

IN THE CHANCERY COURT FOR DAVIDSON COUNTY
TWENTIETH JUDICIAL DISTRICT
THE STATE OF TENNESSEE

THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON
COUNTY, et al.,

Plaintiffs,

vs.

TENNESSEE DEPARTMENT OF
EDUCATION, et al.,

Defendants,

– and –

NATU BAH, et al.,

Intervenor-Defendants.

Case No. 20-0143-II

Chancellor Anne C. Martin, Chief Judge
Judge Tammy M. Harrington
Judge Valerie L. Smith

CONSOLIDATED

ROXANNE McEWEN, DAVID P.
BICHELL, TERRY JO BICHELL, LISA
MINGRONE, CLAUDIA RUSSELL,
INEZ WILLIAMS, HEATHER KENNY,
ELISE McINTOSH, and APRYLE
YOUNG,

Plaintiffs,

vs.

BILL LEE, in his official capacity as
Governor of the State of Tennessee;
LILLIAN HARTGROVE, in her official
capacity as Chair of the Tennessee State
Board of Education; ROBERT EBY, in his
official capacity as Vice Chair of the
Tennessee State Board of Education; NICK
DARNELL, in his official capacity as
Member of the Tennessee State Board of
Education; JORDAN MOLLENHOUR, in
his official capacity as Member of the
Tennessee State Board of Education;
WARREN WELLS, in his official capacity
as Member of the Tennessee State Board of
Education; RYAN HOLT, in his official

Case No. 20-0242-II

Chancellor Anne C. Martin, Chief Judge
Judge Tammy M. Harrington
Judge Valerie L. Smith

capacity as Member of the Tennessee State Board of Education; NATE MORROW, in his official capacity as Member of the Tennessee State Board of Education; LARRY JENSEN, in his official capacity as Member of the Tennessee State Board of Education; DARRELL COBBINS, in his official capacity as Member of the Tennessee State Board of Education; DR. EMILY HOUSE, in her official capacity as Member of the Tennessee State Board of Education; Tennessee Department of Education; and PENNY SCHWINN, in her official capacity as Education Commissioner for the Tennessee Department of Education,

Defendants,

– and –

NATU BAH, et al.,

Intervenor-Defendants.

MCEWEN PLAINTIFFS' AMENDED COMPLAINT (CASE NO. 20-0242-II)

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I. NATURE OF THE ACTION

1. This complaint contends that the Tennessee Education Savings Account Pilot Program (“Voucher Law”), T.C.A. §49-6-2601, *et seq.*, violates the Tennessee Constitution and state law by diverting taxpayer funds appropriated for public schools in Shelby and Davidson Counties to private schools.

2. The Voucher Law applies only to Shelby and Davidson Counties and cannot apply to any other county without legislative amendment.

3. The Voucher Law diverts critically needed public education funding from public schools in Shelby and Davidson Counties. For the 2022-2023 school year, these funds will be diverted from the Basic Education Program (“BEP”), the State’s currently operative school funding statute. Thereafter, the voucher funds will be diverted from the State’s newly enacted school funding statute, the Tennessee Invest in Student Achievement Act (“TISA”), which will replace the BEP beginning in 2023-2024. This diversion of public education funding to private education violates the Education and Equal Protection Clauses of the Tennessee Constitution, which guarantee all public school students an adequate and substantially equal educational opportunity.

4. Additionally, the Voucher Law diverts taxpayer dollars to private schools in violation of the Education Clause’s mandate that the State provide K-12 education through a single system of public schools. The private schools and private education providers funded by the Voucher Law are outside this system, and are not required to adhere to the same academic, accountability, governance, and non-discrimination requirements as Tennessee’s public schools. Diverting limited public education funding to private schools, which do not

provide students the same standards of education and civil rights protections as public schools, violates Tennessee's Constitution.

5. Diverting public education funding from public schools to private schools also violates the BEP, which is the State's school funding statute. The BEP is the mechanism used to allocate taxpayer dollars appropriated by the General Assembly to maintain and support public schools across the State, including those in Shelby and Davidson Counties. In 2022-2023, the Voucher Law will divert BEP funds to private schools and other private education expenditures. Thereafter, the Voucher Law will divert TISA funds intended for public schools in Shelby and Davidson Counties to private schools and other private expenditures.

6. The new voucher funding scheme announced by the Tennessee Department of Education ("TDOE") for the 2022-2023 school year – consisting of a system of direct reimbursement of private schools by TDOE – constitutes the promulgation of new rules without any rulemaking procedure, in violation of the Uniform Administrative Procedures Act ("UAPA"). As a rule, the funding scheme is subject to the UAPA's notice and hearing requirements; because no notice or hearing occurred, the new funding scheme is void and of no effect. Moreover, the new funding scheme – which does not include the creation of individual education savings accounts as required by the Voucher Law and its existing State Board of Education rules – violates the Voucher Law itself. The TDOE's plan instituting this new funding scheme without statutory authority, and in direct contravention of existing statutory mandates, constitutes impermissible agency action.

7. The Voucher Law was passed during the 2019 legislative session, but it did not receive an appropriation for its estimated first-year funding during the 2019 legislative session. This directly violates the “Appropriation of Public Moneys” provision of the Tennessee Constitution and related state law. Moreover, TDOE’s current funding scheme – directly reimbursing private schools – is an expenditure of public money without appropriation by law in violation of the Appropriation of Public Moneys provision of the Tennessee Constitution and state law.

II. JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over this action pursuant to T.C.A. §16-11-101, *et seq.*, as well as T.C.A. §§1-3-121, 29-1-101 and 29-14-101, *et seq.*, and Tenn. R. Civ. P. 65.

9. This Court has personal jurisdiction over Defendants pursuant to T.C.A. §§20-2-222 and 20-2-223 on the grounds that their principal place of business is in Tennessee and that the wrongful conduct and resulting injuries alleged herein substantially occurred in Tennessee.

10. Venue is proper in this judicial district pursuant to T.C.A. §20-4-101(a) because the cause of action arose in Davidson County. Additionally, under T.C.A. §4-4-104(a), the Commissioner of Education’s official residence is located in Davidson County.

III. PARTIES

11. Plaintiff Roxanne McEwen is a resident of Davidson County, Tennessee. She is a parent with one minor child in Metro Nashville Public Schools. Ms. McEwen’s child is

eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. McEwen pays state and local taxes in Davidson County, including car registration and renewal taxes.

12. Plaintiffs David P. Bichell and Terry Jo Bichell are residents of Davidson County, Tennessee. The Bichells own property in Nashville and pay state and local taxes, including property taxes.

13. Plaintiff Lisa Mingrone owns property in Nashville and pays state and local taxes in Davidson County, including property taxes.

