

I, CHRISTOPHER M. WOOD, declare as follows:

1. I am an attorney duly licensed to practice before all of the courts of the State of Tennessee and this Court. I am one of the counsel for Plaintiffs Roxanne McEwen, David P. Bichell, Terry Jo Bichell, Lisa Mingrone, Claudia Russell, Inez Williams, Heather Kenny, Elise McIntosh, and Apryle Young. This declaration is made in support of Plaintiffs' Motion for a Temporary Injunction Pursuant to Tenn. R. Civ. P. 65.04. I have personal knowledge of the matters stated herein and, if called upon, could and would competently testify thereto.

2. Attached are true and correct copies of the following exhibits:

Exhibit 1: Press Release, TN Office of the Governor, Injunction Lifted on Education Savings Account Program, Immediate Implementation Ahead (July 13, 2022), *available at* <https://www.tn.gov/governor/news/2022/7/13/injunction-lifted-on-education-savings-account-program--immediate-implementation-ahead-.html>;

Exhibit 2: Tenn. Dept. of Education, Education Savings Account Program, *ESA Program* (2022), *available at* <https://esa.tnedu.gov/>;

Exhibit 3: Tenn. Education Savings Account Program, "Frequently Asked Questions for Participating Families" (2022-23), *available at* https://esa.tnedu.gov/wp-content/uploads/2022/07/ESA-FAQ-for-Participating-Families_22-23_v21.pdf;

Exhibit 4: Pub. Ch. 966 (H.B. 2143), 112th Gen. Assemb., Reg. Sess. (Tenn. 2022); and

Exhibit 5: *Beaver v. Moore*, No. 22-P-24, Hrg. Tr. for Mtn. for Preliminary Injunction/Mtn. to Dismiss/Mtn. for Judgment on the Pleadings (W. Va. Cir. Ct. July 6, 2022).

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 22nd day of July, 2022, at Nashville, Tennessee.



CHRISTOPHER M. WOOD

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded via electronic filing service and electronic mail to the following on this 22nd day of July, 2022:

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s/ Christopher M. Wood
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EXHIBIT 1

Injunction Lifted on Education Savings Account Program, Immediate Implementation Ahead

Wednesday, July 13, 2022 | 04:26pm

NASHVILLE, Tenn. – Today, Tennessee Governor Bill Lee released the following statement in response to the court lifting the injunction on the Education Savings Account (ESA) program passed by the Lee Administration in 2019.

“Today the court removed the final roadblock to getting Memphis and Nashville families additional options for high-quality education,” said Gov. Lee. “Starting today, we will work to help eligible parents enroll this school year, as we ensure Tennessee families have the opportunity to choose the school that they believe is best for their child.”

The Tennessee Department of Education will make ESA resources available online for parents in the coming days.

###

EXHIBIT 2

What is the ESA program?

The ESA program allows eligible students who are zoned to attend a Shelby County district school, a Metro Nashville public school, or a school that was in the Achievement School District (ASD) to use state and local money toward education expenses, including tuition and/or fees at approved private schools.

NOTICE: The Chancery Court of Davidson County lifted the injunction on the Education Savings Account on July 13, 2022 at 9:51 am. The work to reinstate the ESA program is underway, and resources will be added to this website.

Families can indicate their interest to participate in the ESA program by filling out the [Intent to Enroll form](#).

Download
Frequently Asked Questions: for Families
PDF

Download
Application Checklist
PDF

Download
Program Eligibility Worksheet
PDF

Download
Landlord Affidavit of Residence
PDF

Schools can indicate their interest to participate in the ESA program by filling out a simple form.

[Independent Schools: Intent to Participate form](#)



How the ESA Program Works 2022

In spring 2019, the Tennessee General Assembly passed and Governor Bill Lee signed Public Chapter 506. This law creates the Tennessee Education Savings Account (ESA) program.

What is the ESA program?



Education Savings Accounts are commonly called ESAs for short and provide additional school choices to Tennessee families based on where they live and their income.



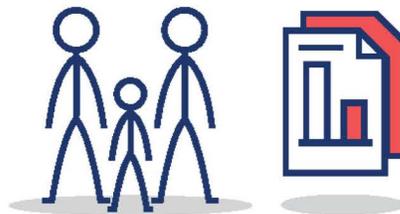
An ESA-eligible student will receive funds to use toward tuition, fees, books and other educational expenses at a participating private school.

Who is eligible?

In Tennessee, ESAs are available to families who live in Tennessee with a student entering grades kindergarten through twelve (K-12) who:



Is zoned to attend a Shelby County district school, a Metro Nashville public school, or a school in the Achievement School District (ASD).



Is a member of a household with an annual income* for the previous year that does not exceed twice the federal income eligibility guidelines for a free school lunch.



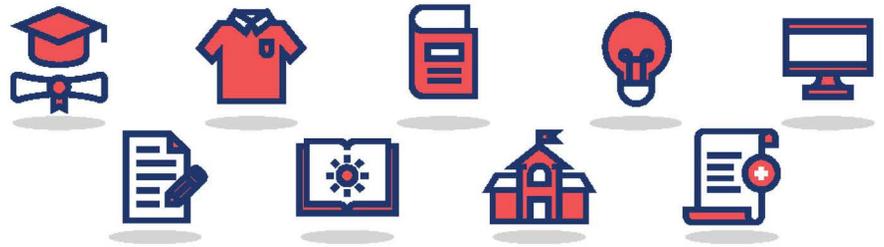
Is a student who either attended a Tennessee public school last year for the full school year, or is eligible for the first time to enroll in a Tennessee school.

**Income chart can be found in the Frequently Asked Questions for Participating Families.
(<https://familymembers.esa.tnedu.gov/faq/>)*

How can ESA funds be used?



Each ESA is funded at approximately \$8,192 to pay for private school tuition or other approved educational expenses.

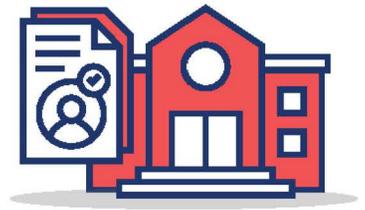


ESA funds can be used for tuition and fees, school uniforms, textbooks, tutoring services, computer hardware, educational therapies or services, summer education programs, specialized after-school programs or other educational purposes.

What do you need to apply for an ESA?

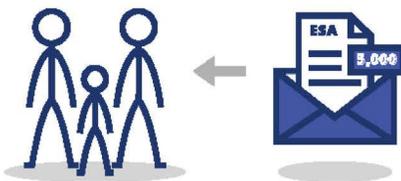


Parents or guardians of potential students need to complete an Intent to Enroll and a complete application, requiring both a proof of address and proof of household income. Upon review of the Intent to Enroll, parents or guardians will receive additional application and program information. The state will post application and other resources each year <https://esa.tnedu.gov/>.



An award for an ESA does not mean that a student is accepted to a participating private school. A student must apply to the participating school as well.

How many ESA will be available?

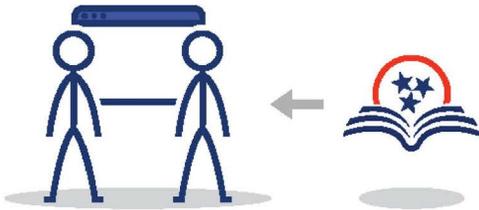


For the upcoming school year up to 5,000 ESAs will be available.



An enrollment lottery will be held if more eligible applications are received than the maximum number of students that may participate in the school year.

How will ESA funds be distributed?



In year one, ESA funds will be distributed directly to participating schools, reimbursing schools for student expenses.



All expenses must be pre-approved by the state before reimbursements to participating schools are made.

Want more details?



For more details on the ESA program, you can download any of our guides and FAQs. (<https://esa.tnedu.gov/handbooks-and-forms/>)



Tennessee
**Education Savings
Account Program**

For more information about the ESA program visit us online at <https://esa.tnedu.gov/>

EXHIBIT 3



Frequently Asked Questions for Participating Families



Tennessee
**Education Savings
Account Program**

Tennessee Department of Education | 2022-23 School Year

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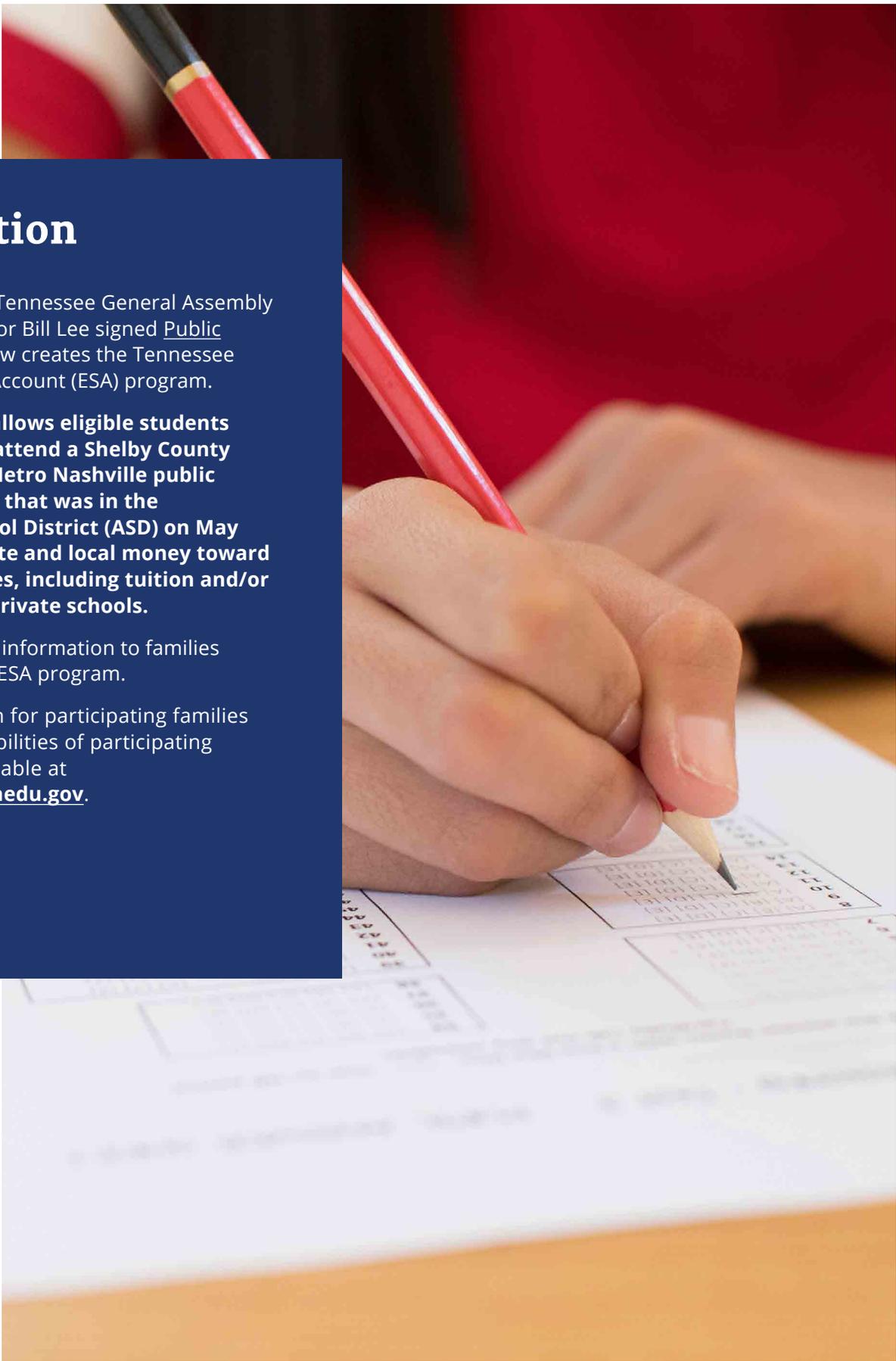
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A close-up photograph of a person's hands holding a red pencil and writing on a document. The document appears to be a form or a spreadsheet with various columns and rows. The person is wearing a red shirt. The background is blurred, focusing attention on the writing action.

Introduction

In spring 2019, the Tennessee General Assembly passed and Governor Bill Lee signed Public Chapter 506. This law creates the Tennessee Education Savings Account (ESA) program.

The ESA program allows eligible students who are zoned to attend a Shelby County district school, a Metro Nashville public school, or a school that was in the Achievement School District (ASD) on May 24, 2019 to use state and local money toward education expenses, including tuition and/or fees at approved private schools.

This guide provides information to families participating in the ESA program.

Further information for participating families about the responsibilities of participating schools is also available at www.school.esa.tnedu.gov.

Overview of the ESA program

What is the ESA program?

The ESA program allows eligible students who are zoned to attend a Shelby County district school, a Metro Nashville public school, or a school that was in the Achievement School District (ASD) to use state and local money toward education expenses, including tuition and/or fees at approved private schools.

What students are eligible for the ESA program?

Students must meet the eligibility requirements below in order to participate in the ESA program.

Student Eligibility

- **Tennessee resident entering kindergarten through grade 12**
- **Meets *one* of the following requirements:**
 - Previously enrolled in and attended a Tennessee public school for one full school year immediately before the school year for which the student receives an ESA
 - Eligible for the first time to enroll in a Tennessee public school
- **Zoned to attend a Shelby County district school, a Metro Nashville public school, or a school that was in the Achievement School District (ASD) on May 24, 2019**
- **Member of a household with an annual income for the previous year that does not exceed twice the federal income eligibility guidelines for free lunch**

Note: Students identified as “at-risk” as defined in state law [T.C.A. § 49-3-307(a)(6)] will automatically meet the income requirements for eligibility. “At-risk” is defined as children who are homeless or from households that receive benefits under the Temporary Assistance for Needy Families (TANF) program.



What amount is available for each ESA?

The amount each participating school will receive per participating student is approximately \$8,192.

How can ESA funds be used?

Funds in an ESA may only be used for **educational purposes**. This includes:

- **Tuition or fees at a participating school**
- **Required school uniforms at a participating school**
- **Required textbooks at a participating school**
- **Tuition and fees for approved summer education programs and specialized after-school education programs**
- **Tutoring services provided by an individual who meets department requirements**
- **Textbooks required by an eligible postsecondary institution**
- **Transportation to and from a participating school or education provider by a taxi or bus service**
- **Fees for early postsecondary opportunity courses, exams, or exams related to college admission**
- **Educational therapies or services for participating students provided by a department-approved therapist**
- **Computer hardware, technological devices, or other department-approved technology fees** (*This is applicable only if the technology is used for educational needs, is purchased at or below fair market value, and is purchased through a participating school, private school, or provider.*)

Funds are used for educational purposes such as



Textbooks



Uniforms



Tuition



Tutors

Terms of the ESA

A student is eligible for the ESA program until the student:

- **Enrolls in a public school**
- **Enrolls in a Category IV or V private school or a private school not approved under the rules of the State Board of Education (SBE)**
- **Is no longer a resident of the local school district in which the student lived when the student began participating in the program** (*Account holders must reapply to the ESA program each year and verify their home address and income.*)
- **Is suspended or terminated from the ESA program**
- **Graduates or withdraws from high school** (*Certificates of attendance do not equal graduation from high school for the purpose of the ESA program. In other words, the student may continue in the program until he or she receives a high school diploma or receives a passing score on all subtests of the GED or HiSET.*)
- **Reaches 22 years of age** (*The student may complete the school year in which he or she reaches the age of 22, as long as he or she will not be enrolled in the program past August 15 of the next school year.*)
- **Fails to verify that household income meets the requirements**

Note: A participating student may voluntarily withdraw from the program at any time. If a participating student withdraws, the participating school must notify the department within **five business days** of withdrawal notification using the online form found at www.stateoftennessee.formstack.com/forms/esa_student_voluntary_withdrawal_form.

School Eligibility

What schools are eligible to participate in the ESA program?

Category I, II, or III private schools may apply to the department to become a participating school.

What are Category I, II, and III Schools?

Category I: Schools approved by the department.

Category II: Schools approved by a private school accrediting agency which has been approved by the Tennessee State Board of Education (SBE).

Category III: Schools that are regionally accredited as identified by the SBE.

Currently Approved Agencies for Accrediting Category II Schools

- Association of Christian Schools International (ACSI)
- Association of Classical & Christian Schools, Inc.
- Catholic Diocese of Nashville, Memphis, and Knoxville
- Christian Schools International Accreditation Services
- Mississippi Association of Independent Schools (MAIS)
- National Lutheran School Accreditation
- Southern Union Conference of the Seventh Day Adventist Church (SDA)
- Tennessee Association of Christian Schools (TACS)
- Tennessee Association of Non-Public Academic Schools (TANAS)

Currently Approved Agencies for Accrediting Category III Schools

- Cognia (formerly AdvancED)
- Northwest Accreditation Commission (NWAC)
- National Association of Independent Schools (NAIS)
- Southern Association of Independent Schools (SAIS)
- Middle States Association Commissions on Elementary and Secondary Schools (MSA CESS)
- Accrediting Commission for Schools Western Association of Schools and Colleges (ACS WASC)
- National Council for Private School Accreditation (NCPSA)
- The Southern Association of Colleges and Schools Commission on Colleges

Application and Admission

What is the application process for students to participate in the program?

To apply for an ESA, the parent of an eligible student (or an eligible student who has reached the age of 18) must submit an application online at www.familymembers.esa.tnedu.gov/apply-now.

The state will announce an open enrollment window each year. To be notified when applications are available, subscribe to the ESA news announcements at www.tn.gov/education/school-options/esa-program.html.

Admission to a participating private school is a separate process from approval for an ESA. Each private school has its own admission policies and procedures and families are encouraged to start researching schools after the ESA application is submitted. The award of an ESA does not ensure acceptance to a participating private school.

Do applicants have to verify their annual income as part of the application process?

Yes. All applicants must show that the student is a member of a household with an annual income for the previous year that is not more than twice the federal income eligibility guidelines for free lunch (*see chart below*).*

Income Chart

Household Size	Twice the Federal Free Lunch Income Guidelines 22-23
2	\$47,606
3	\$59,878
4	\$72,150
5	\$84,422
6	\$96,694
7	\$108,966

Income verification must be established through one of the following:

- A federal income tax return from the previous year (2020 or 2021)
- Temporary Assistance for Needy Families (TANF) letter of eligibility

* **Note:** Students identified "at-risk" as defined in T.C.A. § 49-3-307(a)(6) will automatically satisfy the income requirements for eligibility.

Applicants have to verify their residential address by providing two of the following:



Valid Driver License



Mortgage Statement



Affidavit From Landlord



Utility Bill



Voter Registration Card

Do applicants have to verify their residential address as part of the application process?

Yes. All applicants must show proof of residential address as part of the application. Applicants can do this by uploading **two** of the following:

- **Valid driver's license or state ID**
- **Property tax receipt, mortgage statement, or signed lease agreement**
- **Utility bill**
- **Voter registration card**
- **Affidavit from landlord or owner of current residence** (*Affidavit can be found at www.esa.tnedu.gov/handbooks-and-forms/*)

How will I know if my student's application has been approved or denied?

The department will notify applicants of their application status by email.

