

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

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;
JENNIFER SETTLEMYER, in her official
capacity as Member, South Carolina
Commission on Higher Education; TIM
HOFFERTH, in his official capacity as
Member, South Carolina Commission on
Higher Education; TERRY SECKINGER,
in 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

Civil Action No.

COMPLAINT

**FOR DECLARATORY AND
INJUNCTIVE RELIEF**

CLASS ACTION

Commission on Higher Education; EVANS WHITAKER, in his official capacity as Member, South Carolina Commission on Higher Education; JULIE CARULLO, in her official capacity as Interim Executive Director, South Carolina Commission on Higher Education; GLENN McCONNELL, in his official capacity as President, the College of Charleston; and MARY THORNLEY, in her official capacity as President, Trident Technical College,

Defendants.

COMPLAINT

1. This class action lawsuit challenges the policies of the South Carolina Commission on Higher Education (“CHE”), the College of Charleston, and Trident Technical College that classify dependent U.S. citizen students who reside in South Carolina as “non-residents” for tuition, scholarship, and need-based grant purposes solely because their parents lack requisite proof of citizenship or immigration status. These policies invidiously discriminate against Plaintiffs and other students who are U.S. citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. CHE regulations and policies, and the policies of the College of Charleston and Trident Technical College, classify students as non-residents of South Carolina when they are dependents of individuals who cannot show that they are U.S. citizens or have specific immigration classifications—even when the students otherwise meet the requirements for in-state tuition, state academic merit scholarships, and need-based grants. These policies result in the classification of U.S. citizen students, including Plaintiffs, as non-residents of South Carolina. This classification, in turn, requires students to pay significantly higher out-of-state tuition rates and renders them ineligible for state academic merit scholarships such as the

Palmetto Fellows Scholarship, the LIFE and SC HOPE Scholarships, and education assistance grant programs such as the South Carolina Need-Based Grants Program and the Lottery Tuition Assistance Program. As a result, many talented American students must either forego higher education or incur extraordinary costs, in both money and time, to obtain the same education made available to other South Carolina residents at a fraction of the cost.

3. The Plaintiffs are dependent students who are U.S. citizens, were born in the United States, graduated from South Carolina high schools, and have lived in South Carolina for many years. They attended the same high schools and meet the same high academic standards as their fellow students who have been granted in-state tuition and South Carolina academic merit scholarships and need-based grants. The only difference between the Plaintiffs and the students awarded in-state tuition, state merit scholarships, and need-based aid is that the Plaintiffs cannot prove that their parents are U.S. citizens or have certain specified immigration statuses.

4. Defendants' actions violate the Plaintiffs' fundamental constitutional right to equal protection under the law. The Plaintiffs seek declaratory, injunctive, and equitable relief on behalf of themselves and all others similarly situated.

PARTIES

Plaintiffs

5. Plaintiff **Antonio Rojas Rodriguez** is a U.S. citizen, born in Mississippi in 1995. He has resided continuously with his mother in Summerville, South Carolina for approximately ten years. Antonio graduated from Stratford High School in Goose Creek, South Carolina in June 2015, and has been accepted to the College of Charleston for enrollment as a first year student starting in the fall of 2015. He has been classified as a "non-resident" at the College of Charleston because he is a dependent of his mother and unable to show that his mother is a U.S.

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 dependent of his mother and unable to show that his mother is a U.S. citizen or lawful permanent resident, or that she is in one of the approved visa categories under the CHE regulations. As a result of his classification as a “non-resident,” Trident will assess Alan a higher out-of-state tuition rate. The “non-resident” classification will also prevent Alan from receiving scholarships and need-based grants for which he would otherwise qualify. As a result of being charged this higher non-resident tuition rate and the denial of state financial aid, Alan will likely not be able to afford to enroll in college.

Defendants

8. Defendant **John L. Finan** is the Chairman of the South Carolina Commission on Higher Education. Defendant Finan was appointed to this position by the Governor of South Carolina for a term of four years. S.C. Code Ann. § 59-103-10(4). Defendant Finan is sued in his official capacity.

