NORTH CAROLINA

WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
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,

Defendants.

MOTION TO INTERVENE

INTRODUCTION

Janet Nunn, Christopher and Nichole Peedin, and Katrina Powers (collectively, "Applicants") are parents who have children receiving scholarships from the Opportunity Scholarship Program ("OSP"). The OSP provides students from low-income families with a scholarship that they may use at qualifying nonpublic schools. N.C. Gen. Stat. § 115C-562.2. Pursuant to N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24, Applicants respectfully move this Court for leave to intervene as Defendants to defend against Plaintiffs' as-applied constitutional challenge to the OSP. Applicants and their children are the direct and intended beneficiaries of the OSP and are therefore the real parties in interest to this litigation. For this reason, similarly situated parents were permitted, over the then-plaintiffs' objections, to intervene in and defend against the previous facial challenges to the OSP that the North Carolina Supreme Court rejected in *Hart v. State*, 368 N.C. 122, 774 S.E.2d 281 (2015) and *Richardson v. State*, 368 N.C. 158, 774 S.E.2d 304 (2015).

Applicants are entitled to intervene as of right under N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2). They have a significant interest in the OSP's operation that may be greatly impaired by the disposition of this matter, and their interest as parents and beneficiaries of the OSP will not be adequately represented by the existing parties. Alternatively, this Court should grant Applicants permissive intervention under N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(b). Applicants seek timely intervention to answer Plaintiffs' challenges to the constitutionality of the OSP, so their defense of the OSP will share the same common legal questions that are currently before the parties. Furthermore, the existing parties will not be prejudiced by Applicants' intervention at this very early stage of the case.

Party status is necessary to ensure that the Applicants' interests as the OSP's primary beneficiaries are fully protected. Plaintiffs' Complaint seeks various forms of relief including a permanent injunction enjoining operation of the OSP in its entirety. Should the OSP be ruled unconstitutional and permanently enjoined, Applicants will forever lose the opportunity to protect their families' interests. Particularly for this reason, Applicants respectfully request that they be granted leave to intervene as defendants in the instant case. Applicant-Parents seeking to intervene as defendants in educational-choice litigation are routinely granted intervention in cases in which similar programs are challenged, and intervention should likewise be allowed here.

STATEMENT OF FACTS

I. THE OPPORTUNITY SCHOLARSHIP PROGRAM.

The OSP provides low-income parents with financial assistance to transfer their children from public schools and enroll them at private schools that better suit their needs. The OSP

provides funding of up to $4,200 per year for eligible children whose parents choose to send them to a private school. N.C. Gen. Stat. § 115C-562.2(b).

The OSP is administered by the Defendant State Education Assistance Authority ("SEAA"). *Id.* § 115C-562.1(1). A student is eligible for the OSP if he or she has not yet received a high school diploma and meets at least one of the following requirements: (1) was a full-time student assigned to and attending a public school during the previous semester; (2) received an OSP scholarship during the previous school year; (3) is entering kindergarten or the first grade; (4) is a child in foster care; (5) is a child whose adoption decree was entered not more than a year prior to applying for the scholarship. *Id.* § 115C-562.1(3)(a). Qualifying students must also reside in a household with an income level not more than 133% of the amount required to qualify for the federal free or reduced-price lunch program. *Id.* § 115C-562.1(3)(b).

In distributing scholarships, priority is given to eligible students who received a scholarship during the previous school year. After scholarships are awarded to prior recipients, the following guidelines apply: (1) at least 50% of the remaining funds must go to students who live in a household with an income that qualifies the student for the federal free or reduced-price lunch program; (2) no more than 35% of the remaining funds can be awarded to students entering either kindergarten or first grade; (3) any remaining funds will then be awarded to other eligible students. *Id.* § 115C-562.2(a). Students residing in a household with an income that qualifies for the federal free or reduced-price lunch program may be eligible for a scholarship of up to $4,200, but not in excess of total tuition and fees. Students residing in a household with an income level between 100% and 133% of the amount required to qualify for the federal free or reduced-price lunch program may be eligible to receive a scholarship of up to 90% of their tuition and fees at the nonpublic school, but not more than $4,200. *Id.* § 115C-562.2(b).

SEAA sends scholarship funds to the nonpublic school selected by the scholarship recipient's parent or guardian at least twice a year, and the student's parent or guardian will be required to endorse the scholarship funds to the nonpublic school for deposit into the school's account. Endorsement must be done in person at the site of the nonpublic school. *Id.* § 115C-562.6. The SEAA is authorized to verify information on any scholarship application from eligible students, *id.* § 115C-562.3(a), and household members of scholarship applicants are required to authorize the SEAA to access information held by other state agencies, *id.* § 115C-562.3(b). If a household fails to cooperate with verification efforts, the student's scholarship is revoked. *Id.* § 115C-562.3(a).

Nonpublic schools that participate in the Program must comply with the following requirements: (1) provide the SEAA with documentation for tuition and fees charged to the student; (2) conduct a criminal background check for the staff member with the highest decision-making authority; (3) provide each recipient's parent/guardian an annual explanation of the student's progress (including scores on standardized tests); (4) administer a nationally standardized test to all scholarship recipients in grades three or higher at least once a year, which must measure performance in the areas of English grammar, reading, spelling, and mathematics and report scores to the SEAA each year by July 15; (5) provide the SEAA with graduation rates of scholarship students; (6) for schools where the total amount of student scholarships exceed $300,000 for an academic year, undergo a financial review by a CPA; (7) not require any additional fees based on the status of the student as a scholarship recipient; and (8) for schools enrolling more than 25 scholarship students, report test performance data in the aggregate. *Id.* § 115C-562.5(a)–(c).

II. THE PRESENT LITIGATION.

Seven plaintiffs filed this lawsuit on July 27, 2020 against defendants the State of North Carolina and the North Carolina State Educational Assistance Authority (together "Defendants"), challenging the constitutionality of the OSP under the following provisions of the North Carolina Constitution: Article I, §§ 13, 15, and 19; and Article V, §§ 2(1) and 2(7). This suit is styled as an as-applied challenge that seeks to strike down the OSP.

The present challenge follows in the footsteps of earlier facial challenges to the OSP. *See Hart v. State*, 368 N.C. 122, 774 S.E.2d 281 (2015) (where plaintiffs unsuccessfully made facial challenges to the OSP under Article I, §§ 15, 19; Article V, § 2; and Article IX, §§ 2, 5, and 6); *Richardson v. State*, 368 N.C. 158, 774 S.E.2d 304 (2015) (where plaintiffs unsuccessfully made facial challenges to the OSP under Article I, §§ 15, 19; Article V, § 2; and Article IX, §§ 3 and 6). In both of the earlier challenges, applicant-parents were permitted to intervene as defendants.

As in the previous challenges, Applicants are parents who rely on the OSP to send their children to the schools that work best for them. As such, these families are the OSP's direct beneficiaries.

III. APPLICANTS FOR INTERVENTION.

A. Janet Nunn.

Janet Nunn, a single woman, is the legal guardian for her biological granddaughter, Nariah, and has legal authority to make education decisions for Nariah. Ex. A (Nunn Aff. Supp. Mot. Intervene) at ¶ 3. Thanks to an OSP scholarship, Nariah is a rising 6th grader at Brookstone Schools, a private, classical Christian school in Charlotte. Ex. A at ¶ 4. Born two months premature, Nariah spent a month in the hospital before she came home with Ms. Nunn. Ex. A at ¶ 5. Nariah attended a local public school for both kindergarten and first grade. Ex. A at ¶ 7. By

the end of first grade, Ms. Nunn believed the best course of action would be to have Nariah repeat the first grade because she was behind her peers academically. Ex. A at ¶ 10. The school disagreed. *Id.* Ms. Nunn believed that if Nariah was promoted to second grade, where she could not read as well as her peers or keep up with the other students, that she would grow discouraged and continue to fall even further behind. Ex. A at ¶ 12. At an impasse with the school, Ms. Nunn applied for a scholarship from the OSP and enrolled Nariah at Victory Christian Center School in Charlotte. Ex. A at ¶ 13.

