

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

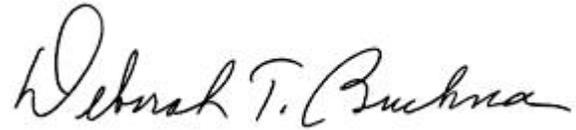
Defendants

Motion for Preliminary Injunction

Plaintiffs KOLLENE CASPERS and MICHELE OROSZ, by and through their attorneys, hereby move this Honorable Court under V.R.C.P. R. 7 to grant a preliminary injunction preventing enforcement of Act 73, currently codified in 16 V.S.A. § 828, during this litigation.

Dated: February 27, 2026

Respectfully Submitted,

A handwritten signature in black ink that reads "Deborah T. Bucknam". The signature is written in a cursive style with a large initial 'D'.

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Introduction

Vermont has offered town tuitioning to rural residents for nearly two centuries. Under the recently enacted Act 73, the State has imposed drastic and unprecedented new restrictions that cut off access to dozens of schools throughout the state. Plaintiffs, who are Vermont parents of schoolchildren eligible for town tuitioning, ask this Court to temporarily pause the challenged provisions while it adjudicates their claims brought under the Common Benefits Clause of the Constitution.

Plaintiffs are entitled to a preliminary injunction for three reasons: First, Plaintiffs, like thousands of other parents and children across Vermont, will suffer catastrophic and irreparable harm if Act 73's challenged provisions are allowed to go into effect. Second, while the Court need not adjudicate the underlying complaint yet, Plaintiffs are likely to succeed in their underlying challenge because both the text of the Common Benefits Clause and ironclad precedent support their position. And third, while the harm to third parties from not issuing a preliminary injunction will be profound, Defendants—the State and Education Secretary—will suffer only minor harm from a temporary injunction.

In addition, Plaintiffs ask this court to either impose a nominal security or waive the fee altogether, as they lack the ability to pay a higher fee and there is no financial necessity on the State's part.

Statement of Facts

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. Compl. ¶ 2. Signed into law by the governor on July 1, 2025—and set to impact Plaintiffs this coming fall—Act 73 amended § 828 to impose drastic new restrictions on the Vermont tuitioning system. Compl. ¶ 3–4.

Plaintiff Kollene Caspers lives in Georgia, Vermont, with her children, C.C.1 and C.C.2. Compl. ¶ 7. C.C.1 is a sophomore at Rice Memorial High School in Burlington, Vermont, where he receives town tuitioning. Compl. ¶ 9. C.C.2 is currently in eighth grade and wishes to join her brother at Rice Memorial next year. Compl. ¶ 10. However, Act 73 now bars town tuitioning from being spent on new admissions at Rice Memorial. Compl. ¶ 11.

A similar situation exists for Plaintiff Michele Orosz, mother of P.O., N.O., and B.O. Michele’s eldest child P.O. attends Rice Memorial. Compl. ¶ 14. N.O. and B.O. wish to attend as well once they reach high school. Compl. ¶ 15. However, Act 73 prevents Michele from obtaining town tuitioning for N.O. and B.O. to do so. *Id.*

Plaintiffs are asking for a preliminary injunction on two specific provisions of Act 73. First, they ask the Court to pause Act 73’s prohibition on school tuitioning vouchers from being spent at any school created after July 1, 2025. § 828(a)(2). Second, they ask the Court to pause Act 73’s ban on 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.*

This matter is especially urgent to the Caspers as C.C.2 must decide on where to attend high school by this summer.

Standard of Review

Under V.R.C.P. Rule 65, a “court may issue a preliminary injunction only on motion, and after notice and hearing at a time and place set by the clerk.” There are four “main factors” to determine whether a preliminary injunction should be granted: “(1) the threat of irreparable harm to the movant; (2) the potential harm to the other parties; (3) the likelihood of success on the merits; and (4) the public interest.” *Taylor v. Town of Cabot*, 2017 VT 92, P19. “The movant bears the burden of establishing that the relevant factors call for imposition of a preliminary injunction,” which is “never awarded as of right.” *Id.* (quoting *Winter v. NRDC*, 555 U.S. 7, 24 (2008)).

