

STATE OF NORTH CAROLINA

COUNTY OF WAKE

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
20-CVS-8346

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

WAKE CO., N.C.
(Handwritten signature)

Plaintiffs,

v.

**PLAINTIFFS' MOTION TO
AMEND THE PLEADINGS**

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.

Plaintiffs respectfully move to amend their Complaint under North Carolina Rule of Civil Procedure 15(a). A copy of the proposed amended complaint is attached as Exhibit A. A red-lined copy of the amended complaint, reflecting the proposed changes between the original complaint and the amended complaint, is attached as Exhibit B.

Respectfully submitted this the 21st day of June 2021.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all parties by depositing a true copy thereof with the United States Postal Service, first class postage prepaid, addressed to the following:

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Exhibit A

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

WAKE COUNTY

SUPERIOR COURT DIVISION

FILE NO. 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 EDUCATION)
ASSISTANCE AUTHORITY,)

FIRST AMENDED COMPLAINT

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.)

INTRODUCTION

1. In 2013, the North Carolina General Assembly enacted a private school voucher program known as the “Opportunity Scholarship Program” (“the Program”). This lawsuit is an as-applied constitutional challenge to the Program.

2. The Program sends millions of taxpayer dollars to private schools. As implemented, many of the Program’s funds are directed to schools that divide communities on

religious lines, disparage many North Carolinians' faiths and identities, and coerce families into living under religious dictates.

3. The Program as implemented funds discrimination on the basis of religion. Families' ability to participate in the Program is limited by their religious beliefs and their willingness to cede control of their faith to a religious school.

4. The Program as implemented funds schools that discriminate against students and parents based on who they love or the gender they know themselves to be, and against those with religious beliefs that do not condemn homosexuality, bisexuality, or gender non-conformity.

5. The North Carolina Constitution declares that "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience." N.C. Const. Art. I, Sec. 13. The North Carolina Constitution also forbids the State from subjecting any person to discrimination "because of . . . religion[.]" N.C. Const. Art. I, Sec. 19. As implemented, the Program violates each of these constitutional commands.

THE PARTIES

6. Plaintiff Tamika Walker Kelly is a resident of Wake County, North Carolina, with one child who attends a Wake County public school. Ms. Walker Kelly has spent thirteen years working as a public school teacher in Cumberland County public schools. She currently serves as President of the North Carolina Association of Educators, a membership organization comprised of thousands of public school teachers, school administrators, and education support personnel in school districts throughout North Carolina. Ms. Walker Kelly is Catholic. She does not subscribe to many of the religious beliefs required for her child to be admitted to private

schools funded through the Program. Ms. Walker Kelly pays various types of taxes to the State of North Carolina.

7. Plaintiff Kristy Moore is a resident of Durham County, North Carolina, with two children who attend a Durham County public school. Ms. Moore has spent sixteen years working as a public school teacher in Durham public schools and recently served as Vice President of the North Carolina Association of Educators. Ms. Moore is a Baptist. She does not subscribe to many of the religious beliefs required for her children to be admitted to private schools funded through the Program. Ms. Moore pays various types of taxes to the State of North Carolina.

8. Plaintiff Amanda Howell is a resident of Randolph County, North Carolina, with two children who attend a Guilford County public school. Ms. Howell was raised a Christian and spent one year of her elementary school education at a Randolph County Christian school currently funded through the Program. Ms. Howell is no longer a Christian, and does not subscribe to many of the religious beliefs required for her children to be admitted to private schools funded through the Program. Ms. Howell pays various types of taxes to the State of North Carolina and qualifies for a voucher.

9. Plaintiffs Kate Meininger and Elizabeth Meininger are married residents of Cumberland County, North Carolina, with two children who attend a Cumberland County public charter school. Kate is not a Christian and Elizabeth is a Christian. Kate and Elizabeth are gay, are in a same-sex marriage, and do not maintain religious beliefs condemning homosexuality, bisexuality, gender non-conformity, or marriage equality. They pay various types of taxes to the State of North Carolina and qualify for a voucher.

10. Plaintiff John Sherry is a resident of Wake County, North Carolina. Mr. Sherry and his husband have two children, one of whom attends a Wake County public school. Mr. Sherry is gay, is in a same-sex marriage, and does not maintain religious beliefs condemning homosexuality, bisexuality, gender non-conformity, or marriage equality. Mr. Sherry pays various types of taxes to the State of North Carolina.

11. Plaintiff Rivca Rachel SaNogueira is a resident of Durham County, North Carolina. Ms. SaNogueira is Jewish and was raised in the Orthodox Jewish community. She spent the entirety of her pre-college education in largely unregulated private religious schools that provided her a deficient education. She dropped out of school in eleventh grade and later received her G.E.D from a public community college. She went on to earn her law degree from Duke University. Ms. SaNogueira has one child who attends a Durham County public school. She pays various types of taxes to the State of North Carolina and qualifies for a voucher.

12. Defendant State of North Carolina (“the State”), through its General Assembly, enacts local and general legislation, including the statute enacting the Program, codified at N.C. Gen. Stat. § 115C-562.1 *et seq.*

13. Defendant North Carolina State Education Assistance Authority (“Authority”) is an agency of the State created under N.C. Gen. Stat. § 116-203 and charged with the administration of and rulemaking for the Program, including the disbursement of funds to private schools.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter and the parties to this action because plaintiffs seek declaratory, injunctive, and other relief pursuant to the North Carolina

Constitution, the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 *et seq.*, and N.C. Gen. Stat. § 7A-245.

15. Venue is proper in Wake County under N.C. Gen. Stat. §§ 1-77 and 1-82 because plaintiff Sherry is a resident of Wake County and the causes of action arose, in part, in Wake County.

FACTS

I. The General Assembly Enacted the Program and Appropriated Taxpayer Funds into a Reserve Fund for the Program to the Detriment of Students in Public Schools.

16. On July 25, 2013, the General Assembly enacted a budget bill for fiscal years 2013-14 and 2014-15. On July 26, 2013, Governor Pat McCrory signed the bill into law. Section 8.29 of the bill created a voucher program for private schools (“the Program”).

17. In July 2016, the General Assembly vastly expanded the Program by enacting Session Law 2016-94. Section 11A.3 of Session Law 2016-94 created a new “Opportunity Scholarship Grant Fund Reserve” allowing unspent funds in the reserve to be carried forward to the next year, and increasing funding of the reserve by ten million dollars per year for the subsequent ten years.

18. The 2016 legislation mandated the amount to be appropriated to the fund in ensuing years, reaching a maximum of \$144,840,000 for fiscal years 2027-28 and beyond.

19. The Program is administered by Defendant North Carolina State Education Assistance Authority (“SEAA” or “Authority”).

20. Under the Program, SEAA awards grants of up to \$4,200 per student to private schools to pay for the student's tuition. Traditional public schools and public charter schools are not eligible to receive funds under the Program.

21. For the 2019-20 school year, students are eligible to have the State fund their private education if they are below the family income ceiling and meet one of the following criteria: (1) received a voucher for the previous year; (2) were a full-time student attending a North Carolina public school or Department of Defense school in North Carolina in the previous spring semester; (3) are entering kindergarten or first grade; (4) were in foster care or were adopted within the last year; or (5) have a parent on full-time active duty with the military. To participate in the Program for the 2020-2021 school year, a family of four must have had a gross family income in 2019 not exceeding \$64,465.

22. SEAA transfers funds to private schools by means of a direct deposit payment contingent on endorsement by the student's parent or guardian and the private school receiving the funds. This process creates a three-way contract between the State, the student's parent or guardian, and the private school.

23. When a student is selected to participate in the Program, they must secure admission to a participating school.

24. The General Assembly appropriated \$54,840,000 to the Program for fiscal year 2018-19 and \$64,840,000 for fiscal year 2019-20.

25. For the 2019-2020 school year, a total of 447 private schools received taxpayer funds.

26. SEAA prepared a list of the amount of funds directed to each private school through the Program, which is attached as Exhibit A.

27. During the 2019-2020 school year, the Program funded the enrollment of more than 12,000 students at private schools. SEAA prepared a list of the number of participating students attending each private school, attached as Exhibit B.

II. The Voucher Program as Implemented Has No Standards or Accountability.

28. Voucher schools are subject to almost no restrictions or obligations. As implemented, voucher schools and the Authority routinely disregard even those minimal requirements.

29. Voucher schools can be operated by inexperienced and unaccredited institutions, can hire unqualified and unsafe teachers and employees, can teach using haphazard and unproven methods, can fail to improve student knowledge and performance in any measurable way, and can discriminate in the admission and treatment of students on the basis of religion, socioeconomic status, physical or mental disability, gender identity, transgender status, sex, pregnancy, language ability, and sexual orientation.

30. Voucher schools are not required to be accredited by the Board of Education or any other state or national institution. There is no requirement that individuals, institutions, or companies that own or operate private schools have any experience or expertise in education. Owners and operators of private schools are not subject to open meeting laws or any other requirements to ensure that important decisions are explained and leaders held accountable to parents and the public.

31. Voucher schools are not required to employ teachers who are licensed by the State Board of Education. Their teachers are not required to have any particular credentials, degrees, experience, or expertise in education. Voucher schools are not required to monitor, evaluate, or measure the performance of their teachers in any way.

32. Voucher schools are required to conduct a criminal background check only for the staff member with the highest decision-making authority. No criminal background check is ever required for any other teacher or employee. Voucher schools are not required to determine whether their teachers and employees have criminal records.

33. Voucher schools are not subject to any requirements regarding the curriculum they teach. Voucher schools are not obligated to meet the requirements of the Common Core curriculum or any other recognized standard for the education of children.

34. Voucher schools are not required to commit to a full year of operation and may close at any time for any reason, including in the middle of the school year.

35. Voucher schools are not subject to any requirements for student achievement. Voucher schools must administer a “nationally standardized test” of their choosing, but there is no requirement that this test measure any particular level of educational achievement. The “nationally standardized test” must measure students in the areas of English and mathematics, but is not required to measure student proficiency in science, history, social studies, or any other subject. Voucher schools are not obligated to demonstrate any growth in student performance as measured by their chosen test.

36. Voucher schools with fewer than 25 students receiving vouchers are not obligated to make their test results public, and no private schools are obligated to reveal test results for their students who do not receive vouchers.

37. Voucher schools and the Authority fail to respect the few requirements imposed on them.

38. Voucher schools with 25 or more students receiving vouchers are statutorily obligated to report aggregate test results of voucher students to the State. However, as

implemented, many fail to do so and claim that the data would be meaningless even if reported. Neither the State nor the Authority impose any consequences on schools that fail to make the required report.

39. N.C. Gen. Stat. § 115C-562.7(c) requires that beginning in 2018, SEAA must report annually to the Department of Public Instruction regarding learning gains or losses of students receiving vouchers, and the competitive effects on public school performance on standardized tests as a result of the voucher program.

40. Violating its obligations under N.C. Gen. Stat. § 115C-562.7(c), SEAA has failed to make the required report. SEAA submitted the first annual report on December 1, 2018, attached as Exhibit C. The December 1, 2018 report was a single page. The report concluded that “evaluating and reporting learning gains and losses is not currently achievable,” reported no findings, and made no provision for further evaluation or reporting, in direct contravention of the statute.

41. In 2019, SEAA did not issue any report whatsoever, completely abdicating its statutory obligations.

III. The Voucher Program as Implemented Funds Discrimination on the Basis of Religion and Religious Beliefs and Interferes with Rights of Conscience.

42. In the 2019-2020 academic year, approximately 90% of Program funds supported religious schools. Many of these schools discriminate against students and their families on the basis of the families’ religious beliefs.

43. The five largest recipients of voucher funds for the 2019-2020 school year were Trinity Christian School in Fayetteville, Berean Baptist Academy in Fayetteville, Fayetteville Christian School, Liberty Christian Academy in Richlands, and Living Water Christian School in

Jacksonville, each of which is religious. Since the 2016-2017 academic year, these five schools have together received more than \$10 million in taxpayer funds through the Program.

