

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

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

FINAL ORDER

Before the Court is the Motion of Defendants Bill Lee, in his official capacity as Governor for the State of Tennessee; Tennessee Department of Education, Lizzette Reynolds in her official capacity as State Education Commissioner; and Roberty Eby, Darrell Cobbins, Krissi McInturff, Jordan Mollenhour, Kelly G. Rollins, Cathy Kolb, Dr. Ina Maxwell, and Larry Jensen, in their official capacities as members of the State Board of Education, (collectively, "State Defendants") to Dismiss the Amended Complaint of Plaintiffs Apryle Young, Elise McIntosh, Dustin Park, Jill Smiley, Crystal Boehm (collectively, "Parent Plaintiffs"), David P. Bichell, Terry Jo Bichell, Lisa Mingrone, Claudia Russell, and Inez Williams (collectively, "Taxpayer Plaintiffs"). Also before the Court is the Motion of Intervenor-Defendants Alicia Denise Fair, Michael Sweeney, and Monica Sweeney for Judgment on the Pleadings, which also seeks the dismissal of Plaintiffs'

Amended Complaint. Having considered the allegations of the Amended Complaint, the briefs, the applicable caselaw, and the arguments of counsel, the Court is now ready to issue its decision.

The Court’s ruling reflects the majority of the Three-Judge Panel duly appointed by the Tennessee Supreme Court to hear and determine this cause pursuant to Tenn. Code Ann. section 20-18-101 and Tenn. Sup. Ct. R. 54, in which CHANCELLOR JOHN C. RAMBO and JUDGE JOSEPH T. HOWELL join in full, and in which CHANCELLOR ANNE C. MARTIN joins in all respects except for Parts IV.B.2, IV.C.3, and the related dispositions below and in Part V, from which she dissents.

For the reasons set forth below, both Motions are hereby **GRANTED**. Accordingly, the Amended Complaint is **DISMISSED**, and judgment is entered in favor of Defendants.

I. Background

On February 12, 2025, Governor Lee signed the Tennessee Education Freedom Scholarship Act (“EFS Act,” “the Act,” “EFS Program,” or “the Program”), Tenn. Code Ann. §§ 49-3-101, *et seq.*, which established a statewide education savings account voucher program under which eligible students may receive state funds toward private-school tuition and related expenses. On May 7, 2026, Governor Lee signed H.B. 2532, 2026 Tenn. Pub. Acts, ch. 963, which raised the programs’ voucher cap for the 2026–27 school year and amended the “hold harmless” provision addressing the effect of disenrollment on district TISA allocations. Am. Compl., ¶¶ 2, 33, 40, 44.

Plaintiffs initially filed this action on November 20, 2025, against State Defendants, asserting two causes of action under the Education Clause: a single-system claim on behalf of all Plaintiffs and an adequacy claim on behalf of Parent Plaintiffs.

On November 26, 2025, Intervenor-Defendants filed their Motion to Intervene under Rule 24. Intervenor-Defendants are parents of beneficiaries of the EFS Program who wished to intervene in this matter to defend the constitutionality of the EFS Act. On February 10, 2026, the Tennessee Supreme Court appointed this Three-Judge Panel to “hear[] and determine[]” this case. Order, No. ADM2021-07775, at *1 (Tenn. Feb. 10, 2026). On June 5, 2026, Plaintiffs filed their Amended Complaint, updating the Defendant State Board members and adding allegations pertaining to intervening developments between the two complaints. This Court, sitting as a Three-Judge Panel, then granted Intervenor-Defendants a permissive intervention under Rule 24.02.

On July 24, 2026, Intervenor-Defendants and State Defendants (collectively, “Defendants”) both moved for dismissal of the Amended Complaint under Rule 12. State Defendants have moved under Rule 12.02(1) and (6) for lack of jurisdiction and failure to state a claim. Intervenor-Defendants have moved under Rule 12.03 for judgment on the pleadings.

II. Allegations of the Amended Complaint

The following statements are allegations of Plaintiffs’ Amended Complaint. Factual statements—*but not legal conclusions*—are taken as true for the purposes of the instant Motions. *See infra* Part III.A.3. And in any event, none of these statements constitutes a finding of the Court.

Plaintiff Young is a resident of Shelby County, Tennessee. She is a parent of a child enrolled in Shelby County Schools. She pays state and local taxes, including car registration and renewal taxes. Plaintiff McIntosh is a resident of Shelby County, Tennessee. She is a parent with a child enrolled in Shelby County Schools. Her child is classified as a student with disabilities who receives special education services. Her child also identifies as LGBTQ+. Plaintiff McIntosh

pays state and local taxes, including car registration and renewal taxes. Plaintiff Park is a resident of Blount County, Tennessee. He is a parent of a child enrolled in Maryville City Schools. His child is classified as a student with multiple disabilities who receives special education services. Plaintiff Park also volunteers as a surrogate parent on behalf of students with disabilities in foster care in Blount County Schools. He owns real property and pay state and local taxes in Blount County, including property taxes. Plaintiff Smiley is a resident of Rutherford County, Tennessee. She is a parent of three children and one stepchild enrolled in Rutherford County Schools. She owns real property and pays state and local taxes in Rutherford County, including property taxes. Plaintiff Boehm is a resident of Hamilton County. She is a parent of two children enrolled in Hamilton County Schools. She owns real property and pays state and local taxes in Hamilton County, including property taxes.

