

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

APRYLE YOUNG, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 25-1621-II
	)	
BILL LEE, in his official capacity as	)	Chancellor Anne C. Martin
Governor for the State of Tennessee, et al.	)	Judge Joseph T. Howell
	)	Chancellor John C. Rambo
Defendants.	)	

ORDER

Before the Court is the Motion of Proposed Intervenors Alicia Denise Fair, Michael Sweeney, and Monica Sweeney to Intervene in this matter as Intervenor-Defendants. Proposed Intervenors seek to intervene by right under Tennessee Rule of Civil Procedure 24.01. Alternatively, Proposed Intervenors seek to intervene by permission of the Court under Tennessee Rule of Civil Procedure 24.02. Plaintiffs oppose the intervention. Defendants do not.

Finding that Proposed Intervenors do not meet the criteria of Rule 24.01 to intervene by right, the Court **DENIES** the Motion to the extent seeks intervention as of right. The Court also finds, however, that Proposed Intervenors satisfy the criteria of Rule 24.02 for a permissive intervention. The Court exercises its discretion and **GRANTS** Proposed Intervenors' Motion to Intervene with its permission.

BACKGROUND

In February 2025, Tennessee enacted the Tennessee Education Freedom Scholarship Act (the "EFS Act"), which established a universal school choice program in the state (the "EFS Program"). The intent of the EFS Act is that "parents should be free to choose the school that best

fits educational needs of their specific child.” *See* 2025 Tenn. Pub. Laws 1st Ex. Sess., Ch. 7 (H.B. 6004).

The EFS Program is administered by the Tennessee Department of Education (the “Department”). *See* Tenn. Code Ann. § 49-6-3503(a). Under the EFS Program, for the 2025–26 school year, 20,000 total scholarships were available to eligible students, with half of those scholarships reserved for low-income students. *See* Tenn. Code Ann. § 49-6-3504(a). The scholarship amount “equals the base funding amount” as set out in Tenn. Code Ann. § 49-3-104(2), which invokes the dollar amount each student generates towards the student’s funding allocation under the Tennessee Investment in Student Achievement Act. To receive a scholarship, each eligible student or his or her parents must submit an application, ensure that the education the money would be going towards satisfies the compulsory attendance requirement of Tenn. Code Ann. § 49-6-3001(c)(1), and not enroll the student in a K–12 public school for the applicable school year. *See* Tenn. Code Ann. § 49-5-3504(d). The scholarship funds must first go to the student’s private school for tuition and fees, and then any remaining funds may be used for enumerated educational expenses. *See* Tenn. Code Ann. § 49-5-3505. In September 2025, the Department reported that it had receives more than 42,000 applications in the EFS Program’s first year and awarded all available scholarships. In November 2025, the Department announced the application window for the 2026–27 school year. On November 20, 2025, Plaintiffs filed this lawsuit challenging the EFS Program, bringing two claims against the EFS Act and arguing that it is unconstitutional under the Education Clause of the Tennessee Constitution.

Proposed Intervenor Fair and her husband are residents of Jefferson City, Tennessee, and the parents of six children, two of whom are still school-aged. Both children attend Lakeway Christian Academy, a private school in White Pine, Tennessee. The Fair family applied for and

received EFS scholarships for both children for the 2025–26 school year. The Fair family does not make a lot of money and would not be able to afford private school for their two school-aged children absent the EFS program. Proposed Intervenor Sweeney are residents of Knoxville, Tennessee, and the parents of three children. All three children are enrolled at St. Mary’s Catholic School, a private school in Oak Ridge, Tennessee. Tuition for three children has been a considerable financial burden on the Sweeney family, and Proposed Intervenor Sweeney have considered returning their children to homeschool due to their financial constraints. The EFS Program, however, has helped Proposed Intervenor Sweeney keep their children at the school where the teachers love them, where their friends attend, and where they are thriving. An injunction against the EFS Program would impose a serious financial burden on the Sweeney family.

LEGAL STANDARDS

Any person desiring to intervene shall file and serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute gives a right to intervene.

Tenn. R. Civ. P. 24.03. “Any order granting or denying a motion to intervene filed pursuant to this rule shall be a final judgment for purposes of Tenn. R. App. P. 3.” Tenn. R. Civ. P. 24.05. The Tennessee Court of Appeals has stated that “the Tennessee Rule on intervention is substantially identical to the Federal rule,” and, for that reason, gaps in Tennessee’s jurisprudence on intervention are regularly filled in by recourse to federal jurisprudence. *See Am. Materials Techs., LLC v. City of Chattanooga*, 42 S.W.3d 914, 916 (Tenn. Ct. App. 2000) (explaining the applicability of Sixth Circuit precedent).

