

**The Supreme Court of the State of South Carolina**

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CANDACE EIDSON, ET AL.,  
PETITIONERS,

*v.*

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

*AND*

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

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

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## INTEREST OF AMICI CURIAE

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

LJC frequently litigates important cases affecting educational freedom and parental choice. For example, in *Kelly v. North Carolina*, LJC represented the North Carolina General Assembly in successfully defending a legal challenge to the state’s Opportunity Scholarship Program. In addition, LJC filed briefs at the certiorari and merits stages at the United States Supreme Court in *Carson v. Makin* and *Espinoza v. Montana Dep’t. of Revenue*, the latter of which was cited in Justice Alito’s opinion. 140 S. Ct. 2246, 2268 (2020) (Alito, J., concurring). LJC has also served as amicus curiae in state court actions impacting educational freedom, including most recently before the Wisconsin Supreme Court in

*Underwood v. Voss*, and before the Oklahoma Supreme Court in *Drummond v. Oklahoma Statewide Virtual Charter School Board*.

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

Amicus curiae Americans for Prosperity Foundation ("AFPF") is a 501(c)(3) nonprofit organization that operates a state chapter in South Carolina committed to educating and empowering Americans to be

courageous advocates for the ideas, principles, and policies of a free and open society. As part of this mission, AFPF appears regularly as amicus curiae before federal and state courts. *See, e.g., Carson v. Makin*, 142 S. Ct. 1987 (2022); *Mahanoy Area Sch. Dist. v. B. L.*, 141 S. Ct. 2038 (2021); *State v. Beaver*, 248 W.Va. 177, 887 S.E.2d 610 (W. Va. 2022).

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

Reason Foundation (“Reason”) is a nonpartisan and nonprofit public policy think tank, founded in 1978. Reason’s mission is to promote free markets, individual liberty, equality of rights, and the rule of law.



Reason advances its mission by issuing research reports and publishing *Reason* magazine, as well as commentary on its websites, [www.reason.com](http://www.reason.com) and [www.reason.tv](http://www.reason.tv). To further Reason’s commitment to “Free Minds and Free Markets,” Reason selectively participates as amicus curiae in cases raising significant constitutional issues.

### **STATEMENT OF ISSUES**

*Amici* adopt the statement of the issues submitted by Respondents.

### **STATEMENT OF THE CASE**

*Amici* adopt the Respondents’ statement of the case.

### **INTRODUCTION**

Parents and policymakers increasingly recognize that, when it comes to education, one size does not fit all. Indeed 2023 was the “year of universal choice” in which seventeen states—including South Carolina—enacted or expanded school choice programs.<sup>1</sup> Like many programs around the country, South Carolina’s Education Scholarship Trust Fund (“ESTF”) program is an Educational Savings Account (“ESA”) program

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<sup>1</sup> Mike McShane, *Oh, What A Year (For School Choice)*, Forbes, Dec. 19, 2023, <https://www.forbes.com/sites/mikemcshane/2023/12/19/oh-what-a-year-for-school-choice/?sh=78259a5544f9> (last visited Jan. 30, 2024).

intended to provide low- and middle-income families with alternative options to traditional public schools—options that are already available to wealthier families.

Petitioners’ attempt to equate expanded educational freedom with discrimination<sup>2</sup> is disingenuous. The heartbeat of the school choice movement is compassion for children in difficult circumstances: not just for children stuck in failing inner-city or rural schools, but students who may have access to generally good public schools but find themselves with individualized needs that would be better addressed in an alternative educational setting. Students with special physical or intellectual challenges, victims of bullying, children of active-duty military, religious minorities, and students who perform best in a single-sex learning environment—all benefit from the many options created by school choice policies. This brief will highlight those benefits for the Court through the stories of families who have been enriched by policies similar to South Carolina’s.

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<sup>2</sup> See, e.g., Pet’rs’ Br. Part II & Pet. ¶¶ 10, 15, 16, 42, 64.

