Vermont Superior Court
Washington Unit
Filed: 9/21/2026

VERMONT SUPERIOR COURT
Washington Unit
65 State Street
Montpelier VT 05602
802-828-2091
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 26-CV-01324

Kollene Caspers et al v. State of Vermont et al

ENTRY REGARDING MOTION

Title: Motion for Preliminary Injunction; Motion to Dismiss ; (Motion: 1; 5)
Filer: Deborah T. Bucknam; David A. Boyd
Filed Date: February 27, 2026; April 13, 2026

The motion is GRANTED IN PART and DENIED IN PART.

School districts in Vermont can satisfy their duty to provide public education to children by operating public schools within their districts or by paying tuition for their students to attend independent or public schools located outside the respective district, colloquially known as tuitioning. A district may designate a particular school for tuitioning or allow families to choose, known as school choice. 16 V.S.A. §§ 821–822. In July 2025, Governor Phil Scott signed into law Act 73, "An act relating to transforming Vermont's education governance, quality, and finance systems." The legislation is 147 pages in length—it does a lot. Among its many provisions are two, §§ 21 and 22, that Plaintiffs in this case find objectionable. Section 21 (amending 16 V.S.A. § 828) adjusts how tuitioning operates in Vermont, and § 22 exempts currently enrolled, tuitioned students, shielding them from the disruption they otherwise might have experienced due to § 21.[1]

Plaintiffs are composed of two groups: (a) certain children who will qualify for tuitioning in their districts and would have chosen to attend certain specifically identified independent schools that no longer are able to receive tuitioned students, and (b) parents who now will have to pay out of pocket if those students nevertheless enroll in those nonqualifying independent schools. Plaintiff-children, when this case was filed, were not yet enrolled in those independent schools, and they will not benefit from the exemption. Some have siblings who are or were

[1] Section 828 was further amended in 2026 by several provisions of 2025, No. 170 (Adj. Sess.). The 2026 amendment has no impact on this case.

exempted and will remain in independent schools that their siblings now cannot attend (on the State's dime). Plaintiffs claim that Act 73's modifications to Vermont's tuition system violates the Common Benefits Clause of the Vermont Constitution, Vt. Const. art. I, § 7, both facially and as applied to them.[2]

Plaintiffs have filed a motion for preliminary injunction seeking to ensure that their school options are the same during the pendency of this case as before Act 73 became effective. The State opposes any injunction and has filed a Rule 12(b)(6) motion to dismiss.[3] The Court now **Grants** the motion to dismiss.[4] In light of this, there is no need to analyze the motion for a preliminary injunction, which is **denied as moot**.

I. *Standards*

The Vermont Supreme Court has described the familiar standard for Rule 12(b)(6) motions to dismiss for failure to state a claim as follows:

> "A motion to dismiss . . . is not favored and rarely granted." This is especially true "when the asserted theory of liability is novel or extreme," as such cases "should be explored in the light of facts as developed by the evidence, and,

---

[2] As the Vermont Supreme Court has explained:

> "The distinction between facial and as-applied challenges . . . goes to the breadth of the remedy." In a facial challenge, a litigant argues that "no set of circumstances exists under which [a statute or regulation] [c]ould be valid." The remedy in a successful facial challenge is that a court will invalidate the contested law. In an as-applied challenge, however, a party claims that a statute or regulation is invalid as applied to the facts of a specific case. The scope of the remedy in an as-applied challenge is narrower. Although a court grants relief "to the parties before the Court," it does not necessarily invalidate the contested law in its entirety.

In re Mountain Top Inn & Resort, 2020 VT 57, ¶ 22, 212 Vt. 554. The distinction has no impact on the analysis here.