At Victory Christian, Nariah repeated the first grade and mastered the fundamentals of reading, propelling her learning, boosting her confidence, and transforming her into an engaged and inquiring student. Ex. A at ¶ 14. During Nariah's fourth grade year, Ms. Nunn decided that because she had become such a good student it was time to find a rigorous, classical approach for Nariah's education. Ex. A at ¶ 15. Ms. Nunn found that approach at Brookstone Schools, a private Christian school in Charlotte. *Id.* At Brookstone, Nariah is a thriving, outgoing, serious student who is proud of what she has accomplished. Ex. A at ¶ 16. But without a scholarship from the OSP, Ms. Nunn would not be able to afford the annual tuition at Brookstone Schools. Ex. A at ¶ 17. Even with the OSP, Ms. Nunn still pays $33 each month to make up the full cost of tuition. *Id.*

If Nariah lost her scholarship, Ms. Nunn would have to pull her out of Brookstone Schools. Ex. A at ¶ 18. She could not afford the full tuition on her own, especially now because she was laid off as a result of the pandemic. *Id.* Absent the OSP, Ms. Nunn would have to enroll Nariah in her zoned public school, which does not provide students with the same type of rigorous curriculum as Brookstone Schools. Ex. A at ¶ 19. Losing the OSP would be a huge, negative blow to Nariah's education. *Id.*

B. Christopher and Nichole Peedin.

Christopher and Nichole Peedin are a married couple with two children, Corbyn and Gracie. Ex. B (Peedin Aff. Supp. Mot. Intervene) at ¶ 3. The Peedins participate in the OSP and receive about $3,780 annually to help them send their son Corbyn, who is entering second grade, to St. Mary Catholic School in Goldsboro. Ex. B at ¶¶ 4–5. The Peedins, who are not Catholic themselves, Ex. B at ¶ 9, have loved their experience at St. Mary and consider the school's staff and community to be family. Ex. B at ¶¶ 7–8. Given Corbyn's success at St. Mary, the Peedins intend to send their daughter to St. Mary for pre-school and kindergarten. Ex. B at ¶ 10. When their daughter is eligible, the Peedins plan to apply to the OSP to assist with tuition. *Id.* Currently, the Peedins must pay a portion of the St. Mary tuition out-of-pocket. Ex. B at ¶ 11. Without the OSP, they would have to pay the tuition in full. *Id.* Absent the OSP, the Peedins could not send Corbyn to St. Mary without severe financial stress. *Id.* And without the OSP, it would be almost impossible for them to cover the cost of tuition for both Corbyn and Gracie. *Id.*

C. Katrina Powers.

Katrina Powers is the mother of four children and is married to an active duty, combat-deployed member of the United States Army Special Forces. Ex. C (Powers Aff. Supp. Mot. Intervene) at ¶ 3. Mrs. Powers's oldest daughter is a rising junior at a public high school who is very happy at her public school and is on track to graduate with an exceptional GPA. Ex. C at ¶ 4. Mrs. Powers' next oldest daughter plans to complete her next year of middle school at a public charter school, where she will attend as an online student this semester. Ex. C at ¶ 5. Mrs. Powers' youngest child, a boy, will be starting kindergarten soon. Ex. C at ¶ 6. She is currently exploring her school options for him. *Id.* Mrs. Powers' youngest daughter, Teagyn, is a high functioning child with autism. Ex. C at ¶ 7.

Thanks to an OSP scholarship, Teagyn is enrolled at a private, non-religious school, The School of Hope, where she will be doing the equivalent of third grade work this academic year. *Id.* Teagyn has not always been in a private school. Ex. C at ¶ 8. She spent her first three years, kindergarten through two first grade years, at a public school in Fayetteville. *Id.* While in public school, Teagyn had an Individualized Education Program ("IEP"). Ex. C at ¶ 9. She was also in a mainstream classroom with her neurologically typical peers. *Id.* However, she was not provided a one-on-one aide, despite Mrs. Powers' requests for one. *Id.* As a result, Teagyn was unable to concentrate on her work and was falling further behind academically with each day. *Id.* Without help, Teagyn was getting bad grades. *Id.* For Mrs. Powers, one of the most frustrating aspects of not being provided a one-on-one aide was that her private insurance was willing to pay for a trained, licensed therapist to come into the school and work one-on-one with Teagyn for up to 30-hours each week. Ex. C at ¶ 10. But the school refused to allow a non-school district employee on campus to fulfill that role. *Id.*

Shortly after an IEP meeting at the public school, regarding Teagyn's second year of first grade, Mrs. Powers chose to disenroll her from public school. Ex. C at ¶ 12. Thanks to an OSP scholarship, Mrs. Powers was able to enroll Teagyn in a private school that serves high-functioning students with autism. Ex. C at ¶¶ 15, 18. When Teagyn was enrolled in public school, it was terribly difficult to get her ready for, and dropped off at, school. Ex. C at ¶ 20. Teagan had extreme separation anxiety when she was in public school. *Id.* Every morning, Teagyn would meltdown, including a screaming fit, in the hall outside of her classroom. *Id.* Every day, her public-school teachers had to take Teagyn out of Mrs. Powers' arms and work to her calm down. *Id.* Every morning was emotionally stressful for Teagyn and Mrs. Powers. *Id.*

Thankfully, everything is different at The School of Hope. Ex. C at ¶ 21. Teagyn gets out of the car on her own and happily marches into the school on her own. *Id.* She is no longer sad to go to school. *Id.* She not only has friends at The School of Hope—she did not have any friends in public school due to her autism-related behaviors—but she is excelling academically and is performing at grade level in subjects like reading and math. *Id.*

The annual tuition cost at the School of Hope is $12,500. Ex. C at ¶ 15. Even paying in installments over 10-months, the cost is out of reach for Mrs. Powers, especially now due to the pandemic. Ex. C at ¶¶ 15 and 16. Teagan receives an annual OSP scholarship of $4,200. Ex. C at ¶ 19. She does not receive any financial aid from the school or any other private scholarships. *Id.* That means that Mrs. Powers must pay approximately $700 out-of-pocket each month to cover the difference between her OSP scholarship and the cost of tuition. *Id.* If Teagyn were to lose her OSP scholarship, Mrs. Powers would not be able to afford to keep her enrolled at The School of Hope. Ex. Cat ¶ 22. And if Teagyn could not attend The School of Hope, Mrs. Powers does not know what she would do to provide Teagyn with an education, except that Mrs. Powers is certain that she would refuse to enroll her in any public school. Ex. C at ¶ 23. Teagyn is a smart and successful student at The School of Hope. *Id.* It would be devastating for Teagyn to lose her OSP scholarship and be denied the opportunity to attend a school that provides her with a high-quality education in a loving, caring environment. *Id.*

ARGUMENT

This Court should grant Applicants' motion for intervention as a matter of right under N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2) or, alternatively, permit them to intervene under *id.* § 1A-1, N.C. R. Civ. P. 24(b) (permissive intervention). As the intended beneficiaries of private school choice programs, like the OSP, parents of children participating in such programs

are routinely granted leave to intervene when such programs are challenged in court. Indeed, parents were allowed to intervene, over the plaintiffs' objections, in two prior facial challenge to the OSP to defend their interests in the program. *Hart v. State*, 368 N.C. 122, 774 S.E.2d 281 (2015); *Richardson v. State*, 368 N.C. 158, 774 S.E.2d 304 (2015). The result should be the same here. *See, e.g.*, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015); *Kotterman v. Killian*, 193 Ariz. 273, 972 P.2d 606 (1999); *Owens v. Colo. Cong. of Parents, Teachers & Students*, 92 P.3d 933 (Colo. 2004); *Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006); *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); *Griffith v. Bower*, 319 Ill. App. 3d 993, 747 N.E.2d 423 (2001); *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016); *Jackson v. Benson*, 218 Wis. 2d 835, 578 N.W.2d 602 (1998).

I. APPLICANTS, AS THE PRIMARY BENEFICIARIES OF THE OPPORTUNITY SCHOLARSHIP PROGRAM, ARE ENTITLED TO INTERVENE AS OF RIGHT IN THIS ACTION.