14. Plaintiff Claudia Russell is a resident of Davidson County, Tennessee. She is a retired public school administrator at Metro Nashville Public Schools, and she periodically returns to the district in a temporary position to fill in for administrators who are on leave. Dr. Russell has spent her entire career working in Metro Nashville Public Schools. She began her career as a teacher and then she became an assistant principal, then a principal. She has worked in various schools in the district. Dr. Russell owns property in Nashville and pays state and local taxes in Davidson County, including property taxes.

15. Plaintiff Inez Williams is a resident of Davidson County, Tennessee. She has legal guardianship over one minor child who attends school in Metro Nashville Public Schools. The minor child is eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. Williams pays state and local taxes in Davidson County, including car registration and renewal taxes.

16. Plaintiff Heather Kenny is a resident of Shelby County, Tennessee. She is a parent with two minor children currently enrolled in Shelby County Schools. Ms. Kenny

owns property in Memphis and pays state and local taxes in Shelby County, including property taxes.

17. Plaintiff Elise McIntosh is a resident of Shelby County, Tennessee. She is a parent with a minor child currently enrolled in Shelby County Schools. Her child is classified as a student with disabilities who receives special education or other services or accommodations in school. Her child also identifies as LGBTQ. Ms. McIntosh's child is eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. McIntosh pays state and local taxes in Shelby County, including car registration and renewal taxes.

18. Plaintiff Apryle Young is a resident of Shelby County, Tennessee. She is a parent with three children currently enrolled in Shelby County Schools. Ms. Young's children are eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. Young pays state and local taxes in Shelby County, including car registration and renewal taxes.

19. Defendant Bill Lee is the Governor of the State of Tennessee and has a legal obligation to enforce the Constitution and laws of this State. Governor Lee is vested under Article III, §§1 and 10, of the Tennessee Constitution with "Supreme Executive power" and the duty to ensure that "the laws be faithfully executed." As the chief executive officer for the State of Tennessee, Governor Lee has responsibility for ensuring that school districts have adequate resources to provide all children with a public education that meets the requirements of the Tennessee Constitution and state laws and regulations. Governor Lee has an office located at State Capitol, First Floor, 600 Charlotte Avenue, Nashville,

Tennessee 37243. Service on Governor Lee may be perfected by delivering a copy of the summons and complaint to the Attorney General or at his State office.

20. Defendants Lillian Hartgrove, Robert Eby, Nick Darnell, Jordan Mollenhour, Warren Wells, Ryan Holt, Nate Morrow, Larry Jensen, Darrell Cobbins, and Dr. Emily House are members of the State Board of Education (“State Board”) and are statutorily charged with overseeing Tennessee’s system of public schools, including academic standards and policies, organization and structure of public schools, licensure of teachers, and distribution of public funds among public schools. T.C.A. §49-1-302. The Voucher Law authorizes the State Board of Education to promulgate rules to effectuate the purposes of the Law. T.C.A. §49-6-2610. In November 2019, the State Board approved rules to effectuate the Voucher Law. Tenn. Comp. R. & Regs. §0520-01-16. These Defendants are being sued in their official capacities. The Tennessee Board of Education’s office is located at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243. Service on these Defendants may be perfected by delivering a copy of the summons and complaint to the Attorney General or at their State offices.

21. Defendant Tennessee Department of Education is the State Education Agency in Tennessee and, together with the State Board and the State Education Commissioner, is responsible for overseeing the State system of public schools. T.C.A. §49-1-201, *et seq.* Under the Voucher Law, the TDOE is responsible for the administration and implementation of the voucher program. T.C.A. §49-6-2604. The TDOE is located at 710 James Robertson Parkway, Nashville, Tennessee 37243. Service on the Department may be perfected by delivering a copy of the summons and complaint to the Attorney General.

22. Defendant Penny Schwinn is the State Education Commissioner. In her official capacity, she is responsible for the implementation of law and policies established by the General Assembly and the State Board. T.C.A. §49-1-201(a). Commissioner Schwinn oversees the State system of public schools, administers the TDOE, and is responsible for implementing and administering the Voucher Law. *Id.*; T.C.A. §49-6-2604. Defendant Schwinn is being sued in her official capacity and has an office at 710 James Robertson Parkway, Nashville, Tennessee 37243. Service on Commissioner Schwinn may be perfected by delivering a copy of the summons and complaint to the Attorney General or at her State office.

IV. RELEVANT LAW

A. Tennessee Constitution's Education and Equal Protection Guarantees

23. The Tennessee Constitution guarantees all children residing in the State the opportunity to obtain an education in Tennessee's "system of free public schools."

24. Article XI, §12, of the Tennessee Constitution, the Education Clause, provides in relevant part:

The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines.

25. The Tennessee Constitution also guarantees equal protection under the law.

Article I, §8, states:

That no man shall be taken or imprisoned, or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or in any manner destroyed or

deprived of his life, liberty or property, but by the judgment of his peers or the law of the land.

Article XI, §8, of the Tennessee Constitution provides in relevant part:

The Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land; nor to pass any law granting to any individual or individuals, rights, privileges, immunitie[s], or exemptions other than such as may be, by the same law extended to any member of the community, who may be able to bring himself within the provisions of such law.

26. Pursuant to the guarantees of the Education and Equal Protection Clauses of the Tennessee Constitution, the Tennessee Supreme Court has recognized the State’s “obligation to maintain and support a system of free public schools that affords substantially equal educational opportunities to all students” throughout the State. *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 140-41 (Tenn. 1993) (“*Small Sch. Sys. P*”).

27. The Tennessee Supreme Court has further recognized that the Tennessee Constitution imposes on the State the affirmative obligation to provide an adequate education to all children in Tennessee’s public school system. *Id.* at 150-51.

28. The Tennessee Constitution thus requires the State to provide a system of public schools that affords all children in districts across Tennessee a substantially equal opportunity for an adequate education.

29. The Tennessee Constitution mandates the State fulfill this duty through maintaining and supporting “a system of free public schools.” The Constitution does not provide for the State to maintain and support any schools other than the system of public schools.

30. The Tennessee Supreme Court has also found that the BEP was designed and enacted by the General Assembly to address “both constitutional mandates imposed upon the State – the obligation to maintain and support a system of free public schools and the obligation that that system afford substantially equal educational opportunities.” *Tenn. Small Sch. Sys. v. McWherter*, 894 S.W.2d 734, 738 (Tenn. 1995) (“*Small Sch. Sys. I*”).

B. BEP Statute and TISA Statute

31. By statute, the General Assembly has established a “state school fund” that serves as the repository of “all funds appropriated or allocated from the state treasury for the operation and maintenance of the public schools or that may derive from any state taxes, the proceeds of which are devoted to public school purposes.” T.C.A. §49-3-101(a).