An award for an Education Savings Account does not mean that a student is accepted to a participating private school. A student must still apply to a participating private school. A participating private school's decision to accept or reject a student is the sole decision of the school. Evidence of acceptance at a participating school will be required as a component of a student's application.

Participating schools may not discriminate based on race, color, or national origin. Participating private schools may offer additional financial aid to eligible students in the form of scholarships or payment plans. The application process for additional financial aid will vary by participating school.

How long will the application review process take?

The review process may take up to 21 business days from the date the application window closes, based on number of applicants and selected enrollment date. Applications will be processed in the order they are received.

How many ESAs are available for the 2022-23 school year?

For the upcoming school year, up to 5,000 ESAs are available.

What happens if the department receives more applications than the state has ESAs?

If the department receives more eligible applications than the maximum number of students that may participate in the program for that school year, there will be an **enrollment lottery**.

What will the enrollment lottery process look like?

Students who participated in the program in the previous school year will automatically be re-enrolled in the program if renewal requirements are met. In other words, these students will not have to enter the lottery.

If an enrollment lottery is conducted, enrollment preference will be granted in the order below:

1. **Eligible students who have a sibling participating in the program**
2. **Eligible students zoned to attend a [Priority School](#)** as defined by the state's accountability system at the time of the enrollment lottery
3. **Eligible students who are eligible for direct certification status**
4. **All other eligible students**

Enrollment Priority

1



Students with participating siblings

2



Students zoned to attend a Priority School

3



Students eligible for direct certification status

4



All other eligible students

Do eligible students have to reapply to participate in the ESA program each year?

Yes. Each year, participating students must reapply to participate in the ESA program. **Account holders must verify their address and income eligibility every year.**

Can an ESA be used for a participating private school outside of Shelby or Davidson County?

Yes. While a student must be zoned to attend a Shelby County district school, a Metro Nashville public school, or a school in the Achievement School District (ASD), the ESA may be used at an out-of-county participating private school.

Account Holder Responsibilities

What are the next steps after being accepted into the ESA program?

If the parent (*or student who has reached the age of 18*) intends on utilizing the ESA for tuition and other approved expenses, an eligible student must apply and be accepted to a participating private school. Parents (*or students who have reached the age of 18*) must then submit a copy of their acceptance letter to the department to claim the ESA award.

What does the “agreement to participate in the program” involve?

The parent (*or student who has reached the age of 18*) must sign an agreement to:

- **Provide an education for the participating student that meets the school attendance requirement** in state law [T.C.A. 49-6-3001(c)(1)] through enrollment in a state board-approved Category I, II, or III private school.
- **Comply with the requirement that participating students in grades 3-11 participate in the Tennessee comprehensive assessment program (TCAP)** tests for math and English language arts each year of enrollment in the program.
- **Not enroll the participating student in the Individualized Education Account (IEA) program** during the time the student is enrolled in the ESA program.
- **Release the local district and student’s zoned school from all responsibilities** to educate the student during the time the student is enrolled in the ESA program. Participation in the program waives the student’s right to receive specially-designed instruction and related services according to the Individuals with Disabilities Education Act (IDEA). Participation in the program also makes the student’s Individualized Education Program (IEP) invalid, and the student will not be entitled to a free appropriate public education (FAPE) from the public school district. The availability of disability-related service will be limited.
- **Follow the acceptable uses of ESA funds and the responsibilities of the parent** of an eligible student (*or eligible student who has reached the age of 18*).

How will ESA funds be distributed in year one?

For the 2022-23 school year, participating non-public schools will be required to fund the student expenses (tuition, fees, computers, etc.) and then submit an invoice to the department for reimbursement. The department will be competitively procuring an application and wallet platform that will be operational beginning in the 2023-23 school year.

Do I have to provide documentation for ESA funds spent?

Supporting documents will be reviewed as part of the monitoring process; however, the department may request documentation prior to paying ESA invoices.

Will the department monitor how ESA money is spent?

Yes. All expenses and requests for payments will require pre-approval. Additionally, the department will establish and advertise a fraud prevention reporting system to allow individuals to report suspected abuse or misuse of the ESA.

If you suspect fraudulent activity, please call (615) 532-8561.

Are there consequences for misspent ESA funds?

Yes. If the department determines that an ESA account holder has misspent funds, the department may remove the account holder from eligibility for an ESA. Otherwise, the department may notify the account holder that they are responsible for repaying the misspent amount.

What other actions can the department take regarding ESA funds?

The department is authorized to freeze or withdraw funding directly from the student's ESA for several reasons, including fraud; misuse of funds; failure to follow state laws, rules, procedures, or the signed agreement; the student returning to the local school district; or funds being deposited into the account by mistake.

Will the state issue families an IRS form 1099 for the ESA award?

No. Families will not be issued an IRS form 1099 as a result of receiving an ESA award.

Can account holders appeal the department's decisions to revoke the ESA account or freeze/withdraw funds?

Yes. The appeals process is outlined in the Family Handbook at www.esa.tnedu.gov/handbooks-and-forms/.

Can a participating student withdraw from the ESA program?

Yes. A participating student may voluntarily withdraw from the ESA program at any time. If this happens, the account holder must complete the *ESA Account Holder Voluntary Withdrawal Form* located at www.esa.tnedu.gov/handbooks-and-forms/.

What happens to ESA funds if the participating student withdraws from the program?

If a participating student withdraws from the ESA program, or if the ESA is not renewed, the ESA will be closed and remaining funds will be returned to the state treasurer.



Participating students may transfer from an approved
Category I, II, or III School
to another approved Category I,II, or III School.

Can a participating student transfer to another private school?

Yes. A participating student may transfer from one ESA-participating Category I, II, or III private school to another ESA-participating Category I, II, or III private school. Note: Both schools must be participating in the ESA program. The account holder should first phone department staff before the participating student transfers to ensure all school tuition payments are reconciled and up to date.

What if a participating student graduates high school with leftover money in the ESA account?

If a participating student graduates high school or reaches the age of 22 and has money left in the ESA account, the student will become a **Legacy Student**.

A Legacy Student may use ESA funds to attend or take courses from an eligible postsecondary institution.

A Legacy Student's ESA will be closed after the first of the following events:

- **The Legacy Student graduates from an eligible postsecondary institution**
- **Four back-to-back years elapse immediately after the Legacy Student enrolls in an eligible postsecondary institution**
- **The Legacy Student is not enrolled in an eligible postsecondary institution for 12 back-to-back months**



Tennessee Department of Education | 2022-23 School Year

www.esa.tnedu.gov

EXHIBIT 4



State of Tennessee

PUBLIC CHAPTER NO. 966

HOUSE BILL NO. 2143

By Representatives Lamberth, Gant, White, Williams, Garrett, Hawk, Curtis Johnson, Faison, Marsh, Haston, Hurt, Baum, Zachary, Gillespie, Cochran, Powers, Darby, Tim Hicks, Lafferty, Wright, Ramsey, Martin, Hazlewood, Kumar, Carringer, Crawford, Sherrell

Substituted for: Senate Bill No. 2396

By Senators Johnson, Massey, Powers, Stevens, Crowe, Reeves

AN ACT to amend Tennessee Code Annotated, relative to education funding.

WHEREAS, the State of Tennessee recognizes it is in the best interest of this State to provide a high-quality education for all students; and

WHEREAS, this General Assembly finds and declares that a high-quality education system must be supported by a state education funding formula that is based on accountability, transparency, growth, and flexibility, so that every student receives the resources they need, every dollar maximizes the impact of those resources, decisions are strategically made at the local level, parents are informed, and the public understands the system; and

WHEREAS, the governor and the Department of Education implemented a procedure to engage the public in the development of a new education funding formula that included eighteen subcommittees composed of Tennesseans from across the State representing a variety of student interests, over sixteen public meetings, an open-comment period, biweekly online town hall meetings, and a myriad of other education funding presentations and public feedback opportunities regarding the elements of a new education funding formula; and

WHEREAS, this General Assembly declares that the creation of a new formula for funding a high-quality public education system in Tennessee is warranted, and such funding formula must be designed to support the following goals:

- (1) Empowering each student to read proficiently by third grade and each grade thereafter;
- (2) Preparing each high school graduate to succeed in the postsecondary program or career of the graduate's choice; and
- (3) Providing each student with the resources needed to succeed, regardless of the student's individual circumstances; and

WHEREAS, this formula is intended to be a funding plan and not a spending plan; and

WHEREAS, the base amount includes funding for the following:

- (1) Instructional supports, such as salaries for classroom teachers; principals; assistant principals; art, music, and physical education teachers in elementary schools; college and career counselors in secondary schools; counselors; social workers; school psychologists; librarians; nurses; school secretaries; substitute teachers; and custodians; as well as duty-free lunches and intervention;
- (2) Materials and supplies, such as textbooks, technology, instructional and non-instructional equipment, and classroom-related travel;
- (3) Operational expenses, such as maintenance, transportation, school safety, coordinated school health programs, family resource centers, and alternative schools; and

HB2143

(4) System supports, such as superintendents, technology directors, system secretarial support, and systemwide instructional supervisors; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 3, Part 1, is amended by deleting the part and substituting:

49-3-101. Short title.

This part is known and may be cited as the "Tennessee Investment in Student Achievement Act."

49-3-102. General provisions.

(a) The state school fund consists of all funds appropriated or allocated from the state treasury for the operation and maintenance of the public schools or that may derive from any state taxes, the proceeds of which are devoted to public school purposes.

(b) The state school fund must be administered and distributed in accordance with the applicable provisions of this title, or, if not controlled in the provisions of this title, then in accordance with the provisions of the general appropriations act that may be applicable.

(c) Notwithstanding §§ 49-3-105 – 49-3-109 or any other law to the contrary, the changes in education funding implemented pursuant to this part are subject to and must be implemented only in accordance with funding as approved by the general assembly in the general appropriations act or other legislative act passed by the general assembly.

49-3-103. Tennessee investment in student achievement formula established.

(a) The Tennessee investment in student achievement formula (TISA) is a student-based funding formula established as the system for funding education for kindergarten through grade twelve (K-12) public schools. The TISA is established to support the following goals:

- (1) Empowering each student to read proficiently by third grade and each grade thereafter;
- (2) Preparing each high school graduate to succeed in the postsecondary program or career of the graduate's choice; and
- (3) Providing each student with the resources needed to succeed, regardless of the student's individual circumstances.

(b) The department shall implement the TISA beginning with the 2023-2024 school year.

(c) The funding described in this part must be allocated in accordance with this part and with rules promulgated by the department in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(d) By July 1, 2023, and by each July 1 thereafter, the department shall create and publish a TISA guide outlining the department's procedures for administering the TISA. At a minimum, the TISA guide must:

- (1) Identify the data that the department must receive from each LEA for purposes of administering the TISA;
- (2) Explain how and when the data identified pursuant to subdivision (d)(1) must be submitted to the department;
- (3) Explain how an LEA may dispute an alleged error in an allocation made to the LEA;

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(4) State that pursuant to § 49-3-108(h), the comptroller shall not approve a local government budget that fails to include the local contribution; and

(5) Identify each LEA that qualifies as a sparse district or a small district.

49-3-104. Definitions.

As used in this part, unless the context otherwise requires:

(1) "Average daily membership" or "ADM" means the sum of the total number of days a student is enrolled divided by the number of days school is in session during this period;

(2) "Base funding amount" means the uniform dollar amount that each student generates towards the student's funding allocation in a given year;

(3) "Baseline funding amount" means:

(A) The basic education program allocations an LEA received in the 2022-2023 school year;

(B) The coordinated school health grant allocations an LEA received in the 2022-2023 school year;

(C) The family resource center grant allocations an LEA received from the department in the 2022-2023 school year; and

(D) The school safety grant allocations an LEA received in the 2022-2023 school year;

(4) "Career and technical program" means a coordinated, non-duplicative sequence of academic and technical content that:

(A) Incorporates challenging state academic standards;

(B) Addresses academic and technical knowledge and skills, including employability skills;

(C) Is aligned with the needs of industries in the economy of the state, region, or local area;

(D) Progresses in specificity, beginning with all aspects of an industry or career cluster and leading to more occupation-specific instruction, including early postsecondary instruction;

(E) Has multiple entry and exit points that incorporate credentialing;

(F) Culminates in the attainment of a recognized credential; and

(G) Is established and categorized into one (1) of three (3) levels by the department, as provided in the department's rules, based on the additional resources required to support the program and the wage-earning potential for students participating in the program;

(5) "Commissioner" means the commissioner of education;

(6) "Concentrated poverty" means that a student is a member in a school that is eligible for Title I schoolwide designation;

(7) "Department" means the department of education;

(8) "Direct allocation" means an allocation in addition to the base funding amount for a student expressed as a flat dollar amount;

(9) "Distribution period" means the period for which the department distributes funds pursuant to a distribution schedule established pursuant to § 49-3-108;

(10) "Economically disadvantaged" means, as defined in Tennessee's Every Student Succeeds Act (ESSA) plan established pursuant to the federal Every Student Succeeds Act (20 U.S.C. § 6301 et seq.), a homeless, foster, runaway, or migrant student or a student eligible for free or reduced-price school meals or milk through the direct certification eligibility guidelines established pursuant to 42 U.S.C. §§ 1751-1769;

(11) "Existing educator" means an individual who is evaluated pursuant to § 49-1-302(d)(2) and who provides direct service to students at school sites;

(12) "Fiscal capacity" means the percentage of the local share that a county must contribute;

(13) "Fiscal capacity calculation" means the formula evaluated by the comptroller of the treasury and approved by the state board that determines fiscal capacity as the average of the fiscal capacity estimates generated by the formula established by the Boyd Center for Business and Economic Research at the University of Tennessee and the formula established by the Tennessee advisory commission on intergovernmental relations;

(14) "Local contribution" means the dollar amount of local funds that a local government must pay toward the local share;

(15) "Local education agency" or "LEA" means a county, city, or special school district, unified school district, school district of a metropolitan form of government, or another school system established by law;

(16) "Membership" means a student is enrolled and assigned to a class;

(17) "Postsecondary readiness assessment" means the assessment required pursuant to § 49-6-6001(b);

(18) "Small district" means an LEA with a membership of one thousand (1,000) or fewer students;

(19) "Sparse district" means a county LEA located in a county with fewer than twenty-five (25) students per square mile;

(20) "State board" means the state board of education;

(21) "TCAP" means the Tennessee comprehensive assessment program;

(22) "Tennessee investment in student achievement formula" or "TISA" means the student-based funding formula established pursuant to this part that consists of student-generated funding allocations pursuant to §§ 49-3-105 and 49-3-106;

(23) "Unique learning need" means a learning need for which an LEA must provide the student individualized services, interventions, accommodations, or modifications to meet the student's need pursuant to § 49-1-229, § 49-10-108, the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or the state board's rules for English as a second language programs, that are documented in a written plan and provided in accordance with § 49-1-229, § 49-10-108, the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), or the state board's rules for English as a second language programs, as applicable, and that are established and categorized into ten (10) levels by the department, as provided in the department's rules, based on the level of additional resources necessary to manage the unique learning need. "Unique learning needs" include, but are not limited to, disabilities, characteristics of dyslexia, giftedness, or limited English proficiency. A student may have multiple

unique learning needs, including multiple unique learning needs of different levels or of the same level; and

(24) "Weighted allocation" means an allocation in addition to the base funding amount for a student that is expressed as a percentage of the base funding amount.

49-3-105. Base funding; weighted allocations; direct allocations.

(a) Each student generates a funding allocation that includes the following:

(1) The base funding amount;

(2) Weighted allocations for which the individual student satisfies the criteria established in subsection (b); and

(3) Direct allocations for which the individual student satisfies the criteria established in subsection (c).

(b) A student generates weighted allocations, none of which is mutually exclusive of another, as follows:

(1) The weighted allocation for a student who is economically disadvantaged is twenty-five percent (25%);

(2) The weighted allocation for a student who experiences concentrated poverty is five percent (5%);

(3) The weighted allocation for a student who resides in a small district is five percent (5%);

(4) The weighted allocation for a student who resides in a sparse district is five percent (5%); and

(5) The department shall establish and categorize unique learning needs into ten (10) levels by rule based on the additional resources required to support each unique learning need. Before the department categorizes unique learning needs by rule, the department shall submit the proposed categorizations to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed categorizations. The state board's recommendation for the proposed categorizations must be included in the filing of the rule with the office of the secretary of state. A student generates a weighted allocation for each of the student's unique learning needs as follows:

(A) The weighted allocation for a level one (1) unique learning need is fifteen percent (15%);

(B) The weighted allocation for a level two (2) unique learning need is twenty percent (20%);

(C) The weighted allocation for a level three (3) unique learning need is forty percent (40%);

(D) The weighted allocation for a level four (4) unique learning need is sixty percent (60%);

(E) The weighted allocation for a level five (5) unique learning need is seventy percent (70%);

(F) The weighted allocation for a level six (6) unique learning need is seventy-five percent (75%);

(G) The weighted allocation for a level seven (7) unique learning need is eighty percent (80%);

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(H) The weighted allocation for a level eight (8) unique learning need is one hundred percent (100%);

(I) The weighted allocation for a level nine (9) unique learning need is one-hundred twenty-five percent (125%); and

(J) The weighted allocation for a level ten (10) unique learning need is one-hundred fifty percent (150%).

(c) The department shall promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to set the direct allocation amounts generated pursuant to this subsection (c). Before the department begins the rulemaking process, the department shall submit the proposed direct allocation amounts to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed direct allocation amounts. The state board's recommendation for the proposed direct allocation amounts must be included in the filing of the rule with the office of the secretary of state. Direct allocation amounts are generated for the following students:

(1) A rising fourth grade student who is determined to not be proficient in English language arts (ELA) based on the student achieving a performance level rating of "below" or "approaching" on the ELA portion of the student's most recent TCAP test;

(2)

(A) A student assigned to the first year of a level one (1) career and technical program;

(B) A student assigned to the second year of a level one (1) career and technical program;

(C) A student assigned to the third year of a level one (1) career and technical program;

(D) A student assigned to the fourth year of a level one (1) career and technical program;

(E) A student assigned to the first year of a level two (2) career and technical program;

(F) A student assigned to the second year of a level two (2) career and technical program;

(G) A student assigned to the third year of a level two (2) career and technical program;

(H) A student assigned to the fourth year of a level two (2) career and technical program;

(I) A student assigned to the first year of a level three (3) career and technical program;

(J) A student assigned to the second year of a level three (3) career and technical program;

(K) A student assigned to the third year of a level three (3) career and technical program; and

(L) A student assigned to the fourth year of a level three (3) career and technical program;

(3)

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(A) A junior or senior in high school who has not previously taken a postsecondary readiness assessment; and

(B) A junior or senior in high school who has previously taken a postsecondary readiness assessment, but only once;

(4) A student in any of the grades kindergarten through three (K-3); and

(5) A student who attends a public charter school.