[3] Named defendants include both the State and Vermont Secretary of Education Zoie Saunders in her official capacity only. A claim against a State official in official capacity is no different from a claim against the State itself. See *Lewis v. Clarke*, 581 U.S. 155, 162–63 (2017); *Hafer v. Melo*, 502 U.S. 21, 25 (1991) ("[T]he real party in interest in an official-capacity suit is the governmental entity and not the named official."); *Karcher v. May*, 484 U.S. 72, 78 (1987) ("We have repeatedly recognized that the real party in interest in an official-capacity suit is the entity represented and not the individual officeholder."); *Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is not a suit against the official personally, for the real party in interest is the entity." (citation omitted)). Effectively, then, the State is the sole defendant in this case. No schools or school districts are parties to this case.

[4] Plaintiffs amended the complaint after the briefing on the pending motions was underway. The parties were offered an opportunity to submit further briefing in light of the amendment, and none did. The amendment has no impact on the substance of this decision.

> generally, not dismissed before trial because of the mere novelty of the allegations." In reviewing a motion to dismiss, we consider whether, taking all of the nonmoving party's factual allegations as true, "'it appears beyond doubt' that there exist no facts or circumstances that would entitle the plaintiff to relief." We treat all reasonable inferences from the complaint as true, and we assume that the movant's contravening assertions are false.

Alger v. Dep't of Labor & Indus., 2006 VT 115, ¶ 12, 181 Vt. 309 (citations omitted); see also 5B A. Benjamin Spencer, et al., Fed. Prac. & Proc. Civ. § 1357 (4th ed.) ("Ultimately, the burden is on the moving party to prove that no legally cognizable claim for relief exists.").

"[S]tatutes are presumed to be constitutional and are presumed to be reasonable. We have often observed that the proponent of a constitutional challenge has a very weighty burden to overcome." *Badgley v. Walton*, 2010 VT 68, ¶ 20, 188 Vt. 367 (citations omitted); accord 2A Sutherland Statutory Construction § 45:11 (7th ed.) ("Courts presume legislation is constitutional and resolve any doubt about the validity of a statute or amendment in favor of sustaining the legislation. . . . Unless a constitution expressly or by necessary implication restricts the actions of the legislative branch, the legislature is free to implement legislation, even if an act may be unwise, unfair, or unjust." (footnote omitted)).

In a case such as this:

> [I]f the complaint sets forth allegations that make out a prima facie case for a [constitutional] violation, then [plaintiffs] have stated a claim and are entitled to move forward to discovery in order to attempt to prove their case. If they fail to make out a prima facie case, they are not entitled to move forward in the litigation process. To make out a prima facie case, a complaint must articulate how a statute is unconstitutional under the applicable substantive standard.

Vitale v. Bellows Falls Union High School, 2023 VT 15, ¶ 31, 217 Vt. 611 (citations omitted).

II. *Background*

It is important at the outset to explain what this case is—and is not—about. Plaintiffs expected, under the pre-Act 73 tuitioning system, that Plaintiff–children would attend specific independent schools at State expense. Those expectations now have been disappointed. Their chosen independent schools no longer qualify for tuitioning.

Plaintiffs readily concede that their claimed constitutional injury is the diminished ability

to choose among independent schools under Act 73. It has nothing to do with the quality of education provided by remaining qualified schools (available to them), whether public or independent. See Plaintiffs' Opposition to Dismissal 2 (filed May 13, 2026) ("Plaintiffs seek equal treatment in regard to the free use of their town tuitioning vouchers. The educational opportunities or lack thereof between different schools is irrelevant.").

Accordingly, Plaintiffs claim no violation of the Education Clause of the Vermont Constitution, Vt. Const. ch. II, § 68, and their Common Benefits claim is not predicated on any claimed inequality of educational opportunity. They assert no grievance about the quality of the schools they can attend under Act 73. They complain instead that they cannot attend, under Act 73, certain independent schools of their choice. In other words, while their statutory ability to choose is diminished; their right to educational opportunity (and equality thereof) is not.

Based on this framing created by Plaintiffs, their Common Benefits claim is premised on that diminution in choice either in relation to what would have been available prior to Act 73 or in relation to those who continue to qualify for tuitioning and whose schools of choice remain qualified to receive them.

