

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

THE METROPOLITAN GOVERNMENT)
OF NASHVILLE AND DAVIDSON)
COUNTY, et al.,)
)
Plaintiffs,)
)
v.) No. 20-0143-II
)
TENNESSEE DEPARTMENT OF) Chancellor Anne C. Martin, Chief Judge
EDUCATION, et al.,) Judge Tammy M. Harrington
) Judge Valerie L. Smith
Defendants,)
)
and)
)
NATU BAH, et al.,)
)
Intervenor-Defendants.) **CONSOLIDATED**

ROXANNE McEWEN, et al.,)
)
Plaintiffs,)
)
v.) No. 20-0242-II
)
BILL LEE, in his official capacity as) Chancellor Anne C. Martin, Chief Judge
Governor of the State of Tennessee, et al.,) Judge Tammy M. Harrington
) Judge Valerie L. Smith
Defendants,)
)
and)
)
NATU BAH, et al.,)
)
Intervenor-Defendants.)

**STATE DEFENDANTS' MOTION TO DISMISS
METRO GOV'T PLAINTIFFS' AMENDED COMPLAINT**

Pursuant to Tenn. R. Civ. P. 12.02(6), Defendants Tennessee Department of Education, Commissioner Penny Schwinn, in her official capacity as Education Commissioner for the Tennessee Department of Education, and Governor Bill Lee, in his official capacity, (“State Defendants”), move to dismiss this case because Plaintiffs fail to state a claim upon which relief can be granted. This case is not justiciable, and the Tennessee Education Savings Account Pilot Program (“ESA Pilot Program”) is constitutional. Therefore, the State Defendants move for dismissal on the following grounds:

1. Plaintiffs lack standing;
2. Plaintiffs’ equal protection and education clause claims, to the extent premised on inequitable distribution of funds or inequality in education due to funding, are not ripe;
3. The ESA Pilot Program does not violate the equal protection provisions of the Tennessee Constitution;
4. The ESA Pilot Program does not violate the Education Clause of the Tennessee Constitution; and
5. Plaintiffs fail to establish an *ultra vires* claim.

For the reasons stated, the Court should grant this motion and dismiss the case in its entirety. The State Defendants’ contemporaneously file a memorandum of law in support of this motion.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this Motion to Dismiss has been forwarded by electronic mail (in lieu of U.S. Mail by agreement of the parties) and the electronic filing system on this 19th day of August, 2022, to:

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