

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

IN THE MARION SUPERIOR/CIRCUIT COURT  
CAUSE NO.:

49007 11 07 PL 02 5402

TERESA MEREDITH, DR. EDWARD E. )  
EILER, RICHARD E. HAMILTON, )  
SHEILA KENNEDY, GLENDA RITZ, )  
REV. MICHAEL JONES, DR. ROBERT M. )  
STWALLEY III, KAREN J. COMBS, )  
REV. KEVIN ARMSTRONG, DEBORAH J. )  
PATTERSON, KEITH GAMBILL, and )  
JUDITH LYNN FAILER, )

Plaintiffs, )

v. )

MITCH DANIELS, in his official capacity as )  
Governor of Indiana; and DR. TONY BENNETT, )  
in his official capacity as Indiana Superintendent )  
of Public Instruction and Director of the Indiana )  
Department of Education, )

Defendants. )

**FILED**

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JUL 01 2011

*Elizabeth A. White*  
CLERK OF THE MARION CIRCUIT COURT

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

1. This is a lawsuit for declaratory and injunctive relief, in which Plaintiffs challenge the constitutionality of Indiana's "Choice Scholarship Program" ("CSP"), which was enacted on May 5, 2011 as part of House Enrolled Act No. 1003, §§ 5-6 & 10, P.L. 92-2011. Taking effect on July 1, 2011, the CSP creates a program under which the State – rather than educating Indiana children through a "general and uniform system of Common Schools," Ind. Const. art. 8, § 1 – would instead use funds raised for public education to pay for a portion of these children to receive their state-funded education in private schools. The vast majority of these CSP schools

will be religious institutions, which are extensions of the religious ministries of the churches that sponsor them, and which exist for the purpose of providing their children with an education based on and grounded in religious training and worship. The CSP will be implemented beginning with the 2011-2012 school year.

2. This use of taxpayer funds is contrary to the Indiana Constitution's directive in Article 8, § 1 that the General Assembly provide for the education of Indiana children through "a general and uniform system of Common Schools." And it is also incompatible with the Constitution's provisions, found in Article 1, §§ 4 and 6, that safeguard Indiana citizens' freedom of conscience by ensuring that they are not compelled, through the taxes they pay, to support religious institutions, ministries, and places of worship against their consent.

#### **Parties**

3. Plaintiff TERESA MEREDITH is an Indiana citizen and taxpayer. She is a resident of Shelbyville and is an elementary school teacher in the Shelbyville Central School Corporation. Ms. Meredith is Vice President of the Indiana State Teachers Association. She has two children who are currently students in the Southwestern Consolidated School District, and two others who are graduates of the public schools.

4. Plaintiff DR. EDWARD E. EILER is an Indiana citizen and taxpayer. He is a resident of West Lafayette, and has served as Superintendent of the Lafayette School Corporation for the last 15 years. He is a former member of the Indiana State Board of Education.

5. Plaintiff RICHARD E. HAMILTON is an Indiana citizen and taxpayer. He is a resident of Indianapolis and is a retired Methodist minister. His children are graduates of the

Washington Township Schools in Marion County, and he has two grandchildren currently enrolled in the Indianapolis Public Schools and a third in a public charter school.

6. Plaintiff SHEILA KENNEDY is an Indiana citizen and taxpayer. She is a resident of Indianapolis and is Professor and Director of Public Affairs Programs in the School of Public and Environmental Affairs at Indiana University-Purdue University Indianapolis. Professor Kennedy is a former Executive Director of the Indiana Civil Liberties Union and former Corporation Counsel of the City of Indianapolis. She is the grandmother of two children currently enrolled in the Indianapolis Public Schools.

7. Plaintiff GLENDA RITZ is an Indiana citizen and taxpayer. She is a resident of Carmel and works as a media specialist at Crooked Creek Elementary School in the Metropolitan School District of Washington Township. Ms. Ritz is President of the Washington Township Education Association and is a member of the Board of Directors of the Indiana State Teachers Association.

8. Plaintiff REV. MICHAEL JONES is an Indiana citizen and taxpayer. Pastor Jones is a resident of Indianapolis. He is the pastor of the Progressive Missionary Baptist Church in Indianapolis. His congregation includes children who attend both public and private schools.

9. Plaintiff DR. ROBERT M. STWALLEY III is an Indiana citizen and taxpayer. He is a resident of Lafayette and is owner of an engineering business. Dr. Stwalley has been a member of the school board of Lafayette School Corporation for the past ten years. He has three children currently enrolled in the Lafayette public schools.