(d) The funding that a student generates pursuant to this section must be administered and allocated by the department to the LEA in which the student is a member for the duration of the student's membership in the LEA, except that the funding a student generates pursuant to subdivision (c)(3) shall not be allocated to the LEA, but must be maintained by the department. A student's membership in an LEA begins on the first day of the student's membership and ends on the last day of the student's membership in the LEA, except that the membership of a student who graduates early is extended to the student's expected graduation date for funding purposes.

(e) A portion of any annual increase in the base funding amount may be restricted by act of the general assembly for the sole purpose of providing salary increases to existing educators. If a portion of an annual increase in the base funding amount is restricted pursuant to this subsection (e), then an LEA or public charter school must use the portion restricted to provide salary increases to existing educators. The state board shall increase the minimum salary on the state salary schedule, as appropriate, based on the amount of funds restricted for salary increases, if any.

(f) Funding allocations made pursuant to this section are based on data collected for an LEA during the immediately preceding school year.

49-3-106. Student outcome incentives.

(a) Subject to available appropriations, the department shall allocate student-generated outcome incentive dollars to an LEA based on the achievement of member students in the LEA's public schools.

(b) An LEA may receive student-generated outcome incentive dollars if the member students in the LEA's public schools achieve the outcome goals established by the department. The department shall establish outcome goals by rule in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. Before the department begins the rulemaking process, the department shall submit the proposed outcome goals to the state board. The state board shall issue a positive, neutral, or negative recommendation for the proposed outcome goals. The state board's recommendation for the proposed outcome goals must be included in the filing of the rule with the office of the secretary of state.

(c) The department shall allocate available appropriations for student-generated outcome incentive dollars to LEAs in direct proportion to the number of outcome incentive dollars generated by students who are members in each of the LEA's public schools, relative to the total number of outcome incentive dollars generated by all Tennessee public school students.

(d) Funding allocations made pursuant to subsections (a)-(c) are based on the data collected for the LEA during the immediately preceding school year.

(e) Funds allocated pursuant to this part that remain unexpended at the end of a fiscal year shall not revert to the general fund but must be used to supplement future allocations of outcome incentive dollars pursuant to this section.

(f) The commissioner shall convene a group of individuals with relevant experience or expertise to advise the commissioner regarding outcome incentive dollars and outcome goals. The group must consist of:

(1) Three (3) directors of schools, one (1) selected from an LEA located:

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- (A) In an urban area in this state;
 - (B) In a suburban area in this state; and
 - (C) In a rural area in this state;
- (2) One (1) teacher;
- (3) The chair of the:
- (A) Education committee of the senate;
 - (B) Education administration committee of the house of representatives; and
 - (C) Education instruction committee of the house of representatives;
- (4) The chair of the state board of education;
- (5) One (1) parent of a student enrolled in a Tennessee public school;
- (6) One (1) resident of this state;
- (7) One (1) private business leader in this state; and
- (8) One (1) member of a local school board.

49-3-107. Fast-growth stipends.

(a) Subject to available appropriations, stipends must be allocated pursuant to this section. Funds appropriated for the purposes of this section must first be allocated pursuant to subsection (b). If the funds appropriated for the purposes of this section exceed the amount required to fund stipends pursuant to subsection (b), then the excess funds must next be allocated pursuant to subsection (c). If the funds appropriated for the purposes of this section exceed the amount required to fund stipends pursuant to subsections (b) and (c), then the percentage in subsection (b) may be lowered to ensure that all funds appropriated are allocated and disbursed to LEAs.

(b) An LEA that experiences growth in the total allocation generated by students in non-virtual schools in the LEA pursuant to § 49-3-105 in the current year in excess of one and one-quarter percent (1.25%), as compared to the prior year, is eligible for a fast-growth stipend equal to the increase in allocations in excess of one and one-quarter percent (1.25%). If the funds appropriated for purposes of this section are insufficient to provide for an LEA's fast-growth stipend, then the commissioner shall apply a pro rata reduction to the stipend amount each LEA is otherwise eligible to receive.

(c) Subject to available appropriations, an LEA that experiences ADM growth in non-virtual schools exceeding two percent (2%) for each year of a three-consecutive-year period is eligible for an infrastructure stipend. The infrastructure stipend is a per-student flat dollar amount based on the number of member students in non-virtual schools in the LEA for the current school year in excess of a two percent (2%) ADM growth in non-virtual schools from the prior year. An infrastructure stipend in a given year must be uniform for all eligible LEAs.

49-3-108. Distribution of funds.

(a) The commissioner and each local government shall distribute allocated education funding periodically throughout the school year according to a schedule established by the commissioners of education and finance and administration, subject to all applicable restrictions prescribed by law.

(b)

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(1) If, during the first year of implementation of the TISA, an LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department shall allocate additional funds to the LEA in an amount equal to one hundred percent (100%) of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

(2) If an LEA was eligible for additional funds under subdivision (b)(1), and if, during the second year of implementation of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department shall allocate additional funds to the LEA in an amount equal to seventy-five percent (75%) of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

(3) If an LEA was eligible for additional funds under subdivisions (b)(1) and (b)(2), and if, during the third year of implementation of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department shall allocate additional funds to the LEA in an amount equal to fifty percent (50%) of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

(4) If an LEA was eligible for additional funds under subdivisions (b)(1)-(3), and if, during the fourth year of implementation of the TISA, the LEA's allocated TISA funds total less than the LEA's baseline funding amount, then the department shall allocate additional funds to the LEA in an amount equal to twenty-five percent (25%) of the difference between the LEA's baseline funding amount and the LEA's allocated TISA amount.

(c) An LEA's allocated education funding shall not decrease more than five percent (5%) from one (1) year to the next year. If an LEA's TISA allocation decreases by more than five percent (5%) from the LEA's TISA allocation for the prior school year, then the department shall allocate additional funds to the LEA in an amount such that the decrease in the LEA's TISA allocation for the current year is only five percent (5%), except that the department shall not allocate additional funds to an LEA pursuant to this subsection (c) if the department is required to allocate additional funds to the LEA pursuant to subsection (b).

(d)

(1)

(A) Subject to available appropriations, the department shall distribute a grant to an LEA that:

(i) Is located within a county designated as distressed or at risk by the commissioner of economic and community development and for which the LEA's fiscal capacity and local contribution increase the LEA's maintenance of effort requirements pursuant to § 49-3-314(c)(3)(A); or

(ii) Is located within a county having an active tourism development zone agreement executed before July 1, 2023, and having a population of not less than ninety-eight thousand three hundred (98,300) nor more than ninety-eight thousand four hundred (98,400), according to the 2020 federal census or any subsequent federal census.

(B) An LEA that satisfies the criteria of subdivisions (d)(1)(A)(i) and (d)(1)(A)(ii) may receive multiple grants.

(2) Subject to available appropriations, the department shall distribute a cost differential factor (CDF) grant to an LEA located in a county in which the cost of living is greater than the statewide average. An LEA is eligible for a CDF grant if the LEA is located in a county for which the ratio between the county's non-governmental wages and the statewide non-governmental wages is greater

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than one (1), as calculated by the Boyd Center for Business and Economic Research at the University of Tennessee. The department shall determine the amount of a grant awarded to an eligible LEA pursuant to this subdivision (d)(2).

(e) Before a full and complete settlement is made with an LEA, the LEA must file all required records and reports with the commissioner.

(f) Notwithstanding § 49-3-105, if state funds available for distribution are insufficient to meet an LEA's TISA allocation for a school year, then the commissioner shall apply a pro rata reduction to the amount that each LEA is allocated.

(g) If the action prescribed in subsection (f) is necessary, then the commissioner, with the approval of the state board, may waive any requirements prescribed by law, rule, or otherwise until the state provides the required funding; provided, however, that the commissioner shall not waive the regulatory or statutory requirements listed in § 49-1-201(d)(1)(A)-(O).

(h) If a local government fails to include the local contribution in the local government's budget, then the comptroller of the treasury shall not approve the local government's budget.

49-3-109. State and local contributions; determination of fiscal capacity.

(a) The state shall provide:

(1) Seventy percent (70%) of the total funding allocation that students generate pursuant to § 49-3-105(a)(1) and (a)(2); and

(2) One hundred percent (100%) of:

(A) The total funding allocation that students generate pursuant to § 49-3-105(a)(3);

(B) The total funding allocation that students generate pursuant to § 49-3-106; and

(C) The total funding allocated pursuant to § 49-3-107.

(b) The local share, which must be paid with local government funds, is the remaining thirty percent (30%) of the total funding allocation that students funded by a local government generate pursuant to § 49-3-105(a)(1) and (a)(2).

(c) Each county's fiscal capacity must be determined pursuant to the fiscal capacity calculation no later than May 1 immediately preceding the school year for which students generate the total funding allocation. The annual fiscal capacity calculation, including the underlying data and the determination for each county, must be reported publicly. The fiscal capacity of a county for a school year shall not be revised after its fiscal capacity has been determined for that school year.

(d) A county's local contribution is calculated by multiplying the county's fiscal capacity by the local share. Each local government's local contribution must be proportional to the funding allocation that students generate in the local government's jurisdiction pursuant to § 49-3-105(a)(1) and (a)(2).

(e) The intent of the general assembly is to provide funding on a fair and equitable basis by recognizing the differences in the ability of local jurisdictions to raise local revenues.

(f) If a local government fails to approve a budget that includes the local government's local contribution and maintenance of effort obligations by October 1, then the commissioner shall not distribute TISA funds to the LEA until the local government approves a budget that includes such obligations.

(g) This part and § 49-3-314(c) establish the minimum education funding that a local government must contribute. This part does not prohibit or limit a local government from contributing more than the local contribution required in subsection (b).

49-3-110. Professional development requirements.

(a) The department shall create or procure, and make available at no cost to participants, a professional development series on the TISA. The series must include, at a minimum, an in-depth explanation of the TISA and the TISA guide, instruction on how to budget to increase student achievement, instruction on how to connect student achievement with investments in education, and instruction on how to hold decision-makers accountable for funding decisions. The department shall make the professional development series on the TISA available to the following individuals, upon their request:

- (1) Directors of schools;
- (2) School board members;
- (3) Members of a public charter school governing body;
- (4) Members and the executive director of the state board;
- (5) Members and the executive director of the Tennessee public charter school commission; and
- (6) Employees of an LEA, public charter school, the department, the state board, or the Tennessee public charter school commission who are responsible for developing, reviewing, or otherwise assisting the LEA, school, or state agency with its annual education budget.

(b) The department shall create or procure, and make available at no cost to participants, a professional development series for LEA and public charter school employees that is tailored to the professional duties of various types of employees and includes an overview of the TISA and best practices for how an employee can maximize budget investments to increase student achievement through the employee's work. The professional development series must be available no later than January 1, 2023.

(c) A professional development series created or procured pursuant to this section may be provided to participants virtually or in person at the discretion of the department. The department shall make all instructional materials used as part of the series publicly available on the department's website.

(d) The department shall procure any good or service selected or approved by the department to effectuate this section competitively and in compliance with all state laws and administrative rules regarding the procurement of goods and services by state agencies, including §§ 12-3-101 – 12-3-104. The department shall submit all contracts for the procurement of any good or service selected or approved by the department to effectuate this section to the fiscal review committee of the general assembly for review according to the timelines and requirements established in § 4-56-107(b)(5)(A).

49-3-111. TISA reporting.

(a) Each LEA must have the opportunity to provide feedback and recommendations regarding the TISA to the department and the comptroller of the treasury, on a template prescribed by the department, by November 1, 2024, and each November 1 thereafter.

(b) By January 15, 2025, and each January 15 thereafter, the department shall deliver a TISA report to the members of the general assembly that contains, at a minimum:

- (1) An academic analysis of each LEA;
- (2) The accountability report cards for each LEA;

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(3) An executive summary of the feedback and recommendations provided by LEAs pursuant to subsection (a); and

(4) Reviews of the TISA by relevant experts, including a cost review and recommendations.

(c) The department shall make the report generated pursuant to subsection (b) publicly available on the department's website.

(d) The comptroller of the treasury, through the comptroller's office of research and education accountability, shall review and study the TISA to determine the effectiveness of state expenditures on kindergarten through grade twelve (K-12) education. By December 31, 2024, the comptroller shall report the conclusions of the study and any legislative recommendations to the speakers of the senate and house of representatives and to the members of the education committee of the senate and the education administration committee of the house of representatives.

49-3-112. Accountability requirements.

(a) Each local education agency shall produce an accountability report that:

(1) Establishes goals for student achievement, including the goal of seventy percent (70%) of the LEA's students in third grade taking the English language arts (ELA) portion of the Tennessee comprehensive assessment program (TCAP) tests achieving a performance level rating of "on track" or "mastered" on the ELA portion of the TCAP tests, in the current school year and explains how the goals can be met within the LEA's budget; and

(2) Describes how the LEA's budget and expenditures for prior school years enabled the LEA to make progress toward the student achievement goals established for the prior school years; provided, however, that this subdivision (a)(2) does not apply to the report submitted for the 2023-2024 school year.

(b) The report required in this section must be presented to the public for comment before the report is submitted to the department. The report required by this section must be submitted to the department by November 1, 2023, and each November 1 thereafter.

(c)

(1) Beginning with the 2024-2025 school year:

(A) An LEA that operates a public school that receives a "D" or "F" letter grade pursuant to § 49-1-228, or a public charter school that receives a "D" or "F" letter grade pursuant to § 49-1-228 and the public charter school's authorizer, may be required to appear for a hearing before the state board, or a committee of the state board appointed by the chair of the state board, to report on the public school's performance and how the LEA's or public charter school's spending decisions may have affected the ability of the LEA's public schools or the public charter school to achieve certain performance goals. At the conclusion of a hearing conducted pursuant to this subdivision (c)(1)(A), the board may recommend that the department impose one (1) of the corrective actions identified in subdivision (c)(2)(B); and

(B) The department may impose one (1) of the following corrective actions for a public charter school or an LEA that operates a public school that receives a "D" or "F" letter grade pursuant to § 49-1-228:

(i) Require the LEA or public charter school to develop, submit to the department for approval, and implement a corrective action plan consistent with a corrective action plan template developed by the department. The department shall report on the

LEA's or public charter school's implementation of the corrective action plan to the state board; or

(ii) Require the department to audit and investigate the LEA's or public charter school's academic programming and spending. The department shall report the outcomes of the audit and investigation to the state board.

(2) The state board shall promulgate rules to effectuate this subsection (c) in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) The department shall provide information requested by the state board by the date specified by the state board, to assist the state board in making the determinations necessary for purposes of this subsection (c).

(d) The department shall apportion the costs of implementing a corrective action imposed pursuant to subdivision (c)(1)(B) between the department and the LEA or public charter school on a case-by-case basis, subject to the approval of the state board.

49-3-113. TISA review committee.

Beginning on January 1, 2026, the state board shall establish a review committee for the TISA. The committee must be comprised of the executive director of the state board, the commissioner of education, the commissioner of finance and administration, the comptroller of the treasury, the director of the Tennessee advisory commission on intergovernmental relations, the chair of the education committee of the senate, the chair of the education administration committee of the house of representatives, and the director of the office of legislative budget analysis, or the director's designee. The state board shall appoint at least one (1) member from each of the following groups to serve on the TISA review committee: teachers, school boards, directors of schools, county governments, municipal governments that operate LEAs, finance directors of urban school systems, finance directors of suburban school systems, and finance directors of rural school systems. The TISA review committee shall meet at least four (4) times per year and shall regularly review the TISA base funding, weighted allocations, direct allocations, and outcome incentive dollars, as well as identify any needed revisions, additions, or deletions to the TISA. The TISA review committee shall prepare an annual report on the TISA and shall provide the report, on or before November 1 of each year, to the governor, the state board of education, the finance, ways and means committees of the senate and the house of representatives, the education committee of the senate, and the education administration committee of the house of representatives. The report must include recommendations on needed revisions, additions, and deletions to the TISA, as well as an analysis of instructional salary disparity among LEAs, including an analysis of disparity in benefits and other compensation among LEAs.

49-3-114. Progress review board.

(a) Beginning on July 1, 2023, there is created a progress review board. The progress review board consists of:

(1) The commissioner of education;

(2) The chair of the state board of education;

(3) Two (2) members appointed by the speaker of the senate; and

(4) Two (2) members appointed by the speaker of the house of representatives.

(b) Appointed members of the progress review board serve a term of two (2) years. If a member no longer meets the qualifications for the member's position on the board, then the member's position on the board is vacated.

(c)

(1) The board shall set an LEA's minimum goal to increase the LEA's third grade student-performance level rating of "on track" or "mastered" on the English language arts (ELA) portion of the Tennessee comprehensive assessment program (TCAP) tests by fifteen percent (15%) of the gap to seventy percent (70%) proficient in three (3) years, beginning with the results of the 2022-2023 TCAP tests; provided, that this subdivision (c)(1) does not apply to an LEA with seventy percent (70%) or more of the third grade students in the LEA achieving a performance level of "on track" or "mastered" on the ELA portion of the TCAP tests. The board shall notify each LEA of the goal established pursuant to this subdivision (c)(1).

(2) The board shall annually review each accountability report submitted pursuant to § 49-3-112(a) to determine if an LEA is taking the proper steps to achieve the goal established pursuant to subdivision (c)(1).

(3) If, at the end of a three-year period as described in subdivision (c)(1), the board verifies that an LEA does not meet a goal established pursuant to subdivision (c)(1), then the board shall determine if further action is necessary based upon whether the LEA is taking the proper steps to achieve the goal as reviewed pursuant to subdivision (c)(2). If the board determines further action is necessary, then the board shall recommend that the commissioner of education require the LEA to complete training in addition to the requirements of § 49-3-110 on how to budget to increase student achievement based upon the goal set pursuant to subdivision (c)(1). If the board makes a recommendation described in this subdivision (c)(3), then the commissioner may require the LEA to complete training in addition to the training required in § 49-3-110.

49-3-115. Rulemaking authority.

(a) The department may promulgate rules to effectuate this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) Before the department begins the rulemaking process for a rule promulgated to effectuate this part, the department shall submit the department's proposed rule to the state board. The state board shall issue a positive, neutral, or negative recommendation for the rule. The state board's recommendation for the rule must be included in the filing of the rule with the office of the secretary of state.

SECTION 2. Tennessee Code Annotated, Title 49, Chapter 3, Part 3, is amended by deleting sections 49-3-301, 49-3-303, 49-3-304, 49-3-305, 49-3-307, 49-3-309, 49-3-318, 49-3-351, 49-3-354, 49-3-355, 49-3-356, 49-3-360, 49-3-362, 49-3-363, 49-3-364, 49-3-365, 49-3-367, and 49-3-368.

SECTION 3. Tennessee Code Annotated, Section 49-3-302(2), is amended by deleting the subdivision and substituting:

(2) "Average daily membership" or "ADM" has the same meaning as defined in § 49-3-104;

SECTION 4. Tennessee Code Annotated, Section 49-3-302(3), is amended by deleting the subdivision.

SECTION 5. Tennessee Code Annotated, Section 49-3-302(11), is amended by deleting the subdivision and substituting:

(11) "Local education agency" or "LEA" has the same meaning as defined in § 49-3-104;

SECTION 6. Tennessee Code Annotated, Section 49-3-302(12), is amended by deleting the language "as provided in § 49-3-305" and substituting "for the administration of this part".

