

State of Vermont

Superior Court

Civil Division

Washington Unit

Case No. 26-CV-01324

**Kollene Caspers, on behalf of herself and her child, C.C.2;  
Valerie Meichtry, on behalf of herself and her child, C.M.;  
Jessica Baker, on behalf of herself and her child J.B.;  
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

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**First Amended Complaint for Declaratory Judgment and Injunctive Relief**

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**INTRODUCTION**

Act 73 irreparably harms Plaintiffs Kollene Caspers, Valerie Meichtry, Jessica Baker, and Michelle Orosz, and their children, by denying them the equal benefits of Vermont's long-running town tuitioning system. But for the operation of Act 73, Plaintiffs and their children would, like other similarly situated families, have the unrestricted ability to use their town tuition vouchers at whichever qualified school they chose. Instead, Act 73 draws distinctions between Vermont families based on arbitrary *math, geography, and prior recipient status*, which denies them the ability to make this choice, while granting it to others. These distinctions between have no rational and just relation to the stated goals in enacting Act 73, failing the requirements of the Common Benefits Clause of the Vermont Constitution.

Therefore Plaintiffs, on behalf of themselves and their children, bring this Complaint for Declaratory and Injunctive Relief against Defendants State of Vermont and Vermont Secretary of Education Zoie Saunders.

### **JURISDICTION, VENUE, AND STANDING**

1. 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.

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

3. Plaintiffs seek a judicial declaration and injunction on behalf of themselves and their children for violations of their constitutional right to equal treatment under Vermont's Common Benefits Clause. *See Baker v. State*, 170 Vt. 194, 208 (1999).

### **PARTIES**

4. Plaintiff Kollene Caspers, the mother of C.C.1 and C.C.2., is a resident of Georgia, Vermont. C.C.1, is a sophomore at Rice Memorial High School in Burlington, Vermont, where he receives school tuitioning. C.C.2 is in eighth grade at Georgia Elementary & Middle School. But for Act 73, C.C.2 would, like her brother, be eligible to use town tuition at Rice Memorial this fall.

5. Plaintiff Valerie Meichtry, the mother of L.M., G.M., W.M., and C.M., is a resident of Searsburg Vermont. L.M., G.M., W.M. attend Grace Christian School, in Bennington, Vermont, where they receive school tuitioning. C.M. will be entering kindergarten this fall. But for Act 73, C.M. would, like her siblings, be eligible for town tuition at Grace Christian this fall.

6. Plaintiff Jessica Baker, the mother of J.B., is a resident of Georgia, Vermont. J.B. currently attends Mater Christi Middle School and is in the eighth grade. But for Act 73, J.B. would be eligible to use town tuition at Rice Memorial this fall.

7. Michele Orosz is the mother of three children: sixteen-year-old P.O., fifth grader N.O., and third grader B.O., and is a resident of Georgia, Vermont. P.O. is a junior at Rice Memorial, where he receives school tuitioning, and N.O. and B.O. both attend Georgia Elementary & Middle School. But for Act 73, N.O. and B.O. would, like their sibling, be eligible for town tuition at Rice Memorial.

8. Defendant Zoie Saunders, sued in her official capacity, is the Vermont Secretary of Education, and is responsible for enforcing Act 73.

9. Defendant State of Vermont, a state within the United States, is responsible for defending the Vermont Constitution and promulgating Act 73.

## **FACTUAL ALLEGATIONS**

### **A. Act 73 subverts Vermont's traditional town tuition system.**

10. Vermont's town tuition system is, according to some commentators, the longest running public tuitioning system in the country—if not the world.

11. In nearly 40% of Vermont towns children could previously attend approved schools with publicly funded town tuition assistance.

12. The only requirement to receive town tuition assistance was living in a supervisory district or union that did not operate a public school, after which the voucher could be used to attend the school of the family's choice, whether that school was in a supervisory district or union with a public school, or not.

13. But that all changed on July 1, 2025, when the Governor approved Act 73.

14. Act 73 amends 16 V.S.A. § 828 to create new distinctions regarding how parents and children who qualify for town tuitioning assistance can use those funds based on arbitrary *math, geography, and prior recipient status*.

15. While some families are still allowed to use their town tuition vouchers freely, hundreds, or thousands, of other Vermont families are denied this ability.