32. The General Assembly has also enacted the BEP, a statutory formula that determines the amount and distribution of funding to maintain and support the State’s system of free public schools. T.C.A. §§49-3-302, 49-3-351, *et seq.* The BEP is the procedure the General Assembly enacted to provide the necessary funding for public schools. T.C.A. §§49-3-302, 49-3-303, and 49-3-351, *et seq.* The BEP funds are designated only for Local Education Agencies (“LEAs”), namely, local public school districts that comprise the statewide system of public schools. T.C.A. §49-3-351, *et seq.*

33. Under Tennessee law, the terms “LEA,” “local school district,” and “school district” are interchangeable and mean “any county school system, city school system, special school district, unified school system, metropolitan school system or any other local public school system or school district created or authorized by the general assembly.” T.C.A. §49-1-103(2).

34. The BEP calculates the cost of four categories of essential education components: instructional salaries and wages, instructional benefits, classroom, and nonclassroom. T.C.A. §49-3-307(a)(2)(A). The BEP statute explicitly directs that “[a]ll funds generated for the BEP shall be spent on BEP components.” T.C.A. §49-3-351(c).

35. The BEP statute further provides that the State shall pay:

seventy percent (70%) of the funds generated for components within the instructional salaries and wages category; seventy percent (70%) of the funds generated for components within the instructional benefits category; seventy-five percent (75%) of the funds generated for components within the classroom category; and fifty percent (50%) of the funds generated for components within the nonclassroom category.

T.C.A. §49-3-307(a)(2)(B).

36. The BEP provides for the determination of state and local shares of funding for these components based on an equalization formula that takes into consideration an LEA’s fiscal capacity. T.C.A. §49-3-356.

37. Upon information and belief, in spring of each year, the State calculates the state and local shares of Davidson County’s BEP allocation to maintain and support Metro Nashville Public Schools. Further upon information and belief, the State pays its share of the BEP to Davidson County in October and February of each year. Upon information and belief, Davidson County collects local property taxes from October through February every year, and the County pays the largest portion of its local taxes to maintain and support Metro Nashville Public Schools. Upon information and belief, Davidson County pays the local share of its BEP allocation to maintain and support Metro Nashville Public Schools in March of each year.

38. Upon information and belief, in spring of each year, the State calculates the state and local shares of Shelby County’s BEP allocation. Further upon information and belief, pursuant to the BEP, the State calculates Shelby County’s local BEP share based on the fiscal capacity of the entire county, not the fiscal capacity of each individual LEA located therein. Upon information and belief, the State’s share of the BEP is paid to Shelby County in October and February of each year, and Shelby County then allocates the State’s share to each LEA located within the county, including Shelby County Schools. Upon information and belief, Shelby County collects local property taxes from October through February every year, and Shelby County Schools taxpayers pay a significant portion of their local taxes to maintain and support Shelby County Schools. Upon information and belief, Shelby County allocates the local share of Shelby County Schools’ BEP allocation to Shelby County Schools in March of each year.

39. As the Tennessee Supreme Court observed, the BEP contains essential governance and accountability provisions for LEAs, including:

mandatory performance standards; local management within established principles; performance audits that objectively measure results; public disclosure by each local system of objectives, strategies, and results; removal from office of local officials unwilling or unable to effectively manage a local system; and final responsibility upon the State officials for an effective educational system throughout the State.

Small Sch. Sys. II, 894 S.W.2d at 739. The Supreme Court emphasized that each of these governance and accountability provisions is integral to the BEP. *Id.*

40. In order to receive BEP funds, LEAs must “meet the requirements of state law as to the operation of the system and of the rules, regulations, and minimum standards of the state board for the operation of schools.” T.C.A. §49-3-353.

41. In 2022, the State enacted a new formula for funding its public schools, the TISA, to replace the BEP. Tennessee Investment in Student Achievement Act, 2022 Tenn. Pub. Acts Ch. 966 (H.B. 2143), to be codified at T.C.A. §49-3-101, *et seq.*

42. TISA provides a base amount of per-pupil funding, then adjusts the base amount by adding weights corresponding to several factors, including economically disadvantaged students, students living in areas of concentrated poverty, students attending charter schools, students living in sparsely populated areas, and students with unique needs. T.C.A. §49-3-105.

43. As with the BEP, the total amount calculated under TISA that a school district must spend consists of a state share, allocated to the district from state funds, and a local share, which the county/district must pay from local revenue sources. T.C.A. §49-3-109.

C. The Uniform Administrative Procedures Act

44. Under the Uniform Administrative Procedures Act (“UAPA”), a rule is defined as:

[A]ny agency regulation, standard, statement, or document of general applicability that is not a policy as defined in subdivision (10) that:

(A) Describes the procedure or practice requirements of an agency; or

(B) Implements, prescribes, or interprets an enactment of the general assembly or congress or a regulation adopted by a federal agency.

T.C.A. §4-5-102(12). Where a “regulation ‘impact[s] the private rights and privileges of the public, and d[oes] not relate to the internal management of state government,’” it is a rule subject to the UAPA. *Occupy Nashville v. Haslam*, 949 F. Supp. 2d 777, 794 (M.D. Tenn. 2013), *rev’d on other grounds*, 769 F.3d 434 (6th Cir. 2014); *see also Cosby v. State Dep’t of Hum. Servs.*, 2005 WL 2217072, at *3 (Tenn. Ct. App. Sept. 12, 2005) (finding Department

of Human Services' internal policy that denied food stamp benefits to mother was a rule under the UAPA). An agency must precede all its rulemaking with notice and a public hearing unless the rule is adopted as an emergency rule or a proposed rule. *See* T.C.A. §4-5-202.

45. “Any agency rule not adopted in compliance with this chapter shall be void and of no effect and shall not be effective against any person or party nor shall it be invoked by the agency for any purpose.” T.C.A. §4-5-216.

D. Tennessee Constitution's Appropriation of Public Moneys Provision

46. The “Appropriation of Public Moneys” provision of the Tennessee Constitution requires the General Assembly to appropriate the estimated first year's funding for every law passed during a legislative session.

47. Article II, §24, of the Tennessee Constitution provides in relevant part that:

Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding.

48. Article II, §24, of the Tennessee Constitution also provides: “No public money shall be expended except pursuant to appropriations made by law.”

49. Additionally, under Tennessee law, “[n]o money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law.” T.C.A. §9-4-601(a)(1).

V. FACTUAL ALLEGATIONS

A. Enactment of the Voucher Law

50. During the 2019 session, the Tennessee Legislature enacted the Voucher Law, T.C.A. §49-6-2601, *et seq.* On May 24, 2019, Governor Lee signed the bill into law.

51. As discussed below, the Voucher Law establishes a voucher program exclusively in Davidson and Shelby Counties.

52. The Voucher Law diverts taxpayer funds that were appropriated to maintain and support public schools in Shelby County Schools and Metro Nashville Public Schools to private schools and other private education expenses. Under the Voucher Law, BEP funds (in 2022-2023) and TISA funds (in 2023-2024 and thereafter) otherwise payable to Shelby County Schools and Metro Nashville Public Schools are to be deposited into an “Education Savings Account” (“ESA”) for each participating voucher student.