Prior to Act 73, tuitioned students had few constraints on which schools they could choose to attend. The relevant portion of the former Section 808, provided as follows:

> A school district shall not pay the tuition of a student except to a public school, an approved independent school, an independent school meeting education quality standards, a tutorial program approved by the State Board, an approved education program, or an independent school in another state or country approved under the laws of that state or country, that complies with the reporting requirement under subsection 4010(c) of this title . . . .

16 V.S.A. § 808 (2024). Section 808, as amended, now provides, in relevant part, as follows:

> (a) A school district shall not pay the tuition of a student except to:
>
> (1) a public school located in Vermont;
>
> (2) an approved independent school that:
>
> (A) is located in Vermont;
>
> (B) is approved under section 166 of this title on or before July 1, 2025;
>
> *(C) is located within either:*

> *(i) a supervisory district that does not operate a public school for some or all grades as of July 1, 2024; or*
>
> *(ii) a supervisory union with one or more member school districts that does not operate a public school for some or all grades as of July 1, 2024;*
>
> *(D) had at least 25 percent of its student enrollment composed of students attending on a district-funded tuition basis pursuant to chapter 21 of this title during the 2023-2024 school year*; and
>
> (E) complies with the minimum class size requirements contained in subdivision 165(a)(9)(A) of this title and State Board rule; provided, however, that if a school is unable to comply with the class size minimum standards due to geographic isolation or a school has developed an implementation plan to meet the class size minimum requirements, the school may ask the State Board to grant it a waiver from this subdivision (E), which decision shall be final;
>
> (3) an independent school meeting education quality standards;
>
> (4) a tutorial program approved by the State Board;
>
> (5) an approved education program;
>
> (6) a public school located in another state; or
>
> (7) a therapeutic approved independent school located in Vermont or another state or country that is approved under the laws of that state or country.

16 V.S.A. § 808(a) (emphasis added). Act 73 further provides that "A school district that pays tuition pursuant to the provisions of 16 V.S.A. chapter 21 [16 V.S.A. §§ 821–838] in effect on June 30, 2025 shall continue to pay tuition on behalf of a resident student enrolled for the 2024–2025 school year in or who has been accepted for enrollment for the 2025–2026 school year by an approved independent school subject to the provisions of 16 V.S.A. § 828 in effect on June 30, 2025, until such time as the student graduates from that school."

Plaintiffs object to 16 V.S.A. § 828(a)(2)(C) and (D). Provision (C) disqualifies an independent school from receiving tuitioned students if it is located within a supervisory union or district that has a public school option available. Provision (D) disqualifies an independent school if its student body was not at least 25% tuitioned, as measured by the 2023–2024 school year. These are the provisions that Plaintiffs allege prevent them from going to their schools of

choice. They assert that the exemption provision of Act 73 magnifies the disparity between their situation and those who still can be tuitioned to their schools of choice.

III. *Analysis*

The elements of a contemporary Common Benefits claim of the sort waged by Plaintiffs are as follows:

> When a statute is challenged under Article 7, we first define that "part of the community" disadvantaged by the law. We examine the statutory basis that distinguishes those protected by the law from those excluded from the state's protection. Our concern here is with delineating, not with labelling the excluded class as "suspect," "quasi-suspect," or "non-suspect" for purposes of determining different levels of judicial scrutiny.
>
> We look next to the government's purpose in drawing a classification that includes some members of the community within the scope of the challenged law but excludes others. Consistent with Article 7's guiding principle of affording the protection and benefit of the law to all members of the Vermont community, we examine the nature of the classification to determine whether it is reasonably necessary to accomplish the State's claimed objectives.
>
> We must ultimately ascertain whether the omission of a part of the community from the benefit, protection and security of the challenged law bears a reasonable and just relation to the governmental purpose. Consistent with the core presumption of inclusion, factors to be considered in this determination may include: (1) the significance of the benefits and protections of the challenged law; (2) whether the omission of members of the community from the benefits and protections of the challenged law promotes the government's stated goals; and (3) whether the classification is significantly underinclusive or overinclusive. . . . What keeps that assessment grounded and objective, and not based upon the private sensitivities or values of individual judges, is that in assessing the relative weights of competing interests courts must look to the history and "'traditions from which [the State] developed'" as well as those "'from which it broke,'" and not to merely personal notions. Moreover, the process of review is necessarily "one of close criticism going to the details of the opposing interests and to their relationships with the historically recognized principles that lend them weight or value."