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SECTION 7. Tennessee Code Annotated, Section 49-3-302, is amended by adding the following as a new subdivision:

() "Tennessee investment in student achievement formula" or "TISA" has the same meaning as defined in § 49-3-104;

SECTION 8. Tennessee Code Annotated, Section 49-3-306(b)(2), is amended by deleting the subdivision.

SECTION 9. Tennessee Code Annotated, Section 49-3-306(b), is amended by deleting subdivision (b)(4) and adding the following as new subdivisions:

(4) This section does not prohibit an LEA from supplementing salaries and wages with local funds when such supplementary funds are in addition to the LEA's local contribution.

(5) An LEA shall not decrease the level of local funding budgeted for salaries and wages from the prior year, except in the case of decreased enrollment. An LEA shall not use increases in state funding to offset local expenditures for salaries and wages.

SECTION 10. Tennessee Code Annotated, Section 49-3-306(d), is amended by deleting the last sentence.

SECTION 11. Tennessee Code Annotated, Section 49-3-306(h), is amended by adding the language "and rules" after the word "guidelines" in the subsection.

SECTION 12. Tennessee Code Annotated, Section 49-3-310, is amended by deleting "Funding for textbooks and other instructional materials shall be provided through the BEP," and substituting "Textbooks and other instructional materials purchased by LEAs and public charter schools using state school funds are".

SECTION 13. Tennessee Code Annotated, Section 49-3-314(c)(1), is amended by deleting the language "state education finance funds as set forth in this part" and substituting "state education finance funds as set forth in part 1 of this chapter".

SECTION 14. Tennessee Code Annotated, Section 49-3-314, is amended by deleting subsections (a) and (b).

SECTION 15. Tennessee Code Annotated, Section 49-3-315(b)(1), is amended by deleting the language "state school funds distributed under this part" and substituting "state school funds distributed under part 1 of this chapter".

SECTION 16. Tennessee Code Annotated, Section 49-3-316(a)(3), is amended by deleting "August 1" wherever it appears and substituting "October 1".

SECTION 17. Tennessee Code Annotated, Section 49-3-316(c)(1), is amended by deleting the language "failure to comply with the requirements of this part," and substituting "failure to comply with the requirements of this part, part 1 of this chapter,".

SECTION 18. Tennessee Code Annotated, Section 49-3-316(d)(2), is amended by deleting the language "expenditures mandated by this part" and substituting "any expenditures mandated by this part or part 1 of this chapter".

SECTION 19. Tennessee Code Annotated, Section 49-3-317(a)(2), is amended by deleting the language "under this part".

SECTION 20. Tennessee Code Annotated, Section 49-3-323, is amended by deleting the section.

SECTION 21. Tennessee Code Annotated, Section 49-3-353, is amended by deleting "Tennessee BEP" wherever it appears and substituting "TISA".

SECTION 22. Tennessee Code Annotated, Section 49-3-357, is amended by deleting the language "under this part," and substituting "under this part, part 1 of this chapter,".

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SECTION 23. Tennessee Code Annotated, Section 49-3-358(a), is amended by deleting "basic education program (BEP) account" and substituting "Tennessee investment in student achievement formula (TISA) account".

SECTION 24. Tennessee Code Annotated, Section 49-3-358, is amended by deleting "BEP" wherever it appears and substituting "TISA".

SECTION 25. Tennessee Code Annotated, Section 49-3-359(a), is amended by deleting the first sentence and substituting "Each LEA and public charter school must pay two hundred dollars (\$200) for each teacher in kindergarten through grade twelve (K-12) for the purpose described in this subsection (a).".

SECTION 26. Tennessee Code Annotated, Section 49-3-359(b), is amended by deleting the subsection.

SECTION 27. Tennessee Code Annotated, Section 49-3-359(c)(1), is amended by deleting the subdivision and substituting:

(1) An LEA may use TISA funds to directly employ a public school nurse or to contract with the Tennessee public school nurse program, created in § 68-1-1201, for the provision of school health services. An LEA must use TISA funds to directly employ, or contract for, a public school nurse as provided in this subsection (c), or must advise the department of education of the LEA's election not to do so.

SECTION 28. Tennessee Code Annotated, Section 49-3-403(b)(2), is amended by deleting "§ 49-3-302" and substituting "§ 49-3-104".

SECTION 29. Tennessee Code Annotated, Section 49-3-404(4), is amended by deleting the language "basic education program" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 30. Tennessee Code Annotated, Section 49-3-1005(c), is amended by deleting the language "a portion of the nonclassroom component of the BEP funding generated for capital outlay purposes" and substituting "and beginning with bonds issued on or after July 1, 2023, a portion of the TISA base funding amount and a portion of an infrastructure stipend pursuant to § 49-3-107, subject to the maximum limits established pursuant to § 4-31-1005(g)(2)".

SECTION 31. Tennessee Code Annotated, Section 49-3-1007, is amended by deleting the language "BEP" wherever it appears and substituting instead "TISA".

SECTION 32. Tennessee Code Annotated, Section 49-1-201(c)(20), is amended by deleting subdivision (C) and substituting instead:

(C) The commissioner may prepare and promulgate, without board approval, rules that are solely necessary for the internal administrative operation and functions of the department and to implement the TISA in accordance with the Tennessee Investment in Student Achievement Act, compiled in chapter 3, part 1 of this title. With the exception of the rulemaking authority provided in the Tennessee Investment in Student Achievement Act, compiled in chapter 3, part 1 of this title, the department's authority to promulgate rules does not supersede the powers of the state board and may be used only in performance of the commissioner's administrative responsibilities;

SECTION 33. Tennessee Code Annotated, Section 49-1-302, is amended by deleting subdivision (a)(4).

SECTION 34. Tennessee Code Annotated, Section 49-1-613(a), is amended by deleting the language "basic education program (BEP) as the result of changes made in the BEP formula for school year 2007-2008" and substituting "the TISA".

SECTION 35. Tennessee Code Annotated, Section 49-1-614(d)(1), is amended by deleting the second sentence and substituting "The ASD shall receive from the department or LEA, as appropriate, an amount of state and local funds in the manner prescribed in § 49-13-

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112 for all schools in the ASD, including those schools operated through charter agreements, contracts, and direct-run models."

SECTION 36. Tennessee Code Annotated, Section 49-1-614(d)(1), is amended by adding ", IDEA," after "Title I".

SECTION 37. Tennessee Code Annotated, Section 49-1-1003, is amended by deleting subsection (a) and substituting instead:

(a) The department of education shall establish and administer the Connie Hall Givens coordinated school health program. An LEA shall annually submit a coordinated school health plan to the department for approval. Each coordinated school health plan must include how the LEA intends to spend funds for student health and wellness, how the LEA currently addresses the health needs of school children, and who will serve as the school health coordinator.

SECTION 38. Tennessee Code Annotated, Section 49-1-1003(b), is amended by deleting the word "grant".

SECTION 39. Tennessee Code Annotated, Title 49, Chapter 1, is amended by deleting Sections 49-1-1004 and 49-1-1006.

SECTION 40. Tennessee Code Annotated, Section 49-1-1005, is amended by deleting the section and substituting:

The department of education and the department of health shall coordinate existing school health programs, grants, and initiatives. To the extent possible in light of existing contracts and waiver requirements, funding, including TennCare funding, must likewise be coordinated. Schools should be encouraged and permitted to perform health screening services under TennCare contracts.

SECTION 41. Tennessee Code Annotated, Section 49-2-101(1)(D), is amended by deleting the language "basic education program (BEP) under chapter 3, part 3 of this title" and substituting instead "Tennessee investment in student achievement formula (TISA) under chapter 3, part 1 of this title".

SECTION 42. Tennessee Code Annotated, Section 49-2-115(b), is amended by deleting the language "Upon approval by the department of education, basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 43. Tennessee Code Annotated, Section 49-2-115(c), is amended by deleting the subsection.

SECTION 44. Tennessee Code Annotated, Section 49-2-203(b)(11), is amended by deleting the language "State basic education program (BEP) funds and any required local matching funds" and substituting "Tennessee investment in student achievement formula (TISA) funds and required local contributions".

SECTION 45. Tennessee Code Annotated, Section 49-2-203(b)(16), is amended by deleting the language "participation in the basic education program" and substituting "ability to receive funds under the Tennessee investment in student achievement formula (TISA)".

SECTION 46. Tennessee Code Annotated, Section 49-2-2101(c)(3), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 47. Tennessee Code Annotated, Section 49-5-407, is amended by deleting the section.

SECTION 48. Tennessee Code Annotated, Section 49-6-101(c)(2), is amended by deleting the language "for participation in the basic education program" and substituting "pursuant to the Tennessee investment in student achievement formula (TISA)".

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SECTION 49. Tennessee Code Annotated, Section 49-6-107(b), is amended by deleting the language "Basic Education Program (BEP) funding formula" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 50. Tennessee Code Annotated, Section 49-6-107(c), is amended by deleting the first sentence and substituting:

As a condition of receiving state funds for classrooms pursuant to §§ 49-6-103 — 49-6-110, the LEA shall provide a matching amount of funds based on the Tennessee investment in student achievement formula (TISA).

SECTION 51. Tennessee Code Annotated, Section 49-6-415(g), is amended by deleting "basic education program" and substituting "TISA".

SECTION 52. Tennessee Code Annotated, Section 49-6-811, is amended by adding the language "and use funds received pursuant to the Tennessee investment in student achievement formula (TISA)" after "school safety center".

SECTION 53. Tennessee Code Annotated, Section 49-6-2603, is amended by deleting the language "basic education program" wherever it appears and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 54. Tennessee Code Annotated, Section 49-6-2605(a), is amended by deleting the language "basic education program (BEP)" and substituting "TISA".

SECTION 55. Tennessee Code Annotated, Section 49-6-2605, is amended by deleting "BEP" wherever it appears and substituting "TISA".

SECTION 56. Tennessee Code Annotated, Section 49-6-2608(e), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 57. Tennessee Code Annotated, Section 49-6-3004(g), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 58. Tennessee Code Annotated, Section 49-6-3104(g), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 59. Tennessee Code Annotated, Section 49-6-3104(g)(2), is amended by deleting the subdivision.

SECTION 60. Tennessee Code Annotated, Section 49-6-3108, is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 61. Tennessee Code Annotated, Section 49-6-4302, is amended by deleting subsections (c), (d), (e), and (g) and adding the following as new subsections:

() LEAs may use funding allocated through the Tennessee investment in student achievement formula (TISA) for programs that address school safety, including, but not limited to, innovative violence prevention programs, conflict resolution, disruptive or assaultive behavior management, improved school security, school resource officers, school safety officers, peer mediation, and training for employees on the identification of possible perpetrators of school-related violence.

() LEAs shall submit an annual school safety plan to the Tennessee school safety center. The Tennessee school safety center shall review school safety plans in collaboration with the state-level school safety team established under § 49-6-802. The Tennessee school safety center shall develop a template for school safety plans to ensure that plans describe, at a minimum, how TISA funds will be used to:

- (1) Improve and support school safety;

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(2) Meet the needs identified in a school security assessment conducted pursuant to this section; and

(3) Support the safety needs of LEA-authorized public charter schools, if applicable.

SECTION 62. Tennessee Code Annotated, Section 49-10-109, is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 63. Tennessee Code Annotated, Section 49-10-109, is amended by deleting "BEP" wherever it appears and substituting "TISA".

SECTION 64. Tennessee Code Annotated, Section 49-10-113(a), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 65. Tennessee Code Annotated, Section 49-10-1403, is amended by deleting the language "basic education program (BEP)" wherever it appears and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 66. Tennessee Code Annotated, Section 49-10-1405(a)(1), is amended by deleting the language "the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the student resides and is zoned to attend" and substituting "the total funding allocation that the student generates under the Tennessee investment in student achievement formula (TISA)".

SECTION 67. Tennessee Code Annotated, Section 49-11-405(b), is amended by deleting the subsection and substituting:

(b) A board of education shall not use TISA funds or any local funds required by the TISA for purposes of this section.

SECTION 68. Tennessee Code Annotated, Section 49-13-104(11), is amended by deleting "§ 49-3-302" and substituting "§ 49-3-104".

SECTION 69. Tennessee Code Annotated, Section 49-13-112(a), is amended by deleting the subsection and substituting:

(a)

(1) A local board of education shall allocate to the charter school an amount equal to:

(A) The total of the state and local student-generated funds for member students in the charter school for the prior year in alignment with the TISA pursuant to chapter 3, part 1 of this title;

(B) The average per pupil local funds received by the district in the current school year above those required by the TISA for each member student in the charter school in the prior year;

(C) The per student state and local funds received by the LEA for member students in the charter school in the current school year beyond the prior year's membership; and

(D) All appropriate allocations under federal law or regulation, including, but not limited to, IDEA and ESEA funds.

(2) Federal funds received by the LEA must be disbursed to charter schools authorized by the LEA by either joint agreement on shared services by individual charters or sub-grants to charters for the charter's equitable share of the federal grant based on eligible students. The allocation must be made in accordance with the policies and procedures developed by the department of education.

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(3) Each LEA shall include as part of its budget submitted pursuant to § 49-2-203, the per pupil amount of local money it will pass through to charter schools during the upcoming school year, including all calculations listed in this section. Allocations to the charter schools during that year must be based on the calculated amounts. The LEA shall distribute the portion of local funds it expects to receive in no fewer than nine (9) equal installments to the charter schools in the same manner as state funds are distributed pursuant to chapter 3 of this title. An LEA shall adjust payments to charter schools, at a minimum, in October, February, and June, based on changes in revenue, student membership, or student services. All funds received by a charter school must be spent according to the budget submitted or as otherwise revised by the public charter school governing body, subject to the requirements of state and federal law.

SECTION 70. Tennessee Code Annotated, Section 49-13-112(b), is amended by deleting "an amount equal to the per pupil state and local funds received by the department or LEA" and substituting "the total of the state and local student-generated funds for member students in the charter school for the prior year in alignment with the TISA, the average per pupil local funds received by the LEA in the current school year above those required by the TISA for each member student in the charter school in the prior year, the per student state and local funds received by the LEA for all additional member students in the charter school in the current year above the prior year's membership, and the per student state and local funds received by the LEA for member students in the charter school in the current school year beyond the prior year's membership".

SECTION 71. Tennessee Code Annotated, Section 49-13-112(c)(1), is amended by adding "and funds generated under the fast-growth stipends detailed in § 49-3-107" after "capital outlay purposes".

SECTION 72. Tennessee Code Annotated, Section 49-13-112(d), is amended by deleting the subsection.

SECTION 73. Tennessee Code Annotated, Section 49-15-107(a), is amended by deleting the subsection and substituting:

(a) The local board of education shall allocate one hundred percent (100%) of state and local TISA funds generated by the participating student, as well as the average per pupil amount of any additional local funds received by the LEA, to a program approved under this chapter. All funds must be spent according to the budget submitted in the program agreement or as otherwise revised by the LEA or applicant public postsecondary institution, subject to the requirements of state and federal law.

SECTION 74. Tennessee Code Annotated, Section 49-16-103(a), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 75. Tennessee Code Annotated, Section 49-16-104(a), is amended by deleting the language "the governor, the general assembly, the state board of education, and the basic education program (BEP) review committee" and substituting "the governor, the general assembly, and the state board of education".

SECTION 76. Tennessee Code Annotated, Section 49-16-213(b), is amended by deleting the last sentence and substituting:

Notwithstanding chapter 3, part 1 of this title, if a public virtual school is closed upon direction of the commissioner or the LEA, then the Tennessee investment in student achievement formula (TISA) payments for the LEA that established the school must exclude a student who was a member in the school the prior year and did not remain a member in the LEA.

SECTION 77. Tennessee Code Annotated, Section 3-14-202(e), is amended by deleting the language "BEP funding formula" and substituting "Tennessee investment in student achievement formula (TISA)".

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SECTION 78. Tennessee Code Annotated, Section 4-6-143(h), is amended by deleting the language "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 79. Tennessee Code Annotated, Section 4-31-1003(4), is amended by deleting "§ 49-3-302" and substituting "§ 49-3-104".

SECTION 80. Tennessee Code Annotated, Section 4-31-1004(b), is amended by deleting the language "basic education program" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 81. Tennessee Code Annotated, Section 4-31-1005(g), is amended by deleting the subsection and substituting:

(g)

(1) Each local education agency is authorized to pledge to the authority, for the further security of the authority's bonds and notes, a portion of the Tennessee investment in student achievement formula (TISA) base funding amount and a portion of an infrastructure stipend allocated pursuant to § 49-3-107. These pledges may be required by the authority as a condition to making loans to local government units.

(2) The maximum portions of the TISA base funding amount and the infrastructure stipend that may be pledged for purposes of subsection (a) must be established by the department of education by rules promulgated pursuant to the Uniform Administrative Procedures Act, codified in title 4, chapter 5.

SECTION 82. Tennessee Code Annotated, Section 4-31-1007(b), is amended by deleting the subsection and substituting:

(b) In the event the local government unit fails to remit the amount set forth in the notice within thirty (30) days of the receipt of the notice, the commissioner of finance and administration shall, without further authorization, withhold such sum or part of such sum from the amount pledged pursuant to § 4-31-1005(g), for the benefit of the authority issuing bonds or notes for the purposes referred to in this part.

SECTION 83. Tennessee Code Annotated, Section 4-31-1007(c), is amended by deleting the subsection and substituting:

(c) In the event there are not sufficient funds pledged pursuant to § 4-31-1005(g) still held by the commissioner of finance and administration for the local education agency to cure the deficiency in repayments to the authority, the commissioner shall transfer to the authority funds equal to the amount of the remaining payment deficiency from the general shortfall reserve subaccount of the lottery for education account as established by § 4-51-111, subject to any limitations on the use of the subaccount established pursuant to § 4-31-1004(a). The commissioner of education shall instruct the commissioner of finance and administration to withhold from any funds allocated to such local education agency in the future that are eligible to be pledged pursuant to § 4-31-1005(g) an amount to replenish the general shortfall reserve subaccount of the lottery for education account equal to the amount transferred to the authority.

SECTION 84. Tennessee Code Annotated, Section 4-31-1101(a), is amended by deleting subdivision (3) and adding the following as new subdivisions:

() "Tennessee investment in student achievement formula" or "TISA" has the same meaning as defined in § 49-3-104;

() "Local education agency" or "LEA" has the same meaning as defined in § 49-3-104;

SECTION 85. Tennessee Code Annotated, Section 4-31-1101(b), is amended by deleting "BEP" and substituting "TISA".

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SECTION 86. Tennessee Code Annotated, Section 4-31-1103(b), is amended by deleting "§ 49-3-101(b)" and substituting "§ 49-3-102(b)".

SECTION 87. Tennessee Code Annotated, Section 5-9-404(c), is amended by deleting "BEP" and substituting "TISA".

SECTION 88. Tennessee Code Annotated, Section 5-12-109(c), is amended by deleting "BEP" and substituting "TISA".

SECTION 89. Tennessee Code Annotated, Section 5-12-210(b), is amended by deleting "BEP" and substituting "TISA".

