IN THE TENNESSEE SUPREME COURT

No. M2020-00683-SC-R11-CV

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

Plaintiffs / Respondents,

v.

TENNESSEE DEPARTMENT OF EDUCATION, *et al.*,

Defendants / Petitioners,

and

NATU BAH, *et al.*,

Intervenor-Defendants / Petitioners.

On Application for Permission to Appeal Pursuant to Tenn. R. App. P. 11 from Tennessee Court of Appeals Case No. M2020-00683-COA-R9-CV

PLAINTIFFS / RESPONDENTS' RESPONSE IN OPPOSITION TO DEFENDANTS / PETITIONERS' APPLICATIONS FOR PERMISSION TO APPEAL

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Statutes and Rules

PRELIMINARY STATEMENT

The Education Savings Account Pilot Program (the "ESA Act") uses public money for private schooling. It passed the Tennessee General Assembly in 2019 by the barest of margins, secured only through an unconstitutional deal: every local school system would be permanently excluded from the bill's application except for systems in "those deep blue metropolitan areas"[1]—Davidson and Shelby counties ("Plaintiff Counties"). Plaintiff Counties opposed the education savings account program, but they were given no choice.

The ESA Act is precisely the type of state interference in local government that Tennessee's citizens voted to prohibit by adopting Article 11, Section 9, Paragraph 2 of the Tennessee Constitution—the Home Rule Amendment. As this Court recognized, "[t]he whole purpose of the Home Rule Amendment was to vest control of local affairs in local governments, or in the people, to the maximum permissible extent." *Farris v. Blanton*, 528 S.W.2d 549, 551 (Tenn. 1975), *quoted with approval in Civil Serv. Merit Bd. of the City of Knoxville v. Burson*, 816 S.W.2d 725, 729 (Tenn. 1991).

The Court of Appeals plowed no new ground in holding the ESA Act unconstitutional under the Home Rule Amendment. The ESA Act will only ever apply in Plaintiff Counties absent further legislative action. It affects Plaintiff Counties in their governmental capacities of "provid[ing]

[1] April 23, 2019 House Session Tr. at 27:1-5, TR Vol. IV at 568; April 23, 2019 House Floor Session Video at timestamp 2:55:15–2:55:31 (statement of then-Deputy House Speaker Matthew Hill (R-Jonesborough)).

adequate educational opportunities" for their students. *State ex rel. Weaver v. Ayers*, 756 S.W.2d 217, 221 (Tenn. 1988). It requires Plaintiff Counties to use local tax funds to send their students to private schools. And it does this without approval from the counties' legislative bodies or citizens.

State and Intervenor-Defendants[2] now ask the Court to ratify the General Assembly's actions by overturning decades of Home Rule Amendment jurisprudence. Because the opinion below presents no need to secure uniformity of decision, resolve important issues of law, address matters of public interest, or exercise the Court's supervisory authority, the Court should deny Defendants' applications for permission to appeal.

FACTUAL BACKGROUND

In 2019, the General Assembly passed the ESA Act, with an effective date of May 24, 2019. *See* 2019 Tenn. Pub. Acts ch. 506, codified at Tenn. Code Ann. §§ 49-6-2601, *et seq.* The Act provides "participating students" with "education savings accounts" that use public funding to pay for private school tuition, fees, and other education-related expenses. Tenn. Code Ann. §§ 49-6-2602(10), -2603(a)(4), -2607(a).

The ESA Act was initially filed as a bill of general application. It applied to *all* school districts with three or more schools currently among the "bottom 10% of schools" in overall achievement based on criteria set

[2] "Bah Defendants" (Intervenors) include Natu Bah, Builguissa Diallo, Bria Davis, and Star-Mandolyn Brumfield. "Greater Praise Defendants" (Intervenors) include Greater Praise Christian Academy, Sensational Enlightenment Academy Independent School, Ciera Calhoun, Alexandria Medlin, and David Wilson, Sr.

by the State Board of Education. (Am. No. 1, *Hearing on H.B. 939 Before the H. Subcomm. on Curriculum, Testing, & Innovation*, 111th Gen. Assemb. (Tenn. 2019).) School districts in Davidson, Hamilton, Knox, Madison, and Shelby counties were initially covered, but the bill was potentially applicable statewide based on future school performance.

The bill did not have sufficient support to pass in its original form. To ensure its passage, proponents removed school districts from the bill in return for votes. For example, then-House Speaker Glen Casada (R-Franklin) held the House floor vote on the bill open for 40 minutes. During that time, he promised Rep. Jason Zachary (R-Knoxville) that Knox County would be excluded and "held harmless" from the Senate version of the bill. (H.B. 939, 111th Gen. Assemb., Tenn. H. J., 2019 Reg. Sess. No. 32; April 23, 2019 House Floor Session Video at timestamp 3:05:37–3:44:24; Video Interview of Rep. Zachary, manually filed in trial court record and available here.) Rep. Zachary then provided the fiftieth vote needed to pass the bill on third and final reading.

Rep. Patsy Hazelwood (R-Signal Mountain) voted for the conference committee report on the bill for the same reason, explaining: "I committed to vote for the ESAs if the [sic] Hamilton County was excluded from the program. The language that's in this conference report here today does that. As a result, I'm going to be keeping my commitment and I will vote for this bill." (May 1, 2019 House Session Tr. at 5:3-7, TR Vol. IV at 595; May 1, 2019 House Floor Session Video at timestamp 1:26:46–1:26:59.) As finally passed, the billed applied only to schools in Davidson and Shelby counties.

To assure its passage, the ESA bill also had to be drafted so that no other city or county could ever fall within its scope. Sen. Joey Hensley (R-Hohenwald) asked the bill's Senate sponsor, Senate Education Committee Chair Dolores Gresham (R-Somerville), to confirm on the Senate floor that "no other LEA will be able to grow into the program over the years," stating, "[I] just want it to be on the record and assured that this conference report continues to prevent any future LEAs from being included in this." (May 1, 2019 Senate Session Tr. at 2:16-18, TR Vol. V at 602; May 1, 2019 Senate Floor Session Video at timestamp 1:37:11–1:37:40.) Sen. Gresham responded unequivocally: "That's the intent of the General Assembly today." (May 1, 2019 Senate Session Tr. at 2:24 – 3:1, TR Vol. V at 602-03; May 1, 2019 Senate Floor Session Video at timestamp 1:37:46–1:37:50.)