53. The General Assembly did not make an appropriation for the estimated first year’s funding of the Voucher Law during the session in which it was enacted.

54. Despite the absence of an appropriation for the estimated funding of the Voucher Law in fiscal year 2019, Defendant TDOE entered into a \$2.5 million contract in November 2019 with ClassWallet, a private, for-profit company based in Florida. Under this contract, ClassWallet was to oversee online application and payment systems for the voucher program. ClassWallet began work under this contract in November 2019.

55. Defendant TDOE paid ClassWallet approximately \$1.2 million in 2019 for performance under this contract, despite the fact that no money was appropriated for the first year of the Voucher Law. According to testimony by the TDOE’s deputy commissioner

before the General Assembly’s Joint Government Operations Committee on January 27, 2020, the TDOE diverted funds appropriated by the General Assembly for the unrelated “Career Ladder” program for public school teachers to pay ClassWallet for services performed to implement the Voucher Law.

B. The Voucher Law Targets Shelby and Davidson Counties

56. The Voucher Law applies to public schools and students in only two Tennessee counties: Shelby and Davidson.

57. The eligibility criteria for participation in the ESA voucher program requires that a student:

(i) Is zoned to attend a school in an LEA, excluding the achievement school district (ASD), with ten (10) or more schools:

- (a) Identified as priority schools in 2015, as defined by the state’s accountability system pursuant to §49-1-602;
 - (b) Among the bottom ten percent (10%) of schools, as identified by the department in 2017 in accordance with §49-1-602(b)(3); and
 - (c) Identified as priority schools in 2018, as defined by the state’s accountability system pursuant to §49-1-602; or
- (ii) Is zoned to attend a school that is in the ASD on May 24, 2019.

T.C.A. §49-6-2602(3)(C).

58. In the entire State of Tennessee, the only LEAs that meet the specific criteria in subsection (i) above are Shelby County Schools and Metro Nashville Public Schools.

59. As of the date specified in subsection (ii) – May 24, 2019 – all of the public schools in the ASD were located in Shelby and Davidson Counties.

60. Because the Voucher Law links its eligibility criteria to facts that existed between 2015 and 2019, it is impossible, without a legislative amendment passed by the General Assembly, for any public school that is not located in Shelby or Davidson Counties to be subject to the Voucher Law.

61. The history of the Voucher Law makes clear that the General Assembly intended the Law to apply only to Shelby and Davidson Counties. When the bill was first introduced, it applied to five counties – Shelby, Davidson, Hamilton, Madison, and Knox – but three were removed to secure the votes needed for passage by the General Assembly.

62. There are numerous references in the legislative record demonstrating the General Assembly’s intent to limit the Voucher Law to Shelby County Schools and Metro Nashville Public Schools. For example, on April 25, 2019, Senator Joey Hensley explicitly stated during debate on the Senate Floor that the Voucher Law would cover only Davidson and Shelby County schools.

63. When the votes on the Voucher Law were cast and there was a 49-49 tie, then-Speaker Glen Casada held the vote open for over 38 minutes. During that time, he engaged in a lengthy discussion with Knoxville Representative Jason Zachary, who opposed the bill, on a balcony behind the House building. After that discussion, Knox County was no longer subject to the Voucher Law, Representative Zachary switched his vote, and the bill passed.

64. On November 15, 2019, the State Board adopted administrative rules to implement the Voucher Law. Those rules were approved by the Joint Government Operations Committee on January 27, 2020. The rules confirm that a student is eligible for a voucher only if the student “[i]s zoned to attend a school in Shelby County Schools,

Metropolitan Nashville Public Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019.” Tenn. Comp. R. & Regs. §§0520-01-16.02(11)(b).

65. Because the Voucher Law requires that the funds deposited into ESAs “be subtracted from the State BEP funds otherwise payable to the LEA,” T.C.A. §49-6-2605(b)(1), the only public schools that will lose BEP funds – and later TISA funds – under the Voucher Law are those in Shelby and Davidson Counties.

66. The Voucher Law further guarantees that only public schools located in Shelby and Davidson Counties will have BEP/TISA funds diverted to ESAs by providing that, “notwithstanding” the Law’s standard severability clause, “if any provision of [the Law] is held invalid, then the invalidity shall not expand the application of [the Law] to eligible students other than those identified in §49-6-2602(3).” T.C.A. §49-6-2611(c).

67. During the floor debate on the voucher bill, representatives from Shelby and Davidson Counties made it very clear that neither they, nor their constituents, supported the Law. For example, during the House debate on April 23, 2019, Davidson County Representative Jason Powell stated that he and his colleagues from Davidson County wanted “to opt out of this piece of legislation” and that “not one of us is for this piece of legislation, yet this legislation is being directly focused on Davidson County as well as another county.” Representative Antonio Parkinson stated, “for the record, we do not like this bill for Shelby County Schools.”

C. The Voucher Law Diverts Public Education Funds to Private Schools

68. The Voucher Law mandates that, for every pupil eligible for the voucher program, an amount representing both the State and local shares of an LEA's per-pupil BEP allocation – up to the combined statewide average of State and local per-pupil BEP allocations – must be subtracted “from the State BEP funds otherwise payable to” Shelby County Schools and Metro Nashville Public Schools. T.C.A. §49-6-2605(a)-(b)(1).

69. For every student who attends Shelby County Schools and Metro Nashville Public Schools, the State provides just the state share of the BEP. The local share comes from the county – from local revenue sources. When a student leaves the district without using a voucher, *e.g.*, if that student moves out of district or attends a private school without a voucher, the district only loses the state share. When a student leaves Shelby County Schools or Metro Nashville Public Schools to use a voucher, the districts lose – out of their state allocation – an amount representing the state and local shares.

70. TDOE estimates that for the current school year, the voucher amount will be \$8,192 per pupil. TDOE, Education Savings Account Program, *How the ESA Program Works 2022*, available at <https://esa.tnedu.gov/> (“Each ESA is funded at approximately \$8,192 to pay for private school tuition or other approved educational expenses.”). So for each voucher student, Shelby County Schools or Metro Nashville Public Schools will lose this amount in state funding.

71. For example, for the 2022-23 school year, Metro Nashville Public Schools' total state share of the BEP is \$297,722,000. The relevant student count to determine the per-pupil state share is 78,521. So, the per-pupil state contribution is \$3,791.62. The total

local share of the BEP is \$421,825,000, or \$5,372.13 per-pupil. Thus, when a student leaves Metro Nashville Public Schools for a reason other than taking a voucher, Metro Nashville Public Schools would lose \$3,791.62 in state funds. When a student leaves to use a private school voucher, the County/District will lose more than twice that amount of state funding, or \$8,192.