44. Many voucher schools refuse admission to students whose beliefs do not conform with the school's official doctrine.

- a. For example, Berean Baptist Academy requires that “[a]pplying students must give a clear testimony of salvation.”
- b. Fayetteville Christian Academy's admissions criteria require that “[t]he student and at least one parent with whom the student resides must be in agreement with the FCS Statement of Faith and have received Jesus Christ as their Savior. . . . Accordingly, FCS will not admit families that belong to or express faith in religions that deny the absolute Deity/Trinity of Jesus Christ as the one and only Savior and path to salvation.”
- c. Living Water Christian “reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student” whenever the school, “predicated upon religious reasons, cannot effectively partner with the parent/guardian because of the divergence between the religious teachings of the School...and the beliefs, attitude, lifestyle or conduct of the parent/guardian.”
- d. These policies are not limited to the largest recipients of voucher funds. For example, to gain admittance to Vandalia Christian School in Greensboro, “[a]t least one of the parents must be ‘born-again’ as taught in the Bible” and “[h]igh school students must have accepted Christ as Savior to be admitted.”

- e. To gain admittance to Asheville Christian Academy, one parent or guardian must be a professing believer in Jesus Christ, agree with the doctrines espoused in the school's statement of faith, and give a testimony of faith in the application.
 - f. Burlington Christian Academy requires prospective students to sign their agreement to a "Statement of Faith" including numerous specific Christian religious tenets.
 - g. Shining Light Academy in Monroe requires that to gain admittance, "[a]t least one of the parents or guardians must be saved" and that "[a] student twelve or older must profess to be born again and live a life that demonstrates a commitment to the Lord."
 - h. Mintz Christian Academy in Roseboro provides that "those admitted into our school must be of the Christian faith."
 - i. To gain admittance to Coastal Christian High School in Wilmington, students must "exhibit a desire to grow in a relationship with Jesus Christ" and "must have one parent that has professed faith in Jesus Christ and is actively involved in a local church."
45. Many voucher schools reserve the right to discipline or expel students whose spiritual beliefs diverge from the school's official doctrine.
- a. For example, Berean Baptist Academy provides that "students who exhibit a hostile attitude toward the Bible [or] prayer . . . will be asked to transfer."
 - b. Liberty Christian Academy provides that "If at any time a student or his/her parents do not demonstrate support for the school, its policies, or its biblical stand, the

parents may be asked to take the child out of the school even though the child has not been an open discipline problem.”

- c. Living Water Christian School requires students to sign a “Student Agreement Conduct” including the statements “I believe and depend on the gospel, which is the power of God for salvation,” “I will submit to all authorities in the church that God has placed over me,” and “I will attempt to be an ambassador of Christ and His church wherever I am.” The school provides that failure to uphold each of these statements “may result in discipline, up to and including suspension or expulsion.”
- d. These policies are not limited to the largest recipients of voucher funds. For example, Community Christian School in Wilson provides that “[a]nyone who will not cooperate spiritually, morally, scholastically, or disciplinarily will be required to withdrawal [sic]. If the testimony of the student is detrimental at any time to Community Christian School, he/she may forfeit the privilege of being a student.”
- e. Shining Light Baptist Academy in Monroe states that “If an attitude of Christian humility and cooperation is not possible by either a student and/or parent, then the student will be dismissed immediately.”
- f. Antioch Christian Academy in Lumberton may ask students to withdraw if they are “found in default of Antioch Christian Academy’s ideals.”
- g. Calvary Christian Academy in Stokes County provides that “[a]rguing against a teacher about any area of our Statement of Faith will be grounds for immediate dismissal,” and provides that “[i]f a high school student voices an opinion contrary to our Statement of Faith (on or off school property), he may be asked not to return the next year or may be dismissed from school during the current year.”

46. Many voucher schools require students and their family members to conform their lifestyle to the school's religious dictates, both in and out of school.
- a. For example, Fayetteville Christian Academy provides that “students and families are expected to manifest a Christian lifestyle by living life according to Biblical teachings.”
 - b. Liberty Christian Academy provides that “[o]n occasions in which the atmosphere or conduct within a particular home or the activities of the student are counter to or in opposition to the biblical lifestyle the school teaches, the school reserves the right, within its sole discretion, to refuse admission of an applicant or discontinue enrollment of a current student.”
 - c. Living Water Christian School issues a “statement of doctrinal beliefs” and requires that “parents of our students must support these statements in their own lives/practices, live a lifestyle consistent with these practices before their children, and support the school in teaching these as moral truths.”
 - d. These policies are not limited to the largest recipients of voucher funds. For example, Temple Baptist School in Asheville requires parents to pledge to support the school by “separating my child from carnal movies and TV programs, rock music, dancing, and worldly literature.”
 - e. Fayetteville Street Christian School in Asheboro “reserves the right to have a student withdrawn or to expel any student who does not conform to the philosophical aims of the school” including through “any acts of immorality[.]”
 - f. Heritage Christian Academy in Zebulon “requires each student, whether at home, school, or elsewhere . . . to refrain from indecent language (including using the

Lord's name in vain), slang and vulgar expressions, . . . rock and/or other worldly music, and immoral conduct."

- g. Wayne Christian School in Goldsboro provides that "If at any time, parents/guardians act in a manner that demonstrate a lack of support for the School or its religious educational philosophy, or otherwise reflect a lack of cooperation and commitment to the home and School working together, Wayne Christian School has the right, in its sole discretion, to remove any student or to discontinue further enrollment of any student."
- h. Faith Christian Academy in Goldsboro requires both students and parents to "support the school in its distinct mission and Biblical beliefs" and "requires each student – whether at home, school, or elsewhere" to refrain from "dancing, immodest dress, and listening to and attending concerts that perform rock and roll, country, R&B, rap, hip-hop, or Christian music that violates the biblical principles of association, order, truth, or exaltation[.]"

47. Many voucher schools condemn homosexuality and bisexuality; forbid gay students and their family members from being open about their sexual orientation; threaten to expel gay, bisexual, or gender nonconforming students if they are open about their sexual orientation, gender identity, or transgender status; prohibit students from expressing support for LGBTQ rights; and require students to adopt religious beliefs that condemn LGBTQ rights.

- a. For example, Liberty Christian Academy reserves the right to "refuse admission of an applicant or discontinue enrollment of a current student" when the student is "living in, practicing, condoning, or supporting sexual immorality" including "homosexual acts; bisexual acts; gender identity different than the birth sex at the

chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.”

- b. Fayetteville Christian School requires that “all persons associated with FCS in any capacity, including employees, volunteers, parents/guardians, and students agree to and abide by [the school’s] Statement on Marriage, Gender, and Sexuality” which provides, *inter alia*, that “[r]ejection of one’s biological sex is a rejection of the image of God within that person,” that marriage “has only one meaning: the uniting of one man and one woman in a single, exclusive union,” and that any form of “sexual immorality . . . is sinful and offensive to God.”
- c. Living Water Christian School requires parents to “live a lifestyle consistent with” its statement of doctrinal beliefs, which includes the assertion that marriage is between “one man and one woman.” The school reserves “the right, in its sole discretion, to remove any student or to discontinue further enrollment of any student” if “at any time, parents/guardians act in a manner that demonstrate a lack of support for LWCS or its religious educational philosophy[.]”
- d. These policies are not limited to the largest recipients of voucher funds. For example, North Raleigh Christian Academy proclaims that “sexual relationships between persons of the same sex are immoral and sinful.” The school “reserves the right . . . to refuse admission of an applicant or discontinue enrollment of a current student” for “living in, practicing, condoning, or supporting . . . homosexual acts, bi-sexual acts; gender identity different than the birth sex at chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.”

- e. Jacksonville Christian Academy states that “Homosexual or transgender conduct, either as acts or identifying statements, is not compatible with employment or enrollment policy [sic] at Jacksonville Christian Academy ... and is a basis for immediate removal.” The school provides examples of statements that can result in a student’s immediate removal, including “I’m gay,” “I’m a homosexual,” “I have homosexual orientation” [sic], and “I am a transgender female/male.”
 - f. Crossroads Christian School in Henderson “retains the right to refuse enrollment to or to expel any student who engages in sexual immorality, including any student who professes to be homosexual/bisexual or is a practicing homosexual/bisexual, as well as any student who condones, supports, or otherwise promotes such practices.”
 - g. Woodland Baptist Christian School in Winston-Salem proclaims that “lesbianism/homosexuality ... is sin,” and that students “**WILL BE EXPELLED**” if they “Conduct their selves [sic] immorally by participating in lesbianism/homosexuality[.]”
48. Many voucher schools require students and their families to regularly attend services at certain religious institutions, and admit only students whose families are willing to regularly attend services at certain religious institutions.
- a. For example, Berean Baptist Academy requires that “[t]he parents and student must be faithful attendees at Berean Baptist Church or a church of ‘like’ faith.”
 - b. Living Water Christian School requires parents to agree to “worship the Lord regularly at a Bible-believing church.”

- c. These policies are not limited to the largest recipients of voucher funds. For example, Bethel Christian Academy in Kinston requires students in middle and high school to “weekly and regularly attend a Bible-believing church.”
- d. Asheville Christian School requires that “the student must reside with at least one parent who . . . is in active fellowship with a Bible-believing church.”
- e. Carolina Baptist Academy in Reidsville provides that “students and parents are expected to belong to and attend regularly a Bible-believing church. Regular, faithful church attendance must be maintained throughout the school year.”
- f. Liberty Christian School in Durham provides that students and their parents “are expected to faithfully attend a Bible-believing church weekly.”
- g. Tabernacle Christian School in Monroe requires parents to “agree to have our child in regular attendance in a Sunday School and church where God’s Word is preached, believed, and obeyed.”

49. At many voucher schools, mandatory religious services, activities, and instruction are a central and integral part of the school’s curriculum. Many of these schools purposefully shield their students from information deemed inconsistent with the school’s religious beliefs and disparage other religious faiths. Students are therefore required to pursue a specific spiritual path. Parents who are unwilling to accept having these schools’ religious beliefs instilled in their children therefore are necessarily excluded from participation.

- a. For example, Living Water Christian School provides chapel services that are “required for all students. Failure to attend will result in disciplinary action.”
- b. Berean Baptist Academy provides mandatory biblical instruction during each year of a child’s enrollment.

- c. These practices are not limited to the largest recipients of voucher funds. For example, An-Noor Academy of Raleigh’s “primary mission is to instill in our students a love for learning Qur’an and Sunnah,” its curriculum includes teaching students to memorize the Qur’an, and it requires all graduating students to recite the entirety of the Qur’an from memory.
- d. Lake Norman Christian School in Mecklenburg County has mandatory weekly chapel services, requires students to pledge allegiance daily to the Christian flag and the Bible, and requires graduating students to have memorized 180 Bible verses.
- e. The Bradford Academy in Burlington includes mandatory biblical instruction or theological instruction, including biblical memorization, in the curriculum for all students from kindergarten to 12th grade.
- f. First Assembly Christian School in Monroe requires “systematic Bible study and Bible memorization held in the classroom each morning” as well as compulsory chapel attendance each Friday morning.
- g. Victory Christian School in Elizabeth City provides an education “based on the truth of God’s Word” and informs prospective parents that “you can be assured [your child] will not be exposed to humanistic secular philosophies.”
- h. Word of God Christian Academy in Raleigh “teach[es] every subject from a Christian perspective,” and “stand[s] in opposition to the ‘progressive’ education predominately used in our public schools today, in which emphasis is upon... questioning authority, the innate goodness of man... [and] the relativity of all things[.]”

- i. First Assembly Christian School in Monroe provides that “[a]ll subjects are taught in the light of the Scriptures” and prohibits students from bringing to school “any magazines or books not approved by the teacher AND principal.”
- j. Community Christian School in Wilson provides that a student’s possession of “anti-Christian literature” counts as a disciplinary infraction at the same level as “possession of a weapon” or “distribution of prescription or nonprescription drugs.”