Here, Proposed Interventors seek intervention in this matter under Tennessee Rule of Civil Procedure 24, either by right or by permission.

I. Intervention as of Right

Upon timely motion any person shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when 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, unless the movant's interest is adequately represented by existing parties; or (3) by stipulation of all the parties.

Tenn. R. Civ. P. 24.01.

By statute, persons not made parties to a suit, but who have an interest in the matter at issue, can intervene in the suit as a matter of right in a number of situations (e.g., person interested in property which is subject of a suit to recover property (T.C.A. § 20-1-115); person interested in property which is subject of eminent domain proceeding (T.C.A. § 29-17-610)). Rule 24.01 preserves all statutory rights of intervention, and adds the grounds set out in clauses (2) and (3) of the Rule.

Tenn. R. Civ. P. 24.01, cmt. A party seeking to intervene by right under Rule 24.01 bears the burden of demonstrating each of the following:

(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.

State v. Brown & Williamson Tobacco Corp., 18 S.W.3d 186, 190–91 (Tenn. 2000) (citing *Grubbs v. Norris*, 870 F.2d 343, 345 (6th Cir. 1989)). Failure to establish any one of these elements means that the motion to intervene as of right should be denied. *Id.* at 191 (citing *Grubbs*, 870 F.2d at 345).

II. Permissive Intervention

Upon timely motion any person may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when a movant's claim or defense and the main action have a question of law or fact in common.

Tenn. R. Civ. P. 24.02.

Rule 24.02 preserves all statutory conditional rights of intervention and adds the right to intervene when the applicant's claim or defense and the main action have a common question of law or fact. Original parties are protected against undue delay or prejudice by empowering the court to deny intervention where necessary to protect these parties.

Tenn. R. Civ. P. 24.02, cmt. "Permissive intervention is generally not proper when the intervenor seeks to raise new claims or issues against the existing parties." *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 191 (citing *Arizona v. California*, 460 U.S. 605, 614 (1983)). "[I]f an intervenor's claim or defense contains a question of law or fact that is also raised by the main action, the requirement of Rule 24.02 is satisfied and the trial court is afforded discretion to permit intervention." *Id.* at 192 (citing *Ballard v. Herzke*, 924 S.W.2d 652, 657 (Tenn. 1996)). "In exercising that discretion, the court must consider whether the intervention will unduly delay or otherwise prejudice the rights of the original parties." *Id.* (citing Tenn. R. Civ. P. 24.02). The fact that the would-be intervenors have successfully identified "a common question of law or fact" does not, however, entitle them to intervention because the decision still lies within the discretion of the trial court. *Ballard*, 924 S.W.2d at 657–58.

ANALYSIS

I. Intervention as of Right

While the precise nature of the interest required to intervene as of right has eluded exact definition, it is clear that the right does not include a mere contingent, remote, or conjectural possibility of being affected as a result of the suit, but must involve 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. Hence, intervention as of right is not appropriate to adjudicate legal interests of an indefinite character, or hypothetical or speculative scenarios that may never come to pass.

State v. Brown & Williamson Tobacco Corp., 18 S.W.3d at 192 (citing *Harris v. Pernsley*, 820 F.2d 592, 601 (3rd Cir. 1987); 3B *Moore's Federal Practice* 24–54 (2d ed. 1995); 67A C.J.S.

Parties § 75 (1978)). When an existing party already has a duty to represent the interest of the proposed intervenor, mere differences in views and tactics on protecting that interest are insufficient to establish a right to intervene. *In re Estate of Hendrickson*, No. M2008-01332-COA-R9-CV, 2009 WL 499495, at *5 (Tenn. Ct. App. Feb. 25, 2009).

The showing required by the proposed intervenor as to the impaired ability by the existing party to protect the intervenor's interest is, however, minimal. *See Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 & n.10 (1972) (citing Fed. R. Civ. P. 24(a)(2); 3B J. Moore, *Federal Practice* 24.09—1(4) (1969)) (“The requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.”).

A. Timeliness

Here, Proposed Intervenors first argue their Motion is timely because (1) they filed within one week of the lawsuit's filing; (2) before any defendant had appeared or filed a responsive pleading; and (3) before any plaintiff filed a motion for any relief. *See* Tenn. R. Civ. P. 24.01; *Brown & Williamson*, 18 S.W.3d at 190–91) Plaintiffs do not challenge the timeliness of the Motion. Accordingly, the Court concludes that Proposed Intervenors sought intervention in a timely fashion as required by Rule 24.

