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Vermont Superior Court
Chittenden Unit
26-CV-06043

State of Vermont

Superior Court **Civil Division**
Chittenden Unit **Docket No. _____**

Allison Duquette, on behalf of herself and her son J.D.;
Theresa McDonough, on behalf of herself and her children A.M. and M.M.;
Amia Cervantes, on behalf of herself and her son O.C.;
Christina Haskins, on behalf of herself and her son C.H.;
Nichole Kruger, on behalf of herself and her children B.K., C.K., J.H., and L.H.;

Plaintiffs,

v.

State of Vermont;
Zoie Saunders, in her official capacity as Vermont Secretary of Education;

Defendants.

Complaint for Declaratory Judgment and Injunctive Relief

Introduction

Under Vermont's Exclusion Rule (16 V.S.A. §§ 821(c); 822(c)), families living in a school district with a public school are required to attend an assigned public school, even if that school is failing. But families living in a school district without a public school are allowed to attend whichever public or private school they choose. This access to educational opportunity results in positive results for those students, including access to superior academics, college preparation, special services, and physical and extracurricular resources.

This unequal treatment, based on nothing more than where a family happens to live, is unconstitutional under the Vermont Constitution, *Brigham v. State*, 166 Vt. 246, 268 (1997) ("[T]o fulfill its constitutional obligation the state must ensure substantial equality of educational opportunity throughout Vermont."); *Baker v. State*, 170 Vt. 194, 212 (1999) (public benefits are for the common benefit of the community).

Therefore, Plaintiffs bring this action on behalf of themselves and their children for declaratory and injunctive relief, seeking the same access to educational opportunity enjoyed by their neighbors, and denied them solely based on their home addresses.

Jurisdiction, Venue, and Standing

1. This Court has jurisdiction under the Declaratory Judgments Act (V.S.A. Title 12, Chapter 167), common law jurisdiction for injunctive and declaratory relief, and the self-executing provisions of Chap. I, Art. 7 of the Vermont Constitution.

2. Venue is proper in Chittenden County, pursuant to 12 V.S.A. § 402.

3. Plaintiffs and their children are denied public tuition support solely based on their district of residence, causing concrete, ongoing constitutional injuries that are directly traceable to Defendants' enforcement of the Exclusion Rule.

4. Plaintiffs seek a judicial declaration and injunction for violations of their and their children's constitutional rights to substantial equality of educational opportunity, and equal protection, under the Common Benefits Clause.

Parties

5. Plaintiff Allison Duquette, the mother of 11-year-old J.D., is a resident of Milton, Vermont. While parents across the state receive town tuitioning for their children, Allison is forbidden from doing so for

J.D. because they live in Milton.

6. Plaintiff Theresa McDonough, the mother of kindergartener A.M. and second grader M.M., is a resident of Waltham, Vermont. While parents across the state receive town tuitioning for their children, Theresa is forbidden from doing so for A.M. and M.M. because they live in Waltham.

7. Plaintiff Amia Cervantes, the mother of 14-year-old O.C., is a resident of Northfield, Vermont. While parents across the state receive town tuitioning for their children, Amia is forbidden from doing so for O.C. because they live in Northfield.

8. Plaintiff Christina "Chrissy" Haskins, the mother of third-grader C.H., is a resident of Jamaica, Vermont. While parents across the state receive town tuitioning for their children, Chrissy is forbidden from doing so for C.H. because they live in Jamaica.

9. Plaintiff Nichole Kruger —the mother of first-grader C.K., seventh-grader L.H., and eighth graders B.K. and J.H. —is a resident of Milton, Vermont. While parents across the state receive town tuitioning for their children, Nichole is forbidden from doing so for B.K., C.K., J.H., and L.H. because they live in Milton.

10. Defendant Zoie Saunders, sued in her official capacity, is the Vermont Secretary of Education, and is responsible for "direct[ing] the execution of" and "compliance with" the Exclusion Rule. 16 V.S.A. § 212(5).

11. Defendant State of Vermont is a sovereign state within the United States responsible under Chapter II, Section 68 and Chapter I, Article 7 of the Vermont Constitution for providing a system of public education and maintaining substantial equality of educational opportunity for all Vermont children.

Factual Allegations

A. Vermont arbitrarily distinguishes between students eligible for educational opportunity and those denied it.

12. Vermont's Town Tuitioning Program is governed by 16 V.S.A. §§ 821(c); 822(c).

13. These statutes authorize tuition payments for Vermont residents who reside in school districts without a public school to attend approved public or private schools in other districts or states.

14. Tuition is paid up to the statewide per-pupil expenditure cap. 16 V.S.A. § 824(c).

15. 16 V.S.A. § 821 mandates tuition payments for families in all

school districts not subject to the Exclusion Rule to attend public elementary schools in other districts or approved independent elementary schools.

16. For high school education, 16 V.S.A. § 822 authorizes school districts to pay tuition for their resident students to attend public high schools or approved independent high schools.

17. In both cases, Vermont students are able to take the funding they receive and use it at the school of their choice, public or private.

18. But 16 V.S.A. §§ 821–22 treat families differently based upon where they live.

19. Families that live in a school district that has a public school are excluded from accessing town tuitioning.

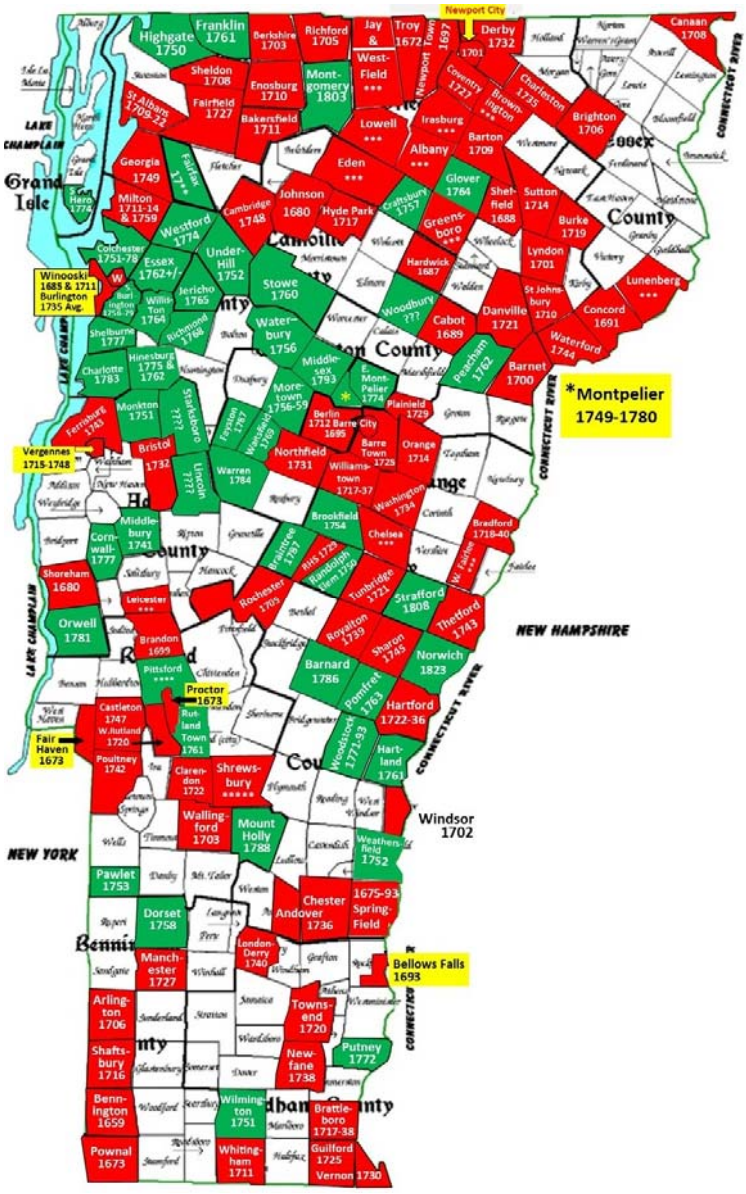
20. But the only difference between those students able to access educational opportunity through town tuitioning, and those denied it, is the arbitrarily drawn boundaries of school district jurisdictions.

