

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

APRYLE YOUNG, et al.,

Plaintiffs,

v.

BILL LEE, in his official capacity as Governor of
the State of Tennessee, et al.,

Defendants,

ALICIA DENISE FAIR and MICHAEL and
MONICA SWEENEY,

Proposed Intervenor-Defendants.

Case No. 25-1621-II
Hon. Anne C. Martin

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

Pursuant to Rule 24 of the Tennessee Rules of Civil Procedure, the proposed Intervenor-Defendants Alicia Denise Fair and Michael and Monica Sweeney (collectively, “Proposed Intervenor-Defendants”) respectfully move the Court to intervene as Defendants in this action and to assert the defenses set forth in their proposed Answer to the Complaint, a copy of which is attached to their Motion. Tenn. R. Civ. P. 24.03.

INTRODUCTION

Proposed Intervenor-Defendants are Tennessee parents who have chosen private school for their children and already rely upon the Tennessee Education Freedom Scholarship program (“EFS Program”), created by the Tennessee Education Freedom Scholarship Act (codified at Tenn. Code § 49-6-3501, *et seq.*), to help pay their children’s tuition. Under the EFS Program, 20,000 Tennessee children are receiving the \$7,295 scholarship to support them attending private school in the state for the 2025-

2026 school year. Tenn. Dep’t of Educ., *Family Handbook: A Guide to the Education Freedom Scholarship (EFS) Program 2025-26 School Year*, <https://tinyurl.com/3yctnpjx> (last accessed Nov. 25, 2025). Proposed Intervenor each have relied on the Program for almost half of this school year, and they intend to continue to use the Program next year and thereafter.

As the intended and direct beneficiaries of the EFS Program, Proposed Intervenor are, in essence, the real parties in interest. They accordingly seek party status as Intervenor-Defendants under Rule 24 to defend the constitutionality of the Program from which they benefit. Proposed Intervenor have critical interests at stake in this case—the education of their children and the receipt of funds from the EFS Program to help pay for that education. Proposed Intervenor share in common questions of law and fact with the existing parties and provide a distinct—and crucial—perspective. Proposed Intervenor will not add any claims to the case, so particularly at this early stage of the case, before named defendants have responded to the complaint and before any preliminary or substantive motions have been filed, permitting intervention will not prejudice existing parties.

Courts regularly grant intervention to the parents of children who rely on—or wish to rely on—an education choice program that has been challenged in court, including in this Court. *See, e.g., Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 146 (Tenn. 2022) (explaining that “[t]he trial court allowed ... parents wanting their children to participate in the ESA program ... to intervene and participate as defendants”). This case is no different, and intervention is warranted.

BACKGROUND

I. The EFS Program

In February 2025, Tennessee enacted the Tennessee Education Freedom Scholarship Act (the “Act”), which established a universal school choice program in Tennessee—the EFS Program. As the Act states, it follows from the “long history” of “publicly supported educational freedom” in

Tennessee, as well as the understanding that “parents should be free to choose the school that best fits the educational needs of their specific child.” 2025 Tenn. Laws 1st Ex. Sess., Pub. Ch. 7, H.B. 4. The Tennessee Department of Education (TDOE) administers the EFS Program. Tenn. Code § 49-6-3503(a).

Under the EFS Program, for the 2025-2026 school year, 20,000 total scholarships were available to eligible students—10,000 were available for eligible students who met an additional criterion, including having a household income no more than 300% the amount required to qualify for free or reduced-price lunch, and the other 10,000 were available for eligible students regardless of income. Tenn. Code § 49-6-3504(a). The scholarship amount “equals the base funding amount” as set out in § 49-3-104(2), which “means the uniform dollar amount that each student generates towards the student’s funding allocation in a given year” under the Tennessee Investment in Student Achievement Act (TISA). Tenn. Code § 49-6-3505. For 2025-2026, each scholarship is projected to be \$7,295 per student, which was funded by a one-time appropriation of general revenue funds. Tenn. Dep’t of Educ., *Family Handbook: A Guide to the Education Freedom Scholarship (EFS) Program 2025-26 School Year*, <https://tinyurl.com/3yctnpjx> (last accessed Nov. 25, 2025).