SECTION 90. Tennessee Code Annotated, Section 5-21-111(i), is amended by deleting "BEP" and substituting "TISA".

SECTION 91. Tennessee Code Annotated, Section 8-27-301(b)(3), is amended by deleting "§ 49-3-302" and substituting "§ 49-3-104".

SECTION 92. Tennessee Code Annotated, Section 8-34-206(b)(1)(D), is amended by deleting the language "Tennessee foundation program, the basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 93. Tennessee Code Annotated, Section 8-37-402(a)(2), is amended by deleting the language "basic education program" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 94. Tennessee Code Annotated, Section 8-38-116, is amended by deleting the language "basic education program" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 95. Tennessee Code Annotated, Section 8-50-702(a)(1), is amended by deleting "§ 49-3-302" and substituting "§ 49-3-104".

SECTION 96. Tennessee Code Annotated, Section 9-4-5115(a), is amended by deleting the language "Basic Education Program (BEP) formula" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 97. Tennessee Code Annotated, Section 12-10-115(c)(3), is amended by deleting "a portion of the nonclassroom component of the basic education program funding generated for capital outlay purposes" and substituting "a portion of the Tennessee investment in student achievement formula (TISA) base funding amount and a portion of an infrastructure stipend allocated pursuant to § 49-3-107, subject to the maximum limits established pursuant to § 4-31-1005(g)(2)".

SECTION 98. Tennessee Code Annotated, Section 37-5-119(h), is amended by deleting "basic education program (BEP)" and substituting "Tennessee investment in student achievement formula (TISA)".

SECTION 99. Tennessee Code Annotated, Section 37-5-131(c)(1), is amended by deleting "BEP funding" and substituting "Tennessee investment in student achievement formula (TISA) funding".

SECTION 100. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. The Tennessee Code Commission is requested to include the headings in a compilation or publication containing this act.

SECTION 101. For purposes of promulgating rules, establishing and evaluating the fiscal capacity calculation, determining fiscal capacities, determining equalization values, determining local contributions, creating and publishing the TISA guide, creating or procuring a professional development series on the TISA, and producing accountability reports for the 2023-2024 school year, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect July 1, 2023, the public welfare requiring it.

HOUSE BILL NO. 2143

PASSED: April 28, 2022



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES



RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 2nd day of May 2022



BILL LEE, GOVERNOR

EXHIBIT 5

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA
TRAVIS BEAVER and WENDY PETERS,

Petitioners/Plaintiff,

CIVIL ACTION NO.: 22-P-24, 24, 26
Honorable Joanna I. Tabit

VS.

RILEY MOORE, in his Official
Capacity as State Treasurer of West
Virginia, et al.,

Respondents/Defendants,

VS.

KATIE SWITZER and JENNIFER
COMPTON,

Intervenor-Defendants.

MOTION FOR PRELIMINARY INJUNCTION/MOTION TO DISMISS/MOTION FOR
JUDGMENT ON THE PLEADINGS

JULY 6, 2022
9:00 A.M.

KANAWHA COUNTY COURTHOUSE
409 VIRGINIA STREET, EAST
CHARLESTON, WEST VIRGINIA

Lauren Belisle
Certified Court Reporter

CAPITOL CITY REPORTING
"PROFESSIONAL STENOMASK FOR THE RECORD"

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P R O C E E D I N G S

THE COURT: Good morning. I don't think I've seen this many people in the courtroom when we weren't picking a jury. But, in any event, good morning everybody. One thing that I want to ask counsel to do is, I have a list of folks at counsel table, who I'm assuming will be addressing the Court, and I'm not going to identify yourself by parties, or we will be usurping a good bit of the time we have set aside for today's hearing. So, before you address the Court, if you would, just please identify yourself and identify the party that you're representing for my purposes. Obviously, some of you I know, some of you I don't know, and obviously, for the court reporter and the record, as well.

And we have a number of things that we need to be covering today. We have the Plaintiff's Motion for Preliminary Injunction, Plaintiff's Request for Judicial Notice in Support of the Motion for Motion for Preliminary Injunction, respective Defendants, Riley Moore and Governor Justice's Motion to Dismiss, Defendant's Blair and Hanshaw's Motion to Dismiss, Parent-Intervenor's Motion for Judgment on the Pleadings, and I have just received, also, a motion from the State to intervene, as well.

So, we are going to address all of these. Some of

1 these I'm going to hear argument on, but you all need to
2 know, I've read the considerable papers that you have filed
3 in connection with the case and I think you all for the
4 exceptional briefing on behalf of all parties. I've
5 reviewed the motions, I've reviewed the responses, I
6 reviewed the replies, and pretty much everything you filed,
7 which has been a good bit of paper. So, thank you all for
8 that. But, knowing that, as we proceed through argument,
9 have an appreciation that I've read your things, and to the
10 extent that you have any additional arguments you want to
11 address in your papers that aren't in your papers, that's
12 fine, and I'm sure I will have questions for all of the
13 respective parties throughout.

14 Okay. So, let's get started. But, before we do, just
15 as a summary of the case, I understand that the parents are
16 -- the Plaintiffs, actually, are parents of students who
17 are enrolled in west Virginia schools. The Beavers'
18 children are enrolled in Putnam County schools, Ms. Peter's
19 children, Raleigh County schools. Both Plaintiffs have
20 children that have been diagnosed with conditions requiring
21 them special needs and special education services, and
22 neither of them know of any private school near their homes
23 that can provide the services for them, and have brought
24 this action alleging they have a right to public education.

1 And West Virginia is a fundamental right granted under our
2 Constitution, and basically alleging that the legislature
3 has violated its constitutional duties regarding public
4 education and passing, what I'm going to refer to, for
5 purposes of today, is the Voucher Law and I believe that's
6 House Bill 2013. That, in essence, in my view, kind of
7 capsulizes what we are here today to discuss, so let's go
8 through the motions first. And I've got some rulings that
9 I want to give on some of them, and the others, I'm going
10 to hear argument regarding them.

11 First, let's take up the Plaintiff's Request for
12 Judicial Notice in Support of Motion for Preliminary
13 Injunction. I've reviewed that. I've reviewed the
14 responses. And as it relates to that particular motion, I
15 don't believe Rule 201 provides that the Court should take
16 judicial notice of these documents. That rule contemplates
17 taking judicial notice of adjudicative facts not in the
18 documents. And what I think I'm being asked to do by
19 taking notice, that that is basically to assume those facts
20 to be true and I'm not supposed to take judicial notice as
21 a court of facts that can't reasonably be questioned, and,
22 obviously, the opposing parties are questioning that. So,
23 as it relates to Plaintiff's Request for Judicial Notice, I
24 am going to deny that, and certainly note your respective

1 objections.

2 And I'm going to task you, Mr. Tinney, with preparing
3 an order reflecting that. And I may be tasking different
4 parties with orders as we go through, because I think it's
5 important to address particular motions and individually,
6 all right?

7 MR. TINNEY: We'll certainly prepare an order
8 with regard to that motion, Your Honor.

9 THE COURT: I appreciate that. Thank you.

10 MR. TINNEY: Yes.

11 THE COURT: And as it relates -- let's discuss
12 the State's Motion to Intervene. Of course, that was filed
13 late last week, and I don't imagine there's been a time to
14 reply. Is there any objection to the state of West
15 Virginia's Motion to Intervene, as a matter of right in
16 connection with the case?

17 MS. GODLEY: Your Honor, Tamerlin Godley on
18 behalf of the Plaintiffs.

19 We do note that it is very untimely, but the most
20 important thing is that we have the appropriate Defendants
21 in the case, so that --

22 THE COURT: And you agree that the State is,
23 basically, the defender of its laws?

24 MS. GODLEY: Yes.

1 THE COURT: And that's why they want to be here?
2 And as it relates to the timeliness issue, we had an
3 interesting situation here procedurally, because to the
4 named respondents, of course, have filed briefs in support
5 of your client's position and I think that, from the
6 State's position, relates to the timeliness argument.

7 MS. GODLEY: Understood.

8 THE COURT: Okay. Is there any objection?

9 MS. GODLEY: No objection.

10 THE COURT: All right. So, I'm going to grant
11 the State's Motion to Intervene without objection.

12 And Mr. Tinney, will you add that to your to-do
13 list?

14 MR. TINNEY: I will, Your Honor. Thank you.

15 THE COURT: I appreciate that. All right. And
16 next, the Parent-Intervenor's Motion for Judgment on the
17 Pleadings. And, of course, Judgment on the Pleadings under
18 12(c) are challenges really to the legal effect of the
19 facts, rather than challenging the proof of the fact
20 themselves. And we apply, in essence, the 12(b)(6)
21 standard, as to whether or not the complaint has set forth
22 a claim and I do believe, having reviewed the complaint in
23 this case, and construing in the light most favorable to
24 the Plaintiffs that it does state a claim, I'm going to

1 deny the Parents-Intervenor's Motion for Judgment on the
2 Pleadings. Certainly, noting your client's objections, Mr.
3 Kawash.

4 MR. KAWASH: Thank you, Your Honor.

5 THE COURT: Thank you. There's another one for
6 you, Mr. Tinney.

7 MR. TINNEY: Oh, okay.

8 THE COURT: I just thought it would be best to
9 keep it that way; is that okay? We're just keeping it
10 consistent.

11 MR. TINNEY: All right. The Court would like me
12 to prepare a motion on that -- or prepare a proposed order
13 on that motion, as well?

14 THE COURT: Well, only because you prevailed,
15 too.

16 MR. TINNEY: Okay.

17 THE COURT: There you go.

18 MR. TINNEY: I appreciate it. Thank you.

19 THE COURT: All right.

20 MR. TINNEY: Thank you, Your Honor.

21 THE COURT: All right. Now, I'm just checking
22 them off is we do it, folks. All right.

23 So, we've got respective Motions to Dismiss from
24 Treasurer Moore, Governor Justice, President Blair and

1 Speaker Hanshaw, and having reviewed those, and also having
2 reviewed the Plaintiff's response, I'm going to hold a
3 ruling in that regard in abeyance. We're going to go ahead
4 and have a hearing on the Motion for Preliminary
5 Injunction. Depending on how that comes out, it may negate
6 consideration of the Motion to Dismiss, and we may be able
7 to revolve some of those issues. But, I do believe, and I
8 do believe it's important for me to say, the Plaintiffs in
9 this case, as taxpayers, in my view, have standing and meet
10 the requirements of standing regarding the alleged injury
11 complained of, and I do believe that its effect is actual
12 and imminent, such the standing is appropriate in
13 connection with the claims. All right. So, in my view,
14 that leaves us with the Motion for Preliminary Injunction.
15 And I will hear argument at this time in that regard.

16 And Mr. Tinney, will you be leading that or will
17 Ms. Godley?

18 MR. TINNEY: I am not, Your Honor. However, I
19 did want to make a brief introduction. We are here on
20 behalf of the Plaintiffs, Travis Beaver and Wendy Peters.
21 Ms. Godley will be making the argument on behalf of the
22 Plaintiffs.

23 THE COURT: Thank you.

24 MR. TINNEY: Thank you. And she has been

1 admitted pro hac vice.

2 THE COURT: Pro hac vice. I signed a bunch of
3 pro hac vice. State Bar is going to make money off this
4 case.

5 MR. TINNEY: Union dues.

6 MS. GODLEY: Your Honor, would you prefer I am
7 here, or I approach?

8 THE COURT: If our court reporter can hear you,
9 whatever you're more comfortable with.

10 MS. GODLEY: I will --

11 THE COURT: Okay.

12 MS. GODLEY: Good morning, Your Honor, Tamerlin
13 Lee Godley on behalf of the Plaintiffs.

14 The West Virginia Constitution sets up a clear
15 framework for publicly funded education, a thorough and
16 efficient system of free schools, funded by specific
17 revenue sources under the general supervision of the Board
18 of Education.

19 THE COURT: Let's talk about funding, Ms. Godley,
20 and how the funding system works.

21 And I want to commend Mr. Taylor and Ms. Morgan.
22 I found Superintendent Burch and President Miller's
23 briefing in support of those issues helpful, and inclusion
24 of the affidavits helped give me an understanding of how it

1 works.

2 MS. GODLEY: So, and there is a very established
3 system by which the enrollment is a key factor.

4 THE COURT: The net enrollment of the students in
5 the school system is key?

6 MS. GODLEY: Is key. And so, there is a variety
7 of different categories of expenses that are based on that
8 enrollment. There are some that are not based on
9 enrollment, but the majority of the factors are based on
10 enrollment. And so, the enrollment in the schools impacts
11 the funding that goes to those school. So, a decrease in
12 that enrollment, decreases the funding from the state to
13 the schools.

14 THE COURT: So, we're not only talking about
15 \$4,300 being taken from state monies going to parents who
16 have been awarded this Hope Scholarship for purposes of
17 private school tuition and/or homeschooling, we're also
18 talking about a decline in enrollment such that funding is
19 impacted on the state level, a county level, such that
20 services, necessary services, cannot be provided in the
21 public education system?

22 MS. GODLEY: That's exactly right. With each of
23 the students that are identified, that enrollment then goes
24 down, and then the amount that's going to be allocated to

1 that school district or that county is going to go down.

2 The way that the West Virginia Constitution, it
3 does not provide -- so, for the government to make a
4 payment of public money to parents to take care of
5 education for themselves, this is exactly what the Voucher
6 Law does. It sets up a system whereby the state advocates
7 its obligation to the student in exchange for paying the
8 family \$4,300. Any additional public resources must then
9 be paid for by the student. The student exchanges --

10 THE COURT: So, let me ask you this question, and
11 this is my take away from reading the briefing. So, if the
12 student is awarded a scholarship, and the student needed to
13 be homeschooled or enrolled in some type of private school,
14 that student in that family can nonetheless avail
15 themselves of certain services of public education, but
16 they've got to pay for it?

17 MS. GODLEY: They do. And actually, this is very
18 common. So, there are certain students that go to private
19 schools, and they don't have the AP class or a particular
20 science class, so they will use public school resources,
21 and now the students will have to pay for it. Same with
22 homeschooling, even one of the intervenors parent says
23 that, you know, if they want to use some public school
24 resources, they will have to pay for them now if they are a

1 voucher student.

2 THE COURT: And had that been the case
3 previously?

4 MS. GODLEY: No, absolutely not. I mean, free
5 schools are free.

6 THE COURT: And that's what the Constitution
7 provides for --

8 MS. GODLEY: That's what the --

9 THE COURT: -- thorough and efficient education?

10 MS. GODLEY: Exactly. And, you know, there is
11 case law where there was a whole discussion about whether
12 or not -- in the past whether or not West Virginia students
13 could pay for certain things for books and the like. And,
14 of course, free is free. You know, the Supreme Court said
15 free means you do not pay for public school resources. So,
16 you know, the Plaintiffs -- or, I mean, the opposing
17 parties talk about how the Constitution is a limit on
18 power. It's not a grant of power like the federal
19 Constitution, it's a limit on power. And here, they've
20 taken up -- the claimers took up the subject of public
21 education and said that what the state could do, is a
22 system, a thorough and efficient system of free schools.
23 But, if something like HP 2013 was allowed, the
24 Constitution would say, the legislature may provide, by

1 general law, for a thorough and efficient system of free
2 schools, or pay parents a sum of money to take care of it
3 themselves. And the Constitution decidedly does not say
4 that. We know that this is a --

5 THE COURT: And you often hear people say the
6 Constitution should be, state and federal, a living and
7 breathing document, but you think that interpretation of it
8 goes beyond the framework.

9 MS. GODLEY: Absolutely. I mean, if the framers
10 were faced -- there were private schools, and came
11 together, and it was a prime importance, as Professor
12 Basters explained, how were we going to handle education in
13 this state? And they determined that they would handle it
14 through a system of free schools.

15 THE COURT: And certainly, individuals that want
16 to send their children to private schools, have had that
17 ability to do.

18 MS. GODLEY: For all time, they have had --

19 THE COURT: Forever and ever.

20 MS. GODLEY: And they continue --

21 THE COURT: And homeschool too.

22 MS. GODLEY: -- continue to have that choice.
23 Nothing that we are saying impacts that choice. People
24 have that choice.

1 THE COURT: You just say, we, as the state of
2 West Virginia, are not going to fund your private decision
3 to send your children to a private school.

4 MS. GODLEY: Exactly. Exactly.

5 THE COURT: Let me ask you this, this isn't the
6 first law -- I mean, West Virginia isn't the first state in
7 which this law has been enacted, or attempted to be
8 enacted, and courts have passed on that issue; have they
9 not? And what are they saying on a national level in
10 different jurisdictions?

11 MS. GODLEY: So, there is not, in the entire
12 United States of America, an expansive -- universal voucher
13 program like this. Not a single state.

14 THE COURT: So, this is, just so we're clear,
15 this law being proposed by our legislature, which is been
16 enacted by our legislature, is the most expansive law in
17 the country with respect to these types of -- these types
18 of --

19 MS. GODLEY: It is the only universal voucher
20 program. So, Nevada tried to do a universal voucher
21 program in 2015, and the Court knocked it down and
22 permanently enjoined it under the Nevada statute. The
23 opposing parties start to the merited case in Indiana,
24 small program. There's two cases that come out of the city

1 of Milwaukee. So, there's --

2 THE COURT: When you're saying small program, are
3 you talking like a county/district race?

4 MS. GODLEY: There's some -- some are
5 geographically based, most are income based, or there's a
6 variety of things that restricted either the number of
7 students that can participate. There is an income basis,
8 there's a performance of --

9 THE COURT: And I don't mean to get you jumping
10 all over the place, because I know that you have an
11 argument that you would like to make, but what specifically
12 are the requirements to apply for the scholarship?

13 MS. GODLEY: The requirements right now are that
14 you have been at least 45 days in a public school, or you
15 are starting kindergarten. So, and after three years, if
16 it doesn't meet certain metrics, everyone in the state can
17 apply for it. So, that -- those are the only requirements.

18 THE COURT: I thought I saw a reference to it
19 that less than five percent or --

20 MS. GODLEY: Yes, if it is less than five percent
21 within the three-year time period.

22 THE COURT: And then it's going to open up to
23 everybody?

24 MS. GODLEY: To everybody. And, in fact, it will

1 be open to everyone over a period of time, even if that
2 doesn't occur, because everyone who starts kindergarten --
3 so, if you're in kindergarten, you are always planning on
4 having your child go to private school or be homeschooled,
5 you apply for this and you get it for --

6 THE COURT: And you get money?

7 MS. GODLEY: -- you get it for the rest of the
8 time.

9 THE COURT: The rest of that --

10 MS. GODLEY: All the way through --

11 THE COURT: -- individual's education?

12 MS. GODLEY: -- K-12. All the way through with.

13 THE COURT: \$4,300?

14 MS. GODLEY: Yes. So, for the first time in
15 America, this statute would have the state subsidizing all
16 private school and homeschool children's education, which
17 is nowhere. So, we have Indiana and North Carolina are two
18 places that the courts have approved a smaller-scale
19 program. And then there's a Florida case, where it was
20 knocked down.