9. Defendant **Clark Parker** is a member of the South Carolina Commission on Higher Education. Defendant Parker 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 Parker is sued in his official capacity.

10. Defendant **Jennifer Settlemyer** is a member of the South Carolina Commission on Higher Education. Defendant Settlemyer 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 Settlemyer is sued in her official capacity.

11. Defendant **Tim Hofferth** is a member of the South Carolina Commission on

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** is a member of the South Carolina Commission on Higher Education. Defendant Hood 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 Hood is sued in his official capacity.

18. Defendant **Louis Lynn** is a member of the South Carolina Commission on Higher Education. Defendant Lynn was appointed to this position by the Governor of South Carolina for a term of two years. S.C. Code Ann. § 59-103-10(2). Defendant Lynn is sued in his official capacity.

19. Defendant **Allison Love** is a member of the South Carolina Commission on Higher Education. Defendant Love was appointed to this position by the Governor of South Carolina for a term of two years. S.C. Code Ann. § 59-103-10(2). Defendant Love is sued in her official capacity.

20. Defendant **Paul Batson** is a member of the South Carolina Commission on Higher Education. Defendant Batson was appointed to this position by the Governor of South Carolina for a term of two years. S.C. Code Ann. § 59-103-10(2). Defendant Batson is sued in his official capacity.

21. Defendant **Evans Whitaker** is a member of the South Carolina Commission on Higher Education. Defendant Whitaker was appointed to this position by the Governor of South Carolina for a term of two years. S.C. Code Ann. § 59-103-10(3). Defendant Whitaker is sued in his official capacity.

22. Defendant **Julie Carullo** is the interim Executive Director of the South Carolina Commission on Higher Education. In her role as interim Executive Director, Ms. Carullo is the chief administrator of the CHE, recommends policies and implements procedures, and directs all

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 of Trident Technical College only.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the United States Constitution and laws of the United States, and pursuant to 28 U.S.C. § 1343 because this action seeks to redress the deprivation, under color of state law, of Plaintiffs' civil rights and to secure equitable or other relief for the violation of those rights.

26. Plaintiffs seek declaratory, injunctive and other appropriate relief, pursuant to 28 U.S.C. §§ 2201 and 2202; Federal Rules of Civil Procedure 23, 57, and 65; and 42 U.S.C. § 1983.

27. Venue is proper under 28 U.S.C. § 1391(b) and Local Civ. Rule 3.01 (D.S.C.) as a substantial part of the events or omissions giving rise to the claims occurred within the District and within the Charleston Division, and Plaintiffs Rojas Rodriguez and Velasquez, as well as Defendants Seckinger, McConnell and Thornley, reside within the Division.

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

\$10,558 for South Carolina residents and \$27,548 for non-residents.

44. At Trident Technical College, the tuition cost for a semester of 12-15 credit hours during the 2014-15 academic year was \$1,956 for South Carolina residents who are also residents of Charleston, Berkeley, or Dorchester County, \$2,170 for South Carolina residents outside of those three counties, and \$3,702 for non-South Carolina residents.

45. The Palmetto Fellows Scholarship is a merit-based program that may be used by students attending eligible four-year institutions within the state. To qualify, a student must be a U.S. citizen or lawful permanent resident, classified as a resident for tuition purposes, and must have either scored at least 1200 on the SAT (27 on the ACT) by the November national test administration, earned a minimum 3.50 cumulative GPA on the SC Uniform Grading Policy (UGP) at the end of the high school junior year, and ranked in the top six percent of the class at the end of either the high school sophomore or the junior year; or have scored at least 1400 on the SAT (32 on the ACT) by the November national test administration and earned a minimum 4.00 cumulative GPA on the SC UGP at the end of the high school junior year. S.C. Code Ann. Reg. §§ 62-315, 62-320, 62-325. Once selected, a student must enroll at an eligible four-year institution and earn at least a 3.0 cumulative GPA by the end of each academic year. S.C. Code Ann. Reg. § 62-335(G).

46. The Palmetto Fellows Scholarship may cover up to \$6,700 toward the cost of attendance in the first year, and up to \$7,500 during the second, third, and fourth years. S.C. Code Ann. Reg. § 62-330.