72. For the 2022-2023 school year, Shelby County Schools' total state share of the BEP is \$651,789,000. The relevant student count to determine the per-pupil state share is 109,835. So, the per-pupil state contribution is \$5,934.26. The total local share of the BEP is \$283,036,000, or \$2,576.92 per pupil. Thus, when a student leaves Shelby County Schools for a reason other than taking a voucher, Shelby County Schools would lose \$5,934.26 in state funds. When a student leaves to use a private school vouchers, the County/District will lose significantly more than that amount of state funding, or \$8,192.

73. In enacting TISA in 2022, the Legislature amended the Voucher Law to replace any reference to the BEP with TISA. 2022 Tenn. Laws Pub. Ch. 966 (H.B. 2143), §§53-56. This includes amending the voucher funding calculation and funding source to replace BEP with TISA. *Id.*, §§54-55.

74. The TISA amount for each district represents both a state share, coming from state funds, and a local share, from local revenue sources. T.C.A. §49-3-109. Starting in the 2023-2024 school year, the voucher amount subtracted from each targeted LEA will be the state **and** local shares – up to the combined statewide average – of the State and local per-pupil TISA allocation.

75. Thus, under TISA, the voucher funding mechanism will operate the same way it does under the BEP. Pursuant to the Voucher Law, the districts will still lose an amount representing both the state and local shares of public education funding for each student who leaves the district to use a voucher.

76. The Voucher Law, under both the BEP and TISA, requires LEAs to continue to count students who leave the district to use a voucher as enrolled in the district. T.C.A. §49-6-2605(b)(1). Thus, the LEAs must raise local funds from taxpayers as if those students were still in the district. Requiring that the districts count students as enrolled increases the amount of local money the districts must raise from local tax dollars in order to satisfy state “maintenance of effort” requirements.

77. The Voucher Law allows up to 5,000 vouchers during the first school year that the program is implemented. T.C.A. §49-6-2604(c). In each subsequent school year, the law allows an increase of 2,500 vouchers. *Id.* In the fifth year and thereafter, the law allows up to 15,000 vouchers. *Id.*

78. In year one, tens of millions in BEP funds will be diverted from Shelby County Schools and Metro Nashville Public Schools if 5,000 students use a voucher. By year five, ***hundreds of millions*** in BEP/TISA funds could be diverted from Shelby County Schools and Metro Nashville Public Schools.

79. The General Assembly’s persistent failure to provide adequate funding to maintain and support Shelby County Schools and Metro Nashville Public Schools is well documented. For example, a 2021 report found three major deficiencies in the State’s funding of its public school system: a funding level approximately \$4,000 per pupil below

the national average and 44th in the nation; a lack of additional funds for LEAs such as Shelby County Schools and Metro Nashville Public Schools that enroll high proportions of students in poverty; and a very low level of investment of tax dollars in the public school system statewide. Danielle Farrie & David G. Sciarra, *Making the Grade: How Fair Is School Funding in Your State?*, Education Law Center (2021), available at https://edlawcenter.org/assets/MTG%202021/2021_ELC_MakingTheGrade_Report_Dec2021.pdf.

80. The State’s own reports confirm the inadequacy of BEP funding. For example, a 2020 report by the Tennessee Advisory Commission on Intergovernmental Relations found that the State’s “school systems often need to hire more staff than provided for by the [BEP] formula.” Michael Mount, et al., *K-12 Public Education Funding & Services*, Tenn. Advisory Comm’n on Intergovernmental Relations (Jan. 2020), available at https://www.tn.gov/content/dam/tn/tacir/2020publications/2020_K12Financing.pdf. The BEP Review Committee, which is officially charged by the General Assembly with reviewing the BEP, recently found that the BEP formula fails to provide adequate funding for classroom teachers, school counselors, interventionists, and nurses. *Basic Education Program Review Committee 2021 Annual Report*, Tenn. State Board of Educ. (2021), available at https://www.tn.gov/content/dam/tn/stateboardofeducation/documents/bepcommitteeactivities/2021/2021%20BEP%20Report_FINAL.pdf. To address these resource deficits, the State’s BEP Review Committee recommended that State BEP funds be increased to provide LEAs, including Shelby County Schools and Metro Nashville Public

Schools, with additional support staff, interventions for at-risk students, technology, and increased teacher compensation. *Id.*

81. Upon information and belief, State funding fails to provide Shelby County Schools and Metro Nashville Public School with sufficient resources – including teachers, guidance counselors, nurses, and interventions for high need students – essential to provide an adequate education to all students in the districts. The Voucher Law will exacerbate this condition by draining more State funding from Shelby County Schools and Metro Nashville Public Schools.

82. The hundreds of millions of dollars that will be diverted from Shelby County Schools and Metro Nashville Public Schools under the Voucher Law will drastically exacerbate the current underfunding of Shelby County Schools and Metro Nashville Public Schools. The Voucher Law will require Shelby County Schools and Metro Nashville Public Schools to make further reductions in teachers, support staff, technology, and other resources essential to providing a constitutionally adequate education to their students.

83. The Voucher Law authorizes grants for Shelby County Schools and Metro Nashville Public Schools from a “school improvement fund” for up to three years. T.C.A. §49-6-2605(b)(2). These grants are expressly subject to an appropriation of funds by the General Assembly each year. *Id.*

84. The Voucher Law restricts the use of these grants, if appropriated, to “school improvement” only. Thus, these grants, even if available, cannot be used for general operating funds and consequently will not replace the state and local BEP funds diverted from Shelby County Schools and Metro Nashville Public Schools under the Voucher Law.

85. Even if the General Assembly fully funds these “school improvement grants,” the grants will not compensate Shelby County Schools and Metro Nashville Public Schools for the loss of BEP funds for each student who uses a voucher. The grants equal only the amount of money diverted to ESA voucher accounts for students who “[w]ere enrolled in and attended a school in the LEA for the one (1) full school year immediately preceding the school year in which the student began participating in the program.” T.C.A. §49-6-2605(b)(2)(A)(i). This does not include students who are “eligible for the first time to enroll in a Tennessee school” – for example, those entering kindergarten – who are also eligible for the voucher program. T.C.A. §49-6-2602(3)(A)(ii).

86. In addition to the initial loss of BEP/TISA funds by Shelby County Schools and Metro Nashville Public Schools, the Voucher Law provides that, when an ESA account is closed for any number of reasons, the remaining funds are returned to the State’s BEP/TISA account rather than returned to Shelby County Schools or Metro Nashville Public Schools. T.C.A. §§49-6-2603(e), 49-6-2608(e). Even when a voucher student returns to Shelby County Schools or Metro Nashville Public Schools and the district resumes full responsibility for educating that student, the funds remaining in the student’s ESA account are returned to the State and not to the district. T.C.A. §49-6-2603(e).