## ARGUMENT

### **The ESTF Program Will Open Doors of Opportunity for Students Throughout South Carolina**

The Supreme Court has stated that “[e]ducation is perhaps the most important function of state and local governments,” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954), and South Carolina’s Constitution charges the government with a duty to provide education to children in the state, S.C. Const. art. XI, §3. Petitioners imply that the ESTF program will somehow hinder South Carolina in carrying that constitutional mandate. Not so: the program is designed to provide new opportunities to all eligible families, including a diverse array of students with unique educational needs.

#### **A. Students in Failing Public Schools**

A recent report identified “South Carolina []as the sixth worst school system in the United States” with issues such as staff shortages localized “in geographic pockets [which] require[] non-uniform solutions to non-uniform problems.”<sup>3</sup> As Justice Thomas observed in a case rejecting legal challenges to the State of Ohio’s school choice policies,

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<sup>3</sup> Patrick McCreless, *SC has among worst school systems in US, report shows* | *The State*, *The State*, Aug. 7, 2022, <https://www.thestate.com/news/state/south-carolina/article264174836.html> (last visited Jan. 30, 2024).

programs like the ESTF represent an opportunity for students in such “pockets” to find educational opportunities that would otherwise be unavailable:

[W]ide-ranging educational reform[s] allow[] voluntary participation of private and religious schools in educating poor urban children otherwise condemned to failing public schools. The program does not force any individual to submit to religious indoctrination or education. It simply gives parents a greater choice as to where and in what manner to educate their children. This is a choice that those with greater means have routinely exercised.

*Zelman v. Simmons-Harris*, 536 U.S. 639, 680 (2002) (Thomas, J. concurring) (footnote omitted). Indeed, it is well understood that these programs can serve as a lifeboat for children from “low-income and minority families” who lack the “means to send their children to any school other than an inner-city public school.” *Id.* at 662-64 (majority opinion).

Consider the story of Nicholas West in Alabama. Nicholas and his younger brothers were zoned for a failing school. But through the Alabama Opportunity Scholarship and other school choice programs, Nicholas and his brothers were able to thrive in different educational environments. According to Nicholas, “each of us was able to experience

different learning environments that we thrived in, even though we lived in the same household. Jordan thrived in an online school, and Blake was able to enroll into another school that could properly accommodate all of his needs.”<sup>4</sup>

Similarly, Charlonda Brown of North Carolina tells the story of her son, Amoree. According to Charlonda, Amoree’s public school “was chronically failing and unsafe. He didn’t have the books he needed, and he was bullied constantly by both students and teachers.” Through North Carolina’s Opportunity Scholarship Program, Amoree was enrolled in a private school where “he’s absolutely thriving.” Charlonda explains that as a mother unable to afford private school, she was put in a terrible bind: “No parent should have to decide, ‘Am I going to pay the tuition or am I going to pay the rent?’ The Opportunity Scholarship gave me a choice. And I’m grateful for it.”<sup>5</sup>

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<sup>4</sup> Nicholas West, Alabama, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/nicholas-west/> (last visited Jan. 30, 2024).

<sup>5</sup> Charlonda Brown, Amoree Brown, North Carolina, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/amoree-brown/> (last visited Jan. 30, 2024).

## **B. Students with Unique Physical, Intellectual, or Developmental Needs**

Petitioners allege that recipients of ESTF funds may be permitted to discriminate based on disability status<sup>6</sup>—but that ignores the obvious benefits to neurodivergent students who would be afforded new opportunities to attend schools specializing in meeting their unique needs.

Consider the experience of John Balsamo in Nevada. According to his mom Cristin, John is “talented, he’s brilliant, he’s loving, and he’s autistic.” His mom explains, “We recognized very early on that John was not like all of the other kids. By the time he was three, he had taught himself to read. He was already displaying photographic memory abilities. He could tell you, for hours and hours, all you ever wanted to know about space, weather phenomena, and dinosaurs.” Unfortunately, even with an individualized education plan (IEP) in place, John did not fit in at a series of local public schools. His parents reached the point of exasperation until they discovered that the Nevada Opportunity

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<sup>6</sup> Lead Petitioner Candace Eidson premises her standing argument on the assertion that beneficiaries of the program “would be permitted to discriminate against students like her [autistic] daughter.”