Then-Deputy House Speaker Matthew Hill (R-Jonesborough) succinctly described the bill's dual purpose on the House floor, explaining that the bill targeted "deep blue" Davidson and Shelby counties while shielding every other city and county from its effects: "Ladies and gentlemen, today on this Floor, the House is leading. We are leading the way to protect LEAs, while also ensuring that our poorest children in those deep blue metropolitan areas have a fighting chance at a quality education." (April 23, 2019 House Session Tr. at 27:1-5, TR Vol. IV at 568; April 23, 2019 House Floor Session Video at timestamp 2:55:15–2:55:31.)

The ESA Act's text does not explicitly identify Davidson and Shelby counties. Rather, the Act uses the definition of "eligible student" to limit the bill's application. To participate, an "eligible student" must be in a family with an annual household income not exceeding twice the federal

income eligibility guidelines for free lunch and, most crucially for purposes of this dispute, be:

1. zoned to attend a school in a local education agency ("LEA")[3] with ten or more schools:
    a) identified by the State as priority schools[4] ***in 2015***,
    b) identified by the State as among the bottom 10% of schools[5] ***in 2017***, and
    c) identified by the State as priority schools ***in 2018***, or
2. zoned to attend an ASD school[6] as of the Act's effective date.

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[3] The Tennessee Code refers to a public-school system, including a county school system, as an LEA. Tenn. Code Ann. § 49-1-103(2).

[4] At least every three years, "the commissioner of education shall recommend for approval to the state board a listing of all schools to be placed in priority . . . status." *Id.* § 49-1-602(b)(1). These "shall include the bottom five percent (5%) of schools in performance, all public high schools failing to graduate one-third (1/3) or more of their students, and schools with chronically low-performing subgroups that have not improved after receiving additional targeted support." *Id.* § 49-1-602(b)(2).

[5] "By October 1 of the year prior to the public identification of priority schools pursuant to subdivision (b)(1), the commissioner shall notify any school and its respective LEA if the school is among the bottom ten percent (10%) of schools in overall achievement as determined by the performance standards and other criteria set by the state board." *Id.* § 49-1-602(b)(3).

[6] The ASD is "an organizational unit of the [Tennessee] department of education, established and administered by the commissioner for the purpose of providing oversight for the operation of schools assigned to or authorized by the ASD." *Id.* § 49-1-614(a). The commissioner has discretionary authority to assign priority schools to the ASD. *Id.* § 49-1-614(c)(1). ASD schools are only in Davidson and Shelby counties. *See* Achievement School District, "Schools" (last visited Dec. 15, 2020).

Tenn. Code Ann. § 49-6-2602(3)(C) (emphasis added).[7]

References to 2015, 2017, and 2018 were not part of the original definition but were added to exclude school districts from the bill. The only LEAs falling within the definition are Metropolitan Nashville Public Schools ("MNPS") and Shelby County Schools ("SCS"), plus the ASD. (2015 Priority List; 2017 Bottom 10% List; 2018 Priority List, Pl. Counties' App. at APP01-013, filed contemporaneously herewith.)[8] As these qualifying years are in the past and set by statute, no other school districts will come within the Act's scope without further General Assembly action.

This limitation to two counties was so important to the General Assembly that the conference committee inserted a *reverse* severability clause into the bill the day before its final passage to prevent judicial expansion of the geographic limitation. Tenn. Code Ann. § 49-6-2611(c) ("Notwithstanding [the severability clause in] subsection (b), if any provision of this part is held invalid, then the invalidity shall not expand

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[7] Although the "eligible student" definition is based on the number of priority and bottom 10% schools in an LEA, the ESA Act does not limit participation only to students attending those schools. Tenn. Code Ann. § 49-6-2602(3)(C).

[8] In 2015, only MNPS, SCS, and the ASD had ten or more priority schools. (2015 Priority List, Pl. Counties' App. at APP01-04.) In 2017, only MNPS, SCS, Hamilton County Schools, and the ASD had ten or more schools on the bottom 10% list. (2017 Bottom 10% List, Pl. Counties' App. at APP05-09.) In 2018, only MNPS, SCS, and the ASD had ten or more priority schools. (2018 Priority List, Pl. Counties' App. at APP010-013.)

the application of this part to eligible students other than those identified in § 49-6-2602(3).").

The ESA Act shifts the full cost of funding education savings accounts onto Plaintiff Counties and their school districts. A participating student's education savings account will receive annual disbursements from the State equal to the per-pupil funding in the student's school district required by the State's Basic Education Program ("BEP"), but not to exceed the combined statewide average of required BEP allocations per pupil. Tenn. Code Ann. § 49-6-2605(a). For Davidson County, total BEP per-pupil funding is currently $8,324 (consisting of $3,618 in State funding and $4,705 in local funding). For Shelby County, total BEP funding is $7,923 (consisting of $5,562 in State funding and $2,361 in local funding). *See* Tennessee Comptroller of the Treasury Legislative Brief, "Understanding Public Chapter 506: Education Savings Accounts" (Updated May 2020) (hereinafter "Comptroller Brief"), Greater Praise Defs.' App. at 006.[9] Because per-pupil BEP funding in Plaintiff Counties' school districts exceeds the statewide average, participating students from both counties would receive ESA funding equal to the statewide average, which for 2020-21 is $7,572. Comptroller Brief, Greater Praise Defs.' App. at 006.

The State will deposit the full ESA disbursement into a participating student's account. Tenn. Code Ann. § 49-6-2605(b)(1). The

[9] The Comptroller's estimates rely on FY2019 expenditures for the required local portion of the BEP but on FY2020 allocations for the State portion. Comptroller Brief, Greater Praise Defs.' App. at 006.

State will then "subtract[]" that same amount "from the state BEP funds otherwise payable to the LEA." *Id*. In other words, the State will break even: Whatever it deposits into an ESA, it will remove from BEP funds it otherwise would have paid to the school district. The General Assembly's Fiscal Review Committee estimated that the two school districts would experience a "shift in BEP funding" of $37 million in the ESA program's first year, climbing to $111 million annually by the fifth year. Corrected Fiscal Memorandum, HB 939 - SB 795 (May 1, 2019). (Pl. Counties' App. at APP014-017.)