IV. The Program Subjects Plaintiffs to Religious Discrimination

Plaintiff Amanda Howell

50. Plaintiff Amanda Howell is a resident of Randolph County, North Carolina.

Plaintiff Howell is not a Christian, does not subscribe to Christian beliefs, and is not a member of any religious congregation. Plaintiff Howell meets the incomes requirements for a voucher.

51. In the 2019-20 school year, the Program funds eight Randolph County private schools, supporting the enrollment of 225 students.

52. Every private school in Randolph County is a Christian religious school. There are no private nonsectarian schools in Randolph County.

53. Many of the largest private schools in Randolph County publicly admit to discriminating on the basis of religion.

- a. Fayetteville Street Christian School in Asheboro maintains Christian “Articles of Faith” and reserves the right “to refuse admission to any student that they feel would not be in the best interest of the school or its belief” and to “expel any student who does not conform to the philosophical aims of the school.” The

school received \$137,723 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 39 students.

- b. Faith Christian School in Ramseur provides an education that “centers around God's Word and a personal relationship with Jesus Christ” with a “mission ... to educate and train servant-leaders for the kingdom of God.” To gain admittance, the school requires a recommendation from the prospective student’s pastor. The school received \$243,672 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 61 students.
- c. Bailey’s Grove Baptist School in Asheboro requires parents and students to be “faithful, active members of Bailey’s Grove Baptist Church (or a Church of like-faith and doctrine) and fully committed to its doctrinal position and ministry direction,” and has as its official motto: “Indoctrinate. Separate. Educate.” The school received \$258,090 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 63 students.
- d. Neighbors Grove Christian School in Asheboro provides that students are admitted based on the student and their parents’ “appreciation for Christian teachings and values and a willingness to support the Academy's Statements of Mission, Purpose, and Faith[.]” The school received \$31,262 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of eight students. The school has since ceased operations.
- e. Hope Baptist Christian Academy in Sophia maintains a detailed statement of faith providing that “the souls of unbelievers ... shall be cast into the Lake of Fire ... to suffer everlasting conscious punishment and torment.” To gain admission,

“prospective students must be a member of a family whose parent(s): agree with the doctrinal beliefs statement on the website, and have made a public profession of salvation . . . and either are members of or are in the process of becoming members of a local church with similar doctrinal beliefs.” The school received \$2,100 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of one student. The school has since ceased operations.

54. Upon information and belief, some or all of the remaining Randolph County private schools also discriminate on the basis of religion, even if they do not admit to doing so in public-facing documents.

55. Plaintiff Howell has two school-aged children. Plaintiff Howell’s son has autism. When Plaintiff Howell was enrolling her son in school, she realized that the Randolph County public school system did not have adequate resources to support him. Plaintiff Howell qualifies for a voucher, and has explored the possibility of sending her children to a private school. She is explicitly barred from having her children attend most Randolph County private schools because she is not a Christian.

56. Plaintiff Howell has no private school choices in Randolph County that are not Christian religious schools.

57. Although Plaintiff Howell otherwise qualifies for a voucher, she cannot send her children to any of the private schools in Randolph County because she is not a Christian, and because she is unwilling to cede control over her children’s faith to a religious school.

58. Plaintiff Howell enrolled her children in a public school in Guilford County that has adequate resources. Plaintiff Howell currently drives 45 minutes, each way, to take her children to school.

59. Plaintiff Howell's friends and neighbors have more publicly funded educational opportunities than Plaintiff Howell solely because of their religious beliefs.

60. Plaintiff Howell pays state taxes that the Program directs to schools that discriminate against her and others who are not Christian.

61. Plaintiff Howell pays state taxes that the Program directs to schools that use the funds to teach that she and others who are not Christian are condemned to hell.

62. The Program denies Plaintiff Howell and her children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiffs Kate Meininger and Elizabeth Meininger, Plaintiff Tamika Walker Kelly

63. Plaintiffs Kate Meininger and Elizabeth Meininger are residents of Cumberland County, North Carolina. The two women are married and have two children who attend a Cumberland County public school. They meet the income requirements for a voucher. Kate Meininger is not a Christian, and does not maintain Christian religious beliefs.

64. For the 2019-2020 school year, Plaintiff Tamika Walker Kelly was a resident of Cumberland County, North Carolina. Plaintiff Walker Kelly later moved to Wake County, where she currently resides. Plaintiff Walker Kelly is Catholic. Plaintiff Walker Kelly does not maintain the particular religious beliefs required to gain admission to many voucher schools. For example, Plaintiff Walker Kelly does not believe homosexuality is sinful, and supports marriage equality and LGBTQ rights.

65. In the 2019-20 school year, the Program funds the education of 1,349 students at 25 Cumberland County private schools.

66. Many of the largest private schools in Cumberland County publicly admit to discriminating on the basis of religion and sexual orientation.
- a. The Village Christian Academy has admissions standards including “an acceptance of Jesus Christ as Lord by one of the parents or guardian, and the student if age applicable.” It also maintains an “Essentials of Faith” that proclaims that marriage is “solely between a man and a woman” and that “no same-sex marriages, unions, affirmations, or endorsements” shall be “conducted or expressed” on its school or church property. The school received \$172,200 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 41 students.
 - b. Fayetteville Christian School “will not admit families that belong to or express faith in religions that deny the absolute Deity/Trinity of Jesus Christ as the one and only Savior and path to salvation” and teaches that those who are not saved “are lost unto the resurrection of damnation.” The school requires students and parents to “agree to and abide by” its belief that “‘marriage’ has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture.” The school received \$623,890 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 151 students.
 - c. Freedom Christian Academy has admission standards providing that “at least one of the parents (or legal guardian) should be a follower of Christ and active in a local church or seeking a church home.” The school proclaims that marriage is between “one man and one woman ... as delineated by scripture,” and seeks

students “who are living in a Biblically-appropriate family unit.” The school received \$481,723 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 118 students.

- d. Berean Baptist Academy only accepts students who “give a clear testimony of Salvation,” and requires that “parents and student must be faithful attendees at Berean Baptist Church or a church of ‘like’ faith.” The school states that marriage is between “one man and one woman” and provides that its “beliefs regarding human sexuality and marriage ... can factor in admissions decisions and continued enrollment[.]” The school received \$855,877 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 212 students.
- e. Northwood Temple Academy requires parents of prospective students to agree to abide by the school’s Christian moral standards, declares that marriage is between “one man and one woman,” and “retains the right to refuse enrollment or to require automatic withdrawal of any student who . . . is unable to support the moral principles of the school” or “if a parent engages in sexual immorality, including any who practice, promote, and/or condone homosexual/ bisexual/ transgendered [sic] behavior[.]” The school received \$480,620 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 119 students.
- f. Cornerstone Christian Academy “reserves the right to refuse admission to any student from a family who cannot be supportive of the major doctrines that will be taught at the Academy” in order to “prevent spiritual confusion.” The school also

“reserves the right ... to refuse admission to an applicant or discontinue enrollment of a current student” who is “living in, condoning, or supporting any form of sexual immorality” or is “practicing or promoting a homosexual lifestyle or alternative gender identity[.]” The school received \$354,259 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 89 students.

- g. Riverside Christian Academy is “committed to providing a Christ-centered education promoting leaders in God’s Kingdom” and “reserves the right to select students on the basis of ... religious commitment [and] lifestyle choices[.]” The school also proclaims that “to help guard your children’s minds against the licentious attitudes fostered by popular education, any anti-Christian behavior such as homosexuality and abortion is exposed for what it is.” The school received \$200,340 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 52 students.
- h. Renaissance Classical Christian Academy practices a “biblical philosophy of admissions,” proclaims that marriage is between “one man and one woman,” and for applying students, requires “at least one parent or guardian to give a credible profession of faith in Jesus Christ as their personal Lord and Savior, and be a regular attendee or member of a Christian church.” The school received \$166,641 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 42 students.

67. Upon information and belief, many other Cumberland County private schools discriminate on the basis of religion even when they do not admit to doing so in public-facing documents.

68. Upon information and belief, many other Cumberland County private schools discriminate on the basis of sexual orientation and beliefs regarding sexual orientation, even when they do not admit to doing so in public-facing documents.

69. The Meiningers have struggled to find a school in which one of their children will thrive. They qualify for a voucher, and in exploring their educational options, they looked into local private schools. They realized that nearly all of their choices were Christian religious schools. They realized that many private schools explicitly barred their children from admission because Kate is not a Christian, because neither Kate nor Elizabeth adhere to the religious doctrines maintained by the schools, because they are in a same-sex marriage, and because they do not believe that homosexuality is sinful. The Meiningers wanted to send at least one of their children to a private school, contacted schools funded by Program to inquire about enrollment, and were told that their children could not attend because of the schools' exclusionary policies.

70. The Meiningers' friends and neighbors have more publicly funded educational opportunities than the Meiningers because of their religious beliefs.

71. The Meiningers' friends and neighbors have more publicly funded educational opportunities than the Meiningers because of who they love.

72. The Meiningers pay state taxes that the Program directs to schools that discriminate against members of their faith and sexual orientation.

73. The Meiningers pay state taxes that the Program uses to fund religious instruction teaching that they, others who are not Christian, and others who are in same-sex relationships are condemned to hell.

74. The Program denies the Meiningers' and their children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported religious discrimination.

75. Plaintiff Walker Kelly cannot enroll her child in many voucher-funded private schools even though she is a Christian because she does not maintain many of the religious beliefs required by the voucher-funded private schools.

76. Plaintiff Walker Kelly pays state taxes that the Program directs to schools that discriminate against her and against others who do not maintain the particular religious beliefs required by the voucher-funded private schools.

77. Plaintiff Walker Kelly pays state taxes that the Program uses to fund religious instruction teaching that she and others who do not subscribe to particular religious tenets are condemned to hell.

78. The Program denies Plaintiff Walker Kelly the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiff John Sherry

79. Plaintiff John Sherry is a resident of Wake County, North Carolina. Plaintiff Sherry has two children, one of whom is a student in the Wake County Public School system.

80. Plaintiff Sherry is gay and is in a same-sex marriage. He believes marriage should be between two consenting adults, regardless of their gender. He does not maintain

religious beliefs that condemn same-sex marriages, homosexuality, bisexuality, or gender nonconformity.

81. In the 2019-2020 school year, the Program funds 50 Wake County private schools, supporting the enrollment of 972 students.

82. Many private schools in Wake County publicly admit to discriminating against students on the basis of their or their parent's sexual orientation and gender identity, and require students to adopt religious beliefs that condemn homosexuality, bisexuality, and gender nonconformity.

- a. Raleigh Christian Academy professes that homosexuality is a “sinful perversion[] of God’s gift of sex” and that “any actions or identifying statements concerning . . . homosexuality, lesbianism, [or] bisexuality” will “not . . . be tolerated in any form and will constitute grounds for expulsion.” The school received \$283,500 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 69 students.
- b. Wake Christian Academy reserves the right to “refuse admission of an applicant” when the “atmosphere or conduct within a particular home . . . are counter to or in opposition to the biblical lifestyle the school teaches,” including “homosexual acts, bisexual acts, gender identity different than the birth sex, promoting such practices, or otherwise the inability to support the moral principles of the school.” The school received 228,060 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 57 students.
- c. North Raleigh Christian Academy’s “Biblical Morality Lifestyle Statement” proclaims that “sexual relationships between persons of the same sex are immoral

and sinful” and provides that “[a]s a parent ... acceptance of admission means I have read the school’s biblical morality policy and agree to abide by it.” The school “retains the right to refuse enrollment or to discontinue enrollment of any student who ... professes to be homosexual/bisexual/transgender ... and/or any student who condones, supports, or otherwise promotes such practices[.]” The school received \$218,139 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 52 students.

- d. Friendship Christian School Raleigh “retains the right to refuse enrollment to or to expel any student who engages in sexual immorality, including any student who professes to be homosexual/bisexual or is a practicing homosexual/bisexual, as well as any student who condones, supports, or otherwise promotes such practices[.]” The school received \$184,800 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 44 students.
- e. Iron Academy in Raleigh reserves the right to “refuse admission of an applicant” when the “atmosphere or conduct within a particular home is counter to or in opposition to the biblical lifestyle that the school teaches” including “practicing a homosexual lifestyle or alternative gender identity; promoting such practices; or otherwise having the inability to support the biblical principles of the school.” The school received \$21,000 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of five students.