21. These arbitrary distinctions perpetuate substantial inequality of access to educational opportunity, including academic, college preparation, special services, and other resources.

B. Greater educational opportunity results in better academic achievement.

22. According to independent research conducted for Plaintiffs, Vermont students with access to town tuitioning achieve better academic outcomes than those denied access to town tuitioning.

23. The scoring used on the map attached as **Exhibit 1** is based on the 2025 Vermont Comprehensive Assessment Program (VTCAP) results, available through the Vermont Agency of Education.



24. This map identifies the towns with schools that achieved very poor scores in the 2025 state achievement tests (shown in red, with cumulative scores).

25. Those towns are proximal to other towns with a school that scored quite well in that same test (shown in green).

26. Considering the data as reflected in **Exhibits 1 & 2**, there are

concrete disparities in educational results, as shown on the VTCAP, between Vermont school districts.

Grade	LEVEL 1 Basic	Grade	LEVEL 2 Below Proficient	Grade	LEV EL 3 Profic ient
3	1500- 1630	3	1631- 1749	3	1750- 1801
4	1500- 1650	4	1651- 1749	4	1750- 1815
5	1500- 1665	5	1666- 1749	5	1750- 1818

27. Consider, for example, the disparities between Sheldon and Franklin, in which a full 53 proficiency points separate student achievement.

28. Or even more dramatic is the difference between Berkshire and Montgomery, which are separated by a full 100 proficiency points.

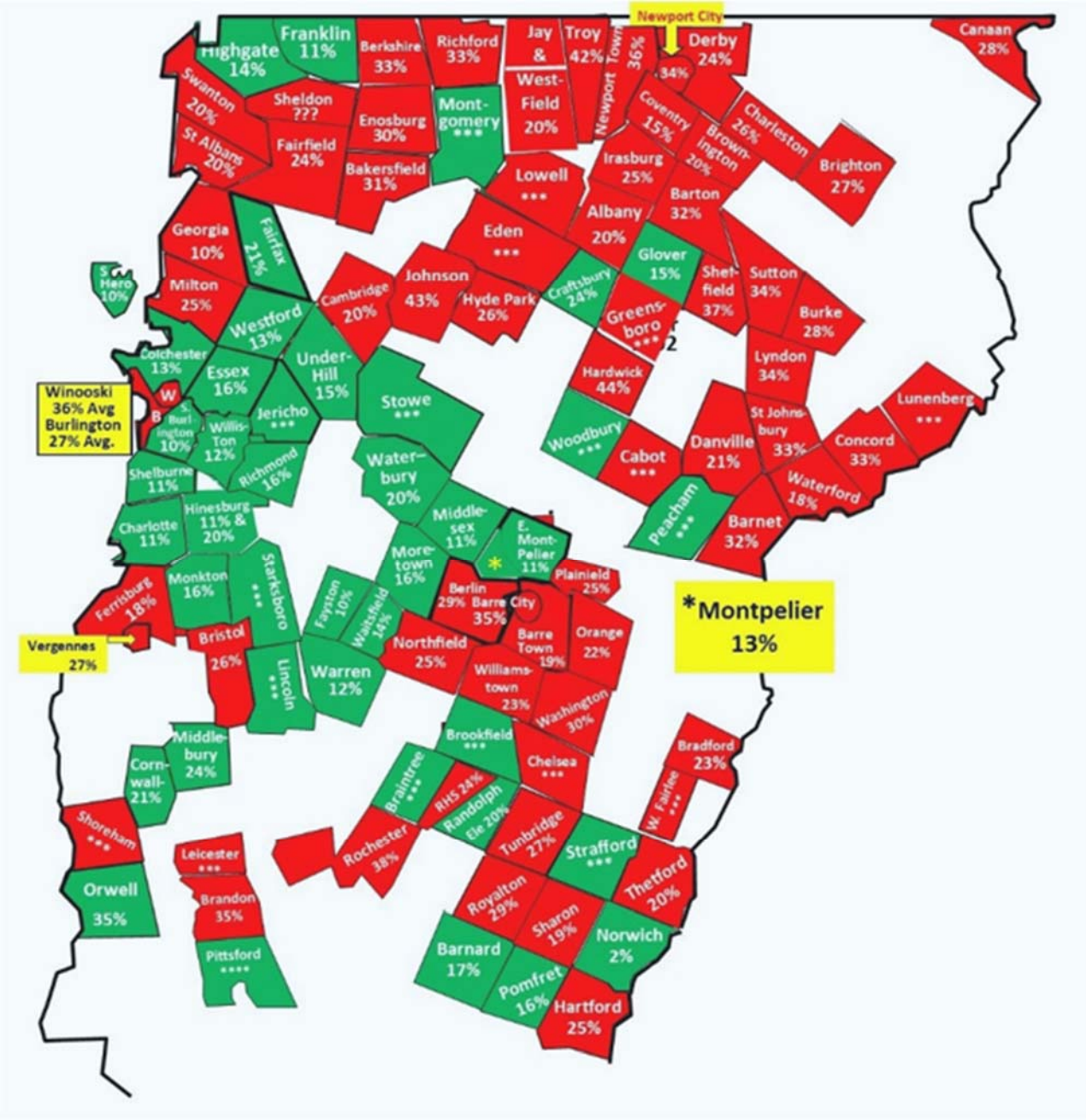
29. Other jurisdictions on the map (which is not exhaustive of the overall state data) show similar educational disparities.

30. But for the legal restrictions on town tuitioning in Vermont, families from the failing districts could avail themselves of better performing schools.

31. The stakes are profound. Across the state, students at many public schools are failing to achieve basic proficiency on the Agency of Education's competency tests, even while their counterparts a single district over perform appropriately, as reflected on the map included as

Exhibit 3.