Applicants are entitled to intervene as a matter of right. North Carolina courts routinely grant intervention when, upon timely motion pursuant to Rule 24(a)(2), applicants demonstrate that "(1) [they have] a direct and immediate interest relating to the property or transaction, (2) denying intervention would result in a practical impairment of the protection of that interest, and (3) there is inadequate representation of that interest by existing parties." *Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 459, 515 S.E.2d 675, 683 (1999); *see also* N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2). Indeed, "[a]s a general rule, motions to intervene made prior to trial are seldom denied." *State Employees' Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264, 330 S.E.2d 645, 648 (1985). The harm to an intervenor's interest is to be

considered from a "practical," rather than a "technical," standpoint. N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24 Comment.

North Carolina courts frequently look to federal courts on intervention standards as "Rule 24 of the North Carolina Rules of Civil Procedure is virtually identical to Rule 24 of the Federal Rules of Civil Procedure." *Harvey Fertilizer & Gas Co. v. Pitt Cnty.*, 153 N.C. App. 81, 87, 568 S.E.2d 923, 927 (2002); *Turner v. Duke Univ.*, 325 N.C. 152, 164, 381 S.E.2d 706, 713 (1989) (since the North Carolina Rules of Civil Procedure are practically identical to the federal rules, federal courts' interpretations of the federal rules "are thus pertinent for guidance and enlightenment in developing the philosophy of the North Carolina rules"); *Sutton v. Duke*, 277 N.C. 94, 99, 176 S.E.2d 161, 164 (1970) (same); *United Servs. Auto. Ass'n v. Simpson*, 126 N.C. App. 393, 485 S.E.2d 337, 339–40 (1997) (adopting reasoning of a Fourth Circuit case); *see also* N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24 Comment (Rule 24(a) "closely follow[s] the federal rule"). Indeed, the Fourth Circuit has explained that "liberal intervention is desirable to dispose of as much of a controversy involving as many apparently concerned persons as is compatible with efficiency and due process." *Feller v. Brock*, 802 F.2d 722, 729 (4th Cir. 1986) (internal citation and quotation marks omitted). Federal courts would clearly permit intervention here.

Applicants' motion is timely—it comes just over three weeks following the filing of Plaintiffs' Complaint—and Applicants satisfy the three remaining criteria articulated above.

A. Applicants Have an Immediate and Direct Interest in this Litigation.

Applicants have an immediate and direct interest in the survival of the OSP, which is the subject of Plaintiffs' lawsuit. Applicants are the parents of children who rely on scholarships for the coming academic year. Applicants have an interest in ensuring that their children receive OSP scholarships, which will enable them to send their children to private schools that better suit

their needs than the public schools to which they are currently assigned. Plaintiffs directly threaten their interests with their lawsuit.

North Carolina courts regularly allow intervention when prospective intervenors' interests are affected by challenged government programs or actions. *See, e.g.*, *Hart*, 368 N.C. 122, 774 S.E.2d 281 (parents allowed permissive intervention to defend the OSP); *Councill v. Town of Boone Bd. of Adjustment*, 146 N.C. App. 103, 108, 551 S.E.2d 907, 910 (2001) (neighbors allowed intervention as of right in conditional use permit proceeding when permit would increase traffic volume, cause risks to health and safety, and reduce their property values); *Procter v. City of Raleigh Bd. of Adjustment*, 133 N.C. App. 181, 184, 514 S.E.2d 745, 747 (1999) (neighbors allowed intervention as of right in special use permit proceeding because proposed development would "impact the special character of their neighborhood" and affect the use and enjoyment of their property); *Hill v. Hill*, 121 N.C. App. 510, 512–13, 466 S.E.2d 322, 324 (1996) (Department of Social Services allowed to intervene as of right in mother's action to terminate father's parental rights when mother partially assigned her right to child support to the DSS and result of proceedings could forever preclude DSS from receiving benefits); *Gummels v. N. Carolina Dep't of Human Res., Div. of Facility Servs., Certificate of Need Sec.*, 97 N.C. App. 245, 249, 388 S.E.2d 223, 225–26 (1990) (allowing petitioner to intervene as of right in another's certificate of need application proceedings when petitioner had applied for 30 out of 60 hospital beds and "might have been awarded all or part of the 60 beds").

Finally, federal case law applying Federal Rule 24(a)(2) reinforces the conclusion that Applicants have the requisite interest to intervene as of right. Federal courts have repeatedly held that the beneficiaries of a government program or law may intervene as of right when that program or law is challenged. *See, e.g.*, *Texas v. United States*, 805 F.3d 653, 660 (5th Cir. 2015)

(allowing alien immigrant parents of minor U.S. citizens to intervene as defendants in a lawsuit challenging a deferred deportation program because they were "the intended beneficiaries of the challenged federal policy"); *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (allowing Wisconsin retailers to intervene in a lawsuit challenging the state's gasoline price-competition law because "[t]hey are the statute's direct beneficiaries"); *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006) (allowing health care providers to intervene as of right to defend conscience protection law because "Congress passed the [law] to protect health care providers like those represented by the proposed intervenors: They are the intended beneficiaries of this law") (internal quotation marks omitted).[1]

As the direct beneficiaries of the OSP, Applicants possess the requisite interest to intervene as a matter of right in this case.

B. The Disposition of this Lawsuit May Impair or Impede Applicants' Ability to Protect Their Interests.

Second, the disposition of this action may, as a "practical matter," "impair or impede" Applicants' "ability to protect [their] interest" in the OSP. N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2). North Carolina courts regularly allow intervention as of right when prospective intervenors can show that the case's outcome could harm their interests related to the litigation. *See, e.g.*, *United Servs. Auto. Ass'n v. Simpson*, 126 N.C. App. 393, 485 S.E.2d 337 (1997) (appellants allowed to intervene as of right in a coverage dispute between an insurer and its insured because the outcome of the declaratory judgment action would affect any judgments the appellants might recover in their fraud claims against the insured); *Nw. Bank v. Robertson*, 25

[1] *See also Cty. of Fresno v. Andrus*, 622 F.2d 436, 438–39 (9th Cir. 1980) (allowing small farmers to intervene as of right to defend rulemaking under reclamation acts because small farmers were "precisely those Congress intended to protect with the reclamation acts"); *United States v. Dixwell Hous. Dev. Corp.*, 71 F.R.D. 558, 560 (D. Conn. 1976) (allowing housing project tenants to intervene as of right to defend portions of National Housing Act because "their interest as beneficiaries of two aspects of the . . . Act" was "sufficient to support intervention").

N.C. App. 424, 213 S.E.2d 363 (1975) (successful bidder at an auction sale permitted to intervene as of right to contest a motion to enjoin conveyance of the property which was the subject of the auction sale).

Federal intervention standards are again instructive. Under the federal rules, an intervenor must "show only that impairment of its substantial legal interest is possible if intervention is denied." *Miller*, 103 F.3d at 1247 (citation omitted). This practical impairment burden is "minimal," even allowing for the consideration of "potential stare decisis effects" and "the time-sensitive nature of a case." *Id.* Thus, as it was in *Miller*, intervention as of right should be allowed when prospective intervenors can show a lawsuit could harm their interests. *See, e.g.*, *JLS, Inc. v. Pub. Serv. Comm'n of W. Va.*, 321 F. App'x 286 (4th Cir. 2009) (granting motion to intervene where lawsuit affected regulation of intervenors); *Nish & Goodwill Servs., Inc. v. Cohen*, 191 F.R.D. 94 (E.D. Va. 2000) (granting a motion to intervene where a lawsuit could interfere with intervenors' right to contract with the military); *Davis v. Lifetime Cap., Inc.*, 560 F. App'x 477, 496 (6th Cir. 2014) (granting a motion to intervene where the intervenor sought to recover funds allegedly seized by a court-appointed receiver in an ongoing fraud case); *Ne. Ohio Coal. for Homeless & SEIU v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006) (granting the State of Ohio's motion to intervene in lawsuit defending the state's voter-identification laws); *Miller*, 103 F.3d at 1247 (granting Chamber of Commerce motion to intervene as defendants in a lawsuit challenging Michigan campaign finance laws because otherwise forthcoming elections might not be subject to the "legislatively approved terms" the Chamber "believe[d] to be fair and constitutional").