16. Specifically, Act 73 prohibits school tuitioning vouchers from being used at any school that did not have “at least 25 percent of its student enrollment composed of students attending on a district-funded tuition basis. . . during the 2023–2024 school year.” § 828(a)(2)(D).

17. In other words, if an independent school had below 25 percent town tuition enrollment in 2023–2024, new students are barred using town tuition assistance there.

18. By contrast, if a school had 25 percent or more town tuition enrollment in 2023–2024, the school is open to new students using town tuition.

19. Act 73’s geographic restriction also functions to bar otherwise eligible parents and students from using their town tuition vouchers at qualified independent schools within supervisory districts or supervisory unions in which public schools are available. § 828(a)(2)(C).

20. So, if an otherwise qualified school happens to be located in a supervisory district or supervisory union, the boundaries of which are arbitrarily drawn by the state, where there is an available public school, that school can no longer accept town tuition voucher from students.

21. Similarly, if a qualified school is in a supervisory district or union without a public school, but does not meet the 25 percent cut-off, otherwise eligible families are prohibited from using town tuition vouchers there.

22. Additionally, a “grandfather clause” guarantees that those already using public tuition vouchers at an independent school can continue to do so until they graduate. 2025 Vt. Laws No. 73, § 22 (H. 454).

23. But those who have not yet done so—even if they were long planning to do so next fall and were planning to follow in their siblings’ footsteps—are now prohibited from doing so.

24. As a result, Act 73 treats families and students differently in their access to a public benefit based on arbitrary *math, geography, and prior recipient status*.

**B. Act 73 denies equal benefits to Plaintiffs and their children.**

25. Kollene Caspers is the mother of C.C.1 and C.C.2.

26. C.C.1 is a sophomore at Rice Memorial High School in Burlington, Vermont, where he has used—and will continue to use—public tuitioning.

27. C.C.2 is in eighth grade at Georgia Elementary & Middle School.

28. C.C.2 is entering high school this fall and is planning to attend Rice Memorial.

29. But for Act 73, C.C.2 would, like her brother, be eligible for town tuition at Rice Memorial this fall.

30. But under Act 73 Kollene will have to come up with between \$15,000 and \$18,000 annually for C.C.2 to attend the same high school as her brother, even though

they live in the same household, and her brother will continue to attend for free.

31. Valerie Meichtry is the mother of L.M., G.M., W.M., and C.M.

32. L.M., G.M., and W.M. attend Grace Christian School, in Bennington, Vermont, where they have received—and will continue to receive—town tuition.

33. C.M. will be entering kindergarten this fall and is planning to attend Grace Christian.

34. But for Act 73, C.M. would, like her siblings, be eligible for town tuition at Grace Christian this fall.

35. But under Act 73 Valerie will have to come up with between \$15,000 and \$18,000 annually if she wants her daughter to attend the same elementary school as her siblings, even though they live in the same household, and the three older children will continue to attend for free.

36. Jessica Baker is the mother of J.B.

37. J.B. currently attends eighth grade at Mater Christi Middle School.

38. J.B. will be entering high school this fall and planned to attend Rice Memorial.

39. But for Act 73, J.B. would be eligible for town tuition at Rice Memorial this fall.

40. But under Act 73 Jessica will have to spend between \$15,000 and \$18,000 annually for him to attend Rice Memorial as planned.

41. Michele Orosz is the mother of three children: sixteen-year-old P.O., fifth grader N.O., and third grader B.O.

42. P.O. is a junior at Rice Memorial, where he has received—and will continue to receive—school tuitioning.

43. N.O. and B.O. both attend Georgia Elementary & Middle School.

44. Both N.O. and B.O. are planning to attend Rice Memorial like their older brother.

45. But for Act 73, N.O. and B.O. would, like their sibling, be eligible for town tuition at Rice Memorial.

46. But under Act 73 Michele will have to spend between \$30,000 and \$36,000 annually for both N.O. and B.O. to attend the same high school as their brother, even though they live in the same household, and he will continue to attend for free.

**C. Act 73 denies Vermonters across the state equal benefits.**

47. Absent this Court's intervention, Plaintiffs' story will play out for parents and children across the state.

48. As noted, children in nearly 40% of Vermont towns could previously attend approved independent schools with town tuition assistance.

49. But under Act 73, more than half of Vermont's independent schools will soon be ineligible to accept town tuition from students who, but for the statute, would be eligible to use the funding freely.

50. Approximately only 18 out of 48 independent schools remain eligible to accept town tuition, while more than 30 can no longer accept town tuition.

