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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

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Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and  
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.  
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education, .....Respondent.

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**PETITION FOR ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION**

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Petitioners respectfully request that this Court entertain their proposed complaint for declaratory and injunctive relief in its original jurisdiction, pursuant to Article V, Section 5 of the South Carolina Constitution, Section 14-3-310 of the South Carolina Code of Laws, and Rule 245 of the South Carolina Appellate Court Rules. Because of the urgency of this matter, the significant public interest it involves, and the material prejudice to the rights of Petitioners that will result from delay, Petitioners further request that the Court give this matter expedited consideration.

As set forth in the attached complaint, this case challenges the South Carolina Department of Education’s newly adopted policy and practice prohibiting the use of Education Scholarship Trust Fund (“ESTF”) scholarships to pay for tuition and fees at private schools. The Department has taken a program that allows parents to use scholarships for a virtually unlimited array of educational expenses, both public and private, and carved out a single exception: private

schooling. In so doing, it has placed the education of thousands of low-income, South Carolina children in jeopardy.

According to the Department, its action is mandated by this Court’s interpretation of Article XI, Section 4 of the South Carolina Constitution in *Eidson v. South Carolina Department of Education*, 444 S.C. 166, 906 S.E.2d 345 (2024). However, no party in *Eidson* raised, and this Court never addressed, the *federal* constitutional implications of that interpretation.

As alleged in the proposed complaint and as addressed below, barring use of ESTF scholarships to pay for private school tuition and fees violates the Fourteenth Amendment to the United States Constitution—specifically, its Due Process and Equal Protection Clauses, as well, arguably, as its Privileges or Immunities Clause. *See generally* Proposed Comp. ¶¶ 64–103. The Due Process Clause protects “the liberty of parents and guardians to direct the upbringing and education of [their] children.” *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534 (1925). This liberty interest is “fundamental,” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997), and it includes, specifically, the right to choose a private school for one’s child. *Pierce*, 268 U.S. at 534–35. Yet the Department now penalizes parents, and treats similarly situated families differently, based solely on their exercise of that fundamental, federal constitutional right.

It is no defense to say that this discriminatory treatment is mandated by the disfavored status of private schooling under Article XI, Section 4 of the *state* constitution. As the U.S. Supreme Court held only four years ago, when a state is “called upon to apply a state [constitutional] provision” in a way that conflicts with the federal constitution, “it [i]s obligated by the Federal Constitution to reject the invitation.” *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 487–88 (2020).

This Court should entertain Petitioners’ proposed complaint for all the reasons above. It should also give this matter expedited consideration because Petitioners are currently incurring great financial and constitutional harm from the Department’s policy and practice barring use of ESTF scholarships at private schools.

Petitioners are the parents of ESTF scholarship recipients, and, until recently, they used those scholarships to secure the education they believed was best for their children: private schooling. *Aff. of Yamilette Albertson in Supp. of Pet’rs’ Pet. for Original Jurisdiction and Expedited Consideration (“Albertson Aff.”)* ¶ 7; *Aff. of Constantine Shulikov in Supp. of Pet’rs’ Pet. for Original Jurisdiction and Expedited Consideration (“Shulikov Aff.”)* ¶ 8, Because of the Department’s newly adopted policy and practice, however, they can no longer use the scholarships for that purpose. Consequently, Petitioners are undergoing tremendous financial struggle to maintain their children’s attendance at their current schools, hoping—with no guarantee—that they will at least be able to finish the remainder of this school year. *Albertson Aff.*, ¶¶ 13, 17; *Shulikov Aff.*, ¶¶ 13, 16.

Without speedy resolution by this Court, however, they will almost certainly be forced to remove their children from their current schools by the end of the school year, if not sooner. *Albertson Aff.*, ¶¶ 13, 17; *Shulikov Aff.*, ¶¶ 13, 17. Starting on January 15, Petitioners will have a short window to re-apply for ESTF scholarships. *Albertson Aff.*, ¶ 14; *Shulikov Aff.*, ¶ 14. During that time, as a condition of renewing the scholarships, they will need to sign an agreement with the Department, promising not to enroll their children in their local public schools. *Albertson Aff.*, ¶ 14; *Shulikov Aff.*, ¶ 14. Meanwhile, Petitioner Albertson faces a January 22 deadline to re-enroll her children in their current private school for the 2025–26 school year. *Albertson Aff.*, ¶ 15. If she opts out of re-enrollment before that date, they will lose

their spots. *Id.* If she opts out of re-enrollment after that date (which she almost certainly would have to do if she cannot use ESTF scholarships for tuition), she will have to pay a fee of \$1,000 per child (or \$2,000 per child, if the opt-out occurs after March 21). *Id.* Petitioner Shulikov similarly risks losing his children’s spots in their current school if he does not notify the school by February 28 that they will be returning for the 2025–26 school year. Shulikov Aff., ¶ 14.

Thus, within a matter of a few months, Petitioners must make critical decisions regarding their children’s educational future. Without a speedy injunction from this Court prohibiting the Department from enforcing its policy and practice, they will almost certainly be forced to uproot their children from their schools by, at the latest, the end of this school year. All the while, Petitioners must draw on their own limited resources to pay the current tuition they thought would be covered by ESTF scholarships.

Because of the grave federal constitutional implications of the Department’s policy and practice; the substantial public interest in both education and respect for the U.S. Constitution; and the severe material harm that will continue to befall Petitioners and thousands of other low-income families in the absence of swift judicial action, Petitioners respectfully request that this Court exercise original jurisdiction over this matter and resolve it on an expedited basis.

### **BACKGROUND**

On May 5, 2023, Governor Henry McMaster signed the ESTF Program into law. Aff. of David Hodges, in Supp. of Pet’rs’ Pet. for Original Jurisdiction and Expedited Consideration (“Hodges Aff.”), Ex. A. The program provides children from low-income families with scholarships that parents can “use to create a customized, flexible education for their child[ren].” *Id.* In its first year, the law directed the Department to provide 5,000 scholarships, each worth \$6,000, to school-aged children from low-income families. S.C. Code Ann. §§ 59-8-110, -120, -

135. To that end, parents were permitted to use the scholarships for a wide array of enumerated, education-related expenses, including private-school<sup>1</sup> tuition and fees, as well as “*any other* educational expense approved by the [D]epartment.” *Id.* § 59-8-120(C) (emphasis added).

Six months after the program took effect, it was challenged in an original action in this Court. The challengers alleged that the program violated the state constitutional provision barring public funds from being “used for the direct benefit of any religious or other private educational institution.” *Eidson*, 444 S.C. at 185 (quoting S.C. Const. art. XI, § 4).

On September 11, 2024, this Court held that allowing scholarship recipients to use their funds for private-school tuition and fees violated Article XI, Section 4 of the state constitution. *Id.* at 189. Simultaneously, this Court upheld the numerous other uses, both public and private, to which scholarships may be put. *Id.* at 194. In upholding the legislature’s ability to provide funding for these other education-related uses, this Court stressed the “many possible and hypothetical forms” that the uses could take. *Id.* at 195. In short, this Court held that the state constitution permits a parent to use the scholarship to pay for virtually any educational expense for her child except one: “use [of] a scholarship to pay [her] child’s private school tuition.” *Id.* at 186.