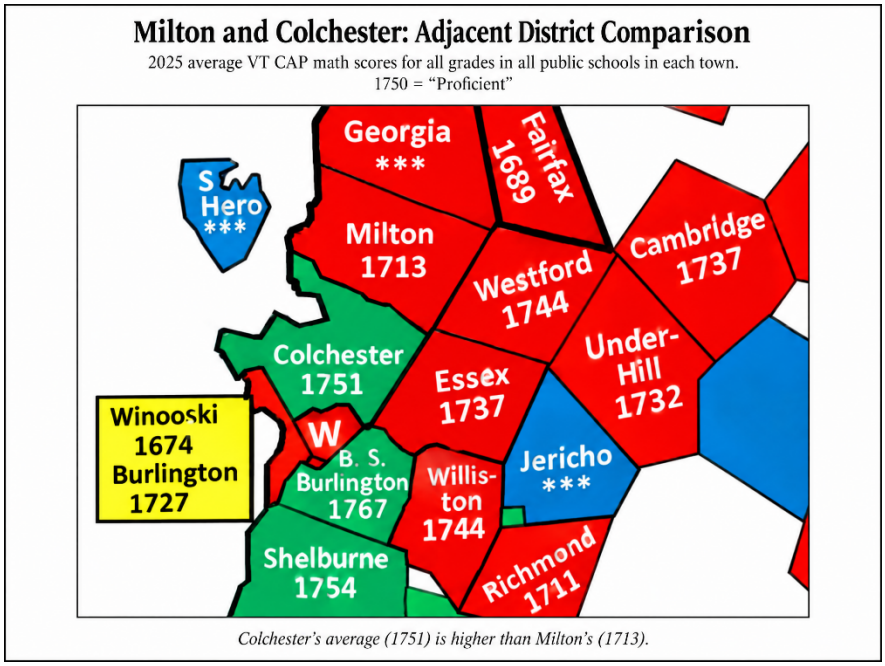
32. Here, the "%" labels in each town signify the average percentage of students who scored "substantially below proficient."



33. This disparity also exists in subject-specific scores, like math,

as reflected on the map included as **Exhibit 4**.

34. Here, the 2025 averaged math scores for all grades for public school students in each town are shown, in which a score of 1750 is equal to "proficient."



35. These disparate academic results among Vermont schoolchildren are also reflected in other studies considering the effect of educational opportunity on academic outcomes in Vermont.

36. A Milton and Rose Friedman Foundation study comparing test results on the Vermont Comprehensive Assessment System (VCAS) for both Vermont students attending public schools and those attending independent schools shows concrete academic disparities among

Vermont students. **Exhibit 5**.

37. The VCAS tests 10th graders in English and math, and 11th graders in science. *Id* at 14.

38. The Friedman study calculates a single composite score for each high school in Vermont by adding the math, reading, and science portions of each exam. *Id.*

39. The resulting figure provides an overall indicator of what percentage of Vermont high school students possess minimum basic competencies in the three test subjects. *Id.*

40. The study's findings show that Vermont high school students who use town tuitioning perform better academically than high school students at public schools, and that access to town tuitioning is a far better indicator of academic performance than poverty or other potential variables. *Id.* at 15–16.

Table One: Influence of School Choice on Standardized Test Scores

Variable	Coefficient	Standard Error	Significance
School Choice	11.813	2.424	.000
Poverty	-.448	.13	.000
Urbanization	.03	.08	.000
Per Pupil Spending	.001	.00	.254

41. A good example, according to an Ethan Allen Institute report

included as **Exhibit 6**, is the Mountain School at Winhall.

42. When the Mountain School was created in 1998, the government-run school it replaced had test scores that were among the lowest in the state. *Id.* at 9.

43. By 2013, Mountain School students scored 13 points above the state average in reading, 16 points above the state average in math, and 19 points above the state average in writing. *Id.*

44. The results of educational opportunity on academic outcomes in Vermont—for those able to access it—are also reflected across the country and have been repeatedly confirmed.

45. A Friedman Foundation for Educational Choice report, included as **Exhibit 7**, found that, based on 12 "gold standard" studies examining how educational opportunity affects the academic outcomes of participants, having access to educational opportunity, such as town tuitioning assistance, consistently results in higher academic achievement for participants.

46. Six of the "gold standard" studies considered found that access to educational opportunity had a positive impact on academic achievement across *all* students participating, while five "gold

standard" studies found that educational opportunity had at least some positive impact on student academic achievement. *Id.* at 7.

47. None of the "gold standard" studies considered in the Friedman report found that access to independent schools had a negative impact on student academic achievement.

TABLE 1 Academic Outcomes of Choice Participants

Location	Author	Year	Results			
			Positive Effect		No Visible Effect	Negative Effect
			All Students	Some Students		
New York	Chingos & Peterson	2012		X		
New York	Jin et. al.	2010		X		
D.C.	Wolf et. al.	2010	X			
Charlotte	Cowen	2008	X			
New York	Krueger & Zhu	2004			X	
New York	Barnard et. al.	2003		X		
New York	Howell & Peterson	2002		X		
D.C.	Howell & Peterson	2002	X			
Dayton	Howell & Peterson	2002		X		
Charlotte	Greene	2001	X			
Milwaukee	Greene et. al.	1998	X			
Milwaukee	Rouse	1998	X			

Note: This table shows all empirical studies using random-assignment methods.

48. Another study conducted by the researchers at Stanford University's Center for Research on Education Outcomes (CREDO), included as **Exhibit 8**, also concludes that students with access to educational opportunity, such as tuitioning reimbursement, generally outperform their peers by wide margins.

49. Their data shows that students with access to educational opportunity score on average 25 percent higher in reading and 29

percent higher in math than students restricted to public schools. *Id.* at 86.

50. These results are also reflected in a Cato Institute paper studying the effects of town tuitioning-style voucher programs in the Los Angeles area. **Exhibit 9**.

51. Evaluating the "Zones of Choice" (ZOC) program, an initiative of the Los Angeles Unified School District in which 30–40 percent of the district operates under town tuitioning-style systems, the Cato paper shows that tuitioning provides better academic outcomes for students than a neighborhood-based assignment system. *Id.* at 1–2.

52. Specifically, the English language arts exam and math exam performance of students in the ZOC program improved by 0.16 standard deviations relative to comparable non-ZOC program students. *Id.*

C. Educational opportunity leads to better college preparation.

53. According to independent research conducted for Plaintiffs, Vermont students with access to town tuitioning achieve better college preparation scores than those denied access to town tuitioning.

54. This research considered the most recent college preparatory results posted by the Vermont Agency of Education, and included three

historic Vermont academies: Burr & Burton, Lyndon Institute, and St. Johnsbury Academy.

55. The research then examined the high schools with the most students receiving town tuition to see how they compared against the average.

56. The results show that—whether considering Advanced Placement scores, Preliminary Scholastic Aptitude Test scores, or Scholastic Aptitude Test scores—access to town tuitioning leads to better college preparedness.

57. In fact, three of Vermont's town tuitioning-eligible independent schools land in the top 10 highest performing schools statewide on each measure.

ID	High School	Test Takers	% Proficient	# Tuition Students	FRL
SU011*	St Johnsbury Academy	142	79.1%	644	72.4%*
PS272	S Burlington HS	51	76.8%	183	17.8%
PS040	Brattleboro Union HS	85	76.4%	144	32.9%
PS406	Bellows Free Acad - St Albans	131	68.7%	160	28.8%
SU006*	Burr & Burton Acad	252	67.7%	687	34.6%*
SU067*	Lyndon Institute	153	57.0%	383	53.3%*
PS072	Colchester HS	195	55.3%	104	23.7%
PS253	Rutland High School	140	52.0%	152	35.0%
PS220	Oxbow HS	31	51.8%	186	48.0%
PS134	Hartford High School	61	50.6%	116	24.1%
PS242	Richford Jr Sr HS	8	-	158	52.9%
	Statewide Weighted Average	*3505*	*65.2%*		38.1%
	Statewide Simple Average		*59.0%*		
	Statewide Median		*64.6%*		
	Statewide Std. Dev.		*20.5%*		

58. Burr & Burton and St. Johnsbury Academy are both far above

average, and Lyndon Institute also makes it into the top 10 statewide.