83. Upon information and belief, many other private schools in Wake County discriminate on the basis of sexual orientation, gender identity, and transgender status, and on the

basis of students' and parents' religious beliefs regarding sexual orientation and gender identity, even when they do not admit to doing so in public-facing documents.

84. Plaintiff Sherry cannot enroll his children in many voucher-funded private schools because he is gay; supports gay marriage; is married to a man; and does not believe that homosexuality, bisexuality, or gender nonconformity are sinful.

85. Plaintiff Sherry's friends and neighbors have more publicly funded educational opportunities than Plaintiff Sherry because of their beliefs regarding marriage, sexual orientation, and gender identity.

86. Plaintiff Sherry's friends and neighbors have more publicly funded educational opportunities than Plaintiff Sherry because of who they love.

87. Plaintiff Sherry pays state taxes that the Program directs to schools that discriminate against Plaintiff Sherry and others who are gay, bisexual, or gender non-conforming, and that discriminate against Plaintiff Sherry and others whose religious beliefs condone and support homosexuality, bisexuality, and gender non-conformity.

88. Plaintiff Sherry pays state taxes that the Program directs to schools that teach he is a sinner because of who he loves.

89. The Program denies Plaintiff Sherry and his children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiff Rivca SaNogueira, Plaintiff Kristy Moore

90. Plaintiff Rivca Rachel SaNogueira is a resident of Durham County, North Carolina. Plaintiff SaNogueira is Jewish, is raising her daughter in the Jewish faith and tradition,

and is active in her synagogue. Plaintiff SaNogueira is not a Christian, does not subscribe to Christian beliefs, and is not a member of a Christian religious community.

91. Plaintiff Kristy Moore is a resident of Durham County, North Carolina. Plaintiff Moore is Baptist, is raising her children in the Baptist faith, and is a member of a Baptist Church. Plaintiff Moore does not maintain the particular religious beliefs required to gain admission to many voucher schools. For example, Plaintiff Moore does not believe homosexuality is sinful, and supports marriage equality and LGBTQ rights.

92. In the 2019-20 school year, the Program funds nineteen Durham County private schools, supporting the enrollment of 411 students.

93. Many of the largest private schools in Durham County publicly admit to discriminating on the basis of religion.

- a. Bethesda Christian Academy in Durham is “a discipleship school seeking to partner with Christian families[.]” The school’s admissions policy has “Spiritual Requirements” asking that parents “share the testimony of their salvation experience” and “read and support” the school’s statement of faith, which includes numerous Christian religious tenets. The school “reserves the right . . . to refuse admission of an applicant or discontinue enrollment of a current student” if “the atmosphere or conduct within a particular home or the activities of the student are counter to . . . the biblical lifestyle the school teaches,” including “living in, practicing, condoning, or supporting . . . homosexual acts, bi-sexual acts; gender identity different than the birth sex at the chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.” Bethesda Christian Academy received \$130,074 through

the Program for the 2019-2020 school year, supporting the enrollment of 32 students.

- b. Liberty Christian School in Durham is a “ministry of Liberty Baptist Church” that “reserves the right to dismiss any student who does not respect its spiritual standards.” Any family that “withdraws fellowship from Liberty Baptist Church or is critical of the church or its ministries may lose the privilege of the ministry of Liberty Christian School.” Liberty Christian received \$379,090 through the Program for the 2019-2020 school year, supporting the enrollment of 94 students.
- c. Mount Zion Christian Academy in Durham requires student applicants and their parents to sign a “Statement of Faith,” swearing that they are in agreement with various Christian tenets. Mount Zion received \$419,580 through the Program for the 2019-2020 school year, supporting the enrollment of 106 students.
- d. Fellowship Baptist Academy in Durham only admits students who are “members of Fellowship Baptist Church” or who “attend other Bible-believing churches[.]” The school received \$166,865 through the Program for the 2019-2020 school year, supporting the enrollment of 47 students.
- e. To enroll in Gorman Christian Academy in Durham “[p]arents and students must agree with the school's mission” and “statement of faith,” and parents must sign a “spiritual and doctrinal commitment” stating that they “believe that Jesus is the Son of God, was born of a virgin, was wholly God and man, lived a sinless life, died in our place as a sacrifice for the sins of mankind, was buried, arose from the grave and ascended into Heaven.” The school professes that “those persons who die . . . without Christ spend eternity in Hell[.]” Gorman Christian Academy

received \$67,200 through the Program for the 2019-2020 school year, supporting the enrollment of 16 students.

- f. Cresset Christian Academy in Durham requires parents of applicants to “agree to support the statement of faith and the Christian philosophy of education.”

“Flaunting participation in a non-Christian lifestyle” is considered a “major offense[]” in line with “threats to harm others” and “[d]efacing school property,” and may result in suspension or dismissal. Cresset Christian Academy received \$9,240 through the Program for the 2019-2020 school year, supporting the enrollment of three students.

94. Upon information and belief, additional Durham County private schools also discriminate on the basis of religion, even if they do not admit to doing so in public-facing documents.

95. Plaintiff SaNogueira cannot enroll her child in many voucher-funded private schools because she is Jewish, because she is not a Christian, and because she does not maintain many of the religious beliefs required by voucher-funded private schools.

96. Plaintiff SaNogueira pays state taxes that the Program directs to schools that discriminate against her, against others who are not Christians, and against others who do not maintain the religious beliefs required by the voucher-funded private schools.

97. Plaintiff SaNogueira pays state taxes that the Program uses to fund religious instruction teaching that she and others who are not Christian are condemned to hell.

98. The Program denies Plaintiff SaNogueira the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

99. Plaintiff Moore cannot enroll her children in many voucher-funded private schools even though she is a Christian because she does not maintain many of the religious beliefs required by the voucher-funded private schools.

100. Plaintiff Moore pays state taxes that the Program directs to schools that discriminate against her and against others who do not maintain the religious beliefs required by the voucher-funded private schools.

101. Plaintiff Moore pays state taxes that the Program uses to fund religious instruction teaching that she and others who do not subscribe to particular religious tenets are condemned to hell.

102. The Program denies Plaintiff Moore the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

FIRST CLAIM FOR RELIEF

As applied challenge under Article I, Sections 13 and 19 of the North Carolina Constitution:
Religious Discrimination and Interference with Rights of Conscience

103. The foregoing allegations are incorporated by reference.

104. Article I, Section 13 of the North Carolina Constitution provides: “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.”

105. Article I, Section 19 of the North Carolina Constitution forbids the State from subjecting any person to “discrimination . . . because of race, color, religion, or national origin.”

106. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by funding educational opportunities that are conditioned on the Plaintiffs and their family members:

- a. Claiming to be a member of a school's religious faith and espousing its religious beliefs;
- b. Ceding control of their religious beliefs to a school;
- c. Accepting inculcation in their children of the school's religious beliefs;
- d. Refusing to express religious beliefs inconsistent with a school's;
- e. Participating in prescribed religious activities and rituals;
- f. Maintaining active membership in certain religious communities;
- g. Adopting beliefs that disavow gay, lesbian, bisexual, and transgender rights and identities;
- h. Concealing their sexual orientation, gender identity, and transgender status; and
- i. Conforming their lives and lifestyles to the school's religious beliefs.

107. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by creating a "school choice" program in which the scope of a student's choice is limited by the student and their family members':

- a. religious beliefs;
- b. participation in religious activities and rituals;
- c. membership in a religious community; and
- d. conformity with religious lifestyle dictates.

108. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by funding schools that condition enrollment on the adoption of religious beliefs condemning homosexuality, bisexuality, and gender nonconformity.

109. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by directing their taxpayer dollars to schools that discriminate against members of Plaintiffs' faiths.

110. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by facilitating the division of communities on the basis of religion and by denying Plaintiffs the social, professional, business, political, educational, and spiritual benefits of living in a community free from state-supported religious discrimination.

111. The Program's beneficiaries are defined by their religion.

112. The Program controls and interferes with rights of conscience.

113. The Program uses taxpayer funds to create a Program in which a citizen's ability to participate depends on the nature of the citizen's religious beliefs.

114. As implemented and as applied, the Program violates Article I, Sections 13 and 19 of the Constitution.

SECOND CLAIM FOR RELIEF

As applied challenge under Article I, Sections 13, 15, and 19; Article V, Sections 2(1) and 2(7) of the North Carolina Constitution

115. The foregoing allegations are incorporated by reference.

116. Article I, Section 15 of the North Carolina Constitution provides "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."

117. Article V, Section 2(1) of the North Carolina Constitution provides: “The power of taxation shall be exercised in a just and equitable manner, for public purposes only.”

118. Article V, Section 2(7) of the North Carolina Constitution provides: “The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.”

119. The Program funds private schools that compel their students and their family members to adopt certain religious beliefs, including through threats of discipline and expulsion. The Program renders students’ continued education contingent on their willingness to adopt and maintain certain religious beliefs, and to conform with religious lifestyle requirements. As implemented, the Program therefore does not accomplish a public purpose, controls and interferes with rights of conscience, and violates the State’s duty to guard and maintain students’ right to the privilege of an education.

120. The Program funds schools that discriminate on the basis of religion, and renders students’ publicly-funded educational opportunities contingent on the nature of a student’s religious beliefs. As implemented, the Program therefore does not accomplish a public purpose, interferes with rights of conscience, and violates the State’s duty to guard and maintain students’ right to the privilege of an education.

121. The Program funds schools that discriminate on the basis of sexual orientation, gender identity, and transgender status, and renders the breadth of a students’ publicly-funded educational opportunities contingent on the student and their parents’ sexual orientation, gender identity, and transgender status, and therefore does not accomplish a public purpose, interferes

with rights of conscience, and violates the State's duty to guard and maintain students' right to the privilege of education.

122. The Program funds schools that condition students' enrollment on grounds that are arbitrary, capricious, discriminatory, or otherwise contrary to the public policy of the State, and therefore does not accomplish a public purpose, interferes with rights of conscience, and violates the State's duty to guard and maintain students' right to the privilege of an education.

123.

124. The Program as implemented and as applied violates Article I, Sections 13, 14, and 19, and Article V, Sections 2(1) and 2(7).

THIRD CLAIM FOR RELIEF

As applied challenge under Article I, Section 15; Article V, Section 2(1) and 2(7)
of the North Carolina Constitution

125. The foregoing allegations are incorporated by reference.

126. The transfer of taxpayer funds to private schools without any accountability or requirements ensuring that students will actually receive an education is not for the purpose of education or for any other public purpose.

127. As implemented, the State has failed to ensure that schools participating in the Program afford students any educational benefits whatsoever.

128. Distributing taxpayer funds to schools in an arbitrary and capricious manner unrelated to educational objectives is not a valid exercise of constitutional authority.

129. As implemented, SEAA has abdicated its statutory obligations regarding oversight of the Program.

130. The Program as implemented and as applied violates Article 1, Section 15, and Article V, Sections 2(1) and 2(7) of the North Carolina Constitution.

PRAYER FOR RELIEF

Plaintiffs request that the Court:

- (1) Declare that the Program as implemented and as applied is unconstitutional under the North Carolina Constitution;
- (2) Enter injunctive or other relief sufficient to redress the constitutional violations identified;
- (3) Award plaintiffs costs pursuant to N.C. Gen. Stat. § 1-263;
- (4) Award such other and further legal and equitable relief as this Court deems necessary, just, and proper.

This the ____ day of June, 2021.

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Exhibit B

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

WAKE COUNTY

FILE NO. [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 EDUCATION 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.

FIRST AMENDED COMPLAINT

INTRODUCTION

1. In 2013, the North Carolina General Assembly enacted a private school voucher program known as the “Opportunity Scholarship Program” (“the Program”). This lawsuit is an as-applied constitutional challenge to the Program.

