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## A Case Study of Private School Choice and Education Litigation in South Carolina: SAFE Grants and *Adams v. McMaster* (S.C. 2020)

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A CASE STUDY OF PRIVATE SCHOOL CHOICE AND EDUCATION LITIGATION IN  
SOUTH CAROLINA: SAFE GRANTS AND *ADAMS V. MCMASTER* (S.C. 2020)

By

Lyndsey Katherine Ebener

Submitted in Partial Fulfillment  
Of the Requirements for  
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## Abstract

The ideology behind private school choice endures in South Carolina. Arguments for parental choice have resurfaced periodically throughout the state's history, particularly in moments of "crisis." The current "crisis" moment is the COVID-19 pandemic, which created a perfect storm for the private school choice movement to gain momentum. When Governor McMaster received South Carolina's emergency education relief funds, he capitalized on this movement with his proposed SAFE Grants program. His intention was for the SAFE Grants program to provide support through one-time tuition grants to low-income families who have children in private schools. Governor McMaster's announcement incited an overwhelming media response, with various individuals and organizations reacting to the program. A media content analysis on the SAFE Grants program allows for interesting conclusions about private school choice and education litigation in South Carolina. The following research aims to explore the ways that various media outlets frame the issue of Governor McMaster's SAFE Grants and the subsequent *Adams v. McMaster* (S.C. 2020) lawsuit. Major findings reveal that news media outlets represent the public's understanding of the SAFE Grants as either providing greater access for a child's school of choice, or as diverting crucial resources away from children in public schools. The use of parental choice rhetoric reflects positively on the SAFE Grants, especially in the context of a global pandemic where education has become increasingly less "one-size-fits-all." In contrast, characterizing the grants as "school vouchers" holds inherent negative connotations for public school supporters and those wary of education privatization. An investigation of the SAFE Grants issue reveals South Carolina's unique relationship to school choice and adds to larger conversations surrounding the education policy of today.

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**List of Abbreviations**

<b>Abbreviation</b>	<b>Meaning</b>
CARES	Coronavirus Aid, Relief, and Economic Security
COVID-19	Coronavirus disease 2019
EOESA	Equal Opportunity Education Scholarship Account Act
GEER	Governor’s Emergency Education Relief
HBCU	Historically Black College/University
PEP	Public Education Partners
PSTA	Palmetto State Teachers Association
SAFE	Safe access to flexible education
SCACS	South Carolina Association of Christian Schools
SCEA	South Carolina Education Association
SCISA	South Carolina Independent School Association
SCSBA	South Carolina School Board Association
TRO	Temporary Restraining Order

### **SAFE Grants Timeline**

July 20, 2020	Governor McMaster announces SAFE Grants program.
July 22, 2020	Orangeburg County circuit judge signs a TRO on the SAFE Grants funds.
August 4, 2020	Judge dismisses the State of South Carolina from the case.
August 19, 2020	South Carolina Supreme Court accepts matter in its original jurisdiction.
August 21, 2020	Court issues an Order granting a “limited preliminary injunction.”
September 18, 2020	Oral Arguments take place before the Supreme Court.
October 7, 2020	South Carolina Supreme Court files ruling.
October 22, 2020	Governor McMaster petitions for the Supreme Court to rehear the case.
December 9, 2020	South Carolina Supreme Court files new opinion.

## Introduction

School choice has re-entered the education conversation with some force as American policy makers, educators, and parents grapple with the effects of a global pandemic on our country's education system. The novel coronavirus (COVID-19) has forced educators and policy makers alike to re-conceptualize what a meaningful education is, and the best way to execute it amid and post-crisis. As many schools shut their doors indefinitely in mid-March of 2020, difficult decisions faced parents regarding virtual, hybrid, and in-person learning. Resultantly, it appears that the pandemic has reshaped the school choice landscape and opened up new windows of opportunity for the public funding of programs that support school choice through COVID-19 relief packages.

U.S. Senator Tim Scott (SC) and Senator Lamar Alexander (TN) introduced a "School Choice Now" Act in the Spring 2020, which would allocate 10% of COVID-related education spending toward school choice programs. Betsy DeVos, former national Secretary of Education, expressed her hope that the COVID-19 relief package would include funding for two programs that would provide public funds and tax credits for parents to send their children to private schools. Though the "School Choice Now" Act did not leave the Senate and a federal court quickly blocked DeVos's aim to spend her discretionary funds on private school tuition vouchers, fear remained for public school advocates that the pandemic would keep the door open for more proposals of these same natures.

While it is a bit early to determine how exactly COVID-19 will impact the school choice landscape, statistics show parents' satisfaction with their child's education having dropped 10 percentage points (to 72%) with the percentage of K-12 parents homeschooling doubling (to 10%) (Gallup, 2020). Interestingly, according to the same survey, far fewer parents report their

child being enrolled in a private, charter, or religious school. Nevertheless, numerous politicians, journalists, and organizations identify expanded school choice as the answer to education issues that the pandemic has created; or, school choice as a further source of detriment.

South Carolina presents a prime example for capitalizing on the educational challenges that COVID-19 has created by pushing the allure of school choice. Because America has a decentralized education system, the majority of COVID-19 relief money earmarked for education was put into a Governor's Emergency Education Relief (GEER) fund for individual states to determine the most beneficial way to spend the money. Governor Henry McMaster (SC) was one of only three governors (in addition to Oklahoma, New Hampshire, and Florida governors) who attempted to use the majority of the GEER Fund for a tuition grant program (SAFE Grants) to promote private school choice. While the South Carolina Supreme Court later declared Governor McMaster's SAFE Grants unconstitutional (*Adams v. McMaster* (S.C. 2020)), the news media's representation of the issue provides a fascinating case study about the divisiveness of private school choice and the multifaceted concept that it is.

Further, the Supreme Court hearing this case adds to South Carolina's extensive historical intersection between education and litigation. From *Pearson v. Clarendon County Board of Education* (1948), to *Briggs v. Elliott* (1952), to *Richland County v. Campbell* (1988), to *Abbeville v. South Carolina* (1996 - 2017), South Carolinians have a history of demanding that the courts recognize and uphold the constitutional right to education when the state has failed in its commitment to do so (Allen, 2018). *Briggs v. Elliott* (1952) ended up consolidating with four other cases to become *Brown vs. Board of Education* (1953), perhaps one of the most well known education cases in United States history. Although many are wary of the judicial branch



intervening in education, it has been imperative in holding the state accountable for making an equitable and adequate education accessible to every South Carolina child.

*Adams v. McMaster* (S.C. 2020) does not directly relate to the state's constitutional commitment to provide adequate education. Rather, the case involves Article XI Section 4 of the South Carolina Constitution that prohibits direct aid to religious or other private educational institutions. The case is similar to *Zelman v. Simmons-Harris* (2002), where the United States Supreme Court upheld an Ohio school voucher program because aid was going to individuals and not directly to schools. Accordingly, we see various instances of “the court up[holding] the practice” of private school choice because it is “primarily for the benefit of the children and not the schools,” or vice-versa (Carpenter and Kafer, 2012, p. 339). The question of who benefits directly from the SAFE Grants is fundamental to *Adams v. McMaster* (2020). It also brings to light many key concepts, including the tensions between state and federal law, the intersection between education and law, and who really benefits from school voucher-esque programs.

An analysis of the news media's representation of the SAFE Grants reveals just how important education policy is. Education reaches everyone regardless of their age, socioeconomic status, or race. While South Carolinians may widely disagree on the proper way to structure and fund education, the overwhelming state and local media coverage on the SAFE Grants shows that it is an issue that matters with numerous stakeholders. Even with the precedent that *Adams v. McMaster* (S.C. 2020) sets for education in South Carolina, these issues are timely and are not going away, especially as both state and national officials manage the lasting effects of a global crisis.

## Literature Review

### Introduction

School choice in America is a broad concept with many different iterations. While commonly thought of in the form of private education, it functions in a variety of ways and encompasses many more alternatives outside of the traditional public school. “School choice” includes private schools, magnet schools, charter schools, Montessori schools, school choice within public school districts, homeschooling, and virtual/online schools. School choice provisions differ among school districts, between states, and nationally. While many ideologies have come together to comprise what people think of as “school choice,” the agency it gives parents to choose the best educational path for their own child is a driving factor in its theoretical background.

The topic of school vouchers often accompanies conversation surrounding private school choice; school vouchers are funded either publicly or privately and can exist in the form of tuition grants or tax credits. Like school choice, school vouchers function in a number of ways depending on the specific program. Many voucher programs have eligibility requirements based on socioeconomic status, target minority populations, and aim to give children better suited educational opportunities. The idea behind many voucher programs is that the dollar amount that it would cost to educate a student in their K-12 public school system should still follow that student even if their parents choose for them to attend a private or non-traditional public school. Or, parents should receive some form of tax credits for financing their own child’s private education.

Even though the topic of school vouchers is broad and people use it as an umbrella term for many different types of programs, it becomes quickly polarizing in practice and in theory.