An adverse ruling in this case would significantly impair Applicants' interest in the OSP. Their interest in obtaining scholarships to pay the cost of their children's tuition—not merely a

financial interest, as in the above-discussed cases, but also an educational one—would obviously be impeded or impaired by a decision declaring the OSP unconstitutional. Indeed, the clear objective of Plaintiffs' lawsuit is to deprive Applicants and other parents of the educational opportunities that the North Carolina General Assembly has seen fit to provide through the OSP. Additionally, Applicants "have no alternative forum where they can mount a robust defense of the" OSP. *Lockyer*, 450 F.3d at 442 (9th Cir. 2006). Should the OSP be ruled unconstitutional, Applicants and their children, "the beneficiaries under the [Program] would have no chance in future proceedings to have its constitutionality upheld." *Saunders v. Super. Ct. in & for Maricopa Cty.*, 510 P.2d 740, 741–42 (Ariz. 1973). "This practical disadvantage to the protection of their interest . . . warrants their intervention as of right." *Id.* at 742. *Cf. Seely v. Borum & Assoc., Inc.*, 127 N.C. App. 193, 488 S.E.2d 282 (1997) (collateral attack barred where plaintiff could have intervened in a first action).

C. Applicants' Interests Will Only Be Represented Adequately if They Are Allowed to Intervene.

Third, Applicants' interest is not adequately protected by existing parties. N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2). When applicants for intervention have different interests in the subject matter of the litigation than existing parties, representation is inadequate.[2] This is

[2] The U.S. Supreme Court has recognized that the applicant's burden of showing inadequate representation under Fed. R. Civ. P. 24 "should be treated as minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). The plain text of both the federal and North Carolina rules governing intervention illustrate why. They both provide for intervention as of right "unless" the applicant's interest is adequately represented by existing parties. *Compare* Fed. R. Civ. P. 24(a)(2) (providing for intervention as of right "unless existing parties adequately represent [the intervenor's] interest") *with* N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(a)(2) ("unless the applicant's interest is adequately represented by existing parties"). In the federal rules, the word "unless" was inserted as part of a 1966 amendment designed to "shift the burden of persuasion" regarding inadequacy from the intervenor to the party opposing intervention. 7C Charles A. Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice and Procedure § 1909 (2d ed. 1986). In other words, "the language of the rule clearly suggests that now the intervenor is to be allowed in, if the other conditions of the rule are satisfied, unless the court is persuaded that the representation is in fact adequate." *Id.* By using substantially identical language, North Carolina joined the federal rules "in . . . making intervention more freely available." *Id.* It is thus sufficient for the applicant to show that "representation of his interest 'may be' inadequate." *Id.* at n.5.

particularly true when a government entity is involved because the government's interest in the outcome of a proceeding generally implicates broad public policy concerns, whereas the individual's interest is necessarily narrower. *See, e.g.*, *JLS, Inc.*, 321 F. App'x at 290 (granting intervention because "even when a governmental agency's interests appear aligned with those of a particular private group at a particular moment in time, 'the government's position is defined by the public interest, [not simply] the interests of a particular group of citizens'") (citation omitted); *In re Sierra Club*, 945 F.2d 776, 780 (4th Cir. 1991) (granting intervention to an environmental group because even though it and a government agency had shared goals, "the[ir] interests may diverge at points" on critical issues of law); *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001) (granting intervention because "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public"). Indeed, federal courts applying Federal Rule of Civil Procedure 24(a) have repeatedly recognized that the interest of an individual participating in a government program is distinct from the broader interest of the government in running that program. Because of these distinct interests, individual participants in the program are not adequately represented by the government in lawsuits about those programs and may therefore intervene as of right in those lawsuits. Examples abound. *See e.g.*, *Trbovich*, 404 U.S. at 539 (holding secretary of labor could not provide adequate representation and allowing intervention because union member's interest was narrower than the secretary's broader interest in "assuring free and democratic union elections"); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) ("[B]ecause the employment interests of IBT's members [in law guaranteeing them a prevailing wage] were potentially more narrow and parochial than the interests of the public at large, IBT demonstrated that the

representation of its interests by the named defendants-appellees may have been inadequate."); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (permitting intervention by Farm Bureau in case where the USDA was a defendant because, *inter alia*, the Bureau's members were beneficiaries of a government aquifer and had distinct economic concerns that the government did not share); *Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 384 (10th Cir. 1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners [who sought to protect regulations that financially benefitted them] in intervention, a task which is on its face impossible."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) (permitting intervention of coal company in federal land-lease program and stating that "it is well-established that governmental entities generally cannot represent the 'more narrow and parochial financial interest' of a private party.").

In this case Defendants, who are answerable to the public at large, have a broad interest in administering the OSP as part of North Carolina's overall approach to public education. Applicants have a narrower interest in using the scholarships to provide their children with the best possible education—an education fitted to what Applicants believe each of their children's educational needs to be. Moreover, Applicants' interests, unlike Defendants, stem from the fundamental "liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925). Additionally, due to their interests being distinct from Defendants', the harm that Applicants will suffer to those interests is also distinct from the harm Defendants will suffer if the OSP is enjoined. Thus, Applicants have a far greater and very personal stake in avoiding the disruption that would be caused by enjoining the OSP than do Defendants.

Here, while the State Defendants have a general interest in protecting North Carolina's laws and executing the General Assembly's education policy, Applicants have a personal interest in ensuring that the OSP can be used by themselves and other eligible families. Without the OSP, Applicants and similarly situated low-and-middle income families who desire to avail themselves of the OSP will have no choice but to return their children to public schools that are failing to meet their children's educational needs, or to educate them at home. Unlike the State Defendants here, Applicants are in a position to see personal, concrete benefits for their children and families if the OSP is upheld, and personal, concrete injury if it is found invalid.

Notably, while Defendants and Applicants each desire to see the OSP upheld, their different interests create the very real possibility of disagreement over litigation approach and legal arguments. *See, e.g.*, *Trbovich*, 404 U.S. at 538–39 (finding intervenors showed inadequate representation when they preferred a different litigation strategy than what was being employed by the Secretary of Labor). Indeed, past experience in school-choice litigation confirms that the government and intervenors may disagree over litigation approaches and will not necessarily raise the same arguments. In *Arizona Christian School Tuition Organization v. Winn*, for example, intervenors successfully argued that the plaintiffs challenging the school-choice program at issue lacked standing, while the state conceded that plaintiffs had standing. 563 U.S. at 125. In *Duncan v. State*, 102 A.3d 913 (N.H. 2014), the state conceded plaintiffs' standing while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional, resulting in dismissal of the case. Similarly, it was the intervenors (and not the state) in *Kotterman* who urged the court to confront the role that anti-religious bigotry played in the adoption of the "Blaine Amendments" found in many state constitutions. 193 Ariz. at 291–292, 972 P.2d at 624–625.

Because the only way to guarantee that Applicants' interests will be adequately represented is for them to participate in the litigation, Applicants should be allowed to intervene as a matter of right. Party status is necessary to ensure that the intended beneficiaries of the OSP may, like the intervenors in *Winn*, *Duncan*, and *Kotterman*, protect their rights vigorously and completely.

II. APPLICANTS SHOULD BE GRANTED PERMISSIVE INTERVENTION TO DEFEND THE OPPORTUNITY SCHOLARSHIP PROGRAM AS ITS INTENDED BENEFICIARIES.

Applicants alternately seek permissive intervention under Rule 24(b). Upon timely motion, any applicant may be permitted to intervene when his or her claim or defense and the main action have a question of law or fact in common. N.C. Gen. Stat. § 1A-1, N.C. R. Civ. P. 24(b)(2). So long as the claims or defenses have issues in common, this Court has broad discretion to allow permissive intervention where the intervention will not unduly delay or prejudice the rights of the original parties. *See, e.g., Virmani v. Presbyterian Health Servs. Corp.*, 350 N.C. 449, 460, 515 S.E.2d 675, 683 (1999). As explained below, Applicants' proposed intervention easily satisfies that standard because it is timely, will concern the same legal issues as those raised by Plaintiffs, and will not unduly delay or prejudice the rights of the original parties.

