

Civil Action No.
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

COMPLAINT

ANTONIO ROJAS RODRIGUEZ, CRISTAL
CARRENO, and ALAN VELASQUEZ, on
behalf of themselves and others similarly
situated,

Plaintiffs,

v.

JOHN L. FINAN, in his official capacity as
Chairman, South Carolina Commission on
Higher Education; CLARK PARKER, in his
official capacity as Member, South Carolina
Commission on Higher Education;
JENNIN her official capacity as Member, South
Carolina Commission on Higher Education;
CHARLES MUNNS, in his official capacity
as Member, South Carolina Commission on
Higher Education; BETTIE ROSE HORNE,
in her official capacity as Member, South
Carolina Commission on Higher Education;
DIANNE KUHL, in her official capacity as
Member, South Carolina Commission on
Higher Education; KIM PHILLIPS, in his
official capacity as Member, South Carolina
Commission on Higher Education; HOOD
TEMPLE, in his official capacity as Member,
South Carolina Commission on Higher
Education; LOUIS LYNN, in his official
capacity as Member, South Carolina
Commission on Higher Education; ALLISON
DEAN LOVE, in her official capacity as
Member, South Carolina Commission on
Higher Education; PAUL BATSON, in his
official capacity as Member, South Carolina

**FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CLASS ACTION

citizen or lawful permanent resident, or is in one of the approved visa categories under the CHE regulations. As a result of his classification as a “non-resident,” the College of Charleston is assessing Antonio a higher out-of-state tuition rate. The “non-resident” classification also prevents Antonio from receiving state academic merit scholarships and need-based grants for which he otherwise qualifies. As a result of being charged this higher non-resident tuition rate and the denial of state academic scholarships and grants, Antonio will not be able to afford to enroll at the College of Charleston.

6. Plaintiff **Cristal Carreno** is a U.S. citizen, born in California in 1995. She has resided continuously with her parents in Inman, South Carolina, for approximately nineteen years. She is a full-time student at Converse College (“Converse”) in Spartanburg, South Carolina, where she expects to enter her junior year in the fall of 2015. Cristal has been classified as a “non-resident” because she is a dependent of her parents and unable to show that her parents are U.S. citizens or lawful permanent residents, or that they are in one of the approved visa categories under the CHE regulations. As a result of this classification as a “non-resident,” Cristal has been denied thousands of dollars in state academic merit scholarships and need-based grants for which she otherwise qualifies. If Cristal cannot secure this state financial aid for the upcoming academic year, she will be forced to borrow large amounts of money to cover her tuition costs and will likely have to obtain another part-time job in addition to her current job and course load.

7. Plaintiff **Alan Velasquez** is a U.S. citizen, born in Maryland in 1996. He has lived in North Charleston, South Carolina (Charleston County) for the past seventeen years. Alan graduated from Trident Baptist Academy in Goose Creek, South Carolina in June 2014 and is a member of the South Carolina Air National Guard. Alan was accepted to Trident Technical

College (“Trident”) in Charleston and hopes to begin classes during the fall 2015 semester.

Trident has informed Alan that he will be classified as a “non-resident” because he is a

Higher Education. Defendant Hofferth serves as a member at large, and was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Hofferth is sued in his official capacity.

12. Defendant **Terrye Seckinger** is a member of the South Carolina Commission on Higher Education. Defendant Seckinger was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Seckinger is sued in her official capacity.

13. Defendant **Charles Munns** is a member of the South Carolina Commission on Higher Education. Defendant Munns was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Munns is sued in his official capacity.

14. Defendant **Bettie Rose Horne** is a member of the South Carolina Commission on Higher Education. Defendant Horne was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Horne is sued in her official capacity.

15. Defendant **Dianne Kuhl** is a member of the South Carolina Commission on Higher Education. Defendant Kuhl was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Kuhl is sued in her official capacity.

16. Defendant **Kim Phillips** is a member of the South Carolina Commission on Higher Education. Defendant Phillips was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(1). Defendant Phillips is sued in his official capacity.