This, coupled with the lack of uniformity among school voucher programs, makes comparative school voucher research quite challenging, especially when researching for voucher effectiveness. While school voucher researchers generally understand that there are a vast array of factors that play into a voucher program's "effectiveness," many disagree on these factors and the definition of "effective." The intended "goal" of voucher programs also varies, which is something that must be taken into account upon evaluation.

Further, the polarization of school vouchers comes from the "passionate and emotional rhetoric that accompanies almost any discussion of the voucher issue, [which] stands in nearly inverse to the amount of evidence that exists about the effects of vouchers on students, teachers, families, or schools" (Metcalf and Tait, 1999, p. 67). This passionate rhetoric and the theoretical arguments that accompany school voucher conversations heighten the differences between opposing sides. The arguments on both sides of Governor Henry McMaster's proposed SAFE Grants program excellently exemplify this notion. For example, SC for Ed, an education advocacy group made up of public educators across the state, categorized the SAFE Grants as "an action that hurts public schools while doing little to help prospective lower-income students" (@SCforEd, 2020). The Palmetto State Teachers Association (PSTA) argued that the "funds could be better used by ensuring our public schools have as many resources as possible to ensure a safe return to in-person instruction" (@PSTANews, 2020). Conversely, in Bill Taylor's, member of the South Carolina House of Representatives, 2020 guest column article in the Post & Courier on the SAFE Grants program, he states "[t]he public school lobby wants to stop this one-time emergency program, because they know giving moderate-and low-income parents a taste of education freedom that wealthier parents enjoy represents a threat to their hold on the

over \$10 billion dollars- an average of over \$14,000 per student - that is poured into the South Carolina public school system each year.”

School voucher advocates focus on the educational freedom that the government ought to make more accessible, framing the school choice narrative around parents’ right to choose the school that best serves their child’s needs. Those in opposition shift the focus to school vouchers’ negative impact on the scarce resources meant for public education, like the National Education Association (NEA) which claims “vouchers take scarce funding from students in public schools and give those resources to unaccountable private schools,” and adds that “[n]o matter how you look at it, vouchers undermine strong public education and student opportunity” (“Opposing Vouchers,” n.d.).

### **Milton Friedman’s Influence on School Choice**

While we can partially credit the current revitalization of “choice” in America to Betsy DeVos’s aggressive school voucher and privatized education agenda, she was certainly not the first advocate for private school vouchers and “choice.” Milton Friedman, an American economist who extolled the virtues of a free market system, was the first person to propose a school voucher program in his 1955 essay “The Role of Government in Education.” Friedman (1955) argues that an individual’s freedom is the ultimate objective. He envisioned that the only governmental action necessary in education is the requirement that each child receives a minimum amount of education. This education would be a general education for citizenship that a stable, democratic society demands. Friedman (1955) suggested that “if the financial burden imposed by such an educational requirement could readily be met by the great bulk of families in a community, it might be feasible and desirable to require the parents to meet the cost directly,” but, if not, the government could finance education by giving parents vouchers that are

redeemable for “approved educational services” (pp. 2-3). Friedman saw the advantages of the further denationalization of education as widening the range of available choice to parents, with an increase in respectable educational institutions because of the competition this kind of program would ensue. Friedman’s ideology is enduring, as advocates for the privatization of American education still echo the fundamental aspects of his argument today. Advocates highlight what Friedman conceptualizes as the value of a market-based education system that gives autonomy to parents, as consumers, rather than the state.

### **Neoliberalism vs. Social Justice in Education**

This neoliberalism, or free-market ideology, is pervasive in the school voucher conversation. Scholars see neoliberal education reform as antithetical to the social justice imperative in education (Au, 2016; Lipman, 2011; Ramlackhan, 2020). The social justice imperative in education focuses on equity and inclusion for all students; it roots itself in the idea that education is a public good for which society has a moral commitment to ensure equal access. Neoliberalism, rather, is an economically driven approach to education. Ramlackhan (2020) argues that, instead of education being for the general public good, the rigid systems and processes of neoliberal education policy “oversimplifies students as products” who ought to “advance the current economic global agenda” (p. 195). Neoliberal education policy’s shift in “social responsibility from the collective (i.e., society) to the individual” contributes to programs where families have expanded education choice because of the “emphasis on competition and consumer autonomy” (ibid., p. 195). Au (2016) builds this argument by showing how neoliberal education reform has worsened race and economic inequalities in the public education system. Neoliberal reform materializes in standardized testing mandates, school voucher and charter

school programs, and the deregulation of education labor practices --- all which construct education as a competitive market (Au, 2016; Ramlackhan, 2020).

Neoliberal ideology sees this competitive market as an equal playing field where everyone is an empowered and autonomous consumer. It reworks democracy as the “freedom to consume in the market,” even though it only translates effectively to education for a privileged few (Lipman, 2011, p. 223). Lipman (2011) also adds that neoliberal ideology reduces public education’s purpose to the production of human capital, rather than to serve its local communities and promote the collective good. For example, Chicago’s charter schools being in its poorest areas reveals a “disinvestment in public goods” and an investment in the “‘empowered’ consumer” (ibid., p. 229). Privatization seems to provide the efficiency and innovation that the public school systems appear to lack.

### **History of Private School Choice**

Many scholars highlight public education’s shortcomings as the main vehicle for expanded privatization and school choice programs. In the 1970s and 1980s, public education in the United States began to become vulnerable to New Right criticism (Carl, 1994). While some understand this vulnerability as a result of American public schools’ underfunding, a large population felt the public school system was responsible for “declining academic achievement, juvenile crime, and drug use” (Carl, 1994, p. 295). Carl (1994) also claims that desegregation had not accomplished either the egalitarian or the efficiency goals expected, and the tension had increased between middle-class parents who “found it more difficult to maintain their children’s privileged positions,” and working-class parents who felt schools “remained dubious avenues for their children’s upward social mobility” (ibid., p. 295). With the culmination of these factors, Carl (1994) shows how “local demands for improved schools, defined differently by various

social groups, get reworked by national policymakers into a constellation of reforms labeled ‘parental choice’” (p. 296).

Regardless, school choice in America runs much deeper than an escape from public education and the way scholars see the history of private school choice in the United States is much more multifaceted. School choice in America predates the country’s official founding in 1776 and its ideology has shifted with the issues of the time (Carpenter and Kafer, 2012). Churches dominated educational instruction in colonial America, financed through either charity or tuition (Carpenter and Kafer, 2012). The Revolutionary War led to an expansion of these schools, with many communities beginning to adopt compulsory education laws (Carpenter and Kafer, 2012). Carpenter and Kafer (2012) contend that the discomfort of the Catholic church with the common school movement, which “reflected the prevailing Protestant ethos of the time,” played a large role in what we now conceptualize as private school choice (p. 336). Catholics “concluded that to avoid the prevalent Protestant atmosphere of the public schools they would have to create their own schools, ideally with public funding” (ibid., p. 338).

Scholars also highlight education integration as a contributing factor to private school choice. Following *Brown vs. Board of Education* (1954), a trend began to develop of white families establishing private segregated schools for their children to attend (Allen, 2019). For example, Allen (2019) argues that white families established Clarendon Hall, Clarendon County’s (SC) first K-12 private schools, to avoid integrated classrooms. While the school’s principal stated in 2016 that the school was “founded in 1965 by the Summerton Baptist Church for the purpose of affording a superior elementary education in a nondenominational Christian environment,” Allen (2019) notes that the school did not admit its first black students until 2000 --- 35 years after the school’s founding (p. 458). Further, she references Charles Clotfelter,

professor of economics at Duke University, who revealed that “the enrollment of White students in private schools tends to leap dramatically in counties in which the non-White population is in the majority,” something with which Clarendon County is still consistent (Allen, 2019, p. 458).

### **The Intersection of Law and the School Voucher Debate**

Historically, scholars, lawyers, and politicians have debated the constitutionality of school vouchers. The plethora of litigation filed in both the United States Supreme Court and state Supreme Courts are part of the reason these programs and the ensuing litigation tend to garner a great deal of national attention. School voucher program opponents see public dollars funding private education through tuition tax credits or vouchers as problematic because of the First Amendment’s Establishment Clause -- an argument assessed most notably in *Zelman v. Simmons-Harris* (2002) (Cheuk and Quinn, 2018). The case involved a school voucher program in Cleveland, Ohio that targeted low-income families; ninety-six percent of student participants used their vouchers (up to \$2,250) to attend “religiously affiliated private schools” (ibid., p. 25). Despite the Plaintiffs, arguing that the program “advanced religion,” winning in both a federal district and an appellate court, the Supreme Court reversed the rulings in a 5-4 decision (ibid., p. 25). The decision was based on the argument that “families make independent and private choices as to where their vouchers go” (ibid., p. 25). However, the dissenting opinion held the powerful sentiment that “students using vouchers to attend religious schools receive ‘religious indoctrination at state expense’” and “constitutional limitations to government [like the Establishment Clause], must remain intact even if providing greater options for Cleveland families relegated to underperforming public schools was otherwise an appropriate policy solution” (ibid., pp. 25-26).