Baker v. State, 170 Vt. 194, 212–14 (1999) (citations and footnotes omitted).

The Court understands the complaint to be intended to state a prima facie case as follows. The disadvantaged part of the community are those students (and their families) who would have chosen to attend a particular independent school that no longer can receive tuitioned students

under Act 73.

In Plaintiffs' view, the only relevant purpose of Act 73 is to promote "an exceptional educational system that is stable and predictable and where a student's home address does not dictate the quality of education they receive." 2025, No. 73, § 1(a)(6).

Plaintiffs contend that their omission from the benefit of a wider set of school options among which to choose does not serve the purpose of ensuring that Vermont's educational system is exceptional, stable, and predictable. Rather, Vermont has long had a liberal tuitioning system, and the new legislation upset their expectations. Moreover, the distinctions it draws in which schools can participate in tuitioning (and thus which schools tuitioned students may choose to attend) are arbitrary and have nothing to do with their quality or fit for particular students and families. In that regard, limiting any exemption or waiver to currently enrolled students, and not extending it to their not-yet-enrolled family members, is substantially underinclusive.

Plaintiffs claim falters at the outset. Apart from those currently enrolled, Act 73 limited the independent schools available to tuitioned students neutrally. It did not limit the options for some students but not others. To the extent that Plaintiffs feel disadvantaged by these changes, they presumably stand in contrast to those who also qualify for tuitioning but would choose to attend a school that remains eligible for tuitioning. In other words, the issue here is not lack of choice but a limit on choice.

It bears noting that the Vermont Supreme Court recently rejected a somewhat similar Common Benefits claim premised on an alleged constitutional right to school choice, which more cogently contrasted those with school choice and those without. See *Vitale v. Bellows Falls Union High School*, 2023 VT 15, ¶ 13, 217 Vt. 611. In that context, the Court plainly explained that there is no such underlying right. "Providing school districts with the choice between maintaining a public school, tuitioning, or some combination of the two is a 'legislative means' to achieve the constitutional ends" of providing an education. Id. "[D]ifferences in the availability of school choice alone do not constitute a substantial inequality of educational opportunity." *Id*. ¶ 17. If that is true as between those with school choice and without, it is difficult to see how it could be any less true between those with school choice who are happy about the options and those who are not. Plaintiffs' framing of the disadvantaged part of the

community for Common Benefit purposes is not auspicious.

Further, Plaintiffs' attempt to limit the cognizable purpose of Act 73 to promoting "an exceptional educational system that is stable and predictable and where a student's home address does not dictate the quality of education they receive" is palpably wrong and out of context. The subdivision of Act 73 from which they excerpt that purpose, in full, says as follows:

> Vermonters deserve an exceptional educational system that is stable and predictable and where a student's home address does not dictate the quality of education they receive. School district size and boundaries, school size, and class size are all influential factors in shaping the quality of instruction and overall student outcomes. The effectiveness of our schools depends on teacher quality, resource availability, and the unique strengths of local communities. *Change in our educational system is needed.* Systems are made of people, so change must come carefully and thoughtfully, with meaningful engagement by all Vermonters.

2025, No. 73, § 1(a)(6) (emphasis added). Other purposes of the legislation expressed in § 1 and reasonably inferable throughout, include, but are not limited to: (a) ensuring substantially equal educational opportunities for all students, (b) dealing with significant declining enrollment and the extraordinary cost of public education in Vermont, (c) keeping tax rates in check, and (d) improving sustainability and efficiency, taking advantage of economies of scale, and reducing administrative costs.