17. Defendant **Hood Temple**

operations of the CHE. Defendant Carullo is sued in her official capacity as interim Executive Director of the CHE only.

23. Defendant **Glenn McConnell** is the President of the College of Charleston. In his role as President, Mr. McConnell exercises managerial and administrative authority for the ongoing operations of the College of Charleston. Defendant McConnell is sued in his official capacity as President of the College of Charleston only.

24. Defendant **Mary Thornley** is the President of Trident Technical College. In her role as President, Dr. Thornley exercises managerial and administrative authority for the ongoing operations of Trident Technical College. Defendant Thornley is sued in her official capacity as

President(.)-0.479431()-20.5177(I)2.3678(n)-0.958863()-0.479431(h)]TJ 240.82 0 Td [(e)3.16033(r)2.3678()2.

LEGAL FRAMEWORK

28. Public colleges and universities in South Carolina charge different tuition rates based on whether the enrolling student is classified as a “resident” or “non-resident” of the state.

29. Certain scholarships, including the Palmetto Fellows Scholarship, the LIFE Scholarship, and the SC HOPE Scholarship, are merit scholarships offered by the state of South Carolina and governed by CHE regulations and policies. These regulations and policies require that the recipient be classified as a “resident” of South Carolina as that term is understood for tuition purposes.

30. Similarly, the Need-Based Grant¹ and the Lottery Tuition Assistance Program offered by the state of South Carolina are governed by regulations and policies established by the CHE, and require that the recipient be classified as a “resident” of South Carolina as that term is understood for tuition purposes.

31. The South Carolina tuition statute distinguishes between “independent” and “dependent” individuals for purposes of residency classifications. An “independent person” is defined as a person over eighteen, or an emancipated minor, “whose predominant source of income is his own earnings or income.” S.C. Code Ann. § 59-112-10(F). A “dependent person” is defined as “one whose financial support is provided not through his own earnings or entitlements, but whose predominant source of income or support is payments from a parent, spouse, or guardian, and who qualifies as a dependent or an exemption on the federal tax return of the parent, spouse, or guardian[.]” S.C. Code Ann § 59-112-10(G).

¹ The “Need-based Grant” program is available to students at both public and independent (private) institutions in South Carolina. For independent colleges, the program is known specifically as “Tuition Grants.” S.C. Code Ann. Reg. § 62-455. Consistent with the regulatory language governing the program generally, Plaintiffs use the term “Need-Based Grant” to refer to grants at both public and independent institutions.

32. To be classified as a resident and to qualify for in-state tuition rates, an *independent* person must reside in and have been domiciled in South Carolina for twelve months, and have an intention of making a permanent home in the state. S.C. Code Ann. § 59-112-20(A). If the applicant is a *dependent* minor, his or her residence will be presumed to be that of his or her parent. S.C. Code Ann. § 59-112-20(D).

33. Any applicant classified as a non-resident is considered ineligible for scholarships and grant assistance such as the Palmetto Fellows Scholarship, the LIFE Scholarship, the SC HOPE Scholarship, and the South Carolina Need-Based Grant and Lottery Tuition Assistance Program.

34. State statutes do not contemplate citizenship or immigration status when determining whether an individual should be classified as a resident or non-resident. Rather, citizenship and immigration status qualifications are addressed by regulation and CHE policy.

35. The CHE is authorized to promulgate uniform regulations to implement the statutory residency requirements. S.C. Code Ann. § 59-112-100.

36. The CHE's tuition regulations are "to be applied consistently by all South Carolina institutions of higher education." S.C. Code Ann. Reg. § 62-600(A). The CHE has the "authority and responsibility for a coordinated, efficient, and responsive higher education system in this State consistent with the missions of each type of institution." S.C. Code Ann. § 59-103-20.

37. The CHE is also charged to "ensure access and equity opportunities at each institution of higher learning for all citizens of this State regardless of race, gender, color, creed, or national origin within the parameters provided by law." S.C. Code Ann. § 59-103-45(7).