The ESA Act compels Plaintiff Counties to cover this loss of BEP funding by requiring that participating students attending private schools be "counted in the enrollment figures" of their public school districts "[f]or the purpose of funding calculations." Tenn. Code Ann. § 49-6-2605(b)(1). Because of this "counting requirement," each Plaintiff County must continue to appropriate its local share of BEP funding for every student in the ESA program, *even though these students no longer attend public schools*. *See id.* § 49-3-307(a)(1)(B) (describing BEP calculation as based on "enrollment"); *id.* § 49-3-307(a)(11) (BEP formula "shall be student-based such that each student entering or exiting an LEA shall impact generated funding"); *id.* § 49-3-356(a) ("Every local government shall appropriate funds sufficient to fund the local share of the BEP."); *see also id.* § 49-2-101(1), (6) (making Plaintiff Counties' legislative bodies responsible for adopting budgets and levying taxes for their school systems). Based on the funding numbers in the Comptroller's Brief, the counting requirement would force Davidson County to appropriate $4,705 in local BEP funding to MNPS for each ESA student

who no longer attends an MNPS school. Shelby County would be required to appropriate $2,361 for each ESA student who no longer attends an SCS school.

The counting requirement also affects Plaintiff Counties' obligations under Tennessee's "maintenance-of-effort" statute. Comptroller Brief at n.D ("Any additional local funding beyond the required BEP local match will not be included in ESA funding calculations, *but districts must continue to budget sufficient funds to meet maintenance of effort requirements set by the state*.") (emphasis added), Greater Praise Defs.' App. at 007.[10] Local jurisdictions may choose to appropriate more education funding than the BEP requires. Plaintiff Counties do so, bringing their total local per-pupil spending to $9,277 ($4,705 in BEP and $4,571 in additional funds) in Davidson County and $6,414 ($2,361 in BEP and $4,053 in additional funds) in Shelby County. *Id*. Because the counting requirement leaves ESA participating students on the school districts' rolls, the maintenance-of-effort statute requires Plaintiff Counties to appropriate their *full* local per-pupil spending (BEP and additional funding) for students no longer attending their schools.[11]

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[10] The State's "maintenance of effort" statute generally requires local governments to appropriate the same level of per-pupil local funding notwithstanding any increase in state funding in a particular year. Tenn. Code Ann. § 49-3-314; *see also* Tennessee Comptroller of the Treasury Legislative Brief, "Understanding Tennessee's Maintenance of Effort in Education Laws" (Sep. 2015).

[11] Charter school students are also counted in the authorizing LEA's enrollment. *See* Tenn. Op. Att'y Gen. 13-34. But in contrast to private

In sum, by artificially inflating the district's enrollment through the "counting requirement," the ESA Act imposes a per-pupil "ESA Mandate" on Plaintiff Counties to compensate their school districts for the loss of State BEP funds to the ESA program. Based on the Comptroller's numbers, Davidson County would have paid an ESA Mandate this year of $9,277 for each participating student, and Shelby County would have paid $6,414.[12]

The ESA Act includes a three-year grant program—the "school improvement fund"—intended to disburse annual grants to MNPS and SCS in an amount roughly equal to the ESA disbursements to participating students. Tenn. Code Ann. § 49-6-2605(b)(2).[13] As the Court of Appeals noted, this grant program does not make Plaintiff Counties or their school systems whole. The grant program is "subject to

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schools participating in the ESA program, charter schools are considered part of the LEA. Tenn. Code Ann. §§ 49-13-102, -112(a).

[12] The same ESA Mandate on Plaintiff Counties would apply for participating students currently enrolled in ASD schools. State law provides that the ASD shall receive an "amount equal to the per student state and local funds" from the school district in which ASD schools are located. *Id*. § 49-1-614(d)(1). The only schools assigned to the ASD are in Davidson and Shelby counties. *See* Achievement School District, "Schools" (last visited Dec. 15, 2020). Thus, Plaintiff Counties will have to pay the ESA Mandate for students who leave ASD schools for private schools under the ESA program.

[13] Grants issued under this program will not equal all ESA payments to participating students. The program only reimburses lost funding resulting from students who attended an MNPS or SCS public school for one full school year before joining the ESA program. *Id*. School districts will receive no grant funds for participating students who enter kindergarten or move into Plaintiff Counties and elect to use ESA funds.

appropriation" and not a condition precedent to implementation of the Act. *Id*. Even if fully funded, the program only provides grants to the two school systems for the first three years of the ESA program, which has no sunset date. *Id*. The school systems can only use funds from the grant program "for school improvement," not as general operating funds. *Id*. Most significantly, the grant program does not release Plaintiff Counties from their financial obligations under the ESA Act's "counting requirement." Thus, whether or not their school districts receive grant funds, Plaintiff Counties will still be required to pay the ESA Mandate for students who no longer attend their schools.

STANDARD OF REVIEW

A party may take an appeal by permission from a final decision of the Court of Appeals to the Supreme Court "only on application and in the discretion of the Supreme Court." Tenn. R. App. P. 11. The Court may consider the following factors in determining whether to grant permission to appeal: "(1) the need to secure uniformity of decision, (2) the need to secure settlement of important questions of law, (3) the need to secure settlement of questions of public interest, and (4) the need for the exercise of the Supreme Court's supervisory authority." *Id*.

LEGAL ARGUMENT

Despite Defendants' heated rhetoric, the Court of Appeals' decision involves a routine application of well-developed jurisprudence under the Home Rule Amendment. It is Defendants, not the Court of Appeals, who seek to overturn decades of settled case law and undo the important work of the 1953 Constitutional Convention. This case does not involve unsettled questions of law or decisions that lack uniformity. The Court of

Appeals' opinion properly examined the constitutional challenge at issue and need not be corrected through this Court's supervisory authority. The public interest weighs in favor of declining review. This Court should reject Defendants' attempt to weaken the Home Rule Amendment's constitutional protection of local sovereignty and deny their applications.

I. SUPREME COURT REVIEW IS NOT NECESSARY TO SETTLE IMPORTANT QUESTIONS OF LAW OR TO SECURE UNIFORMITY OF DECISIONS.

The Court of Appeals and Chancellor both held that the ESA Act violates the Tennessee Constitution's Home Rule Amendment because the Act will only ever apply to school districts in two counties, affects those counties in their governmental capacities, and does not provide for local approval. Claiming error, Defendants argue the following: (1) Tennessee law applying the Home Rule Amendment is conflicting and unsettled; (2) the Home Rule Amendment does not apply to pilot programs; (3) the Home Rule Amendment does not apply to education-related legislation; (4) the ESA Act applies to LEAs and not to counties in their governmental capacity; and (5) the ESA Act's application to more than one county takes it outside the Home Rule Amendment's scope. None of these arguments is supported by the Home Rule Amendment's language, judicial interpretation, or the facts.