On September 11, the same day this Court issued the ruling, Petitioners received an email from the program administrator, sent on behalf of the Department, with the Department’s seal, stating: “Today, the South Carolina Supreme Court ruled that sections of South Carolina’s Education Scholarship Trust Fund (ESTF) program are unconstitutional. The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for

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<sup>1</sup> Private schools are considered “education service providers” under the statute. S.C. Code Ann. § 59-8-110.

purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools.**” Albertson Aff. ¶ 10 & Ex. A (emphasis in original); Shulikov Aff. ¶ 10 & Ex. A (emphasis in original). A subsequent email from the administrator, sent on behalf of the Department, with the Department’s seal, advised Petitioners: “[W]hile families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**” Albertson Aff. ¶ 11 & Ex. B (emphasis in original); Shulikov Aff. ¶ 11 & Ex. B (emphasis in original).

In addition to emailing Petitioners regarding this policy, the Department also publicized the policy through the Education Scholarship Trust Fund Program webpage on the Department’s website. Hodges Aff., Ex. A. The page contains a “latest information” link, which directs the user to another page, which provides: “On September 11, 2024, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional. Pursuant to this ruling, and as of September 11, 2024, **ESTF funds may no longer be used for tuition or fee payments to nonpublic schools.**” *Id.*, Ex. B.

For many parents, Petitioners included, the Department’s newly adopted policy and practice have thrown their families’ futures into disarray. Petitioners are the breadwinners in low-income families who, until recently, relied on the scholarships to pay for their children’s education. Albertson Aff. ¶¶ 4, 7, 19; Shulikov Aff. ¶¶ 4, 8, 18. Although the Department’s new policy and practice allow Petitioners to use the scholarships for other educational expenses, this is cold comfort for them, as they have no reason to use the scholarships for things like tutoring, homeschooling, or tuition and fees at an out-of-district public school. Albertson Aff. ¶ 19; Shulikov Aff. ¶ 18. And should Petitioners attempt to use the scholarships, in contravention of

the Department’s policy and practice, for private school tuition and fees—that is, for the education they believe is best for their children—the law makes clear that they will be “subject to penalty.” S.C. Code Ann. § 59-8-115(E)(4)(d).

### **PETITIONERS’ CLAIMS**

Petitioners, like all parents, have a fundamental right, or liberty interest, in directing the education and upbringing of their children. *Meyer v. Nebraska*, 262 U.S. 390, 399, 401 (1923). This includes, specifically, the right to send one’s children to a private school. *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925). The United States Supreme Court has likened this “fundamental” right to those “specific freedoms protected by the Bill of Rights.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). This Court, too, has spoken about the right in similar terms, describing it as “fundamental” and giving parents “a protected liberty interest in the care, custody, and control of their children.” *Camburn v. Smith*, 355 S.C. 574, 579, 586 S.E.2d 565, 567 (2003).

The Department’s policy and practice prohibiting the use of the ESTF Program for private school tuition infringes this right. The General Assembly enacted the program to empower low-income families to direct the education of their children and, to that end, allowed use of scholarship funds for virtually any educational choice a parent might make for her child. S.C. Code Ann. § 59-8-110. The Department’s policy and practice, however, target and prohibit just one of those choices: the choice to attend a private school, which was provided for in the legislation. *Id.* In other words, the Department’s policy and practice penalize and discriminate against parents for exercising the very fundamental, federal constitutional right that the U.S. Supreme Court recognized in *Pierce v. Society of Sisters*.

The federal Constitution does not countenance a state’s “denial of or placing of conditions upon a benefit” based on a citizen’s exercise of a fundamental right. *Sherbert v.*

*Verner*, 374 U.S. 398, 404 (1963). This is true even if, as here, the denial or conditioning is prompted by—even necessitated by—compliance with the state’s own constitution. When a state agency (or a state court) is “called upon to apply a state [constitutional] provision” in such a way, “it [i]s obligated by the Federal Constitution to reject the invitation.” *Espinoza*, 591 U.S. at 487–88 (holding Montana Supreme Court’s application of the “no aid” provision of the Montana Constitution violated the Free Exercise Clause of the U.S. Constitution); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015) (holding that the Supremacy Clause “creates a rule of decision” that state courts “must not give effect to state laws that conflict with federal laws”).

For three reasons, Petitioner’s proposed complaint requests that this Court declare the Department’s policy and practice unconstitutional and enjoin their enforcement.

#### *Due Process*

First, the policy and practice violate the Due Process Clause of the Fourteenth Amendment. That provision “provides heightened protection against government interference with certain fundamental rights and liberty interests,” including the right to direct the education and upbringing of one’s children. *Glucksberg*, 521 U.S. at 720; *Pierce*, 268 U.S. 510.

The General Assembly created the ESTF Program to facilitate the exercise of that very right. The program empowers low-income parents to provide an education for their children, an education that the state requires them to obtain. S.C. Code Ann. § 59-65-10. The program grants thousands of parents the resources to provide educational alternatives to the public schools to which their children have been assigned and, in so doing, allows them to satisfy the state’s compulsory attendance statute. Parents can then use the scholarships to address the diverse needs



of their children with a diverse array of educational expenses, from textbooks to tutoring to tuition and fees for private and out-of-district public schools.

The Department, however, has now singled out and excluded a single parental choice from the program: private schooling. It has done so for no other reason than that helping parents to pay for private schooling is disfavored in the South Carolina Constitution. But again, parents have a fundamental, *federal* constitutional right, under the Due Process Clause of the Fourteenth Amendment, to direct the education of their children, and the Department cannot deny an otherwise available benefit—one that the General Assembly has provided for the very purpose of facilitating the exercise of that right—simply because a parent exercises it in a way that the Department or the state constitution disfavors.

“It is too late in the day to doubt that” constitutional rights “may be infringed by the denial of or placing of conditions upon a benefit or privilege.” *Sherbert*, 374 U.S. at 404. This is especially true when the condition turns on the exercise of a fundamental constitutional right. “[I]f the government could deny a benefit to a person because of his constitutionally protected [activities], his exercise of those freedoms would in effect be penalized and inhibited,” and “[s]uch interference with constitutional rights is impermissible.” *Perry v. Sindermann*, 408 U.S. 593, 597 (1972); *see also Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (holding government could not prohibit use of otherwise generally available student activity funds on religious activities); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533 (2001) (holding government could not condition funding for legal aid organizations on organization’s agreement not to challenge welfare laws).

To be clear, South Carolina was under no obligation to establish the ESTF Program. However, it *did* establish that benefit program, and the Department’s “administration of that

benefit is subject to the [constitutional] principles governing any such public benefit program—including the prohibition on denying the benefit based on a recipient’s . . . exercise” of her constitutional rights. *Carson v. Makin*, 596 U.S. 767, 785 (2022).

### *Equal Protection*

Second, the Department’s policy and practice violate the Equal Protection Clause of the Fourteenth Amendment. South Carolina created the ESTF Program to empower parents to provide an education for their children. Hodges Aff., Ex. A. Recognizing that not all children have the same needs, and that not all families can afford to meet those needs, the General Assembly provided low-income families with the means to afford educational alternatives. S.C. Code Ann. § 59-8-110. Parents were thereby empowered to exercise their fundamental right to direct the education of their children with scholarships that they could use for a wide array of educational expenses that could serve the diverse needs of their children. *Id.* Yet the Department classifies and discriminates against certain of these beneficiaries: those who would use the benefit to access a private school education—those who, in other words, would exercise their fundamental, federal constitutional right recognized in *Pierce v. Society of Sisters*.

