

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

DORIS SIMMONS-HARRIS  
1731 Wickford Road  
Cleveland, Ohio 44112

SHERYL SMITH  
4440 Granada Blvd., #4  
Warrensville Heights, Ohio 44128

REV. STEVEN BEHR  
4505 Clinton Avenue  
Lorain, Ohio 44055

Plaintiffs,

v.

JOHN M. GOFF  
SUPERINTENDENT OF PUBLIC  
INSTRUCTION, STATE OF OHIO  
65 South Front Street  
Columbus, Ohio 43215-4183,

Defendant.

96CVH01-0721

Case No. \_\_\_\_\_

52510F18

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

INTRODUCTION

1. This is a lawsuit for declaratory and injunctive relief, in which plaintiffs challenge the constitutionality of that portion of Amended Substitute House Bill No. 117 ("Budget Act") that directs the State Superintendent of Public Instruction to establish a Pilot Project Scholarship Program ("Scholarship Program"). The Scholarship Program provides, *inter alia*, for the expenditure of public funds to pay tuition at private schools, the vast majority of which are pervasively sectarian, for a potentially significant number of pupils who reside in the Cleveland City School

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District ("CCSD"). The Scholarship Program is to be implemented as of the beginning of the CCSD 1996-97 school year, and preparations for such implementation presently are underway.

2. Plaintiffs contend that the challenged portion of the Budget Act is unconstitutional because it (a) uses public funds to support or maintain religious education, worship, and other religious activities in violation of Article I, Section 7, of the Ohio Constitution, the Establishment Clause of the First Amendment to the United States Constitution, and 42 U.S.C. § 1983; (b) grants to religious sects "control of . . . part of the school funds of this state," in violation of Article VI, Section 2, of the Ohio Constitution; (c) violates the mandate of Article VI, Section 2, of the Ohio Constitution that the Legislature shall "secure a thorough and efficient system of common schools throughout the state"; (d) is a law of a general nature that applies solely to the CCSD and therefore fails to "have a uniform operation throughout the state," in violation of Article II, Section 26, of the Ohio Constitution; and (e) was enacted as part of the multi-subject Budget Act in violation of the requirement of Article II, Section 15(D), of the Ohio Constitution that "no bill shall contain more than one subject, which shall be clearly expressed in its title."

#### JURISDICTION AND VENUE

3. This Court has jurisdiction over this lawsuit pursuant to Ohio Const. Art. IV, § 4, and R.C. § 2305.01.

4. Venue lies in this Court pursuant to Civ. R. 3(B)(4).

## PARTIES

5. Plaintiff Doris Simmons-Harris is the parent of a minor child who is a pupil in CCSD during the CCSI 1995-96 school year, and who plans to attend CCSD during subsequent school years. Ms. Simmons-Harris is an adult resident of Cleveland, and an Ohio taxpayer. Ms. Simmons-Harris brings this lawsuit on her own behalf, and on behalf of her aforementioned minor child.

6. Plaintiff Sheryl Smith is the parent of a minor child who is a first grade pupil at a nonsectarian private school in Cleveland Heights, Ohio during the 1995-96 school year. Ms. Smith is an adult resident of Warrensville Heights, and an Ohio taxpayer.

7. Plaintiff Steven Behr is the pastor at Our Savior/Nuestro Salvador Lutheran Church in Lorain, Ohio. Rev. Behr is an adult resident of Lorain, and an Ohio taxpayer.

8. Defendant John M. Goff is the Ohio State Superintendent of Public Instruction. Dr. Goff has responsibility for the implementation and administration of the statutes of Ohio relating to public education, including specifically the statute establishing the Scholarship Program. Dr. Goff is sued in his official capacity.

## FACTS

9. On June 30, 1985, Ohio enacted the Budget Act, a portion of which, codified as R.C. §§ 3313.974-3313.979, established the Scholarship Program. R.C. §§ 3313.974 to 3313.979 ("Scholarship Program Statute") are attached

hereto as Attachment A, and incorporated herein by reference. The Budget Act, a 1,070-page document which dealt with numerous subjects unrelated to the Scholarship Program, contained no reference to the Scholarship Program in its title

10. Pursuant to the Scholarship Program Statute, the State Superintendent of Public Instruction ("Superintendent") is required to establish the Scholarship Program "in one school district that, as of March 1995, was under a federal court order requiring supervision and operational management of the district by the state superintendent." R.C. § 3313.975(A). The only school district that was under such a court order as of March 1995 was the CCSD.

