

The Supreme Court of the State of South Carolina

CANDACE EIDSON, ET AL.,
PETITIONERS,

v.

SOUTH CAROLINA DEPARTMENT OF EDUCATION, ET AL.,
RESPONDENTS,

AND

HENRY D. MCMASTER, ET AL.,
INTERVENORS-RESPONDENTS.

**MOTION OF LIBERTY JUSTICE CENTER, AMERICAN
FEDERATION FOR CHILDREN, AMERICANS FOR
PROSPERITY FOUNDATION, MANHATTAN INSTITUTE FOR
POLICY RESEARCH, AND REASON FOUNDATION FOR LEAVE
TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

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Under South Carolina Appellate Court Rule 213, Liberty Justice Center, American Federation for Children, Americans for Prosperity Foundation, Manhattan Institute for Public Policy, and the Reason Foundation seek the Court's leave to file an *amicus* brief in support of the Respondents. A copy of the proposed brief is attached to this motion.

INTEREST OF AMICI

Liberty Justice Center ("LJC") is a national, nonpartisan public-interest law firm committed to protecting fundamental constitutional rights. The organization is best known for its protection of free speech in the landmark U.S. Supreme Court case of *Janus v. AFSCME*. In addition to protecting free speech and other constitutional rights, LJC has a strong interest in supporting educational freedom throughout the United States.

LJC frequently litigates important cases affecting educational freedom and parental choice. For example, in *Kelly v. North Carolina*, LJC represented the North Carolina General Assembly in successfully defending a legal challenge to the state's Opportunity Scholarship Program. In addition, LJC filed briefs at the certiorari and merits stages at the United States Supreme Court in *Carson v. Makin* and *Espinoza v.*

Montana Dep't. of Revenue, the latter of which was cited in Justice Alito's opinion. 140 S. Ct. 2246, 2268 (2020) (Alito, J., concurring). LJC has also served as amicus curiae in state court actions impacting educational freedom, including most recently before the Wisconsin Supreme Court in *Underwood v. Voss*, and before the Oklahoma Supreme Court in *Drummond v. Oklahoma Statewide Virtual Charter School Board*.

The American Federation for Children is the nation's largest and most effective advocacy organization for education reform. It works to pass high quality education reforms and advocate for families' educational options. The American Federation for Children works in states, including South Carolina, to provide families with resources and information on their educational options, including publicly funded school choice programs. Its board and affiliated entity boards include prominent, former elected officials such as Hon. Joe Lieberman (former U.S. Senator, D-Connecticut), Hon. Scott Walker (former Governor, R-Wisconsin), Hon. Kevin P. Chavous (former national chairman, Democrats for Education Reform, and former D.C. City Councilor), and Hon. Ann Duplessis (former state senator, D-Louisiana). Working

together on a bipartisan basis, AFC’s advocacy team pursues its singular goal of educational opportunity for every child.

Americans for Prosperity Foundation (“AFPF”) is a 501(c)(3) nonprofit organization that operates a state chapter in South Carolina committed to educating and empowering Americans to be courageous advocates for the ideas, principles, and policies of a free and open society. As part of this mission, AFPF appears regularly as amicus curiae before federal and state courts. *See, e.g., Carson v. Makin*, 142 S. Ct. 1987 (2022); *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038 (2021); *State v. Beaver*, 248 W.Va. 177, 887 S.E.2d 610 (W. Va. 2022).

The Manhattan Institute for Policy Research (“MI”) is a nonpartisan public policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. MI’s constitutional studies program aims to preserve the Constitution’s original public meaning. To that end, it has historically sponsored scholarship regarding constitutional rights, quality-of-life issues, property rights, and economic liberty. MI scholars and affiliates are sought after experts on school choice and have conducted research demonstrating the transformative power of

educational freedom programs for individual student outcomes and systemwide improvements.

Reason Foundation (“Reason”) is a nonpartisan and nonprofit public policy think tank, founded in 1978. Reason’s mission is to promote free markets, individual liberty, equality of rights, and the rule of law. Reason advances its mission by issuing research reports and publishing *Reason* magazine, as well as commentary on its websites, www.reason.com and www.reason.tv. To further Reason’s commitment to “Free Minds and Free Markets,” Reason selectively participates as amicus curiae in cases raising significant constitutional issues.

THE PROPOSED BRIEF

The proposed brief is relevant to this Court’s consideration of the issues presented because it directly addresses claims made by Petitioners. Specifically, Petitioners allege that South Carolina’s Educational Savings Trust Fund (“ESTF”) program is somehow “discriminatory” or “exclusionary” in nature. *See, e.g.*, Pet’rs’ Br. Part II. Indeed, the allegation is made repeatedly in the Petition, including as a basis for standing (*e.g.*, Pet. ¶¶ 10, 15, 16, 42, 64). The proposed brief

provides a unique perspective on the issues before the Court, as amici—organizations with extensive legal and policy experience in the field of educational freedom—present unique and important perspectives on how programs like the ESTF operate not to discriminate against low- and middle-income students, but to benefit them by providing them with a quality education tailored to fit their needs. Thus, the Court should follow its ordinary practice and accept the *amicus* brief. *See Ex Parte Brown*, 393 S.C. 214, 225–26, 711 S.E.2d 899, 904–05 (2011); *see also Savannah Riverkeeper v. S.C. Dep’t of Health & Env’t Control*, 400 S.C. 196, 207, 733 S.E.2d 903, 909 (2012) (Kittredge, J., dissenting) (referring to the Court’s “standard practice of accepting amici briefs”).

For these reasons, this motion should be granted and the attached *amicus* brief filed.

Respectfully submitted,

s/ Christopher Mills

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FEBRUARY 1, 2024

CERTIFICATE OF SERVICE

I, Christopher E. Mills, an attorney, certify that on this day the foregoing Motion was served electronically on all parties via electronic mail, per the following electronic mail message.

Eidson et al. v. S.C. Dep't of Education et al., S.C. Sup. Ct. No. 2023-001673



Christopher Mills

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Brief Serve.pdf
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Counsel,

Attached for service is a motion for leave to file amicus brief and accompanying brief in the above case on behalf of Liberty Justice Center, American Federation for Children, Americans for Prosperity Foundation, Manhattan Institute for Public Policy, and the Reason Foundation.

Sincerely,

Christopher Mills

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Dated: February 1, 2024

s/ Christopher Mills
Christopher E. Mills