Plaintiffs Bichell are residents and taxpayers of Davidson County, Tennessee. The Bichells own real property and pay state and local taxes in Davidson County, including property taxes. The Bichells' son attended Metro Nashville Public Schools and was classified as a student with disabilities and received special education services. He has since graduated. Plaintiff Mingrone owns real property in Davidson County and pays property taxes. Plaintiff Russell is a resident of Davidson County, Tennessee. She is a retired public school administrator in Metro Nashville Public Schools, and she periodically returns to the district in a temporary position to fill in for administrators who are on leave. Dr. Russell has spent her entire career working at Metro Nashville Public Schools. She began her career as a teacher, then became an assistant principal, then a principal. She has worked in various schools in the district. Dr. Russell owns real property and pays state and local taxes in Davidson County, including property taxes. Plaintiff Williams is a resident of Davidson County, Tennessee. She pays state and local taxes in Davidson County.

Governor Lee is the Governor of the State of Tennessee and has a legal obligation to enforce the Constitution and laws of this State. He is vested under Article III, Sections 1 and 10 of the Tennessee Constitution with “Supreme Executive power” and the duty to ensure that “the laws be faithfully executed.” As the chief executive officer for the State of Tennessee, Governor Lee has responsibility for ensuring that school districts have adequate resources to provide all children with a public education that meets the requirements of the Tennessee Constitution and state laws and regulations. Defendants Robert Eby, Darrell Cobbins, Krissi McInturff, Jordan Mollenhour, Kelly G. Rollins, Cathy Kolb, Dr. Ina Maxwell, and Larry Jensen are members of the State Board of Education and are statutorily charged with overseeing Tennessee’s system of public schools, including academic standards and policies, organization and structure of public schools, licensure of teachers, and distribution public funds among public schools. These Defendants are all being sued in their official capacities. The Tennessee Board of Education’s office is located at 500 James Robertson Parkway, Fifth Floor, Nashville, Tennessee 37243, and service on these Defendants may be perfected by delivering a copy of the summons and complaint to the Attorney General or at their state offices. The Department is the State Education Agency in Tennessee and, together with the State Board and the State Education Commissioner, is responsible for overseeing the state system of public schools. Under the EFS Act, the Department is responsible for the administration and implementation of the EFS Program. Commissioner Reynolds is the State Education Commissioner. In her official capacity, she is responsible for the implementation of laws and policies established by the General Assembly and State Board. She oversees the state system of public schools, administers the Department, and is responsible for implementing and administering the EFS Act.

Ratified in 1978, the Tennessee Constitution’s Education Clause was created and debated at the 1977 Limited Constitutional Convention. A delegate to that Convention proposed inserting the word “public” between “such other” and “post-secondary” in the text of the provision. The proposal was roundly rejected because delegates recognized the inclusion of the word “public” would preclude the State from funding private postsecondary institutions.

In *Tennessee Small School Systems v. McWherter (Small Schools I)*, 851 S.W.2d 139, 150–51 (Tenn. 1993), the Tennessee Supreme Court held that the Education Clause “guarantees to the school children of this state the right to a free public education.” More broadly, the Court determined that the “education” thus guaranteed to Tennessee school children—which it defined as “[t]he act or process of imparting or acquiring general knowledge, developing the powers of reasoning and judgment, and generally of preparing oneself or others intellectually for mature life”—constituted “an enforceable standard for assessing the educational opportunities provided in the several districts throughout the state.”

In *Tennessee Small School Systems v. McWherter (Small Schools II)*, 894 S.W.2d 734, 738 (Tenn. 1995), the Tennessee Supreme Court found that the Basic Education Program, the State’s then-existing school funding statute, was designed and enacted by the General Assembly to fulfill the adequacy mandate in the Tennessee Constitution.

In 2022, the General Assembly enacted the Tennessee Investment in Student Achievement Act (“TISA”), Tenn. Code Ann. §§ 49-3-101, *et seq.*, which is the funding formula currently governing state and local funding for public schools.

In February 2025, Governor Lee signed the EFS Act into law, establishing a statewide education-savings-account voucher program and making nearly every school age student in the state eligible for a \$7,295 voucher. On February 25, 2025, Plaintiffs sent a letter to Defendants

and other state officials demanding that they not implement the Act, stating that spending public money on the Act violates their rights under the Tennessee Constitution, but Defendants did not respond. Earlier this year, Governor Lee signed another bill expanding the EFS Program by raising the cap on the number of vouchers the State can issue.

Under the Act, the State is required to provide a voucher to any eligible student who applies, subject to legislative appropriation. An eligible student is defined as any student who is entitled to attend a public school, except for a student enrolled in a home school or church-related school with which the student's parent is associated, registered, or is participating as a parent-teacher. The Act imposes no family income limitation and no requirement that a student must have previously attended a public school in order to qualify for a voucher. A student participating in the universal voucher program must use the voucher funds to pay for private school tuition and fees. Remaining funds may be used for additional private educational expenses such as textbooks, instructional materials, and uniforms; tutoring services; transportation to and from a private school; summer education programs and certain afterschool programs; computer hardware, technological devices or other technology costs; fees for postsecondary courses or exams; and educational therapy services. To receive voucher funds, participating private schools must (1) be located in Tennessee; (2) be "accredited by, or a member of, an organization or association approved by the state board of education as an organization accrediting or setting academic requirements in schools, or that has been approved by the state, or is in the future approved by the commissioner in accordance with rules promulgated by the state board of education"; and (3) be defined as a category I, II, or III school¹ approved by the commissioner of education.