Scholarship program made possible a different choice: a school where, his mom says, “[t]hey encourage patience, kindness, and that every child is important. And better yet? He was happy again. He loved school again. He believed in himself again. Everything went from being ‘I can’t’ to ‘I can.’” John’s mom detailed the benefits of “[s]maller classes, less transitioning, and unstructured periods . . . a school willing and able to teach children in various ways—both traditional and nontraditional[.]” For John, school choice and private education at Far West Academy made all the difference.<sup>7</sup>

James Martin, a retired Army Combat Veteran, tells a similar story about his daughter Mia’s experience with North Carolina’s Opportunity Scholarship Program. Mia’s zoned public school had difficulty meeting her needs through her IEP, requiring her parents to bring her to intensive Advanced Behavioral Analysis therapy at a clinic for hours every day after school. But through the Opportunity Scholarship Program, James was able to send Mia to a private school that combined her clinical and educational needs and could provide “a classroom of six

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<sup>7</sup> Cristin Balsamo, John Balsamo, Nevada, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/john-balsamo/> (last visited Jan. 30, 2024).

kids with autism, coupled with six advanced behavioral analysis technicians and clinicians and one special education teacher.” James credits North Carolina’s program for the fact that his daughter “is absolutely thriving.”<sup>8</sup>

Under the ESTF program, similar opportunities and innovations will be available for South Carolina students with disabilities and other unique needs.

### **C. Victims of Bullying**

In November 2023, a mother of a sixth-grade boy sued the Charleston County School District, alleging that her son had suffered “assaults, including sexual assault,” by fellow students that caused him “physical, mental and emotional injuries that rendered him incapable of returning to school,” ultimately “forc[ing] the victim to change to a school outside of his regular attendance zone for the following school year.”<sup>9</sup> In January 2024, a student at Horry County Schools alleged similar abuse

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<sup>8</sup> James Martin, North Carolina, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/james-martin/> (last visited Jan. 30, 2024).

<sup>9</sup> Marissa Thompson, *Parent sues Charleston Co. School District over alleged bullying incidents*, Live5News, Nov. 5, 2023, <https://www.live5news.com/2023/11/05/parent-sues-charleston-co-school-district-over-alleged-bullying-incidents/> (last visited Jan. 30, 2024).



that resulted in the student being beaten unconscious and suffering a fractured skull.<sup>10</sup> The ESTF program will offer an invaluable tool to parents and families like these who find themselves forced to leave their zoned schools to protect their students.

Walter Blank's story is instructive. Walter started school with an Attention Deficit Hyperactive Disorder (ADHD) diagnosis and quickly fell two grades behind in reading and math. As a result of bullying, he had to focus on surviving rather than learning: "I remember coming home from school multiple times with ripped clothing and bruises from other students bullying me. My grades were as low as my motivation, and there didn't seem to be any signs of change." Walter's mom applied for an EdChoice Ohio scholarship so he could attend Tree of Life Christian School, where he thrived, taking part in sports, music, drama, and student council. He graduated and is a graduate in journalism from Mount Vernon Nazarene University.<sup>11</sup>

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<sup>10</sup> Dennis Bright, *Lawsuit alleges student bullied, beaten at South Carolina high school* | FOX8 WGHP, myfox8.com, Jan. 2, 2024, <https://myfox8.com/news/south-carolina/lawsuit-alleges-student-bullied-beaten-at-south-carolina-high-school/> (last visited Jan. 30, 2024).

<sup>11</sup> Walter Blanks, Jr., Ohio Fellow, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/walter-blanks/> (last visited Jan. 30, 2024); WALTER BLANKS, JR. - American Federation for Children,

Emily Bullins-Jones was another victim of bullying who found respite through school choice programs. Her mom, Annie, says the verbal and physical abuse began as soon as she enrolled at her local public high school: “On a daily basis, male students called her derogatory names and groped her in hallways.” Complaints to school authorities went nowhere, and her grades started sliding. Then Annie secured a tax-credit scholarship for Emily to enroll at John Carroll Catholic High School. She writes, “The harassment ended, students treated each other with respect, and my child blossomed.”<sup>12</sup>

Parents like Walter’s mom and Emily’s mom often find that school choice is their only alternative when their child has been consistently, even violently, bullied at school.<sup>13</sup> A national survey of students in private and public schools found that the students in private schools felt

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<https://www.federationforchildren.org/staff/walter-blanks-jr/> (last visited Jan. 30, 2024).