2. The Program sends millions of taxpayer dollars to private schools ~~without imposing any meaningful educational requirements~~. As implemented, many of the Program’s

funds are directed to schools that divide communities on religious lines, disparage many North Carolinians' faiths and identities, and coerce families into living under religious dictates.

3. The Program as implemented funds discrimination on the basis of religion. Families' ability to participate in the Program is limited by their religious beliefs and their willingness to cede control of their faith to a religious school.

4. The Program as implemented funds schools that discriminate against students and parents based on who they love or the gender they know themselves to be, and against those with religious beliefs that do not condemn homosexuality, bisexuality, or gender non-conformity.

5. The North Carolina Constitution declares that "All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience." N.C. Const. Art. I, Sec. 13. The North Carolina Constitution also forbids the State from subjecting any person to discrimination "because of . . . religion[.]" N.C. Const. Art. I, Sec. 19. As implemented, the Program violates each of these constitutional commands.

THE PARTIES

6. Plaintiff Tamika Walker Kelly is a resident of ~~Wake~~Cumberland County, North Carolina, with one child who attends a ~~Cumberland~~Wake County public school. Ms. Walker Kelly has spent thirteen years working as a public school teacher in Cumberland County public schools. She currently serves as President of the North Carolina Association of Educators, a membership organization comprised of thousands of public school teachers, school administrators, and education support personnel in school districts throughout North Carolina. Ms. Walker Kelly is Catholic. She does not subscribe to many of the religious beliefs required

for her child to be admitted to private schools funded through the Program. Ms. Walker Kelly pays various types of taxes to the State of North Carolina.

7. Plaintiff Kristy Moore is a resident of Durham County, North Carolina, with two children who attend a Durham County public school. Ms. Moore has spent sixteen years working as a public school teacher in Durham public schools and recently served as Vice President of the North Carolina Association of Educators. Ms. Moore is a Baptist. She does not subscribe to many of the religious beliefs required for her children to be admitted to private schools funded through the Program. Ms. Moore pays various types of taxes to the State of North Carolina.

8. Plaintiff Amanda Howell is a resident of Randolph County, North Carolina, with two children who attend a Guilford County public school. Ms. Howell was raised a Christian and spent one year of her elementary school education at a Randolph County Christian school currently funded through the Program. Ms. Howell is no longer a Christian, and does not subscribe to many of the religious beliefs required for her children to be admitted to private schools funded through the Program. Ms. Howell pays various types of taxes to the State of North Carolina and qualifies for a voucher.

9. Plaintiffs Kate Meininger and Elizabeth Meininger are married residents of Cumberland County, North Carolina, with two children who attend a Cumberland County public charter school. Kate is ~~a Muslim~~ not a Christian and Elizabeth is a Christian. Kate and Elizabeth are gay, are in a same-sex marriage, and do not maintain religious beliefs condemning homosexuality, bisexuality, gender non-conformity, or marriage equality. They pay various types of taxes to the State of North Carolina and qualify for a voucher.

10. Plaintiff John Sherry is a resident of Wake County, North Carolina. Mr. Sherry and his husband have two children, one of whom attends a Wake County public school. Mr. Sherry is gay, is in a same-sex marriage, and does not maintain religious beliefs condemning homosexuality, bisexuality, gender non-conformity, or marriage equality. Mr. Sherry pays various types of taxes to the State of North Carolina.

11. Plaintiff Rivca Rachel SaNogueira is a resident of Durham County, North Carolina. Ms. SaNogueira is Jewish and was raised in the Orthodox Jewish community. She spent the entirety of her pre-college education in largely unregulated private religious schools that provided her a deficient education. She dropped out of school in eleventh grade and later received her G.E.D from a public community college. She went on to earn her law degree from Duke University. Ms. SaNogueira has one child who attends a Durham County public school. She pays various types of taxes to the State of North Carolina and qualifies for a voucher.

12. Defendant State of North Carolina (“the State”), through its General Assembly, enacts local and general legislation, including the statute enacting the Program, codified at N.C. Gen. Stat. § 115C-562.1 *et seq.*

13. Defendant North Carolina State Education Assistance Authority (“Authority”) is an agency of the State created under N.C. Gen. Stat. § 116-203 and charged with the administration of and rulemaking for the Program, including the disbursement of funds to private schools.

JURISDICTION AND VENUE

14. This Court has jurisdiction over the subject matter and the parties to this action because plaintiffs seek declaratory, injunctive, and other relief pursuant to the North Carolina

Constitution, the North Carolina Declaratory Judgment Act, N.C. Gen. Stat. §§ 1-253 *et seq.*, and N.C. Gen. Stat. § 7A-245.

15. Venue is proper in Wake County under N.C. Gen. Stat. §§ 1-77 and 1-82 because plaintiff Sherry is a resident of Wake County and the causes of action arose, in part, in Wake County.

FACTS

I. The General Assembly Enacted the Program and Appropriated Taxpayer Funds into a Reserve Fund for the Program to the Detriment of Students in Public Schools.

16. On July 25, 2013, the General Assembly enacted a budget bill for fiscal years 2013-14 and 2014-15. On July 26, 2013, Governor Pat McCrory signed the bill into law. Section 8.29 of the bill created a voucher program for private schools (“the Program”).

17. In July 2016, the General Assembly vastly expanded the Program by enacting Session Law 2016-94. Section 11A.3 of Session Law 2016-94 created a new “Opportunity Scholarship Grant Fund Reserve” allowing unspent funds in the reserve to be carried forward to the next year, and increasing funding of the reserve by ten million dollars per year for the subsequent ten years.

18. The 2016 legislation mandated the amount to be appropriated to the fund in ensuing years, reaching a maximum of \$144,840,000 for fiscal years 2027-28 and beyond.

19. The Program is administered by Defendant North Carolina State Education Assistance Authority (“SEAA” or “Authority”).

20. Under the Program, SEAA awards grants of up to \$4,200 per student to private schools to pay for the student's tuition. Traditional public schools and public charter schools are not eligible to receive funds under the Program.

21. For the 2019-20 school year, students are eligible to have the State fund their private education if they are below the family income ceiling and meet one of the following criteria: (1) received a voucher for the previous year; (2) were a full-time student attending a North Carolina public school or Department of Defense school in North Carolina in the previous spring semester; (3) are entering kindergarten or first grade; (4) were in foster care or were adopted within the last year; or (5) have a parent on full-time active duty with the military. To participate in the Program for the 2020-2021 school year, a family of four must have had a gross family income in 2019 not exceeding \$64,465.

22. SEAA transfers funds to private schools by means of a direct deposit payment contingent on endorsement by the student's parent or guardian and the private school receiving the funds. This process creates a three-way contract between the State, the student's parent or guardian, and the private school.

23. When a student is selected to participate in the Program, they must secure admission to a participating school.

24. The General Assembly appropriated \$54,840,000 to the Program for fiscal year 2018-19 and \$64,840,000 for fiscal year 2019-20.

25. For the 2019-2020 school year, a total of 447 private schools received taxpayer funds.

26. SEAA prepared a list of the amount of funds directed to each private school through the Program, which is attached as Exhibit A.

27. During the 2019-2020 school year, the Program funded the enrollment of more than 12,000 students at private schools. SEAA prepared a list of the number of participating students attending each private school, attached as Exhibit B.

II. The Voucher Program as Implemented Has No Standards or Accountability.

28. Voucher schools are subject to almost no restrictions or obligations. As implemented, voucher schools and the Authority routinely disregard even those minimal requirements.

29. Voucher schools can be operated by inexperienced and unaccredited institutions, can hire unqualified and unsafe teachers and employees, can teach using haphazard and unproven methods, can fail to improve student knowledge and performance in any measurable way, and can discriminate in the admission and treatment of students on the basis of religion, socioeconomic status, physical or mental disability, gender identity, transgender status, sex, pregnancy, language ability, and sexual orientation.

30. Voucher schools are not required to be accredited by the Board of Education or any other state or national institution. There is no requirement that individuals, institutions, or companies that own or operate private schools have any experience or expertise in education. Owners and operators of private schools are not subject to open meeting laws or any other requirements to ensure that important decisions are explained and leaders held accountable to parents and the public.

31. Voucher schools are not required to employ teachers who are licensed by the State Board of Education. Their teachers are not required to have any particular credentials, degrees, experience, or expertise in education. Voucher schools are not required to monitor, evaluate, or measure the performance of their teachers in any way.

32. Voucher schools are required to conduct a criminal background check only for the staff member with the highest decision-making authority. No criminal background check is ever required for any other teacher or employee. Voucher schools are not required to determine whether their teachers and employees have criminal records.

33. Voucher schools are not subject to any requirements regarding the curriculum they teach. Voucher schools are not obligated to meet the requirements of the Common Core curriculum or any other recognized standard for the education of children.

34. Voucher schools are not required to commit to a full year of operation and may close at any time for any reason, including in the middle of the school year.

35. Voucher schools are not subject to any requirements for student achievement. Voucher schools must administer a “nationally standardized test” of their choosing, but there is no requirement that this test measure any particular level of educational achievement. The “nationally standardized test” must measure students in the areas of English and mathematics, but is not required to measure student proficiency in science, history, social studies, or any other subject. Voucher schools are not obligated to demonstrate any growth in student performance as measured by their chosen test.

36. Voucher schools with fewer than 25 students receiving vouchers are not obligated to make their test results public, and no private schools are obligated to reveal test results for their students who do not receive vouchers.

37. Voucher schools and the Authority fail to respect the few requirements imposed on them.

38. Voucher schools with 25 or more students receiving vouchers are statutorily obligated to report aggregate test results of voucher students to the State. However, as

implemented, many fail to do so and claim that the data would be meaningless even if reported. Neither the State nor the Authority impose any consequences on schools that fail to make the required report.

39. N.C. Gen. Stat. § 115C-562.7(c) requires that beginning in 2018, SEAA must report annually to the Department of Public Instruction regarding learning gains or losses of students receiving vouchers, and the competitive effects on public school performance on standardized tests as a result of the voucher program.

40. Violating its obligations under N.C. Gen. Stat. § 115C-562.7(c), SEAA has failed to make the required report. SEAA submitted the first annual report on December 1, 2018, attached as Exhibit C. The December 1, 2018 report was a single page. The report concluded that “evaluating and reporting learning gains and losses is not currently achievable,” reported no findings, and made no provision for further evaluation or reporting, in direct contravention of the statute.

41. In 2019, SEAA did not issue any report whatsoever, completely abdicating its statutory obligations.

III. The Voucher Program as Implemented Funds Discrimination on the Basis of Religion and Religious Beliefs and Interferes with Rights of Conscience.

42. In the 2019-2020 academic year, approximately 90% of Program funds supported religious schools. Many of these schools discriminate against students and their families on the basis of the families’ religious beliefs.

43. The five largest recipients of voucher funds [for the 2019-2020 school year were](#) ~~are~~ Trinity Christian School in Fayetteville, Berean Baptist Academy in Fayetteville, Fayetteville Christian School, Liberty Christian Academy in Richlands, and Living Water Christian School in

Jacksonville, each of which is religious. Since the 2016-2017 academic year, these five schools have together received more than \$10 million in taxpayer funds through the Program.

44. Many voucher schools refuse admission to students whose beliefs do not conform with the school's official doctrine.

- a. For example, Berean Baptist Academy requires that “[a]pplying students must give a clear testimony of salvation.”
- b. Fayetteville Christian Academy's admissions criteria require that “[t]he student and at least one parent with whom the student resides must be in agreement with the FCS Statement of Faith and have received Jesus Christ as their Savior. . . . Accordingly, FCS will not admit families that belong to or express faith in religions that deny the absolute Deity/Trinity of Jesus Christ as the one and only Savior and path to salvation.”
- c. Living Water Christian “reserves the right, within its sole discretion, to refuse admission of an applicant or to discontinue enrollment of a student” whenever the school, “predicated upon religious reasons, cannot effectively partner with the parent/guardian because of the divergence between the religious teachings of the School...and the beliefs, attitude, lifestyle or conduct of the parent/guardian.”
- d. These policies are not limited to the largest recipients of voucher funds. For example, to gain admittance to Vandalia Christian School in Greensboro, “[a]t least one of the parents must be ‘born-again’ as taught in the Bible” and “[h]igh school students must have accepted Christ as Savior to be admitted.”