A. Applicants' Motion to Intervene is Timely.

First, Applicants' motion to intervene—filed just over three weeks after the filing of this lawsuit—is timely. The five factors North Carolina courts weigh when evaluating timeliness include "(1) the status of the case, (2) the possibility of unfairness or prejudice to the existing parties, (3) the reason for the delay in moving for intervention, (4) the resulting prejudice to the applicant if the motion is denied, and (5) any unusual circumstances." *Malloy v. Cooper*, 195

N.C. App. 747, 750, 673 S.E.2d 783, 786 (2009) (quoting *Home Builders Ass'n of Fayetteville N.C., Inc. v. City of Fayetteville*, 170 N.C. App. 625, 630–31, 613 S.E.2d 521, 525 (2005) (emphasis omitted). Applicants easily satisfy all five timeliness factors. Their motion is timely because they filed it quickly, just over three weeks after Plaintiffs' filed this lawsuit. Indeed, their motion is more timely than other motions to intervene that North Carolina courts have held to be timely. *See, e.g.*, *Hamilton v. Freeman*, 147 N.C. App. 195, 202, 554 S.E.2d 856, 860 (2001) (two months). Furthermore, because Applicants have filed their motion in a timely fashion, there is no prejudice caused by the timing of their intervention to the existing parties. There has been no delay in Applicants' moving for intervention. No discovery has taken place between the parties, nor have any depositions been noticed. As explained above, Applicants would be prejudiced by a denial of this motion because they would lose their only opportunity to defend their interest in benefitting from the OSP. And there are no unusual circumstances here militating against a determination that Applicants' motion is timely.

Granting Applicants' motion to intervene will not delay resolution of this lawsuit. Applicants will abide by any schedule established previously by the parties. Applicants, as the OSP's primary beneficiaries, have every interest in seeing an expeditious resolution.

B. Applicants' Intervention Will Involve the Same Legal Issues as Those Raised by Plaintiffs.

Second, Applicants' defense of the Act will involve the same legal issues currently before the parties—that is, whether the OSP violates the North Carolina Constitution. Applicants will focus solely on the constitutional claims brought by Plaintiffs and will not bring any crossclaims or introduce any issues unrelated to Plaintiffs' challenge to the constitutionality of the Act.

C. Applicants' Intervention Will Not Unduly Delay or Prejudice the Rights of the Original Parties.

Third, Applicants' intervention will not unduly delay or prejudice the rights of the original parties. Applicants have every interest in seeing this litigation expeditiously resolved, so that they can plan for their children's future education. And, as noted above, Applicants will not introduce any legal issues unrelated to the constitutional claims raised by Plaintiffs. Furthermore, Applicants believe that their participation in this case will assist this Court in its resolution of Plaintiffs' constitutional claims. Applicants' counsel has significant experience representing parents in their defense of educational-choice programs facing constitutional challenges.[3] Indeed, Applicants' counsel in the present case also represented the parent-intervenors who defended against the prior facial challenges to the OSP, which raised very similar constitutional issues, and thus have significant experience and expertise litigating under the North Carolina Constitution. *See Hart*, 368 N.C. 122, 774 S.E.2d 281 (2015); *Richardson*, 368 N.C. 158, 774 S.E.2d 304 (2015). It is appropriate to have the parties with the most direct and tangible stake in the OSP participating in the lawsuit.

Finally, in nearly every court challenge to a school-choice program during the past three decades, parents have been permitted to intervene in order to represent their and their children's unique interests. Applicants respectfully ask that they be allowed to intervene because they—like

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[3] *See, e.g.* Montana's tax credit program, *Espinoza v. Montana Dep't of Revenue*, 140 S.Ct. 2246 (U.S. 2020). Nevada's education savings account program, *Schwartz v. Lopez*, 382 P.3d 886 (Nev. 2016). Alabama's Education Tax Credit and Scholarship Program, *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015). New Hampshire's Education Tax Credit Program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014). Arizona's Empowerment Scholarship Account Program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013). Indiana's Choice Scholarship Program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013). Arizona's scholarship tax credit programs, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (individual scholarship tax credit program), *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009) (corporate tax credit program), and *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999) (individual tax credit program). Illinois' Educational Expenses Tax Credit Program, *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001); *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. Ct. 2001). Ohio's Pilot Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999). Milwaukee's Parental Choice Program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998) and *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

parents who have intervened in other school-choice cases—are best situated to assist this Court in understanding the real-world need for, and effects of, the educational opportunities provided by the OSP and its impact on its intended beneficiaries: parents who want to keep their children in the schools where they are receiving the type of education that best suits their unique, individual needs.

CONCLUSION

Party status is necessary to ensure that the interests of the OSP's beneficiaries are fully protected. Should the OSP be ruled unconstitutional in this case, Applicants will forever lose the opportunity to protect their interests. Particularly for this reason, Applicants respectfully request that they be granted leave to intervene as defendants in the instant case.

WHEREFORE, Applicants respectfully request that this Court grant them leave to intervene as Defendants in this case.

Dated this 19th day of August, 2020.

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**Pro Hac Vice* Application Pending

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date listed below a copy of the foregoing was served upon all parties to this matter by placing a copy in the United States Mail, First Class, postage prepaid and addressed as follows:

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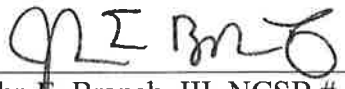

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Exhibit A

NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE 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, Defendants.	**AFFIDAVIT OF JANET NUNN IN SUPPORT OF MOTION TO INTERVENE**

Comes now the affiant, Janet Nunn, after being duly sworn upon her oath, and states as follows:

1. I am an adult over the age of 18 years, and have personal knowledge as to all the matters stated herein.
2. I am a resident of the state of North Carolina and reside in the City of Charlotte in Mecklenburg County.
3. I am the legal guardian to my biological granddaughter, Nariah. I have full legal and physical custody of Nariah, whom I call my daughter, and I have the legal authority to make all educational decisions on her behalf. I am not married.

4. Thanks to the scholarship she receives under North Carolina's Opportunity Scholarship Program, Nariah is now a rising 6th grader at Brookstone Schools, a private, classical Christian school in Charlotte.
5. Nariah was born two months premature and spent a month in the hospital before she could come home with me. She has lived with me as her guardian and grandmother her entire life.
6. As a young child, Nariah was behind in her speech development, which may have been related to the many ear infections she suffered from an early age.
7. Nariah attended First Ward Elementary School, one of Charlotte-Mecklenberg's public schools, for both kindergarten and first grade. When she was in kindergarten, she received private tutoring.
8. But in first grade, when she was assessed by the school, it was revealed that, even though she could recite the alphabet, she did not know the different sounds each letter made. So, again, I got her tutoring help.
9. Even though I got Nariah a private tutor to help with her reading, I was very concerned that she would remain behind without additional help and support. To address my concerns, I asked the administration at First Ward to test Nariah to determine if an IEP would be appropriate for her. But the administration claimed that if they tested her, she would pass the test. The school had been pulling her out of her regular classroom for help in the resource room, but that meant while she was improving in reading she was falling behind in other subjects.
10. By the end of first grade, in my opinion, Nariah was still behind academically. Yet her public school wanted to promote her to second grade. I refused to allow her to be moved along if she was behind her peers.

11. The school officials were upset by the idea of her repeating first grade. They believed that if she was held back for another year she would become a discipline problem. The school did say that if Nariah had problems in second grade, they would consider testing her when those problems arose.
12. However, I believed that if Nariah was placed in a second-grade classroom, where she would not be able to read or keep up with the other students, she would grow discouraged and continue to fall even further behind. I could already see her getting quiet and fearful. She was becoming a child who tried to hide behind other students, never speaking up for her needs, or participating in class discussions.
13. At an impasse with the school, I applied for a scholarship from the OSP and ultimately enrolled Nariah at Victory Christian Center School in Charlotte.
14. At Victory Christian, Nariah repeated the first grade and was able to master the fundamentals of reading, which propelled her learning and boosted her confidence. She moved out of the shell she had entered while at First Ward and became an engaged and inquiring student.
15. During Nariah's fourth grade year, I decided that she had become such a good student that I wanted to find a rigorous, classical approach for her education. So I moved her to Brookstone Schools.
16. At Brookstone, Nariah is a serious student who is proud of what she has accomplished. She is no longer content to sit in the back of the classroom. Instead, she is in the front of the class and is known for frequently raising her hand to confidently answer questions. Today, she really believes in herself and that self-confidence continues to grow.