The Department’s policy and practice (correctly) do not restrict any of the other expenses that the General Assembly provided for when it enacted the ESTF Program for low-income families. S.C. Code Ann. § 59-8-110. If a parent wants to use the scholarship for the tuition and fees needed to enroll her child in an out-of-district public school, she can. *Id.* If she wants to use the scholarship to educate her child with tutors, she can. *Id.* If she wants to use the scholarship for textbooks and curricula so she can homeschool her child, she can. *Id.* If she wants to use the scholarship for any of the enumerated expenses that the General Assembly provided, or for “any educational expense approved by the [D]epartment,” she can. *Id.* It is *only* when a parent wants

to use the scholarship for private school tuition and fees and facilitate the exercise of her right to send her child to private school that the Department's policy and practice say she cannot.

“[C]lassifications that . . . impinge upon the exercise of a fundamental right” are “presumptively invidious” and presumptively unconstitutional. *Plyler v. Doe*, 457 U.S. 202, 216–17 (1982) (internal quotation marks omitted). They must withstand strict scrutiny to survive. *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976) (“[E]qual protection analysis requires strict scrutiny of a legislative classification . . . when the classification impermissibly interferes with the exercise of a fundamental right.”). This rule applies in the specific context of a case like this one, where a classification is drawn to condition the availability of a public benefit. *See, e.g., Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 262 n.21 (1974) (holding that “[s]trict scrutiny [wa]s required . . . because the challenged classification” in a state medical benefit program “impinge[d] on the [fundamental] right of interstate travel”); *see also Zobel v. Williams*, 457 U.S. 55, 60 (1982) (“When a state distributes benefits unequally, the distinctions it makes are subject to scrutiny under the Equal Protection Clause of the Fourteenth Amendment.”).

Here, to the extent the Department's justification for its classification rests on Article XI, Section 4 of the South Carolina Constitution, it does not satisfy rational basis review, much less strict scrutiny. The Department may maintain that Article XI, Section 4, as interpreted in *Eidson*, flatly bars financial aid to attend a private school. But even where a fundamental right is *not* involved (which it is here), a state constitutional provision cannot, consistent with the federal Equal Protection Clause, impose a structural barrier on the ability of certain citizens to seek or obtain aid from the government. That is what the U.S. Supreme Court held in *Romer v. Evans*, in which it invalidated a state constitutional amendment for doing precisely that. 517 U.S. 620 (1996). “Central both to the idea of the rule of law and to our own Constitution's guarantee of

equal protection,” *Romer* held, “is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance.” *Id.* at 633. Applying rational basis review, the Court declared: “It is not within our constitutional tradition to enact laws . . . declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from the government.” *Id.*

Simply put, a state may not “impose[] a special disability” on a single class of citizens, *id.* at 631, especially where, as here, it defines that class by their exercise of a fundamental, federal constitutional right.

#### *Privileges or Immunities*

Third, to the extent that the source of substantive protection for the right of parents to direct the upbringing of their children is the Privileges or Immunities Clause, rather than (or in addition to) the Due Process Clause, of the Fourteenth Amendment, the Department’s policy and practice abridge a privilege or immunity of citizenship. That clause protects “those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States.” *Snowden v. Hughes*, 321 U.S. 1, 6 (1944). Among the unenumerated substantive rights that citizens possess is the right of parents to direct the education and upbringing of the children under their control, including by sending them to a private school. *See, e.g., Glucksberg*, 521 U.S. 702; *Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality); *Stanley v. Illinois*, 405 U.S. 645, 658 (1972); *Pierce*, 268 U.S. 510.

Petitioners acknowledge that a claim based on the Privileges or Immunities Clause may be foreclosed by current U.S. Supreme Court precedent. *See Slaughter-House Cases*, 83 U.S. (16 Wall.) 36 (1872). They nonetheless bring this claim to preserve it for eventual U.S. Supreme Court review, given the ongoing disagreement on that Court about whether the Due Process or

“Privileges or Immunities Clause is the provision of the Fourteenth Amendment that guarantees substantive rights.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 240, n.22 (2022). At least one currently serving justice has suggested that it is the Privileges or Immunities Clause that protects the “fundamental right of parents to direct the upbringing of their children.” *Troxel*, 530 U.S. at 80 (Thomas, J., concurring in judgment).

For their part, Petitioners argue that whatever its source, Petitioners’ right to direct the upbringing of their children—including by sending them to a private school—is fundamental and is infringed by the Department’s policy and practice for the reasons stated in their complaint. *See generally* Proposed Comp. ¶¶ 92–103. Their complaint accordingly asks this Court for a declaration that the Department’s policy and practice violate the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment, as well as an injunction barring their enforcement and requiring the Department to permit Petitioners and other parents to use their ESTF scholarships for private school tuition and fees, as the Legislature provided.

### **ORIGINAL JURISDICTION REQUEST**

This Court should entertain Petitioners’ claims in its original jurisdiction. Rule 245 provides that the Court may take a matter in its original jurisdiction “[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised,” and if “the matter [cannot] be determined in a lower court in the first instance [] without material prejudice to the rights of the parties.” Rule 245(a), SCACR; *see also Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014) (holding that this Court may resolve a case in the first instance due to “the public interest involved and the need for prompt resolution”).

This Court is uniquely well-suited to address Petitioners' claims. To start, a lower court may not be able to judge how this Court's recent opinion in *Eidson* harmonizes or conflicts with the federal Constitution; determining how *Eidson* corresponds to federal constitutional law is a job for this Court. Next, there are no factual issues to be developed in this case; instead, this case is purely legal. Last, the educational futures of thousands of children remain up in the air until a decision is reached. In short, because this case involves a matter of great public interest that demands an expeditious resolution to prevent material, ongoing prejudice to the rights of Petitioners and others like them, this Court should hear this case in its original jurisdiction.

**1. This Case Involves a Matter of Great Public Interest.**

There is no question that because this case involves education, it is a matter of great public interest that warrants this Court's exercise of its original jurisdiction. As this Court has explained, "education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society." *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 624, 767 S.E.2d 157, 159 (2014) (quoting *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954)). The U.S. Supreme Court, meanwhile, has stressed that "private education has played and is playing a significant and valuable role in raising national levels of knowledge, competence, and experience," and that Americans have long "rel[ie]d[] on private school systems, including parochial systems," to provide the "high quality education [that is] an indispensable ingredient for achieving the kind of nation, and the kind of citizenry, that they have desired to create." *Bd. of Educ. v. Allen*, 392 U.S. 236, 247–48 (1968).

It is hardly surprising, then, that this Court has repeatedly asserted its original jurisdiction in constitutional matters involving education. In *Adams v. McMaster*, for example, it exercised

original jurisdiction over a challenge to a government program directing federal funds to pay tuition for eligible children to attend private schools. 432 S.C. 225, 242, 851 S.E.2d 703 (2020). And in *Eidson*, it did so in a state constitutional challenge to the ESTF Program at issue in this case. 444 S.C. at 176.

This case is no less significant and therefore fits squarely within this Court’s original jurisdiction jurisprudence. The question of whether the Department may prohibit a person from using a public benefit to exercise a vital constitutional right, particularly where it concerns how she will raise her children, is a matter of strong public interest. Indeed, it is no exaggeration to say that resolution of this question will affect the education of thousands of low-income children during the present academic year and many thousands more during the coming years. S.C. Code Ann. § 59-8-135(A) (expanding the number of scholarships available in subsequent school years). And the fact that the Department’s policy and practice are an application of this Court’s decision in *Eidson* only makes this case particularly well-suited for this Court to adjudicate.