¹ Category I private schools are those "approved individually by the Department of Education," Category II private schools are those "approved by an agency whose ability to accredit schools in Tennessee is approved by the State Board," and Category III private schools are those which "are regionally accredited."

In the 2025–26 school year, the Act authorized the issuance of up to 20,000 vouchers statewide. Of those—and only in the In the 2025–26 school year—10,000 vouchers were reserved for students who either (1) had an annual household income not exceeding 300 percent of the federal free or reduced-price lunch eligibility guidelines (equivalent to \$178,434 for a family of four in 2025-2026); or (2) were eligible for the State’s pre-existing Tennessee Education Savings Account Pilot Program (“ESA Act” or “ESA Pilot Program”); or (3) were eligible for Tennessee’s pre-existing voucher program for students with disabilities. The remaining 10,000 vouchers were available for any eligible student, including students who attended private schools in the prior school year and students who were enrolled in high-performing public schools. In that first year of the EFS Program, 42,827 applications were submitted, and all 20,000 available vouchers were awarded. The 2026 Amendments to the EFS Act increased the maximum number of vouchers available from 20,000 to 35,000 for the 2026–27 school year. For the 2026–27 school year, over 56,000 applications were submitted for the EFS Program, and all 35,000 available vouchers were awarded. Subject to appropriated funds, the EFS Program cap increases by 5,000 vouchers each year, provided that in the preceding year, the number of applications exceeded 75 percent of the maximum number of vouchers for that year. When the EFS Act initially passed, the Tennessee General Assembly Fiscal Review Committee projected that demand would be sufficient to trigger the annual increases in the program’s maximum capacity.

The EFS Act also contains a “hold harmless” provision, amended in 2026, which provides that, for the 2026–27 school year, if a local education agency (“LEA”) experiences disenrollment that would cause it to receive a lesser TISA allocation than in the 2025–26 school year, the Department must allocate additional funds such that the LEA receives the same TISA allocation it received in the 2025–26 school year. For the 2027–28 and 2028–29 school years, if an LEA

experiences disenrollment and is to receive a lesser TISA allocation than it received in the 2025–26 school year, then the Department must allocate additional funds to the LEA: the amount of the average per pupil state funds received by the LEA in the immediately preceding school year for each student who disenrolled from the LEA in the immediately preceding school year and, at the time of the student’s registration or enrollment, provided the LEA with the student’s social security number.

Beginning with the 2027–28 school year, LEAs must also report to the Department the reason for disenrollment given by each non-virtual disenrolled student, regardless of whether a social security number was provided. Beginning with the 2029–30 school year, the Department must allocate additional funds to an LEA equal to the average per-pupil state funds received for each disenrolled student who, in the preceding year, had received a voucher under the program. The total additional funds an LEA may receive cannot exceed the difference between its current-year TISA allocation and its 2025–2026 allocation. Under the 2026 amendments, the Department must also report the number of voucher applicants disaggregated by county, prior public-school enrollment, and, to the extent available, household income.

The ESF Act diverts state funding to private schools that, by definition, are not part of the system of free public schools, and that, unlike public schools, participating private schools are not required to serve all students who wish to attend. Participating private schools are not required to comply with the academic standards imposed on public schools, including the state curriculum, state teacher-licensure standards, or Tennessee’s third-grade reading-retention law. Nor must they administer the full Tennessee Comprehensive Assessment Program (“TCAP”); instead they may opt for a national standardized test, in only two subjects (math and English language arts), that is not comparable to the TCAP, and the General Assembly’s Fiscal Review Committee has predicted

that most participating schools will select that option, avoiding state-level performance oversight and comparison to public-school outcomes. The State is not required to collect, and has not released, comprehensive data on participating schools or voucher recipients, such as race, disability status, or zoned public-school district, leaving the State unable to evaluate who benefits from the program, whether it advances equity, or how participants perform compared to public-school peers. As a result, the Act directs public funds to private institutions lacking the transparency, accountability, and quality standards required of the public school system.

Plaintiffs further allege that the ESF Act lacks anti-discrimination and civil-rights protections: participating private schools may refuse admission or continued enrollment, or otherwise discriminate, based on disability status, religious beliefs, language proficiency, family income, gender identity, sexual orientation, academic ability, or other factors, whereas public schools must admit all students and provide equitable opportunities regardless of background or ability. The Act contains no provision ensuring that taxpayer funds will not support discriminatory policies by participating schools, and it does not prohibit discrimination based on race, color, or national origin. Instead, it expressly provides that accepting voucher funds does not require a participating school to alter its “creed, practices, admission policies, . . . or curriculum,” which grants private schools broad license to exclude, discipline, or expel students based on identity, disability, or family circumstances that do not align with the school’s religious, moral, or other criteria. Students with disabilities who use vouchers lose the comprehensive rights and protections guaranteed in public schools: participating schools may refuse to provide special-education services, and a voucher recipient does not retain the right to special-education and related services from the LEA of residence, receiving instead only the more limited “equitable services” available to private-school students under the federal IDEA, along with the loss of other IDEA and state and

federal protections such as disciplinary safeguards and the right to a due-process hearing. Participating private schools are also not subject to Tennessee’s statutory protections against bullying, intimidation, and harassment, and voucher students, unlike public-school students, have no due-process rights in disciplinary proceedings.