While generally a “security” is required to obtain a preliminary injunction, “for good cause shown and recited in the order, the court may waive” this requirement. V.R.C.P. Rule 65.

Argument

I. Vermont parents and children, including Plaintiffs, will suffer irreparable harm if Act 73’s challenged provisions are not enjoined.

Plaintiffs, like thousands of other parents and children across Vermont, will suffer irreparable harm if Act 73’s challenged provisions are allowed to go into effect.

“Irreparable harm ‘is perhaps the single most important prerequisite for the issuance of a preliminary injunction.’” *Chase v. State*, 2006 Vt. Super. LEXIS 25, *3 (Vt. Super. Ct. Washington Unit, Civil Div. July 21, 2006) (quoting *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002)). A moving party shows irreparable harm by demonstrating “that ‘there is a continuing harm which cannot be adequately redressed by final relief on the merits’ and . . . ‘money damages cannot provide adequate compensation.’” *Chase*, 2006 Vt. Super. LEXIS 25 at *3 (quoting *Kamerling*, 295 F.3d at 214); see also *State v. Big Brother Sec. Programs*, 2020 Vt. Super. LEXIS 27, *11 (Vt. Super. Ct. Chittenden Unit, Civil Div. Apr. 26, 2020) (“Irreparable harm generally means that the harm cannot be fully remedied at the end of the litigation—for example, by an award of money damages.”).

When evaluating whether to issue preliminary injunctions, the Vermont Supreme Court has highlighted the “impossibility of an acceptable remedy” post-litigation for minors who will reach adulthood over the course of litigation. *In re J.G.*, 160 Vt. 250, 256 (1993). This concern is so profound that the Vermont Supreme Court will even set aside trial court preliminary injunctions on the issue, even though (unlike in federal courts) the denial of a request for a preliminary injunction is “not ordinarily appealable,” *Hoban v. State*, 2005 Vt. Super. LEXIS 40, *3 (Vt. Super. Ct. Washington Unit, Civ. Div. Apr. 15, 2005). For example, the Supreme Court in *In re J.G.* made an exception for a minor attempting to challenge the transfer of his petty larceny case out of family court, as the minor would likely have turned eighteen during the duration of litigation. *In re J.G.*, 160 Vt. at 256.

While *J.G.* involved a criminal-adjacent matter, its holding should apply in educational context, as the “impossibility of an acceptable remedy” remains just as high. *Id.* at 256. *J.G.* was heavily relied upon in the *Taylor v. Town of Cabot* decision which established the “main factors” governing all preliminary injunction adjudication in the state. *Taylor*, 2017 VT 92 at P19; *see also Vermont State Emps.’ Ass’n v. State*, 2025 Vt. Super. LEXIS 263, *5–6 (Vt. Super. Ct. Washington Unit, Civil Div. Nov. 29, 2025) (one of a multitude of cases from this Court quoting *Taylor* verbatim).

Federal courts, which have an equivalent standard, have already held that “the *alleged* violation of a constitutional right . . . triggers a finding of irreparable harm,” *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (emphasis in original); *see also Brewer v. West Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744–745 (2d Cir. 2000) (“When an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary.”). This rule also applies to violations of constitutional-adjacent statutes and regulatory schemes designed to protect people’s fundamental rights. *Jolly*, 76 F.3d at 482 (“although the plaintiff’s free exercise claim is statutory rather than constitutional . . . [c]ourts have persuasively found that irreparable harm accompanies a substantial burden on an individual’s rights to the free exercise of religion under RFRA.”)