Moreover, the right involved in this case—to direct the education of one’s children, including, specifically, by choosing private schooling for them—has been likened by the U.S. Supreme Court “to the specific freedoms protected by the Bill of Rights.” *Glucksberg*, 521 U.S. at 720. When the Court recognized this right over a century ago in *Meyer v. Nebraska*, it did not conjure it out of the ether, but rather stressed that it preexisted the Constitution itself. *Meyer*, 262 U.S. at 399–400. And since the Court decided *Meyer*, it has repeatedly reaffirmed the right as “fundamental,” *Glucksberg*, 521 U.S. at 720, even as it has cast doubt upon, or even rescinded its recognition of, other longstanding constitutional rights.<sup>2</sup> Indeed, it is difficult to conceive of a

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<sup>2</sup> See, e.g., *Dobbs*, 597 U.S. at 256–57 (“[T]he right to make decisions about the education of one’s children . . . do[es] not support the right to obtain an abortion, and by the same token, our

right of greater public import than the right to raise and educate one's own children. *See also S.C. Dep't of Soc. Servs. v. Sarah W.*, 402 S.C. 324, 343, 741 S.E.2d 739, 749 (2013) ("There is perhaps no relationship more sacred than that of parent and child.").

Finally, this case raises another fundamental, public interest: the interest in ensuring that a state applies its own constitution in compliance with the requirements of the U.S. Constitution. *See State v. Waitus*, 224 S.C. 12, 19, 77 S.E.2d 256, 259 (1953) ("We are bound by [the U.S. Supreme Court's] decisions construing the Federal Constitution, although our own views may not be in accord therewith."). The U.S. Supreme Court has *repeatedly* invalidated applications of state constitutions that violate rights protected by the federal Constitution. *See, e.g., Espinoza*, 591 U.S. at 488 (invalidating application of state constitutional provision to bar scholarships from being used at religious schools); *Romer*, 517 U.S. at 633 (invalidating state constitutional provision prohibiting protections for gays and lesbians); *McDaniel v. Paty*, 435 U.S. 618 (1978) (invalidating state constitutional provision barring minister from serving as a constitutional delegate). This Court should entertain the current case, in its original jurisdiction, to ensure that the Department is applying the South Carolina Constitution in a manner that is consistent with the protections that the Fourteenth Amendment to the federal Constitution affords.

## **2. The Ongoing Material Prejudice to the Rights of Petitioners and Thousands Like Them Warrants Prompt Resolution that Can Only Be Provided by this Court.**

This Court should also exercise its original jurisdiction because "the need for prompt resolution" of this case can only be satisfied by this Court without causing additional "material prejudice" to Petitioners and thousands of other low-income South Carolina families. Rule 245(a), SCACR; *Carnival Corp.*, 407 S.C. at 80. The Department's policy and practice have

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conclusion that the Constitution does not confer such a right does not undermine [the *Meyer-Pierce* right] in any way.").



threatened the education of Petitioners' children (and thousands like them), thrown their futures into disarray, and forced their families to incur enormous financial costs to keep them in school. The only way to avoid further harm to Petitioners is for this Court to hear this case now.

Time is of the essence. Right now, Petitioners, who head up low-income households, are paying the costs of their children's education without the use of the quarterly payments made to them by the Department. *Albertson Aff.* ¶¶ 13, 19, *Shulikov Aff.* ¶¶ 13, 18; S.C. Code Ann. § 59-8-120(E). Starting on January 15, they have a short window to re-apply for their children's scholarships to preserve the possibility of using the scholarships again. During that time, and in order to receive the scholarships, they must execute agreements with the Department, promising not to enroll their children in their resident public school districts. S.C. Code Ann. § 59-8-115(A).

Other deadlines are rapidly approaching. On January 8, 2025, Petitioner Albertson's children will be automatically re-enrolled in their school for the 2025–26 school year. *Albertson Aff.* ¶ 15. She will have until January 22 to opt out of re-enrollment. If she opts out before that date, her children will give up their slots. But if she opts out after that date, which she would almost certainly would have to do if she cannot use her children's ESTF scholarships to pay their tuition, she will have to pay a fee, per child, of \$1,000 (and if she opts out after March 21, she will have to pay a fee, per child, of \$2,000). Petitioner Shulikov faces a similar deadline and also risks losing his children's spots. *Shulikov Aff.* ¶ 14. In this light, it is essential that this case be resolved now so that Petitioners can make critical and time-sensitive decisions about where their children go to school. *See also Creswick v. Univ. of S.C.*, 434 S.C. 77, 79–80, 862 S.E.2d 706, 707 (2021) (exercising original jurisdiction to resolve dispute prior to the start of the school year).

Further, since the Department’s policy and practice were adopted in response to this Court’s interpretation of the state constitution, it only makes sense that this Court—not a lower court—be the one to determine whether the Department’s policy and practice comport with the federal Constitution. Petitioners have already endured great financial hardships. *Albertson Aff.* ¶ 13, *Shulikov Aff.* ¶ 13. If they are forced to go to a lower court, then they are guaranteed to face further material prejudice by either having to spend even more of their limited resources to educate their children or by being forced by financial necessity to withdraw their children from school. *Albertson Aff.* ¶¶ 13, 17, *Shulikov Aff.* ¶¶ 13, 16. For these reasons, it is essential that this Court entertain Petitioners’ claims in its original jurisdiction and not let them slowly wend their way through the lower courts with all the attendant delays and appeals, which would only further “material[ly] prejudice” Petitioners. Rule 245(a), SCACR.

Finally, this case involves purely legal issues; there is no need for fact finding or discovery to resolve Petitioners’ claims. Rule 245, SCACR. And this Court is uniquely positioned to resolve those claims on a timeline that will benefit the Petitioners, the Department, and the broader public. Petitioners will benefit by being able to plan their children’s educational futures for the coming school year; the Department will benefit from a timely determination of whether its policy and practice comport with the federal Constitution and how it must administer the program; and the public will benefit from clarity regarding their elected representatives’ ability to provide for the educational needs of the children of this state. This is an “exceptional” situation and “[a] decision by this Court at this time best serves the interests of judicial economy by eliminating the numerous inevitable appeals” that will accompany the “novel issue[s] of significant public interest” that this case presents. *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471–72, 674 S.E.2d 154, 160–61 (2009). Since this Court is likely to ultimately decide the merits

of this case, both fairness and the exigencies of time warrant the Court's taking original jurisdiction of it.

### **SUGGESTED SCHEDULE**

Because of the urgent nature of the action, and because there is no need for this Court to provide for fact finding or discovery to resolve Petitioners' claims, which are purely legal in nature, the following schedule is suggested for disposition of this matter:

1. Respondent's answer to Petitioners' complaint due 14 days after entry of the Court's order exercising original jurisdiction.
2. Petitioners' brief due 21 days after entry of the Court's order exercising original jurisdiction.
3. Brief of Respondent due 14 days after service of Petitioners' brief.
4. Reply brief of Petitioner due 10 days after service of Respondent's brief.
5. Argument and disposition at the Court's earliest convenience.

### **CONCLUSION**

In its discretion, this Court will take a matter in its original jurisdiction "[i]f the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised," and if "the matter [cannot] be determined in a lower court in the first instance [] without material prejudice to the rights of the parties." Rule 245(a), SCACR. This is such a case. This Court should take jurisdiction of this case, direct a response to the proposed complaint, and give this matter expedited consideration.