In practice, many participating Tennessee private schools maintain exclusionary policies. Evangelical Christian School in Shelby County will admit only students with “one parent professing Christ as Savior.” Christ’s Legacy Academy in McMinn County requires a parental statement of faith affirming belief in and acceptance of Christ, active church membership, and maintenance of a “Christian home where Biblical principles are nurtured.” Briarcrest Christian School in Shelby County expels any pregnant student, expels students for “inappropriate sexual behavior” including premarital sex or homosexual, bisexual, or transgender-related conduct, and may decline to admit or continue enrolling a student or parent who fails to conform to “biblical principles,” which the school defines to include abortion, “heterosexual, homosexual or alternate gender identity,” and disrespect of faculty or staff. Providence Christian Academy in Rutherford County reserves the right to refuse or discontinue enrollment for students from homes “living in, condoning or supporting sexual immorality,” practicing or promoting a “homosexual lifestyle or alternative gender identity,” or otherwise unable to support the school’s moral principles. Christ the King School in Davidson County states it may decline enrollment for applicants whose special needs cannot, in the school’s judgment, be met with reasonable accommodations, and that admission and retention of students with disabilities, special needs, or English-learner status “cannot be guaranteed.” Holy Rosary Academy in Davidson County conditions admission on academic, behavioral, standardized-test, and attendance records, as well as parish membership.

Brainerd Baptist School in Hamilton County states that admitted students “must be capable of functioning in a traditional classroom environment.”

Unlike public schools, participating private schools charge tuition; even with a voucher, the \$7,295 amount for 2025–26 did not cover base tuition at 80% of the private schools where voucher students were enrolled, and average Tennessee private-school tuition (\$13,630 for elementary, \$14,768 for high school) was roughly double the voucher amount. Families using vouchers must cover, or often pay for themselves, resources that are free in public schools, such as transportation, uniforms, books, meals, and special-education services.

Participating private schools are, by statute, autonomous and not agents of the State. The ESF Act bars imposition of any additional rules or requirements on participating schools beyond those “narrowly tailored to enforce” the program’s limited requirements. The Act also states that participating schools “must have the maximum freedom to provide for the educational needs of recipients without government control.”

In summary, the Act diverts taxpayer dollars to schools outside the public system that are not subject to public schools’ academic, accountability, transparency, governance, or anti-discrimination requirements and that are not free.

Because of inadequate state education funding, Tennessee public schools already suffer fundamental resource deficits—including insufficient qualified teachers and specialized staff and shortages of essential supplies—that TISA has not resolved, and that poor statewide student outcomes demonstrate that public schools lack resources needed for an adequate education, with the ESF Act exacerbating both resource and outcome deficits by further reducing public-school funding. According to the Department’s 2025 TISA annual report, more than two-thirds of surveyed district leaders found TISA’s base funding amount too low, almost half found TISA

funding inadequate for literacy support, and district leaders separately expressed concern that TISA funding was insufficient to meet the State’s minimum-teacher-salary targets and did not account for escalating transportation costs or rising student mental-health needs. Statewide, more than one-third of students are taught by an inexperienced teacher (defined as one with less than two years’ experience) and more than half by a teacher deemed “ineffective,” with low-income students and students of color significantly more likely to be assigned such teachers. As a result of inadequate funding, districts statewide experience teacher shortages, insufficient training and professional development, lack of special-education services, deteriorating facilities, overcrowded classrooms, shortages of instructional materials and technology, and shortages of support staff, nurses, social workers, and counselors.

For example, inadequate state funding has forced Hamilton County Schools to cut 11% of districtwide staff in 2025–26 and to eliminate \$1.6 million from its exceptional-education program for students with disabilities, cutting that program’s staff and services. This inhibited the provision of student-support services (including for homeless students), instructional support, and technology. Similarly in Shelby County Schools, there have been shortages of teachers (300 vacancies reported in July 2025), nurses, and substitute teachers for students with disabilities, excessive class sizes, insufficient books, laptops, and technology, and inadequate facilities, including insufficient cooling and heating. As for Metro Nashville Public Schools, there have also been shortages of teachers (170 vacancies as of July 2025) and of specialized staff including special-education teachers, speech-language pathologists, school psychologists, counselors, and occupational and physical therapists, with 50 vacant special-education support-aide positions. This has resulted in student-counselor ratios well above recommended levels, excessive caseloads, shortages of supplies and technology, and high teacher turnover.

These funding and resource shortages have persisted for years and are acknowledged in state reports, and that TISA, though purportedly enacted to address inadequacies in the prior funding scheme, has failed to do so, particularly for students with higher needs, in part because the State conducted no assessment of the funding level required for a constitutionally adequate education before enacting TISA, and because TISA's reliance on direct certification for identifying economically disadvantaged students likely undercounts such students given the administrative burdens of programs like SNAP, WIC, and TANF. TISA fails to account for geographic variation in costs, including local wage variation and cost-of-living differentials for which the General Assembly has appropriated no funds since at least FY 2023–24. TISA does not, in design or operation, provide sufficient funding for a constitutionally adequate education.