87. Furthermore, a student’s departure from Shelby County Schools or Metro Nashville Public Schools to use a voucher does not relieve the districts of all of the costs associated with that student.

88. Shelby County Schools and Metro Nashville Public Schools bear substantial fixed costs in operating their public schools. These fixed costs include facilities repair and

maintenance, teacher and staff pensions, debt service, and long-term contracts. Because participants in the voucher program will exit Shelby County Schools and Metro Nashville Public Schools from different schools, grade levels, and classrooms, the districts will be unable to proportionately reduce these fixed costs. Moreover, because students will leave the districts from different classrooms, grades, and schools, the districts will likewise not be able to proportionately reduce variable costs, such as staff, programs, and services. Thus, the districts will be unable to rely on reduced costs to cover the loss of BEP or TISA funds under the Voucher Law.

89. As set forth below, the Voucher Law permits private schools participating in the voucher program to deny enrollment to students with elevated needs, including students with disabilities, who may be more expensive to educate. As a result, the Voucher Law will likely increase the concentration of more costly-to-educate students in Shelby County Schools and Metro Nashville Public Schools, with less money available for their support and growth.

D. The Voucher Law Requires the TDOE to Establish and Maintain Separate ESAs for Each Participating Student

90. Pursuant to the Voucher Law, “the department [TDOE] *shall establish and maintain separate [education savings accounts] for each participating student.*” T.C.A. §49-6-2607(b) (emphasis added).

91. The TDOE must also “verify that the uses of ESA funds are permitted under [the statute] and institute fraud protection measures.” *Id.*

92. Under the Voucher Law, “[u]se of ESA funds on tuition and fees, computer hardware or other technological devices, tutoring services, educational therapy services,

summer education programs and specialized afterschool education programs, and any other expenses identified by the department must be *preapproved* by the department.” *Id.* (emphasis added).

93. Further, preapproval must be requested by completing and submitting the TDOE’s preapproval form. *Id.*

94. The Voucher Law provides that ESA funds shall only be used for the expenses listed in T.C.A. §44-6-2603(a)(4) of the statute. *Id.*

95. In July 2022, TDOE posted on its website a document titled: “Frequently Asked Questions for Participating Families” for the “2022-23 School Year,” (last accessed Aug. 1, 2022), *available at* https://esa.tnedu.gov/wp-content/uploads/2022/07/ESA-FAQ-for-Participating-Families_22-23_v2-1.pdf. This 14-page document provides information to families who seek to participate in the ESA program. *Id.* at 4.

96. Notably, in this document, TDOE announced a method for administering the Voucher Law that is inconsistent with the statute itself. The announcement states: “For the 2022-23 school year, participating non-public schools will be required to fund the student expenses (tuition, fees, computers, etc.) and then submit an invoice to the department for reimbursement. The department will be competitively procuring an application and wallet platform that will be operational beginning in the 2022-23 school year.” *Id.* at 12.

E. Requirements Differ for Voucher Schools and Public Schools

97. Under the Voucher Law, a student is eligible for the voucher program if the student:

- (a) (i) was previously enrolled in and attended a Tennessee public school for one (1) full school year immediately preceding the school year for

which the student receives an [ESA]; (ii) is eligible for the first time to enroll in a Tennessee school; or (iii) received an [ESA] in the previous school year;

- (b) is a student in any of the grades kindergarten through twelfth (K-12);
- (c) is zoned to attend a school in Shelby County Schools or Metro Nashville Public Schools, or that was in the Achievement School District on the date the law was enacted; and
- (d) is a member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for the free lunch program.

T.C.A. §49-6-2602(3).

98. A student participating in the voucher program may use the BEP/TISA funds deposited into an ESA account for tuition in a private school and also for many other private education expenses: private school fees and textbooks; tutors and/or tutoring facilities; transportation to and from a private school or educational provider; early postsecondary opportunity courses or examinations for college admissions; computer hardware, technological devices, or other technology fees; uniforms; summer education programs and certain afterschool programs; tuition, textbooks and fees at certain postsecondary institutions; educational therapy services; and ESA management fees. T.C.A. §49-6-2603(4).

99. The Voucher Law provides that only students attending a “participating school” can receive ESA voucher funding. Participating schools are defined as those that meet the requirements established by the TDOE and the State Board for Category I, II, or III private schools. T.C.A. §49-6-2602(9).

100. Category I private schools are “those approved individually by the Department of Education,” Category II private schools are those “accredited by an agency whose

accreditation process is approved by the State Board of Education,” and Category III private schools are “those which are regionally accredited.” Tenn. Comp. R. & Regs. §0520-07-02-.01.

101. State Board regulations provide that “[t]he criteria and procedures used in the evaluation of [Category I] schools are the same as for the public schools,” Tenn. Comp. R. & Regs. §0520-07-02-.02, but this is not true for Category II and Category III private schools. Tenn. Comp. R. & Regs. §§0520-07-02-.03, 0520-07-02-.04.

102. The State Board regulations governing approval of accrediting organizations for Category II private schools include criteria for topics such as curriculum and graduation, teacher licensure and evaluation, and testing. Tenn. Comp. R. & Regs. §0520-07-02-.03(6)(c)(9). The regulations for Category III private schools require only regional accreditation, reporting of basic student information to the student’s public school district of residence, and a minimum age for students entering kindergarten. Tenn. Comp. R. & Regs. §0520-07-02-.04. The criteria used by regional accrediting agencies varies.

103. In contrast to public schools, the Voucher Law requires participating private schools to administer state tests in only two subjects, Math and English Language Arts. T.C.A. §49-6-2606(a)(1). Unlike public school students, voucher students need not be given a state test in Social Studies and Science.

104. The Voucher Law does not require all participating private schools to comply with the governance and accountability mandates of state laws, including the BEP statute, that apply to the public schools.

F. The Voucher Law Lacks Anti-Discrimination and Civil Rights Protections

105. The Voucher Law requires participating private schools to certify that they will not discriminate against voucher students or applicants on the basis of race, color, or national origin. T.C.A. §49-6-2607(e)(2).

106. The Voucher Law does not prohibit participating schools from refusing admission based on disability, religion, English language ability, LGBTQ status, or family income level. The Voucher Law explicitly states that accepting ESA voucher money will not require any participating private school to change any part of its “creed, practices, admissions policies, or curriculum in order to accept participating students, other than as is necessary to comply with the requirements of the program.” T.C.A. §49-6-2609(c).