Dated: December 5, 2024

Respectfully submitted,

/s/ Matthew P. Cavedon

Matthew P. Cavedon (SC Bar No. 105505)

AMAGI LAW, LLC

336 Georgia Avenue, Suite 106 #217

North Augusta, SC 29841

(706) 309-2859

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Michael Bindas\*

INSTITUTE FOR JUSTICE

600 University St., Suite 2710

Seattle, WA 98101

(206) 957-1300

mbindas@ij.org

*\*Pro Hac Vice Applications Pending*

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Dec 05 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

\_\_\_\_\_  
Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and  
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.  
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education, .....Respondent.

\_\_\_\_\_  
**AFFIDAVIT OF YAMILETTE ALBERTSON IN SUPPORT OF PETITIONERS’  
PETITION FOR ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION**  
\_\_\_\_\_

I, Yamilette Albertson, submit the following testimony under oath:

1. I am a citizen of the United States over eighteen years of age. I am of sound mind and fully competent to make this affidavit, which I make knowingly and based on my personal knowledge.

2. I submit this affidavit in support of Petitioners’ Petition for Original Jurisdiction and Expedited Consideration.

3. I am a single mother and I live in Bluffton, South Carolina with my three children. They are Y., my 17-year-old daughter, and A. and J., my six-year-old twin boys. My father, who is 65 years old, also lives with us. He is currently battling cancer.

4. Like my father, I am a military veteran. For a decade, I served my country as a Marine, where I worked as a recruiter at home and as a utilities engineer in the Middle East. After leaving the Marines, I had a short spell of unemployment before ultimately finding work as an operations

manager at a Sherwin-Williams store, where I have worked for seven years. Although money is tight, I make enough to support my family.

5. As Y. approached her senior year at public school, Y. and I concluded that her public school hadn't done a good job of providing her with post-graduation opportunities. We researched the Cross Schools in Bluffton, a local private school, and after going on a tour, we came away impressed. The school offered small class sizes, good career opportunities, a rigorous education, and religious values—all qualities that were missing from Y.'s public school.

6. After we visited the school, I started thinking about how great it would be if all my children could attend the school. The only problem was that sending all three of my children to the school was financially impossible. But after I spoke with the school's administration, I learned about the Education Scholarship Trust Fund ("ESTF") Program, which could provide scholarships for my children.

7. With my help, my children applied for—and received—admission to the school; they also applied for—and received—scholarships from the ESTF Program to pay a major part of the school's tuition. The ESTF scholarships—supplemented with my savings and earnings, and a part-time job Y. took on to bring more resources to the family—gave me enough resources to pay for their education.

8. My children are thriving at school. Y. is excelling academically, she is receiving the religious instruction that I am unable (but want) to provide, and she is making good friends. And she is also learning about career opportunities in a way that she wasn't at public school. While she has long wanted to follow my path into the Marines, she is also learning about alternative careers like welding.

9. For their part, the twins are doing great. They are reading in class and engaged in their subjects. A.'s teacher recently told me that he was one of the top students in class. And I have observed that, even over a short period of time, J. has matured and developed a real sense of purpose.

10. On September 11, 2024, I learned about the South Carolina Supreme Court's *Eidson v. South Carolina Department of Education* decision and the South Carolina Department of Education's policy and practice prohibiting use of ESTF funds for private school tuition and fees. I received an email from ClassWallet, the ESTF program administrator, sent on behalf of the Department, with the Department's seal, stating: "Today, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional. The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools.**" Attached as Exhibit A to this affidavit is a true and correct copy of the email I received. I did not alter or amend the email in any way.

11. On October 11, 2024, I received another email from the program administrator, sent on behalf of the Department, with the Department's seal. The email stated: "[W]hile families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**" Attached as Exhibit B to this affidavit is a true and correct copy of the email I received. I did not alter or amend the email in any way.

12. When I learned about the *Eidson* decision and the policy and practice subsequently adopted by the Department, I was shocked. I thought to myself, “How can it be unconstitutional for my children to use a scholarship to go to school?” It did not make sense to me.

13. Despite this change in circumstance, I want to keep my children in school for the remainder of the year. I hope and expect to be able to rely on my family’s resources, as well as help from private donors, to make tuition payments for the remainder of the academic year. However, I have no guarantee that they will suffice. What *is* guaranteed is that my family will incur great financial hardships for the remainder of the academic year, as the school charges tuition on an ongoing basis, and I can no longer use the scholarships to pay for it. I am managing to scrape by, but it is a struggle.

14. Starting on January 15, 2025, I will have a short window in which I can re-apply for the scholarships and I intend to do so. As part of the application process, I must sign an agreement with the Department promising not to enroll my children in public school. If I do not sign the agreement, the Department will not approve the application.

15. The January 15 deadline is not the only upcoming deadline I face. On January 8, 2025, my boys will be automatically re-enrolled in school for the 2025–26 year. I will have until January 22 to opt them out of the automatic re-enrollment; if I exercise that option, then they will lose their spots in school, which will be given to children on the school’s waitlist. If I do not exercise that option by January 22, but decide by March 21 not to re-enroll my children, then the school will charge me a \$1,000 fee for each child. If I decide after March 21 not to re-enroll my children, then the school will charge me a \$2,000 fee for each child.

16. If the Department’s policy and practice are not changed or enjoined, I will be unable to use the ESTF scholarships to pay for tuition and fees at my children’s private school. If they are



not changed or enjoined, I will also lose the opportunity to apply for, and receive, ESTF scholarships that I can use to pay for tuition and fees at my children's private school in the future.

17. Thinking about the future has put me under great financial and psychological strain. If the ESTF Program does not go back to what it was before, I will be faced with a choice. I will either have to endure tremendous financial hardship or, more likely, withdraw my children from the Cross Schools and re-enroll them in public schools—public schools that, to me, do not provide the best education for my children—following the conclusion of the school year.

18. As a parent, this is heartbreaking. I know I can pull together enough resources so that Y. can graduate from school, but my boys will probably not be so fortunate. I dread the prospect of having to send my boys back to a public school that isn't right for them, that doesn't deliver the same kind of education, and that doesn't provide the same religious education that I wish I could give them. The things I value most for my boys at their private school—better education, small class sizes, religious instruction, and professional opportunities—will disappear.

19. I just want my children to attend the school I believe works for them. But because of the Department's newly adopted policy and practice barring use of ESTF scholarships to pay for tuition and fees at private schools, I cannot use the scholarships at the school simply because it is a private school. This is very frustrating because it is only by using the scholarships for the private school's tuition and fees that the school is affordable for me. I know that the scholarships can still be used for expenses like textbooks and curricula, which would be particularly useful if I wanted to homeschool my children or hire tutors for them, but that's not what I want. I am a single mother who works full-time, and it is impracticable, as well as undesirable, for me to use the scholarships for those educational alternatives.

20. If I had chosen to homeschool my children, have them tutored, or have them attend an out-of-district public school, I would be able to use the scholarships for the attendant expenses. But because of the Department's policy and practice, I cannot use my children's scholarships for the education I know is best for them: private schooling.

21. This testimony is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.



Yamilette Albertson

SWORN to and subscribed before me this 4 day of December 2024.



Notary Public in and for the State of South Carolina

My commission expires 02/16/2027.