<sup>12</sup> Annie Bullins-Jones, *Giving options to bullying victims is right thing to do* | *Guest column*, TCPalm.com, Jan. 2, 2018, <https://www.tcpalm.com/story/opinion/contributors/2018/01/02/giving-options-bullying-victims-right-thing-do-guest-column/991036001/> (last visited Jan. 30, 2024) (originally published as Annie Bullins-Jones, *Giving options to bullying victims is right thing to do*, The Stuart Times, Jan. 3, 2018).

<sup>13</sup> Kevin Currie-Knight & Alex Schuh, *Can School Choice Keep Children Safe from Bullying?*, EdChoice, Sep. 26, 2017, <https://www.edchoice.org/engage/can-school-choice-keep-children-safe-from-bullying/> (last visited Jan. 30, 2024).

greater enforcement of the school’s anti-bullying policy, greater acceptance of students from minority groups, and greater social inclusivity.<sup>14</sup> Students at religious schools have also reported lower levels of bullying than students in public schools.<sup>15</sup> The ESTF program will help ensure that such options are not limited only to wealthy families in South Carolina.

#### **D. Religious Minorities**

The ESTF program will offer new opportunities for South Carolina parents who wish to raise their children in their faith and to send them to a school that offers “[s]ystematic religious instruction and moral training according to the tenets” of their faith. *Pierce v. Soc’y. of Sisters*, 268 U.S. 510, 532 (1925). According to Rabbi Yitz Frank, “There is something to be gained by attending a Jewish day school and the reality is that there are many families that would not have the resources to do

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<sup>14</sup> School Bullying Report Card: Public vs. Private, ink.niche.com, 2014, available at <https://web.archive.org/web/20150802232417/https://ink.niche.com/school-bullying-report-card/> (aggregating responses from over 185,000 student users) (last visited Jan. 31, 2024).

<sup>15</sup> U.S. Dep’t. of Educ., Web Tables NCES 2015-17, 2015 School Crime Supplement (SCS) to the National Crime Victimization Survey (NCVS) (2016) (Table 2.2), <https://nces.ed.gov/pubs2017/2017015.pdf> (last visited Jan. 30, 2024).

that without the help of [school choice] programs.”<sup>16</sup> Religious schools can also serve to protect religious minorities who face discrimination in public schools. For example, “Muslims and Jews experience disproportionately high rates of hate speech and bullying”<sup>17</sup>—a trend that has reportedly increased following October 7, 2023.<sup>18</sup> The opportunity to attend private religious schools can serve as an essential safeguard to these students. Schools such as the Muslim Academy of Greater Orlando, for example, can serve as a refuge for Muslim students fleeing harassment, bullying, and isolation at their public schools. Once there, students enrolled through the Florida scholarship program find a welcoming community with high academic standards and a focus on service to the broader community. Principal Jameer Abass says, “[W]hat I am trying to teach the kids is you are part of a larger society. You are

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<sup>16</sup> Amanda Koehn, “Orthodox educators praise school choice,” *Cleveland Jewish News* (Feb. 10, 2017).

<sup>17</sup> See Nadia S. Ansary, *Religious-Based-Bullying: Insights on Research and Evidence-Based Best Practices from the National Interfaith Anti-Bullying Summit*, 3, 13 (Institute for Social Policy and Understanding) (2018), <http://icnacsj.org/wp-content/uploads/2018/11/ISPU-AMHP-Religious-Based-Bullying.pdf> (last visited Jan. 30, 2024).

<sup>18</sup> Amaarah DeCuir, *An Urgent Message to School Leaders: Your Arab and Muslim Students Need You*, *Education Week*, Oct. 27, 2023, <https://www.edweek.org/leadership/opinion-an-urgent-message-to-school-leaders-your-arab-and-muslim-students-need-you/2023/10> (last visited Jan. 30, 2024).