51. Of course, not all students are legally rejected.

52. Under Act 73, some students are allowed to use their funding at

independent schools based solely upon the arbitrarily determined location of the otherwise qualified independent school—or upon the town tuition funded enrollment at those schools two years ago.

53. Parents and students who wish to use their town tuition vouchers at an independent school are *prohibited* from doing so if that school’s town tuition funded enrollment was below 25 percent during the 2023–2024 academic year.

54. Parents and students who wish to use their town tuition vouchers at an independent school are *permitted* to do so if that school’s town tuition funded enrollment was 25 percent or higher during the 2023–2024 academic year.

55. Relatedly, parents and students who live in a district that contains an independent school with a 2023–2024 town tuition funded enrollment of 24 percent or less are *prohibited* from using their town tuition at that school.

56. Parents and students who live in a district that contains an independent school with a 2023–2024 town tuition funded enrollment of 25 percent or more, are *permitted* to use their town tuition at that school.

57. Additionally, a parent or child who has already used town tuition at an independent school can *continue* to do so.

58. A parent or child who has not already used town tuition at an independent school is *prohibited* from doing so—even if other children living in the same household are allowed to use their town tuition vouchers at the same independent school.

59. The only difference between parents and children harmed by Act 73, and those benefitted, are the arbitrary lines drawn by the government.

**D. Allegations applicable to requests for equitable relief.**

60. Act 73 imposes unequal treatment between parents and children who are, but for the distinctions created by Act 73, similarly situated to those parents and children who are eligible to freely use town tuition at independent schools.

61. In fact, several of Plaintiffs' children are harmed by Act 73, while others in the same household are unaffected.

62. Act 73 draws a distinction between parents and children who are eligible to use tuition assistance at independent schools and those who are not.

63. But for the intervention of this Court, Plaintiffs and their children will be denied equal treatment when the next school year begins this fall.

64. Kollene Caspers's child, C.C.2, is in eighth grade and will be prohibited from using her town tuition voucher at Rice Memorial this fall, even though her sibling will continue to do so.

65. Valerie Meichtry's child, C.M., is entering kindergarten this fall and will be prohibited from using her town tuition voucher at Grace Christian this fall, even though her siblings will continue to do so.

66. Jessica Baker's child, J.B., is in eighth grade and will be prohibited from using his town tuition voucher at Rice Memorial this fall.

67. Michele Orosz's children, N.O. and B.O., hope to attend Rice Memorial in the next several years, but will be prohibited from using their town tuition vouchers at Rice because of Act 73, even though their older sibling will continue to do so.

68. Plaintiffs ask this Court to declare the legal rights of parties with adverse

interests in a continuing controversy.

69. Preliminary and permanent injunctive relief is appropriate, as Plaintiffs and their children will suffer irreparable injuries to their constitutional rights under the Common Benefits Clause.

70. There is no adequate remedy at law for these imminent injuries.

## CAUSES OF ACTION

### Count I

#### Common Benefits Clause

#### Chap. I, Art. 7 of the Vermont Constitution

71. Plaintiffs re-allege and incorporate by reference all allegations contained in the foregoing paragraphs.

72. The Common Benefits Clause of the Vermont Constitution is intended to ensure that the benefits and protections conferred by the state are for the common benefit of the community. *Baker*, 170 Vt. at 212.

73. The Common Benefits Clause achieves this goal by ensuring “not only that everyone enjoy equality before the law . . . but also that everyone have an equal share in the fruits of the common enterprise.” *Id.* at 208–09.

74. Thus, at its core, the Common Benefits Clause “expressed a vision of government that afforded every Vermonter its benefit and protection and provided no Vermonter particular advantage.” *Id.*

75. In essence, the Common Benefits Clause functions as a prohibition on government favoritism and the distribution of government benefits based on political preferences. *Id.* at 208.

76. The chief right of those protected by the Clause is the right of *inclusion*.

77. Act 73 violates the Common Benefits Clause through its exclusion of Plaintiffs and other Vermont families from the free use of town tuition, which is granted to other Vermonters.

78. Establishing a Common Benefits inquiry consists of three steps: a court must (1) define the part of the community disadvantaged by the legal requirement; (2) identify the governmental purpose in excluding a part of the community from the benefit; and (3) ascertain whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose. *Id.* at 212-14.