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**Dec 05 2024**

S.C. SUPREME COURT

# **Exhibit A**

Affidavit of Yamilette Albertson in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration

From: **South Carolina Department of Education | ClassWallet** <[info@classwallet.com](mailto:info@classwallet.com)>  
Date: Wed, Sep 11, 2024 at 7:03 PM  
Subject: South Carolina Supreme Court Ruling  
To: <[yamilette0416@gmail.com](mailto:yamilette0416@gmail.com)>

Info about your ClassWallet account

[View this email in your browser](#)



CLASSWALLET



On behalf of the South Carolina Department of Education (SCDE)

Dear ESTF Parent:

Today, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional.

The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools.** No parent will be expected to repay any funds spent prior to today's ruling.

We share your confusion and frustration over this decision, and we are committed to doing everything in our power to support the least disruptive path forward for your student.

We will be in contact with you and your school in the coming days as we gather more information on a potential path forward. We strongly urge you to communicate directly with your child's school to discuss this situation as well.

Respectfully,

The SCDE Team

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# **Exhibit B**

Affidavit of Yamilette Albertson in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration

From: **South Carolina Department of Education | ClassWallet** <[info@classwallet.com](mailto:info@classwallet.com)>  
Date: Fri, Oct 11, 2024, 12:14  
Subject: Important Update from the South Carolina Department of Education  
To: <[yamilette0416@gmail.com](mailto:yamilette0416@gmail.com)>

Info about your ClassWallet account

[View this email in your browser](#)



CLASSWALLET



On behalf of the South Carolina Department of Education (SCDE)

Dear ESTF Parent:

As a reminder, **funding for Q2 (\$1,500) will be deposited into each participating student's ESTF account on or before October 31st.** In addition, while families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**

The Department continues to work closely with the Governor, General Assembly and others to find a solution for all families affected by the September court ruling and we expect to have more news soon.

Respectfully,  
The SCDE Team

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Dec 05 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

\_\_\_\_\_  
Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and  
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.  
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education, .....Respondent.

\_\_\_\_\_  
**AFFIDAVIT OF CONSTANTINE SHULIKOV IN SUPPORT OF PETITIONERS’  
PETITION FOR ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION**  
\_\_\_\_\_

I, Constantine Shulikov, submit the following testimony under oath:

1. I am a citizen of the United States over eighteen years of age, and a resident of Moore, South Carolina. I am of sound mind and fully competent to make this affidavit, which I make knowingly and based on my personal knowledge.

2. I submit this affidavit in support of Petitioners’ Petition for Original Jurisdiction and Expedited Consideration.

3. I work in education. For over two decades, I have worked at one company as an instructional designer. I produce training materials that help fellow employees learn how to do different tasks at work. It is meaningful work that has shown me how people learn and absorb information differently.

4. I am currently the sole breadwinner in my home. My wife homeschools two of our children.

5. Over the years, my wife and I have tried different kinds of schooling for our children. Some of our children have been homeschooled while others have attended public or private school. In each circumstance, my wife and I have simply tried to choose the best education for each of our children, who are individuals with different needs.

6. Last year, my children A., E., P., N., and V. attended a public charter school. Although the education the school provided was adequate, my wife and I felt like our children weren't reaching their full potential. We wanted something better for A., E., P., N., and V.—better teachers, smaller class sizes, and an education that reflected our family's values.

7. When my wife and I learned about the Education Scholarship Trust Fund ("ESTF") Program, it showed us a whole new world of possibilities. We immediately applied for scholarships for A., E., P., N., and V. and started researching schools.

8. The school we eventually settled on was Westgate Christian School in Spartanburg. The reason we liked it was because the school had small class sizes, a child-focused education, and religious values that aligned with our family's. When our children were awarded scholarships, we used the scholarships to enroll them at the school.

9. The difference in our children since enrolling in the school has been remarkable. They are excited about going to school. They love their teachers and the friends they made. Whereas before they felt lost in the crowd, now they feel like they get one-on-one attention. Each day, they come home brimming with new ideas, excited to share with us what they learned.

10. On September 11, 2024, I learned about the South Carolina Supreme Court's decision in *Eidson v. South Carolina Department of Education* and the South Carolina Department of Education's policy and practice prohibiting use of ESTF funds for private school tuition and fees. ClassWallet, the ESTF program administrator, sent an email to my family on behalf of the

Department, with the Department's seal, stating: "Today, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional. The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools.**" Attached as Exhibit A to this affidavit is a true and correct copy of the email. I did not alter or amend the email in any way.

11. On October 11, 2024, ClassWallet sent another email to my family, also on behalf of the Department, with the Department's seal. The email stated: "[W]hile families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**" Attached as Exhibit B to this affidavit is a true and correct copy of the email I received. I did not alter or amend the email in any way.

12. When my wife and I learned about the decision in *Eidson* and the policy and practice subsequently adopted by the Department, we were shocked. Our children had made enormous progress at a school they attended for less than a year, but now that progress was being threatened. After getting a taste of a better education, our children were now at risk of being sent to schools that weren't right for them.

13. Despite this change in circumstance, I want to keep my children in their school. I hope and expect to be able to rely on my family's resources, as well as help from private donors, to make tuition payments for the remainder of the academic year. However, I have no guarantee that they will suffice. What *is* guaranteed is that my family will incur great financial hardships

for the remainder of the academic year, as the school charges tuition on an ongoing basis, and the scholarships can no longer be used to pay for it. We are scraping by, but it is a struggle.

14. Starting on January 15, 2025, I will have a short window in which I can re-apply for the scholarships and I intend to do so. As part of the application process, I must sign an agreement with the Department promising not to enroll my children in public school. If I do not sign the agreement, the Department will not approve the application. This is not the only upcoming deadline I face. I will also have to tell the school by February 28, 2025 whether I plan to re-enroll my children next year. If I am unable to tell them, with certainty, that I plan to re-enroll my children, then their spots at the school will be at risk.

15. If the Department's policy and practice are not changed or enjoined, I will be unable to use the ESTF scholarships to pay for tuition and fees at my children's private school. If they are not changed or enjoined, I will also lose the opportunity to apply for, and receive, ESTF scholarships that I can use to pay for tuition and fees at my children's private school in the future.

16. Thinking about the future has put me under great financial and psychological strain. If the ESTF Program does not go back to what it was before, I will be faced with a choice. I will either have to endure tremendous financial hardship or, most likely, withdraw my children from Westgate and re-enroll them in public schools—public schools that, to me, do not provide the best education for my children—following the conclusion of the school year.

17. As a parent, this is heartbreaking. I dread the prospect of having to send my children back to a public school that isn't right for them, that doesn't deliver the same kind of education, and that doesn't provide the same religious education that my wife and I want them to have. The

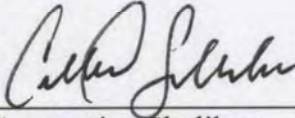
things I value most for my children at their private school—better teachers, smaller class sizes, and an education that reflects our family’s values—will disappear.

18. I just want my children to attend the school I believe works best for them. But because of the Department’s newly adopted policy and practice barring use of ESTF scholarships to pay for tuition and fees at private schools, I cannot use the scholarships at the school simply because it is a private school. This is very frustrating because it is only by using the scholarships for the private school’s tuition and fees that the school is affordable for me. I know that the scholarships can still be used for expenses like textbooks and curricula, which would be particularly useful if my wife and I wanted to homeschool A., E., P., N., and V. or hire tutors for them, but that’s not what we want. While my wife is currently homeschooling two of our children, there is no way that she could homeschool all of them. But even if she could, that is not how we want to educate each of our children.