A. *Farris v. Blanton* Sets Forth a Clear Test for Applicability of the Home Rule Amendment That Tennessee Courts, Including the Court of Appeals Below, Have Consistently and Correctly Applied.

For much of Tennessee's history, local governments were mere "arms or instrumentalities of the state government—creatures of the

Legislature, and subject to its control at will." *Grainger Cty. v. State*, 80 S.W. 750, 757 (Tenn. 1904). The balance of power between the State and local governments shifted dramatically in 1953 with the adoption of the second paragraph of Article XI, Section 9 of the Tennessee Constitution—the Home Rule Amendment. The Amendment was drafted by a constitutional convention "that had been rife with concern over state encroachment on local prerogatives" and "[c]oncern about the General Assembly's abuse of that power." Elijah Swiney, *John Forrest Dillon Goes to School: Dillon's Rule in Tennessee Ten Years After* Southern Constructors, 79 Tenn. L. Rev. 103, 118-19 (Fall 2011).

To remedy this concern, the Home Rule Amendment placed several restraints on the exercise of state power. These constitutional restrictions "fundamentally change[d] the relationship between the General Assembly and these types of municipalities, because such entities now derive their power from sources other than the prerogative of the legislature." *S. Constructors, Inc. v. Loudon Cty. Bd. of Educ.*, 58 S.W. 3d 706, 714 (Tenn. 2001); *see also Shelby Cty. v. Hale*, 292 S.W.2d 745, 748 (Tenn. 1956) (the "second provision" in Art. XI, § 9 is a "limitation on legislative power"). As this Court acknowledged, "[t]he whole purpose of the Home Rule Amendment was to vest control of local affairs in local governments, or in the people, to the maximum permissible extent." *Burson*, 816 S.W.2d at 729 (quoting *Farris*, 528 S.W.2d 549).

To that end, the Home Rule Amendment's second paragraph states:

> [A]ny act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the

> approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

Tenn. Const., art. XI, § 9.

Thus, any act of the General Assembly that (1) is "private or local in form or effect," (2) is "applicable to a particular county or municipality," and (3) affects the county or municipality in "its governmental or its proprietary capacity" must "by its terms" require approval by the local legislative body or popular referendum. Without local approval language, any such legislation is "absolutely and utterly void." *Farris*, 528 S.W.2d at 551.

The Court of Appeals correctly held that the ESA Act was intentionally drafted to apply in only two counties and that it affected those counties in their governmental capacities of funding their county school systems. Because the Act met the criteria for local legislation covered by the Home Rule Amendment yet lacked a local approval provision, the Court of Appeals held the Act was "void and of no effect."

This Court issued its first comprehensive analysis of the Home Rule Amendment in *Farris* and has consistently applied *Farris* in subsequent opinions. *See, e.g.*, *Burson*, 816 S.W.2d at 729-30 (reviewing *Farris* and subsequent decisions). *Farris* established two important principles for courts to follow in applying the Amendment. First, *Farris* cautioned against allowing the General Assembly to avoid Home Rule Amendment scrutiny through self-serving language. *Farris* explained that the "test" for Home Rule Amendment compliance "is not the outward, visible or

facial indices, nor the designation, description or nomenclature employed by the Legislature. Such a criterion would emasculate the purpose of the amendment." *Farris*, 528 S.W.2d at 551. Rather, "[t]he sole constitutional test" under the Amendment "must be whether the legislative enactment, irrespective of its form, is local in effect and application." *Id.*

Second, *Farris* held that a bill is not local in effect as long as it is "potentially applicable throughout the state" at the time of passage, even if its initial application is more limited. *Id.* at 552. But this analysis must be based on the bill's language at the time of passage; courts "cannot conjecture what the law may be in the future" or "speculate upon the future action of the General Assembly." *Id.* at 555.

Applying these two principles, *Farris* invalidated a law that on its face was general in form, in that it applied to all counties headed by a mayor, but in fact only applied to Shelby County and could not affect any other county absent further action of the legislature. *Id.*

This Court subsequently held that legislation exempting two counties, Wayne and Bledsoe, from a "permanent, general provision, applicable in nearly ninety counties" was local in form and effect in violation of the Home Rule Amendment. *Leech v. Wayne Cty.*, 588 S.W.2d 270, 274 (Tenn. 1979). The exemptions for the two counties were based on population brackets drawn so narrowly that they could not potentially apply to other counties without further legislative action.[14]

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[14] *See* Tenn. Public Acts of 1978, Chap. 934, § 8 (providing for separate election requirements in any county "having a population of *not less than 7,600 nor more than 7,700*" or "*not less than 12,350 nor more than 12,400* according to the 1970 census or any subsequent federal census"), *cited in*

In upholding other statutes that affected only two or three counties at passage, this Court has determined whether the acts were potentially applicable to other counties. None of these cases held that bills applying to only two or three counties when passed were *per se* beyond the Home Rule Amendment's scope. *See, e.g.*, *Burson*, 816 S.W.2d at 730 (upholding statute applicable only to three counties because it was potentially applicable to any county with a minimum population of 300,000); *Bozeman v. Barker*, 571 S.W.2d 279, 280, 282 (Tenn. 1978) (upholding statute applicable only to two counties because it was potentially applicable to any county with population between 275,000 and 600,000); *see also Doyle v. Metro. Gov't of Nashville & Davidson Cty.*, 471 S.W.2d 371, 374 (Tenn. 1971) (upholding statute applicable only to Davidson County because it was potentially applicable to any county adopting metropolitan form of government); *Burson*, 816 S.W.2d at 729-30 (reviewing Tennessee cases applying the "potentially applicable" doctrine under the Home Rule Amendment).[15]

The Court of Appeals applied this well-settled Tennessee law to evaluate the ESA Act's constitutionality. The Court of Appeals' opinion is not "sketchily-reasoned," as State Defendants allege, nor is there any conflict within Home Rule Amendment jurisprudence, as the Greater

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Leech, 588 S.W.2d at 276 (emphasis added). Only Wayne and Bledsoe counties fell within these narrow population brackets.