10. Plaintiff KAREN J. COMBS is an Indiana citizen and taxpayer. She is a resident of Lafayette and is principal of the Glen Acres Elementary School in the Lafayette School

Corporation. Approximately 75% of the students at the elementary school of which Ms. Combs is principal are eligible for federally subsidized lunch programs. Her daughter attends a Christian school.

11. Plaintiff REV. KEVIN ARMSTRONG is an Indiana citizen and taxpayer. He is a resident of Indianapolis and is senior pastor of North United Methodist Church in Indianapolis. Rev. Armstrong's daughter is a graduate of the Indianapolis Public Schools. His congregation includes children enrolled in public, private, and charter schools.

12. Plaintiff DEBORAH J. PATTERSON is an Indiana citizen and taxpayer. She is a resident of Lafayette. Ms. Patterson is a member of the school board of St. James Lutheran School, where two of her children are enrolled. She is an elementary school teacher in the Lafayette School Corporation.

13. Plaintiff KEITH GAMBILL is an Indiana citizen and taxpayer. He is a resident of Evansville, and has taught music in the Evansville-Vanderburgh School Corporation for 24 years. Mr. Gambill is President of the Evansville Teachers Association.

14. Plaintiff JUDITH LYNN FAILER is an Indiana citizen and taxpayer. She is a resident of Indianapolis, and is an Associate Professor of Political Science at Indiana University in Bloomington. Ms. Failer is a member of the Board of Directors of the Hasten Hebrew Academy of Indianapolis (but is a plaintiff in her individual capacity rather than as a member of the Board). She is the parent of two children who attend Hasten Hebrew Academy.

15. Defendant MITCH DANIELS is Governor of the State of Indiana. It is his responsibility under Article 5, § 17 of the Indiana Constitution to "take care that the laws are faithfully executed." Governor Daniels is sued in his official capacity. Governor Daniels' principal office is located in Indianapolis, Marion County.

16. Defendant DR. TONY BENNETT is Indiana Superintendent of Public Instruction. In that capacity Dr. Bennett chairs the Indiana State Board of Education and serves as Director of the Indiana Department of Education, which is charged with implementing the CSP and disbursing CSP scholarship funds. Superintendent Bennett is sued in his official capacity. Superintendent Bennett's principal office is located in Indianapolis, Marion County.

### Facts

17. The CSP was enacted by the 2011 Indiana General Assembly as part of HEA 1003. Sections 5 and 6 of HEA 1003 add definitional provisions to Ind. Code. ch. 20-51-1, while the substantive CSP provisions contained in Section 10 of HEA 1003 are codified as Ind. Code ch. 20-51-4.

18. Beginning with the 2011-12 school year, the CSP is to provide vouchers, known as "choice scholarships," through which the State will pay all or part of the tuition for eligible children to attend private schools instead of the public schools they otherwise would attend.<sup>1</sup>

19. Children from families with household incomes up to 150% of the eligibility level for federally subsidized lunch programs – approximately \$62,000 for a family of four – will be eligible to receive CSP vouchers. In the program's initial two years, the total number of vouchers that can be awarded is capped at 7,500 for 2011-12 and 15,000 for 2012-13. Thereafter, there are no limits on the number of vouchers that may be awarded. Once the program is fully implemented in the 2013-14 school year, approximately 60% of all Indiana schoolchildren will be legally entitled to receive a voucher upon application.

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<sup>1</sup> Scholarships provided under the CSP may also be used to pay tuition for public schools outside the school corporation in which the student has legal settlement. Plaintiffs have no objection, constitutional or otherwise, to this or other means of allowing students to attend public schools outside their own school corporations without charge. As this provision is not severable from the rest of the CSP, however, the program must be invalidated in its entirety.

20. CSP vouchers will be in an amount equal to the tuition and fees charged by the private school – except that the scholarship cannot exceed 90% of the “state tuition support amount” for the student’s public school (for families with household incomes up to the eligibility level for federally subsidized lunch programs), or 50% of the state tuition support amount (for families with incomes between 100% and 150% of that level). In addition, for children in grades 1-8, the voucher amount is capped at \$4,500.

21. Vouchers are to be distributed from public funds by the Department of Education (“Department”). While the Department may pay the voucher funds to the student or parent, the Department’s check or warrant must, to be valid, also be endorsed by the school at which the scholarship is being used.

22. The CSP statute does not prohibit participating private schools from charging CSP students additional tuition beyond the amount covered by their vouchers.