38. The CHE's regulations define "resident" for purposes of tuition and fees as "an

independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries” S.C. Code Ann. Reg. § 62-602(N).

39. The CHE’s regulations further provide that “independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non-resident, out of state rate,” except that “[c]ertain non resident [sic] aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education.” S.C. Code Ann. Reg. § 62-604. The authorized visa categories are: A-1, A-2, E-2, G-1, G-2, G-3, G-4, H-1B, H-2A, H-2B, H-3, H-4, K-1, K-2, L-1, L-2, N-9 and N-9.

40. CHE regulations further provide that a dependent person’s residency is based upon the residency of the person upon whom they are dependent. S.C. Code Ann. Reg. §§ 62-602(C); 62-603(B).

41. Pursuant to these regulations, the CHE and colleges and universities within the state have adopted policies that dependent students who otherwise reside and are domiciled in the State but whose parents are not (i) citizens of the United States; (ii) lawful permanent residents; or (iii) immigrants in an authorized visa category, are not eligible for in-state tuition, academic merit scholarships, and need-based grants that require South Carolina residency.

TUITION, SCHOLARSHIP, AND NEED-BASED AID DIFFERENTIAL

42. Tuition rates for students classified as non-residents are significantly higher than those for students classified as residents at all public colleges and universities in South Carolina.

43. At the College of Charleston, the tuition cost for the 2014-15 academic year was

talented minority students who might otherwise pursue studies outside the State.” S.C. Code Ann. Reg. § 62-300(A).

48. The CHE’s regulations provide that it “shall ensure that there is equitable minority participation in the [Palmetto Fellows] Program.” S.C. Code Ann. Reg. § 62-325(D).

49. The Palmetto Fellows Scholarship Enhancement provides an additional \$2,500 toward the cost of attendance to college sophomores, juniors, and seniors who are eligible for the Palmetto Fellows Scholarship and are enrolled as full-time, degree-seeking students in a declared major of science or mathematics. To qualify for the Palmetto Fellows Scholarship enhancement, students must have completed at least 14 credit hours of instruction in math or science by the end of their first year, in addition to the other requirements of the Palmetto Fellows Scholarship program. S.C. Code Ann. Reg. §§ 62-318; 62-335.

50. The Legislative Incentive for Future Excellence (LIFE) Scholarship is a merit-based scholarship program that may be used by students attending public or private institutions within the state. To qualify during the first academic year, a student must be classified as a resident for tuition purposes, and must meet two of the following three requirements: (1) earned a cumulative 3.0 grade point average based on the SC Uniform Grading Scale; (2) scored an 1100 on the SAT or a 24 on the ACT; and/or (3) ranked in the top 30 percent of the high school graduating class. The LIFE Scholarship can cover up to \$5,000 toward the cost of attendance each year. S.C. Code Ann. Reg. § 62-1200.10(A). The LIFE Scholarship is available only to U.S. citizens and lawful permanent residents. *Id.*

51. The LIFE Scholarship Enhancement provides an additional \$2,500 toward the cost of attendance to sophomores, juniors, and seniors who are eligible for the LIFE Scholarship and are enrolled as full-time, degree-seeking students in a declared major of science or

mathematics. To qualify for the LIFE Scholarship Enhancement, students must have completed at least 14 credit hours of instruction in math or science courses by the end of the student's first year of enrollment, maintain a 3.0 grade point average, and have completed a minimum of 30 credit hours each academic year. S.C. Code Ann. Reg. §§ 62-1200.10(O); 62-1200.15.