Various other Supreme Court cases have established the precedent that some state-funded programs that give money to private religious schools are permissible. If programs are “secular in purpose, do not result in government indoctrination of religion, provide aid to individuals on a broad, non-discriminatory basis without reference to religion, and refrain from excessive entanglement between government and religion,” Establishment Clause arguments will not impede their implementation (Hanson, 2001, p. 96). History shows it is very possible for school voucher programs to navigate around these provisions. However, the Establishment Clause is not the only aspect of the constitution that is relevant to the school-choice debate. The equal protection clause, due process, and liberty also exist in the same conversation. Minow (2011) argues that leading choice advocates shifted the “spotlight” in court from the Establishment Clause to “concerns about governmentally imposed viewpoint discrimination under freedom of speech” (p. 830). This was rhetorically successful because of the concerns over exclusion and subordination present in *Brown* (Minow, 2011). Minow (2011) discusses how this ultimately led to the decision in *Zelman v. Simmons-Harris* (2002); while she implies that the decision was a slippery slope for perpetuating unequal educational opportunities, the case did not contribute to any “mass movement” for school vouchers and the movement came to somewhat of a halt in 2008 (p. 833). Minow (2011) identifies the Iraq War, Hurricane Katrina, and the stock market collapse as possible explanations --- catastrophic events contributing to a decline in interest in private, market-based solutions.

Since then, a revitalization in support for the private, market-based solution of vouchers has occurred in the United States, allowing us to, again, circle back to the movement’s origins. Minow (2011), too, references Milton Friedman’s original argument, but in conjunction with parental “choice” as resistance to integration. Minow (2011) notes the interesting coincidence

that Friedman published his paper so soon after the Supreme Court's decision in *Brown*, even though Friedman expressed no prior knowledge of multiple Southern states "exploring public funding of private schooling 'as a means of evading the Supreme Court ruling against segregation'" (Minow, 2011, p. 822). Many Southern states did this effectively, like the Prince Edward County Board of Supervisors in Virginia who voted to freeze all public school funding in 1959. With the doors of the public schools subsequently closed, private schools, backed by state scholarship grants and various other county funds, opened (Minow, 2011). It took ten years after *Brown* for the Court to declare that the time for integrating with all "deliberate speed" had run out, making "'freedom of choice' plans become a euphemism for resurgent racial separation" (Minow, 2011, p. 823).

### ***South Carolina***

While this specific example from Prince Edward County in Virginia is often cited by scholars when discussing private education as resistance to integration, it is certainly not the only one. In R. Scott Baker's *Paradoxes of Desegregation* (2006), he discusses the bond issued in 1957 to uphold segregation by the "Citizens' Council" and the idea expressed by Robert Figg Jr. that immediate desegregation "would destroy the public school system in South Carolina" (p. 127). Delia Allen (2019) echoes this notion, bringing up the startling response of Governor James F. Byrnes to the *Briggs v. Elliott* case filing, which would consolidate with four other cases to eventually become *Brown v. Board of Education*, where "he would petition the state legislature to abandon public education. In short, he would rather eliminate public education for all than to allow Black students to attend the same school as White students; segregation trumped education" (Allen, 2019, p. 455). Baker (2006) further expounds upon the ways in which politicians and influential community members sought to tighten access to "white" schools and

improve “black” schools as a means to uphold segregation in the South Carolina education system.

Tactics such as these, and many others, contribute to what Allen (2019) identifies as “the legal history of seeking educational opportunity in South Carolina” (p. 443). Through lawsuits like *Briggs v. Elliott* (1952), *Richland County v. Campbell* (1988), and *Abbeville County School District v. South Carolina* (2005), we see the extensive historical intersection between education and litigation in South Carolina. The intersection between education and litigation in South Carolina has led to criticism about the court having a role in education. For example, one of the judges stated during the *Briggs* trial that ““it’s not the function of the court to determine what is the best educational policy. It is the function of the court to see that all men are given their rights”” (Allen, 2019, p. 450). Concern about the court becoming a “super-school board” in South Carolina still holds firm today (Allen, 2019).

Thus, South Carolina holds a very important place in the national conversation surrounding the privatization of education, school choice, school vouchers, and the intersection between litigation and education. While researchers within South Carolina have done significant work in these areas as related to South Carolina, the state is not currently a significant part of the larger conversation about private school choice. Look no further than *Adams v. McMaster* (S.C. 2020) and see that South Carolina adds to this larger conversation because of its historical and contemporary relationship to these issues. Using South Carolina as a case study for private school choice and education litigation can help us to understand and add clarity to the larger scale, as these are enduring topics in the education policy of today.

## Context

### Case Overview of *Adams v. McMaster*

During the summer of 2020, each state received funds from the federal Coronavirus Aid, Relief, and Economic Security (CARES) act to help with the economic impacts of the novel coronavirus pandemic (COVID-19). Part of this package included money earmarked specifically for education in the GEER fund. South Carolina's share of GEER funds was \$48 million -- a one-time grant, expiring within a year if not used. On July 20, 2020, Governor Henry McMaster held a press conference at Hampton Park Christian School in Greenville, SC to announce his plan for the allocation of the GEER funds. At the press conference, Governor McMaster announced that \$32 million of the \$48 million GEER funds would go toward his creation of the Safe Access to Flexible Education (SAFE) Grants. The grants were to cover a one-time program that would provide about 5,000 grants of up to \$6,500 to subsidize private school tuition for students and families. For students to be eligible for SAFE grants, their household would have to have an adjusted gross income of 300% or less of the federal poverty level. McMaster's (2020) justification for the grants is:

private schools in our state provide an essential education to over 50,000 children. They provide parents the ability to choose the type of education environment and instruction they feel best suits their child's unique needs. And a large number of these students come from working or low-income families - who - in the best economy - are barely able to scrimp and scrape together just enough money to pay their child's tuition.

Governor McMaster modeled his program on successful grant programs in Florida, Arizona, and North Carolina, and said that the SAFE Grants will provide "critical support for working, low-income families impacted financially by the pandemic" (McMaster, 2020). "My South

Carolina Education,” a school choice advocacy group, put out a pamphlet on the SAFE Grants following McMaster’s announcement. While the grants would first be awarded on a first-come, first-served basis, distribution for any remaining funds would happen based upon a lottery program (“Introduction to SAFE Grants,” 2020). “My South Carolina Education” also includes a page titled “Who do SAFE Grants benefit” and lists students, parents, independent schools and public schools.

Despite all of these alleged benefactors of Governor McMaster’s SAFE Grants, pushback from various interest groups, including parents, teachers, and education advocacy groups, was nearly immediate. In particular, the PSTA (2020) argued that “while the SAFE grant program is only for one year, it still has the hallmarks of a voucher system that diverts public dollars from public schools.” Additionally, SC for Ed put out a statement just hours after the announcement of the SAFE Grants program indicating their disappointment in McMaster’s “decision to commit to using CARES Act Funds, which could go to helping public school districts safely prepare for face-to-face instruction in the very schools he purports to want opened, to instead subsidize private schools” (@SCforED, 2020).

But, pushback against McMaster’s SAFE grants program was not just limited to social media statements. On July 21, 2020, within a day of McMaster’s announcement about the SAFE Grants, Dr. Thomasena Adam (represented by Skylar B. Hutto, Esquire of Williams & Williams Law Firm in Orangeburg, South Carolina) filed for an “Ex Parte Temporary Restraining Order, Motion for Preliminary Injunction, and Complaint for Declaratory and Injunctive Relief” against Governor McMaster and the Palmetto Promise Institute. The Complaint identifies the Plaintiff, Dr. Adams, as a resident and taxpayer in Orangeburg County who has worked for over fifteen years in public education and holds a Doctorate in Education. The Complaint roots itself in

questions of law pertinent to Orangeburg Country, but notes that the venue is not necessary for a declaratory judgement action as “this action relates to a matter of public interest.”<sup>1</sup> It includes the statistic that Orangeburg County would receive just under six million dollars in CARES Act funding, amounting to about four hundred and seventy three dollars per student. Recipients of Governor McMaster’s SAFE Grants would receive thirteen times as much funding as the average public school student in Orangeburg County and about forty-five times as much funding as the average public school student in Richland County School District Two.

Further, the Complaint cites the unconstitutionality of the program. It refers to Title XI, Section 4 of the South Carolina Constitution: “No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institutions.”<sup>2</sup> The Plaintiff finds precedent in *Hartness v. Patterson* (S.C. 1971), which states that “the use of public funds under the Act to provide tuition grants to students attending the participating religious institutions constitutes aid to such institutions within the meaning of, and prohibited by, Article XI, Section 9, of the Constitution of South Carolina.”<sup>3</sup> Plaintiff argues for a Temporary Restraining Order (TRO) on the funds to prevent action by the State and Governor done in “*ultra vires*”<sup>4</sup> and to “prevent the State from distributing monies it will not be able to recover.”<sup>5</sup>

Shortly thereafter, Orangeburg County Circuit Judge Edgar Dickson signed the TRO, temporarily blocking the SAFE grant’s distribution. Following the July 29, 2020, hearing before the circuit court, the petitioners indicated their intent to amend their initial complaint, adding

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<sup>1</sup> Complaint at 5, Adams v. McMaster, No. 001069. (July 21, 2020).