[15] If the Legislature could circumvent the Home Rule Amendment by making a statute applicable to two or three counties as opposed to one, there would have been no reason for this Court in *Burson* or *Bozeman* to analyze the respective statutes' potential applicability to other counties. *See discussion infra* pp. 33-35.

Praise Defendants claim. Rather, the Court of Appeals' decision is simple and straightforward because the constitutional question that the ESA Act presents is simple and straightforward.

B. There Is No "Pilot Program Exception" to the Home Rule Amendment.

Late in the legislative process, the ESA Act was amended to include "Pilot Program" in its name and to direct the State Office of Research and Education Accountability ("OREA") to report on its efficacy after three years. (*See* Am. No. 5, S.B. 795, 111th Gen. Assemb., Tenn. S. J., 2019 Reg. Sess. No. 31.) Based on these revisions, State Defendants make the remarkable claim that the Court of Appeals erred by failing to recognize a "pilot program" exception to the Home Rule Amendment.[16]

There is no "pilot program" exception in the Home Rule Amendment language. The Amendment applies to "*any* act" that falls within the Amendment's three criteria: "[1] private or local in form or effect [2] applicable to a particular county or municipality [3] in its governmental or proprietary capacity." Tenn. Const., art. XI, § 9 (emphasis added).

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[16] Unlike a "pilot program," the ESA Act creates a permanent state program with no "sunset" provision. Then-Deputy House Speaker Hill referred to the bill in a House committee as a "four-county pilot ESA program" because it "limits it down to just four counties" and "will stay in those four counties unless the legislature were to ever choose in the future to revisit the issue." (Apr. 17, 2019 House Committee Session Tr. at 4:17, 9:13 – 10:3, TR Vol. IV at 532, 537-38; Apr. 17, 2019 House Committee Session Video at timestamp 44:42 – 44:45, 51:30 – 52:19.)

State Defendants seek to circumvent this clear mandate in two ways. They argue that because pilot programs may be expanded in the future, they are not "local in effect" under the Amendment. (State Defs.' Application at 21.) And they assert that the Home Rule Amendment does not grant local governments "veto power" over "state legislative policy decisions" such as the creation of pilot programs. (*Id.* at 17.) Both arguments fail.

The sole factual basis for State Defendants' claim that the ESA Act is "potentially applicable" throughout the state is that the General Assembly *may* expand the Act in the future based on recommendations from the OREA. *See* Tenn. Code Ann. § 49-6-2611(a)(2)(v). The Court rejected this argument in *Farris*. The *Farris* appellee claimed that the challenged law was not local in effect because it could apply to counties that the legislature might later empower to adopt Shelby County's form of government. This Court responded that it could consider only the law as passed, adding: "We cannot conjecture what the law may be in the future. *We are not at liberty to speculate upon the future action of the General Assembly*." *Farris*, 528 S.W.2d at 555 (emphasis added).

State Defendants alternatively argue that the Court of Appeals' opinion "perverted" the Home Rule Amendment by granting local governments "veto power" over "state legislative policy decisions" such as creating pilot programs. (State Defs.' Application at 17, 19.) But local approval is the linchpin of the Amendment's protection of local sovereignty. To disallow the local "veto" for this reason would essentially repeal the Home Rule Amendment, as all legislation represents "policy

decisions" by the General Assembly. *See Willeford v. Klepper*, 597 S.W.3d 454, 469 (Tenn. 2020) ("the determination of public policy" is primarily a function of "the legislature") (internal quotations omitted); *see also Hodge v. Craig*, 382 S.W.3d 325, 337 (Tenn. 2012) ("Tennessee's public policy is reflected in its constitution.").

Contrary to State Defendants' apocalyptic rhetoric, requiring compliance with the Home Rule Amendment will not prohibit the General Assembly from using pilot programs for incremental reform. The legislature can seek local approval for such programs when required. Or a pilot program can be drafted as general legislation and thereby avoid local approval. In fact, the ESA Act as initially filed was potentially applicable in other counties and thus would have been exempt from Home Rule Amendment scrutiny.

Or the legislature could structure a pilot program so that it does not affect local government. In fact, the State Defendants' application cites just such an education pilot program—the "Tennessee STAR Scholarship Act of 2007." (*See* State Defs.' Application at 18 (citing Tenn. Op. Att'y Gen. No. 07-60).) That pilot program used *state* lottery proceeds to provide academic assistance to students attending "Title I" schools rather than commandeering local funds.[17] Because the act did not involve local government, it did not implicate the Home Rule Amendment.

[17] State Defendants also favorably cite a second pilot program, which similarly did not commandeer local government and thus created no Home Rule Amendment conflict. *See* Tenn. Op. Att'y Gen. No. 04-087 (statute creating "pilot program" through which state health department

The Court of Appeals' holding that "pilot programs" like the ESA Act are subject to Home Rule Amendment scrutiny is consistent with the Amendment and this Court's decisions. State Defendants' arguments, in contrast, would overturn *Farris* and exempt bills from Home Rule Amendment scrutiny based on marketing labels and vague promises of future legislation. Such a standard has no support in the Amendment's language and, by elevating form over substance, would allow the General Assembly to "emasculate the purpose of the amendment." *Farris*, 528 S.W.2d at 551. These arguments concerning pilot programs present no important issue of law for this Court to review.

C. There Is No "Education Law Exception" to the Home Rule Amendment.

State Defendants next assert that the Home Rule Amendment cannot apply to the ESA Act because the Tennessee Constitution's Education Clause gives the State plenary authority over public education.[18] Plaintiff Counties do not dispute that public education is a fundamental state function. But the Home Rule Amendment is a

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would make *per diem* payments to licensed retirement homes in certain counties for low-income residents).

[18] While the ESA Act affects public-school funding, its disposition of those funds extends beyond the public-school scope of the Education Clause. The Education Clause states in relevant part: "The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools." Tenn. Const., art. XI, § 12. The Court of Appeals correctly noted that this language conveys authority to support a system of free *public* schools, not to send students to *private* schools. *Metro. Gov't of Nashville & Davidson Cty. v. Tennessee Dep't of Educ.*, No. M202000683COAR9CV, 2020 WL 5807636, at *5 (Tenn. Ct. App. Sept. 29, 2020).