52. The purpose of the LIFE Scholarship is “to increase the access to higher education, improve the employability of South Carolina's students so as to attract business to the State, provide incentives for students to be better prepared for college, and to encourage students to graduate from college on time.” S.C. Code Ann. Reg. 62-1200.1. Similarly, the legislative purpose in creating the LIFE Scholarship Enhancement was to increase the number of students majoring in math and science to encourage the same results as noted above for the LIFE Scholarship. *Id.*

53. The SC HOPE Scholarship is a one-year merit-based scholarship created for first-time entering freshmen attending a four-year institution who do not qualify for the LIFE or Palmetto Fellows Scholarships, but who graduated from high school with a cumulative 3.0 grade point average based on the SC Uniform Grading Scale. To qualify, a student must be a U.S. citizen or lawful permanent resident, and classified as a resident for tuition purposes. S.C. Code Ann. Reg. § 62-900.95. The SC HOPE Scholarship can cover up to \$2,800 toward the cost of attendance during the first year. S.C. Code Ann. Reg. § 62-900.125.

54. The South Carolina Need-Based Grants Program provides financial aid assistance to South Carolina's neediest students who attend public or eligible independent colleges in the state. This grant is limited to students who are U.S. citizens or eligible non-citizens who can show South Carolina residency for twelve consecutive months. To qualify for the Need-Based Grant, a student must: 1) meet the definition of a “needy student” under federal regulations for

58. As a result, many talented American students are forced either to delay or entirely forego a college education.

PLAINTIFFS' STATEMENT OF FACTS

59. Plaintiff Antonio Rojas Rodriguez is a U.S. citizen who was born in Mississippi and has lived continuously in South Carolina with his mother, upon whom he is dependent, for approximately ten years. He resides in Summerville, South Carolina, and graduated from Stratford High School in June 2015. Antonio is nineteen years old and has a South Carolina driver's license.

60. Antonio graduated with a 3.3 GPA on a 4.0 scale, and was active in the Future Business Leaders of America and service organizations at his high school, among his many extracurricular activities. Antonio was one of two South Carolina students to receive the Hispanic Heritage Foundation Youth Award in 2014 for his commitment to community service. Antonio hopes to become the first person in his family to graduate from college, and he plans to study business.

61.

out-of-state resident for purposes of tuition due to his inability to show proof that his mother is a U.S. citizen or permanent resident, or is in an eligible immigration classification.

65. The College of Charleston will assess out-of-state tuition rates to Antonio, which will nearly triple the cost of attendance. Antonio will also be unable to receive the LIFE Scholarship due to his classification as a non-resident. Due to his classification as a non-South Carolina resident, Antonio will be forced to forego enrollment at the College of Charleston and

completed thirty-four credit hours in math and science. Cristal has enrolled in over thirty credit hours of courses each year. She has completed all the academic requirements of eligibility for the LIFE Scholarship and LIFE Scholarship Enhancement. Cristal intends to attend medical school to become a pediatrician or obtain a master's degree

permanent residents, you are not eligible to receive funding from the state of SC.”

75. The August 7, 2013, financial aid package did not include the LIFE Scholarship or a South Carolina Need-Based Grant. Instead, under the new package, Cristal was required to raise or borrow an estimated \$10,500. Cristal borrowed approximately \$8,500 in Stafford and Perkins loans, and received approximately \$2,000 from outside scholarships for the year.

76. For the 2014-2015 school year, tuition at Converse was \$16,500. In August 2014, Converse College’s Office of Financial Assistance issued Cristal a financial aid package for the 2014-2015 school year. This financial aid package did not include the LIFE Scholarship, LIFE Scholarship Enhancement, or South-Carolina Need-Based Grant, which would have totaled approximately \$10,400 (\$5,000 from the LIFE Scholarship, \$2,500 from the LIFE Scholarship Enhancement, and \$2,900 from the Need-Based Grant). Because Cristal was denied these scholarships and need-based aid, she had to borrow a total of \$10,700 in loans for the year. Cristal borrowed approximately \$6,000 from a family member and approximately \$4,700 in Stafford loans.

77. Cristal has faced great financial and personal hardship because of her classification as a non-resident of South Carolina. She has expended significant time and effort in securing alternative sources of funding for her education due to the denial of the LIFE Scholarship, LIFE Scholarship Enhancement, and SC Need-Based Grants, including borrowing large sums of money to finance her tuition at Converse. She presently does not have a way to pay the entirety of the \$16,500 in tuition costs for the 2015-2016 academic year, and will likely have to take out additional large private loans and obtain another part-time job in addition to her current employment to cover the cost of tuition.