17. Without the scholarship from the OSP, I would not be able to afford the annual tuition at Brookstone Schools. Even with the OSP, I still must pay $33 each month to make up the full cost of tuition.

18. If Nariah lost her scholarship, I would have to pull her out of Brookstone Schools. I could not afford the full tuition on my own. Especially now. I was laid off because of the pandemic.

19. Absent the OSP, I would have to enroll Nariah in our zoned public school, which does not provide students with the same type of rigorous curriculum as Brookstone Schools. Losing the OSP would be a huge, negative blow to Nariah's education.

20. I affirm, under the penalties for perjury, that the foregoing representations are true.

FURTHER AFFIANT SAYETH NOT.

Dated: August 18, 2020

Janet Nunn

Janet Nunn

Exhibit B

NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE 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, Defendants.	**AFFIDAVIT OF CHRISTOPHER PEEDIN IN SUPPORT OF MOTION TO INTERVENE**

Comes now the affiant, Christopher Peedin, and after being duly sworn upon his oath, states as follows:

1. I am an adult over the age of 18 years, and have personal knowledge as to all the matters stated herein.
2. I am a resident of the state of North Carolina and reside in the City of Goldsboro in Wayne County.
3. I am a deputy with the Wayne County Sherriff's Office. I live in Goldsboro with my wife, Nichole, who works as a cosmetologist. We have two children, Corbyn, 7, and Gracie, 3.

4. My family participates in the Opportunity Scholarship Program ("OSP") for Corbyn. With the OSP, we receive 90% of the full scholarship amount, which works out to about $3,780 annually.
5. Using the OSP, Corbyn is able to attend St. Mary Catholic School in Goldsboro. St. Mary is a K-8 school (and also operates a pre-school). He is entering the second grade now, and we have used the OSP to help cover his tuition since he entered kindergarten there two years ago.
6. We had always heard great things about St. Mary. My wife meets a lot of high school teachers through her work in a salon, and they consistently tell her that the students who arrive from St. Mary are much more advanced, academically, than their fellow freshmen who attended public elementary schools. We knew admissions can be very competitive at St. Mary, so we were thrilled when we were able to get a spot.
7. Everything we heard about St. Mary is true, and my wife and I could not be more pleased with Corbyn's experience there. The school really feels like a family. Because of the small class-size and grade-size, Corbyn's social circle stays mostly intact year after year, and we are able to build personal relationships with Corbyn's teachers and our fellow parents.
8. Moreover, St. Mary's response to the COVID pandemic was first-class. Within a couple of days of the school closing, every student had take-home packets of work to get started on. We stayed in constant contact with his teachers, and my wife and I were astonished to see how advanced some of Corbyn's first-grade coursework was.
9. My family is not Catholic—we are Pentecostal—but we accept St. Mary's Catholic curriculum and values. In fact, we appreciate that it exposes Corbyn to a different religious

perspective. And the education Corbyn receives at St. Mary is so exceptional that we know it is the best environment for him from a purely academic standpoint.

10. Given the success Corbyn has had there, we intend to send our daughter, Gracie, to St. Mary for pre-school and kindergarten when she is eligible. And once she enters kindergarten, we intend to use the OSP to assist with tuition there.

11. We currently do pay a portion of the St. Mary tuition out of pocket, but without the OSP, we would have to pay in full. Without the OSP, I am not sure that we could send Corbyn to St. Mary without severe financial stress. And without the OSP, it will be almost impossible for us to cover the cost of tuition for both Corbyn and Gracie.

12. I affirm, under the penalties for perjury, that the foregoing representations are true.

FURTHER AFFIANT SAYETH NOT.

Dated: 8-18-2020

Christopher Peedin

Exhibit C

NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE 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, Defendants.	**AFFIDAVIT OF KATRINA POWERS IN SUPPORT OF MOTION TO INTERVENE**

Comes now the affiant, Katrina Powers, after being duly sworn upon her oath, and states as follows:

1. I am an adult over the age of 18 years, and have personal knowledge as to all the matters stated herein.
2. I am a resident of the state of North Carolina and reside in the City of Fayetteville in Cumberland County.
3. I am the wife of an active duty, combat-deployed member of the United States Army Special Forces. And I am the mother of four children.

4. My oldest daughter is junior at Jack Britt High School, a public high school located in southern Cumberland County. My oldest daughter fits perfectly into the public school "box." She has a 4.3 GPA, is on track to graduate, and is generally very happy at Jack Britt.
5. Last school year, my second oldest daughter was enrolled at John Griffin Middle School, a public school in Fayetteville, and was also homeschooled in the spring. However, she is now enrolled at the Capitol Encore Academy, a public charter school in Fayetteville, where she will attend as an online student this semester.
6. I also have a young son who will be starting kindergarten soon. I am currently exploring my school options for him. At this point, the only thing I am certain is that I do not want to send him to E. Melvin Honeycutt Elementary School, which is the public school where his older sister, and my youngest daughter, Teagyn, was enrolled before she received an OSP scholarship.
7. My youngest daughter, Teagyn, is a high functioning child with autism. Thanks to a scholarship from the Opportunity Scholarship Program ("OSP"), Teagyn is enrolled at a private, non-religious school, The School of Hope, where she will be doing the equivalent of third grade work this academic year.
8. Teagyn has not always been in a private school. She spent her first three years, kindergarten through two first grade years, at E. Melvin Honeycutt Elementary School, a public school in Fayetteville.
9. While in public school, Teagyn had an Individualized Education Program ("IEP"). She was also in a mainstream classroom with her neurologically typical peers, and not a self-contained classroom with other students with disabilities. However, she was not provided a one-on-one aide, despite my requesting one, and as a result Teagyn was unable to concentrate

on her work and was falling further behind academically with each day. Teagyn would only do in-class work if someone sat right next to her. Without help, she was getting bad grades.

10. One of the most frustrating aspects of not being provided a one-on-one aide was that my private insurance was willing to pay for a trained, licensed therapist to come into the school and work one-on-one with Teagyn for up to 30-hours each week. But the school refused to allow a non-school district employee on campus to fulfill that role.
11. Moreover, even if the school had been willing to provide a one-on-one aide, that aide would not have been required to have any training or education or experience in working with a child with special needs.
12. Shortly after an IEP meeting with E. Melvin Honeycutt regarding my daughter's second year of first grade, I chose to disenroll her from public school. While I searched for a new school, Teagyn received therapies paid for by my private insurance.
13. Soon after I disenrolled Teagyn, a public-school teacher from E. Melvin Honeycutt Elementary School recommended The School of Hope to me.
14. The School of Hope serves students who have been clinically diagnosed with autism, which is why everyone who works at the school has experience or training working with children with autism.
15. After meeting with The School of Hope's principal and seeing the school firsthand, I knew I wanted Teagyn to attend the school. But with an annual tuition cost of $12,500, even paid in installments over 10-months, the cost was out of reach.
16. And the full cost of tuition would certainly be out of reach to me right now. Due to COVID, the part-time jobs I do have, as an Instacart shopper and as a brand ambassador for a line of beer, have not been bringing in much income.

17. Thankfully, The School of Hope told me about the OSP.

18. I applied for and received an OSP scholarship for Teagyn. I used the scholarship to enroll her at—and I continue to rely on her OSP scholarship to keep her enrolled at—The School of Hope.

19. Teagyn receives an annual scholarship of $4,200 under the OSP. She does not receive any financial aid from the school or other private scholarships, which means that I must pay approximately $700 out-of-pocket each month to pay for the difference between her OSP scholarship and the cost of tuition.