"limitation on legislative power," including legislative power over education. *Hale*, 292 S.W.2d at 748; *see also Thornton v. Carrier*, 311 S.W.2d 208, 214 (Tenn. Ct. App. 1957) ("In Tennessee, it is a settled doctrine of constitutional law that 'the legislative power of the generally assembly of this state extends to every subject, *except in so far as it is prohibited . . . by the restriction of our own constitution*.'") (citation omitted) (emphasis added). The Court of Appeals appropriately concluded that "having plenary authority over public schools does not mean that other provisions of the Tennessee Constitution do not or cannot apply." *Metro. Gov't*, 2020 WL 5807636, at *5.

Public education falls within the scope of the Home Rule Amendment because the State has delegated a significant part of that function to counties, making it part of a county's governmental capacity. This Court recognized in *Ayers* that "a partnership has been established between the State and its political subdivisions to provide adequate educational opportunities in Tennessee." 756 S.W.2d at 221. More specifically, the State requires counties to provide the "necessary funds" for their local schools and to "oversee the process of expenditure . . . with due regard for the essential place of education in the governmental services provided by the county." *Id.* at 223; *see* Tenn. Code Ann. § 49-2-101. By delegating these and other education responsibilities, the General Assembly has engaged local governments in a "governmental function." *Brentwood Liquors Corp. of Williamson Cty. v. Fox*, 496 S.W.2d 454, 457 (Tenn. 1973) ("Education is a governmental function and in the exercise of that function the county acts in a governmental capacity.");

see also Eugene McQuillin, The Law of Municipal Corporations §§ 4:76, 4:77 (3d ed.), Westlaw (database updated Aug. 2020) ("powers of a municipal corporation that are governmental . . . are ordinarily those that relate to state affairs"). And local governmental capacities fall within the Home Rule Amendment.

No Tennessee court has held that education-related legislation is exempt from the Home Rule Amendment. To the contrary, the Tennessee Court of Appeals upheld the Education Improvement Act of 1992, Tenn. Code Ann. §§ 49-2-201, *et seq.*, from Home Rule Amendment challenge rather than declining to rule because the legislation addressed education. *Cty. of Shelby v. McWherter*, 936 S.W.2d 923, 935-36 (Tenn. Ct. App. 1996), *perm. app. denied* (Tenn. 1996); *see also Bd. of Educ. of Shelby Cty. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 660 (W.D. Tenn. 2012) (striking down legislation under the Home Rule Amendment that allowed creation of municipal school districts only in Shelby County).[19]

This Court has applied the Home Rule Amendment in other areas in which the state exercises plenary authority, such as the structure and jurisdiction of lower state courts. *See Lawler v. McCanless*, 417 S.W.2d 548, 553 (Tenn. 1967) (striking down as a violation of the Home Rule Amendment an act that expanded the state court jurisdiction of the general sessions court only in Gibson County). There is nothing about education legislation that would require different treatment.

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[19] The State, a party in *Bd. of Educ. of Shelby Cty.*, contended that the law in question was a general law; it did not contend that the law was beyond the scope of the Home Rule Amendment because it applied to public education. 911 F. Supp. 2d at 654.

The two cases on which State Defendants rely—*State ex rel. Cheek v. Rollings*, 308 S.W.2d 393 (Tenn. 1957), and *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984)—are inapposite, merely holding that the General Assembly is free to abolish state courts that exercise *only* state functions without offending the Home Rule Amendment. The Court of Appeals properly distinguished these cases, which provide no support for the State's position. Once again, State Defendants' argument presents no issue of law meriting review.

D. The ESA Act Is Applicable to Counties, Not Just LEAs.

Defendants claim that the ESA Act is exempt from Home Rule Amendment scrutiny because the Act addresses LEAs, not counties. But the Court of Appeals correctly held that the Act directly affects Plaintiff Counties, not just their school districts, and therefore is covered by the Amendment. There is no lack of legal clarity that this Court need address.

The Home Rule Amendment applies to any legislative act that is "private or local in form *or effect*." Tenn. Const., art. XI, § 9 (emphasis added). "The sole constitutional test," according to this Court, "must be whether the legislative enactment, *irrespective of its form*, *is local in effect and application*." *Farris*, 528 S.W.2d at 551 (emphasis added).

In this case, the Court of Appeals faithfully applied *Farris*'s admonition. The court noted that the statutory definition of "LEA" includes "metropolitan and county school systems," for which counties have numerous "vitally important" statutory duties, including financial obligations. *Metro. Gov't*, 2020 WL 5807636, at *3. The court observed that "giving an entity a new name does not change the nature of the

entity or its relationship to the county government that funds it." *Id.* at *4. And the court concluded that the ESA Act's "counting requirement" by itself satisfied the Amendment's "local effect" requirement by keeping county appropriations for the county school system "artificially high." *Id.* at *3 n.1.

Defendants erroneously cite a variety of this Court's prior decisions to create an illusion of legal conflict and error. This Court's holdings that sanitary districts and special school districts are not covered by the Home Rule Amendment do not conflict with the Court of Appeals' decision below. Unlike county school districts, special school districts are self-taxing and do not rely on county or municipal governments for support or oversight.[20] Sanitary districts are stand-alone entities under Tennessee law and not part of county or city government. Tenn. Code Ann. § 7-81-109. The Home Rule Amendment's treatment of these unique entities says nothing about the relationship between county governments and county school systems. *See Metro. Gov't*, 2020 WL 5807636, at *3 (distinguishing *Perritt v. Carter*, 325 S.W.2d 233 (Tenn. 1959) (special school districts); *Fountain City Sanitary Dist. v. Knox Cty.*, 308 S.W.2d 482 (Tenn. 1957) (sanitary districts)).[21]

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[20] State Defendants' syllogism in n.12 of their application proceeds from a faulty premise. The proper syllogism would be: (1) some LEAs are special school districts; (2) special school districts are not cities or counties; therefore (3) some LEAs are not cities or counties. This syllogism, of course, says nothing about LEAs that are not special school districts.

[21] State Defendants' position in this case conflicts with Tenn. Op. Att'y Gen. 02-020, which opines that legislation creating a special school

Nor does the opinion below conflict with this Court's holding in *Southern Constructors, Inc. v. Loudon County Board of Education*, 58 S.W.3d 706 (Tenn. 2001). The ESA Act falls within the Home Rule Amendment's second paragraph, dealing with local legislation. In contrast, *Southern Constructors* interpreted unrelated language in the Amendment's third paragraph that allows counties and municipalities to adopt "home rule." 58 S.W.3d at 714-16. *Southern Constructors* did not address the constitutional mandate at issue in this case.