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11. The Scholarship Program provides, *inter alia*, that the Superintendent shall use public funds to award scholarships to pupils residing in the CCSD. These scholarships are to pay a fixed percentage of the tuition that these pupils are charged (up to a maximum of \$2500) in order to attend "registered" private schools located within the geographical boundaries of the CCSD. In the case of pupils from "low-income families," defined by the Superintendent as families with incomes not exceeding two times the federal poverty index, the Scholarship Program will pay 90 percent of the tuition, and the private schools may not charge additional tuition in excess of the remaining 10 percent. For other pupils, the Scholarship Program will pay 75 percent of the tuition.

OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION  
STATE OF OHIO  
COLUMBUS, OHIO 43260-1197

12. Although the Scholarship Program Statute also permits scholarships to be used at public schools in participating public school districts adjacent to the

CCSD, no public school districts have elected to participate in the Scholarship Program during the CCSD 1996-97 school year.

13. The number of scholarships to be awarded each CCSD school year depends on the funds that are appropriated by the General Assembly for the Scholarship Program during that CCSD school year. The Scholarship Program Statute permits up to 50 percent of the scholarships to be awarded to pupils who were enrolled in private schools during the preceding CCSD 1995-96 school year. New scholarships are to be awarded each year to pupils entering kindergarten through grade three; once a scholarship is awarded, the recipient remains eligible for continued scholarships through grade eight for so long as the General Assembly appropriates funds for the Program.

14. For the CCSD 1996-97 school year, the General Assembly has appropriated from the general revenue fund \$5,250,000 for the Scholarship Program, said amount to be taken from funds that otherwise would have been distributed to the CCSD as Disadvantaged Pupil Impact Aid. This transfer results in a direct reduction of funds which would have been available to the CCSD during the 1996-97 school year. Approximately 1,500 scholarships will be awarded for the CCSD 1996-97 school year.

Payment of scholarships will be made by the State in four installments. The checks will be made payable to the parents of the pupils who are attending private schools, but will be mailed directly to the schools. Principals of the schools will be responsible for releasing the checks to the

parents, either to be used to pay tuition or as reimbursement for tuition that already has been paid.

16. Private schools that are affiliated with a religious group, institution, or organization, or that include a religious component in their program or operation ("sectarian private schools") are eligible to participate in the Scholarship Program. During the CCSD 1995-96 school year, approximately 52 private schools that offer instruction to pupils in kindergarten through grade eight are operating within the geographical boundaries of the CCSD. Of these, at least 49, enrolling approximately 98.9 percent of all private-school pupils in kindergarten through grade eight, are sectarian private schools.

17. As of January 19, 1996, a total of 53 private schools have been registered, or have registration applications pending, to participate in the Scholarship Program during the CCSD 1996-97 school year. Of these 53, 38 are sectarian private schools that are in operation during the CCSD 1995-96 school year, 3 are nonsectarian private schools that are in operation during the CCSD 1995-96 school year, and 12 are private schools that are not in operation during the CCSD 1995-96 school year but intend to participate in the Scholarship Program. Of these latter 12 schools, upon information and belief at least 7 are sectarian. The 45 sectarian private schools that have been registered, or have registration applications pending, to participate in the Scholarship Program during the CCSD 1996-97 school year, constituting 85% of the total of 53 such schools

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will enroll well over 90% of all pupils who are awarded scholarships during the CCSD 1996-97 school year.

18. All, or almost all, of the sectarian private schools that have been registered, or have registration applications pending, to participate in the Scholarship Program during the CCSD 1996-97 school year are pervasively sectarian, in that the secular and sectarian aspects of their educational programs are intertwined, their educational programs include religious indoctrination, worship, and the inculcation of religious beliefs, and their educational programs are designed to advance the schools' religious missions. By way of illustration, excerpts from written materials that have prepared by several of the sectarian private schools that have been registered to participate in the Scholarship Program during the CCSD 1996-97 school year are attached hereto as Attachment B, and incorporated herein by reference. The document prepared by Our Lady of Good Counsel School provides that "[t]otal Religious instruction is the major focus of the educational program at O.L.G.C. . . . Lessons learned in the formal Religion classes are purposefully carried into all subject areas. Prayer and Worship are important elements of our program." The Mission Statement for Saint Vitus School indicates that the school "draws its reason for existence from the mission of the [Catholic] Church. It strives to assist parents in developing Catholic young men and women who demonstrate their faith by love of God . . . ." According to the Parent Handbook for the West Park Lutheran School, "a child needs to hear and learn the Word of God constantly," and "[t]his can be done only when the entire curriculum

and the life of the school are grounded in the Word of God and dedicated to the purpose of showing the love of the Savior to a world which without Him, would be lost forever." The "primary purpose" of the Calvary Center Academy "is to provide learning opportunities for young people to study in a Christ-centered environment . . . ."

