

STATE OF VERMONT
WASHINGTON COUNTY, ss

SENATORS TANYA VYHOVSKY,	*	VERMONT SUPERIOR COURT,
and RICHARD McCORMACK	*	CIVIL DIVISION, WASHINGTON
Plaintiffs,	*	UNIT, Case No.
v.	*	
	*	
HON. PHIL SCOTT and ZOIE	*	
SAUNDERS,	*	
Defendants	*	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

- 1) The defendant Vermont Governor Phil Scott purposefully circumvented the constitutional and statutory requirement to obtain the advice and consent of the Vermont Senate for the appointment of the defendant Zoie Saunders to the position of the Vermont Secretary of Education.
2. The appointment of the Secretary of Education is governed by Chapter II, section 20 of the Vermont Constitution.
3. In pertinent part it provides that “The Governor...shall have power to commission all officers, and also to appoint officers, except where provision is, or shall be, otherwise made by law or the Frame of Government; and shall supply every vacancy in any office, occasioned by death or otherwise, until the office can be filled in the manner directed by law or this Constitution.”
4. To be “otherwise made by law,” the appointment of executive officers such as the Secretary of Education is governed statutorily by the provisions of 3 V.S.A. §§256 and 257.
5. Specifically, 3 V.S.A. §256(b) provides that “all secretaries of State agencies...shall take office only with the advice and consent of the Senate except in the

case of an appointment to fill a vacancy when the General Assembly is not in session in which case the appointee may take office subject to the provisions of section 257 of this title.”

6. Zoie Saunders was appointed Secretary of Education by Governor Scott in March of 2024 when the General Assembly was in session.

7. She took office on or about April 15, 2024, subject to the advice and consent of the Senate as provided by 3 V.S.A. §257(b).

8. That section provides that “if the appointment to fill the vacancy is made during any session of the General Assembly, the person appointed may validly function in that office until the Senate shall act upon the appointment submitted forthwith by the Governor. Thereafter the appointee shall continue in office if the Senate consents to the appointment.”

9. On April 30, 2024 by a vote of 9 in favor, 19 against, the Vermont Senate declined to give its consent to her appointment.

10. Plaintiffs are Senators who voted in the majority against giving consent to her appointment.

11. Immediately upon the Senate’s vote denying Ms. Saunders’ confirmation, the Governor announced that he had named Ms. Saunders as “interim Secretary,” and that he was installing her indefinitely to the \$168 thousand per year position.

12. A spokesperson for the Governor Jason Maulucci stated that she can serve as “interim Secretary” through February, 2025 and is not subject to Senate confirmation.

13. According to press accounts he stated “Governors make interim appointments all the time to fill vacancies pending permanent appointments. After the Senate vote this

morning, a vacancy in the office was created.”

14. The biennium of the General Assembly remained in session until June 17, 2024.

15. Governor Scott did not “forthwith” resubmit Ms. Saunders’ name to the Senate for confirmation as required by 3 V.S.A. §257(b), or at any time during the balance of the biennium April 30 through June 17, 2024.

**COUNT I –
REQUEST FOR DECLARATORY AND INJUNCTIVE RELIEF**

16. The Senators request a declaratory judgment that

- there is no provision under either 3 V.S.A. §§256 or 257 for “interim” appointments of secretaries of State agencies, including the Secretary of Education, which bypasses the Senate’s authority and responsibility to grant or withhold its consent to such appointment;
- because the Senate withheld its consent to Ms. Saunders’ appointment as Secretary of Education, and the Governor failed to resubmit her name to the Senate for confirmation on or before June 17, 2024, the Senate’s April 30th rejection was its final act for the balance of the biennium and remains its final act until the General Assembly next reconvenes in January of 2025 and a new Senate is seated; and/or
- the Governor consequently cannot under 3 V.S.A. §257(b) bypass the Senate’s April 30th decision and authority to withhold its consent to her appointment by making a subsequent appointment of her to that position by means of a so-called “recess appointment” after the General Assembly has adjourned.

17. Relatedly, the Senators ask for a declaratory judgment that since April 30, 2024 the office of Secretary of Education has remained unfilled, that Ms. Saunders has not “validly functioned” in it, that her actions in it since April 30, 2024 are *ultra vires* and void, and to enjoin her from exercise the duties, authority, and from enjoying the emoluments, of that office.

Dated at Burlington, Vermont this 19th day of June, 2024.

/s/ John L. Franco, Jr.

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