To receive a scholarship, the eligible student or her parents must (1) “[s]ubmit a completed scholarship application to the [D]epartment; (2) [e]nsure the provision of an education for the eligible student that satisfies the compulsory school attendance requirement provided in § 49-6-3001(c)(1) through enrollment in a private school; and (3) [n]ot enroll the eligible student in a kindergarten through grade twelve (K-12) public school in any school year for which the eligible student receives a scholarship.” Tenn. Code § 49-6-3504(d).

The scholarship funds “must first be used to pay the recipient’s tuition and fees” to the child’s private school, and any remaining funds may be used for any of a number of “educational expenses” listed in the statute, including, for example, “[t]extbooks, curricula, instructional materials, and

uniforms required by the private school in which the recipient is enrolled,” “[f]ees for transportation to and from the private school in which the recipient is enrolled, paid to a fee-for-service transportation provider that meets the requirements established by the [D]epartment,” and “[e]ducational therapy services provided by therapists who meet the requirements established by the [D]epartment.” Tenn. Code § 49-6-3505.

In September 2025, the TDOE reported the “remarkable results” from the EFS Program’s first year. TDOE Announces Successful Implementation of Education Freedom Scholarship Program, Tenn. Dep’t of Educ. (Sept. 19, 2025), <https://tinyurl.com/3cutznadb>. In the first year of the EFS Program, TDOE received more than 42,000 applications and awarded all 20,000 available scholarships. *Id.*

TDOE recently announced the application window for the 2026-2027 school year, which will take place in December 2025 through January 2026. TDOE Releases Education Freedom Scholarship Application Dates, Tenn. Dep’t of Educ. (Nov. 20, 2025), <https://tinyurl.com/44jc9pmc>.

II. Proposed Intervenor

a. The Fair Family

Alicia Denise Fair is a resident of Jefferson City, Tennessee. Exhibit A, Fair Decl. ¶ 1. She and her husband, Donald “Chris” Fair, are the parents of six children, two of whom are still school-aged. *Id.* ¶¶ 1-2. Their second-youngest child, A.F., is a fourteen-year-old girl and a ninth grader, and their youngest child, H.F., is a twelve-year-old girl and a seventh grader. Both girls attend Lakeway Christian Academy, which is a private school in White Pine, Tennessee. *Id.* ¶ 2.

Ms. Fair and her husband are both first responders. Ms. Fair is the GIS Coordinator at Jefferson County 911, and Mr. Fair is a police sergeant. Fair Decl. ¶ 1. As first responders, they are dedicated to serving their community, but they do not make a lot of money. *Id.* ¶ 5. The Fairs did not think that they would be able to afford private school for their girls on their own. *Id.* ¶ 6. Lakeway

offered their family scholarships for the first year of school, but that assistance was cut in half the following year. *Id.* ¶ 9. With the cut in scholarship assistance, last year was a big struggle for their family, with Mr. Fair working two full-time jobs and Ms. Fair working her full-time job as well as additional part-time work bookkeeping and delivering goods via DoorDash and Instacart. *Id.* ¶ 10.

The Fairs applied for and received EFS scholarships for both of their children for the 2025-2026 school year. Fair Decl. ¶ 13. That assistance has allowed them to keep their children at Lakeway Christian Academy, where the Fairs greatly value the educational model and religious values, the excellent facilities and programs, and the care that the teachers and staff have for the students there. *Id.* ¶¶ 7–8, 12–14. The EFS Program has also enabled the Fairs’ children to attend additional activities with their school, and Ms. Fair has been able to reduce her part-time hours so that she is able to spend more time attending their activities. *Id.* ¶ 14. If not for the EFS scholarships, the Fairs could not afford to keep their children in the school that they believe serves their children so well. *Id.* ¶¶ 15.

b. The Sweeney Family

Michael and Monica Sweeney are residents of Knoxville, Tennessee. Exhibit B, Sweeney Decl. ¶ 1. They are the parents of two sons and one daughter: M.H.S. is a thirteen-year-old boy and a seventh grader; M.M.S. is an eleven-year-old girl and a fifth grader, and M.G.S. is an eight-year-old boy and a third grader. *Id.* ¶ 2. The Sweeneys enroll all three of their children at St. Mary’s Catholic School, a private school in Oak Ridge, Tennessee. *Id.* ¶ 5.