19. The Scholarship Program Statute places no limitations on the use that the participating private schools may make of the public funds that are made available to pay tuition. These funds may be used for any purpose that the participating private schools deem appropriate, which in the case of sectarian private schools would include the payment of salaries and expenses of employees affiliated with the religious mission of the school, the purchase of literature and other materials identified with the religious mission of the school, the maintenance and construction of facilities used for religious purposes, and other expenditures that support or maintain religious education, worship, and other religious activities.

20. Private schools may participate in the Scholarship Program only if they comply with certain requirements contained in the Scholarship Program Statute, including a prescribed admissions policy, a prohibition on discrimination on the basis of race, religion, or ethnic background, a prohibition on advocacy or fostering of unlawful behavior or teaching of hatred of any person or group on the basis of race, ethnicity, national origin, or religion, and a prohibition on providing false or misleading information to parents, students, or the public. The Superintendent is

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to monitor compliance with these requirements, and "shall revoke the registration of any school" that fails to comply. R.C. § 3313.976(A) and (B).

CAUSE OF ACTION

A. First Cause of Action

[Violation of Article I, Section 7, of the Ohio Constitution]

21. The allegations in Paragraphs 1 through 20 are realleged and incorporated herein by reference.

22. Under the Scholarship Program, public funds will be used to support and maintain religious education, worship, and other religious activities. This use of public funds has the primary effect of advancing religion, fosters excessive entanglement between government and religion, and compels unwilling taxpayers to support places of worship, in violation of Article I, Section 7, of the Ohio Constitution.

B. Second Cause of Action

[Violation of the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983]

23. The allegations in Paragraphs 1 through 20 are realleged and incorporated herein by reference.

24. Under the Scholarship Program, public funds will be used to support and maintain religious education, worship, and other religious activities. This use of public funds has the primary effect of advancing religion and fosters excessive entanglement between government and religion, in violation of the Establishment

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Clause of the First Amendment to the United States Constitution and 42 U.S.C.  
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C. Third Cause of Action

[Violation of Article VI, Section 2, of the  
Ohio Constitution]

25. The allegations in Paragraphs 1 through 20 are realleged and  
incorporated herein by reference.

26. Because the Scholarship Program places no limitations on the use  
of the public funds that are received by participating sectarian private schools, it  
grants religious sects "control of . . . part of the school funds of this state," in  
violation of Article VI, Section 2, of the Ohio Constitution.

D. Fourth Cause of Action

[Violation of Article VI, Section 2, of the  
Ohio Constitution]

27. The allegations in Paragraphs 1 through 20 are realleged and  
incorporated herein by reference.

28. Because the Scholarship Program diverts pupils and public funds from  
the CCSD to private schools, mostly sectarian private schools, it violates the  
requirement in Article VI, Section 2, of the Ohio Constitution that the General  
Assembly provide for the education of the State's children through "a thorough and  
efficient system of common schools throughout the state."

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E. Fifth Cause of Action

[Violation of Article II, Section 26, of the Ohio Constitution]

29. The allegations in Paragraphs 1 through 20 are realleged and incorporated herein by reference.

30. The Scholarship Program Statute is a law of a general nature that applies only to the CCSD. Because neither the Scholarship Program Statute nor any other provision of Ohio law, creates, authorizes, or appropriates public funds for comparable programs elsewhere in the State, the Scholarship Program Statute does not have "a uniform operation throughout the state," in violation of Article II, Section 26, of the Ohio Constitution.

F. Sixth Cause of Action

[Violation of Article II, Section 15(D) of the Ohio Constitution]

31. The allegations in Paragraphs 1 through 20 are realleged and incorporated herein by reference.

32. The Scholarship Program Statute was enacted as part of the Budget Act. Because the Budget Act dealt with numerous subjects unrelated to the Scholarship Program, and did not reference the Scholarship Program in its title, the Scholarship Program Statute was enacted in violation of the requirement in Article II, Section 15(D), of the Ohio Constitution that "[n]o bill shall contain more than one subject, which shall be clearly expressed in its title."

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**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request that this Court:

- (1) Declare the Scholarship Program unconstitutional under (a) Article I, Section 7, of the Ohio Constitution; (b) the Establishment Clause of the First Amendment to the United States Constitution and 42 U.S.C. § 1983; (c) the "control of school funds" clause of Article VI, Section 2, of the Ohio Constitution; (d) the "thorough and efficient system of common schools" clause of Article VI, Section 2, of the Ohio Constitution; (e) the "uniform operation" clause of Article II, Section 26, of the Ohio Constitution; and (f) the one-subject requirement of Article II, Section 15(D), of the Ohio Constitution;
- (2) Enjoin defendant, and all persons and entities acting under his direction or in concert with him, from implementing the Scholarship Program;
- (3) Award to plaintiffs the attorneys' fees, expenses, and costs that are 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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