78. The deadline for Cristal to enroll for her third academic year at Converse College

he will likely not be able to take a full course load and may have to forego college attendance entirely, resulting in irreparable injury.

CLASS ACTION ALLEGATIONS

86. Plaintiffs bring this action on behalf of themselves and all those similarly situated pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

87. The class is defined as:

All individuals who can or will be able to establish residency for tuition purposes in South Carolina pursuant to S.C. Code of Reg. §§ 62-602(N) and 62-604 but for a lack of proof that their parents are U.S. citizens or lawful permanent residents, or are in certain eligible immigration classifications, who are enrolled or intend to enroll in a college or university in South Carolina.

88. The precise size of the class is unknown, but is clearly sufficient to warrant certifying a class. An estimated 170 U.S. citizen children of unauthorized immigrant parents in South Carolina are expected to newly enroll in higher education in South Carolina each year. Approximately 140 of these students are expected to newly enroll in public colleges or universities in South Carolina each year.

89. Questions of law and fact are common to the class, including whether Defendants' policies of requiring dependent students to show proof of their parents' citizenship or immigration status to establish residency for the purpose of in-state tuition, state merit scholarships, and need-based grants violates the Equal Protection Clause of the United States Constitution. This question predominates over any questions affecting only the individual plaintiffs.

90. Plaintiffs' claims are typical of the claims of the class because Defendants'

policies of requiring dependent students to present proof of their parents' citizenship or immigration status in order to be classified as a "resident," apply with equal force to all members of the proposed class.

91. Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. Plaintiffs are represented by counsel with expertise in

96. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983 to redress the deprivation, under color of state law, of rights secured by the United States Constitution.

PRAYER FOR RELIEF

WHEREFORE, in light of the foregoing, Plaintiffs request that the Court:

- a. Assume jurisdiction over this matter;
- b. Certify this matter as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;
- c. Declare that the challenged policies of classifying dependent students as non-residents for tuition, scholarship, and grant purposes solely because they lack proof of their parents' citizenship or immigration status violate the Equal Protection Clause of the United States Constitution;
- d. Enjoin Defendant McConnell from requiring Plaintiff Antonio Rojas Rodriguez and similarly-situated students to provide proof of their parents' citizenship or immigration status in order to be classified as South Carolina residents for tuition purposes at the College of Charleston;
- e. Enjoin Defendant Thornley from requiring Plaintiff Alan Velasquez and similarly-situated students to provide proof of their parents' citizenship or immigration status in order to be classified as South Carolina residents for tuition purposes at Trident Technical College;
- f. Enjoin the CHE Defendants from denying Plaintiffs Antonio Rojas Rodriguez, Cristal Carreno, Alan Velasquez, and similarly-situated students the Palmetto Fellows, LIFE, and/or HOPE scholarships, as well as the SC Need-Based Grant and/or Lottery Tuition Assistance, based solely on their inability to provide proof

- of their parents' citizenship or immigration status;
- g. Enjoin the CHE Defendants from requiring that dependent U.S. citizen students who reside in South Carolina provide proof of their parents' citizenship or immigration status for purposes of eligibility for in-state tuition, state scholarships, and state need-based financial aid;
 - h. Direct the CHE Defendants to immediately inform all colleges and universities in South Carolina that for purposes of determining the residency status of students as it relates to tuition, merit scholarships, and need-based grants, the colleges and universities may not inquire into the citizenship or immigration status of the parent(s) of the student;
 - i. Grant Plaintiffs the reasonable costs of suit and reasonable attorneys' fees and other expenses pursuant to 42 U.S.C. § 1988; and
 - j. Grant such other relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED this 8th day of June, 2015.

/s/ Stephen Suggs
On behalf of Attorneys for Plaintiffs

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*Applications for admission *pro hac vice*
forthcoming.

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