Bah Defendants refer to the ESA Act's financial impact on Plaintiff Counties as a mere "fiscal effect" that does not fall within the Home Rule Amendment. But the ESA Act's financial impact is not an incidental, second-hand effect. Rather, the Act's "counting requirement" is key to the Act's financial viability, as it requires Plaintiff Counties to subsidize their school districts' participation in the program. *See Metro. Gov't*, 2020 WL 5807636, at *3 n.1 (noting that the counting requirement "inflates the calculation of the amount of local taxes that must be raised and appropriated by the county" and "[c]ombined with the maintenance of effort statutes," "keeps the county appropriations for the county school system artificially high").

Nothing in the Home Rule Amendment excludes fiscal effects from the Amendment's scope. Contrary to Bah Defendants' claims, this Court's opinions in *Chattanooga-Hamilton Cty. Hosp. Auth. v. City of*

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district in two counties violates the Home Rule Amendment where the legislation transfers county-owned property into the district without county approval. *Id.* at *5.

Chattanooga, 580 S.W.2d 322 (Tenn. 1979), and *Perritt v. Carter*, 325 S.W.2d 233 (Tenn. 1959), are consistent with the Court of Appeals' application of the Amendment to local fiscal impacts. In *City of Chattanooga*, this Court reviewed the constitutionality of a 1977 private act that amended the original act creating the hospital authority. The 1977 act required county approval because it substantially affected the county by, among other provisions, amending the original act to declare the Authority to be a "public instrumentality acting on behalf of the County." *City of Chattanooga*, 580 S.W.2d at 328. In contrast, the 1977 act did not require city approval because it did not "substantially affect" the city beyond the provisions of the original act, which the litigation did not challenge.[22] Accordingly, the Court concluded that the 1977 Act appropriately required county approval but not city approval. *City of Chattanooga* thus supports the Court of Appeals' decision here.

The Bah Defendants similarly misconstrue this Court's ruling in *Perritt v. Carter*. In *Perritt*, this Court rejected an attempt to use the Home Rule Amendment to block a private act expanding a special school district within Carroll County. 325 S.W.2d at 233. The Bah Defendants assume that expanding the district would have had a "fiscal effect" on the

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[22] Bah Defendants suggest that the 1977 act transferred the city's real property to the Authority, imposing a "fiscal effect." (*See* Bah Defs.' Application at 16 n.6.) In fact, the city's property was conveyed to the Authority in the original act; the 1977 act only restated the conveyance before adding new language granting rights of reversion. Accordingly, the 1977 act imposed no new "fiscal effect" on the city that would have triggered the Home Rule Amendment. *Compare* 1977 Tenn. Private Acts ch. 125, § 2 *with* 1976 Tenn. Private Acts ch. 297, § 2.

county, requiring local approval. (Bah Defs.' Application at 17.) But moving students from the county into the special school district did not affect the county financially, either under the school funding formula in the private act that created the district or under general education law.[23] Thus, expanding the school district had no local fiscal effect that would have triggered the Home Rule Amendment.

Defendants' attempt to drive a wedge between Plaintiff Counties and their school districts is a red herring. Consistent with this Court's instructions, the Court of Appeals looked beyond the ESA Act's form and correctly concluded that the Act had an extensive fiscal effect on Plaintiff Counties that fell within the Home Rule Amendment's scope.[24] For the same reason, the Court of Appeals correctly held that Plaintiff Counties have standing. These holdings neither improperly extend the Home Rule

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[23] Under the 1919 private act that created the special district, Carroll County would provide the special school district "its per capita or prorata" share of all county school funds. *See* 1919 Tenn. Private Acts ch. 374, § 6. Accordingly, moving students into the special school district did not affect Carroll County's total education funding obligation, only the allocation of those funds among the local schools. State education law uses the same formula. *See* Tenn. Code Ann. § 49-3-315(a) ("All school funds for current operation and maintenance purposes collected by any county . . . shall be apportioned by the county trustee among the LEAs in the county on the basis of the WFTEADA [weighted full-time equivalent average daily attendance] maintained by each, during the current school year.").

[24] In fact, the ESA Act inflicts financial burdens on Plaintiff Counties *and* their school districts, interferes in their operations, and infringes on their local government sovereignty, the very types of harm that the Home Rule Amendment was adopted to prevent.

Amendment nor undermine longstanding precedent. The holdings therefore do not merit further judicial review.

E. The Home Rule Amendment Applies to Legislation Affecting Two Counties.

This Court held in *Leech* that a statute applying only in two counties was a private act subject to Home Rule Amendment scrutiny. 588 S.W.2d at 274. The Court of Appeals relied upon that holding in concluding that the ESA Act, which applies only in Davidson and Shelby counties, falls within the Amendment.

Greater Praise Defendants claim that the *Leech* opinion is a "180" reversal of this Courts' *Bozeman* opinion from the previous year. They assert that this Court upheld the statute at issue in *Bozeman* "because it applied to two counties." (Greater Praise Defs.' Application at 13.) This grossly mischaracterizes *Bozeman*'s holding. The Court upheld the *Bozeman* statute not because it applied to two counties but because it passed *Farris*'s "potentially applicable" test, as it "can become applicable to many other counties depending on what population growth is reflected by any subsequent Federal Census." *Bozeman*, 571 S.W.2d at 282; *see also Farris*, 528 S.W.2d at 552.[25] The Attorney General's Office is not confused on this point; it opined in 2002 that local legislation affecting

[25] Greater Praise Defendants also inaccurately claim that the population bracket at issue in *Bozeman* was based only on the 1970 census. (Greater Praise Defs.' Application at 17.) In fact, the act at issue applied to "counties having populations in excess of 250,000 according to the Federal Census of Population of 1970, *or any subsequent Federal Census of Population*." 571 S.W.2d at 280 (emphasis added).

two counties violated the Home Rule Amendment. *See* Tenn. Op. Att'y Gen. 02-020, at *5.

In fact, this Court has never rejected a Home Rule Amendment claim solely because the statute at issued applied to two or three counties or cities. Rather, it upheld such statutes in *Bozeman* and other cases because the statutes were potentially applicable to other counties without further legislative action. *See* cases cited *supra* p. 22.[26]

As the Court of Appeals noted, the holding in *Leech* is consistent with the 1953 constitutional convention debate on the Home Rule Amendment, in which the Chair of the Committee on Editing, when presenting the Amendment's proposed text, explained that an act "would be a local bill if it applies to one or two" municipalities. (Tennessee Const. Convention J. of 1953 at 1121, Pl. Counties' App. at APP020.) *Leech* was correctly decided, and it was correctly applied to the ESA Act below. This issue does not require further review by the Court.