Moreover, Tennessee's student outcomes confirm this resource inadequacy. The State administers the TCAP to evaluate proficiency and determine grade-level advancement, intending to hold the State accountable and inform resource-allocation decisions. 'Approaching' and 'below' expectations are considered below grade level. State law requires retention of third graders scoring below grade level in ELA, subject to exceptions. In 2025, 58.4% of the State's third graders scored below grade level in ELA. More than half of students in all grades scored below grade level in ELA, as did nearly two-thirds (61%) in math, and more than half of high-schoolers in U.S. History. These outcomes demonstrate the State's failure to meet the constitutional adequacy standard. These districts already lack the funding needed to provide the staff, services, and programs necessary for successful learning, and that diverting further public funding to private-school vouchers only exacerbates this insufficiency. The ESF Act exacerbates this underfunding by diverting funds from public schools: every Tennessee district is subject to funding loss from the Act, and in 2025–26 students in 86 of the state's 95 counties received a

voucher; for 2026–2027, all 35,000 available vouchers were awarded to students in 93 of the 95 counties. Because TISA funding relies largely on total enrollment, each student who leaves a public school to use a voucher reduces that district’s funding allocation (by at least the TISA base amount plus any weighted funding associated with that student). The Act also deprives districts of funding more broadly by reducing overall public funds available for public education; states with less money in the public fisc invest less in public schools. For Hamilton County, Metro Nashville, and Shelby County specifically, Plaintiffs allege the ESF Act’s harm compounds funding already diverted by the State’s pre-existing ESA Act, under which those three districts have already lost tens of millions of dollars intended to meet the State’s adequate-education obligation. Tennessee has also elected to participate, beginning in 2027, in a federal tax-credit voucher program that will further incentivize students to leave public schools.

In 2025–26, the maximum 20,000 vouchers were distributed, costing the State at least \$145.9 million. The Department must now make up to 35,000 vouchers available for 2026–27, which the Fiscal Review Committee estimates will cost an additional \$112,950,000 (for a total of \$263,550,000). Because the ESF Act ties each voucher’s value to the TISA base funding amount and both that amount and the enrollment cap will grow, the Fiscal Review Committee initially projected the Act would cost \$188.1 million in 2026–27 and approximately \$1 billion over its first five years. But even this estimate did not account for the 2026 expansion’s more rapid growth. By 2039, the program could fund as many as 100,000 vouchers annually. Meanwhile, school districts must continue paying fixed costs—facilities repair and maintenance, teacher and staff pensions, debt service, long-term contracts, and school libraries—regardless of enrollment decline and cannot reduce those fixed costs in proportion to student losses. Even variable costs such as staffing and programs cannot be reduced in full proportion to departing students, so districts cannot

offset the Act’s financial impact through operational reductions. Because program participation is more concentrated in some districts than others, those districts are more likely to suffer substantial harm to budgets and resources. These budget strains are compounded when a voucher student later returns to public school—which is not uncommon—because the voucher funds are not restored to the district. Instead, those funds revert to the State Treasury for reallocation to a new applicant.

Because the Act permits private schools to deny enrollment or services to higher-need students, including students with disabilities, it will likely increase the concentration of higher-need, more costly-to-educate students in public schools that already have less money available to support them. Nothing in the Law prevents families from receiving vouchers to subsidize educational choices they could already afford, so the State continues diverting public dollars that could otherwise fulfill its constitutional public-education duty while subsidizing families who already could and did pay private-school tuition themselves, further impeding districts' ability to provide adequate educational resources.

Finally, the Act’s “hold harmless” provision does not meaningfully offset these harms. Only districts whose disenrollment reduces their total allocation below the statutory threshold qualify for hold-harmless funds. As a result, only a small fraction of districts benefit. The Fiscal Review Committee estimated that in 2025–26 only 12 of Tennessee’s 147 districts would qualify, for an estimated \$3,328,662 in total hold-harmless allocations, and that in 2026–2027, before the 2026 amendments, only 15 of 147 districts would qualify, for an estimated \$5,323,643. The 2026 amendments will likely reduce relief further because conditioning hold-harmless funding on collection of students’ social security numbers creates a costly administrative burden and may

additionally deter disclosure by families, which would in turn trigger further disenrollment and absenteeism.

III. Legal Standards

A. Rule 12

1. Rule 12.03

Intervenor-Defendants move under Tennessee Rule of Civil Procedure 12.03 to dismiss the Amended Complaint. Rule 12.03 provides that, “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” The Court examines a motion for judgment on the pleadings under Rule 12.03 using the same standard as a Rule 12.02(6) motion to dismiss. *See Harman v. Univ. of Tenn.*, 353 S.W.3d 734, 736 (Tenn. 2011) (citing *Timmins v. Lindsey*, 310 S.W.3d 834, 838 (Tenn. Ct. App. 2009); *Waldron v. Delffs*, 988 S.W.2d 182, 184 (Tenn. Ct. App. 1998)) (“The motions, being essentially the same, are reviewed under the same standards.”). That standard is provided below.² *See infra* Part III.A.3.

2. Rule 12.02(1)

State Defendants first move under Tennessee Rule of Civil Procedure 12.02(1) to dismiss the Amended Complaint. Rule 12.02(1) provides for dismissal in the event of a “lack of jurisdiction over the subject matter.” Subject matter jurisdiction concerns a court’s very authority to resolve the case before it. *Minyard v. Lucas*, 576 S.W.3d 351, 355 (Tenn. 2019) (citing

² The Court notes that Intervenor-Defendants’ Motion may be procedurally improper because Tenn. R. Civ. P. 12.03 permits a party to move for judgment on the pleadings only “after the pleadings are closed.” Here, Intervenor-Defendants have moved for judgment on the pleadings despite State Defendants having not yet filed an answer. In fact, State Defendants’ Rule 12.02 Motion to Dismiss would appear to mean the pleadings are open indefinitely. *See Cherokee Country Club, Inc. v. City of Knoxville*, 152 S.W.3d 466, 478 (Tenn. 2004) (quoting Tenn. R. Civ. P. 7.01 & cmt) (determining that pleadings close after a complaint and an answer, unless there is additionally a counterclaim, cross-claim, or third-party complaint that requires an answer of its own). While there is an Answer filed by Intervenor-Defendants, none of Plaintiffs’ claims are against Intervenor-Defendants. Nevertheless, since a Rule 12.02(6) motion and a Rule 12.03 motion are “essentially the same,” the Court concludes that any procedural impropriety is harmless in this instance because if the Motion is premature it is simply construed as a Rule 12.02(6) motion. *Cf. Harman*, 353 S.W.3d at 736.