Even under the more stringent “abuse of discretion” standard, the Second Circuit has already found irreparable harm in a pre-Act 73 constitutional case where a student at Rice Memorial sought to participate in the Dual Enrollment

Program administered by Vermont’s Agency of Educational. *A.H. v. French*, 985 F.3d 165, 175 (2d Cir. 2021). Granting a preliminary injunction to the student, the court noted that “denial of a constitutional right ordinarily warrants a finding of irreparable harm, even when the violation persists for ‘minimal periods’ of time.” *Id.* at 184. The court also noted that “the issuance of a preliminary injunction advances Rice’s ability to attract talented students from Sending Districts who may also be interested in the DEP.”¹ *Id.* If a school suffers irreparable harm from a diminished ability to attract talented students, then Plaintiffs suffer even greater irreparable harm because of their own diminished educational options. Kollene Caspers and Michele Orosz allege constitutional violations under the Common Benefits Clause, both on behalf of themselves and on behalf of their children. C.C.2 will have to choose a high school at the start of this summer—a time when it is virtually certain litigation will still be ongoing, and when her brother will be receiving town tuitioning to attend Rice Memorial. The constitutional violation will thus be near-immediate. And, as Act 73 applies across the town of Georgia and the entire state, Rice Memorial will suffer a diminished pool of student talent if it goes into effect, even if the Caspers manage to scrounge up the funds to pay for C.C.2.

In summary, Act 73’s challenged provisions will result in irreparable harm if allowed to go into effect—and much of that harm *cannot* later be remedied.

¹ In *A.H.*, Rice Memorial’s parent organization joined the student as a plaintiff in *A.H. A.H.*, 985 F.3d at 165.

II. Plaintiffs are likely to succeed in showing Act 73 violates the Common Benefits Clause.

Plaintiffs are likely to succeed in their challenge because both the text of the Common Benefits Clause and ironclad precedent support their position.

If “the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme,” it must explain that it is likely to succeed in its underlying challenge. *Hagan v. City of Barre*, 2009 Vt. Super. LEXIS 27, *11–12 (Vt. Super. Ct. Wash. Unit, Civil Div. June 29, 2009).

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. 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)); *see also* Vt. Const. Ch. I, Art. 7 (the “Common Benefits Clause”).

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*). Instead, “Vermont children have a right to ‘substantial

equality of educational opportunity.” *Vitale*, 2023 VT 15 at P10 (emphasis in the original) (quoting *Brigham I*, 166 Vt. at 268).

Any type of legislation that singles out private entities for either special privilege or special disability must articulate a compelling governmental purpose which complies with the requirements of the Common Benefits Clause. *State v. Ludlow Supermarkets, Inc.*, 141 Vt. 261, 265 (1982) (“When [the Legislature] creates a special preference, or a special disability, for a class of persons, it should identify the characteristic that justifies the special treatment.”). A claim for a violation of the right to substantially equal educational opportunity consists of three elements. *Vitale* 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[n] 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.*

Here, Plaintiffs are likely to prevail in showing that Act 73 is unconstitutional under the Common Benefits Clause.

First, Act 73 harms schoolchildren and their parents by stripping them of tuitioning they would have received but for the Act. Second, when imposing Act 73, the General Assembly’s stated purpose was 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 does the exact opposite. It *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.” *Id.* Act 73 undermines stability and predictability with haphazard eligibility rules applied arbitrarily, subjectively, and on a regional and age basis. As town tuitioning is a program for rural communities that lack an in-district public school, Act 73’s new, unevenly-distributed restrictions create 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.*

Plaintiffs are likely to succeed in their case, because both the plain meaning of the Common Benefits Clause and longstanding precedent forbid discriminatory laws like Act 73.

III. While the harm to third parties from not issuing a preliminary injunction will be profound, the State will face minimal harm if the injunction is issued.

It is not just Plaintiffs who will benefit from the Court issuing a preliminary injunction: thousands of other children and parents across the state will benefit, too.

In contrast, the potential harm to the State and the Secretary will be mild, if it exists at all.