- e. To gain admittance to Asheville Christian Academy, one parent or guardian must be a professing believer in Jesus Christ, agree with the doctrines espoused in the school’s statement of faith, and give a testimony of faith in the application.
 - f. Burlington Christian Academy requires prospective students to sign their agreement to a “Statement of Faith” including numerous specific Christian religious tenets.
 - g. Shining Light Academy in Monroe requires that to gain admittance, “[a]t least one of the parents or guardians must be saved” and that “[a] student twelve or older must profess to be born again and live a life that demonstrates a commitment to the Lord.”
 - h. Mintz Christian Academy in Roseboro provides that “those admitted into our school must be of the Christian faith.”
 - i. To gain admittance to Coastal Christian High School in Wilmington, students must “exhibit a desire to grow in a relationship with Jesus Christ” and “must have one parent that has professed faith in Jesus Christ and is actively involved in a local church.”
45. Many voucher schools reserve the right to discipline or expel students whose spiritual beliefs diverge from the school’s official doctrine.
- a. For example, Berean Baptist Academy provides that “students who exhibit a hostile attitude toward the Bible [or] prayer . . . will be asked to transfer.”
 - b. Liberty Christian Academy provides that “If at any time a student or his/her parents do not demonstrate support for the school, its policies, or its biblical stand, the

parents may be asked to take the child out of the school even though the child has not been an open discipline problem.”

- c. Living Water Christian School requires students to sign a “Student Agreement Conduct” including the statements “I believe and depend on the gospel, which is the power of God for salvation,” “I will submit to all authorities in the church that God has placed over me,” and “I will attempt to be an ambassador of Christ and His church wherever I am.” The school provides that failure to uphold each of these statements “may result in discipline, up to and including suspension or expulsion.”
- d. These policies are not limited to the largest recipients of voucher funds. For example, Community Christian School in Wilson provides that “[a]nyone who will not cooperate spiritually, morally, scholastically, or disciplinarily will be required to withdrawal [sic]. If the testimony of the student is detrimental at any time to Community Christian School, he/she may forfeit the privilege of being a student.”
- e. Shining Light Baptist Academy in Monroe states that “If an attitude of Christian humility and cooperation is not possible by either a student and/or parent, then the student will be dismissed immediately.”
- f. Antioch Christian Academy in Lumberton may ask students to withdraw if they are “found in default of Antioch Christian Academy’s ideals.”
- g. Calvary Christian Academy in Stokes County provides that “[a]rguing against a teacher about any area of our Statement of Faith will be grounds for immediate dismissal,” and provides that “[i]f a high school student voices an opinion contrary to our Statement of Faith (on or off school property), he may be asked not to return the next year or may be dismissed from school during the current year.”

46. Many voucher schools require students and their family members to conform their lifestyle to the school's religious dictates, both in and out of school.
- a. For example, Fayetteville Christian Academy provides that “students and families are expected to manifest a Christian lifestyle by living life according to Biblical teachings.”
 - b. Liberty Christian Academy provides that “[o]n occasions in which the atmosphere or conduct within a particular home or the activities of the student are counter to or in opposition to the biblical lifestyle the school teaches, the school reserves the right, within its sole discretion, to refuse admission of an applicant or discontinue enrollment of a current student.”
 - c. Living Water Christian School issues a “statement of doctrinal beliefs” and requires that “parents of our students must support these statements in their own lives/practices, live a lifestyle consistent with these practices before their children, and support the school in teaching these as moral truths.”
 - d. These policies are not limited to the largest recipients of voucher funds. For example, Temple Baptist School in Asheville requires parents to pledge to support the school by “separating my child from carnal movies and TV programs, rock music, dancing, and worldly literature.”
 - e. Fayetteville Street Christian School in Asheboro “reserves the right to have a student withdrawn or to expel any student who does not conform to the philosophical aims of the school” including through “any acts of immorality[.]”
 - f. Heritage Christian Academy in Zebulon “requires each student, whether at home, school, or elsewhere . . . to refrain from indecent language (including using the

Lord's name in vain), slang and vulgar expressions, . . . rock and/or other worldly music, and immoral conduct."

- g. Wayne Christian School in Goldsboro provides that "If at any time, parents/guardians act in a manner that demonstrate a lack of support for the School or its religious educational philosophy, or otherwise reflect a lack of cooperation and commitment to the home and School working together, Wayne Christian School has the right, in its sole discretion, to remove any student or to discontinue further enrollment of any student."
- h. Faith Christian Academy in Goldsboro requires both students and parents to "support the school in its distinct mission and Biblical beliefs" and "requires each student – whether at home, school, or elsewhere" to refrain from "dancing, immodest dress, and listening to and attending concerts that perform rock and roll, country, R&B, rap, hip-hop, or Christian music that violates the biblical principles of association, order, truth, or exaltation[.]"

47. Many voucher schools condemn homosexuality and bisexuality; forbid gay students and their family members from being open about their sexual orientation; threaten to expel gay, bisexual, or gender nonconforming students if they are open about their sexual orientation, gender identity, or transgender status; prohibit students from expressing support for LGBTQ rights; and require students to adopt religious beliefs that condemn LGBTQ rights.

- a. For example, Liberty Christian Academy reserves the right to "refuse admission of an applicant or discontinue enrollment of a current student" when the student is "living in, practicing, condoning, or supporting sexual immorality" including "homosexual acts; bisexual acts; gender identity different than the birth sex at the

chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.”

- b. Fayetteville Christian School requires that “all persons associated with FCS in any capacity, including employees, volunteers, parents/guardians, and students agree to and abide by [the school’s] Statement on Marriage, Gender, and Sexuality” which provides, *inter alia*, that “[r]ejection of one’s biological sex is a rejection of the image of God within that person,” that marriage “has only one meaning: the uniting of one man and one woman in a single, exclusive union,” and that any form of “sexual immorality . . . is sinful and offensive to God.”
- c. Living Water Christian School requires parents to “live a lifestyle consistent with” its statement of doctrinal beliefs, which includes the assertion that marriage is between “one man and one woman.” The school reserves “the right, in its sole discretion, to remove any student or to discontinue further enrollment of any student” if “at any time, parents/guardians act in a manner that demonstrate a lack of support for LWCS or its religious educational philosophy[.]”
- d. These policies are not limited to the largest recipients of voucher funds. For example, North Raleigh Christian Academy proclaims that “sexual relationships between persons of the same sex are immoral and sinful.” The school “reserves the right . . . to refuse admission of an applicant or discontinue enrollment of a current student” for “living in, practicing, condoning, or supporting . . . homosexual acts, bi-sexual acts; gender identity different than the birth sex at chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.”

- e. Jacksonville Christian Academy states that “Homosexual or transgender conduct, either as acts or identifying statements, is not compatible with employment or enrollment policy [sic] at Jacksonville Christian Academy ... and is a basis for immediate removal.” The school provides examples of statements that can result in a student’s immediate removal, including “I’m gay,” “I’m a homosexual,” “I have homosexual orientation” [sic], and “I am a transgender female/male.”
- f. Crossroads Christian School in Henderson “retains the right to refuse enrollment to or to expel any student who engages in sexual immorality, including any student who professes to be homosexual/bisexual or is a practicing homosexual/bisexual, as well as any student who condones, supports, or otherwise promotes such practices.”
- g. Woodland Baptist Christian School in Winston-Salem proclaims that “lesbianism/homosexuality ... is sin,” and that students “**WILL BE EXPELLED**” if they “Conduct their selves [sic] immorally by participating in lesbianism/homosexuality[.]”

48. Many voucher schools require students and their families to regularly attend services at certain religious institutions, and admit only students whose families are willing to regularly attend services at certain religious institutions.

- a. For example, Berean Baptist Academy requires that “[t]he parents and student must be faithful attendees at Berean Baptist Church or a church of ‘like’ faith.”
- b. Living Water Christian School requires parents to agree to “worship the Lord regularly at a Bible-believing church.”

- c. These policies are not limited to the largest recipients of voucher funds. For example, Bethel Christian Academy in Kinston requires students in middle and high school to “weekly and regularly attend a Bible-believing church.”
- d. Asheville Christian School requires that “the student must reside with at least one parent who . . . is in active fellowship with a Bible-believing church.”
- e. Carolina Baptist Academy in Reidsville provides that “students and parents are expected to belong to and attend regularly a Bible-believing church. Regular, faithful church attendance must be maintained throughout the school year.”
- f. Liberty Christian School in Durham provides that students and their parents “are expected to faithfully attend a Bible-believing church weekly.”
- g. Tabernacle Christian School in Monroe requires parents to “agree to have our child in regular attendance in a Sunday School and church where God’s Word is preached, believed, and obeyed.”

49. At many voucher schools, mandatory religious services, activities, and instruction are a central and integral part of the school’s curriculum. Many of these schools purposefully shield their students from information deemed inconsistent with the school’s religious beliefs and disparage other religious faiths. Students are therefore required to pursue a specific spiritual path. Parents who are unwilling to accept having these schools’ religious beliefs instilled in their children therefore are necessarily excluded from participation.

- a. For example, Living Water Christian School provides chapel services that are “required for all students. Failure to attend will result in disciplinary action.”
- b. Berean Baptist Academy provides mandatory biblical instruction during each year of a child’s enrollment.

- c. These practices are not limited to the largest recipients of voucher funds. For example, An-Noor Academy of Raleigh’s “primary mission is to instill in our students a love for learning Qur’an and Sunnah,” its curriculum includes teaching students to memorize the Qur’an, and it requires all graduating students to recite the entirety of the Qur’an from memory.
- d. Lake Norman Christian School in Mecklenburg County has mandatory weekly chapel services, requires students to pledge allegiance daily to the Christian flag and the Bible, and requires graduating students to have memorized 180 Bible verses.
- e. The Bradford Academy in Burlington includes mandatory biblical instruction or theological instruction, including biblical memorization, in the curriculum for all students from kindergarten to 12th grade.
- f. First Assembly Christian School in Monroe requires “systematic Bible study and Bible memorization held in the classroom each morning” as well as compulsory chapel attendance each Friday morning.
- g. Victory Christian School in Elizabeth City provides an education “based on the truth of God’s Word” and informs prospective parents that “you can be assured [your child] will not be exposed to humanistic secular philosophies.”
- h. Word of God Christian Academy in Raleigh “teach[es] every subject from a Christian perspective,” and “stand[s] in opposition to the ‘progressive’ education predominately used in our public schools today, in which emphasis is upon... questioning authority, the innate goodness of man... [and] the relativity of all things[.]”

- i. First Assembly Christian School in Monroe provides that “[a]ll subjects are taught in the light of the Scriptures” and prohibits students from bringing to school “any magazines or books not approved by the teacher AND principal.”
- j. Community Christian School in Wilson provides that a student’s possession of “anti-Christian literature” counts as a disciplinary infraction at the same level as “possession of a weapon” or “distribution of prescription or nonprescription drugs.”

IV. The Program Subjects Plaintiffs to Religious Discrimination

Plaintiff Amanda Howell

50. Plaintiff Amanda Howell is a resident of Randolph County, North Carolina. Plaintiff Howell is not a Christian, does not subscribe to Christian beliefs, and is not a member of any religious congregation. Plaintiff Howell meets the incomes requirements for a voucher.

51. In the 2019-20 school year, the Program funds eight Randolph County private schools, supporting the enrollment of 225 students.

52. Every private school in Randolph County is a Christian religious school. There are no private nonsectarian schools in Randolph County.

53. Many of the largest private schools in Randolph County publicly admit to discriminating on the basis of religion.

- a. Fayetteville Street Christian School in Asheboro maintains Christian “Articles of Faith” and reserves the right “to refuse admission to any student that they feel would not be in the best interest of the school or its belief” and to “expel any

student who does not conform to the philosophical aims of the school.” The school received \$137,723 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 39 students.