Plaintiffs' muted characterization of Act 73's purpose fails to take into account the complicated policies being promoted by the legislature. Looks at this larger tapestry of purpose undermines Plaintiffs' contentions and prima facie showing of a constitutional violation.

The final element, however, goes entirely unsatisfied by the allegations of the complaint. The fundamental question is whether, in light of the legislative purposes of the statute, the distinctions it draws that arguably leave Plaintiffs without the benefit that others receive is reasonable and just. Because Plaintiffs misinterpret the purposes of the Act, they do not engage with those purposes in the complaint. Rather, they disregard everything as arbitrary. That is insufficient. See *Vitale v. Bellows Falls Union High School*, 2023 VT 15, ¶ 13, 217 Vt. 611 ("The complaint does not explain how the statute is unreasonable or unjust under the law, especially when judged in relation to a governmental purpose like providing quality education while adapting to local needs and desires."). The statute is presumed to be reasonable and constitutional. There is nothing in the complaint to indicate why it might be unconstitutional

except conclusory allegations of unfairness.

Nor are the changes to tuitioning in Act 73 obviously unreasonable in relation to statutory purposes. Disallowing an independent school from receiving tuitioned students in a district with a public school option helps keep public school dollars and students in public schools, which presumably improves efficiencies and sustainability for those public schools. Limiting participation of independent schools to those with a historical critical mass of tuitioned students (the 25% requirement) presumably ensures the availability of schools where concentrated need or choice has a historical basis. It might also ensure that school districts that tuition are doing so with independent schools whose administrative processes are accustomed to receiving public students and providing an educational opportunity commensurate with the community and state standards. Finally, the legislative choice to allow students currently enrolled in schools that no longer will be able to receive tuitioned students to remain through graduation is humane and avoids the disruption of requiring those students to start anew somewhere else midstream. The provision is not facially or obviously underinclusive.

Plaintiffs' complaint offers nothing as to why, in placing limits on which independent schools are qualified to receive tuitioned students, Act 73 would violate their rights under the Common Benefits Clause.

Moreover, insofar as Plaintiffs argue that there is a long tradition of school choice in Vermont, and that Act 73 unsettles their reasonable expectation, based on that history, the Court simply reiterates the Vermont Supreme Court's observation in *Vitale* that tuitioning, including tuitioning with choice, is a means to an end, and the end is education, not choice.[5] As Plaintiffs readily concede, this case has nothing to do with the quality or equality of education. Where school choice is available, the history of things is that the legislature has placed limits on which schools are viable recipients of public tuition dollars. That remains the case.

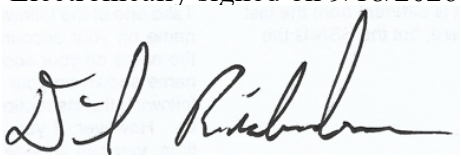
[5] The importance of this distinction has consistently and historically been central to the question of how to administer education. As Horace Mann, the 19th century education reformer wrote, "Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery." *H. Mann*, *Annual Reports on Education* 669 (1872). Mann, who was born in poverty and relied upon self-education at a library established by Benjamin Franklin, championed the common school movement as a way of ensuring universal access to standardized education, regardless of means, background, or sectarian affiliation. As student needs and community resources have shifted since this early model, the question for every generation is how to get students to the educational end. In this respect, Plaintiff's argument, that broad choice is a critical and fundamental component, is more about the policy choices, the means, which are ultimately the purview of the legislature, not the courts, to articulate.

Plaintiffs still have school choice. They just do not have the same set of options or breadth of choice they had before Act 73. They have not come forward in the complaint with any prima facie case that their diminished options amount to a constitutional violation.

ORDER

For the foregoing reasons, the State's motion to dismiss is **Granted**. Plaintiffs' motion for a preliminary injunction is **denied as moot**.

Electronically signed on 9/18/2026 6:01 PM pursuant to V.R.E.F. 9(d)



Daniel Richardson
Superior Court Judge