Chapman v. DaVita, Inc., 380 S.W.3d 710, 712–13 (Tenn. 2012). Such authority may “only be conferred upon a court by a constitutional or legislative act.” *Northland Ins. Co. v. State*, 33 S.W.3d 727, 729 (Tenn. 2000) (citing *Kane v. Kane*, 547 S.W.2d 559, 560 (Tenn. 1977); *Computer Shoppe, Inc. v. State*, 780 S.W.2d 729, 734 (Tenn. Ct. App. 1989)); *Minyard*, 576 S.W.3d at 355 (citing *Chapman*, 380 S.W.3d at 712–13) (“Subject matter jurisdiction is conferred and defined by the Tennessee Constitution and statutes.”).

A determination on the particular nature of a case is essential to whether a court may properly assert subject matter jurisdiction over it. See *Landers v. Jones*, 872 S.W.2d 674, 675 (Tenn. 1994) (citing *Cooper v. Reynolds*, 77 U.S. 308 (1870); *Turpin v. Conner Bros. Excavating Co.*, 761 S.W.2d 296, 297 (Tenn. 1988)); *State ex rel. Comm’r of Dep’t of Transp. v. Thomas*, 336 S.W.3d 588, 602 (Tenn. Ct. App. 2010) (quoting *Northland Ins. Co.*, 33 S.W.3d at 729). A court must ascertain what a plaintiff is seeking, on what basis or bases the plaintiff is seeking it, and whether state law authorizes the court to give the plaintiff what he seeks. *In re Estate of Trigg*, 368 S.W.3d 483, 489 (Tenn. 2012) (citing *Northland Ins. Co.*, 33 S.W.3d at 729; *Landers*, 872 S.W.2d at 675) (“Determining whether subject matter jurisdiction exists in a particular case requires the courts to examine (1) the nature or gravamen of the cause of action, (2) the nature of the relief being sought, and (3) the constitutional or statutory provisions relied upon by the plaintiff.”).

3. Rule 12.02(6)

State Defendants also move under Tenn. Rule of Civil Procedure 12.02(6) for failure to state a claim. Such a motion “tests ‘only the legal sufficiency of the complaint, not the strength of the plaintiff’s proof or evidence.’” *Elvis Presley Enterprises, Inc. v. City of Memphis*, 620 S.W.3d 318, 323 (Tenn. 2021) (quoting *Webb v. Nashville Area Habitat for Human., Inc.*, 346 S.W.3d

422, 426 (Tenn. 2011)); *Dobbs v. Guenther*, 846 S.W.2d 270, 273–74 (Tenn. Ct. App. 1992) (citing *Sanders v. Vinson*, 558 S.W.2d 838, 840 (Tenn. 1977)). Therefore, a plaintiff’s allegations are taken as true. *Id.* (citing *Crews v. Buckman Labs. Int’l, Inc.*, 78 S.W.3d 852, 857 (Tenn. 2002)). And all inferences that the Court might reasonably draw from those allegations are drawn in the plaintiff’s favor. *Webb*, 346 S.W.3d at 426 (quoting *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31–32 (Tenn. 2007)). “[L]egal arguments or ‘legal conclusions’ couched as facts,” however, are not factual allegations and therefore “are not taken as true.” *Estate of Haire v. Webster*, 570 S.W.3d 683, 690 (Tenn. 2019) (quoting *Moore-Pennoyer v. State*, 515 S.W.3d 271, 276 (Tenn. 2017)). By the very act of filing a motion to dismiss, a defendant—for the purposes of that motion—“admit[s] the truth of all of the relevant and material allegations contained in the complaint, but . . . assert[s] that the allegations fail to establish a cause of action.” *Elvis Presley Enterprises, Inc.*, 620 S.W.3d at 323 (quoting *Leach v. Taylor*, 124 S.W.3d 87, 90 (Tenn. 2004)). Accordingly, we are compelled to “grant a motion to dismiss only when it appears that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief.” *Id.* (quoting *Crews*, 78 S.W.3d at 857).

B. Constitutional Challenges

1. Constitutional Challenges to Statutes

“Ruling on a constitutional challenge to a statute is often an exercise in judicial restraint.” *State v. Booker*, 656 S.W.3d 49, 56 (Tenn. 2022). Tennessee courts “must be careful not to impose [their] own policy views on the matter or overstep into the General Assembly’s realm of making reasoned policy judgments.” *Id.* (citing *Stein v. Davidson Hotel Co.*, 945 S.W.2d 714, 717 (Tenn. 1997)). They “must be controlled by the fact that our Legislature may enact any law which our Constitution does not prohibit, and the Courts of this State cannot strike down one of its statutes

unless it clearly appears that such statute does contravene some provision of the Constitution.” *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020) (quoting *Holly v. City of Elizabethton*, 241 S.W.2d 1001, 1004–05 (Tenn. 1951)). “It is only by remembering the limits of the power confided to the judicial department of the government, and respecting the independence of the other departments, that the judiciary can maintain its own independence in the proper sense of the term[.]” *State v. McCoy*, 459 S.W.3d 1, 9 (Tenn. 2014) (quoting *State ex rel. Robinson v. Lindsay*, 53 S.W. 950, 952 (Tenn. 1899)).