American. We do fundraising for the Leukemia society and try to be as much as possible part of the community.”<sup>19</sup>

Citing historian Walter Edgar, the Interfaith Partners of SC observed that, “[a]s one of the original thirteen colonies, South Carolina has long included an array of religious diversity.”<sup>20</sup> The ESTF program honors that history by allowing its residents to have access to a broad array of religious educational institutions.

### **E. Children in Military Families**

South Carolina is home to more than 68,000 military personnel.<sup>21</sup> Their families face unique educational challenges, as “military children change schools an average of six to nine times from the start of

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<sup>19</sup> Livi Stanford, *Muslim schools share concerns about security*, NextSteps: Step Up For Students, May 22, 2017, <https://nextstepsblog.org/2017/05/muslim-schools-refuge/> (last visited Jan. 30, 2024) (originally published as Livi Stanford, Muslim schools share concerns about security, RedefineEDonline.org, May 22, 2017, available at <https://web.archive.org/web/20170713001820/https://www.redefine-donline.org/2017/05/muslim-schools-refuge/> (last visited Jan. 30, 2024)).

<sup>20</sup> *SC’s Diverse Religious History*, Interfaith Partners of South Carolina, <https://interfaithpartnersofsc.org/about/scs-diverse-religious-history/> (last visited Jan. 30, 2024) (citing Walter B. Edgar, *South Carolina: A History* (Univ. of South Carolina Press) (1998)).

<sup>21</sup> Joseph C. Von Nessen, *The Economic Impact of South Carolina’s Military Community, A Statewide and Regional Analysis* (South Carolina Dept. of Veterans’ Affairs) (2022) <https://scdva.sc.gov/sites/scdva/files/Documents/Economic%20Impact%20Final%20June%202022.pdf> (last visited Jan. 30, 2024).

kindergarten to their high school graduation.”<sup>22</sup> Writing in the *New York Times*, former Naval Intelligence Officer Frances Tilney Burke detailed those difficulties while advocating for a national ESA program to benefit active military personnel:

[A]n Education Savings Account offers a family flexibility — a way to fill in the gaps that widen with every change of school. An account would help an airman’s daughter at say, Maxwell Air Force Base in Montgomery, Ala., take online classes instead of attend her local high school, which may not offer German or advanced calculus, the classes she took when her father was stationed at Ramstein Air Base, Germany. An account would help a Marine’s son who struggled to maintain his grades after moving three years in a row and found a private school willing to help him catch up near Camp Lejeune in North Carolina. . . .

My family’s story of frequent military moves is not unusual. It shows the universal challenges faced by military kids. My 11- and 10-year-old daughters are attending their fifth schools. Their experience includes instruction at Montessori, private secular, public and parochial schools. With each new military assignment, my husband and I tried to assess which school option would be the best. At most locations, we chose a secular private or parochial school. We do this not because it’s healthy for our

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<sup>22</sup> Press Release, U.S. Dept. of Defense, *Month of the Military Child 2023 – Taking Care of Our Military Children* (Apr. 3, 2023), <https://www.defense.gov/News/Releases/Release/Article/3349616/month-of-the-military-child-2023-taking-care-of-our-military-children/https%3A%2F%2Fwww.defense.gov%2FNews%2FReleases%2FRelease%2FArticle%2F3349616%2Fmonth-of-the-military-child-2023-taking-care-of-our-military-children%2F> (last visited Jan. 30, 2024).

finances, but because we want the best opportunity for our children. We want them to fit in right away without struggling to make sure that the language arts class taught in Tennessee matches what is taught in Massachusetts public schools (it doesn't). All transitions are hard, but moving a child from one private-school or home-schooling community to another is a gentler, more flexible process than subjecting them to the often rigid rules of public schools. Additionally, many of the public school options either on or right outside a military installation are subpar, and private or home-school options may be better.<sup>23</sup>

North Carolinian Brooke Medina, a third-generation Army wife and the mother of four children, similarly advocates for ESAs, observing that they have the power to “help mitigate a declining retention rate among certain military populations,” expand access to “portable education” such as “online courses,” and “contribute to a healthy education market in communities that are largely driven by military-related commerce.”<sup>24</sup>

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<sup>23</sup> Frances Tilney Burke, *Military Kids Change School Up to 9 Times. So Let's Make It Easier*, New York Times, Jan. 8, 2020, <https://www.nytimes.com/2020/01/08/opinion/military-families.html> (last visited Jan. 30, 2024).