21 THE COURT: Let me ask you this, are there
22 restrictions on the use of the money? Say I'm in
23 Huntington, Cabell County, and I decide I like a school
24 better over in Ohio or even in Kentucky, can I take state

1 money that's been awarded to me by the Hope Scholarship
2 Fund, West Virginia state taxpayer money, and go across the
3 border and use that money there?

4 MS. GODLEY: Indeed, you can. And as you
5 probably know, they're advertising. Bring your West
6 Virginia taxpayer money, come over here to these different
7 states, and use your money there. Absolutely, you can. We
8 know that this sounds unconstitutional, because opposing
9 parties have to engage in a deceptive illusion in order to
10 try to avoid the constraints of the West Virginia
11 Constitution. They say, "This is just financial aid. It's
12 just a scholarship for extra educational services." But
13 it's not a scholarship for extra services, it is the
14 child's core education. In order to obtain this money,
15 this student must exchange their right to a free public
16 education for an amount that is insufficient to pay for
17 private school tuition and fees. It's exchanged without
18 accountability and without --

19 THE COURT: And nobody's checking on what you're
20 doing with it? There's no follow-up whatsoever?

21 MS. GODLEY: There is a limited audit function
22 that only if there's some -- if the Hope Scholarship Award
23 is made aware that there are issues, then there's a limited
24 audit function, but generally, no one is checking. No one

1 is saying, "Hey did you educate your child? Have they
2 progressed on academic standards? You know, are you
3 providing the education that this child deserves?"

4 THE COURT: Something I see regularly in my
5 courtroom, as tragic as it is, and any circuit judge will
6 tell you that, you know, there's a very small percentage,
7 obviously, the work that we do, the overwhelming number of
8 cases that we have to deal with abuse and neglect matters,
9 and educational neglect is a factor in so many of those
10 cases. So, for instance, if a parent can essentially apply
11 for this scholarship, if their child meets the
12 prerequisites that you've described, take that money and
13 there's no accountability with respect to what's being done
14 with it. They can take that money and pay bills, buy
15 drugs, and no one knows of it?

16 MS. GODLEY: And you can imagine you're a family
17 in poverty and its \$4,300 a child and you have three
18 children, even the exigencies of people's circumstances,
19 the thing about the Constitution is that it's protecting
20 our most vulnerable children. Of course, there are
21 parents, more affluent parents that are sending their kids
22 to private school and this is just subsidizing that, or if
23 they are affluent enough to have one parent stay home and
24 educate, but there are children for whom parents will make

1 the decision to take this money and not educate them. And
2 that, the framers said, "No, you cannot do that. We are
3 taking on the obligation. It is a fundamental right to
4 provide a free public school system. We cannot abdicate
5 that duty by just paying a certain amount of money, and
6 let's see how parents do." Those children are protected by
7 the Constitution. And, you know, we see this *expressio*
8 *unius*, which --

9 THE COURT: I'm glad -- did you have Latin,
10 because I didn't? I took Spanish when I was a kid. I
11 could not pronounce it, but I know --

12 MS. GODLEY: To be honest --

13 THE COURT: I know what it means.

14 MS. GODLEY: -- it reminds me always of a Harry
15 Potter-like spell, *expressio unius*. But *expressio unius* --

16 THE COURT: So, *expressio unius* --

17 MS. GODLEY: -- which the West Virginia Courts
18 have said is axiom and axiomatic in terms of its
19 interpretation of principles. It is used in cases without
20 number. And where the Constitution speaks in an area, then
21 that limits what the legislature can do. I think that the
22 court's words and Gilman about the regulation of an
23 alcohol, are very applicable here. The court said, "The
24 expressed power here given to regulate or prohibit the sale

1 of liquors. Unless it was intended to limit the
2 legislative authority, it would render this provision of
3 the Constitution wholly nugatory and useless, because as we
4 have seen, without this provision, the legislature would
5 have plenary power over the whole subject." So the same is
6 true here. If there wasn't an education article, because
7 the Constitution, as they argue repeatedly, is only a
8 limitation on power. The framers set forth what could be
9 done. Having not included just pay people money, or
10 subsidize private education, it can't be done here.

11 Opposing parties argue this is just a floor, not
12 a ceiling, but the Constitution creates ceilings. The
13 legislature has, you know, full plenary power, unless the
14 Constitution creates a ceiling.

15 THE COURT: Let me interrupt you, Ms. Godley. I
16 think I understand your argument. Then, obviously, I want
17 to hear from Superintendent Burch, President Miller, and I
18 see Ms. Talbott here for the Department, to the extent that
19 she has anything that she would want to say.

20 MS. TALBOTT: Your Honor, I'm not appearing
21 today.

22 THE COURT: Okay.

23 MS. TALBOTT: We have the Department, Kelly
24 Morgan.

1 THE COURT: That's fine. I will hear from
2 Ms. Morgan and Mr. Taylor.

3 MS. TALBOTT: Okay.

4 THE COURT: And to the extent that you have
5 anything else you would like to add, I think I've got the
6 gist.

7 MS. GODLEY: I'll just save some time for
8 rebuttal.

9 THE COURT: Thank you. Ms. Morgan, will you be
10 addressing the argument?

11 MS. MORGAN: I am actually going to allow
12 Mr. Taylor, but do want to introduce Superintendent Burch
13 here with us today, Heather Hutchins as general counsel,
14 President Miller Hall, and Kelli Talbott here.

15 I will go ahead and let Michael take lead. If
16 you have any questions, let us know.

17 THE COURT: Thank you. Mr. Taylor? And Mr.
18 Taylor, obviously, I heard from Ms. Godley with respect to
19 the Plaintiff's position, and much of the arguments in
20 connection with the case, I understand, are duplicative and
21 repetitive. And that's okay, but I don't need to hear that
22 again, but I do need to hear -- and, obviously, we have an
23 interesting situation here when named Respondents are
24 joining in the position of the individuals suing them and

1 asking this Court to declare that particular statute
2 unconstitutional.

3 MR. TAYLOR: Thank you.

4 THE COURT: So, I do want to have an
5 understanding of their position. I've certainly reviewed
6 your brief.

7 MR. TAYLOR: Thank you, Your Honor. For the
8 record, Michael Taylor, on behalf of the Defendants Burch
9 and Miller.

10 As the Court has noted, what I planned on getting
11 up here and discussing was the funding formula, but this
12 Court has already shown that it has a great understanding
13 of the effects of the Hope Scholarship.

14 THE COURT: You need students in there.

15 MR. TAYLOR: Absolutely.

16 THE COURT: And that is the foundation of how
17 state and county school boards are funded and services
18 provided directly from that funding and if you don't have
19 students in there, you're losing money twofold. Actually,
20 our public students are losing money twofold. They're
21 losing money from your position.

22 MR. TAYLOR: Correct.

23 THE COURT: From your position, from the
24 Plaintiff's position, money that's being diverted for

1 private -- for use at institutions and for homeschooling,
2 and also by virtue of the fact that the enrollment, as a
3 result, will decline.

4 MR. TAYLOR: Correct.

5 THE COURT: So, the funding source will, too.

6 MR. TAYLOR: Correct, Your Honor, it's a double
7 take from the public students that enjoyed the free public
8 school system, as provided by the Constitution.

9 THE COURT: And how -- how many -- how many
10 applications have we got out there?

11 MR. TAYLOR: Last I saw, it was well over 3,000.
12 The actual number, I do not have, because what's happening
13 is, while there was a deadline, as of a week or two ago,
14 the Hope Scholarship Board voted to allow wait applicants
15 to be eligible for the Hope Scholarship, as well. And so,
16 I know there's another meeting coming up in a couple of
17 weeks, where they may process more late applicants, with
18 respect to that issue. So, the final number of students
19 that are being incentivized to either not enter public
20 education or to actually leave public education is well
21 over 3,000 students.

22 THE COURT: Let me ask you this. If I have a
23 child enrolled in private school now --

24 MR. TAYLOR: Yes.

1 THE COURT: -- and I'm like, "Hey, I can transfer
2 to public school for 45 days," am I -- would my child then
3 be eligible for the Hope Scholarship, if I decided to go
4 back to the very school I was enrolled in to get \$4,300?

5 MR. TAYLOR: Absolutely, Your Honor. And now
6 think about this, if a student enters public education
7 within the last 45 days of the year, that then becomes the
8 public school's responsibility to educate that student.
9 That student, who's entering in the last 45 days was never
10 captured in the public school funding formula, so you're
11 educating the student without the funds. Now, what happens
12 is this, at the end of the year, the school takes a tally
13 of the total student enrollment and starts making decisions
14 about hiring or keeping educators. Are we keeping people
15 in school -- or are we keeping educators, service
16 personnel, other issues, and can we look at the final
17 numbers to try to predict for the upcoming year, how many
18 teachers we are going to need? How many teachers is the
19 funding formula going to permit us to fund? How many
20 service personnel is the funding formula going to permit us
21 to fund? And they do a little bit of guesswork. Now,
22 that's way out. That's about a year in advance, but
23 they're making these decisions based upon end-of-school
24 timing. And so, there is a factor where that may be a

1 problem. Now, the school funds for the school year always
2 messes me up. The school funds for the 2022/2023, have
3 already been allocated. That decision has already been
4 made. But, they are already looking to try to make
5 decisions for 2023/2024 school year, and you have to use
6 the information that you have now to start figuring out how
7 many teachers are we going to have, how many teachers is
8 the school funding formula going to have? So, you're
9 making these decisions well in advanced, and you're making
10 them based upon the best data that you have. The best data
11 that you may have is how many students are at the school at
12 the end of the year.

13 Now, the enrollment capture data is in October,
14 so that's the official number that we use to calculate the
15 net enrollment under the school funding formula. So,
16 there's a period of time, if you do what the Court has
17 noted, you enter your student for 45 days, the burden falls
18 on the school to educate that kid without the funds being
19 allocated, they may make decisions based upon that student,
20 and then when it comes around time for the fall, students
21 have left because they have been incentivized to leave the
22 public education system to get the Hope Scholarship. Now,
23 all of a sudden, we are at a net loss of students, and
24 we've got too many teachers, so now teachers are going to

1 be laid off because students have been incentivized to
2 leave. And so -- and is not just teachers. I mean, were
3 talking about service personnel, we're talking about
4 professional support service personnel, the counselors,
5 school counselors.

6 The Court mentioned, you know, abuse and neglect
7 is a large part of the docket, and one of the first lines
8 of defenses in abuse and neglect cases, are the counselors
9 at the school. They're funded directly -- the number of
10 counselors a school system can have --

11 THE COURT: And they are mandated reporters.

12 MR. TAYLOR: -- is directly related to the net
13 enrollment. So, this does have an effect, and is an actual
14 effect that we already know. It's over 3,000 students that
15 have -- would otherwise be in public education.

16 THE COURT: When you quantify that into dollars,
17 what are you looking at?

18 MR. TAYLOR: Well, it's --

19 THE COURT: That's a lot of zeros.

20 MR. TAYLOR: It would be. And you -- the rough
21 calculation would be take \$4,300 times 3,000, because the
22 \$4,300 is --

23 THE COURT: That's what I was trying to do, but I
24 was trying to figure out zeros.

1 MR. TAYLOR: Yeah, it's roughly the number that
2 they allocate per pupil.

3 By the way, this number for the Hope Scholarship
4 this year, under the law, is subject to change. Next year
5 it could be \$5,000, \$10,000. It's up to the legislature to
6 allocate. It's not a set-in-stone number.

7 THE COURT: And I've seen in the briefing, that
8 the annual -- is the annual cost of the state of west
9 Virginia approaching 100 million?

10 MR. TAYLOR: Correct. That's the fiscal notes
11 that indicate that. And so, that's what we're looking at
12 with respect to this.

13 And I want to take a step back for a minute,
14 because this Court mentioned, "Geeze, we have a unique
15 situation where we have a Respondent agreeing with the
16 Plaintiff, and the reason for this is that the Board of
17 Education's role was, they're an independent entity under
18 the Constitution, and their role is to protect and oversee
19 and supervise public education. There can be no dispute
20 and no doubt that this is an attack on public education at
21 this juncture. No one can dispute that incentivizing
22 students to leave public education for private education is
23 going to result in less funding for schools. Less funding
24 for public schools result in less services that the schools

1 can provide.

2 THE COURT: And it is going to be the most
3 vulnerable students --

4 MR. TAYLOR: Most of the time.

5 THE COURT: -- that are going to be severely
6 impacted by the lack of services?

7 MR. TAYLOR: Absolutely, Your Honor, that is
8 exactly what's going to happen. I do want to address just
9 a couple of points, because these were not so far addressed
10 by us. But, in the replies, the Respondents indicated,
11 "well, federal funds won't be affected." That's actually
12 not technically true. With respect to federal fundings,
13 it's students that when, for example, with like Title I or
14 other IDEA, they have to -- they provide equitable services
15 under the federal funding, and students that are in private
16 education, when they go to allocate that, they set aside a
17 portion of the money that would otherwise be allocated to
18 the county, they set it aside to be used for private
19 education, if the private education entity chooses to
20 provide the services. So, there's a set aside. So, if
21 students do leave public education, the federal monies will
22 get adjusted to go to private education.

23 THE COURT: So, help me understand. The money --
24 I mean, the money comes to the Board of Education,

1 theoretically, under the statute, right? The money comes
2 to the Board of Education and then the Board of Education
3 disperses the money to the Hope Scholarship Awards; is that
4 how works?

5 MR. TAYLOR: That's how I understand the statute.

6 THE COURT: Okay.

7 MR. TAYLOR: They have to -- the Board of
8 Education has to put in their money request to the
9 legislature, "Hey, this is how much we need for public
10 education." And also, we're required now to request the
11 money that we need for private education, but we get it and
12 we pass it right on through to the Hope Scholarship Board
13 to administer.

14 THE COURT: But the pass-through essentially
15 keeps it public money?

16 MR. TAYLOR: I think --

17 THE COURT: But, even though the Board of
18 Education, theoretically, controls it at that point in
19 time, there's no accountability, as we established earlier,
20 for where the money is going. And let's talk about
21 something the Board of Education has to assess and is
22 charged with statutorily; how do you evaluate quality
23 standards? How do you assure that these kids, the
24 students, are getting the education they're supposed to be

1 getting, or you aren't at all?

2 MR. TAYLOR: Well, the State Board of Education,
3 as the Respondents clearly note, have no role in this
4 private education. So, the State Board of Education has no
5 say over --

6 THE COURT: So, we're going to take the money --
7 we're going to take West Virginia taxpayer money, you all
8 can do with it what you want, you can go to private
9 education, you can go to another state if you want to, you
10 can homeschool, but we're not going to know what you're
11 doing with your money, and we're not going to have any idea
12 the quality of education your children are getting, if
13 anything at all.

14 MR. TAYLOR: So, to be fair, under the statute
15 and under the Hope Scholarship Board, there is what they
16 deem to be some quality assurance and the quality assurance
17 is, you can take your -- a kid can take a national tests,
18 standardized test, or you can have a license educator just
19 certify that your student is progressing. There's no
20 standards as to how they do that certification, it's just
21 you have somebody with a teaching license, and they can
22 say, "Yeah, your student is progressing." But, there's no
23 other accountability with respect to that aspect of it.

24 THE COURT: I mean, does it have to be a

1 certified educator that's working with the student, that
2 has --

3 MR. TAYLOR: It just says a certified educator. T
4 the two manners in which you can show is that you can take
5 a standardized test or you can have a certified educator
6 just certify that your student is progressing from year to
7 year. And, of course, I mean, we can all think of the
8 nightmare scenarios if you have \$4,300, a certified teacher
9 can say, well give me \$100 of that, and I will certify your
10 student. I mean, there's no way to be accountable with
11 respect to that. I mean, the Board of Education has no
12 accountability over that, because they're not charged with
13 supervising this program. It's the Hope Scholarship Board
14 that is responsible for supervising this program.

15 So, at the end of the day, I just want to make
16 clear that what we're talking about here is what the state
17 constitution requires. The state constitution requires
18 that the legislature shall provide by general law for a
19 thorough and efficient system of free schools. Any
20 argument about what federal funding won't be affected is
21 frankly irrelevant to the state constitutional standard
22 that the legislature shall provide. Not the federal
23 government, the legislature.

24 Additionally, there was talk about, "well, you

1 know, if the state funding formula is inadequate, then
2 counties can just increase their county tax, property taxes
3 and recover that." Again, the state constitution provides
4 that it's the legislature's responsibility to provide this,
5 not shuffle it off on the counties to increase their county
6 tax burden, on top of the fact that there is a current
7 constitutional amendment for voting that would limit the
8 county's ability to tax certain property. So, we've got
9 all of these things that are boiling up, but at the end of
10 the day, if we even remove all of those, under the statute
11 in and of itself, it incentivizes students to flee public
12 education, and that has the effect of dropping that
13 enrollment, which has the effect of dropping funding for
14 public schools, which has the effect of dropping services
15 that may be provided to the students of the school.

16 The funding formula is not just dollars. The
17 funding formula calculates how many teachers you are funded
18 for. So, net enrollment, they affect the number of
19 teachers. How many professional service support persons,
20 how many counselors, the net enrollment calculates, how
21 many counselors you're allowed to have, drops in
22 enrollment, less counselors, because there is no funding
23 for it and other services.

24 So, Your Honor, that's really what the Board of

1 Education has to say about this. They have a duty to
2 supervise and protect and oversee public education. After
3 reviewing this law and all the consequences of it, it's
4 clear that this is an attack and an affront to public
5 education with respect to the state's incentivization of
6 fleeing public education, resulting in less funding,
7 resulting in less services.

8 THE COURT: Thank you, Mr. Taylor.

9 MR. TAYLOR: Thank you, Your Honor.

10 MS. MORGAN: Your Honor, just for a moment, I did
11 forget to introduce two board members that are here, as
12 well, today. Scott Rotruck and Debra Sullivan are in the
13 audience back there, who wanted to be here to support our
14 position today.

15 THE COURT: Thank you very much. Mr. Rotruck,
16 Ms. Sullivan, I appreciate you all being here, as well.
17 All right. And I will hear from Respondents. Who is going
18 to be speaking for the Respondents?

19 MR. HOUSE: Your Honor, Joshua House for the
20 Parent-Intervenors. I'll take the lead and then -- excuse
21 me, I'm going to butcher the last name -- Mr. wolfingbarger
22 will follow for the AG.

23 THE COURT: Okay. Thank you. Mr. House, let me
24 ask you this question. You agree that the West Virginia

1 Constitution requires a thorough and efficient public
2 education?

3 MR. HOUSE: Absolutely, Your Honor.

4 THE COURT: We have a system of free schools,
5 right?

6 MR. HOUSE: Yes.

7 THE COURT: How does this, not impermissive, this
8 statutory framework, impermissibly incentivize the use of
9 public monies for private education and homeschooling, how
10 do you get around?

11 MR. HOUSE: Well, because the Constitution
12 itself, Section 12, says that the legislature has a duty.
13 It says it shall provide for intellectual, moral
14 improvement, in addition to Section 1. So, the legislature
15 is not stuck at just Section 1. Free schools are great,
16 but the legislature has a duty to do that.