107. Upon information and belief, many Tennessee private schools limit admission and continued enrollment based on religion, sexual orientation, or other student or family characteristics protected from discrimination in public schools. For example, Evangelical Christian School in Memphis, a Category II private school, will only admit students with “one parent professing Christ as Savior.” Evangelical Christian School, “How to Apply,” (last accessed Aug 3, 2022), *available at* <https://www.ecseagles.com/admissions/visit>. Briarcrest Christian School in Shelby County, a Category II, III, and IV private school: (i) immediately expels any student who is pregnant; (ii) expels students for engaging in “inappropriate sexual behavior (including but not limited to premarital sexual relations, homosexuality, bisexuality or transgender related actions)”; and (iii) may “decline to tour, process an application, extend an offer to enroll or continue the enrollment of any . . . student” if such student or their parent “is or appears to be failing to conform their actions or

statements to biblical principles.” Briarcrest Christian School, “Biblical Principles,” (last accessed Aug 3, 2022), *available at* <https://www.briarcrest.com/admissions/student-and-family-policies/biblical-principles>; Briarcrest Christian School, “Code of Conduct,” (last accessed Aug. 3, 2022), *available at* <https://www.briarcrest.com/admissions/student-and-family-policies/code-of-conduct>. Providence Christian Academy, a Category III private school in Murfreesboro, reserves the right to refuse admission or discontinue enrollment of students from homes that are “living in, condoning or supporting sexual immorality; practicing homosexual lifestyle or alternative gender identity; promoting such practices; or otherwise having the inability to support the moral principles of the school.” Providence Christian Academy, “Parent Student Handbook 2022-2023,” (last accessed Aug. 3, 2022), *available at* <https://www.providencechristian.com/wp-content/uploads/2022/07/Parent-Student-Handbook-2022-2023.pdf>.

108. The Voucher Law expressly permits participating private schools to deny special education programs and services to students with disabilities by providing that voucher program participation “has the same effect as a parental refusal to consent to the receipt of services under the Individuals with Disabilities Education Act.” T.C.A. §49-6-2603(3).

109. The Voucher Law will divert BEP/TISA funds appropriated by the General Assembly away from Shelby County Schools and Metro Nashville Public Schools to pay tuition, fees, and other expenses for private schools that are not required to serve all students. The Voucher Law allows participating private schools to use public taxpayer dollars to refuse admission to and discriminate against students based on disability status, religious

beliefs, language proficiency, lack of financial means, citizenship status, gender identity, sexual orientation, or other factors. Public schools are prohibited by law from refusing admission to or discriminating against students or families based on any of these characteristics or factors.

110. The Voucher Law does not require participating private schools to afford students the protections against bullying, intimidation, and harassment that public schools must provide under state law. T.C.A. §49-6-4501, *et seq.*

111. The Voucher Law expressly gives participating private schools “maximum freedom to provide for the educational needs of participating students without governmental control.” T.C.A. §49-6-2609(c). Passage of the Voucher Law does not give the TDOE authority to “impose any additional regulation of participating schools or providers.” T.C.A. §49-6-2609(b). The Voucher Law explicitly states that “[a] participating school or provider is autonomous and not an agent of this state.” T.C.A. §49-6-2609(a).

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the Education and Equal Protection Clauses of the Tennessee Constitution)

112. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

113. Under the Tennessee Constitution, the State of Tennessee, through the General Assembly, must maintain and support a system of public schools that provides adequate and substantially equal educational opportunities to all children residing in the State. TENN. CONST., art. I, §8; art. XI, §§8, 12; *Small Sch. Sys. I*, 851 S.W.2d at 139; *Small Sch. Sys. II*,

894 S.W.2d at 734; *Tenn. Small Sch. Sys. v. McWherter* (“*Small Sch. Sys. IIP*”), 91 S.W.3d 232 (Tenn. 2002).

114. In the *Small School Systems* rulings, the Tennessee Supreme Court invalidated the State’s previous school funding system because it deprived public school students in certain LEAs of substantially equal educational opportunities. *Small School Systems I*, 851 S.W.2d at 156. The Supreme Court also declared that the General Assembly’s enactment of the BEP statute and funding formula was intended to cure those constitutional deficiencies. *Small Sch. Sys. II*, 894 S.W.2d at 736.

115. The Voucher Law will deprive students in Shelby County Schools and Metro Nashville Public Schools of substantially equal educational opportunities by diverting the BEP/TISA funds appropriated by the General Assembly to maintain and support their schools to pay for private school tuition and other private educational expenses.

116. Currently through the BEP statute, and after 2022-2023 through the TISA statute, the General Assembly provides funding to maintain and support an adequate education for students in the State’s system of public schools. Because the Voucher Law diverts substantial BEP/TISA funds intended to maintain and support Shelby County Schools and Metro Nashville Public Schools away from those districts, the Law deprives students in Shelby County Schools and Metro Nashville Public Schools of the BEP/TISA funds deemed legally necessary to provide them with an adequate and equal education.

117. The current funding provided by the General Assembly through the BEP statute is demonstrably inadequate to enable Shelby County Schools and Metro Nashville Public Schools to provide the teachers, support staff, and other resources necessary to afford

all students an adequate education under Article I, §8, and Article XI, §§8 and 12, of the Tennessee Constitution. The diversion of BEP funds under the Voucher Law will further deprive Shelby County Schools and Metro Nashville Public Schools of the funding required to provide their students with a constitutionally-mandated adequate and equal education.

118. Because the Voucher Law alters and diminishes the BEP/TISA funds appropriated by the General Assembly to maintain and support Shelby County Schools and Metro Nashville Public Schools, the Law violates the Equal Protection and Education Clauses of the Tennessee Constitution, Article I, §8; Article XI, §§8, 12, for students in Shelby County Schools and Metro Nashville Public Schools.

SECOND CAUSE OF ACTION

(Violation of the Requirement of a Single System of Public Schools Mandated by the Education Clause of the Tennessee Constitution)

119. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

120. The Tennessee Constitution's Education Clause, Article XI, §12, requires the General Assembly to provide for the maintenance, support and eligibility standards of "*a* system of free *public* schools" (emphasis added). The Tennessee Constitution does not permit the General Assembly to maintain and support schools outside the system of free public schools.

121. The Voucher Law diverts BEP funds appropriated by the General Assembly to maintain and support Tennessee public schools to instead pay for tuition and other expenses in private schools that do not comply with the requirements of a single system of public schools.

122. The private schools authorized by the Voucher Law to participate in the voucher program are not – and cannot, by the express terms of the Law – be part of the State of Tennessee’s system of free public schools.

123. Under the Voucher Law, participating private schools are not required to comply with the same academic and eligibility standards required by State law for Tennessee’s system of free public schools.

124. Under the Voucher Law, participating private schools are expressly exempt from the legal obligation to enroll and educate all students, as is required in Tennessee’s system of free public schools. The participating private schools can deny enrollment or otherwise discriminate against students based on characteristics such as disability, religion, English proficiency, LGBTQ status, and ability to pay tuition or fees.

125. Under the Voucher Law, participating private schools are not required to provide services that public schools are obligated under state and federal law to provide to students, including special education services for students with disabilities.

126. Under the Voucher Law, participating private schools are not subject to the requirements imposed by State law on public schools to protect students from harassment, intimidation, or bullying.