<sup>24</sup> Brooke Medina, *This Education Bill Would Be a Game-Changer for Military Families Like Mine*, The Daily Signal, Mar. 16, 2018, <https://www.dailysignal.com/2018/03/16/education-bill-game-changer-military-families-like-mine/> (last visited Jan. 30, 2024).

## F. Children in Single-Sex Schools

Though academics argue about the value of single-sex schools, the U.S. Department of Education concluded after an exhaustive literature review that “single-sex schooling can be helpful, especially for certain outcomes related to academic achievement and more positive academic aspirations.”<sup>25</sup> As single-sex schools deliver results, more and more are opening, especially in urban and minority communities.<sup>26</sup>

Dominique Hagens is one of many children who used ESA programs to select a single-sex learning environment. She attended the historically black, all-girls St. Mary’s Academy in New Orleans thanks to Louisiana’s Student Scholarships for Educational Excellence Program. As Dominique explains: “I formed bonds that I’m not sure I would have made had I gone somewhere else. . . . My school offers a very familial atmosphere. The

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<sup>25</sup> RMC Research Corporation, *Early Implementation of Public Single-Sex Schools: Perceptions and Characteristics* xi (U.S. Dep’t. of Educ. Office of Planning, Evaluation and Policy Development) (2008), <https://www2.ed.gov/rschstat/eval/other/single-sex/characteristics/characteristics.pdf> (last visited Jan. 30, 2024). *See also* Executive Summary: Early Implementation of Public Single-Sex Schools: Perceptions and Characteristics, <https://www2.ed.gov/rschstat/eval/other/single-sex/characteristics/index.html> (last visited Jan. 30, 2024).

<sup>26</sup> Lise Eliot, *Single-sex schools are on the rise for kids of color*, Salon, Jan. 8, 2017, [https://www.salon.com/2017/01/08/single-sex-schools-are-on-the-rise-for-kids-of-color\\_partner/](https://www.salon.com/2017/01/08/single-sex-schools-are-on-the-rise-for-kids-of-color_partner/) (last visited Jan. 30, 2024); Denisa Superville, *Single-Gender Schools Prove Best for Some Students*, Educ. Week (Sept. 30, 2016).



people here truly care for me, and they motivate me rather than try to change or discourage me.”<sup>27</sup> That same option should be made widely available to South Carolina students.

### **G. Children Seeking Alternative Educational Settings**

There are also educational options that may be less generally available but still may be the best choice for certain students. Some students may wish to use a scholarship towards tuition at a boarding school, with its immersive nature that combines the social, athletic, artistic, and educational development. Other young people may be best served by a faith-based recovery high school, which focuses on serving students struggling with heroin, opioids, and other addictions.<sup>28</sup>

The widespread availability of alternative educational environments may also help alleviate controversies surrounding curricula and school library catalogues. This argument is proffered by academic Neal McCluskey, author of *The Fractured Schoolhouse*:

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<sup>27</sup> Dominique Hagans, Louisiana, Voices for Choice, American Federation for Children, <https://www.federationforchildren.org/voices-for-choice/dominique-hagans/> (last visited Jan. 30, 2024).

<sup>28</sup> See, e.g., Perry West, *Pennsylvania diocese opening faith-based addiction recovery high school*, Catholic News Agency, Dec. 17, 2018, <https://www.catholicnewsagency.com/news/40156/pennsylvania-diocese-opening-faith-based-addiction-recovery-high-school> (last visited Jan. 30, 2024).