<sup>2</sup> Ibid at 14.

<sup>3</sup> Ibid at 15.

<sup>4</sup> *Ultra vires* refers to someone acting beyond their legal power or authority.

<sup>5</sup> Ibid at 18.

additional petitioners and new respondents.<sup>6</sup> Additional Petitioners included Rhonda Polin, Shaun Thacker, Orangeburg County School District, Sherry East, and the South Carolina Education Association (SCEA). Additional Respondents included the South Carolina Office of the Treasurer and the South Carolina Department of Administration. The matter was then taken up by the South Carolina Supreme Court, which was set to hear oral arguments on September 18, 2020.

### ***Oral Arguments***

\_\_\_\_\_The South Carolina Supreme Court reconvened for the first time in-person since the start of the COVID-19 pandemic to hear oral arguments for *Dr. Thomasena Adams, et. al. v. Governor Henry McMaster, et al.* on September 18, 2020. A driving question for the Petitioners, represented by Mr. Skylar Hutto, was whether the state can “avoid the constitutional prohibition on funding private education and has the state subverted its commitment to preserving public education” (S.C., 2020). Mr. Hutto then went on to state that the case “is not a question of policy, but a question of power. And does the governor have the power to distribute these funds in whatever manner he chooses?” (S.C., 2020).

As Mr. Hutto gave his opening arguments, the Supreme Court Justices questioned him on the Petitioners’ standing, whether federal or state laws govern the funds, and who has the direct benefit from the funds. Mr. Hutto centered his responses around the provisions that gray areas within the CARES Act are not invitations to fit external policy and the Governor’s straw man argument to avoid the constitutional prohibition on giving funds to private institutions. He uses the fact that schools would not particularize the benefit from the funds to a particular student as

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<sup>6</sup> Petition for Original Jurisdiction and Declaratory Relief, *Adams v. McMaster*, No. 001069 (August 4, 2020).

further evidence that the SAFE Grants are a direct benefit to the individual private education institution.

Mr. Thomas Limehouse, attorney for the Respondents, focused his opening argument on the language of the CARES Act, including the “governor’s discretion” and the Petitioners’ failure to establish adequate standing and injury before the court. The Justices also questioned him extensively about whether federal or state laws govern the funds and who receives the direct benefit from the SAFE grants. They raised the issue involving the CARES Act provision that the funds must be paid to entities, not individuals. But, if the SAFE Grants are used in direct benefit to religious or private educational institutions, they violate the state constitution. To this notion, Justice John Kittredge states, “I’m in a quandary. Which one is it? I don’t see how you can have it both ways,” noting the significant barrier that the SAFE Grants’ distribution faces either way (S.C., 2020). Mr. Limehouse argued that the distribution is not an “either or,” referencing the possibility of the grants as an “indirect benefit” and the difference between a “consumer” and a “beneficiary” (S.C., 2020).

Mr. W. Allen Nickles III gave the closing argument for the Petitioners. Mr. Nickles reiterated that all funds coming out of the government are made “public” and must be treated as such. He also characterized the SAFE Grants as a deviation from the purpose of the fund itself, indicating that the grants’ distribution has nothing to do with how COVID-19 has impacted a particular family. Rather, families “must be fast or lucky to get the money,” as the Governor would grant funds on a first-come first-serve basis and then through a lottery system (S.C., 2020).



### ***The Ruling***

\_\_\_\_\_The South Carolina Supreme Court filed the Declaratory Judgement on the case on October 7, 2020. The Supreme Court held that the Governor’s allocation of \$32 million in federal emergency funding for the creation of the SAFE Grants Program violates Article XI, Section 4 of the South Carolina Constitution, ruling that the Governor’s decision uses public funds for the direct benefit of private educational institutions.<sup>7</sup>

They address the question of standing by stating that the Petitioners have established “public importance” standing. In regard to the constitutionality of Governor McMaster’s proposed use of the GEER funds, the court finds that *Adams v. McMaster* is distinguishable from the precedent that the Respondent cites from *Durham v. McLeod*. *Durham v. McLeod* involved funds used for the State Education Assistance Act. Because the funds received by the State Education Assistance Authority were “trust funds to be held and applied solely toward carrying out the purposes of the Act” and did “not constitute a debt of the State or any political subdivision,” they were not considered “public funds.” Instead, they were found to be a “student loan fund under the Act” that is “held by the Authority as a trust fund.”<sup>8</sup> The GEER funds given to South Carolina from the federal government are deposited directly into the State Treasury, and then distributed from the Treasury by the Governor, as a representative of South Carolina. Therefore, they constitute “public funds” to which Article XI, Section 4 of the South Carolina State Constitution is applicable.

The court also rejects the Respondent’s argument that the SAFE grants do not provide a direct benefit to participating private educational institutions. Given that the SAFE Grants are directly transferred from the State Treasury to the participating institution through an online

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<sup>7</sup> Declaratory Judgement Issued at 4, *Adams v. McMaster*, No. 001069 (October 7, 2020).

<sup>8</sup> Declaratory Judgement Issued at 9, *Adams v. McMaster*, No. 001069 (October 7, 2020).

portal, the Respondent's argument that it is merely an indirect benefit to the institution because families have an independent choice of which school to attend does not stand. Further, only pre-selected private educational institutions selected by the Governor's advisory panel are eligible for the use of SAFE Grants, so the court finds that the program does not actually provide students with a free and independent choice.

Further, the court finds that "there is no clear congressional intent in the education provisions of the CARES Act to allow the Governor to allocate the GEER funds in his discretion in contravention of our State Constitution," rejecting the Respondent's argument that the discretion granted to him by the CARES Act preempts the state's constitutional mandate.<sup>9</sup> The court recognizes the unfathomable effects of the COVID-19 pandemic, but holds that, no matter the circumstances, the South Carolina State Constitution remains a constant.

Despite the Court's findings, Governor McMaster filed a Petition for Rehearing. The Petition argues that the Court should grant rehearing and issue a substituted opinion dismissing the Petitioners' complaint because of how the "Petitioners hardly acknowledged their threshold of burden of establishing standing and failed to properly plead, preserve, or otherwise prove the applicability of the public importance exception to standing."<sup>10</sup> Further, they argue that the federal GEER funds do not qualify as state public funds, GEER funds cannot revert to the state treasury and become state funds, and the Court's decision contradicts Act 154. The federal government also provided an *amicus curiae* brief supporting the Governor's petition.

The Court granted the Respondents' petition for rehearing and filed a new opinion on December 9, 2020. The new Order also ruled against Governor McMaster's SAFE grants

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<sup>9</sup> Declaratory Judgement Issued at 14, *Adams v. McMaster*, No. 001069 (October 7, 2020).

<sup>10</sup> Respondent Governor Henry McMaster's Petition for Rehearing at 5, *Adams v. McMaster*, No. 001069 (October 22, 2020).

program, again declaring the program to be in violation of the South Carolina State Constitution and finding no grounds for Governor McMaster to distribute the GEER funds in this manner.

### **South Carolina's Historical Connection to School Choice**

South Carolina's unique relationship to private school choice also coincides with education litigation. While we see the court intervening in education policy in *Adams v. McMaster* (S.C. 2020), the role of the courts in South Carolina education is something South Carolina politicians, lawyers, judges, and scholars alike have continually questioned throughout history. During the *Briggs vs. Elliot* trial, the first school funding lawsuit in South Carolina, three judges argued to the Plaintiff's attorney that "it's not the function of the court to determine what is the best educational policy. It is the function of the court to see that all men are given their rights" (Allen, 2019, p. 240). Further, in the midst of *Brown vs. Board* litigation, Justice Felix Frankfurter expressed his concern about the court becoming a "super school board" (Baker, p. 127). The idea of separation of powers was also brought up by the Plaintiff's attorney in *Adams vs. McMaster*, where Mr. Hutto responded to concerns about the Supreme Court intervening in education that it "is not a question of policy, but is a question of power" (S.C., 2020).

Concerns about the separation of powers even led to the creation of the Southern Manifesto (1956) following the decision in *Brown vs. Board of Education* (U.S. 1954). Then South Carolina Senator Strom Thurmond wrote the initial draft of the Southern Manifesto, which was signed by 19 United States Senators and 82 Southern Representatives. The document critiqued the Supreme Court's decision in *Brown* as a "clear abuse of power," encouraging both southerners and their representatives to "resist forced integration by any lawful means," and to "use all lawful means to bring about a reversal of this decision which is contrary to the Constitution and to prevent the use of force in its implementation" (The "Southern Manifesto,"

1956). The included caveat of “any lawful” means is part of the reason resistance to integration in South Carolina became so pervasive and effective in the South Carolina school system.