79. First, the community disadvantaged by Act 73 are parents and children, including Plaintiffs, who are prohibited from freely using town tuition vouchers at independent schools that were once accessible to them.

80. This community is defined by the arbitrary mathematical, geographical, and previous recipient-based statuses Act 73 imposes.

81. Second, the government's goal in enacting Act 73 was to create "an exceptional educational system that is stable and predictable and where a student's home address does not dictate the quality of education they receive." 2025 Vt. Acts & Resolves No. 73, § 1(a)(6).<sup>1</sup>

82. While Act 73 does also include later statements regarding the legislative intent to take *future actions* in regard to education in Vermont, *see* 2025 No. 73

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<sup>1</sup><https://legislature.vermont.gov/Documents/2026/Docs/ACTS/ACT073/ACT073%20As%20Enacted.pdf>

§ 1(b)(1); (3)(A), (C), (E), these future ambitions are irrelevant to the specific intent regarding the challenged provisions contained in 16 V.S.A. § 828.

83. Third, the omission of members of the prohibited community from the benefit, protection, and security of Act 73 bears no reasonable and just relation to the governmental purpose of creating “an exceptional educational system that is stable and predictable and where a student’s home address does not dictate the quality of education they receive.”

84. For this issue, the Court can consider factors including: “(1) the significance of the benefits and protections of the challenged law; (2) whether the omission of members of the community from the benefits and protections of the challenged law promotes the government's stated goals; and (3) whether the part of the community receiving the benefit is significantly underinclusive or overinclusive.” *Baker*, 170 Vt. at 214.

85. While weighing these factors, courts must look to the “history and traditions from which the state developed as well as those from which it broke.” *Id.*

86. Vermont’s founders, long before the framing of the U.S. Constitution, chose to include a right to education, the only governmental service included in Vermont’s first Constitution of 1777.

87. Under the Education Clause of the Vermont Constitution, “Vermont children have a fundamental right to education.” *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, P11 (Vt. 2023).

88. And since 1869, one of the primary means used to achieve this

constitutional end has been Vermont's town tuition system.

89. In fact, the omission of members of the prohibited community from the benefits and protections of Act 73 undermines the statutes stated goals.

90. Instead of creating a stable system, the Act operates erratically: preventing parents from using town tuition for their children who intended to follow their siblings to the same independent schools.

91. Instead of creating a predictable system, the Act operates capriciously: parents and children now have no idea which independent schools can accept town tuition, because their eligibility can fluctuate based on an arbitrary mathematical cut-off.

92. Instead of education being decoupled from residency, Act 73 reinforces the link between a student's home address and their educational options.

93. Thus, Act 73's exclusion of the prohibited community does not create an exceptional education system; it undermines an exceptional education system that has been operating for over one hundred fifty years by arbitrarily treating similarly situated parents and children differently.

94. Weighing the relevant factors, including the "history and traditions from which the state developed as well as those from which it broke," Act 73 is hopelessly underinclusive.

95. The governmental goal of creating an exceptional education system provides no reasonable and just basis for denying the legal benefits and protections of the Common Benefits Clause to the excluded families, who are no differently

situated with respect to educating their children than their counterparts allowed to use the town tuition assistance freely.

96. As such, the Plaintiffs seek preliminary and permanent equitable relief against the Defendants on behalf of themselves and their children.

### **PRAYER FOR RELIEF**

Therefore, Plaintiffs respectfully request this Court order the following relief:

#### **A. Preliminary Injunction**

- A preliminary injunction against the Defendants to halt the imminent injuries to Plaintiffs' and their children's rights as a result of Act 73, under the Common Benefits Clause.

#### **B. Declaratory Relief**

- Declaring that, to the degree that Act 73 violates the Common Benefits Clause, it is unconstitutional, both as applied to Plaintiffs and facially.

#### **C. Permanent Injunction**

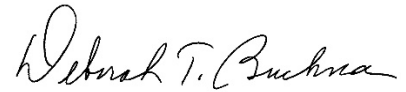
- A permanent injunction enjoining the Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, from engaging in any of the activities above the Court declares violate the Common Benefits Clause, as applied to Plaintiffs and facially.

#### **D. Fees, Costs, and Other Relief**

- A judgment awarding Plaintiffs their costs and attorneys' fees, to the extent permitted by law.
- Any and all further relief the Court deems just and proper.

Dated: May 8, 2026

Respectfully Submitted,



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