20. When Teagyn was enrolled at E. Melvin Honeycutt Elementary School, the process of getting ready for and going to school was literally the worst part of my day, and my life. Teagyn had extreme separation anxiety when she was in public school. Every morning, Teagyn had a complete meltdown, including a screaming fit, in the hall outside of her classroom. Every day, her public-school teachers had to take her out of my arms and work to her calm down. Every morning was emotionally stressful. She simply did not want to be away from me. I did not even want to wake up most mornings because the drop off at her public school was so bad.

21. Everything is different at The School of Hope. Teagyn gets out of the car on her own and happily marches into the school on her own. She is no longer sad to go to school. She not only has friends at The School of Hope—she did not have any friends in public school due to her autism-related behaviors—but she is excelling academically and is performing at grade level in subjects like reading and math. She also enjoys doing science experiments at The School of Hope, something she never got to do in her public school.

22. If Teagyn were to lose her OSP scholarship, I would not be able to afford to keep her enrolled at The Hope School.

23. If she could not attend The School of Hope, I do not know what I would do to provide her with an education—except I know this: I would refuse to send her to any Cumberland County public school. Teagyn is a smart and successful student at The School of Hope. It would be devastating to lose our OSP scholarship and be denied this wonderful opportunity to attend a school that provides her with a high quality education in a loving, caring environment.

24. I affirm, under the penalties for perjury, that the foregoing representations are true.

FURTHER AFFIANT SAYETH NOT.

Dated: 9.18.20

Katrina Powers

EXHIBIT D

NORTH CAROLINA WAKE COUNTY	IN THE GENERAL COURT OF JUSTICE 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, Defendants, and JANET NUNN, CHRISTOPHER AND NICHOLE PEEDIN, and KATRINA POWERS, Intervenor-Defendants.	**INTERVENOR-DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT**

Intervenor-Defendants Janet Nunn, Chris and Nichole Peedin, and Katrina Powers (collectively "Intervenor-Defendants") hereby submit their Answers to Plaintiffs' Complaint:

INTRODUCTION

1. Intervenor-Defendants admit that in 2013 the North Carolina General Assembly enacted the Opportunity Scholarship Program ("OSP") and deny the remaining allegations in paragraph 1.

2. Intervenor-Defendants deny the allegations in paragraph 2.

3. Intervenor-Defendants deny the allegations in paragraph 3.

4. Intervenor-Defendants deny the allegations in paragraph 4.

5. Intervenor-Defendants admit that the excerpted language of Article I, Sections 13 and 19 of the North Carolina Constitution is correctly quoted. They deny that the OSP violates any of the cited provisions of the North Carolina Constitution.

THE PARTIES

6. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 6 and therefore deny the same.

7. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 7 and therefore deny the same.

8. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 8 and therefore deny the same.

9. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 9 and therefore deny the same.

10. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 10 and therefore deny the same.

11. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 11 and therefore deny the same.

12. In response to the allegations in paragraph 12, Intervenor-Defendants admit that the legislative power of the State of North Carolina is vested in the General Assembly and further state that the laws of North Carolina speak for themselves. Intervenor-Defendants admit the allegations only to the extent they are consistent with North Carolina law. Otherwise, the allegations are denied.

13. The allegations in paragraph 13 are characterizations of the named defendants under North Carolina law. In response to these allegations, Intervenor-Defendants state that the laws of North Carolina speak for themselves. Intervenor-Defendants admit the allegations only to the extent they are consistent with North Carolina law. Otherwise, the allegations are denied.

JURISDICTION AND VENUE

14. The allegations in paragraph 14 are legal conclusions and Intervenor-Defendants therefore deny the same.

15. The allegations in paragraph 15 are legal conclusions and Intervenor-Defendants therefore deny the same. Additionally, Intervenor-Defendants are without knowledge of the residency of Plaintiff Sherry, and therefore deny the allegation to the extent it alleges proper venue on that basis.

FACTS

I. In response to the allegations in subheading I, Intervenor-Defendants deny that North Carolina's laws governing the OSP are to the detriment of students in public schools.

16. In response to the allegations in paragraph 16, Intervenor-Defendants state that the laws of North Carolina speak for themselves. Intervenor-Defendants admit that Pat McCrory was Governor of North Carolina when he signed Session Law 2013-360 on July 26, 2013. Otherwise, they deny the allegations in paragraph 16.

17. Intervenor-Defendants admit the allegations in paragraph 17 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

18. Intervenor-Defendants admit the allegations in paragraph 18 to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

19. Admit.

20. Admit that the OSP provides funding of up to $4,200 per year for eligible children whose parents choose to send them to a private school. Defendant-Intervenors admit the remaining allegations in paragraph 20 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

21. Intervenors-Defendants admit the allegations in paragraph 21 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

22. Intervenor-Defendants admit that the SEAA sends funds to nonpublic schools, which deposit into a school's account, contingent upon the endorsement of the OSP student's parent or guardian. Intervenor-Defendants deny the remaining allegations in paragraph 22.

23. Intervenor-Defendants admit that OSP recipients must attend a participating school. Otherwise, Intervenor-Defendants deny the allegation in paragraph 23.

24. Intervenor-Defendants admit the allegations in paragraph 24 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

25. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 25 and therefore deny the same.

26. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 26 and therefore deny the same.

27. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 27 and therefore deny the same.

II. Intervenor-Defendants deny the allegations in subheading II.

28. Intervenor-Defendants deny the allegations in paragraph 28.

29. Intervenor-Defendants deny the allegations in paragraph 29.

30. Intervenor-Defendants admit the allegations in paragraph 30 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

31. Intervenor-Defendants admit the allegations in paragraph 31 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

32. Intervenor Defendants admit the allegations in paragraph 32 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the remaining allegations.

33. Intervenor-Defendants admit the allegations in paragraph 33 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

34. Intervenor-Defendants admit the allegations in paragraph 34 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

35. Intervenor-Defendants admit the allegations in paragraph 35 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

36. Intervenor-Defendants admit the allegations in paragraph 36 only to the extent they are consistent with the laws of North Carolina, which speak for themselves, and otherwise deny the allegations.

37. Intervenor-Defendants deny the allegations in paragraph 37.

38. Intervenor-Defendants admit that "[a] nonpublic school enrolling more than 25 students whose tuition and fees are paid in whole or in part with a scholarship grant shall report to the Authority on the aggregate standardized test performance of eligible students." N.C. Gen. Stat. § 115C-562.5(c). Otherwise, they deny the allegations in paragraph 38.

39. Intervenor-Defendants admit that "[t]he Authority shall report annually, no later than December 1, to the Department of Public Instruction" on "[l]earning gains or losses of students receiving scholarship grants … and shall compare, to the extent possible, the learning gains or losses of eligible students by nonpublic school to the statewide learning gains or losses of public school students with similar socioeconomic backgrounds, using aggregate standardized test performance data provided to the Authority by nonpublic schools and by the Department of Public Instruction." N.C. Gen. Stat. § 115C-562.7(c). Otherwise, they deny the allegations in paragraph 39.

40. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 40 and therefore deny the same.

41. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 41 and therefore deny the same.

III. The allegations in subheading III are legal conclusions and Intervenor-Defendants therefore deny the same.

42. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 42 and therefore deny the same.

43. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 43 and therefore deny the same.

44. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 44 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph g and therefore deny the same.

h. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph h and therefore deny the same.

i. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 44, subparagraph i and therefore deny the same.

45. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 45 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 45, subparagraph g and therefore deny the same.

46. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 46 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph g and therefore deny the same.

h. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 46, subparagraph h and therefore deny the same.

47. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 47 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 47, subparagraph g and therefore deny the same.

48. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 48 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 48, subparagraph g and therefore deny the same.

49. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 49 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph g and therefore deny the same.

h. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph h and therefore deny the same.

i. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph i and therefore deny the same.

j. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 49, subparagraph j and therefore deny the same.

IV. Intervenor-Defendants deny the allegations in subheading IV.

50. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 50 and therefore deny the same.

51. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 51 and therefore deny the same.

52. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 52 and therefore deny the same.

53. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 53 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 53, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 53, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 53, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 53, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 53, subparagraph e and therefore deny the same.

54. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 54 and therefore deny the same.

55. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 55 and therefore deny the same.

56. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 56 and therefore deny the same.

57. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 57 and therefore deny the same.

58. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 58 and therefore deny the same.

59. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 59 and therefore deny the same.

60. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 60 and therefore deny the same.

61. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 61 and therefore deny the same.

62. Intervenor-Defendants deny the allegations in paragraph 62.

63. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 63 and therefore deny the same.

64. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 64 and therefore deny the same.

65. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 65 and therefore deny the same.

66. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 66 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph f and therefore deny the same.

g. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph g and therefore deny the same.

h. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 66, subparagraph h and therefore deny the same.

67. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 67 and therefore deny the same.

68. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 68 and therefore deny the same.

69. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 69 and therefore deny the same.

70. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 70 of the Complaint and therefore deny the same.

71. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 71 of the Complaint and therefore deny the same.

72. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 72 of the Complaint and therefore deny the same.

73. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 73 of the Complaint and therefore deny the same.

74. Intervenor-Defendants deny the allegations in paragraph 74.

75. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 75 and therefore deny the same.

76. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 76 and therefore deny the same.

77. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 77 and therefore deny the same.

78. Intervenor-Defendants deny the allegations in paragraph 78.

79. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 79 and therefore deny the same.

80. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 80 and therefore deny the same.

81. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 81 and therefore deny the same.

82. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 82 and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 82, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 82, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 82, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 82, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 82, subparagraph e and therefore deny the same.

83. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 83 and therefore deny the same.

84. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 84 and therefore deny the same.

85. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 85 and therefore deny the same.

86. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 86 and therefore deny the same.

87. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 87 and therefore deny the same.

88. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 88 and therefore deny the same.

89. Intervenor-Defendants deny the allegations in paragraph 89.

90. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 90 and therefore deny the same.

91. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 91 and therefore deny the same.

92. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 92 and therefore deny the same.

93. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 93 of the Complaint and therefore deny the same.

a. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph a and therefore deny the same.

b. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph b and therefore deny the same.

c. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph c and therefore deny the same.

d. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph d and therefore deny the same.

e. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph e and therefore deny the same.

f. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations contained in paragraph 93, subparagraph f and therefore deny the same.

94. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 94 and therefore deny the same.

95. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 95 and therefore deny the same.

96. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 96 and therefore deny the same.

97. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 97 and therefore deny the same.

98. Intervenor-Defendants deny the allegations in paragraph 98.

99. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 99 and therefore deny the same.

100. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 100 and therefore deny the same.

101. Intervenor-Defendants are without sufficient information or knowledge to form a conclusion regarding the truth or falsity of the allegations in paragraph 101 and therefore deny the same.

102. Intervenor-Defendants deny the allegations in paragraph 102.

FIRST CLAIM FOR RELIEF
Article I, Sections 13 and 19 of the North Carolina Constitution:
Religious Discrimination and Interference with Rights of Conscience

103. Intervenor-Defendants incorporate every statement in the preceding paragraphs as if fully set forth herein.

104. Intervenor-Defendants admit only that the allegation in paragraph 104 contains a quotation from Article I, Section 13 of the North Carolina Constitution. Otherwise, the allegation is denied.

105. Intervenor-Defendants admit only that the allegation in paragraph 105 contains a partial quotation from Article I, Section 19 of the North Carolina Constitution. Otherwise, the allegation is denied.

106. Intervenor-Defendants deny the allegations in paragraph 106.

a. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph a.

b. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph b.

c. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph c.

d. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph d.

e. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph e.

f. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph f.

g. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph g.

h. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph h.

i. Intervenor-Defendants deny the allegation in paragraph 106, subparagraph i.

107. Intervenor-Defendants deny the allegations in paragraph 107.

a. Intervenor-Defendants deny the allegation in paragraph 107, subparagraph a.

b. Intervenor-Defendants deny the allegation in paragraph 107, subparagraph b.

c. Intervenor-Defendants deny the allegation in paragraph 107, subparagraph c.

d. Intervenor-Defendants deny the allegation in paragraph 107, subparagraph d.

108. Intervenor-Defendants deny the allegations in paragraph 108.

109. Intervenor-Defendants deny the allegations in paragraph 109.

110. Intervenor-Defendants deny the allegations in paragraph 110.

111. Intervenor-Defendants deny the allegation in paragraph 111.

112. Intervenor-Defendants deny the allegations in paragraph 112.

113. Intervenor-Defendants deny the allegations in paragraph 113.

114. Intervenor-Defendants deny the allegations in paragraph 114.

115. Intervenor-Defendants deny the allegations in paragraph 115.

SECOND CLAIM FOR RELIEF
Article I, Sections 13, 15, and 19; Article V, Sections 2(1) and 2(7)
of the North Carolina Constitution

116. Intervenor-Defendants incorporate every statement in the preceding paragraphs as if fully set forth herein.

117. Intervenor-Defendants admit only that the allegation in paragraph 117 of the Complaint contains a quotation from Article I, Section 15 of the North Carolina Constitution. Otherwise, the allegation is denied.

118. Intervenor-Defendants admit only that the allegation in paragraph 118 of the Complaint contains a partial quotation from Article V, Section 2(1) of the North Carolina Constitution. Otherwise, the allegation is denied.

119. Intervenor-Defendants admit only that the allegation in paragraph 119 of the Complaint quotes Article V, Section 2(7) of the North Carolina Constitution. Otherwise, the allegation is denied.

120. Intervenor-Defendants deny the allegations in paragraph 120.

121. Intervenor-Defendants deny the allegations in paragraph 121.

122. Intervenor-Defendants deny the allegations in paragraph 122.

123. Intervenor-Defendants deny the allegations in paragraph 123.

124. Intervenor-Defendants deny the allegations in paragraph 124.

125. Intervenor-Defendants deny the allegations in paragraph 125.

THIRD CLAIM FOR RELIEF
Article I, Section 15; Article V, Sections 2(1) and 2(7)
of the North Carolina Constitution

126. Intervenor-Defendants incorporate every statement in the preceding paragraphs as if fully set forth herein.

127. The allegations in paragraph 127 of the Complaint are legal conclusions and factual assertions based on a faulty legal premise. Intervenor-Defendants therefore deny the same.

128. Intervenor-Defendants deny the allegations in paragraph 128.

129. The allegations in paragraph 129 of the Complaint are legal conclusions and factual assertions based on a faulty legal premise. Intervenor-Defendants therefore deny the same.

130. Intervenor-Defendants deny the allegations in paragraph 130.

131. Intervenor-Defendants deny the allegations in paragraph 131.

PRAYER FOR RELIEF

(1) No response is required as this prayer for relief contains no allegation of fact or law.

(2) No response is required as this prayer for relief contains no allegation of fact or law.

(3) No response is required as this prayer for relief contains no allegation of fact or law.

(4) No response is required as this prayer for relief contains no allegation of fact or law.

AFFIRMATIVE DEFENSES

1. Intervenor-Defendants reserve the right to assert any affirmative defense to the extent that facts discovered in the course of this litigation support such an affirmative defense.

2. The Plaintiffs' claims fail, in whole or in part, because they have failed to state a claim upon which relief can be granted.

3. The Plaintiffs' claims fail, in whole or in part, because they lack standing.

4. The Plaintiffs' claims fail, in whole or in part, because they seek a judicial decision that would violate the Establishment and Free Exercise Clauses of the First Amendment.

5. The Plaintiffs' claims, in whole or in part, are barred by *res judicata*.

6. Intervenor-Defendants request this Court to enter a final judgment in favor of Defendants and Intervenor-Defendants as follows:

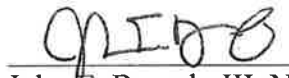
a. dismissing Plaintiffs' claims with prejudice;

b. denying Plaintiffs' request for declaratory relief and for a permanent injunction;

c. awarding Intervenor-Defendants any and all such other relief as the Court deems just and equitable, including, but not limited to, an award of attorneys' fees and costs to the extent provided by North Carolina law.

Respectfully submitted this 19th day of August, 2020.

SHANAHAN LAW GROUP, PLLC



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**Pro Hac Vice* Application Pending