59. St. Johnsbury Academy stands out when considering the AP scores.

60. Despite having a poverty rate nearly twice the statewide average, St. Johnsbury Academy jumped to the first spot in this cohort of high schools —beating even South Burlington High School, despite having a poverty rate four times greater.

61. Unfortunately, schools like St. Johnsbury Academy and Burr & Burton are not permitted to take town tuitioning from families who are subject to the exclusionary rule.

62. Educational opportunity also leads to higher Preliminary Scholastic Aptitude Test (PSAT) scores.

ID	High School	Test Takers	Total Mean	# Tuition Students	District FRL
PS134	Hartford High School	23	1130	116	24.1%
SU006	Burr & Burton Acad	160	1080	687	34.6%*
PS253	Rutland High School	66	1068	152	35.0%
PS272	S Burlington HS	170	1060	183	17.8%
PS406	Bellows Free Acad - St Albans	81	1052	160	28.8%
PS072	Colchester HS	139	1029	104	23.7%
PS040	Brattleboro Union HS	137	1027	144	32.9%
SU011	St Johnsbury Academy	239	1027	644	72.4%*
SU067	Lyndon Institute	50	994	383	53.3%*
PS220	Oxbow HS	33	993	186	48.0%
PS242	Richford Jr Sr HS	13	895	158	52.9%
	Weighted Average	*3948*	*1010*		38.1%
	Simple Average		*1006*		
	Median		*1016*		
	Std. Dev.		*55.6*		

63. Burr & Burton Academy registers in the top five schools

statewide for 11th-grade PSAT scores.

64. Burr & Burton is 70 points above the statewide average, and more than one standard deviation above the median high school performance.

65. St. Johnsbury Academy is also impressive, as it has the highest poverty rate in the state yet manages to achieve an above-average PSAT score.

66. Town tuitioning-eligible private schools also have higher Scholastic Aptitude Test (SAT) scores than the state average.

ID	High School	Test Takers	Total Score Mean	# Tuition Students	FRL
PS272	S Burlington HS	163	1180	183	17.8%
SU006*	Burr & Burton Acad	129	1145	687	34.6%*
PS072	Colchester HS	109	1139	104	23.7%
SU011*	St Johnsbury Academy	203	1128	644	72.4%*
PS406	Bellows Free Acad - St Albans	119	1101	160	28.8%
PS134	Hartford High School	78	1099	116	24.1%
SU067*	Lyndon Institute	111	1090	383	53.3%*
PS040	Brattleboro Union HS	109	1083	144	32.9%
PS242	Richford Jr Sr HS	17	1072	158	52.9%
PS253	Rutland High School	125	1066	152	35.0%
PS220	Oxbow HS	25	1058	186	48.0%
	Statewide Weighted Average	*3787*	*1102*		38.1%
	Statewide Simple Average		*1086*		
	Statewide Median		*1086*		
	Statewide Std. Dev.		*64.6*		

67. Burr & Burton again stands out, landing second highest in Vermont, and registering 43 points above the statewide average.

68. St. Johnsbury Academy also earns a place in the top 5,

registering 26 points above the statewide average.

69. Lyndon Institute also lands in the top 10 statewide, beating out the remaining top four public high schools in the state.

70. These schools outperform the statewide median in almost every instance despite having higher than average poverty rates.

71. Most often, they outperformed the average by more than a full standard deviation.

72. They also consistently outperformed public high schools that had lower poverty rates.

73. These results are also reflected in other studies considering the effect of educational opportunity on college preparation in Vermont.

74. As perhaps would be expected, better preparation in turn leads to higher college acceptance rates.

75. The results of educational opportunity for college preparation in Vermont—for those able to access it—are reflected across the country, and have been repeatedly confirmed.

76. Considering the ZOC program in Los Angeles, *supra* at ¶¶ 52–53, educational opportunity is also positively associated with better college preparedness.

77. For the ZOC study, this result was shown by SAT score improvements of about 0.16 standard deviations for students with access to educational opportunity. *Id.*

D. Educational opportunity results in better support for disadvantaged students.

78. According to independent research conducted for Plaintiffs, disadvantaged Vermont students with access to educational opportunity are particularly benefited.

79. This research considers ninth (the highest grade level included in the publicly available dataset) graders' participation in the Federal Free or Reduced Lunch program (FRL), a common proxy to identify children living in poverty.

80. The results show that the greater the poverty of the students, the more they benefit academically from access to educational opportunity.

81. Within the cohort of school unions with FRL from 31–40 percent, there are statistically significant student performance differences between school districts and supervisory unions (SUs)

offering town tuitioning and those that do not.[1]

Math Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	BENNINGTON RUTLAND SU	2581.81	TRUE	0.346	161
2018	MILTON SD	2556.94		0.336	124
2018	ADDISON NORTHWEST SU	2555.68		0.316	87
2018	WINDSOR SOUTHEAST SU	2554.12	MOST	0.363	79
2018	RUTLAND CITY SD	2544.54		0.387	182
2018	HARTFORD SD	2544.44		0.324	129
2018	BARRE SU	2543.86		0.384	175
2018	FRANKLIN CENTRAL SU	2539.6		0.366	190
2018	RUTLAND SOUTH SU	2519.07		0.380	70
2018	CALEDONIA CENTRAL SU	2512.7		0.329	61
2018	RUTLAND NORTHEAST SU	2465.05	SOME	0.394	58
2018	GRAND ISLE SU		TRUE	0.359	0
2018	ESSEX NORTH SU			0.355	0
2018	*VT Statewide*	*2543.11*			*5844*
	Group Average:	2537.98			120
	Weighted Group Average:	2544.43			
	Statewide Average:	2543.11			

English Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	MILTON SD	2611.58		0.336	124
2018	BENNINGTON RUTLAND SU	2592.93	TRUE	0.346	161
2018	ADDISON NORTHWEST SU	2580.72		0.316	87
2018	RUTLAND CITY SD	2579.63		0.387	180
2018	BARRE SU	2575.94		0.384	175
2018	WINDSOR SOUTHEAST SU	2571.97	MOST	0.363	78
2018	FRANKLIN CENTRAL SU	2567.14		0.366	188
2018	CALEDONIA CENTRAL SU	2548.21		0.329	61
2018	RUTLAND SOUTH SU	2544.02		0.380	70
2018	HARTFORD SD	2535.59		0.324	130
2018	RUTLAND NORTHEAST SU	2513.37	SOME	0.394	67
2018	GRAND ISLE SU	0	TRUE	0.359	0
2018	ESSEX NORTH SU			0.355	0
2018	*VT Statewide*	*2578.68*			*5844*
	Group Average:	2565.55			120
	Weighted Group Average:	2570.57			
	Statewide Average:	2578.68			

82. As shown above, the Bennington Rutland Supervisory Union

[1] An SU is an "administrative, planning, and educational service unit" for two or more school districts. For this data, some schools were broken down to the district level while others were recorded for the SU. Vt. Agency of Educ., *Common Terms that Are Frequently Confused: School; School District; Union School District; Supervisory Union; Supervisory District; etc.* (Aug. 5, 2016), https://education.vermont.gov/sites/aoe/files/documents/edu-governance-terms-frequently-confused.pdf.