Thus, the most durable resistance to integration came from moderates, not extremists; moderates recognized *Brown vs. Board of Education*’s legitimacy, intending to uphold segregation legally (Baker, 2006). The revitalization of the Gressette Committee was a significant factor in carrying this out successfully. Governor James F. Byrnes originally created the committee to both prepare for and avoid the fast-approaching prospect of federally mandated desegregation (Solomon, 1955). Upon its revitalization, Chief Council David W. Robinson (attorney for the Gressette Committee), harped on using legal means to preserve segregation (Baker, 2006). Accordingly, the committee “argued that the Supreme Court had not made ‘any order or decree which might have the effect of forcing an immediate change in local school policy or procedure,’” downplaying and actively working against Black South Carolinians’ attempts to integrate public schools (Cunningham, 2021, p. 40).

Cunningham (2021) further highlights how resistance to integration in South Carolina was not limited to state agencies. The White Citizens Council, which was founded in Mississippi in 1954, quickly spread to South Carolina. Rather than using physical violence to thwart desegregation efforts by Black South Carolinians, the Council found economic pressures and intimidation tactics more effective --- one of which included publishing the names of African Americans’ who had signed desegregation petitions in the local newspapers (Baker, 2006, p. 112). NAACP chapters in South Carolina led these petitions; many stated “the maintenance of racially segregated schools is a violation of the Constitution of the United States. You are duty bound to take immediate steps to reorganize the public schools under your jurisdiction on a nondiscriminatory basis” (ibid., p. 110). Editor for the *News and Courier*, Thomas Waring, urged

white employers to study the listed names and fire those who were not willing to remove their names from the petitions (Baker, 2006). Such economic retaliation forced many to withdraw their names from school-integration petitions, as many African Americans were dependent on white people for their employment (Baker, 2006).

Other “lawful” anti-desegregation tactics included white leaders turning to private education. In anticipation of the court’s decision on *Brown*, Charles N. Plowden, local Clarendon County planter and former legislator, and others had acquired up to \$34,000 for private education (Baker, 2006, p. 110). Waring argued that “progressive educational reforms...have lowered educational standards in the public schools,” and that South Carolinians should send their children to private schools through state-subsidized “private school tuition” payments (ibid., p. 110).

The United States’ decentralized education governance structure aided in these efforts to maintain segregation. Southern attorneys argued to the court following *Brown* that the implementation of desegregation should be left to state and local officials (Baker, 2006). Robert Figg Jr., South Carolina attorney, added that “immediate desegregation ‘would destroy the public school system of South Carolina’” (ibid., p. 127). Edelman (1973) notes the “great deal of discretion” that the court left local school officials kept the door open for interference and delay (p. 34). Because “the courts had never spelled out what a desegregated school system should look like...many local districts had adopted the minimum possible method of compliance, the most popular of which was ‘freedom of choice’” (ibid., p. 38).

### ***Orangeburg County School District***

When resistance to desegregation took place in South Carolina following the *Brown v. Board Decision*, Orangeburg County was a major site of legal pushback. While public schools

remained segregated well into the late 1960s, community members organized class-action lawsuits to accomplish a more thorough plan for desegregation within the county's districts. Attorneys handpicked students as Plaintiffs for the lawsuit; students would have to have "strong academic backgrounds and parents who were not economically dependent on whites" (National Historical Registry, p. 14). Plaintiffs in *Adams v. School District No. 5* alleged that deliberate segregation had taken place within the dual system of public schools. The Citizens' Council in Orangeburg organized to recruit white students as intervenors, but recognized that desegregation was likely inevitable. Thus, a separate committee was established, headed by Dr. T. Elliott Wannamaker, to determine the feasibility of establishing a private school. Funding could come from both "state tuition grants" and tuition payments made by parents and donations.<sup>11</sup> The "freedom of choice" plan was successful until August of 1969 when a new court order forced its abandonment. Nevertheless, at the final stage of desegregation in 1971, private segregation academies flourished in Orangeburg County, with Wannamaker as the leader of the state's "private school movement."

While legal pushback to Governor McMaster's SAFE Grants could have happened anywhere in the state, the fact that it happened in Orangeburg County is certainly noteworthy. Professor Dangerfield (2020) of the University of South Carolina Salkehatchie notes that "the irony in promoting equality in separate, private education should not be lost on students of history." The irony certainly was not lost on Orangeburg County School District -- a district only a couple of generations removed from the growth in private educational institutions, in part facilitated by state grants, following federal integration mandates.

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<sup>11</sup>The General Assembly passed a bill in 1963 approving state grants for children who attended "secular private schools" (National Historic Registry, p. 14).

### **Governor McMaster's Free Market Education Ideology**

\_\_\_\_\_ While Governor McMaster proposed his SAFE Grants program within the context of providing financial assistance to those impacted by the pandemic, he has historically supported school choice, school vouchers, and private education in South Carolina. McMaster succeeded to the office of governor when former Governor Nikki Haley resigned to serve as the Ambassador to the United Nations in 2017. South Carolina re-elected him as Governor in 2018. His 2018-2019 executive budget highlighted school choice in the form of charter schools. He called for a 5% increase in per-pupil funding for charter students, stating “because charters do not receive local tax revenue like their public school peers, this increase constitutes a necessary commitment to enhance equity and underscore this state’s commitment to schools that provide parents with choice and opportunity that best suits their child” (McMaster, 2018, p.17). His 2020 State of the State Address included a proposal to “unleash the free market into early childhood education through parental choice...eliminat[ing] red tape and regulations while increasing the reimbursement rate -- that is, the money that already follows each child -- to the school of the parent’s choice” (McMaster, 2020). He put forth the same proposal in his 2021 Address, stating that the 25% increase in charter schools is “parents and the free market at work” (McMaster, 2021). The palatable parental choice rhetoric is almost always coupled with a ideologically neoliberal statement on the economic benefits of a free market education system.

The other named Respondent on the SAFE Grants lawsuit is the Palmetto Promise Institute, the institution that was listed as the owner of the online portal for SAFE Grant payments. The Palmetto Promise Institute is a conservative think tank, revitalized in 2013 by former United States Senator, Jim DeMint. The Palmetto “promise” is to “promote policy solutions to advance a free and flourishing South Carolina, where every individual has the

opportunity to reach their full, God-given potential” (Palmetto Promise, n.d.). Although not an education organization, Palmetto Promise has helped to shape recent, contentious education bills in the state, including the Equal Opportunity Education Scholarship Account Act proposed in 2020 (EOESA). Under the EOESA, the State would deposit the amount of money equal to how much the district for which the participating student is zoned would have received.<sup>12</sup> Instead of the district receiving the money, the participating student would then be able to use that money for a school of their choice. The bill has been revised and proposed in several legislative sessions, but has not passed. This legislative and executive history lends itself to the conclusion that Governor McMaster’s SAFE Grants proposal can be understood outside of the context of relief for the COVID-19 pandemic.

### **Methods**

In order to see the ways individuals and organizations framed the issue of Governor McMaster’s SAFE Grants program announcement and the subsequent lawsuit, I conducted a media analysis of the SAFE Grants program. I found Lasswell’s (1948) model of communication to be a helpful starting place for this analysis; in particular, describing an act of communication by answering “who says what in which channel to whom with what effect” (p. 216). I then utilized Saraisky’s (2016) method of media content analysis to construct my own. Saraisky (2016) contends that the media operates through both framing and gatekeeping to outline public problems. Thus, a media content analysis functions by analyzing frames (the way the media organizes ideas, words, images, and themes around an issue) and then “gatekeeping” to whom the media gives space to speak on public problems (Saraisky, 2016). I determined a media content analysis to be the best way to assess my research question because of the media’s ability to potentially influence the way the public is interpreting and synthesizing current events within

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<sup>12</sup> H. 3681. [https://www.scstatehouse.gov/sess123\\_2019-2020/bills/3681.htm](https://www.scstatehouse.gov/sess123_2019-2020/bills/3681.htm)



a larger context. Because the SAFE Grants were deemed to be a “matter of public importance” by the Plaintiffs in the *Adams v. McMaster* lawsuit, a media analysis is a logical way to identify how the issue came to be understood as a public one.

Before beginning the media analysis, I did a significant amount of research to understand the progression of the *Adams v. McMaster* (S.C. 2020) lawsuit and South Carolina’s historical relationship to private school choice. I was able to access many of the case documents through Google searches or through the South Carolina Supreme Court website. I found other sources (e.g., scholarly articles, historical documents, etc.) to enhance my analysis through the research databases JSTOR, Project MUSE, and Google Scholar. Search terms included various combinations of “education,” “choice,” “private,” “vouchers,” “law,” and “South Carolina.” This gave me a greater context for understanding the key themes that the media analysis brings to light, but also contributed to some underlying assumptions that influenced the manner in which I went about my analysis. My awareness of the legal arguments on both sides, along with arguments historically made surrounding private school choice, made me curious to see how these would translate in the public sphere.