The analyses for the second and fourth factors, the “potential harm to the other parties” and the “public interest,” are often lumped together. *See e.g., Town of Pawlet v. Banyai*, 2021 Vt. Envtl. LEXIS 4, *6–8 (Vt. Super. Ct., Env’t Div. Jan. 21, 2021); *Bitumar USA Inc. v. Vt. Agency of Transp.*, 2014 Vt. Super. LEXIS 58, *12 (Vt. Super. Ct. Washington Unit, Civil Div. July 31, 2014). This is because the phrase “other parties” does not just mean the non-moving party in the litigation, but rather anyone who could face an externality from either the issuance or non-issuance of a preliminary injunction. In *Town of Pawlet v. Banyai*, for example, the Court issued a preliminary injunction closing a private firing range after weighing the second factor for the movant, not because of the harm to either of the litigants, but because of the “risk of potential harm” to third-party neighbors and pedestrians. *Pawlet*, 2021 Vt. Envtl. LEXIS 4 at *8.

“A preliminary injunction is meant to ‘preserve the relative positions of the parties until a trial on the merits can be held.’” *Swanson v. Vill. of Woodstock*, 2025 Vt. Super. LEXIS 162, *4 (Vt. Super. Ct. Windsor Unit, Civil Div. Aug. 7, 2025). Therefore, the “other parties” and “public interests” will often weigh in favor of injunctions seeking to pause drastic changes in government policy that are alleged to be unlawful. *Id.* In *Swanson v. Village of Woodstock*, for example, the Court blocked the appointment of a new police chief until it could evaluate claims that the old one’s removal was improper. *Id.* at *4–5. The Court acknowledged this

injunction burdened the government but still determined it preferable to preserve the status quo than risk the appearance that government actions were not taken “in accordance with the applicable laws and procedures.” *Id.*

Here, the harm from Act 73—much of which is irreparable—is not limited to Plaintiffs but impacts thousands of parents and students across the state. In nearly 40% of Vermont towns, particularly those where public schools are too remote, schoolchildren are reliant on publicly funded tuition assistance. Thousands of parents are in the same horrible situation as Kollene: trying to help an eighth grader prepare for high school without having any idea of what that high school will be. Thousands of children are in C.C.2’s unfortunate shoes: Unable to plan for the future because the educational opportunities their older siblings received have been stripped from them. And thousands of other children are in the same horrible circumstances as C.C.1 and P.O.: Having to suddenly reconsider their post-graduation plans because their family needs to redirect funds to send their younger siblings to their desired school.

The government cannot be harmed “when it is prevented from enforcing an unconstitutional statute.” *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 620 (7th Cir. 2004), *see also Newsom v. Albemarle County Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003) (“Surely, upholding constitutional rights serves the public interest.”). Even if Act 73 *were* constitutional, a preliminary injunction would impose only a minimal burden, if any, on the State and Secretary. Vermont’s town tuitioning system has run continuously since the mid-1800s. *Vitale v. State*, First Amended Complaint p. 1

(Vt. Super Ct. Orleans Unit Civil Div. Dec. 12, 2020) (215-12-20). It is, in fact, considered the longest running town tuitioning system in the country, if not the world. *See id.* Act 73 is a radical, abrupt departure from these centuries of tradition. It imposes drastic new restrictions not seen in the history of Vermont. Therefore, even if the State were ultimately to prevail, maintaining the status quo—that has existed since before houses had running water and electricity—will have little to no effect on the State.

In summary, while the potential harm to the State and Secretary from a preliminary injunction is minimal, the harm to other parents and children across Vermont from *not* issuing a preliminary injunction would be catastrophic.

IV. Security should be nominal or waived given the impossibility of Plaintiffs paying a higher fee and the lack of any financial necessity on the State’s part.

Security should either be nominal or waived, as Plaintiffs lack any ability to pay a higher fee and there is no financial necessity on the State’s part.

A Court should generally impose “security by the applicant [of a motion for a preliminary injunction], in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.” V.R.C.P. Rule 65(c). However, “the court may waive the giving of security” for “good cause.” V.R.C.P. Rule 65(c). “There is no necessary relationship between what the court may determine to be appropriate at the time of a preliminary injunction hearing and an amount that later may be shown to [be] ‘caused by the wrongful issuing of the injunction.’”

