tuition basis pursuant to chapter 21 of this title during the 2023-2024 school year; and
- (E) complies with the minimum class size requirements contained in subdivision 165(a)(9) of this title and State Board rule; provided, however, that if a school is unable to comply with the class size minimum standards due to geographic isolation or a school has developed an implementation plan to meet the class size minimum requirements, the school may ask the State Board to grant it a waiver from this subdivision (E), which decision shall be final.

20. The restrictions imposed by Act 73 contradict the policy goals outlined by the General Assembly: to create an “exceptional education system that is stable and predictable and where a student's home address does not dictate the quality of education they receive.” VT LEGIS 73 (2025), 2025 Vermont Laws No. 73 (H. 454). Act 73 *reduces* the ability of Plaintiff schoolchildren to enjoy substantially equal educational opportunity and *reduces* the ability of Plaintiff schoolchildren to access “robust services and programs.” Act 73 also does not reduce the benefit across the board, but does so arbitrarily, subjectively, and on a regional and age basis, creating even greater disparities in student opportunity from community to community, household to household, and sometimes *even within the same family*. The shrinking of the opportunities for schoolchildren who presently enjoy town tuitioning increases the risk that “a student’s home address . . . dictate[s] the quality of education they receive.” *Id.*

Jurisdiction, Venue, and Standing

21. This Court has jurisdiction under the Declaratory Judgments Act (V.S.A. Title 12, Chapter 167), common law jurisdiction for injunctive and declaratory

relief, the self-executing provisions of Chap. I, Art. 7 of the Vermont Constitution, and V.R.C.P. 75.

22. Venue is proper in Washington County, pursuant to 12 V.S.A. § 402.

23. Here, Plaintiffs seek to vindicate both their rights and the rights of their children. Parents seeking a judicial declaration and injunction to vindicate their children's constitutional rights to equal educational opportunity have standing to pursue their claims. *Brigham v. State*, 2005 VT 105, ¶ 17 (*Brigham II*).

Count I

Act 73 violates the Common Benefits Clause and Plaintiffs are entitled to declaratory and injunctive relief on behalf of their children.

24. Count I is brought against both Secretary Saunders (in her official capacity) and the State of Vermont. Plaintiffs incorporate by reference all preceding paragraphs.

25. Act 73 arbitrarily limits the equal educational opportunities of Plaintiffs' children, who are otherwise entitled to town tuitioning benefits. Plaintiffs seek a declaratory judgment to vindicate the rights of their children and injunctive relief to give them access to town tuitioning.

26. Vermont's schoolchildren have a constitutional right to a substantially equal educational opportunity. "[T]he *Brigham I* Court took the significance of education, a government benefit codified in the Vermont Constitution, into account in its Common Benefits analysis and concluded that Vermont children have a right

to “*substantial* equality of educational opportunity.” *Vitale*, 2023 VT 15 at P10 (cleaned up) (emphasis in the original).

27. A claim for a violation of the right to substantially equal educational opportunity consists of three elements. *Id.* at P20–24. First, a plaintiff must “define the part of the community disadvantaged by the legal requirement.” *Id.* at P20. Next, he or she must “identify the governmental purpose, if any is known, in imposing that disadvantage.” *Id.* Finally, he or she must “explain how the omission of a part of the community from the benefit does not bear a reasonable and just relation to a governmental purpose identified.” *Id.* at P24.

28. The community here is comprised of schoolchildren who were stripped of tuitioning they would have received were it not for the new restrictions imposed by Act 73.

29. Nothing in the policy outlined in Act 73 identifies any government purpose in excluding this community from the government benefit they previously received.

30. Denying Plaintiffs’ children the equal educational opportunity afforded similarly situated students bears no reasonable and just relation to any identified government purpose.

Count II

Act 73 violates the Common Benefits Clause and Plaintiffs are entitled to declaratory and injunctive relief and damages on behalf of themselves.

31. Count II is brought against both Secretary Saunders (in her official capacity) and the State of Vermont. Plaintiffs incorporate by reference all preceding paragraphs.

32. Separately from the harm it imposes on schoolchildren, Act 73 arbitrarily limits certain parents' ability to continue receiving town tuitioning for their children, even as similarly situated parents do receive town tuitioning. Plaintiffs seek a declaratory judgment to vindicate their own rights, and injunctive relief to give them access to town tuitioning.

33. Plaintiffs also seek damages to recoup any town tuitioning they would be eligible for were it not for the unconstitutional violations of their rights imposed by Act 73. Under our Supreme Court's precedent in *Zullo v. State*, 2019 VT 1, a plaintiff may seek damages "for state constitutional tort claims where (i) the relevant constitutional provision is self-executing and (ii) where the Legislature has failed to provide a meaningful alternative remedy." *A.V. v. Vt. Dep't for Child.*, 2025 Vt. Super. LEXIS 767, *17 (Vt. Super Ct. 2025). Here, the Common Benefits Clause, Chap. I, Art. 7, has been held to be self-executive. *See Baker*, 170 Vt. at 197–98. Similarly, while the Legislature has permitted individual school board tuitioning decisions to be appealed to the State Board, § 828(a)(7)(c), it has offered no remedy for the violations of Plaintiffs' rights.

34. The community here is comprised of parents who live in areas where there are no public schools and were stripped of tuition reimbursements they would have received were it not for the new restrictions imposed by Act 73. There is nothing in the policy outlined in Act 73 which identifies any government purpose in excluding this community from the government benefit they previously received. Denying Plaintiffs the benefits of town tuitioning bears no reasonable and just relation to any identified government purpose.

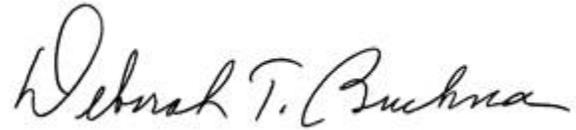
Prayer for Relief

WHEREFORE, Plaintiffs pray this Honorable Court:

1. Declare that Act 73 violates Article I, Section 7 and Article II, Section 68 of the Vermont Constitution by excluding independent schools from the town tuitioning system based on their proximity to public schools or their high enrollment of non-tuitioning system students.
2. Enjoin the Defendants from imposing Act 73's new restrictions on independent schools based on their proximity to public schools or their high enrollment of non-tuitioning system students.
3. Award damages for any town tuitioning Plaintiffs would have received but for Act 73's violation of their constitutional rights.
4. Award attorneys' fees and costs, where applicable.
5. Award any and all other relief which this Honorable Court deems just and equitable.

Dated: February 27, 2026

Respectfully Submitted,



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*Motion for pro hac vice forthcoming