I began my media analysis by conducting a search with the phrase “McMaster SAFE Grants.” I used the date restraints January 1, 2020 to Present Day.<sup>13</sup> Because the research topic focuses on a particular program with a clear announcement date, there were no articles on Governor McMaster’s SAFE Grants program prior to his announcement in Greenville on July 20, 2020. I sorted the articles onto a timeline spreadsheet that includes all key events following the SAFE Grants program’s announcement: after July 20, 2020 (date of the announcement), July 29, 2020 (Temporary Restraining Order on the funds by Orangeburg judge), September 18, 2020, (the oral arguments on *Adams v. McMaster*), October 7, 2020 (Ruling published by SC Supreme

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<sup>13</sup> The last article included in the media analysis was from December 12, 2020.

Court), October 22, 2020 (McMaster’s Petition for Rehearing), and December 9, 2020 (S.C. Supreme Court’s new opinion published). This way of organization allowed me to account for any shift in major trends as the story developed. I further grouped the articles based upon whether a local, state, or national news source published them. While a few national news sources did report on the SAFE Grants, I found the most compelling articles in local and state news sources like *The State* and *The Post and Courier*.

Next, I chose keywords based on the preliminary research I had already done on the topic to search within the articles. Search terms included “choice,” “vouchers,” “constitution,” “constitutionality,” “public education,” and “public school” in various combinations. I also included the “CARES Act” and “COVID-19,” but did not include them in my final analysis because they did not establish enough of a meaningful pattern. I noted which articles used each term, followed by a quantification of how many did so relative to the entire data set.

To discern the way in which these sets of data were beginning to concentrate around different themes, I began making detailed annotations within each data set. Because I was deductively coding data, I had to continue to remain conscious of my internal biases during this phase of my analysis. To mitigate biases, I made annotations systematically. First, I noted whether the article used the terms within direct quotes (and, if so, who used them). A consideration of who was using the term allowed me to draw later conclusions about how the media was framing the SAFE Grants through whose voice they gave space to comment on them.

Next, I focused on the tone surrounding key terms’ usage and what type of rhetoric they put forth. Determining whether the article was positive, negative, or neutral to the SAFE Grants supported this stage of analysis. For example, an article centering only on how the SAFE Grants would benefit low-income families looks favorably on the SAFE Grants, while an article

centering on the SAFE Grants' detriment to public education would look skeptically at the SAFE Grants. After evaluating the relevant media articles, I took my analysis deeper by identifying similarities or differences in the context surrounding different example's usage of key terms. A point of saturation did arise within the media analysis; because the media coverage was no longer enhancing my major findings, I ceased data collection at this point. This method of data collection did raise some concerns surrounding the amount of data I was able to collect. Because of this saturation point, the sample data is small. Additionally, although I took the necessary steps to mitigate researcher bias, there is still room for subjectivity in this method for data analysis.

While I do have a profound interest in the intersection between education and law, I am a Senior English major who has not been to law school and has only taken a few education classes. Therefore, there may be some shortcomings in my overview and analysis of the intricacies within the *Adams v. McMaster* (S.C. 2020) court case. Nevertheless, the classes that I have taken and my personal research interests in the role of public education in our society, have influenced my perspective on this topic. Further, receiving a meaningful education from a diverse, South Carolina public school has shaped my view on the importance of public education in giving opportunity to every child to succeed. My hope is that one day liberation of a child from a "failing school" will no longer be an argument for school voucher and tuition grant programs, because we will no longer have schools that are considered "failing." My strong belief in the moral imperative that we, as a society, have to uplift public education to ensure that this is no longer the case may shine through in my synthesis of the literature on school choice and my media content analysis of the SAFE Grants program.

## Major Findings

Governor McMaster's proposed SAFE Grants Program [July, 2020] and its subsequent lawsuit [July - December 2020] flooded state and local media from their inception. These media sources, beginning with Governor McMaster's announcement of the SAFE grants on July 20, 2020, and ending on December 10, 2020, with the last piece of coverage on the issue, bring to light the different ways in which organizations and individuals frame the issue. Supporters of the program centered the focus around parental choice and the SAFE Grants giving more opportunity to disadvantaged students whose education had been disrupted by the COVID-19 pandemic. For critics, the focus remained on the way the SAFE Grants program would divert public dollars away from struggling public schools and the slippery slope of a tuition grant program of this nature.

Clear ideological differences come to light in looking at the media response and public reception of Governor McMaster's SAFE Grants program. An evaluation of media coverage on the SAFE Grants program reveals two "opposing sides" to the SAFE Grants program: those who support the program and those who do not. But, the main takeaway from the SAFE Grants' media coverage does not revolve around basic agreement or disagreement. The importance in the analysis lies in the two sides' justifications for their position on the SAFE grants program; these are justifications that frame the issue in fundamentally different ways. Those supporting the SAFE Grants program understand the funds as critical in giving low-income parents and families the autonomy to send their child to a school that best suits their needs. Those in opposition to the SAFE Grants program perceive the SAFE Grants as a direct and unconstitutional threat to public education, supported by the problematic notion of public dollars funnelling into private schools.

The shifting in frame based upon opinion remains consistent with school voucher -esque debates nationwide.

Framing refers to the way issues are organized and understood within the public arena (Saraisky, 2015). Thus, the public comes to understand the topic of the SAFE Grants in this imperfect dichotomy: seeing the SAFE Grants as providing greater access for a child's school of choice, or seeing the SAFE Grants as a direct threat to public education. The two sides are not on opposite sides of the same spectrum. Rather, they are existing on different spectrums entirely.

### **Choice Rhetoric**

Approximately 48% of the articles analyzed explicitly mentioned school choice in relation to McMaster's SAFE grants program. Of this 48%, approximately 30% use choice within a direct quote, 50% mention choice independently, and the remaining 20% does both. Commonly cited sources include spokespersons from the Roman Catholic Diocese of Charleston, South Carolina Independent School Association (SCISA), SC Association of Christian Schools (SCACS), Governor McMaster's initial announcement speech, Ellen Weaver (CEO of Palmetto Promise Institute), and South Carolina Congressmen William Timmons and Jeff Duncan. In national coverage of the issue, the CEO of Edchoice is cited, as well as Congressman Chip Roy (R-TX).

Most striking, all direct quotes that include any variation of the term "choice" (e.g., parental choice, school choice, education choice) are positive reactions to McMaster's SAFE Grants program. More specifically, they perceive the lawsuit that quickly followed McMaster's announcement as shameful in the barrier it posed to this choice. For example, the joint statement released by the Roman Catholic Diocese of Charleston, the SCISA, and the SCACS following the South Carolina Supreme Court's ruling on October reads, "[i]t is disappointing that the

Supreme Court has decided to further hurt those low - to middle - income families who are suffering financially due to the COVID-19 pandemic. By blocking their access to SAFE Grants money, parents may not be able to send their children to the school of their choice”

(Fortier-Bensen, 2020). The rhetoric elevates the COVID-19 education crisis, advocating for the SAFE Grants program as an easy, viable solution. Congressman Jeff Duncan (2020) states “[I]miting the number of educational opportunities made available to our children is a complete disservice, but providing the opportunity of choice is common sense. The SAFE Grants program will give parents the chance to choose a learning environment that best fits their child’s needs and allow them to do so at an affordable cost.”

Out of the articles that use direct quotes promoting the parental choice aspect of the SAFE Grants, only half of them include a direct quote from people or organizations on the opposing side of the issue. Notable persons include Skylar Hutto, Plaintiff’s counsel for *Adams v. McMaster*, the PSTA, the Public Education Partners (PEP), and the South Carolina School Boards Association (SCSBA). The only group to explicitly address parental choice on the opposing side of the SAFE Grants was SCSBA’s executive director, Scott Price. Price asserts “SCSBA has consistently advocated for our state to focus its limited public resources and all of its effort to ensuring every student attends a public school that any parent would choose for their child” (*Post and Courier*, 2020). Rather than focusing on the extension of parental choice to private, independent schools, Price focuses on the need for state resources to remain within public schools for the benefit of all students.

Although the remaining articles mention a variation of the term “choice” with regard to the SAFE Grants outside of a direct quote, evaluation of support for the SAFE Grants within these articles is less straight-forward. While “choice” used within direct quotations about the

SAFE Grants was consistently positive, articles that refer to choice in their own words are more difficult to generalize and characterize. The term “choice” becomes quite nuanced when looking at the way in which the media uses it to frame the program. Namely, several articles explicitly call the SAFE Grants a “school-choice program,” but their connotations vary. On the national scale, Forbes breaks down McMaster’s program positively in their Policy section, writing “Governor McMaster’s new school choice-expanding grant program quickly drew national attention and praise, with plaudits heaped by prominent education reformers...” (Gleason, 2020). The article goes on to quote several politicians and movers and shakers who see the SAFE Grants program favorably as it relates to education choice. Other articles are less explicit about characterizing the “school choice grant program” as positive. WBTV includes direct quotes from Republican Congressman Jeff Duncan about the empowering aspect of school choice for parents and children, along with criticism from the PSTA about McMaster’s misuse of precious financial resources that were meant for public education.