(SU) significantly outperforms every other SU or school district in the cohort in math despite being middle of the range for FRL.

83. For English, Bennington Rutland drops to second but still outperforms the average by nearly 30 points.

84. Bennington Rutland also significantly outperforms the statewide average which is helpful for contextualization.

85. Within the cohort of SUs where 41–50 percent of students qualify for FRL, the positive academic impact of town tuitioning becomes even more dramatic.

Math Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	WINDHAM NORTHEAST SU	2564.95		0.484	72
2018	TWO RIVERS SU	2552.65	SOME	0.410	63
2018	RIVENDELL INTERSTATE SCHOOL DISTRICT	2544.72		0.443	36
2018	ADDISON RUTLAND SU	2542.4		0.407	94
2018	WINDHAM CENTRAL SU	2538.44	MOST	0.404	58
2018	BURLINGTON SD	2522.87		0.457	226
2018	WINDHAM SOUTHEAST SU	2522.81	SOME	0.406	204
2018	ORANGE EAST SU	2520.1	MOST	0.449	90
2018	SPRINGFIELD SD	2516.86		0.436	86
2018	ORANGE SOUTHWEST SU	2506.38		0.403	110
2018	FRANKLIN NORTHWEST SU	2499.69		0.449	133
2018	LAMOILLE NORTH SU	2492.45		0.466	103
2018	WASHINGTON NORTHEAST SU	2491.17		0.425	35
2018	BATTENKILL VALLEY SU	2489.16		0.449	30
2018	*VT Statewide*	*2543.11*			*5844*
	Group Average:	2521.76			96
	Weighted Group Average:	2521.01			
	Statewide Average:	2543.11			

English Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	WINDHAM NORTHEAST SU	2581.34		0.484	69
2018	TWO RIVERS SU	2579.74	SOME	0.410	63
2018	ORANGE SOUTHWEST SU	2574.23		0.403	110
2018	ORANGE EAST SU	2571.95	MOST	0.449	90
2018	LAMOILLE NORTH SU	2564.78		0.466	103
2018	WINDHAM CENTRAL SU	2564.05	MOST	0.404	59
2018	WINDHAM SOUTHEAST SU	2563.78	SOME	0.406	204
2018	BURLINGTON SD	2563.34		0.457	226
2018	RIVENDELL INTERSTATE SCHOOL DISTRICT	2560.36		0.443	36
2018	WASHINGTON NORTHEAST SU	2559.22		0.425	35
2018	FRANKLIN NORTHWEST SU	2558.71		0.449	133
2018	BATTENKILL VALLEY SU	2556.63		0.449	30
2018	ADDISON RUTLAND SU	2551.53		0.407	95
2018	SPRINGFIELD SD	2542.58		0.436	86
2018	*VT Statewide*	*2578.68*			*5844*
	Group Average:	2563.73			96
	Weighted Group Average:	2563.75			
	Statewide Average:	2578.68			

86. Despite none of the school unions in this cohort fully tuitioning, all SUs where some or most of their member districts were non-operating performed at or above average.

87. The Orange East SU outperformed the cohort average for English by several points.

88. Similarly, the Windham Central SU was 17 points above the cohort average.

89. Two Rivers SU performed at the top of this group for both math and English, beating the cohort average by 32 points in math and 16 points in English.

90. Within the cohort of school unions with FRL 50 percent+ the

positive academic impact of educational opportunity is beyond dispute.

Math Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	ORLEANS CENTRAL SU	2548.89		0.600	83
2018	ST JOHNSBURY SD	2532.67	ALL	0.724	98
2018	NORTH COUNTRY SU	2530.86	SOME	0.551	172
2018	SOUTHWEST VERMONT SU	2518.02	SOME	0.739	197
2018	FRANKLIN NORTHEAST SU	2512.76		0.507	100
2018	ORLEANS SOUTHWEST SU	2504.57	SOME	0.570	69
2018	WINDHAM SOUTHWEST SU	2485.28	MOST	0.516	25
2018	WINOOSKI SD	2424.39		0.531	58
2018	*VT Statewide*	*2543.11*			*5844*
	Group Average:	2507.18			100
	Weighted Group Average:	2516.15			
	Statewide Average:	2543.11			

English Scores:

SchoolYear	OrganizationName	Av. Scaled Score	Tuitioned	FRL	Students Tested
2018	ORLEANS CENTRAL SU	2593.92		0.600	83
2018	ORLEANS SOUTHWEST SU	2570.6	SOME	0.570	68
2018	ST JOHNSBURY SD	2561.02	ALL	0.724	98
2018	SOUTHWEST VERMONT SU	2543.89	SOME	0.739	197
2018	FRANKLIN NORTHEAST SU	2539.75		0.507	100
2018	WINDHAM SOUTHWEST SU	2534.64	MOST	0.516	25
2018	NORTH COUNTRY SU	2517.97	SOME	0.551	172
2018	WINOOSKI SD	2461.58		0.531	55
2018	*VT Statewide*	*2578.68*			*5844*
	Group Average:	2540.42			100
	Weighted Group Average:	2541.41			
	Statewide Average:	2578.68			

91. The St. Johnsbury school district has the second highest poverty rate in the state but manages to place towards the top of this group for both disciplines tested, performing 16.5 points higher than the cohort average in math.

92. The only SU that placed higher in this discipline had an FRL

rate more than 12 percent lower.

93. According to the Ethan Allen Institute, the Compass School in Westminster provided another example of what educational opportunity was capable for disadvantaged students. **Exhibit 6** at 10.

94. The Compass School in Westminster was established in 1999 and, prior to its closure, enrolled between 80 and 100 students in grades 9–12. *Id.*

95. Forty percent of its student population qualified for free and reduced lunch. *Id.*

96. Thirty percent of those students had identified special learning needs. *Id.*

97. But despite these students' challenges, Compass had an almost 100 percent high school graduation rate. *Id.*

98. The evidence demonstrating the benefits of educational opportunity for disadvantaged students in Vermont is also mirrored in data gathered across the country.

99. The CREDO report discussed above also concludes that educational opportunity is especially helpful for students in poverty, black students, and English language learners. **Exhibit 8** at 23.