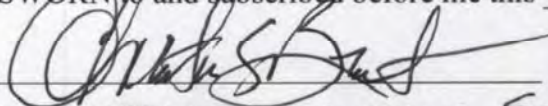
19. If my wife and I had chosen to homeschool all our children, have them tutored, or have them attend an out-of-district public school, we would be able to use the scholarships for the attendant expenses. But because of the Department’s policy and practice, my wife and I cannot use our children’s scholarships for the education we know is best for them: private schooling.

20. This testimony is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Constantine Shulikov

SWORN to and subscribed before me this 4th day of December, 2024.

  
\_\_\_\_\_  
Notary Public in and for the State of South Carolina.

My commission expires June 24, 2025



**RECEIVED**

**Dec 05 2024**

S.C. SUPREME COURT

# **Exhibit A**

Affidavit of Constantine Shulikov in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration

**From:** South Carolina Department of Education | ClassWallet <[info@classwallet.com](mailto:info@classwallet.com)>

**Date:** September 11, 2024 at 7:03:27 PM EDT

**To:** [alionashulikov@yahoo.com](mailto:alionashulikov@yahoo.com)

**Subject:** South Carolina Supreme Court Ruling

**Reply-To:** South Carolina Department of Education | ClassWallet <[info@classwallet.com](mailto:info@classwallet.com)>

Info about your ClassWallet account

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CLASSWALLET



On behalf of the South Carolina Department of Education (SCDE)

Dear ESTF Parent:

Today, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional.

The practical impact of this decision is that – while expenses like tutoring, therapies, and other items remain eligible for purchase – as of today, **funds from this program may no longer be used for future tuition or fee payments to nonpublic schools**. No parent will be expected to repay any funds spent prior to today's ruling.

We share your confusion and frustration over this decision, and we are committed to doing everything in our power to support the least disruptive path forward for your student.

We will be in contact with you and your school in the coming days as we gather more information on a potential path forward. We strongly urge you to communicate directly with your child's school to discuss this situation as well.

Respectfully,

The SCDE Team



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# **Exhibit B**

*Affidavit of Constantine Shulikov in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration*

**From:** South Carolina Department of Education | ClassWallet <[info@classwallet.com](mailto:info@classwallet.com)>

**Date:** October 11, 2024 at 12:14:36 PM EDT

**To:** [alionashulikov@yahoo.com](mailto:alionashulikov@yahoo.com)

**Subject:** Important Update from the South Carolina Department of Education

**Reply-To:** South Carolina Department of Education | ClassWallet <[info@classwallet.com](mailto:info@classwallet.com)>

Info about your ClassWallet account

[View this email in your browser](#)



CLASSWALLET



On behalf of the South Carolina Department of Education (SCDE)

Dear ESTF Parent:

As a reminder, **funding for Q2 (\$1,500) will be deposited into each participating student's ESTF account on or before October 31st.** In addition, while families are no longer able to use ESTF funds for non-public, independent school tuition and fees, **funds can still be used for other allowed expenses like tutoring, therapies, curriculum, educational materials and technology.**

The Department continues to work closely with the Governor, General Assembly and others to find a solution for all families affected by the September court ruling and we expect to have more news soon.

Respectfully,  
The SCDE Team

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Dec 05 2024

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

IN THE ORIGINAL JURISDICTION OF THE SUPREME COURT

Yamilette Albertson, on her own behalf and on behalf of her children, Y., A., and J.; and  
Constantine Shulikov, on his own behalf and on behalf of his children, A., E., P., N., and V.  
..... Petitioners,

v.

Ellen Weaver, in her official capacity as State Superintendent of Education, .....Respondent.

**AFFIDAVIT OF DAVID HODGES IN SUPPORT OF PETITIONERS' PETITION FOR  
ORIGINAL JURISDICTION AND EXPEDITED CONSIDERATION**

I, David Hodges, submit the following testimony under oath:

1. I am a citizen of the United States over eighteen years of age. I am of sound mind and fully competent to make this affidavit, which I make knowingly and based on my personal knowledge.

2. I am an attorney at the Institute for Justice, and I represent the Petitioners Yamilette Albertson and Constantine Shulikov in this matter, *pro hac vice* admission pending.

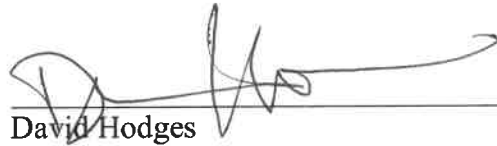
3. I submit this affidavit in support of Petitioners' Petition for Original Jurisdiction and Expedited Consideration.

4. Attached as Exhibit A to this affidavit is a true and correct copy of a webpage that I accessed on November 25, 2024 from the website of the South Carolina Department of Education, at the uniform resource locator <https://ed.sc.gov/newsroom/strategic-engagement/education-scholarship-trust-fund-program/>. I did not alter or amend the webpage in any way.


5. Upon accessing the webpage described in paragraph 4 on November 25, 2024, I clicked the "Latest Information" button that appears near the top of the webpage. Attached as Exhibit B to this affidavit is a true and correct copy of the webpage to which I was automatically directed upon clicking the "Latest Information" button. The uniform resource locator for the webpage to which I was automatically directed is <https://www.classwallet.com/programs/southcarolinaestf/>. I did not alter or amend the webpage in any way.

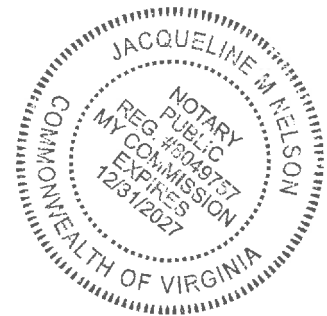
6. This testimony is true and correct to the best of my knowledge.

FURTHER AFFIANT SAYETH NOT.

  
David Hodges

SWORN to and subscribed before me this 2<sup>nd</sup> day of December, 2024.

  
Notary Public in and for the State of Virginia.  
My commission expires 12/31/2027.



**RECEIVED**

**Dec 05 2024**

S.C. SUPREME COURT

# **Exhibit A**

Affidavit of David Hodges in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration

# Education Scholarship Trust Fund Program

The South Carolina Department of Education administers the Education Scholarship Trust Fund and has contracted with ClassWallet for programmatic support and to manage the distribution of scholarship funds to participating families.

[Approved Education Service Providers](#) (Updated 09/13/2024)

Please visit the [Education Scholarship Trust Fund Program](#) for the latest information, to sign up for upcoming webinars, and to link to the application.

## LATEST INFORMATION

## Background Information

On May 5, 2023, Governor Henry McMaster signed the Education Scholarship Trust Fund Act into law. This new ESA program—modeled after similar programs around the country—allows qualifying South Carolina parents to apply for a scholarship worth \$6,000. These scholarships may be used to create a customized, flexible education for their child, as outlined below.

## Am I Eligible?

To be eligible, students must:

- Be a resident of South Carolina; AND
- Have attended a South Carolina public school during the previous school year, OR have not yet attained the age of five on or before September 1 of the previous school year but have attained the age of five on or before September 1 of the current school year, OR have received a scholarship the previous school year; AND
- Have a household income as follows:
  - School Year 2024-2025 – does not exceed 200% of the [federal poverty guidelines](#).
  - School Year 2025-2026 – does not exceed 300% of the [federal poverty guidelines](#).
  - School year 2026-2027 and subsequent school years – does not exceed 400% of the [federal poverty guidelines](#).