47. The South Carolina legislature established the Palmetto Fellows Scholarship to “recognize the most academically talented high school seniors in South Carolina and encourage them to attend eligible colleges or universities in the State. A secondary purpose is to help retain

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

determining federal student aid eligibility; 2) enroll in a minimum of 12 credit hours; and 3) certify that she lacks a criminal record, and has not defaulted or does not owe a refund or repayment for any state or federal financial aid. S.C. Code Ann. Reg. §§ 62-460; 62-465.

55. The South Carolina Lottery Tuition Assistance program provides financial aid to students at two-year public and independent institutions. To qualify for the Tuition Assistance program, a student must: 1) file the Free Application for Federal Student Aid (FAFSA); 2) be a U.S. citizen or legal permanent resident who meets the definition of eligible non-citizen under state residency statutes; 3) qualify for in-state tuition and be a South Carolina resident for at least a year under the South Carolina residency statute; 4) enroll or be accepted for enrollment as a part-time or full-time student in a diploma, certificate, or an associate's degree-seeking program for a minimum of 6 credit hours; and 5) make satisfactory academic progress toward completion of the program requirements; 6) certify that she lacks a criminal record, and has not defaulted or does not owe a refund or repayment for any state or federal financial aid; and 7) not be eligible for or a recipient of a SC HOPE, LIFE, or Palmetto Fellows Scholarships. S.C. Code Ann. Reg. § 62-900.165.

56. U.S. citizen students who reside in South Carolina, but whose parents are not U.S. citizens or lawful permanent residents, and are not in one of the specified immigration classifications, are ineligible for in-state tuition rates, the Palmetto Fellows Scholarship, LIFE or HOPE Scholarships, the SC Need-Based Grants, and the Lottery Tuition Assistance program.

57. These students are therefore charged at least two times as much as other similarly-situated students for the same education at South Carolina's public colleges and universities, and are excluded from receiving tens of thousands of dollars in state scholarships and grants for which they otherwise qualify.

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. Antonio applied to and was accepted by the College of Charleston, and has qualified for the South Carolina LIFE Scholarship based on his high academic achievements.

62. Antonio qualifies for the federal Pell Grant, a federal need-based grant for low-income undergraduate students.

63. Antonio cannot show proof that his mother is a U.S. citizen or permanent resident, or in an eligible immigration classification for Antonio to be classified as a South Carolina resident for tuition and scholarship purposes.

64. Antonio wishes to enroll at the College of Charleston as a first year student beginning in the fall of 2015, but the college has informed him that he will be classified as an

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 will be irreparably injured as a result.

66. Antonio hopes to enroll in the SPECTRA Program, a summer program for multicultural and first-generation college students going into their first year at the College of Charleston, starting in mid-July 2015. The deadline for Antonio to pay tuition for the Fall 2015 semester is August 15, 2015.

67. Plaintiff Cristal Carreno is a U.S. citizen who was born in California and has lived continuously in South Carolina with her parents, upon whom she is dependent, for approximately nineteen years. She resides in Inman, South Carolina. She is nineteen years old and will be a junior at Converse College, a private college in Spartanburg, South Carolina, in the fall of 2015. Cristal has a South Carolina driver's license.

68. Cristal graduated in 2013 with honors from Chapman High School in Inman, South Carolina. In high school, Cristal earned a grade point average of 3.94 on a 4.0 scale, and graduated with the ninth highest grade point average in her graduating class of 196 students, in the top 5 percent of her class.

69. Cristal has declared Biology and Spanish as her majors at Converse. She currently maintains a grade point average of 3.80. She completed fifteen credit hours in mathematics and science courses during her first year. After completing her sophomore year, Cristal has

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 in Physician Assistant Studies.

70. Cristal qualifies for the federal Pell Grant, a federal need-based grant for low-income undergraduate students.

71. Cristal cannot show proof that her parents are U.S. citizens or permanent residents, or in an eligible immigration classification for Cristal to be classified as a South Carolina resident for tuition, scholarship, and need-based aid purposes.