All three children perform well at school. Their oldest son, M.S., is a particularly high achiever, and St. Mary’s can challenge him with extra assignments to keep him engaged. Sweeney Decl. ¶ 8.

Paying tuition at St. Mary’s for three children has been a financial burden on the Sweeneys. Although they have received some assistance from their Diocese and the school, they still paid nearly \$2,000 per month in tuition for their children and were finding it increasingly difficult to make those payments. Sweeney Decl. ¶ 9. They have considered returning their children to homeschool due to

their financial constraints. *Id.* The EFS Program has helped the Sweeneys keep their children at the school where the teachers love them, where their friends attend, and where they are thriving. *Id.* ¶¶ 7, 10–11. They receive the EFS scholarships for each of their children for the 2025-2026 school year, and they intend to continue using the EFS Program in years to come. *Id.* ¶ 11. An injunction against the EFS Program would impose a serious financial burden on their family. *Id.* ¶ 12.

III. This Lawsuit

On November 20, 2025, Plaintiffs filed this lawsuit challenging the EFS Program. Plaintiffs are (1) five parents of children enrolled in public schools in Tennessee and (2) five Tennessee residents who pay taxes in the state. Compl. ¶¶ 8–16. Plaintiffs bring two claims against the EFS Program, arguing that it is unconstitutional under Article XI, section 12 of the Tennessee Constitution. Compl. ¶¶ 117–131. Plaintiffs request a “judgment declaring that the [EFS Program] violates the Tennessee Constitution’s Education Clause,” as well as “temporary and permanent injunctions preventing the enforcement of the [Program].” Compl., Declaratory and Injunctive Relief.

ARGUMENT

Rule 24 of the Tennessee Rules of Civil Procedure governs intervention, which can be either by right or by permission. Tenn. R. Civ. P. 24.01 (by right); Tenn. R. Civ. P. 24.02 (permissive). Here, intervention is warranted under both the standard for intervention by right and the standard for permissive intervention.

I. Intervention by Right

For intervention by right, “[u]pon timely motion[,]” a person “shall be permitted to intervene in an action” if the movant “claims an interest relating to the property or transaction which is the subject of the action and the movant is so situated that the disposition of the action may as a practical matter impair or impede the movant’s ability to protect that interest,” and the existing parties do not adequately represent that interest. Tenn. R. Civ. P. 24.01. Such an interest is a “direct claim on the

subject matter of the suit such that the intervenor will either gain or lose by direct operation of the judgment,” not “a mere contingent, remote, or conjectural possibility of being affected as a result of the suit.” *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191-92 (Tenn. 2000).

For adequacy of representation, an intervenor need only show that her interests “may be” inadequately protected, a burden described by the U.S. Supreme Court as “minimal.” *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972); accord *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1247 (6th Cir. 1997); *Grubbs v. Norris*, 870 F.2d 343, 347 (6th Cir. 1989); see also *Am. Materials Techs., LLC v. City of Chattanooga*, 42 S.W.3d 914, 916 (Tenn. Ct. App. 2000) (explaining that “the Tennessee Rule on intervention is substantially identical to the Federal rule”). This burden does not require an intervenor to show that representation “will in fact be inadequate.” *Miller*, 103 F.3d at 1247. If the intervenor’s interest is similar but not identical to an existing party’s interest, then intervention should generally be allowed. See *Ballard v. Herzke*, 924 S.W.2d 652, 657–58 (Tenn. 1996).