As such, “[t]he Court must uphold the constitutionality of a statute wherever possible.” *Id.* at 8 (citing *State v. Pickett*, 211 S.W.3d 696, 700 (Tenn. 2007)). It must likewise begin its analysis with the presumption that a challenged statute is constitutional. *McClay v. Airport Management Services, LLC*, 596 S.W.3d 686, 689 (Tenn. 2020) (quoting *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006)) (“Each of the questions certified by the District Court in this case requires us to determine whether Tennessee’s statutory cap on noneconomic damages violates the Tennessee Constitution. In making that determination, we ‘start with a strong presumption that acts passed by the legislature are constitutional.’”). Further, they “indulge every presumption and resolve every doubt in favor of the statute’s constitutionality.” *Id.* (quoting *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003)).

2. Construing Constitutional Text

In *McNabb v. Harrison*, 710 S.W.3d 653, 658 (Tenn. 2025) (quoting *State ex rel. Doyle v. Torrence*, 310 S.W.2d 425, 427–28 (Tenn. 1958)) (second alteration in original), the Court set forth precisely how the courts of this state are to construe any of the Tennessee Constitution’s provisions, by “enforc[ing] ‘what the people who voted for this constitutional [provision] would think that the language meant.’ . . . more commonly known today as determining the ‘original

public meaning.” See also *Wygant v. Lee*, --- S.W.3d ----, No. M2023-01686-SC-R3-CV, 2025 3537313, at *13 (Tenn. Dec. 10, 2025) (reiterating the *McNabb* approach); *Coblentz v. Tractor Supply Co.*, --- S.W.3d ----, 2025 WL 3704465, at * 10 (Tenn. Dec. 22, 2025) (applying *McNabb*); *Denson ex rel. Denson v. Methodist Med. Ctr. of Oak Ridge*, 737 S.W.3d 325, 331 (Tenn. 2025) (applying *McNabb*); *Metro. Gov’t of Nashville & Davidson Cnty. v. Lee*, 2025 WL 1565481, at * 10 (Tenn. Ct. App. June 3, 2025) (applying *McNabb*), *cert. granted*, 2025 WL 269214, at *1 (Tenn. Sept. 18, 2025). The Court then elaborated on this approach:

The process of determining the original public meaning has often been inaccurately described as using the text to determine the intent of the drafters. In fact, this Court has used similarly imprecise language in its description of this method. For almost a century though, we have made clear that we do not speculate on the subjective intentions or motives of the drafters. Instead, “the focus must be on the objective meaning of the text itself—because that is the law that was adopted by the public.” We clarify today that in construing constitutional provisions, this Court seeks to determine the original public meaning.

Determining the original public meaning does not require an overly narrow construction. Thus, determining the original public meaning does not require a judicial straitjacket, “limit[ing] one to the hyperliteral meaning of each word in the text.” Instead, it requires courts to determine, using the evidence available, “how a reasonable reader, fully competent in the language, would have understood the text at the time it was issued.”

“Original public meaning is discerned through consideration of the [] text in light of ‘well-established canons of [] construction.’” Consequently, we begin by reading the plain language and giving terms “their ordinary and inherent meaning.” Not only do we consider contemporaneous dictionary definitions, but also usages and historical practices at the time of the adoption of the text.

In this process, we construe the Tennessee Constitution as a single, unified document. No provision will be given construction that would “impair or destroy any other part.”

Finally, we construe a constitutional provision as it is written. It is not this Court’s role to create ambiguity. When a constitutional provision has a clear meaning, this Court cannot apply another.

McNabb, 710 S.W.3d at 658–59 (citations omitted).

IV. Analysis

A. *Sovereign Immunity*

State Defendants first argue that Governor Lee ought to be dismissed from this action because he is immune from suit under the doctrine of sovereign immunity. The Tennessee Supreme Court has interpreted Article I, Section 17 of the Tennessee Constitution as prohibiting suits “against the State unless explicitly authorized by statute” and thereby “upholding the doctrine of sovereign immunity.” *Colonial Pipeline Co. v. Morgan*, 263 S.W.3d 827, 849 (Tenn. 2008) (citing *N. British & Mercantile Co. v. Craig*, 62 S.W. 155, 157 (Tenn. 1900); *State v. Bank of Tenn.*, 62 Tenn. (3 Baxt.) 395, 403 (1874)). In other words, “[t]he sovereign State of Tennessee is immune from lawsuits ‘except as it consents to be sued.’” *Smith v. Tenn. Nat’l Guard*, 551 S.W.3d 702, 708 (Tenn. 2018) (quoting *Stewart v. State*, 33 S.W.3d 785, 790 (Tenn. 2000)). The Court of Appeals has explained the relation between this doctrine and that of subject matter jurisdiction:

Subject matter jurisdiction and sovereign immunity are two different legal concepts. However, courts may lack subject matter jurisdiction because of the doctrine of sovereign immunity. Sovereign immunity is jurisdictional immunity from suit, which acts as a jurisdictional bar to an action against the state by precluding a court from exercising subject-matter jurisdiction. The doctrine of sovereign immunity divests the courts of subject matter jurisdiction.