II. THE SUPREME COURT NEED NOT ASSERT SUPERVISORY AUTHORITY IN THIS CASE.

State Defendants claim that Supreme Court review is needed to establish supervisory authority over the Court of Appeals, which they assert failed to apply the presumption of constitutionality when

[26] Greater Praise Defendants claim that this Court's decision in *Burson*, which involved population brackets potentially applicable to any county with a population greater than 300,000, "tacitly ignored" the *Leech* decision. (Greater Praise Defs.' Application at 18.) *Leech* involved population brackets that were so narrowly drawn that they would only ever apply to two counties. *See supra* n.14. There was no conflict between the two cases that needed to be explained or resolved.

examining the ESA Act. "In evaluating the constitutionality of a statute, [courts] begin with the presumption that an act of the General Assembly is constitutional." *Willeford*, 597 S.W.3d at 465 (internal quotations omitted). Nothing in that presumption, however, requires or even permits the court to rewrite a constitutional provision beyond its intended meaning to save a statute.

Rather, the presumption of constitutionality establishes a pecking order where there is more than one reasonable interpretation of a statute's meaning, as this Court explained:

> Moreover, when considering the constitutionality of a statute, courts have a duty to adopt a construction which will sustain the statute and avoid constitutional conflict if at all possible, and this duty requires courts to indulge every presumption and resolve every doubt in favor of the statute's constitutionality.

State v. Taylor, 70 S.W.3d 717, 721 (Tenn. 2002). The Court must "seek to adopt the most 'reasonable construction which avoids statutory conflict and provides for harmonious operation of the laws.'" *In re Kaliyah S.*, 455 S.W.3d 533, 552 (Tenn. 2015) (quoting *Carver v. Citizen Utils. Co.*, 954 S.W.2d 34, 35 (Tenn. 1997)).

State Defendants are not asking the Court to adopt an alternative, reasonable construction of the statute. They are asking the Court to adopt a new interpretation of the Home Rule Amendment untethered from its language. To illustrate, State Defendants' examples of how the presumption should apply would require rewriting the Home Rule Amendment to create exemptions for pilot programs and education bills. Their argument also constitutes a back-door attack on the firmly

established principle in *Farris* that courts must look to the *substance* of a bill, not its *form*, to determine whether the Home Rule Amendment applies.

"[T]he Court must be controlled by the fact that our Legislature may enact any law *which our Constitution does not prohibit . . . .*" *Willeford*, 597 S.W.3d at 465 (internal quotations omitted) (emphasis added). A court cannot ignore constitutional requirements or rewrite well-established case law to save an unconstitutional statute. The Court of Appeals' opinion is consistent with both the law and the presumption of constitutionality.

III. THE PUBLIC INTEREST DOES NOT WEIGH IN FAVOR OF SUPREME COURT REVIEW.

Application of the Home Rule Amendment does not place any weight on the merits of the legislation at issue. It does not require rational basis or strict scrutiny review of governmental interests or weighing of competing factors. *Compare* Tenn. Const., art. XI, § 9 (Home Rule Amendment) *with id.*, art. XI, § 8 (requiring equal protection of the law). In *Lawler v. McCanless*, the citizens and bar of Gibson County likely approved of expanding the jurisdiction of their general sessions court to address a backlog of state court cases. But the enabling legislation applied only in Gibson County without a provision for local approval, so it was declared invalid notwithstanding the merits of judicial efficiency. 417 S.W.2d 548.

The ESA Act falls squarely within the requirements of the Home Rule Amendment, and Defendants' policy arguments should carry no weight. But some response to Defendants' public interest arguments is

warranted because they mischaracterize the ESA Act, the Court of Appeals' ruling, and the Tennessee Constitution.

Contrary to Defendants' emotional appeals, the ESA Act is a far cry from social justice legislation. The bill is not targeted at students attending poorly performing schools—it allows eligible students to use ESA funds to attend private school even if they are zoned to the highest performing schools in their district.[27] Defendants attempt to spin the purported benefits of the Act to show otherwise, but this factual impact of the Act is beyond dispute. The Act is a financial lifeline for struggling private schools, not students. (*See* Aff. of Greater Praise Academy Director Kay Johnson ¶ 10 (ESA Act would enable Academy to increase enrollment by 240%), TR VII at 1152.)

State Defendants' argument that the Court of Appeals misinterpreted the Education Clause and therefore gave it insufficient weight also fails. The Education Clause, by its terms, requires that the General Assembly "shall provide for the maintenance, support and eligibility standards of a system of *free public schools*." Tenn. Const., art. XI, § 12 (emphasis added). Nothing in the provision addresses use of public funds to pay for private school tuition. State Defendants' assertion

[27] Although the "eligible student" definition is based on the number of priority and bottom 10% schools in an LEA, the ESA Act does not limit participation only to students attending those schools. Tenn. Code Ann. § 49-6-2602(3)(C). Thus, *any* income-eligible student zoned to attend a school in the subject LEA, even if attending the LEA's highest-performing school, may participate in the program.

that the Court of Appeals erred by noting this discord fails to establish an issue of public concern meriting further review.

More generally, nothing in the public interest requires the Court to accept every permissive appeal involving the constitutionality of legislation, whether involving education or other subjects. But this would be the necessary implication of Defendants' argument.

CONCLUSION

The ESA Act imposes a unique burden on two and only two counties—Davidson and Shelby—in overseeing and funding their county school systems. Multiple rulings by this Court and the Court of Appeals confirm that Article XI, Section 9, Paragraph 2 of the Tennessee Constitution prohibits the General Assembly from imposing such a burden without Plaintiff Counties' approval.

The Court of Appeals' well-reasoned opinion falls squarely within mainstream Tennessee jurisprudence under the Home Rule Amendment. It neither conflicts with prior decisions nor addresses novel questions of law. The only relevant question of public interest in this case was settled in 1953 when Tennessee's citizens approved the Home Rule Amendment to the state constitution. Nothing in this case requires this Court to exercise its supervisory authority, and Defendants' applications for permission to appeal under Tenn. Rule App. P. 11 should be denied.