17 THE COURT: You got charter schools, you got
18 private schools out there, there is nothing in the law and
19 there have been. I mean, you can send your kids to private
20 school, you can homeschool your kids, you just don't get
21 money from West Virginia school funds for it.

22 MR. HOUSE: And, again, the Constitution just
23 doesn't say that. Again, it says that the state shall
24 provide for those additional institutions. That's Section

1 12.

2 THE COURT: what about what Ms. Godley had said,
3 and the doctrine that I cannot pronounce, where it
4 basically says, you know, the expression of one thing is
5 necessarily exclusion of the other as it relates to this
6 issue?

7 MR. HOUSE: Sure, but again, the Constitution
8 also expresses this other thing.

9 THE COURT: where are you going to get \$100
10 million a year to do this?

11 MR. HOUSE: The legislature has a duty to. It
12 has to. It has no option but to.

13 THE COURT: You aren't from West Virginia, are
14 you? I mean, and I say that, and I don't mean it
15 facetiously. We struggle. Throughout my life, we have
16 struggled to fund so many things, particularly education.
17 And you go back and you look at the Recht decision 40 years
18 ago, you go back and you look at Pauley versus Kelly, and
19 you say you have got to do this. This is a priority for
20 the state of West Virginia, public free education. \$100
21 million is nothing to sneeze at. \$4,300 per student, and
22 no limitation on that such that it can be raised, no
23 accountability as to where those monies are going. I mean,
24 can you dispute any of that?

1 MR. HOUSE: well, the \$4,300 is not coming from
2 public schools. And again, I think what's important --

3 THE COURT: wait. wait. wait. How can you say
4 that?

5 MR. HOUSE: Because it's coming from the general
6 fund.

7 THE COURT: It's coming from the --

8 MR. HOUSE: So, the legislature can do two great
9 things at once.

10 THE COURT: It's coming from the general fund,
11 because you send it through to the Board of Education and
12 the Board of Education disperses it to the Hope
13 Scholarship.

14 MR. HOUSE: I think it's -- with respect, Your
15 Honor, I think that's just a pass-through. I don't think
16 the Board of Education could --

17 THE COURT: Right, it is a pass-through.

18 MR. HOUSE: -- could do anything about that.

19 THE COURT: It's made to look like something that
20 it isn't.

21 MR. HOUSE: whatever it might be looking like --
22 again, you know this lawsuit is not a Pauley claim, because
23 we know what that looks like. *Pauley versus Kelly*, says
24 that the legislature has a duty to fund education. We know

1 that you sue the legislature and you say, "Hey you're not
2 funding education. You're not providing for the free
3 schools." You amass a record to show that the free schools
4 are inadequate and you have a case.

5 THE COURT: How does this not impair the
6 legislature's ability, the state's ability, the county's
7 ability to provide for their student population?

8 MR. HOUSE: Well, with respect, Your Honor,
9 without --

10 THE COURT: You know what, I'm going to assume
11 everything you're saying is respectful and with respect.

12 MR. HOUSE: Your Honor, it does impair, because
13 of the fact that -- any library would impair under that
14 logic, any road that the state or county decides to build,
15 would impair. It's taking money from the general first,
16 and spending it not on public schools. The Plaintiffs, at
17 best, want more money spent on public schools, but that's
18 not what the Constitution requires. It says that public
19 schools should be thorough and efficient. And once they
20 are, the state can do all sorts of things, whether it's
21 libraries, public universities, encouraging families,
22 again, who are going to make the choice to homeschool their
23 children.

24 THE COURT: But when you incentivize 3,000

1 students to the tune of \$4,300 per, that's money that
2 you're taking away from public education. And as we
3 discussed, also, when you do that, and you incentivize kids
4 in public education to go to private education and
5 homeschool for the money, then you're reducing the student
6 population, which adversely impacts that net enrollment,
7 and that's where all the funding is based and then that's
8 going to negatively impact services that you are going to
9 be able to provide to the students.

10 MR. TAYLOR: I think all of those facts are
11 actually -- they're contested, Your Honor. Our experts
12 have shown that actually as enrollment has declined since
13 1992 in West Virginia, resources for public schools on a
14 per-capita basis have gone up. There are schools that have
15 actually been left with more resources to educate the
16 remaining children, as other children are educated through
17 other means, or otherwise leave the schools. So, that is
18 just not a fact to be taken at face value.

19 THE COURT: Where are the -- okay, let's just
20 assume what you're saying to be correct, where are we
21 getting this 100 million? Where is West Virginia getting
22 all of this money to fund this scholarship program?

23 MR. HOUSE: Your Honor, I mean, it would come out
24 of the general fund. Again, this program is funded from of

1 the general fund. And you're right, I'm not from West
2 Virginia, but I am from -- I moved to Virginia from Nevada,
3 and in Nevada, as opposing counsel mentioned, a similar
4 program was passed. And actually, I'm surprised --

5 THE COURT: well, I thought --

6 MR. HOUSE: -- that she misrepresented. It was
7 actually upheld. It was upheld. It was on the books until
8 very recently when a new legislature repealed. It was only
9 not funded, it was just never funded. But under the --

10 THE COURT: It never was funded?

11 MR. HOUSE: It was just not funded. That's
12 right, it was not. Nevada has some funny appropriation
13 rules, but it was just never funded. The program was
14 upheld.

15 THE COURT: well, then it never -- then it never
16 was --

17 MR. HOUSE: Sure, but --

18 THE COURT: It's never been -- there has never
19 been a statute like this that has been funded and put in.
20 There is no precedent for this --

21 MR. HOUSE: Actually, I --

22 THE COURT: -- and actually working.

23 MR. HOUSE: Again, whether it works or not is for
24 the legislature to evaluate. The Constitution doesn't say

1 that the legislature can be an experiment.

2 THE COURT: well, we might need the legislature
3 to evaluate, or they might need to reevaluate. Isn't that
4 what I'm supposed to do here today?

5 MR. HOUSE: No, Your Honor, respectfully, you're
6 not.

7 THE COURT: well, I'm supposed to make a
8 determination as to whether or not it's constitutional or
9 not.

10 MR. HOUSE: That's right. That's right.

11 THE COURT: All right.

12 MR. HOUSE: And that's the thing. Look, it may
13 not work, but our Section 12 of Article XII, says, "The
14 legislature has a duty to promote intellectual and moral
15 achievement." It's allowed to experiment with different
16 things.

17 THE COURT: How are we going to know if we're
18 promoting any moral or intellectual achievement, if there
19 is no accountability? I mean, point me to something in
20 that law that says, you know what, we're going to track
21 where this money goes, we are going to see what these
22 parents are doing with this money, we're going to track and
23 see how these students are achieving. I mean, I'm very
24 troubled about what Mr. Taylor just said. Yeah, they can

1 take a national standardized test or somebody can just wave
2 a little certification participation trophy saying, yeah,
3 they did it. Yay.

4 MR. HOUSE: Your Honor, again, that seems --
5 that's up to the legislature. I mean, it may not work.
6 Maybe it doesn't work.

7 THE COURT: well, it's not only up to the
8 legislature, it's up to the Board of Education. Isn't it
9 the state Board of Education's duty to ensure that students
10 in West Virginia and public monies that are earmarked for
11 educational purposes, are used for the expressed purpose in
12 which they are to be designated, and that is to educate our
13 students. And nothing, nothing in the world is preventing
14 people from making an independent choice to send their kids
15 to private school, nothing, or to homeschool them. We're
16 just saying, you can't take West Virginia -- they're just
17 saying you can't take West Virginia taxpayer money to
18 incentivize people to do just that.

19 MR. HOUSE: That's already possible, and that
20 already happens in West Virginia, and it has happened for
21 years and years. Counties can provide textbooks to
22 private schools students, and they do free of charge.
23 Public money is used for private school scholarships.

24 THE COURT: And now I'm hearing that if they

1 want to do that, they've got to pay for it under the Hope
2 Scholarship Plan. Under that framework, if the kids are in
3 private school or the kids are being homeschooled, and they
4 want to avail themselves of public school services, that's
5 available, but if they do it, they got to pay for it.

6 MR. HOUSE: I'm sorry, Your Honor, maybe I
7 misspoke. What I mean is, the state is paying for those
8 textbooks to private school children. The state is paying
9 for scholarships to private colleges. In fact, there's
10 multiple state-based scholarship programs that pay for
11 private education. This happens all the time. All of
12 these would be --

13 THE COURT: This is secondary education that
14 we're talking about?

15 MR. HOUSE: All of these would -- well, no, no,
16 no, the textbooks are actually primary education.

17 THE COURT: Okay.

18 MR. HOUSE: And, again, all of that would be
19 unconstitutional if the Plaintiff's theory of this case is
20 right. Again, Section 12, just completely obliterates
21 their Section 1 argument. It doesn't make sense to say
22 that all the legislature can do is what's in Section 1 if
23 Section 12 exists. In fact, Section 11 even says, by the
24 way, "Certain teacher's colleges can be provided for, but

1 not others.” I mean, if we were looking at Article XII as
2 just a limit on, look, free schools and nothing else, it
3 wouldn't make sense. The logic of Article XII would
4 implode in on itself. And that's -- I think, that's the
5 problem in this expressio unius argument.

6 And, again, the school fund arguments are
7 similarly empty. Sections 4 and 5 say, here's a school
8 fund, here's how it's funded, it's an investment fund,
9 interest goes to the free schools, don't touch it except
10 for free schools. This program doesn't touch it. School
11 fund is being left -- it's left untouched.

12 I think at the end of the day, Plaintiff's
13 problem is with the funding formula. I've heard that
14 multiple times today from the Board of Education's
15 attorney. It's the funding formula. Look how the funding
16 formula is going to work. Look how it's going to act in
17 practice. What if everyone leaves? That's a *Pauley versus*
18 *Kelly* claim. If the funding formula is not working for
19 West Virginia like it wasn't in the 1970's and 80's, we
20 know what a case challenge in that looks like. This is not
21 that case. Plaintiffs just don't like the Hope Scholarship
22 Program, and that's their political belief, and that's
23 fine, but that's not the constitutional argument.

24 THE COURT: It's a fiscal issue, it's a

1 constitutional issue, but I don't think it's a political
2 issue.

3 MR. HOUSE: And, again, there is no provision
4 looking at the text of all these provisions that they
5 raised on which they can hang their hat for that argument.
6 The Constitution does not limit the government to the free
7 schools. The very text says you're not limited to the free
8 schools, you have to do more. Here, the legislature is
9 doing more to try to help education in West Virginia.

10 THE COURT: How can you say you're helping when
11 you can't even track what you're doing? You can't assess
12 progress. There is no accountability for the money. I
13 mean, how do you respond to the situation where -- that I
14 had discussed earlier? You know, say I have a parent or
15 parents who are struggling in the throes of addiction,
16 which is something that we deal with all the time, and they
17 see an opportunity, "You know what, we've got kids in
18 public school, we can homeschool them. We've got three
19 kids. Let's do this, let's get this program, and let's get
20 about 12,000 plus into the house." And, you know, maybe
21 the intentions are good in the beginning, but the
22 challenges that they have with financial insecurity and
23 whatnot, lead to them doing something altogether different
24 with those monies.

1 MR. HOUSE: well, one, the program doesn't change
2 that, right? The program doesn't have an effect one way or
3 the other, because the fact that --

4 THE COURT: It's fueling it.

5 MR. HOUSE: well, it's --

6 THE COURT: And incentivizing it.

7 MR. HOUSE: And even if that's the case, my
8 understanding of how the program works, is that you can't
9 just take the money, put it in your checking account and
10 use it on noneducational things. There's a portal, a
11 payment portal that's been created, where the registered
12 educator has to send forms to the state. They go into a
13 state database. The state, I think, my reading of the
14 statute, has a duty to create the most efficient way to get
15 the money straight to the educator, rather than into the
16 family's pockets. That's situation would be --

17 THE COURT: unless they're homeschooled.

18 MR. HOUSE: But even then, it has to go for
19 course materials. So, for instance, Katie Switzer, one of
20 my clients, has four children under five, and she plans to
21 homeschool the oldest of the two, the two oldest, and she
22 will be getting money that will go to -- not to her, but to
23 the charter school that she's going to or the public school
24 that she's going to purchase programs from, because she's

1 not going to get -- she's not going to do math classes.
2 She's not going to do everything, so it's going to be
3 piecemeal, and the money goes to the services. It goes to
4 the transport provider, it goes to the therapist.

5 THE COURT: Couldn't she -- she could've done
6 that -- she could've done that anyway, she just wouldn't
7 have been given money for it, right?

8 MR. HOUSE: Yeah, all these things are --

9 THE COURT: All these things --

10 MR. HOUSE: Right.

11 THE COURT: All these things --

12 MR. HOUSE: Absolutely.

13 THE COURT: -- are things that people could have
14 chosen to do?

15 MR. HOUSE: Right.

16 THE COURT: People have chosen. My parents chose
17 to do. For years, people have been doing it and they make
18 that choice.

19 MR. HOUSE: Right.

20 THE COURT: Right?

21 MR. HOUSE: But the money is not -- again, this
22 program is not sending money to my client's pocket, it's
23 going to those educators. And, so, this whole -- all of
24 that would be horrible if that happened, and I understand

1 the concern about those things, but the Hope Scholarship
2 Program, it's not regulating private education, it doesn't
3 change the way private education works, and it appears to
4 do its best to make sure the money will end up at whatever
5 private educator or service or therapist that the parents
6 have chosen --

7 THE COURT: Is there any --

8 MR. HOUSE: -- to send it to.

9 THE COURT: Is there any, as Ms. Godley was
10 talking about it, is there a universal -- is there any
11 universal scholarship like this anywhere in the country
12 where this has been done? You indicated that in Nevada
13 they passed it, and, in essence, never implemented it,
14 because the legislator repealed it, which is indicative of
15 maybe what they thought the wisdom of that law was.

16 MR. HOUSE: Most legislatures have eligibility
17 requirements, as does this one here. They vary. I believe
18 Arizona, just this year, is passing --

19 THE COURT: what, you got to be in school 45
20 days? what else? Public school for 45 days --

21 MR. HOUSE: Public school for 45 days, I believe,
22 is the main requirement for this -- to use this program.
23 So, it would not cover children who are already in private
24 school. To answer your question, Your Honor --

1 THE COURT: well, unless I'm in --

2 MR. HOUSE: -- I believe Arizona --

3 THE COURT: -- a private school and I want to go,
4 like my example, and I'm like, I want this \$4,300, it's
5 kind of hard to send all these kids to private school, so
6 I'm going to go put them in public school for 45 days.
7 We'll do that at the end of the year and then I'm going to
8 re-enroll right where they were and be incentivized to do
9 just that?

10 And then, as Mr. Taylor pointed out, I'm really
11 jacking things up because I have a student in the school
12 system for 45 days that wasn't accounted for and then that
13 individual may be used as a basis for net enrollment
14 figures, which are really false, so it's all fiction.

15 MR. HOUSE: Even if those enrollment figures
16 matter, they don't for preliminary injunction. Nothing is
17 going to happen for another year as the -- at least another
18 year as the government's attorney just pointed out. So, I
19 would just say, look, we're at the preliminary injunction
20 stage. There is no immediate harm that's going to happen
21 to the Plaintiffs, no immediate harm to public schools, no
22 need for preliminary injunction. Even if they've stated a
23 claim, which we do not think they have, the injunction
24 should be denied, Your Honor.

1 THE COURT: You don't think they can articulate
2 irreparable harm?

3 MR. HOUSE: No. No, Your Honor. I mean, not at
4 all. Again, no harm, even under --

5 THE COURT: You don't think it's imminent?

6 MR. HOUSE: Even under their theory, it's
7 certainly not imminent, because the formula adjustments
8 don't kick in for another year. Public schools aren't
9 going to be --

10 THE COURT: So, we should just wait and then just
11 be in a state of flux 12 months from now?

12 MR. HOUSE: One way --

13 THE COURT: These folks are at least trying to be
14 proactive and get these issues in the courts, so that these
15 issues can be resolved appropriately or corrected. Isn't
16 that what you're supposed to do?

17 MR. HOUSE: Your Honor, one way of thinking about
18 it, is that enjoining this program today will not add a
19 single dollar to the public schools. They will not have a
20 bigger budget. They won't be able to better serve the
21 residents of West Virginia.

22 THE COURT: All right.

23 MR. HOUSE: And enjoining will not do --

24 THE COURT: well, I mean, I have a calculator

1 here. I can multiply 3,300 by 4,300, and see what monies
2 will be diverted from public education, monies that could
3 have potentially gone to public education that are going to
4 be diverted.

5 MR. HOUSE: Again, that's any money in the state
6 could go to public education. The money spent on the road
7 could go to public education. It is not unconstitutional
8 to take money from the general fund and spend it on other
9 legislature priorities.

10 THE COURT: But, it's money that would've been
11 spent for education.

12 MR. HOUSE: No, it's not. It's general fund
13 money. It could've gone anywhere. It could have gone to
14 the libraries. Could have gone to roads. It could have
15 gone to healthcare. It could have gone to any other issues
16 that West Virginia wants to spend money on.

17 THE COURT: And they want to spend money on this
18 scholarship fund?

19 MR. HOUSE: That appears to be.

20 THE COURT: What's the purpose of it?

21 MR. HOUSE: The purpose of this bill?

22 THE COURT: The purpose of this bill, the
23 scholarship fund?

24 MR. HOUSE: My understanding is to encourage --

1 to actually allow even parents, like my clients, to be able
2 to attend public schools -- excuse me, private schools or
3 to attend homeschools --

4 THE COURT: And that ability --

5 MR. HOUSE: -- that they can actually afford.

6 THE COURT: That ability has been there forever.

7 It's just giving them money. The state is giving them
8 money. And I've got a problem, too, because I'm looking
9 at, you know, in essence, just with respect to, I mean,
10 some of these schools that theoretically could apply for
11 these particular funds and these particular private schools
12 can discriminate on the basis of all kinds of things, can't
13 they? I mean, they can do that lawfully. So, what you're
14 doing is, you're taking West Virginia public monies and
15 affording private institutions the opportunity to, in
16 essence, not comply with federal law.

17 MR. HOUSE: It's considered the parent's money,
18 Your Honor. It's not the state's money. Once they receive
19 it into their accounts, is considered the parent's money.

20 THE COURT: Well, then, you keep talking about it
21 not being the parent's money and you say it goes straight
22 to the educator, so whose money is it?

23 MR. HOUSE: It's the -- the law says --

24 THE COURT: It's the parent's choice.

1 MR. HOUSE: -- it's the parent's choice.

2 THE COURT: It is fundamentally the parent's
3 choice. And it is fundamentally a parent's choice to
4 educate his or her children any way they want to. And if
5 they want to make the decision to educate their children at
6 a private institution, that right is there, that ability is
7 there, and has been for years. And similarly, if they want
8 to homeschool their children and can meet all those
9 necessary requirements, they can do that. It just seems to
10 me to be fundamentally inappropriate, if not
11 unconstitutional, to do what this statutory mechanism
12 suggests.