100. Students in all these groups post significantly higher learning gains in both reading and math as compared to students without educational opportunity. *Id.*

101. And it is not only academics where disadvantaged students benefit from educational opportunity.

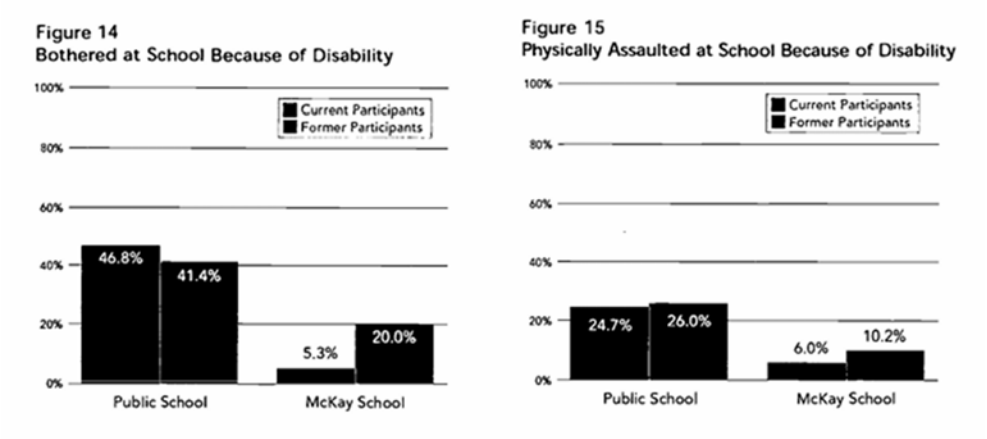
102. The Manhattan Institute conducted a study of Florida's McKay Program for Students with Disabilities, which makes school funding available to any special education student in Florida, and found that voucher students report significantly fewer incidents of bullying by their peers. **Exhibit 10**.

103. According to the study, in Florida public schools, 46.8 percent of disabled students were "bothered often" by bullies. *Id.* at 3, 6, 9.

104. In McKay schools, only 5.3 percent were bothered often. *Id.* at 6.

105. According to the study, 24.7 percent of Florida students were physically assaulted due to their disabilities. *Id.* at 9.

106. In McKay schools, this number was only 6 percent. *Id.*



107. The Manhattan Institute study also found that behavior problems were fewer where disabled children had access to educational opportunity. *Id.* at 13–14.

108. According to this data, 40.3 percent of participants said their special education children exhibited behavior problems in public schools. *Id.* at 3.

109. But only 18.8 percent report such behavior problems in McKay schools. *Id.*

E. Vermont students also experience facility and resource disparities.

110. Vermont students also face disparities in facilities, medical resources, and extracurricular activities.

111. One disparity between Vermont schools is between those which have adequate capacity for their enrollment needs, whereas other schools do not have the physical capacity to appropriately teach all the

students who attend.

112. For example, while Bridport [sic] Central School states that they have the spacing necessary to meet enrollment needs, neighboring Middlebury ID reports it cannot teach "Language Acquisition" because of inadequate facility space." *Compare* **Exhibit 11**; *with* **Exhibit 12**.

113. Middlebury ID also says that it would have more "language and literature" classes if it had the room to hold them, and that it also has "no conference/meeting spaces" or "small group space for our students" "during the school day." **Exhibit 12**.

114. Another disparity is that while some Vermont schools have the facilities necessary to comply with their privacy obligations under the Family Educational Rights & Privacy Act (FERPA) and Health Insurance Portability & Accountability Act (HIPAA), many freely admit that they lack the facilities necessary to comply with federal requirements.

115. For example, Middlebury ID has reported to the State its "most concerning" issue is that it does not "have adequate confidential space to provide 1:1 services to students as required to maintain FERPA, HIPAA or IEP requirements." *Id.*

116. Similarly, Orleans Elementary in Orleans Central SU has conceded to the State that it does not "have adequate confidential space to provide 1:1 services to students as required to maintain FERPA, HIPAA, and IEP." **Exhibit 13**.

117. In contrast, Hardwick Elementary in Orleans Southwest SU, which neighbors Orleans Central SU, says that it does have "adequate space" to comply with FERPA and HIPAA. **Exhibit 14**.

118. St. Albans City School in Maple Run Unified School District reports to "have plenty of breakout space," adding that, if anything, it could use *more* students. **Exhibit 15**.

119. Another disparity is that many public schools in the State have adequate, well-maintained sidewalks that enable the physically disabled to easily and safely enter and exit buildings.

120. Others, by the State's own admission, lack this basic requirement.

121. For example, Cabot School, an elementary school in Caledonia SU, has—by the State's own admission—"significant sidewalk trip hazards." **Exhibit 16** at 2.

122. Nearby Barnet [sic] Elementary, in contrast, does not have

such an issue. *See* **Exhibit 17** at 2.

123. Similarly, Richford Jr. Sr. High School does not have sufficient walkways, whereas Enosburg Falls Middle-High School—from the same district—does. *Compare* **Exhibit 18** at 2; *with* **Exhibit 19** at 2.

124. Another disparity is that while some public schools in the State have adequate, handicap-accessible parking, others do not maintain a paved parking lot.

125. For example, while the parking lot for Eden Central in Lamoille North SU has not been reported to have any issues, Stowe Middle/High School in neighboring Lamoille South SU was so dangerous that it "failed" its state inspection. *Compare* **Exhibit 20**; *with* **Exhibit 21** at 1–3.

126. Another disparity is between schools that have safe, accessible playgrounds for students, and those that do not.

127. For example, while Peoples [sic] Academy in Lamoille South SU has a furnished playground surrounded by a safety fence, nearby Eden Central School in Lamoille North SU's playground is "in Failed condition" and may be unsafe for use. *Compare* **Exhibit 22**; *with* **Exhibit 23**.

128. Another disparity is between Vermont schools that have hot water (which many consider a necessity, given the State's climate), and those that do not.

129. For example, while Craftsbury Schools in Orleans South SU have hot water, the water heater for nearby Barton Graded Campus in neighboring Orleans Central SU has "[f]ailed." *Compare* **Exhibit 24**; *with* **Exhibit 25**.

130. Relatedly, there is also a wide disparity in the quality of electrical and plumbing in schools across the state.

131. For example, while Barstow Memorial School in Rutland North SU has adequate plumbing and electrical access, the plumbing, HVAC, and electrical systems in nearby Rutland Campus of neighboring Rutland City SU are in "poor condition" and, in the State's own words, are "well beyond" the point of needing repairs. *Compare* **Exhibit 26** at 1; *with* **Exhibit 27**.

132. Unsurprisingly, students with special needs suffer most from the absence of equality in facilities.

133. Dorset Elementary School in Bennington-Rutland SU conceded that, after third grade, autistic students could not be integrated because

"we didn't have the capacity to house the program at our school." **Exhibit 28**.

134. Each of the aforementioned differences—for capacity, for physical ability to comply with FERPA, for safe and handicap-accessible sidewalks, for parking, for play areas, for heating and plumbing, and for integrated classrooms—is not limited to one or two specific examples: The state's own data shows widespread disparities in facility capacity. *See* Act 72 School Facilities Assessment, Vt. Agency of Educ.[2]

135. Each disparity is readily apparent, even with the woefully incomplete data that the State currently provides on its Facilities Assessment webpage. *See id.*

136. Another disparity between Vermont schools concerns opportunities for extracurricular activities.

137. Some schools provide American football programs; others do not.

138. Some schools provide swimming programs; others do not. *See Swimming*, Find & Go Seek.[3]

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[2] https://education.vermont.gov/schools/facilities/act-72-school-facilities-assessment (last visited Sept. 2, 2026).
[3] https://findandgoseek.net/swimming (last visited Sept. 10, 2026).