72. Cristal has been classified as a non-resident of South Carolina because of her inability to show proof that her parents are U.S. citizens or permanent residents, or are in an eligible immigration classification.

73. After Cristal's admission to Converse in April 2013, the college's financial assistance office initially offered her an estimated financial aid package for her first academic year. This initial package included a LIFE Scholarship of \$5,000 per year, a South Carolina Need-Based Grant of \$2,500 per year, a federal Pell Grant, and college merit scholarships. Under this package, Cristal needed to raise or borrow a total of \$5,500 in subsidized and unsubsidized federal Stafford Loans to cover the cost of tuition at Converse, which was \$29,124 for the 2013-2014 academic year.

74. In a letter dated August 7, 2013, Cristal received notification of a revised financial aid package. The notice informed her that "[e]ligibility for the SC Tuition Grant and the LIFE Scholarship require that you meet the residency regulations of the state of SC. Since your residency is based on your parents' legal residence and since your parents are not citizens or

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

is August 14, 2015.

79. As a result of her classification as a non-resident and the denial of the LIFE Scholarship, LIFE Scholarship Enhancement, and Need-Based Grant to pay for her third year at Converse, Cristal will face significant financial hardship and will be irreparably injured.

80. Plaintiff Alan Velazquez is a U.S. citizen who was born in Maryland and has lived continuously in South Carolina with his mother, upon whom he is dependent, for approximately seventeen years. He resides in North Charleston, South Carolina, and graduated from Trident Baptist Academy in Goose Creek, South Carolina, in June 2014. Alan is eighteen years old and has a South Carolina driver's license.

81. Alan joined the South Carolina Air National Guard in December 2013. He is currently on active duty orders until on or about June 12, 2015.

82. Alan applied and was accepted to Trident Technical College in Charleston in early 2015. He intends to attend Trident for two years and then transfer to a four-year institution to complete his bachelor's degree in health science. Alan hopes to attend medical school and become an oncologist.

83. In May 2015, Alan was informed by Trident officials that he will be considered an out-of-state resident for tuition purposes because he cannot show proof that his mother is a U.S. citizen or permanent resident, or in an eligible immigration classification.

84. As a result of this classification, Trident will assess him out-of-state tuition at a rate nearly double the rate he would be charged as a resident of Charleston County, South Carolina. Alan will also be ineligible for state merit scholarships and need-based aid.

85. Alan passed up an opportunity to apply for a permanent position with the Air National Guard to pursue his college degree. If he is charged out-of-state tuition rates at Trident,

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 class action litigation and civil rights litigation related to immigrants.

92. Defendants have acted and will act on grounds generally applicable to the class in creating and implementing the policies of requiring students to present proof of their parents' citizenship or immigration status in order to be classified as a "resident," thereby making appropriate final declaratory and injunctive relief with respect to the class as a whole.

CAUSES OF ACTION

COUNT ONE

FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE

42 U.S.C. § 1983

93. The foregoing allegations are repeated and incorporated as though fully set forth herein.

94. The Fourteenth Amendment to the United States Constitution provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

95. Defendants' policies of classifying dependent U.S. citizen students who reside in South Carolina as "non-residents" based on the fact that they cannot provide proof of their parents' citizenship or immigration status deny these U.S. citizens equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution.

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

Stephen Suggs (Federal Bar No. 7525)
Susan Berkowitz (Federal Bar No. 1305)
South Carolina Appleseed Legal Justice Center
P.O. Box 7187
Columbia, SC 29202
T: (803) 779-1113
F: (803) 779-5951
ssuggs@scjustice.org
sberk@scjustice.org

Michelle R. Lapointe* (GA Bar No. 007080)
Eunice H. Cho* (CA Bar No. 266417)
James M. Knoepp* (GA Bar No. 366241)
Southern Poverty Law Center
1989 College Ave. NE

Atlanta, GA 30317
T: (404) 521-6700
F: (404) 221-5857
michelle.lapointe@splcenter.org
eunice.cho@splcenter.org
jim.knoepf@splcenter.org

*Applications for admission *pro hac vice*
forthcoming.

ATTORNEYS FOR PLAINTIFFS