- b. Faith Christian School in Ramseur provides an education that “centers around God's Word and a personal relationship with Jesus Christ” with a “mission ... to educate and train servant-leaders for the kingdom of God.” To gain admittance, the school requires a recommendation from the prospective student’s pastor. The school received \$243,672 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 61 students.
- c. Bailey’s Grove Baptist School in Asheboro requires parents and students to be “faithful, active members of Bailey’s Grove Baptist Church (or a Church of like-faith and doctrine) and fully committed to its doctrinal position and ministry direction,” and has as its official motto: “Indoctrinate. Separate. Educate.” The school received \$258,090 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 63 students.
- d. Neighbors Grove Christian School in Asheboro provides that students are admitted based on the student and their parents’ “appreciation for Christian teachings and values and a willingness to support the Academy's Statements of Mission, Purpose, and Faith[.]” The school received \$31,262 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of eight students. [The school has since ceased operations.](#)
- e. Hope Baptist Christian Academy in Sophia maintains a detailed statement of faith providing that “the souls of unbelievers ... shall be cast into the Lake of Fire ... to

suffer everlasting conscious punishment and torment.” To gain admission, “prospective students must be a member of a family whose parent(s): agree with the doctrinal beliefs statement on the website, and have made a public profession of salvation . . . and either are members of or are in the process of becoming members of a local church with similar doctrinal beliefs." The school received \$2,100 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of one student. [The school has since ceased operations.](#)

54. Upon information and belief, some or all of the remaining Randolph County private schools also discriminate on the basis of religion, even if they do not admit to doing so in public-facing documents.

55. Plaintiff Howell has two school-aged children. Plaintiff Howell’s son has autism. When Plaintiff Howell was enrolling her son in school, she realized that the Randolph County public school system did not have adequate resources to support him. Plaintiff Howell qualifies for a voucher, and has explored the possibility of sending her children to a private school. She is explicitly barred from having her children attend most Randolph County private schools because she is not a Christian.

56. Plaintiff Howell has no private school choices in Randolph County that are not Christian religious schools.

57. Although Plaintiff Howell otherwise qualifies for a voucher, she cannot send her children to any of the private schools in Randolph County because she is not a Christian, and because she is unwilling to cede control over her children’s faith to a religious school.

58. Plaintiff Howell enrolled her children in a public school in Guilford County that has adequate resources. Plaintiff Howell currently drives 45 minutes, each way, to take her children to school.

59. Plaintiff Howell's friends and neighbors have more publicly funded educational opportunities than Plaintiff Howell solely because of their religious beliefs.

60. Plaintiff Howell pays state taxes that the Program directs to schools that discriminate against her and others who are not Christian.

61. Plaintiff Howell pays state taxes that the Program directs to schools that use the funds to teach that she and others who are not Christian are condemned to hell.

62. The Program denies Plaintiff Howell and her children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiffs Kate Meininger and Elizabeth Meininger, Plaintiff Tamika Walker Kelly

63. Plaintiffs Kate Meininger and Elizabeth Meininger are residents of Cumberland County, North Carolina. The two women are married and have two children who attend a Cumberland County public school. They meet the income requirements for a voucher. Kate Meininger is ~~a Muslim, is~~ not a Christian, and does not maintain Christian religious beliefs.

64. For the 2019-2020 school year, Plaintiff Tamika Walker Kelly ~~is-was~~ a resident of Cumberland County, North Carolina. Plaintiff Walker Kelly later moved to Wake County, where she currently resides. Plaintiff Walker Kelly is Catholic. Plaintiff Walker Kelly does not maintain the particular religious beliefs required to gain admission to many voucher schools. For example, Plaintiff Walker Kelly does not believe homosexuality is sinful, and supports marriage equality and LGBTQ rights.

65. In the 2019-20 school year, the Program funds the education of 1,349 students at 25 Cumberland County private schools.

66. Many of the largest private schools in Cumberland County publicly admit to discriminating on the basis of religion and sexual orientation.

- a. The Village Christian Academy has admissions standards including “an acceptance of Jesus Christ as Lord by one of the parents or guardian, and the student if age applicable.” It also maintains an “Essentials of Faith” that proclaims that marriage is “solely between a man and a woman” and that “no same-sex marriages, unions, affirmations, or endorsements” shall be “conducted or expressed” on its school or church property. The school received \$172,200 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 41 students.
- b. Fayetteville Christian School “will not admit families that belong to or express faith in religions that deny the absolute Deity/Trinity of Jesus Christ as the one and only Savior and path to salvation” and teaches that those who are not saved “are lost unto the resurrection of damnation.” The school requires students and parents to “agree to and abide by” its belief that “‘marriage’ has only one meaning: the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture.” The school received \$623,890 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 151 students.
- c. Freedom Christian Academy has admission standards providing that “at least one of the parents (or legal guardian) should be a follower of Christ and active in a

local church or seeking a church home.” The school proclaims that marriage is between “one man and one woman ... as delineated by scripture,” and seeks students “who are living in a Biblically-appropriate family unit.” The school received \$481,723 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 118 students.

- d. Berean Baptist Academy only accepts students who “give a clear testimony of Salvation,” and requires that “parents and student must be faithful attendees at Berean Baptist Church or a church of ‘like’ faith.” The school states that marriage is between “one man and one woman” and provides that its “beliefs regarding human sexuality and marriage ... can factor in admissions decisions and continued enrollment[.]” The school received \$855,877 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 212 students.
- e. Northwood Temple Academy requires parents of prospective students to agree to abide by the school’s Christian moral standards, declares that marriage is between “one man and one woman,” and “retains the right to refuse enrollment or to require automatic withdrawal of any student who . . . is unable to support the moral principles of the school” or “if a parent engages in sexual immorality, including any who practice, promote, and/or condone homosexual/ bisexual/ transgendered [sic] behavior[.]” The school received \$480,620 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 119 students.

- f. Cornerstone Christian Academy “reserves the right to refuse admission to any student from a family who cannot be supportive of the major doctrines that will be taught at the Academy” in order to “prevent spiritual confusion.” The school also “reserves the right ... to refuse admission to an applicant or discontinue enrollment of a current student” who is “living in, condoning, or supporting any form of sexual immorality” or is “practicing or promoting a homosexual lifestyle or alternative gender identity[.]” The school received \$354,259 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 89 students.
- g. Riverside Christian Academy is “committed to providing a Christ-centered education promoting leaders in God’s Kingdom” and “reserves the right to select students on the basis of ... religious commitment [and] lifestyle choices[.]” The school also proclaims that “to help guard your children’s minds against the licentious attitudes fostered by popular education, any anti-Christian behavior such as homosexuality and abortion is exposed for what it is.” The school received \$200,340 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 52 students.
- h. Renaissance Classical Christian Academy practices a “biblical philosophy of admissions,” proclaims that marriage is between “one man and one woman,” and for applying students, requires “at least one parent or guardian to give a credible profession of faith in Jesus Christ as their personal Lord and Savior, and be a regular attendee or member of a Christian church.” The school received \$166,641

in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 42 students.

67. Upon information and belief, many other Cumberland County private schools discriminate on the basis of religion even when they do not admit to doing so in public-facing documents.

68. Upon information and belief, many other Cumberland County private schools discriminate on the basis of sexual orientation and beliefs regarding sexual orientation, even when they do not admit to doing so in public-facing documents.

69. The Meiningers have struggled to find a school in which one of their children will thrive. They qualify for a voucher, and in exploring their educational options, they looked into local private schools. They realized that nearly all of their choices were Christian religious schools. They realized that many private schools explicitly barred their children from admission because Kate is ~~Muslim~~ not a Christian, because neither Kate nor Elizabeth adhere to the religious doctrines maintained by the schools, because they are in a same-sex marriage, and because they do not believe that homosexuality is sinful. The Meiningers wanted to send at least one of their children to a private school, contacted schools funded by Program to inquire about enrollment, and were told that their children could not attend because of the schools' exclusionary policies.

70. The Meiningers' friends and neighbors have more publicly funded educational opportunities than the Meiningers because of their religious beliefs.

71. The Meiningers' friends and neighbors have more publicly funded educational opportunities than the Meiningers because of who they love.

72. The Meiningers pay state taxes that the Program directs to schools that discriminate against members of their faith and sexual orientation.

73. The Meiningers pay state taxes that the Program uses to fund religious instruction teaching that they, others who are not Christian, and others who are in same-sex relationships are condemned to hell.

74. The Program denies the Meiningers' and their children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported religious discrimination.

75. Plaintiff Walker Kelly cannot enroll her child in many voucher-funded private schools even though she is a Christian because she does not maintain many of the religious beliefs required by the voucher-funded private schools.

76. Plaintiff Walker Kelly pays state taxes that the Program directs to schools that discriminate against her and against others who do not maintain the particular religious beliefs required by the voucher-funded private schools.

77. Plaintiff Walker Kelly pays state taxes that the Program uses to fund religious instruction teaching that she and others who do not subscribe to particular religious tenets are condemned to hell.

78. The Program denies Plaintiff Walker Kelly the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiff John Sherry

79. Plaintiff John Sherry is a resident of Wake County, North Carolina. Plaintiff Sherry has two children, one of whom is a student in the Wake County Public School system.

80. Plaintiff Sherry is gay and is in a same-sex marriage. He believes marriage should be between two consenting adults, regardless of their gender. He does not maintain religious beliefs that condemn same-sex marriages, homosexuality, bisexuality, or gender nonconformity.

81. In the 2019-2020 school year, the Program funds 50 Wake County private schools, supporting the enrollment of 972 students.

82. Many private schools in Wake County publicly admit to discriminating against students on the basis of their or their parent's sexual orientation and gender identity, and require students to adopt religious beliefs that condemn homosexuality, bisexuality, and gender nonconformity.

- a. Raleigh Christian Academy professes that homosexuality is a "sinful perversion[] of God's gift of sex" and that "any actions or identifying statements concerning ... homosexuality, lesbianism, [or] bisexuality" will "not . . . be tolerated in any form and will constitute grounds for expulsion." The school received \$283,500 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 69 students.
- b. Wake Christian Academy reserves the right to "refuse admission of an applicant" when the "atmosphere or conduct within a particular home . . . are counter to or in opposition to the biblical lifestyle the school teaches," including "homosexual acts, bisexual acts, gender identity different than the birth sex, promoting such practices, or otherwise the inability to support the moral principles of the school." The school received 228,060 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 57 students.

- c. North Raleigh Christian Academy’s “Biblical Morality Lifestyle Statement” proclaims that “sexual relationships between persons of the same sex are immoral and sinful” and provides that “[a]s a parent ... acceptance of admission means I have read the school’s biblical morality policy and agree to abide by it.” The school “retains the right to refuse enrollment or to discontinue enrollment of any student who ... professes to be homosexual/bisexual/transgender ... and/or any student who condones, supports, or otherwise promotes such practices[.]” The school received \$218,139 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 52 students.
- d. Friendship Christian School Raleigh “retains the right to refuse enrollment to or to expel any student who engages in sexual immorality, including any student who professes to be homosexual/bisexual or is a practicing homosexual/bisexual, as well as any student who condones, supports, or otherwise promotes such practices[.]” The school received \$184,800 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of 44 students.
- e. Iron Academy in Raleigh reserves the right to “refuse admission of an applicant” when the “atmosphere or conduct within a particular home is counter to or in opposition to the biblical lifestyle that the school teaches” including “practicing a homosexual lifestyle or alternative gender identity; promoting such practices; or otherwise having the inability to support the biblical principles of the school.” The school received \$21,000 in state funding through the Program for the 2019-2020 school year, supporting the enrollment of five students.

83. Upon information and belief, many other private schools in Wake County discriminate on the basis of sexual orientation, gender identity, and transgender status, and on the basis of students' and parents' religious beliefs regarding sexual orientation and gender identity, even when they do not admit to doing so in public-facing documents.

84. Plaintiff Sherry cannot enroll his children in many voucher-funded private schools because he is gay; supports gay marriage; is married to a man; and does not believe that homosexuality, bisexuality, or gender nonconformity are sinful.