*Reexamining Education for a Free, Equal, and Harmonious Society*, and

Solomon Chen:

How can progressives protect themselves from this onslaught? Rather than relying on winning political warfare with conservatives, which basically guarantees endless battles over what public schools will teach, they should embrace school choice. They should do so both because it would be a much more stable way to access progressive education — no need for endless political combat to get it or keep it — and because it is simply the right way to deliver education for a free and equal society. No one should have to defeat their neighbors to have their basic values respected in the raising of their children.<sup>29</sup>

Indeed, through the ESTF, some parents may prefer to educate their children in a “classical” setting,<sup>30</sup> while others may prefer to educate their children through a Montessori setting,<sup>31</sup> or through “social justice

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<sup>29</sup> Neal McCluskey & Solomon Chen, *Progressives keep losing in education — they need school choice*, The Hill, Feb. 26, 2022, <https://thehill.com/blogs/congress-blog/education/595993-progressives-keep-losing-in-education-they-need-school-choice/> (last visited Jan. 31, 2024).

<sup>30</sup> See, e.g., *About Classical Christian Education*, Covenant Classical Christian School, <https://covenantcs.org/classical-christian-education-2/> (last visited Jan. 31, 2024) (a South Carolina school focusing on “the seven liberal arts of ancient education”).

<sup>31</sup> *Where Joy Fuels Success*, River Montessori High School, <https://rivermontessorihs.org/> (last visited Jan. 31, 2024) (a “first of its kind replicable, mixed-income, Montessori high school”); *Tuition and Tuition Assistance*, River Montessori High School, <https://rivermontessorihs.org/tuition-index> (last visited Jan. 31, 2024) (indicating that “one-third of seats are reserved for families who qualify for free or reduced

curriculum allow[ing] students to explore the full spectrum of injustice including bias, prejudice, discrimination, and oppression.”<sup>32</sup> South Carolina’s ESTF program will help ensure such options are available, within state law parameters, to families in the Palmetto State.

## CONCLUSION

Ultimately, these stories demonstrate that there is “no one way to school.”<sup>33</sup> While everyone agrees that all children should have equal access to education, virtually no one thinks the way we educate all children should be uniform, as though we were putting children on an education assembly line. People understand that different children have different needs, preferences, strengths, and weaknesses. School choice—like South Carolina’s ESTF program—is a tool to provide children equal access to education while recognizing that all children are learn in unique ways. Petitioners’ arguments that such programs are discriminatory

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lunch to attend at \$450 or less per year,” and that RMHS “supports intentional socio-economic diversity through acceptance of Indiana School Choice Scholarships and Indiana Education Scholarship (ESA) Funds.”).

<sup>32</sup> See, e.g., *Race, Equity, and Justice at Willowwind School: Statement from the Head of School*, Willowwind School, <https://www.willowwind.org/diversity-statement> (last visited Jan. 31, 2024) (Willowwind School is a private school eligible for Iowa’s new Students First Education Savings Accounts).

<sup>33</sup> Ashley Rogers Berner, *Pluralism and American Public Education: No One Way to School* (Palgrave MacMillan) (2017).

cannot be reconciled with the success stories of school choice around the country.

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FEBRUARY 1, 2024

# CERTIFICATE OF SERVICE

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

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



Christopher Mills

To: williaminkler@inklerlaw.com; wanickles@nickleslaw.com; jlevin@edlawcenter.org; wlecker@edlawcenter.org; aobrien@nea.org; khollar@nea.org; ghagins@naacpnet.org; ravindran@bredhoff.com; grybak@bredhoff.com; khearn@wyche.com; bcritzer@wyche.com; esmith@scag.gov; timehouse@governor.sc.gov; glambert@governor.sc.gov; eshedd@governor.sc.gov; Kevin.hall@wbd-us.com; todd.carroll@wbd-us.com; jgilliam@burr.com; bwright@burr.com; Miles.Coleman@americanrights.org

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Counsel,

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

Sincerely,

Christopher Mills

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Dated: February 1, 2024

s/ Christopher Mills  
Christopher E. Mills

## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 211, SCAR, I, Christopher E. Mills, an attorney, certify that the foregoing complies with the length and formatting requirements of Rules 211 and 267, SCAR.

Dated: February 1, 2024

*s/ Christopher Mills* \_\_\_\_\_  
Christopher E. Mills