139. Some schools provide lacrosse programs; others do not.

140. Some schools provide wrestling programs; others do not.

F. Plaintiffs' unique educational needs suffer as a result of the Exclusion Rule.

Allison Duquette

141. Allison's son previously attended Milton Elementary School within the Milton School District.

142. Allison became so concerned with the subpar academic standards and chaotic learning environment in her local Milton schools that she ran and won a seat on the local school board.

143. On the school board, Allison advocated for educational reform, arguing that Milton's schools' current path was unsustainable given the district's plummeting enrollment numbers.

144. Because of the lack of quality education, Allison pulled J.D. out of Milton School District and is homeschooling him, even though this is a great financial and personal burden on her family.

145. Allison would prefer J.D. attend high school with his peers, but the academics at Milton make it an unacceptable choice.

146. If possible, Allison would send J.D. to Colchester Supervisory Union, which is adjacent to Milton and—unlike Milton— performs with

proficiency on the Agency of Education's evaluations.

147. But because her family lives in Milton and is subject to the Exclusion Rule, this is not possible.

Theresa McDonough

148. Theresa's daughter M.M. is academically gifted.

149. But Vergennes UES, the public school both Theresa and M.M. previously attended, does not offer any accelerated courses.

150. The coursework at Vergennes is also consistently far below grade level in peer schools.

151. While the administration at Vergennes offered to let her daughter skip a grade because the coursework for her grade was not sufficiently challenging, Theresa declined because her daughter would lose age-appropriate peers.

152. In order to give her children an education on par with their peers in neighboring districts, Theresa is spending $14,000 to send her children to Champlain Valley Christian School (CVCS).

153. If Theresa's family was not subject to the Exclusion Rule because they live in Waltham, she would make use of town tuitioning (even if that meant her children left CVCS).

Amia Cervantes

154. Northfield School, where Amia's son O.C. is districted, is so under-resourced and poorly managed that altercations and fights frequently break out.

155. While O.C. himself is well-behaved, when attending Northfield, he was frequently pulled from the classroom to write "witness reports" on the violence and misbehavior he witnessed.

156. Staff would frequently pressure O.C. to accuse his peers of misdeeds, sometimes berating him until he cried.

157. O.C. desperately wants to participate in extracurricular activities, including American football, lacrosse, and wrestling.

158. However, Northfield Middle & High School offers minimal extracurricular activities, and does not include any of those three sports.

159. Out-of-pocket, Amia has been paying for O.C. to compete on the football and wrestling teams of neighboring Barre Unified Union School District.

160. If possible, Amia would send O.C. to Barre Unified Union School District so he can attend class with his teammates in a stable

environment.

161. But O.C. is not allowed to attend Barre because he and Amia live in Northfield and are thus subject to the Exclusion Rule.

Chrissy Haskins

162. Chrissy's son C.H. previously attended school within the West River Education District.

163. C.H. has special education needs.

164. Chrissy had to battle with West River to get C.H. an individualized education plan (IEP), and the school was unable to provide the individualized services he needed.

165. Despite his challenges, C.H. has a natural aptitude for mathematics.

166. West River does not have any accelerated math programs available to students.

167. Left with no alternative, Chrissy took C.H. out of West River, and placed him in the Mountain School at Winhall at great personal expense.

168. Since being placed in the Mountain School at Winhall, C.H. has thrived: his special education needs are met, and he has been able to

excel at mathematics.

169. If Chrissy and C.H. lived just ten miles to the west, they would receive town tuitioning for the Mountain School, where over 80 percent of the student body receives town tuitioning.

170. Instead, C.H. is excluded from town tuitioning because he lives on the Haskins family farm in Jamaica, which has been in their family for generations.

Nichole Kruger

171. Nichole lives in Milton with her four school-age children B.K., C.K., J.H., and L.H.

172. Students attending Milton schools consistently fail to deliver proficient test scores.

173. However, nearby Colchester and South Burlington schools do consistently deliver proficient test scores for their students.

174. If possible, Nichole would send her children to either Colchester or South Burlington public schools.

175. But because they live in Milton, Nichole and her children are subject to the Exclusion Rule and thus do not receive town tuitioning.

Causes of Action

Count I
Equality of Educational Opportunity
Chap. I, Art. 7; Ch. II, § 68 of the Vermont Constitution

176. Plaintiffs re-allege and incorporate by reference all allegations contained in the previous paragraphs.

177. "Vermont children have a fundamental right to education under the Education Clause of the Vermont Constitution." *Vitale v. Bellows Falls Union High Sch.*, 2023 VT 15, P11 (2023) (quoting *Brigham*, 166 Vt. at 264); *see also* V.S.A. Const. § 68.

178. This right can be enforced by affected Vermont families, through the Common Benefits Clause. *See Brigham*, 166 Vt. at 250.

179. The mirror to this right is the government's "fundamental obligation" to provide for education to Vermont children. *Id.*

180. In order to meet its obligation under the Common Benefits Clause, "the state must ensure substantial equality of educational opportunity *throughout* Vermont." *Brigham*, 166 Vt. 246 at 268 (emphasis added); *see also* Vt. Const. Ch. 1, Art. 7.

181. While the Vermont Constitution is silent as to the means for providing education, this does not give the state free rein to select any

method it wishes without judicial scrutiny. *Vitale*, 2023 VT at P15.

182. The state is ultimately responsible for inequities resulting from its chosen methods of providing for education. *Id.* (quoting *Brigham*, 166 Vt. at 264 ("They are choices made by the government of the State of Vermont, and choices for which it bears ultimate responsibility.")).

183. If the method the state selects to provide for education results in substantially different educational opportunities, the state is responsible for those inequities even if the statutes themselves seemingly treat all school districts the same. *Id.*

184. At minimum, "educational opportunity" is legally defined as equal access to opportunities to learn. *Id.* at P16.

185. The Exclusion Rule results in substantial inequality of educational opportunity for Plaintiffs' children and children across Vermont.

186. Families on one side of an arbitrary line between school districts can access educational opportunity at better performing schools, or schools with better programming or resources, through town tuitioning.

187. Families on the other side of the arbitrary line between school

districts are denied these educational opportunities and locked into comparatively low performing schools or diminished schools.

188. Students in a district with its own public school are assigned a public school based on nothing more than where they live.

189. Students in a district that doesn't have its own public school are *not* assigned a public school based on where they live.

190. But for the Exclusion Rule, Plaintiffs and excluded families across Vermont would be able to avail themselves of the educational opportunity afforded other Vermont families through town tuitioning to send their children to the school of their choice.

191. But because of the Exclusion Rule, Plaintiffs and excluded families are denied this educational opportunity.

192. As shown above, the difference between the learning opportunities Vermont schools offer is demonstrated by rigorous studies and quantitative analysis of data from across the state, as well as data from other states exemplifying national trends.

193. Having access to educational opportunity through town tuitioning results in better academic achievement.

194. This includes above average performance on statewide

assessments of basic English and math skills.

195. Having access to educational opportunity through town tuitioning results in better preparation for college.

196. This includes access to AP classes, PSAT, and SAT resources.

197. Having access to educational opportunity through town tuitioning results in better services for disadvantaged students.