B. Substantial Legal Interest

Proposed Intervenors next argue that as parents relying upon the EFS Program to help send their children to private schools where those children are thriving, Proposed Intervenors unquestionably have a substantial, cognizable interest—specifically, their children's education—that will be impaired should they not be permitted to intervene to defend the Program. *See In re Knott*, 197 S.W. 1097, 1098 (Tenn. 1917); *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925).

In fact, Proposed Intervenor argue they have a “direct claim” on that interest because they are using and wish to continue using the EFS Program as it continues in the years to come, and Plaintiffs’ lawsuit specifically requests an injunction preventing the enforcement of the EFS Program.

Plaintiffs argue, however, that Proposed Intervenor have no legally protectable interest in this case because they have no right to a publicly-funded, private education for their children. They argue the Tennessee Constitution guarantees free, public schools for every Tennessean, not private school subsidies. Thus, Plaintiffs argue their lawsuit makes no interference with Proposed Intervenor’s actual rights to send their children to private because there is no right to have that private education funded by taxpayers. Plaintiffs also argue that Proposed Intervenor’s interests as beneficiaries of the EFS Program is nothing more than “a mere contingent, remote, or conjectural possibility of being affected” because the EFS Program can be expanded, altered, or abolished at any time by the General Assembly.

Proposed Intervenor counter that they have substantial legal interests in this case, both in terms of the economic interest in the EFS Program as beneficiaries and in terms of the fundamental liberty interest in directing the upbringing of their children. Plaintiffs’ arguments, according to Proposed Intervenor, invoke the wrong rule because the question is not whether Proposed Intervenor have actionable rights but whether they have interests at stake. And here, Proposed Intervenor argue they plainly do.

While Plaintiffs are correct that Proposed Intervenor have no particular right to taxpayer-funded private education—which itself does not invoke the fundamental liberty interests of a parent—Proposed Intervenor are correct that they are unquestionably an economic beneficiary of

the EFS Program in the exercise of that liberty interest. Accordingly, the Court concludes Proposed Intervenor have established a substantial legal interest in this case.

C. Impairment to Ability to Protect Interest

Absent intervention in the present suit, Proposed Intervenor assert would be unable to protect their interests as described above. Only through an intervention would they be allowed to argue on behalf of the EFS Program—recourse to their elected representatives would be futile if the program is enjoined because it is ruled unconstitutional. Plaintiffs primarily rest on their arguments as to the existence of an interest and the adequacy of the representation by the State. They do however argue in a footnote that the instant lawsuit does not threaten any interest Proposed Intervenor would have because Plaintiffs do not challenge any individual eligibility determination or seek to resolve any factual dispute related to Proposed Intervenor or their children. Briefly in their Reply, Proposed Intervenor address this footnote, arguing they don't see the relevance of Plaintiffs' point—an outcome in Plaintiffs' favor would immediately preclude their ability to continue benefitting from the EFS Program and there is no other way for them to directly defend against that outcome other than joining this suit.

The Court agrees with Proposed Intervenor that intervention in this matter is the only way for them to directly protect their interests and concludes they have established sufficient impairment.

D. Adequacy of the Representation

Finally, Proposed Intervenor argue that the State inadequately represents their interests in this case. The burden to demonstrating this, Proposed Intervenor argue, is “minimal” and requires only that the movant “show[] that representation of his interest ‘may be’ inadequate.” See *Trbovich*, 404 U.S. at 538 n.10 (quoting 3B J. Moore, Federal Practice 24.09—1(4) (1969)).

Proposed Intervenor assert that, while the State can be expected to defend the program, its interests are not identical to Proposed Intervenor's interests. As beneficiaries of the program and because of the parent's "sacred" interest in the education of his or her child, Proposed Intervenor's interests are fundamentally different from the State's legal duty to defend its duly enacted laws. *See In re Knott*, 197 S.W. at 1098; *Ballard v. Herzke*, 924 S.W.2d 652, 658 (Tenn. 1996). Thus, Proposed Intervenor contend they have the greatest stake in the EFS Program, and the State cannot adequately represent that stake because the State lacks the direct knowledge the Proposed Intervenor possess as beneficiaries of the EFS Program. Furthermore, Proposed Intervenor and the State "may not always dictate precisely the same approach to the conduct of the litigation." *See Trbovich*, 404 U.S. at 539; *Miller*, 103 F.3d at 1247.