13 MR. HOUSE: The statute is just empowering them
14 to make those choices. My client -- again, my client --

15 THE COURT: They can already make them. You
16 don't need a statute to make them.

17 MR. HOUSE: My client --

18 THE COURT: You need a statute -- the purpose of
19 the statute is to incentivize them to do just that and give
20 them money; is it not?

21 MR. HOUSE: My client has four children --

22 THE COURT: Is it not?

23 MR. HOUSE: -- under five.

24 THE COURT: Is it not?

1 MR. HOUSE: well, it --

2 THE COURT: Is the purpose of the statute to
3 incentivize parents to remove their children from the
4 public school system and go to the private school system
5 because we are going to pay \$4,300?

6 MR. HOUSE: No, it is not, Your Honor, because my
7 clients are not using it that way. Again, Katie Switzer,
8 one of my clients, is already going to be homeschooling.
9 It's just be a huge financial struggle. She's not --

10 THE COURT: Okay.

11 MR. HOUSE: She is not --

12 THE COURT: I appreciate that Ms. Switzer might
13 be a little bit of an aberration.

14 MR. HOUSE: She's not here today, right, because
15 one of her children is having heart surgery. This money,
16 dispersing it right before the school year is going to
17 prevent -- is going to throw her financial plans into
18 disarray, her educational plans into disarray. One of her
19 children is going to spend this on speech therapy. This is
20 not -- this is not going to top off wealthy west
21 Virginians.

22 THE COURT: Okay. And I understand what you're
23 saying. And I'm sorry for Ms. Switzer's predicament, but
24 what I'm looking at, too, let's look at the bigger picture.

1 Let's look at about when you reduce the net enrollment,
2 what you are doing is you're going to be reducing student
3 population, and in return, you're going to be reducing
4 state funding, you're going to be reducing county funding
5 for those respective school districts, and those school
6 districts are not going to be able to provide the services
7 for the most vulnerable student population. Kids with
8 special needs, kids with autism that can only get these
9 services in public schools.

10 MR. HOUSE: And, Your Honor, the funding formula
11 was not challenged in this case. It should have been,
12 perhaps, if Plaintiffs have those problems with the
13 program. The thorough and efficiency of public schools
14 was not challenged in this case. There are no allegations
15 in the complaint that the free schools are not going to be
16 adequately or thoroughly or efficiently funded. If they
17 want to bring their case, we know they are free to under
18 Pauley v. Kelly. That's not the case they brought. They
19 challenged the scholarship program and there's no
20 restriction on that.

21 And I want to leave time for the AG to come up.

22 THE COURT: I got it. Thank you, Mr. House.

23 MR. HOUSE: Thank you, Your Honor.

24 THE COURT: I'll hear from Mr. Wolfingbarger now.

1 Thank you for your very spirited argument. Very well
2 spoken. Thank you.

3 Mr. Wolfingbarger, you've got a duty to defend
4 state laws, but you also have a duty to, as does the
5 attorney general, to defend the state constitution.

6 MR. WOLFINGBARGER: Absolutely, Your Honor.

7 THE COURT: Okay. How do you get around it? How
8 does this withstand strict scrutiny, because that's what
9 we're talking about?

10 MR. WOLFINGBARGER: Okay.

11 THE COURT: What is the compelling state
12 interest?

13 MR. WOLFINGBARGER: Well, first of all, Your
14 Honor, I think you have to --

15 THE COURT: Well, first of all, answer my
16 question.

17 MR. WOLFINGBARGER: The law is presumed to be
18 constitutional. It comes into this courtroom with the
19 presumption that it is constitutional and the Plaintiffs
20 have the burden of proving beyond a reasonable doubt that
21 the law is not constitutional.

22 So, there's been this parade of predictions of
23 horrible things that are going to happen when the funding
24 changes kick in, but if you look at the evidence that has

1 been discussed in this courtroom, it's nowhere close to
2 what they were talking about. If you look at the numbers,
3 3,000 students have apparently applied for the program at
4 \$4,300 a year. That's \$12.9 million, Your Honor. That's
5 not \$100 million. We're talking about a situation where
6 the state of West Virginia just announced that it's going
7 to have a \$1.2 billion surplus this year.

8 THE COURT: This year.

9 MR. WOLFINGBARGER: This year.

10 THE COURT: This year.

11 MR. WOLFINGBARGER: But that's all we're talking
12 about, because it has to be an imminent harm. So, if the
13 legislature has \$1.2 billion, I think it's fair to say they
14 would have the ability to reach into the general fund, find
15 \$12.9 million, if that was required for the state system to
16 be functioning thoroughly and efficiently.

17 THE COURT: Is there any law anywhere else in the
18 country like this? There's not, is there?

19 MR. WOLFINGBARGER: I'm not aware of one, Your
20 Honor, but I don't think that has anything to do with the
21 constitutionality of the law. It may have to do with the
22 wisdom of the law, or the prudence of the law --

23 THE COURT: Well, it does when other states --
24 and hasn't Florida -- I want to say it was in *Bush versus*

1 Holmes, pretty much considered this precise issue --

2 MR. WOLFINGBARGER: To be quite honest --

3 THE COURT: -- and found it to be
4 unconstitutional?

5 MR. WOLFINGBARGER: To be quite honest, Your
6 Honor, the constitutional provisions of Florida, Indiana,
7 North Carolina, Nevada, those are all different from West
8 Virginia. So, what I'm talking about --

9 THE COURT: I thought that in Florida it was a
10 thorough and efficient education for free schools like our
11 system.

12 MR. WOLFINGBARGER: I am not aware of that, Your
13 Honor. But, I'll defer --

14 THE COURT: Have you read that case?

15 MR. WOLFINGBARGER: It's been a while, Your
16 Honor. There's a lot of case law involved in this.

17 THE COURT: Okay. Oh, I know. But it seemed to
18 me that that one was particularly helpful.

19 MR. WOLFINGBARGER: Yeah. But, the law is
20 presumed to be constitutional.

21 THE COURT: I understand that.

22 MR. WOLFINGBARGER: And the legislature has the
23 ability to do things above and beyond --

24 THE COURT: All right. I'm going to apply strict

1 scrutiny analysis to this.

2 MR. WOLFINGBARGER: Okay.

3 THE COURT: So, I need to understand what is the
4 compelling state interest -- what is the compelling state
5 interest in upholding the Constitution under the statute?
6 why do you need it because -- and this is what I don't get,
7 because folks are free to do this. Folks have been free
8 for time and more to send their children to private school
9 or homeschool their kids. But now, you know what, why do
10 we feel the need to give them money to do just that?

11 MR. WOLFINGBARGER: As our expert pointed out,
12 when you look at the effects of educational choice
13 programs, like the Hope Scholarship Program that have been
14 implemented in other states, like Louisiana, it is
15 typically the lower --

16 THE COURT: Are these statewide programs or are
17 they individualized for cities, municipalities, counties,
18 school district? That's different?

19 MR. WOLFINGBARGER: There's a variety of
20 differences, Your Honor, but it doesn't change the fact --
21 it doesn't come down to --

22 THE COURT: Okay. well, that's interesting,
23 then.

24 MR. WOLFINGBARGER: -- the law's

1 constitutional.

2 THE COURT: So, did those statutes provide for a
3 mechanism to assess the educational progress, quality
4 standards? I'm assuming if your experts are attesting to
5 that, then they must, but I'm not seeing anything in the
6 Hope Scholarship framework that does that.

7 MR. WOLFINGBARGER: There are a lot of government
8 programs, Your Honor, that don't have that type of
9 accounting function.

10 THE COURT: well, this is about education, and
11 this is about what we are constitutionally required to
12 provide for our children.

13 MR. WOLFINGBARGER: I agree, Your Honor.

14 THE COURT: And state monies are being funneled
15 to do this. So, to the extent that that's being done, it
16 seems to me that it's critical, and if you don't do that,
17 you usurp the powers and the duties that are statutorily
18 sent to the state board. That's what they are charged with
19 doing.

20 MR. WOLFINGBARGER: And, again, Your Honor, that
21 goes to the prudence and the wisdom of the law, not the
22 constitutionality of it and that's why we believe this suit
23 should be dismissed, because it infringes upon the
24 political question doctrine. They don't like the policy.

1 well, understood. But, legislatures and the ballot box are
2 where political questions are resolved, not through the
3 courts. The law is presumed to be constitutional. It must
4 be proven beyond a reasonable doubt that there is no set of
5 circumstances under which it can function constitutionally.
6 We have a \$12.9 million budgetary impact right now, a
7 situation where the state has a \$1.2 billion surplus. So,
8 I don't see an imminent harm here, Your Honor. I see a
9 speculative injury, I see a hypothetical injury, and under
10 those circumstances, based on the applicable law, this case
11 should be dismissed and the Plaintiffs definitely should
12 not be entitled to a preliminary injunction.

13 THE COURT: Thank you.

14 MR. WOLFINGBARGER: Thank you, Your Honor.

15 THE COURT: Ms. Godley, I want to give you an
16 opportunity for rebuttal.

17 MS. GODLEY: Just quickly, Your Honor. First, in
18 terms of Nevada, I actually argued that case against Paul
19 Clement. The court held that the District Court - should
20 be remanded to District Court to enter a Final Declaratory
21 Judgment and Permanent Injunction Enjoining Enforcements,
22 so that was enjoined.

23 THE COURT: well, that sounds like that took care
24 of that and then - wait. So, let me just have an

1 understanding, historically, of what happened in Nevada.
2 It goes up to the appellate court, the appellate court did
3 exactly what you were asking this Court to do?

4 MS. GODLEY: Right. Right. So, at the trial
5 court, we have a preliminary injunction. We went to the
6 appellate court and the appellate court permanently
7 enjoined it.

8 THE COURT: Appellate court permanently enjoined,
9 and it was subsequently the legislature who repealed the
10 framework?

11 MS. GODLEY: Exactly.

12 THE COURT: In accordance with the appellate
13 decision?

14 MS. GODLEY: Exactly. Exactly. In regard to
15 Section 12, which was raised for the first time in replies,
16 so clearly not their core argument, but the Section 12
17 says, "The legislature shall foster and encourage
18 intellectual improvement." So, what we know in Lawson v.
19 Kanawha County, the Supreme Court has said, "General and
20 indefinite terms of one provision of the Constitution,
21 literally embracing numerous subjects, are impliedly
22 limited and restrained by definite and specific terms of
23 another, necessarily and absorbedly withdrawing from the
24 operation of such general terms." So, this kind of general

1 framework does not give them the authority as to K-12
2 public schools. They talk about scholarships. That's not
3 covered by K-12 fee schools. They talk about other things
4 that are outside, but Section 12 does not give them the
5 authority when the remainder of the sections limit it.

6 what we know here, Your Honor, is that this is
7 not about whether vouchers are right or wrong, this is
8 about whether this statute is constitutional under West
9 Virginia's Constitution and it's not. It must be enjoined.

10 THE COURT: Thank you. All right, folks, just so
11 you all have an understanding, I have reviewed, as I've
12 indicated on the outset -- I've spent a great deal of time
13 with the briefing in this case, the research, and I
14 appreciate all of counsels' efforts in educating me on all
15 these issues and educating me on matters outside our
16 jurisdiction, which are helpful, as well. So, I'm going to
17 make my findings and conclusions.

18 And the Plaintiffs are parents of students
19 enrolled in West Virginia Public Schools; Plaintiff, Travis
20 Beaver's children in Putnam County Schools and Plaintiff,
21 Wendy Peters' children, in Raleigh County Public Schools.
22 Both children -- both Plaintiffs have children that are
23 diagnosed with conditions requiring them to need special
24 education services, and neither know of any private school

1 near their homes that are able to provide the services. As
2 I indicated at the outset, I believe that the Plaintiffs
3 have standing to bring this action, as the injuries
4 complained of are actual, and frankly, in my view,
5 imminent. And there is a right to public education in West
6 Virginia. It is fundamental right that is granted by
7 Article XII, Section 1 of the state constitution, and it
8 provides that our state legislature has a duty to provide a
9 thorough and efficient system of free schools for the
10 children West Virginia, and the legislature can take no
11 action to frustrate that obligation. We've talked about
12 it, and that's the citation of *Pauley versus Kelly*, 255
13 S.E.2d, 672.

14 And I'm going to try and talk about the doctrine
15 of *expressio unius* -- did I get that right, Ms. Godley --
16 which is the expression of one thing, being the exclusion
17 of the other. And that has been consistently applied by
18 courts in our state, and it dictates that the state of West
19 Virginia cannot provide for nonpublic education or take any
20 action which frustrates this obligation. Any action
21 negatively impacting public school funding is subject to
22 strict scrutiny in the legislature, can reduce limits, or
23 can reduce funds, actually, for public education only if
24 they can show a compelling government interest. Nonpublic

1 education is not of a constitutional interest in this
2 state.

3 And I am troubled that there seems to be no
4 educational standards or accountability to the public
5 provided by the Hope Scholarship Fund. Funds, in my view,
6 are diverted from a historically underfunded public school
7 system in West Virginia and that is problematic. In my
8 view, the Hope Scholarship Program provides a financial
9 incentive to students enrolled in public schools to leave
10 the public education system, further negatively affecting
11 the public school resources.

12 The funds from the Hope Scholarship Fund Program,
13 are public education funds, which could be used by any
14 student at a private school or for homeschooling, and the
15 fund itself results in a reduction of students enrolled in
16 public schools, which equals, as we discussed, a reduction
17 in funding for all public schools in the state.

18 The Hope Scholarship Program, in my view,
19 undermines the free education system by requiring the
20 Department of Education to take funds appropriated by the
21 legislature in transferring them to the Hope Scholarship
22 Fund, which is then tasked for dispersing the funds for
23 private education savings accounts or vouchers, and it
24 provides for nonpublic education, thereby frustrating the

1 state's obligation to provide free public education. And
2 because private schools frequently aren't either willing or
3 able serve disabled or special needs students, many
4 disabled or special needs students are not going to be
5 utilizing the vouchers and public schools will be left with
6 less funds to educate the students with the most needs, the
7 most vulnerable of the student population.

8 Article XII, Section 4, of the Constitution
9 mandates that certain funds are designated for the school
10 fund to be used or public school system and such funds are
11 prohibited from use for any other purpose. Article II,
12 Section 2 of the Constitution provides that the Board of
13 Education is responsible for the general supervision of
14 free schools, and by creating the Hope Scholarship Board to
15 administer expenditure of public funds by way of these
16 vouchers, the program usurps the Board of Education's
17 constitutional authority by restricting its exercise of
18 academic and financial oversight over the use of these
19 funds.

20 And in my view, the legislature has violated its
21 constitutional obligations regarding public education and
22 funding by enacting House Bill 2013 for the Hope
23 Scholarship Fund, more particularly codified in W. Va. §
24 18-30-11, et seq. In *Justice versus ALF-CIO*, 86 S.E.2d 613

1 (2021), four factors are delineated to determine whether or
2 not a preliminary injunction should lie: Number one, the
3 likelihood of irreparable harm to the Plaintiff without the
4 injunction; number two, the likelihood of harm to the
5 Defendant with the injunction; number three, the
6 Plaintiff's likelihood of success on the merits; and
7 finally, number four, the public interests, and in view of
8 the Court, all factors weigh in favor of the
9 Plaintiffs/Petitioners.

10 In my view, the Plaintiffs and the public school
11 system will suffer irreparable harm if the Hope Scholarship
12 Program and the legislation establishing it are not enjoyed
13 for being implemented. Accordingly, I'm going to grant the
14 Declaratory Judgment Relief, and find that House Bill 2013,
15 under W. Va. Code § 18-31 et seq., more particularly known
16 as the Voucher Law, violates Article XII, Sections 1, 2, 4
17 and 5 of the West Virginia Constitution, and Article VI,
18 Section 39 of the Constitution, as well, and accordingly,
19 is null and void. I'm granting preliminary and permanent
20 injunctive relief enjoining the state from implementing
21 that statute.

22 And I'm going to ask you, Mr. Tinney, to prepare
23 an order consistent with those findings.

24 MR. TINNEY: I will, Your Honor. Thank you.

1 THE COURT: And I will certainly note the
2 Plaintiff's objection. As it relates to this issue, the
3 Motions to Dismiss on behalf of Governor Justice, Treasurer
4 Moore and Speaker Hanshaw, and President Blair, in
5 reviewing your papers, depending on how the Court ruled, as
6 it related to the injunctive relief, which I have granted
7 you, you would be willing to agree to the dismissal of
8 those party; is that correct?

9 MR. TINNEY: Correct, Your Honor.

10 THE COURT: All right.

11 MR. TINNEY: We simply wanted to make sure that
12 we had the appropriate constitutional officers present.

13 THE COURT: So, I'm going to go ahead, then, and
14 enter an order of dismissal. Well, actually, I'll ask you
15 to prepare an order of dismissal. I would be like a
16 separate order as it relates to that, that issue regarding
17 the Motions to Dismiss.

18 MR. TINNEY: I understand the assignment, Your
19 Honor.

20 THE COURT: Treasurer Moore, Governor Justice,
21 President Blair, and Speaker Hanshaw, they'll need to be
22 part of that, as well. All right.

23 And I'll certainly note the exceptions and
24 objections to any and all adverse rulings on part of the

1 Parent-Inventors, and on part of any of the other
2 Respondents.

3 MR. WOLFINGBARGER: Your Honor, would it please
4 the Court, the State would ask for a 30-day stay of the
5 order, to allow the State to determine whether they want to
6 appeal your rulings or not.

7 THE COURT: Is there any objection to the Motion
8 for Stay?

9 MS. GODLEY: Yes, Your Honor. These monies are
10 getting set to go out, and that is part of the harm to send
11 money out.

12 THE COURT: Yeah, I don't disagree. I'm going to
13 deny the Motion to Stay, to the extent that when you're
14 seeking relief on an appellate level, of course, you can
15 encompass that in your request.

16 Anything further at this time?

17 MR. TINNEY: Nothing further on behalf of the
18 Plaintiffs, Your Honor.

19 THE COURT: All right. Thank you all.

20 * * * * *

21 Concluded at 10:15 a.m.

22 * * * * *

23

REPORTER'S CERTIFICATE

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, to wit:

I, Lauren Belisle, Notary Public in and for the State of West Virginia, duly commissioned and qualified, do hereby certify that the foregoing hearing of **TRAVIS BEAVER, et al., v. RILEY MOORE, et al., v. KATIE SWITZER, et al., 22-P-24, 25 and 26**, was duly transcribed by and before me, under the West Virginia Rules of Civil Procedure, at the time and place and for the purpose specified in the caption thereof; the said witnesses having been duly sworn to testify the whole truth and nothing but the truth concerning the matter in controversy.

I do certify that the said hearing was correctly taken by me by means of the Stenomask; that the same was transcribed by me, and that the said transcript is a true record of the testimony given by said witness.

I further certify that I am not connected by blood or marriage with any of the parties to this action, am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, or financially interested in the action, or interested, directly or indirectly, in the matter in controversy.

Given under my hand this 10th day of July 2022.

Lauren Belisle

Lauren Belisle, CCR
Notary Public

My Commission Expires April 15, 2024.