23. Participating schools are allowed to apply their existing admissions policies in determining which CSP students to admit, which may involve selective screening of students according to factors such as academic criteria, disciplinary records, special needs, or religious affiliation or belief.

24. The statute specifically prohibits the Department of Education or any other state agency from regulating the educational program of private schools that accept CSP students, including regulation of their curriculum, religious instruction or activities, classroom teaching, and teacher and staff hiring requirements.

25. When a student enrolls in a private school with a CSP voucher, the public school that he or she previously attended will lose the state funding provided to that school as a result of

the student's attendance there. The CSP will thus divert many millions of dollars in public funds from Indiana public schools to private schools.

26. The private schools at which CSP vouchers can be used must be located in Indiana, accredited by either the State Board of Education or by a national or regional accreditation agency recognized by the State Board, and must administer standardized tests required by the State.

27. The State Board of Education recognizes the following national or regional accreditation agencies for purposes of applying the CSP: Accrediting Association of Seventh-Day Adventist Schools, Colleges, and Universities; American Association of Christian Schools; Association of Christian Schools International; Christian Schools International; Independent Schools Association of the Central States; International Christian Accrediting Association; National Lutheran Schools Accreditation; and North Central Association.

28. Approximately 352 Indiana private schools are accredited by the State Board or by one of the other accrediting agencies it recognizes, and thus are eligible to enroll CSP students. Of these eligible private schools, 91.5% (322 schools) are religious schools, in that they are owned, operated, sponsored by, or affiliated with a church, faith, or other religious organization, and are institutions in which religious instruction and religious exercise is a part of the educational program. Only 30 of the eligible private schools, or 8.5% of the total, are nonsectarian. Of the religious schools, 185 are Catholic, 54 are "Christian," 36 Lutheran, 14 Adventist, 11 Baptist, 16 affiliated with other Protestant denominations, and 3 schools each are Islamic and Jewish.

29. In many parts of the State there are no accredited nonsectarian private schools, so that families who wish to obtain CSP vouchers for their children to attend private schools will have no option other than a religious school.

30. The statute places no restrictions on the purposes for which such religious schools may use the public funds received under the CSP, and these schools are accordingly free to use CSP funds for purposes such as religious instruction, worship, and other religious activities. Public funds provided under the CSP thus could be used, for example, to pay the salaries or stipends of clergy, members of religious orders, and others who provide religious training and instruction; to purchase Bibles, religious textbooks, textbooks that present subjects other than religion from a religious point of view, and other religious literature; to purchase and display crucifixes and other religious symbols; and to build and maintain chapels and other facilities used for religious worship.

31. The religious schools eligible to participate in the CSP typically describe themselves as ministries of the church or other religious organization with which they are affiliated. A substantial purpose of these schools, and of the religious entities that own, operate, sponsor, or control them, is to provide students with a religious upbringing and to inculcate in them the particular religious beliefs, doctrines, and values of the school or sponsoring religious organization.

32. In all or almost all of these religious schools, religious training and instruction, worship, and prayer are an integral part of the school's education program. These religious schools are thus places of worship.

33. Unlike voucher programs that have been enacted in certain other states, the CSP does not prohibit schools from requiring CSP students to participate in all aspects of the school's

religious program, including religious training and instruction, worship, and prayer. Indeed, the CSP statute specifically prohibits the Department and other state agencies from regulating the “religious instruction or activities” of participating private schools.

34. All or almost all of the religious schools that participate in the CSP will, in accordance with their standard curriculum and practice, require students who attend with public funding under the CSP to participate in prayer, worship, religious training and instruction, and other religious activities that tend to inculcate in such students the particular religious beliefs and values of the churches and other religious organizations that own, operate, sponsor, or control such schools.

35. In most or all of the religious schools eligible to participate in the CSP, the school’s or sponsoring church’s religious beliefs permeate the entire educational program, often influencing even the teaching of secular subjects. As one such school explains in its literature, for example, “our Catholic faith is integrated into all subject areas of our curriculum.” As another puts it, “all subjects must be integrated with the truth of Scripture, and not contradict the principles of God’s Word.”

36. Many of the schools that would be eligible for CSP funding explicitly state in their literature that religious indoctrination of students is central to their reason for being – that the school “exists to show children Jesus” and encourages each student to “develop a personal relationship with God,” for example, or that part of the school’s mission is to “encourage a personal relationship with Christ.”

37. The CSP statute prohibits participating private schools from discriminating on the basis of race, color, or national origin, but does not prohibit discrimination based on religious beliefs or affiliation.