Thus, there is an important distinction between those which categorize the SAFE Grants as a school choice program and those which understand the SAFE Grants as key in promoting parental choice. Mostly consistent with the direct quotes that refer to education “choice,” a little over half of the articles on the SAFE Grants program that generally discuss choice do so in a way that reflects favorably on the program (approximately 61%). In his opinion piece in the State, Jim Demint (2020), founder of the Palmetto Promise Institute and former U.S. Senator, says Governor McMaster deserves praise for his SAFE Grants plan:

By building on a track record of success in dozens of states around the nation, Gov.

McMaster rightly recognizes that education choice is not a luxury only to be considered

when times are good; rather, it is a lifeline that can literally open opportunity and save lives.

Again, we see key actors using rhetoric that functions to promote education choice as the vital solution to “saving” South Carolina students in a time of crisis. Further, several articles include the statement: “Modeled on successful grant and scholarship programs serving thousands of students in Florida, Arizona, and North Carolina, SAFE grants will provide critical support for working low-income families impacted financially by the pandemic. SAFE Grants will ensure that these students can access an education of their choice.” They, too, capitalize on the palatable choice rhetoric, while suggesting that South Carolina would be falling in line with other states’ sound school choice policies.

### **SAFE Grants as School Vouchers**

There are many ways to categorize programs that are comparable to Governor McMaster’s SAFE Grants. While Governor McMaster calls his program “one-time, need-based tuition grants,” similar programs, including tax-credit scholarships, education savings accounts, and individual tax credits or deductions, get blanketed under the term “school vouchers.”

Although Chief Justice Kaye Hearn referred to the SAFE grants as a “thinly disguised voucher program” during the oral arguments SAFE Grants lawsuit, media sources rarely refer to it as a voucher program (S.C., 2020).

Only about 14% of the articles analyzed use the term “voucher” to discuss the SAFE Grants, with an overwhelming majority of these casting McMaster’s proposal in a negative light. Notably, the two biggest newspapers in South Carolina, *The State* and *The Post and Courier*, have both referred to the SAFE grants as vouchers. The *Post and Courier*’s Opinion Staff published an editorial titled “McMaster should accept vouchers defeat, focus on helping poor



kids in SC” after the Governor’s request that the Supreme Court re-hear the case, urging the Governor to remember his responsibility to South Carolina’s children. The State’s headline read “Judge temporarily blocks McMaster’s \$32M spending plan for private school vouchers,” following the TRO on the funds.

Governor McMaster’s SAFE Grants program got national attention when Representative Bobby Scott (VA-D) and Representative James Clyburn (SC-D) wrote a joint letter to former Education Secretary Betsy DeVos, asking that she investigate the creation of the “voucher scheme” using the GEER funds from the CARES Act. They indicate that the “scheme” violates the CARES Act and the Department of Education’s guidance for how to distribute the funds. Interestingly, DeVos had previously praised Governor McMaster for his plan in assisting “low-income SC families to find the right fit this fall,” and also violated part of the CARES Act in her rule for relief funds to be shared equally with private schools. DeVos’s plan, too, flooded national headlines, as it was subsequently blocked by a federal judge.

It is understandable that characterizing McMaster’s SAFE Grants program as a school voucher program would hold negative implications, because public school advocates have historically frowned upon voucher programs (Maranto & Rhinesmith, 2017). Many media sources included the PSTA’s statement on the SAFE Grants where they maintain they have “traditionally advocated against the establishment of any voucher program in South Carolina, and while the SAFE grant program is only for one year, it still has the hallmarks of a voucher system that diverts public dollars from public schools.” Similar sentiments from other organizations and individuals are likely why those in support of the program, including Governor McMaster himself, find alternative rhetoric like “tuition grants” or “school choice program” to “thinly disguise” the funds. Characterizing the SAFE Grants as a voucher program makes the

program immediately carry the same concerns implicit in any other voucher program, including the lack of accountability to taxpayers, concerns about equity, and the Establishment Clause, or state equivalent.

### **Public vs. Private**

While characterizing the SAFE Grants as school vouchers does encompass a debate between public and private schools, an evaluation of media sources reveals that the SAFE Grants also create this divide on their own. Almost half of the articles analyzed mention public schools or public education in their discussion of the SAFE Grants. Of these articles, an overwhelming majority do so in a way that shows opposition to the SAFE Grants program. But, there are a few dissenting examples that use public education's alleged shortcomings to further show support for Governor McMaster's SAFE Grants program. Again, it is more common for direct quotes to raise the topic of public education, rather than the articles' authors themselves. This gives the appearance of the general public seeing the SAFE Grants as divisive between public and private education.

Two major voices on the supporting side of the SAFE Grants refer to the "public school lobby" as a force that impedes educational progress. One, Ellen Weaver (2020), who comes up repeatedly in media articles on the SAFE grants, notes the "brick-wall of the state's public-education lobby" to parental control over their own child's education. Weaver adds, "the opposition to modestly priced education-choice programs like SAFE grants has nothing to do with what is best for students and everything to do with who will control that \$10 billion: parents or central planners," giving a subtle critique of education governance as it stands (2020). In Representative Bill Taylor's (2020) (Republic - Aiken) guest column article in *The Post &*

*Courier*, he supports Weaver's argument that the "public education lobby" impedes educational freedom:

The public school lobby wants to stop this one-time emergency program, because they know giving moderate-and low-income parents a taste of education freedom that wealthier parents enjoy represents a threat to their hold on the over \$10 billion dollars- an average of over \$14,000 per student - that is poured into the South Carolina public school system each year.

Noticeably, Taylor also alludes to the perceived "lack of return on investment" from South Carolina public schools that adds to private school choice arguments. He highlights the financial barrier to educational freedom --- appealing at first glance rhetoric for many. Taylor's comment also reflects the larger school of thought that sees public education as an inefficient institution (Lieberman, 1993; Saltman, 2005).

Conversely, the opposing side of the SAFE Grants --- as represented in the media --- focuses on concerns surrounding accountability and the public schools the program seems to leave behind. Organizations opposing Governor McMaster's program did not waste any time getting their statements to the surrounding media following the announcement on July 20, 2020. SC for Ed categorized the SAFE Grants as "an action that hurts public schools while doing little to help prospective lower-income private school students" and the Palmetto State Teachers Association argues that the "funds could be better used by ensuring our public schools have as many resources as possible to ensure a safe return to in-person instruction" (WLTX, 2020). Many others expressed their worry that the SAFE Grants were not subject to the same accountability measures as traditional public schools that receive public funding. The way in which many people perceived the SAFE grants program as a direct threat/attack on public

education is certainly notable, especially considering South Carolina's historical relationship to private school choice.

Thus, setting aside the considerable critique of the specifics and logistics of the SAFE Grants program, a significant theme that came forth through the media analysis was the fear of the slippery slope on which a program of this nature treads. Even though the program was to be one-time and rather limited, likely unable to leave any lasting impact on South Carolina's education system, the media shows many opposing it on principle because of the window of opportunity it opens for the state to funnel public money into private schools. These voices echo the point Mr. Hutto, attorney for Plaintiff in SAFE Grants lawsuit, makes in the *Adams v. McMaster* (S.C. 2020) oral arguments: the coronavirus pandemic and subsequent relief funds are not an invitation for Governors, or anybody, to fit in external policy --- especially when it is unconstitutional.

### **The Constitutionality Question**

Accordingly, Governor McMaster's SAFE Grants do not just spark a debate about public and private schools; the SAFE Grants also stoke contention about the constitutionality of public funds going to private educational institutions. While those in opposition to the program recognize the problematic notion of public dollars filtering into private schools, immediate reactions to the SAFE Grants in the media were not focused on constitutionality. In fact, the media does not explicitly mention constitutionality with regard to the SAFE Grants until *after* the Orangeburg Judge temporarily blocked the funds on July 21, 2020. This aspect of the media analysis reveals that, while people were thinking about many things upfront in relation to the SAFE Grants, generally, constitutionality was not one of them. Granted, the lawsuit was in the press in the day following the program's announcement (July 21, 2020); but, considering the

copious amount of media coverage that exists from the day of McMaster's announcement, it is certainly still notable.

Nevertheless, the constitutionality question is a major contributing factor to the amount of coverage the SAFE Grants get over the course of the six months following their inception. It is an event with distinct turning points due to its involvement with the courts and also due to the time constraint in which the Governor could distribute the GEER funds.<sup>14</sup> Further, Petitioners framed the matter as "one of public importance," allowing for countless perceived stakeholders in the funds.<sup>15</sup> Although various biases do come forth in other aspects of media coverage of the SAFE Grants, media coverage on the constitutionality aspect of the SAFE Grants remains generally objective. Sources straightforwardly report the facts of the case, and consistently incorporate direct quotations only from the counsel on each side. Governor McMaster's statement after the Supreme Court announced its ruling appears in several local media sources. He comments on his constant commitment to providing educational opportunity for lower income families and families with special needs at public and private schools, adding that the Supreme Court's decision to rule the SAFE Grants as unconstitutional puts both lower income families and independent private colleges and HBCUs that were to receive CARES Act funding in jeopardy. Even though he indicates his intention to request the Court to reconsider their ruling, his statement does not address the constitutionality of the SAFE Grants.