85. Plaintiff Sherry's friends and neighbors have more publicly funded educational opportunities than Plaintiff Sherry because of their beliefs regarding marriage, sexual orientation, and gender identity.

86. Plaintiff Sherry's friends and neighbors have more publicly funded educational opportunities than Plaintiff Sherry because of who they love.

87. Plaintiff Sherry pays state taxes that the Program directs to schools that discriminate against Plaintiff Sherry and others who are gay, bisexual, or gender non-conforming, and that discriminate and against Plaintiff Sherry and others whose religious beliefs condone and support homosexuality, bisexuality, and gender non-conformity.

88. Plaintiff Sherry pays state taxes that the Program directs to schools that teach he is a sinner because of who he loves.

89. The Program denies Plaintiff Sherry and his children the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

Plaintiff Rivca SaNogueira, Plaintiff Kristy Moore

90. Plaintiff Rivca Rachel SaNogueira is a resident of Durham County, North Carolina. Plaintiff SaNogueira is Jewish, is raising her daughter in the Jewish faith and tradition, and is active in her synagogue. Plaintiff SaNogueira is not a Christian, does not subscribe to Christian beliefs, and is not a member of a Christian religious community.

91. Plaintiff Kristy Moore is a resident of Durham County, North Carolina. Plaintiff Moore is Baptist, is raising her children in the Baptist faith, and is a member of a Baptist Church. Plaintiff Moore does not maintain the particular religious beliefs required to gain admission to many voucher schools. For example, Plaintiff Moore does not believe homosexuality is sinful, and supports marriage equality and LGBTQ rights.

92. In the 2019-20 school year, the Program funds nineteen Durham County private schools, supporting the enrollment of 411 students.

93. Many of the largest private schools in Durham County publicly admit to discriminating on the basis of religion.

- a. Bethesda Christian Academy in Durham is “a discipleship school seeking to partner with Christian families[.]” The school’s admissions policy has “Spiritual Requirements” asking that parents “share the testimony of their salvation experience” and “read and support” the school’s statement of faith, which includes numerous Christian religious tenets. The school “reserves the right . . . to refuse admission of an applicant or discontinue enrollment of a current student” if “the atmosphere or conduct within a particular home or the activities of the student are counter to . . . the biblical lifestyle the school teaches,” including “living in, practicing, condoning, or supporting . . . homosexual acts, bi-sexual

acts; gender identity different than the birth sex at the chromosomal level; promoting such practices; or otherwise the inability to support the moral principles of the school.” Bethesda Christian Academy received \$130,074 through the Program for the 2019-2020 school year, supporting the enrollment of 32 students.

- b. Liberty Christian School in Durham is a “ministry of Liberty Baptist Church” that “reserves the right to dismiss any student who does not respect its spiritual standards.” Any family that “withdraws fellowship from Liberty Baptist Church or is critical of the church or its ministries may lose the privilege of the ministry of Liberty Christian School.” Liberty Christian received \$379,090 through the Program for the 2019-2020 school year, supporting the enrollment of 94 students.
- c. Mount Zion Christian Academy in Durham requires student applicants and their parents to sign a “Statement of Faith,” swearing that they are in agreement with various Christian tenets. Mount Zion received \$419,580 through the Program for the 2019-2020 school year, supporting the enrollment of 106 students.
- d. Fellowship Baptist Academy in Durham only admits students who are “members of Fellowship Baptist Church” or who “attend other Bible-believing churches[.]” The school received \$166,865 through the Program for the 2019-2020 school year, supporting the enrollment of 47 students.
- e. To enroll in Gorman Christian Academy in Durham “[p]arents and students must agree with the school's mission” and “statement of faith,” and parents must sign a “spiritual and doctrinal commitment” stating that they “believe that Jesus is the Son of God, was born of a virgin, was wholly God and man, lived a sinless life,

died in our place as a sacrifice for the sins of mankind, was buried, arose from the grave and ascended into Heaven.” The school professes that “those persons who die . . . without Christ spend eternity in Hell[.]” Gorman Christian Academy received \$67,200 through the Program for the 2019-2020 school year, supporting the enrollment of 16 students.

- f. Cresset Christian Academy in Durham requires parents of applicants to “agree to support the statement of faith and the Christian philosophy of education.”

“Flaunting participation in a non-Christian lifestyle” is considered a “major offense[]” in line with “threats to harm others” and “[d]efacing school property,” and may result in suspension or dismissal. Cresset Christian Academy received \$9,240 through the Program for the 2019-2020 school year, supporting the enrollment of three students.

94. Upon information and belief, additional Durham County private schools also discriminate on the basis of religion, even if they do not admit to doing so in public-facing documents.

95. Plaintiff SaNogueira cannot enroll her child in many voucher-funded private schools because she is Jewish, because she is not a Christian, and because she does not maintain many of the religious beliefs required by voucher-funded private schools.

96. Plaintiff SaNogueira pays state taxes that the Program directs to schools that discriminate against her, against others who are not Christians, and against others who do not maintain the religious beliefs required by the voucher-funded private schools.

97. Plaintiff SaNogueira pays state taxes that the Program uses to fund religious instruction teaching that she and others who are not Christian are condemned to hell.

98. The Program denies Plaintiff SaNogueira the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

99. Plaintiff Moore cannot enroll her children in many voucher-funded private schools even though she is a Christian because she does not maintain many of the religious beliefs required by the voucher-funded private schools.

100. Plaintiff Moore pays state taxes that the Program directs to schools that discriminate against her and against others who do not maintain the religious beliefs required by the voucher-funded private schools.

101. Plaintiff Moore pays state taxes that the Program uses to fund religious instruction teaching that she and others who do not subscribe to particular religious tenets are condemned to hell.

102. The Program denies Plaintiff Moore the important social, professional, business, political, spiritual, and educational benefits of living in a community free from state-supported discrimination.

FIRST CLAIM FOR RELIEF

[As applied challenge under](#) Article I, Sections 13 and 19 of the North Carolina Constitution:
Religious Discrimination and Interference with Rights of Conscience

103. The foregoing allegations are incorporated by reference.

104. Article I, Section 13 of the North Carolina Constitution provides: “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.”

105. Article I, Section 19 of the North Carolina Constitution forbids the State from subjecting any person to “discrimination . . . because of race, color, religion, or national origin.”

106. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by funding educational opportunities that are conditioned on the Plaintiffs and their family members:

- a. Claiming to be a member of a school’s religious faith and espousing its religious beliefs;
- b. Ceding control of their religious beliefs to a school;
- c. Accepting inculcation in their children of the school’s religious beliefs;
- d. Refusing to express religious beliefs inconsistent with a school’s;
- e. Participating in prescribed religious activities and rituals;
- f. Maintaining active membership in certain religious communities;
- g. Adopting beliefs that disavow gay, lesbian, bisexual, and transgender rights and identities;
- h. Concealing their sexual orientation, gender identity, and transgender status; and
- i. Conforming their lives and lifestyles to the school’s religious beliefs.

107. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by creating a “school choice” program in which the scope of a student’s choice is limited by the student and their family members’:

- a. religious beliefs;
- b. participation in religious activities and rituals;
- c. membership in a religious community; and
- d. conformity with religious lifestyle dictates.

108. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by funding schools that condition enrollment on the adoption of religious beliefs condemning homosexuality, bisexuality, and gender nonconformity.

109. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by directing their taxpayer dollars to schools that discriminate against members of Plaintiffs' faiths.

110. The Program subjects Plaintiffs to religious discrimination and interferes with rights of conscience by facilitating the division of communities on the basis of religion and by denying Plaintiffs the social, professional, business, political, educational, and spiritual benefits of living in a community free from state-supported religious discrimination.

111. The Program's beneficiaries are defined by their religion.

112. The Program controls and interferes with rights of conscience.

113. The Program uses taxpayer funds to create a Program in which a citizen's ability to participate depends on the nature of the citizen's religious beliefs.

~~114. As implemented, the Program in its entirety violates Article I, Sections 13 and 19 of the Constitution.~~

~~115.114. As implemented and as applied, the Program violates Article I, Sections 13 and 19 of the Constitution, insofar as it funds schools that discriminate and interfere with rights of conscience as described in paragraphs 44-49.~~

SECOND CLAIM FOR RELIEF

As applied challenge under Article I, Sections 13, 15, and 19; Article V, Sections 2(1) and 2(7) of the North Carolina Constitution

~~116.115.~~ The foregoing allegations are incorporated by reference.

~~117.116.~~ Article I, Section 15 of the North Carolina Constitution provides “The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.”

~~118.117.~~ Article V, Section 2(1) of the North Carolina Constitution provides: “The power of taxation shall be exercised in a just and equitable manner, for public purposes only.”

~~119.118.~~ Article V, Section 2(7) of the North Carolina Constitution provides: “The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.”

~~120.119.~~ The Program funds private schools that compel their students and their family members to adopt certain religious beliefs, including through threats of discipline and expulsion. The Program renders students’ continued education contingent on their willingness to adopt and maintain certain religious beliefs, and to conform with religious lifestyle requirements. As implemented, the Program therefore does not accomplish a public purpose, controls and interferes with rights of conscience, and violates the State’s duty to guard and maintain students’ right to the privilege of an education.

~~121.120.~~ The Program funds schools that discriminate on the basis of religion, and renders students’ publicly-funded educational opportunities contingent on the nature of a student’s religious beliefs. As implemented, the Program therefore does not accomplish a public purpose, interferes with rights of conscience, and violates the State’s duty to guard and maintain students’ right to the privilege of an education.

~~122.121.~~ The Program funds schools that discriminate on the basis of sexual orientation, gender identity, and transgender status, and renders the breadth of a students’

publicly-funded educational opportunities contingent on the student and their parents' sexual orientation, gender identity, and transgender status, and therefore does not accomplish a public purpose, interferes with rights of conscience, and violates the State's duty to guard and maintain students' right to the privilege of education.

~~123.122.~~ The Program funds schools that condition students' enrollment on grounds that are arbitrary, capricious, discriminatory, or otherwise contrary to the public policy of the State, and therefore does not accomplish a public purpose, interferes with rights of conscience, and violates the State's duty to guard and maintain students' right to the privilege of an education.

~~124.123.~~ The Program as implemented violates Article I, Sections 13, 14, and 19, and Article V, Sections 2(1) and 2(7), in its entirety.

~~125.124.~~ The Program as implemented and as applied violates Article I, Sections 13, 14, and 19, and Article V, Sections 2(1) and 2(7), ~~insofar as it funds schools with the attributes described in paragraphs 44-49.~~

THIRD CLAIM FOR RELIEF

As applied challenge under Article I, Section 15; Article V, Section 2(1) and 2(7) of the North Carolina Constitution

~~126.125.~~ The foregoing allegations are incorporated by reference.

~~127.126.~~ The transfer of taxpayer funds to private schools without any accountability or requirements ensuring that students will actually receive an education is not for the purpose of education or for any other public purpose.

~~128.127.~~ As implemented, the State has failed to ensure that schools participating in the Program afford students any educational benefits whatsoever.

~~129.128.~~ Distributing taxpayer funds to schools in an arbitrary and capricious manner unrelated to educational objectives is not a valid exercise of constitutional authority.

~~130.129.~~ As implemented, SEAA has abdicated its statutory obligations regarding oversight of the Program.

~~131.130.~~ The Program as implemented and as applied violates Article 1, Section 15, and Article V, Sections 2(1) and 2(7) of the North Carolina Constitution.

PRAYER FOR RELIEF

Plaintiffs request that the Court:

(1) Declare that the Program as implemented and as applied is unconstitutional under the North Carolina Constitution;

~~(1)(2) Enter injunctive or other relief sufficient to redress the constitutional violations identified;~~

~~(2) Enter a permanent injunction enjoining the selection of voucher recipients, any further disbursements of money from the Reserve Fund, and any further appropriations to the Reserve Fund;~~

(3) Award plaintiffs costs pursuant to N.C. Gen. Stat. § 1-263;

(4) Award such other and further legal and equitable relief as this Court deems necessary, just, and proper.

This the ~~27th~~ ___ day of ~~July~~June, 2020~~1~~.

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