Proposed Intervenors are entitled to intervene as of right under Rule 24.01 because “(1) the application for intervention was timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the pending litigation; (3) the proposed intervenor’s ability to protect that interest is impaired; and (4) the parties to the underlying suit cannot adequately represent the intervenor’s interests.” *Brown & Williamson*, 18 S.W.3d at 190–91 (citing *Grubbs*, 870 F.2d at 345).

First, Proposed Intervenors’ motion is timely. Tenn. R. Civ. P. 24.01; *Brown & Williamson*, 18 S.W.3d at 190–91. Generally, “the timeliness of an intervention is governed by equitable principles, and is determined by the facts and circumstances of each particular case,” including the length of time during which the intervenor reasonably should have known of its interest. *Santander v. Lopez*, 2010 WL 1172531, at *6–7 (Tenn. Ct. App. Mar. 24, 2010) (concluding that motion to intervene was timely and reversing trial court’s denial of intervention). By filing within one week of the lawsuit’s filing on November 20, 2025—and before any defendant has appeared or filed a responsive pleading and before

any plaintiff has filed a motion for any relief—Proposed Intervenor has certainly satisfied the timeliness requirement.

Second and third, as parents relying on the EFS Program to help send their children to private schools where their children are thriving, Proposed Intervenor unquestionably have a substantial, cognizable interest—their children’s education—that will be impaired should they not be permitted to intervene to defend the Program. *See* Tenn. R. Civ. P. 24.01; *In re Knott*, 197 S.W. 1097, 1098 (Tenn. 1917) (recognizing that a parent’s interest in his child’s education is “sacred”); *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925) (describing parents’ fundamental interest in “direct[ing] the upbringing and education of” their children).

Indeed, Proposed Intervenor has a “direct claim” on that interest because they are the ones who are using, and wish to continue using, the EFS Program. *See Brown & Williamson*, 18 S.W.3d at 192. Proposed Intervenor are currently using the EFS Program to fund their children’s private school education, and they intend to continue to use the EFS Program as it continues in the years to come. Fair Decl. ¶ 13; Sweeney Decl. ¶ 11. Plaintiffs’ lawsuit specifically requests an injunction preventing the EFS Program’s enforcement. Compl., Declaratory and Injunctive Relief. If Plaintiffs succeed, then Proposed Intervenor will lose the EFS Program support that they are receiving this year as well as the opportunity to continue to receive that support in years to come. In that case, Proposed Intervenor will face difficult financial and educational consequences for their children, perhaps including inability to afford their current schools. Proposed Intervenor’s interest is undeniable.

Fourth, no other party adequately represents Proposed Intervenor’s interests. Tenn. R. Civ. P. 24.01. As described above, this requirement is a “minimal” burden, requiring a showing that the representation “may be” inadequate. *See Trbovich*, 404 U.S. at 538 n.10; *see also Miller*, 103 F.3d at 1248; *Grubbs*, 870 F.2d at 347. Proposed Intervenor more than meet that burden. Plaintiffs are seeking to enjoin the EFS Program, and while the State Defendants can be expected to defend the Program

based on their legal duty to defend the state's laws, their interests are not the same as Proposed Intervenors'. Proposed Intervenors are beneficiaries of the EFS Program, and both their status as beneficiaries and their "sacred" interest in the education of their children set their interests apart from all other parties in this case. *In re Knott*, 197 S.W. at 1098; *see Ballard*, 924 S.W.2d at 658.

As parents relying upon EFS scholarships to provide their children with the education they think is best for them, Proposed Intervenors have the greatest stake in avoiding potential disruption to the EFS Program—which Plaintiffs demand in their prayer for relief, Compl., Declaratory and Injunctive Relief. Proposed Intervenors' interests "are not identical" to the State's interests and so "intervention is appropriate." *Ballard*, 924 S.W.2d at 658; *see, e.g., Miller*, 103 F.3d at 1243, 1247 (holding that intervenor Chamber of Commerce was entitled to intervene by right and permissively in case challenging constitutionality of Michigan law because, as the party affected by the statute's regulations, it "would harbor an approach and reasoning for upholding the statutes that will differ markedly from those of the state, which is cast by the statutes in the role of regulator").