Plaintiffs respond that Proposed Intervenor cannot show that the State will inadequately represent whatever interest they may have. This is because the adequacy of the representation is presumed when "when the proposed intervenor and a party to the suit . . . have the same ultimate objective." *See Bradley v. Milliken*, 828 F.2d 1186, 1192 (6th Cir. 1987) (quoting *Wade v. Goldschmidt*, 673 F.2d 182, 186 n.7 (7th Cir. 1982) (per curiam)) (omission in original); *Blanchard v. Johnson*, 532 F.2d 1074, 1077 (6th Cir. 1976). Plaintiffs explain that the Sixth Circuit looks to several additional factors in determining adequacy of representation: "(1) whether there is collusion between the representative and an opposing party; (2) whether the representative fails in the fulfillment of its duty; and (3) whether the representative has an interest adverse to the proposed intervenor." *See Ohio v. EPA*, 313 F.R.D. 65, 68–69 (S.D. Ohio 2016) (citing *Purnell v. City of Akron*, 925 F.2d 941, 949 (6th Cir. 1991)); *Steigerwald v. BHH, LLC*, 317 F.R.D. 615, 620 (N.D. Ohio 2016).

Plaintiffs argue that the *Trbovch* “minimal” burden standard is not the appropriate standard here because it has not been used by any Tennessee court in the specific instance here where the Attorney General’s office is defending the constitutionality of the same statute that Proposed Intervenor wish to intervene in order to defend. There is no suggestion that the Attorney General will not do so vigorously. Thus, Plaintiffs assert, Proposed Intervenor’s argument amounts to the position that they will pursue either more aggressive or more creative legal tactics than the Attorney General’s office. This is insufficient. *See Steigerwald*, 317 F.R.D. at 620 (quoting *EPA*, 313 F.R.D. at 69) (“A disagreement over litigation strategy, however, does not establish inadequate representation.”); *see also In re Estate of Hendrickson*, 2009 WL 499495, at *5 (stating the same).

Proposed Intervenor respond that their “minimal” burden of inadequate representation does not require proof that the representation of the State is in fact inadequate. *See Trbovich*, 404 U.S. 528, 538 n.10 (quoting 3B J. Moore, *Federal Practice* 24.09—1(4)) (“The requirement of the Rule is satisfied if the applicant shows that representation of his interest ‘may be’ inadequate; and the burden of making that showing should be treated as minimal.”); *Miller*, 103 F.3d at 1247 (“One is not required to show that the representation will in fact be inadequate.”). Proposed Intervenor argue they satisfy this requirement because their interests are distinct from those of the present parties.

In the view of the Court, Proposed Intervenor’s interests *are* adequately represented by the State. Plaintiffs’ argument about *Trbovich* not being specifically adopted by Tennessee courts is substantially irrelevant because Tennessee courts regularly rely on federal intervention jurisprudence to fill its own gaps. But this doesn’t change that Proposed Intervenor’s arguments about the inadequate representation all come down to the possibility of different legal tactics—which is plainly insufficient. *Steigerwald*, 317 F.R.D. at 620 (quoting *EPA*, 313 F.R.D. at 69) (“A

disagreement over litigation strategy, however, does not establish inadequate representation.”); *In re Estate of Hendrickson*, 2009 WL 499495, at *5 (stating the same). Looking to the factors considered by the Sixth Circuit, *see Steigerwald*, 317 F.R.D. at 620; quoting *EPA*, 313 F.R.D. at 68–69, there is no suggestion of collusion between the State and Plaintiffs or that the Attorney General’s office will fail to fulfill its duty to vigorously defend the constitutionality of the EFS Program. This analysis would be different if it were one of the rare instances that the Attorney General decides not to defend the constitutionality of a particular statute, but that is not the case here. Moreover, while the interests of the State and Proposed Intervenors are not identical, they are certainly not opposed to one another. Accordingly, the Court concludes that Proposed Intervenors have failed to demonstrate inadequate representation by the State. Consequently, the Motion to Intervene under Rule 24.01 by right must be, and therefore is, **DENIED**.