### **Major Voices and Notable Absences**

It is important to note to whom the media gives the status and space to comment on the SAFE Grants issue. It is a key way in which the media has some influence over public policy.

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<sup>14</sup> Governor McMaster was planning to fund the SAFE Grants with a portion of the GEER funds. GEER funds from the CARES Act expired within a year of distribution, if not used.

<sup>15</sup> This is also how Plaintiff establishes standing (sufficient connection to and harm from the law or action challenged).

Surprisingly, commentary on the SAFE Grants does not revolve as much around McMaster himself as other policy actors. Major voices within media coverage include the PSTA, SC for Ed, the Roman Catholic Diocese of Charleston, SCISA, Ellen Weaver, and various state and local politicians.

The PSTA and SC for Ed greatly push the opposing side of the SAFE Grants by advocating for the need of these funds so that public schools are able to operate safely. Their voices, made up of teachers across the state, help to propagate the argument against the SAFE Grants because of the lack of accountability to which non-public schools adhere. Conversely, non-public school advocates like the Roman Catholic Diocese of Charleston and the SCISA serve to show the need for the \$32M from the GEER funds in private schools. More specifically, they argue for the low-to-middle income families who deserve to be able to attend the school of their choice, despite the financial impacts of COVID-19. Because one side of these major voices comes directly from public education supporters and the other side comes directly from private/non-public school supporters, as noted, media coverage works to publicize the SAFE Grants issue as a public vs. private one. While media coverage does not necessarily provide these frames outside of whom they choose to quote, it is striking when considering how this gatekeeping has potentially influenced the way the general public perceives the SAFE Grants.

A major, individual voice in media coverage of the SAFE Grants is Ellen Weaver. As CEO of Palmetto Promise Institute, she gives an abundance of statements on the SAFE Grants as a promising and necessary vehicle for school choice in South Carolina. Her opinion is even given space on the national scale, as seen in her piece in the *Wall Street Journal*. Weaver's piece includes a heart-wrenching story of a widowed mother who is struggling to keep her kids in the private school they love. Weaver goes on to describe how the SAFE Grants had given the mother

hope, which the Orangeburg judge's TRO quickly "dashed." Weaver, still, expresses optimism in the surprising opportunity the pandemic has created for school choice.

Weaver's opinion piece is unique among media coverage, in part because it highlights elements absent from other articles. Weaver's piece includes an emotional appeal from the perspective of a parent whose family would benefit from the tuition grants. Other articles include theoretical arguments about why the SAFE Grants make sense, but do not have the same emotional rhetoric. Additionally, the parental perspective is unique among other SAFE Grants media coverage. Overall, parents do not get the loudest voice in media coverage on the SAFE Grants, despite parental choice being a key, driving force in proponent's arguments.

As mentioned, there is also a lack of commentary within media sources on Governor McMaster. Outside of his opponents expressing their disappointment with his decision, and various South Carolina media articles calling on him to accept the Supreme Court's ruling and maintain his commitment to public education, there is not much profiling on Governor McMaster and the build-up that led him to allocate such a significant amount of the GEER funds to tuition grants. Given McMaster's past support for private school choice and vouchers, there seems to be space for commentary on the more immediate historical context surrounding the SAFE Grants announcement; in considering other, related factors, the announcement does seem to go a bit outside of the realm of mere financial impacts of the coronavirus on families with children in private schools.

Regardless, media coverage on the SAFE Grants dies down after the Supreme Court's final ruling on December 9, 2020. There is also barely anything regarding a follow-up interview or statement from McMaster concerning the Supreme Court's re-published opinion. Most media sources only mention the SAFE Grants again in articles discussing Governor McMaster's

updated plan for the GEER funds, announced in early January 2021, after the Supreme Court struck down his original idea. McMaster's new plan involves spending \$8 million for technical school training, \$7 million on pre-kindergarten programs, and \$4 million on educational resources for children in foster families or group homes. He also announced that \$9 million would be going to South Carolina's charter schools to offset increased enrollment costs and \$1.5 million would be going to the South Carolina Department of Commerce for the South Carolina Workforce Journey's Initiative. Governor McMaster's website notes that the remaining GEER fund balance will be awarded prior to the May 11, 2021 deadline (McMaster, 2021).

### **Past Coverage on Related Issues**

Although Governor McMaster's SAFE Grants program incited passionate reactions from multiple organizations and individuals -- leading to significant media coverage across the state -- related issues have not gotten as much coverage in the past several years. A quick media search of "school vouchers SC" from the past four years (2017-2020) revealed that the two major state newspapers, *The State* and *The Post and Courier*, reported on a "school voucher" bill from the 2019-2020 General Assembly. The bill, S. 556, involved the "Equal Opportunity Education Scholarship Account Act," which proposed "to promote student achievement by making South Carolina the most choice-driven state in the nation by increasing students' participation in, and students' access to educational opportunities."

S. 556 would function by transferring state funding for a student into an account that parents could then use for private school tuition or other services. Families with children in under-performing schools and children with special needs would be eligible. The last day of coverage on the bill is just days before national and state shutdowns began taking place due to the COVID-19 pandemic. While in significantly smaller numbers, there are similar arguments



surrounding S. 556 to the SAFE Grants lawsuit; these, too, center on the government diverting public money from public schools for the benefit of private educational institutions with less accountability. It is important to highlight how the logic behind S. 556 and the SAFE Grants is similar (i.e. providing more educational opportunities to disadvantaged families). And, it should also be emphasized that the timeframe between the two is so small. This connection is striking, especially considering there is no mention of S. 556 in media coverage on the SAFE Grants. Nevertheless, it further allows for context for the SAFE Grants fiasco outside of the vacuum that is the COVID-19 pandemic.

### **Conclusion**

These major findings highlight how crucial the press is in framing the public's understanding of such complex policy issues. The way people are consuming news is rapidly changing, but the importance of local news remains consistent -- along with people's general trust in it. While the press' critical role in society gives it great responsibility, local news outlets in South Carolina severely lack the financial resources and support to report on topics fairly. Instead of giving topics the time and careful analysis that they demand, they rely on sensationalized headlines and mere repetition. These sensationalized headlines often incite immediate conflict between opposing sides, only exacerbating people's unwillingness to engage with those whom they disagree. When the news media simply repeats the framing that has been given to them, they abandon what makes their job have a truly vital role in communities --- the objective and independent analysis of current events. Alternatively, the burden is on the consumer to make sense of such complexity. Consumers must do a significant amount of work to accurately intake information, but the average news consumer does not have the time nor means

to discern bias and slanted reporting meaningfully, and may not even make it past the headline. This is what makes quality news sources so essential.

As noted in the analysis, there are numerous different ways that organizations and individuals frame the SAFE Grants, stemming from whether they agree or disagree. The news media's role ought not to be a repetition of whichever of these framings is most accessible and profitable. The news media's role ought to be to accurately report what Governor McMaster said about the SAFE Grants program's purpose and function in his initial announcement and subsequent press releases, and what the program actually does.

A media content analysis on Governor McMaster's SAFE Grants reveals the divisiveness of the program. By including statements from either private educational institutions, or public school teacher organizations, news media outlets give the impression that the general public sees the SAFE Grants as divisive between public and private education. But, a closer look reveals the way the two sides' justifications for their positions frame the issue in entirely different ways. As stated, supporters see the program as providing support and opportunity to low-income families who want to send their children to private school. Critics see the program as diverting precious monetary resources away from the children in public schools who need it the most. The two sides do not have completely opposite opinions. Rather, they arrive at them through fundamentally different ideological approaches.

In looking at the "facts," neither side is necessarily wrong. As identified in *Adams v. McMaster* (S.C. 2020), the SAFE grants do, in fact, govern public funds in an unlawful manner. But, that is not to say that they do not have the potential to financially benefit some low-income families with children who are already attending private schools. Generally, there is some common ground to be found between the two sides. Media coverage publicizes the SAFE Grants

issue as a public vs. private one, but, in reality, it is much more complex than that. Enveloped in the SAFE Grants is decades of South Carolina's questionable constitutional commitment to preserving public education, both related to and independent of private education.

Further, the relationship between the immense (and quite successful) resistance to integration following *Brown v. Board of Education* (1954) and private school choice cannot be ignored. As a fundamental tenet of democracy and a founding principle of America, equitable and adequate public education is vitally important. Despite the South Carolina Supreme Court declaring the SAFE Grants unconstitutional, the school voucher conversation is far from over. Presently (April 2021), there is a bill in the South Carolina House of Representatives to repeal the constitutional provision prohibiting direct aid to private or religious educational institutions.<sup>16</sup> There is much more work to be done on why such a provision exists and what repealing it would mean for education in South Carolina. There is also much work to be done regarding the perception of public education in South Carolina and the systems in place that uphold *de facto* segregation in its education system. Nevertheless, a deep dive into how the news media frames the SAFE Grants issue and *Adams v. McMaster* (S.C. 2020) gives a glimpse into these timely concepts and opens up multiple windows of opportunity for further exploration.

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<sup>16</sup> H. 3498 "Relating to the prohibition against the state or its political subdivisions providing direct aid to religious or other private educational institutions."

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