The government cannot adequately represent the equitable interests of Proposed Intervenors because it lacks the direct knowledge they possess. Tennessee courts have held that a party seeking an injunction must address the balance between their harm and the harm that the injunction would inflict on other parties. *See, e.g., Vintage Health Res., Inc. v. Guiangan*, 309 S.W.3d 448, 467 (Tenn. Ct. App. 2009). In these equitable arguments, the State cannot adequately represent Proposed Intervenors' interests because it lacks relevant information, such as knowledge regarding their children and their experiences with the EFS Program and the injury that any injunction would inflict on them.

Furthermore, Proposed Intervenors' interests and the State's interests "may not always dictate precisely the same approach to the conduct of the litigation." *Trbovich*, 404 U.S. at 539; *Miller*, 103 F.3d at 1247. As past experience in educational choice litigation shows, the government and participating families often take different litigation approaches and present different arguments. In *Arizona Christian*

School Tuition Organization v. Winn, 563 U.S. 125 (2011), for example, parent-intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, which was an issue that the state had conceded. The state similarly conceded standing in *Duncan v. State*, 102 A.3d 913 (N.H. 2014), while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional. Likewise in *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999), parent-intervenors—not the state—urged and persuaded the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state’s educational choice program. And in *Hart v. State*, 772 S.E.2d 855 (N.C. 2014), it was parent-intervenors—not the government—that obtained interlocutory relief ensuring that 2,000 students would not lose their scholarships after an adverse judgment from the trial court.

Another example occurred recently here in Tennessee after this Court granted intervention to parent-intervenors in a different, and ongoing, school-choice case, who are also represented by counsel from EdChoice Legal Advocates and the Beacon Center of Tennessee (and Institute for Justice, which has passed the torch on to EdChoice). See *Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, 645 S.W.3d 141, 146 (Tenn. 2022). Parent-intervenors in that case pursued an argument regarding the Tennessee Home Rule Amendment—an argument that the state only later embraced—that proved decisive to upholding the school-choice program at the Supreme Court. See *id.* at 151–52 (noting that “Intervenors, and now the State as well,” had advanced the argument).

Proposed Intervenors are entitled to intervene by right.

II. Permissive Intervention

In the alternative, permissive intervention is warranted. For permissive intervention, a person “may be permitted to intervene” if the request is “timely,” and the person’s “claim or defense and the main action have a question of law or fact in common.” Tenn. R. Civ. P. 24.02. The Court has discretion to permit intervention, and “[i]n exercising discretion, the [C]ourt must consider whether

the intervention will unduly delay or otherwise prejudice the rights of the original parties.” *Brown & Williamson*, 18 S.W.3d at 192 (citing Tenn. R. Civ. P. 24.02). Where the intervenor “do[es] not seek to inject any new claims or issues” into the case, courts have found that intervention would cause “no undue delay or prejudice to the adjudication of the rights of the original parties.” *Kocher v. Bearden*, 546 S.W.3d 78, 84–85 (Tenn. Ct. App. 2017) (reversing trial court’s decision denying motion to intervene).

Proposed Intervenors should be permitted to intervene under the discretionary standard for permissive intervention. because the request is “timely,” “the would-be intervenor’s claim or defense contains a question of law or fact that is also raised by the main action,” and intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties.” *Ballard*, 924 S.W.2d at 657; Tenn. R. Civ. P. 24.02.

As demonstrated above, Proposed Intervenors’ motion to intervene is timely, as it was filed less than a week after the Plaintiffs filed their Complaint and even before the named defendants have appeared.