127. Under the Voucher Law, participating private schools are not required to comply with the same governance and accountability mandates of state law that apply to Tennessee’s system of free public schools.

128. The Voucher Law violates the General Assembly’s obligation in Article XI, §12 of the Tennessee Constitution to maintain and support “*a system*” of “free *public* schools” (emphases added).

THIRD CAUSE OF ACTION

(Violation of the BEP Statute)

129. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

130. The BEP is the statutory formula by which the General Assembly determines and appropriates the funds required to maintain and support Tennessee’s system of free public schools, including Shelby County Schools and Metro Nashville Public Schools. T.C.A. §49-3-351, *et seq.*

131. The BEP’s statutory provisions provide for the determination, allocation, and apportionment of BEP funds to public school districts only. T.C.A. §49-3-351, *et seq.* The BEP statute does not provide for funds to be distributed to any school other than those in public school districts.

132. The Voucher Law violates the BEP statute by diverting BEP funds appropriated by the General Assembly to maintain and support Shelby County Schools and Metro Nashville Public Schools to private schools and other private education expenses.

FOURTH CAUSE OF ACTION

(Violation of the Voucher Statute Itself)

133. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

134. As stated above, the Voucher Law mandates that TDOE establish and maintain separate education savings accounts – called ESAs – for each participating student, that the voucher funds be deposited into each student’s ESA account, and that any expenses be preapproved by the TDOE. T.C.A. §49-6-2607(b)

135. As stated on the TDOE website, TDOE has no intention of following the Voucher Law’s express requirements.

136. TDOE’s plan for the 2022-2023 school year does not include establishing or maintaining separate ESAs for each participating student, nor does the plan contemplate depositing funds into students’ ESAs.

137. Instead, TDOE instructs participating private schools to directly fund the voucher students’ expenses.

138. Further, TDOE instructs participating private schools to send invoices to the State for reimbursement. Reimbursement is directly at odds with the statutory requirement that all expenses be “preapproved” by TDOE.

139. The TDOE plan disregards the Voucher Law in its entirety and amounts to impermissible agency action beyond statutory authority.

FIFTH CAUSE OF ACTION

(Violation of the Uniform Administrative Procedures Act)

140. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

141. The Voucher Law requires the State Board of Education to promulgate the rules that control the voucher program under the Uniform Administrative Procedures Act

(UAPA), T.C.A. §4-5-101, *et seq.* See T.C.A. §49-6-2610 (requiring rule-making process under UAPA).

142. The UAPA requires notice and a hearing when an agency promulgates rules. T.C.A. §4-5-202.

143. The State Defendants' funding scheme for the 2022-2023 school year does not follow the rules previously promulgated by the State Board of Education. Rather, the State Defendants have created an entirely new scheme to fund the voucher program. Specifically, the proposed funding scheme does not require the creation of the individual education savings accounts that are central to the Voucher Law but rather directs private schools to pay voucher student expenses directly and then submit invoices to the TDOE for reimbursement.

144. This new funding scheme is a *rule* for the purposes of the UAPA. T.C.A. §4-5-102(12). It implements the Voucher Law, and it directly impacts the "rights and privileges" afforded to participating families under the Voucher Law. See *Occupy Nashville*, 949 F. Supp. 2d at 794. Namely, it removes control of the ESA funds, and the ESA itself, and invents a new voucher system where the private school ultimately controls the state education funds allotted for each student. That the State Defendants previously enacted rules to outline the management of ESA funds also strongly indicates that the new funding scheme replacing that system is a new rule.

145. State Defendants violate the UAPA by promulgating new rules regarding the funding of the voucher program without proper rulemaking procedure, including notice and hearing.

SIXTH CAUSE OF ACTION

(Violation of the Appropriation of Public Moneys Provisions of the Tennessee Constitution and T.C.A. §9-4-601)

146. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein.

147. Article II, §24, of the Tennessee Constitution provides:

Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding.

148. Article II, §24, of the Tennessee Constitution also provides: "No public money shall be expended except pursuant to appropriations made by law.

149. By statute, "[n]o money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law." T.C.A. §9-4-601(a)(1).

150. The Voucher Law was enacted by the General Assembly in its 2019 legislative session.

151. During the 2019 legislative session, the General Assembly did not make an appropriation for the estimated first year's funding of the Voucher Law.

152. In November 2019, Defendant TDOE signed a \$2.5 million contract with a private for-profit company, ClassWallet, to undertake the administration of the Voucher Law. ClassWallet began work under the contract in November 2019.

153. TDOE diverted public funds from an unrelated, existing State program supporting public school teachers to instead pay ClassWallet \$1.2 million in 2019 for its work on the voucher program.

154. TDOE's expenditures for the ClassWallet contract, or any other expenditures for the administration and implementation of the Voucher Law in 2019, without appropriation for the estimated first year's funding of the Voucher Law, render the Voucher Law null and void under Article II, §24, of the Tennessee Constitution and violate T.C.A. §9-4-601.

155. Moreover, TDOE's plan to spend public money to reimburse private schools directly also violates the Appropriations of Public Money provisions. There is no law authorizing this expenditure of public money.

VII. DECLARATORY AND INJUNCTIVE RELIEF

156. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein. Plaintiffs seek a judgment declaring that the Voucher Law violates the Tennessee Constitution's provisions on Education, Equal Protection, and Appropriation of Public Moneys, as well as the BEP statute and T.C.A. §9-4-601, and a permanent injunction preventing enforcement of the Voucher Law.

157. Plaintiffs have suffered and will continue to suffer irreparable harm if the Voucher Law continues to be implemented by Defendants. Diversion of public education funding to the voucher program will result in the loss of millions of dollars in BEP and TISA funds that Shelby County Schools and Metro Nashville Public Schools need to provide their students, including Plaintiffs' children, with the educational opportunities mandated by the State constitution. These taxpayer dollars will be lost to illegal spending.

158. A temporary, and ultimately permanent, injunction to bar implementation of the Voucher Law will prevent irreparable harm to Plaintiffs, including the harm to Plaintiffs'

children from the loss of funding required to provide them with an adequate and equitable education in Shelby County Schools and Metro Nashville Public Schools.

WHEREFORE, Plaintiffs demand judgment against Defendants on each Count of the Complaint and pray for the following relief:

A. That the Court enter a judgment declaring that the Voucher Law violates the Tennessee Constitution's provisions on Education, Equal Protection, and Appropriation of Public Moneys, as well as the BEP statute and T.C.A. §9-4-601;

B. That the Court issue temporary and permanent injunctions preventing the enforcement of the Voucher Law;

C. That the Court award Plaintiffs their costs, expenses, and reasonable attorneys' fees as required by law; and

D. That the Court grant such further relief as it may deem just and proper.

DATED: August 3, 2022

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded via electronic filing service and electronic mail to the following on this 3rd day of August, 2022:

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