

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED

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WAKE CO., C.S.C.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

20-CVS-8346

TAMIKA WALKER KELLY, KRISTY MOORE,
AMANDA HOWELL, KATE MEININGER,
ELIZABETH MEININGER, JOHN SHERRY,
and RIVCA RACHEL SANOGUEIRA

Plaintiffs,

v.

STATE OF NORTH CAROLINA and NORTH
CAROLINA STATE EDUCATIONAL
ASSISTANCE AUTHORITY,

Defendants, and

PHILIP E. BERGER *in his official capacity as
President Pro Tempore of the North Carolina
Senate*, and TIMOTHY K. MOORE *in his official
capacity as Speaker of the North Carolina House
of Representatives*,

Intervenor-Defendants, and

JANET NUNN, CHRISTOPHER AND
NICHOLE PEEDIN, and KATRINA POWERS,

Intervenor-Defendants.

ORDER

ORDER ON MOTIONS TO DISMISS FOR LACK OF STANDING

THIS CAUSE comes before the Court on motions by Defendants State of North Carolina and North Carolina State Educational Assistance Authority (“State Defendants”), Intervenor-Defendants Philip Berger and Timothy Moore (“Legislative Intervenor-Defendants”), and Intervenor-Defendants Janet Nunn, Christopher and Nichole Peedin, and Katrina Powers (“Nunn Intervenor-Defendants”) to dismiss under N.C. Gen. Stat. § 1A-1, Rule 12(b)(1). Defendants all contend that Plaintiffs lack standing to advance their claims, and that dismissal is therefore required.

The Complaint

1. The Plaintiffs are seven North Carolina parents and taxpayers who contend that the Opportunity Scholarship Program (“the Program”), as implemented, violates various provisions of the North Carolina Constitution. Plaintiffs’ personal circumstances, including allegations regarding their religions, religious beliefs, and sexual orientations, are included in paragraphs 6-11, 50-102 of the Complaint.

2. Plaintiffs’ first claim for relief contends that the Program, as implemented, violates Article I, Sections 13 and 19 of the North Carolina Constitution. (Compl. ¶¶ 103-15.)

3. Plaintiffs’ second claim for relief contends that the Program, as implemented, violates Article I, Sections 13, 15, and 19, and Article V, Sections 2(1) and 2(7) of the North Carolina Constitution. (Compl. ¶¶ 116-25.)

4. Plaintiffs’ third claim for relief contends that the Program, as implemented, violates Article I, Section 15 and Article V, Sections 2(1) and 2(7). (Compl. ¶¶ 127-28.)

Analysis

1. When resolving a motion to dismiss for lack of standing, the Court must “view the allegations as true and the supporting record in the light most favorable to the non-moving party.” *Metcalf v. Black Dog Realty, LLC*, 200 N.C. App. 619, 625, 684 S.E.2d 709, 714 (2009). In the “analysis of standing, [courts] also consider that North Carolina is a notice pleading jurisdiction, and as a general rule, there is no particular formulation that must be included in a complaint or filing in order to invoke jurisdiction[.]” *Id.*

2. “The gist of the question of standing is whether the party seeking relief has alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Comm. to Elect Dan Forest v. Emps. Pol. Action Comm.*, 376 N.C. 558, 594–95, 853 S.E.2d 698, 725 (2021) (quoting *Stanley v. Department of Conservation and Development*, 284 N.C. 15, 28, 199 S.E.2d 641 (1973)).

3. “Notably, unlike in federal court, taxpayer status has long served as a basis for challenges alleging the unconstitutional or illegal disbursement of tax funds.” *Id.* at 594, 853 S.E.2d at 724. “The often-stated rule that a taxpayer has no standing to challenge questions of general public interest that affects all taxpayers equally does not apply where a taxpayer shows that the tax levied upon him is for an unconstitutional, illegal or unauthorized purpose; that the carrying out of the challenged provision will cause him to sustain, personally, a direct and irreparable injury; or that he is a member of the class prejudiced by the operation of the statute.” *Texfi Indus., Inc. v. City of Fayetteville*, 44 N.C. App. 268, 270, 261 S.E.2d 21, 23 (1979) (cleaned up), *aff’d*, 301 N.C. 1, 269 S.E.2d 142 (1980).

4. The “‘direct injury’ required in this context could be, but is not necessarily limited to, ‘deprivation of a constitutionally guaranteed personal right or an invasion of his property rights.’” *Forest*, 376 N.C. at 593, 853 S.E.2d at 724 (quoting *State ex rel. Summrell v. Carolina-Virginia Racing Ass’n*, 239 N.C. 591, 594, 80 S.E.2d 638 (1954).) “In the context of an action challenging the constitutionality of a legislative or executive action . . . the requirement for ‘direct injury’ or that the complaining party be ‘adversely affected’ by the action does not incorporate the ‘injury-in-fact’ requirement of federal law.” *Id.* at 595, n.40, 853 S.E.2d at 725.

5. The allegations in the Complaint meet Plaintiffs' burden of alleging that they have suffered a direct, personal injury sufficient to give them standing to raise their claims.

6. The allegations in the Complaint meet Plaintiffs' burden of alleging that they are members of classes prejudiced by the discriminatory actions they challenge, giving them an additional, separate basis for standing to raise their claims.

7. Plaintiffs' taxpayer status is sufficient to give them standing to raise their third claim for relief.

Order

For the foregoing reasons, the State Defendants' Amended Motion To Dismiss [Rule 12(b)(1)] is DENIED; the Legislative Intervenor-Defendants' First Amended Motion To Dismiss Pursuant To Rule 12(b)(1) is DENIED; and Parent-Intervenors' Amended Motion For Dismissal is DENIED.

DATED: 5-14-21



G. Bryan Collins, Jr.
Superior Court Judge Presiding