Proposed Intervenors also have common questions of law and fact with the current parties. *Id.* Like State Defendants, Proposed Intervenors seek to resolve the questions of law raised by the Complaint regarding the constitutionality of the EFS Program under Tennessee law. *See Ballard*, 924 S.W.2d at 657–58 (concluding that intervenor media entities had a common question of fact or law where they had the “same” “basic interest” as the plaintiffs in “challeng[ing] the validity of the protective order entered in the main action”). Proposed Intervenors’ purpose in intervening, moreover, supports intervention. *See Am. Materials Techs.*, 42 S.W.3d at 916 (purpose of intervention is a relevant factor); *Ballard*, 924 S.W.2d at 658 (considering intervenors’ “interest” in intervening). Proposed Intervenors are intervening to defend the constitutionality of the EFS Program and to represent their own interest in preventing the great harm that would be inflicted on Proposed Intervenors themselves, other beneficiaries, and the public if the Program were enjoined.

In addition, intervention will not “unduly delay or prejudice the adjudication of the rights of the original parties.” Tenn R. Civ. P. 24.02. Proposed Intervenor will not present cross-claims or introduce any issues unrelated to Plaintiffs’ challenge, nor will they complicate the factual record. *Kocher*, 546 S.W.3d at 84–85 (concluding there would be “no undue delay or prejudice to the adjudication of the rights of the original parties if intervention is permitted under the circumstances of this case”). None of the original parties will be prejudiced by the intervention here.

Finally, Proposed Intervenor will provide a more complete understanding and defense of the EFS Program and its constitutionality under Tennessee law. Proposed Intervenor’s counsel is partnered with Institute for Justice (IJ) and is carrying on IJ’s legacy and decades of experience representing intervening parents in the defense of educational choice programs in courts around the country. See Chantal Fennell, *Celebrating Two Years Defending Families’ Right to Choose* (Nov. 12, 2025), <https://tinyurl.com/376t8xv6>. Following from that legacy, Proposed Intervenor’s counsel with EdChoice Legal Advocates and the Beacon Center of Tennessee are currently representing intervening parents in the defense of another Tennessee educational choice program. *Bichell, et al. v. Lee, et al. and Natu Bah, et al.*, No. 20-0242-II (Davidson Cnty. Chancery Ct.). EdChoice Legal Advocates is also participating as co-counsel representing intervenors defending Ohio’s education savings account program and the Utah Fits All scholarship program, and as lead counsel representing intervening parents in lawsuits challenging Montana’s education savings account program for students with special needs, Missouri’s tax credit scholarship program, and Wyoming’s education savings account program.¹

¹ Order, *McEwen v. Lee*, No. 20-0242-II (Chancery Ct. of Davidson County April 3, 2020); Order Granting Intervention, *Missouri National Education Association v. State of Missouri*, No. 25AC-CC05358 (Cir. Ct. of Cole County August 13, 2025); Order Granting Intervention, *Wyoming Education Association v. Megan Degenfelder*, No. 2025-CV-020336 (Dist. Ct. of Laramie County July 9, 2025); Order Granting Intervention, *Kevin Labresh v. Governor Spencer J. Cox*, No. 240904193 (Dist. Ct. of Salt Lake City County June 10, 2024); Order Granting Intervention, *Montana Quality Education Coalition v. State of Montana*, No. ADV-25-2024-0000044-IJ (Dist. Ct. of Lewis & Clark County May 2, 2024); Order Granting Intervention, *Columbus City School District v. State of Ohio*, No. 22-CV-67 (Dist. Ct. of Franklin County May 12, 2022).

In sum, Proposed Intervenors have the requisite interest to intervene because they are the beneficiaries of a government program being challenged and their interests will be impaired significantly—they will lose the scholarship for their children’s education—if the injunction is granted. As individual beneficiaries of the EFS Program, their interests are not adequately represented by the state defendants. Proposed Intervenors also will not delay or prejudice anyone from intervention, as they quickly intervened and will not add claims to the suit. For these reasons, intervention is warranted.

CONCLUSION

Proposed Intervenors respectfully request the Court to grant their Motion to Intervene as Defendants.

Dated: November 26, 2025.

Respectfully submitted,

/s/ Ben Stormes

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of November, 2025, the foregoing Memorandum in Support of Motion to Intervene as Defendants was served on counsel for Plaintiffs via FedEx shipping, and served on Defendants to the Tennessee Attorney General via United States mail.

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