Students currently enrolled in a public charter school, home school students (as defined in Sections 59-65-40 [Option 1], 59-65-45 [Option 2], 59-65-47 [Option 3]), and students participating in the Educational Credit for Exceptional Needs Children's Fund program (as defined in Section 12-6-3790) are *not* eligible for this scholarship program.

## What types of flexible education expenses are eligible?

- Tuition and fees of an education service provider
- Textbooks, curriculum, or other instructional materials including, but not limited to, any supplemental materials or associated online instruction required by either a curriculum or an education service provider
- Tutoring services approved by the Department of Education
- Computer hardware or other technological devices that are used primarily for a scholarship student's educational needs and approved by the department or a licensed physician
- Tuition and fees for an approved nonpublic online education service provider or course
- Fees for approved:
  - National norm-referenced examinations, advanced placement examinations, or similar assessments,
  - Industry certification exams, or
  - Examinations related to college or university admission
- Educational services for pupils with disabilities from a licensed or accredited practitioner or provider including, but not limited to, occupational, behavioral, physical, and speech-language therapies
- Approved contracted services from a public school district, including individual classes, after school tutoring services, transportation, or fees or costs associated with participation in extracurricular activities
- Contracted teaching services and education classes approved by the Department of Education
- Fees for transportation paid to a fee-for-service transportation provider for the scholarship student to travel to and from an eligible provider as defined in this section, not to exceed \$750 for each school year
- Fees for account management by private financial management firms approved by the department
- Any other educational expense approved by the Department of Education

## Contact Information

849 Learning Lane  
West Columbia, SC 29172  
**Email:** [info@ed.sc.gov](mailto:info@ed.sc.gov)

[Agency Staff Directory](#)

Some content may require [Adobe Reader](#)

### Accessibility

The South Carolina Department of Education is committed to providing a web presence that enables full public access. As such, the SCDE has established and complies with accessibility standards to meet the needs of users with disabilities. If you require additional assistance with the content on this page please contact [info@ed.sc.gov](mailto:info@ed.sc.gov).

## How are scholarships funded?

Scholarship accounts are funded through an annual appropriation of the South Carolina General Assembly. They are worth \$6,000 per eligible student, per school year and will be awarded, based upon available funding from the General Assembly, as follows:


- School Year 2024-2025 – up to 5,000 scholarships/year
- School Year 2025-2026 – up to 10,000 scholarships/year
- School Year 2026-2027 and subsequent school years – up to 15,000 scholarships/year






## When and how may a parent or legal guardian apply for a scholarship for their student?

Scholarships will first be available for the 2024-2025 school year. The law requires that the scholarship application process open no earlier than January 15, 2024, and close no later than March 15, 2024. The SC Department of Education will create, announce, and publicize a standard application process.

## How may education service providers apply to participate in the program?

Education service providers are a person or organization approved by the SC Department of Education to provide educational goods and services to scholarship students. The Department will develop an application process for participation in the program which outlines the criteria and timeline for approval and will certify a list of approved education service providers no later than February 1, 2024. This list will be available on the Department's website.



## SC Department of Education

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### Contact Us

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 803-734-8500

 [info@ed.sc.gov](mailto:info@ed.sc.gov)

 [ed.sc.gov](http://ed.sc.gov)

 849 Learning Lane  
West Columbia, SC 29172

### Tools

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[Reset Password](#)

[Application Portal](#)

[Create Account](#)

[Technical Support](#)

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# **Exhibit B**

**Affidavit of David Hodges in Support of  
Petitioners' Petition for Original Jurisdiction and Expedited Consideration**



South Carolina Department of Education

## Education Scholarship Trust Fund Program

### IMPORTANT UPDATE


**On September 11, 2024, the South Carolina Supreme Court ruled that sections of South Carolina's Education Scholarship Trust Fund (ESTF) program are unconstitutional.**

Pursuant to this ruling, and as of September 11, 2024, **ESTF funds may no longer be used for tuition or fee payments to nonpublic schools.**

No parent will be expected to repay any funds that were spent prior to the court ruling **and expenses like tutoring, therapies, and other items remain eligible for purchase.**

Thank you for your interest in participating in the **Education Scholarship Trust Fund (ESTF) Program**. The ESTF program provides \$6,000 scholarships to qualifying South Carolina students. The South Carolina Department of Education administers the ESTF and has contracted with ClassWallet for programmatic support and to manage the distribution of scholarship funds to participating families. Learn more and get started below!

**The 2025-2026 student application will open January 15th, 2025.**

 **Notify me when the application period starts**

## Learn More



## Get Started

Families & Students

Education Service Providers

### IMPORTANT

- [Approved Education Service Providers for the 2024-2025 School Year](#)
- Space was limited by law to 5,000 students for the 2024-2025 school year.
- Scholarships were [awarded to students that met the qualifications on a first-come, first-served basis!](#)
- If your student was approved, the first quarterly disbursement was made on July 30, 2024.

## Families & Students

Families can use scholarship funds to create a customized, flexible education for their student, including paying for approved expenses like tutoring, educational therapies and out-of-district attendance fees.

## Next Steps

- **Step 1: Access scholarship funds on ClassWallet**

Once your student is approved, you will receive a Welcome Email from ClassWallet with next steps on how to access your scholarship funds through the ClassWallet platform.

**Accounts have now been funded!** If you have questions about accessing your ESTF funds contact [Classwallet Customer Support](#) or reference your Welcome Email.

- **Step 2: Use your student's scholarship**

Make payments and purchases for approved expenses using your student's scholarship account through ClassWallet.

## Help & Support

### Family & Student Application Questions

FACTS Management has been contracted to support the application administration process.

#### Call FACTS Management

[\(866\) 539-6359](tel:(866)539-6359)

Monday through Friday from 8 am - 8 pm ET

#### Email FACTS Management

[info@factsmgt.com](mailto:info@factsmgt.com)

### General Program Support and Scholarship Account Funding Questions

#### Call ClassWallet

[\(877\) 313-1299](tel:(877)313-1299)

Monday through Friday from 8 am - 8 pm ET  
Saturday from 10 am - 4 pm ET

#### Email ClassWallet

[help@classwallet.com](mailto:help@classwallet.com)

#### Contact Outbridge Support

<https://www.outbridge-sc.org>

### The 2024-2025 Application is Closed

If you have already submitted an application, click below to log-in and check your application status.

[Student Application](#)

## Resources for Families & Students

- Download the [Participant Guide](#)
- 2024-2025 ESTF families! Watch your email for updates.
- [FAQs](#)

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## Education Service Providers

Thank you for your interest in serving ESTF families & students. "Education Service Providers" are individuals or organizations approved by the South Carolina Department of Education to provide educational goods and services to scholarship students at the direction of their parent or guardian. The Department has developed an application process for participation in the program which outlines the criteria and timeline for approval.

### Get Started

- **Step 1:** To submit an application, complete the Education Service Provider application form.

[Education Service Provider Application](#)

- **Step 2:** You will receive notification of the state's decision within 10 business days of your submission.
- **Step 3:** Within 3 business days of your ESP Application approval, you will receive an email from ClassWallet with step-by-step instructions on finalizing your registration and creating your ClassWallet account. This final step will allow you to receive payments from families and students.

## Resources For Service Providers

- [FAQs](#)
- [Learn more from other Service Providers](#)
- Download the [Education Service Provider Guide](#)