Downtown Barre Dev. v. C & S Wholesale Grocers, Inc., 2007 Vt. Super. LEXIS 59,

*5–6 (Vt. Super. Ct. Wash. Unit, Civil Div. March 1, 2007) (quoting a specific line from 12 V.S.A. § 4447 to make a more general point about how the court’s discretion in issuing injunctions).

V.R.C.P. Rule 65(c) is significantly laxer than the corresponding F.R.C.P. Rule 65(c), which states: “The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” This is noteworthy, as federal courts have routinely held that their Rule 65(c) is not mandatory and “the district court possesses discretion over whether to require the posting of security.” *Moltan Co. v. Eagle-Picher Indus.*, 55 F.3d 1171, 1176 (6th Cir. 1995); *see also International Controls Corp. v. Vesco*, 490 F.2d 1334, 1356 (2d Cir. 1974); *Ferguson v. Tabah*, 288 F.2d 665, 675 (2d Cir. 1961).

The reason for both Rule 65(c)s’ flexibility goes to their purposes. The “bond requirement serves a number of functions.” *Nokia Corp. v. Interdigital, Inc.*, 645 F.3d 553, 557 (2d Cir. 2011). It “assures the enjoined party that it may readily collect damages from the funds posted in the event that it was wrongfully enjoined, and that it may do so without further litigation and without regard to the possible insolvency of the plaintiff.” *Id.* It also “provides the plaintiff with notice of the maximum extent of its potential liability.” *Id.* As a result, courts are free to dispense with its requirements for a variety of reasons, such as when there has been “no proof of likelihood of harm,” or when “the injunctive order was issued to ‘aid and

preserve the court's jurisdiction over the subject matter involved.” *Ferguson*, 288 F.2d at 675 (quoting *Magidson v. Duggan*, 180 F.2d 473, 479 (8th Cir. 1950)); *see also International Controls*, 490 F.2d at 1356 (“the district court may dispense with security where there has been no proof of likelihood of harm to the party enjoined”).

This preliminary injunction will not impose any financial burden on the State. Plaintiffs are already eligible for town tuitioning, which means they live in districts without public schools. The only question is for which school they will use their town tuitioning dollars. Rice Memorial is paid for its town tuitioning students, at the average statewide announced high school tuition rate set by the State Board of Education. The Board determines the tuition rate by averaging the tuition charged by public schools in Vermont. The only schools within driving distance for Georgia students that are eligible for town tuitioning under Act 73 are public schools. Those public school districts typically charge the average statewide announced tuition for students from choice towns like Georgia: therefore, there is *no* additional financial burden on the State if the plaintiffs’ children attend Rice Memorial.

Plaintiffs, in contrast, will suffer extreme harm if asked to pay more than a nominal security fee. Kollene and Michele are working parents whose incomes are already stretched thin paying for ordinary household expenses. They cannot reasonably be expected to pay upfront their own children’s tuition for the next few years.

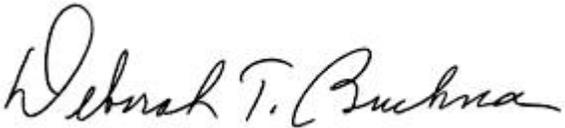
In summary, Plaintiffs lack any ability to pay a higher fee and there is no financial necessity on the State's part. For these reasons, security should either be nominal or waived entirely.

Conclusion

For the foregoing reasons, Plaintiffs Kollene Caspers and Michele Orosz, by and through their attorneys, hereby move this Honorable Court under V.R.C.P. R. 7 to grant a preliminary injunction preventing enforcement of Act 73, currently codified in 16 V.S.A. § 828, during this litigation, and ask that security be either nominal or waived entirely.

Dated: February 27, 2026

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*Motion for pro hac vice forthcoming