II. Permissive Intervention

Here, Proposed Intervenors do not claim any statute confers a conditional right to intervene. They assert, however, that their Motion is timely and premised upon a common question of law or fact with regard to the defense of the EFS Program as articulated in the previous section. Plaintiffs again do not dispute the timeliness. Nor do they dispute the existence of the common question of law or fact. As such, there is effectively no disagreement between the parties that Proposed Intervenors satisfy the criteria for Rule 24.02. Thus, the Court *has* the authority to allow a permissive intervention. The dispute here is whether the Court *should* permit Proposed Intervenors to intervene and, if so, what, if any, conditions the Court should place upon Proposed Intervenors.

A. *Prejudice and Undue Delay to Plaintiffs*

Proposed Intervenors assert they will neither prejudice Plaintiffs nor cause them undue delay because Proposed Intervenors will not introduce their own claims or complicate the record.

See Kocher v. Bearden, 546 S.W.3d 78, 84–85 (Tenn. Ct. App. 2017) (“Rule 24.02 provides that ‘[i]n exercising discretion the court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.’ Despite the appellees’ arguments to the contrary, we conclude that Durham did not seek to inject any new claims or issues in the Kocher-Bearden case, such as discovery or issues of fault. The Kocher-Bearden case was already settled. Durham sought to intervene only for the limited purpose of modifying the agreed order to gain access to the documents in the record. We discern 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.”). To the contrary, Proposed Intervenor argue they will provide a more complete understanding and defense of the EFS Program and its constitutionality under Tennessee law.

First, Plaintiffs argue that the intervention of Proposed Intervenor will significantly complicate and delay a case that turns upon constitutional questions regarding the structure of Tennessee’s public-school system. By bringing in personal narratives about their children, individualized financial circumstances, and family-level educational decisions—none of which have any bearing on the constitutionality of the EFS Program—Proposed Intervenor would distract the constitutional questions with policy disputes. Proposed Intervenor argue in response that there is no requirement of *doctrinal* connection at play here. Moreover, Proposed Intervenor would raise issues in *opposition* to Plaintiffs’ claims, not *distractions* from them.

Second, Plaintiffs argue that the intervention would prejudice Plaintiffs by expanding discovery, motion practice, and briefing as it already has by the Intervenor—represented by the same counsel—in the ongoing litigation in *Bichell v. Lee*, No. 20-0242-II. Proposed Intervenor note that Plaintiffs do not cite to anything in the proposed Answer to back up this claim. Proposed Intervenor argue that their “personal narratives” will require far less expansive discovery than is

already implicated by Plaintiffs' Complaint. Moreover, Proposed Intervenor-Defendants argue that the lack of progress in *Bichell* stems not from the Intervenor-Defendants' involvement but the "plaintiffs' own shifting allegations, legal arguments, and conduct," which "only under-scores the speculative nature of Plaintiffs' claim that Proposed Intervenor-Defendants would cause unfair prejudice to Plaintiffs at some later stage of the case."

The Court is inclined to agree with Proposed Intervenor-Defendants that they would not prejudice Plaintiffs or unduly delay this case by seeking to oppose Plaintiffs' claims. Accordingly, in the exercise of its discretion, Proposed Intervenor-Defendants' Motion to Intervene by permission under Rule 24.02 is hereby **GRANTED**.

B. Conditional Intervention

In the event that the Court grants a permissive intervention, as it has done here, Plaintiffs have requested the Court to condition the intervention of Proposed Intervenor-Defendants by requiring them to coordinate all discovery with the State and to not file duplicative briefing. *See Rodell*, 42 S.W.3d at 863 (quoting *Beauregard, Inc.*, 107 F.3d at 352 n.2) ("It is undisputed that virtually any condition may be attached to a grant of permissive intervention.").

At this time, the Court declines to place any formal limitations on Proposed Intervenor-Defendants' participation in this lawsuit. It does, however, request that Proposed Intervenor-Defendants coordinate with Defendants to the best of their abilities on this litigation. The Court expects that efforts amongst Defendants and Intervenor-Defendants will not be duplicated.

CONCLUSION

For the foregoing reasons, the Court finds that Proposed Intervenor-Defendants cannot intervene in this matter by right under Rule 24.01. Nevertheless, the Court concludes Proposed Intervenor-Defendants have satisfied the criteria for a permissive intervention under Rule 24.02. Exercising its discretion,

the Court will allow Proposed Intervenor to intervene in this case as Intervenor-Defendants. Accordingly, their Motion to Intervene is **GRANTED** under the Rule 24.02 as a permissive intervention.

It is so ORDERED.

s/Anne C. Martin
CHANCELLOR ANNE C. MARTIN, CHIEF JUDGE

s/Joseph T. Howell
JUDGE JOSEPH T. HOWELL

s/John C. Rambo
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