38. Some of the schools that would be eligible for CSP funding reserve the right to deny admission to students who are not members of their religion – for example (as several schools explain), admitting only students who “[h]ave a relationship with God through Jesus Christ or at least be open to the idea,” or who “have accepted Jesus Christ as their personal Savior” and “agree to exclusively attend Sunday School and church services each week at a Bible-preaching church that practices water baptism by immersion.”

39. Many of the religious schools eligible for CSP funding use religious curriculum materials to teach secular as well as religious subjects. For example, A Beka and Bob Jones University curriculum materials are popular at many eligible schools, some of which exclusively use materials from these and other religious publishing houses. Among other things, A Beka and Bob Jones curricula teach “creationism,” purport to refute the “man-made” theory of evolution, teach that the earth is a few thousand years old, and use Spanish courses to teach students to “present the gospel” in that language. Books from these publishing houses heavily use the Bible as a teaching source for all subjects.

40. Public funding of private, predominantly religious, education through the CSP will enable participating religious schools to provide religious training and instruction in the beliefs, doctrines, and values of their particular faith to students who otherwise would not have received the religious education these schools offer.

**First Cause of Action  
(Article 8, § 1, Indiana Constitution)**

41. The allegations of paragraphs 1-40 are realleged and incorporated herein by reference.

42. Article 8, § 1 of the Indiana Constitution provides that “it shall be the duty of the General Assembly to ... provide, by law, for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.”

43. Under the CSP the State is unconstitutionally directed to fulfill its education obligation in a manner other than that prescribed in Article 8, § 1 – namely, by paying tuition for a portion of the State’s children to obtain their publicly funded education in private schools rather than through the “uniform system of Common Schools” called for by Article 8, § 1.

44. In further violation of Article 8, § 1, the private schools through which the State purports to discharge its education duty under the CSP are not part of a “uniform system,” the tuition CSP students may be required to pay at these schools is not “without charge,” and these private schools are not “equally open to all.”

**Second Cause of Action**  
**(Article 1, § 4, Indiana Constitution)**

45. The allegations of paragraphs 1-44 are realleged and incorporated herein by reference.

46. Article 1, § 4 of the Indiana Constitution provides in part that “no person shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.”

47. By using public funds to pay for Indiana children to attend religious schools, which are places of worship and ministries of these schools and of the churches or other religious organizations that own, operate, sponsor, or control them, the CSP compels plaintiffs and other Indiana taxpayers, through their tax payments, to support such ministries and places of worship in violation of Article 1, § 4 of the Indiana Constitution.

**Third Cause of Action**  
**(Article 1, § 6, Indiana Constitution)**

48. The allegations of paragraphs 1-47 are realleged and incorporated herein by reference.

49. Article 1, § 6 of the Indiana Constitution provides that “[n]o money shall be drawn from the treasury, for the benefit of any religious or theological institution.”

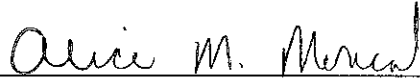
50. Under the CSP, public funds are drawn from the treasury and used to pay for children to attend religious institutions, where they will receive religious training and instruction in the beliefs, doctrines, and values of the sponsoring church or other religious organization. This use of public funds benefits these schools and the churches and denominations that sponsor them, in particular by enabling these religious institutions to bring their religious message to children who otherwise would not have received it, in violation of Article 1, § 6 of the Indiana Constitution.

**Prayer for Relief**

WHEREFORE, plaintiffs respectfully request that this Court:

1. Declare the Choice Scholarship Program unconstitutional under (a) Article 8, § 1, of the Indiana Constitution; (b) Article 1, § 4, of the Indiana Constitution; and (c) Article 1, § 6, of the Indiana Constitution;
2. Preliminarily and permanently enjoin defendants, and all persons and entities acting under their direction or in concert with them, from taking any measures to implement or enforce the Choice Scholarship Program;
3. Award plaintiffs their attorneys’ fees, expenses, and costs incurred in prosecuting this lawsuit; and
4. Order such other and further relief as this Court may deem appropriate.

Respectfully submitted,



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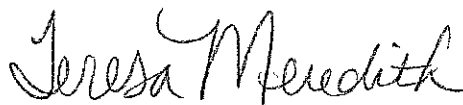
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Dated: July 1, 2011

**VERIFICATION**

I, Teresa Meredith, affirm, under the penalties for perjury, that I have reasonable cause to believe the existence of the facts alleged in the foregoing Complaint, and that the foregoing representations are true.



Teresa Meredith

6-29-11  
(date)