198. This includes not only academic benefits but also increased physical and mental safety through decreased incidence of bullying.

199. Having access to educational opportunity through town tuitioning results in access to higher quality facilities and resources.

200. This includes classroom capacity, the school's physical ability to comply with FERPA, availability of safe and handicap-accessible sidewalks, availability of parking, access to play areas, hot water, electricity, plumbing, and integrated classrooms.

201. The disparate opportunities between students with access to town tuitioning are demonstrated by the specific experiences of Plaintiffs, each of whom want the educational opportunity available to other families but are arbitrarily excluded from the program.

202. Allison Duquette and her family are arbitrarily excluded from

the educational opportunities available through town tuitioning, even though in Milton schools J.D. must endure a lessened education.

203. Theresa McDonough and her family are arbitrarily excluded from the educational opportunities available through town tuitioning, meaning she has to spend $14,000 a year to get her special needs son the special education he would get for free in a neighboring school district.

204. Amia Cervantes and her family are arbitrarily excluded from the educational opportunities available through town tuitioning, meaning not only is O.C. denied the academic opportunities of his tuitioning-eligible peers, but he is also excluded from extracurricular activities of football, lacrosse, and wrestling.

205. Nichole Kruger and her family are arbitrarily excluded from the benefits of town tuitioning, meaning B.K., C.K., J.H., and L.H.'s peers can access the benefits of Colchester SU, but they cannot.

206. Chrissy Haskin and her family are arbitrarily excluded from the educational opportunities available through town tuitioning, meaning C.H. cannot access the advanced mathematics classes he needs to excel in a subject for which he is gifted.

207. In Vermont the right to education is so integral to the state's "constitutional form of government, and its guarantees of political and civil rights, that any statutory framework that infringes upon the equal enjoyment of that right bears a commensurate heavy burden of justification." *Brigham I*, 166 Vt. at 256.

208. For these reasons, Plaintiffs seek declaratory and permanent injunctive relief against the Defendants, on behalf of both them and their children, and affected families across Vermont.

Count II
Equality of Common Benefits
Chap. I, Art. 7 of the Vermont Constitution

209. Plaintiffs re-allege and incorporate by reference all allegations contained in the previous paragraphs.

210. The Common Benefits Clause of the Vermont Constitution is intended to ensure that the benefits conferred by the state are for the common benefit of the community. *Baker*, 170 Vt. at 212.

211. A general complaint under the Common Benefits Clause "must contain a 'short and plain statement' that (1) defines the part of the community disadvantaged by the legal requirement; (2) identifies the governmental purpose, if any is known, in excluding a part of the

community from the benefit; and (3) explains how the omission of a part of the community from the benefit does not bear a reasonable and just relation to a governmental purpose identified." *Vitale*, 2023 VT at P23.

212. When analyzing the means-ends connection in the third part of a Common Benefits Clause claim, the Court can consider factors including: "(1) the significance of the benefits and protections of the challenged law; (2) whether the omission of members of the community from the benefits and protections of the challenged law promotes the government's stated goals; and (3) whether the part of the community receiving the benefit is significantly underinclusive or overinclusive." *Baker*, 170 Vt. at 214.

213. Here, the community disadvantaged is composed of those subject to the Exclusion Rule, including each of the Plaintiffs and their children.

214. Neither 16 V.S.A. §§ 821(c) nor 822(c) states a purpose for allowing some, but not all, Vermont families to access educational opportunity for their children.

215. Both 16 V.S.A. §§ 821(c) and 822(c) are located in Chapter 21 of 16 V.S.A., but this chapter also does not generally state a purpose for

the Exclusion Rule.

216. The general purposes of Vermont's system of public education are stated in 16 V.S.A. § 1.

217. The first purpose reflects the State's constitutional obligation: "To keep Vermont's democracy competitive and thriving, Vermont students must be afforded substantially equal access to a quality basic education." *Id.*

218. The Exclusion Rule omits the excluded community members from accessing full educational opportunity, and thus is not consistent with advancing substantially equal access to education.

219. The second purpose of Vermont's system of public education specified in 16 V.S.A. § 1 is that "one of the strengths of Vermont's education system lies in its rich diversity and the ability for each local school district to adapt its educational program to local needs and desires. Therefore, it is the policy of the State that all Vermont children will be afforded educational opportunities that are substantially equal although educational programs may vary from district to district." *Id.*

220. The Exclusion Rule does not bear a "reasonable and just relation" to the State policy supporting "rich diversity" in local school

districts and allowing local school districts to "adapt [their] educational program[s] to local needs and desires."

221. No data or study has concluded that introducing educational opportunity in the form of town tuitioning reduces the ability of local districts to adapt to local needs, or reduces the "rich diversity" of local school programs.

222. To the contrary, the available empirical research demonstrates that educational opportunity expands and diversifies local educational offerings.

223. Eliminating the Exclusion Rule would make it *easier* for students to access local public school programs and provide further revenue sources for these schools. *See* 16 V.S.A. § 821.

224. A Brookings Institution study concluded that district bureaucracies exert a homogenizing influence on the schools within their purview, and that variation follows from alternatives and competition. **Exhibit 29**.

225. When schools are empowered to attract new students, both the quality and variety of their programs improve. *Id.* at 1.

226. Similarly, a Mackinac Center study found that public school

districts facing increased competition offered new programs, including all-day kindergarten, before- and after-school programs, and expanded foreign-language emphasis. **Exhibit 30.**

227. Equal access to educational opportunity is a significant benefit protected by the Vermont Constitution. *Vitale*, 2023 VT at P11.

228. The omission of members of the community from the benefits and protections of town tuitioning via the Exclusion Rule does not lend itself to protecting or furthering this important constitutional right.

229. The Exclusion Rule is overinclusive because there is no legitimate reason to deny Vermont families equal access to educational opportunity, while arbitrarily granting it to others.

230. The Exclusion Rule is underinclusive because its effect is to deny a large portion of Vermont's student population the constitutional benefit of substantially equal educational opportunity, while extending it to a much smaller portion of the student population "with no logical connection to the stated governmental goal" *Baker*, 170 Vt. at 217.

231. For these reasons, Plaintiffs seek declaratory and permanent injunctive relief against the Defendants, on behalf of both them and their children, and affected families across Vermont.

Prayer for Relief

Therefore, Plaintiffs respectfully request this Court order the following relief:

a) An order declaring that the Exclusion Rule (16 V.S.A. §§ 821(c); 822(c)) violates the Education Clause and Common Benefits Clause by denying equal access to educational opportunity through town tuitioning and is unconstitutional both as applied to Plaintiffs and facially.

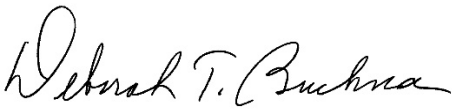
b) A permanent injunction enjoining the Defendants, their officers, employees, agents, attorneys, and all others acting in concert with them, from enforcing the Exclusion Rule (16 V.S.A. §§ 821(c); 822(c)).

c) A judgment awarding Plaintiffs their costs and attorneys' fees, to the extent permitted by law.

d) Any and all further relief the Court deems just and proper.

Dated: November 16, 2026

Respectfully Submitted,



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