Mobley v. State, No. W2017-02356-COA-R3-CV, 2019 WL 117585, at *3 (Tenn. Ct. App. Jan. 7, 2019) (quoting *Colonial Pipeline Co.*, 263 S.W.3d at 851; *White v. State ex rel. Armstrong*, No. M1999-00713-COA-R3-CV, 2001 WL 134601, at *3 (Tenn. Ct. App. Feb. 16, 2001)) (alterations and internal quotation marks omitted). What this means as a general rule is that the General Assembly must waive sovereign immunity in order for a suit against the State or its officers to proceed. See Tenn. Const. art. 1, § 17.

Anticipating an argument from Plaintiffs that Tenn. Code Ann. section 1-3-121 waived sovereign immunity in this case, see *Recipient of Final Expunction Order in McNairy Cnty. Cir. Ct. Case No. 3279 v. Rausch*, 645 S.W.3d 160, 169 (Tenn. 2022) (holding “that section 1-3-121 waives sovereign immunity for causes of action seeking ‘declaratory or injunctive relief . . . regarding the legality or constitutionality of a governmental action,’” State Defendants point out that the General Assembly repealed Tenn. Code Ann. section 1-3-121 in its entirety earlier this year. Therefore, that waiver no longer exists. Moreover, the argument continues, even though Plaintiffs filed this action before Tenn. Code Ann. section 1-3-121 was repealed, claims against the State never truly vest in the same way as other rights and interests because a state may withdraw its consent to be sued at any time. See *State v. Henley*, 41 S.W. 352, 357 (Tenn. 1897) (citing *State v. Bank of Tennessee*, 62 Tenn. (3 Baxt.) 395 (1874); *State v. Sneed*, 68 Tenn. (49 Baxt.) 472 (1876)) (“Under this provision of the constitution [Article I, Section 17] it is held that, if the state consent to suit, she may withdraw that consent, even while the litigation is pending.”); see also *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 676 (1999) (citing *Beers v. Arkansas*, 61 U.S. 527 (1857)) (stating the same in the context of a state’s consent to be sued in federal courts).

Plaintiffs disclaim any reliance upon Tenn. Code Ann. section 1-3-121, however, and instead assert no waiver statute is needed here because of *Colonial Pipeline*, 263 S.W.3d at 850–54. Plaintiffs refer to the exception to sovereign immunity articulated in that case, or perhaps more accurately a non-application of the doctrine. The common-law *ultra vires* doctrine articulated in *Colonial Pipeline*, 263 S.W.3d at 849, 852–53 (“[A]n officer acting pursuant to a statute that is unconstitutional and void does not act as an agent of the State. Any such action is *ultra vires*—that is, beyond the authority granted by the State.”), and *Ex Parte Young*, 209 U.S. 123, 159 (1908)

(“The act to be enforced is alleged to be unconstitutional; and if it be so, the use of the name of the state to enforce an unconstitutional act to the injury of complainants is a proceeding without the authority of, and one which does not affect, the state in its sovereign or governmental capacity.”), permits suits to proceed against officers of the state whose actions have violated the Constitution because the State cannot empower its officers to do what it cannot, and therefore sovereign immunity does not attach to those actions. An additional caveat is the unavailability of damages in such an action: “[S]overeign immunity does not bar a declaratory judgment or injunctive relief against state officers to prevent the enforcement of an unconstitutional statute, so long as the plaintiff does not seek monetary damages.” *Colonial Pipeline*, 263 S.W.3d at 854.

As such, State Defendants next argue that *Colonial Pipeline* does not apply to Governor Lee because he is not responsible for enforcing the EFS Act; indeed, the Act expressly directs the Department and the State Board of Education to implement the EFS Program. See Tenn. Code Ann. §§ 49-6-3503(a) (“There is created an education freedom scholarship program to be administered by the department.”), 49-6-3512 (“The state board of education shall promulgate rules to effectuate this part.”). Plaintiffs respond that the pleaded allegations adequately connect Governor Lee to program because they allege he is the State’s “Supreme Executive power,” bears the duty of seeing all the laws faithfully executed, and is responsible as chief executive for ensuring the public-school system complies with the constitution. Moreover, Plaintiffs continue, the *Small Schools* cases repeatedly entertained claims against the Governor and other state officials under the Education Clause. See generally *Small Schools I*, 851 S.W.2d 139; *Small Schools II*, 894 S.W.2d 734; *Tenn. Smal Sch. Sys. v. McWherter (Small Schools III)*, 91 S.W.3d 232 (Tenn. 2002).

Plaintiffs argue further that this Court rejected the State’s attempt to claim sovereign immunity in a case brought under the Education Clause, claiming state education funding, in which

the Governor, among others, was a defendant. *See* Order Deny’g Defs.’ Mot. to Dismiss, *Shelby Cnty. Bd. of Educ. v. Haslam*, No. 15-1048-I (Davidson Cnty Ch. Ct. July 24, 2018 [hereinafter the “*Haslam* Order”]). The *Haslam* court determined that applying sovereign immunity “at th[e] pleading stage would be to change the findings and rulings from the *Small Schools* trilogy.” *Haslam* Order, at *7.

In reply, State Defendants reiterate that *Colonial Pipeline* does not apply to this situation because Governor Lee is not directly “responsible for enforcing” the Act. *See* Mem. & Order, *Babb v. Lee*, No. 23-1600-I (Davidson Cnty. Ch. Ct. June 29, 2026) (citing *Tenn. Conf. of NAACP v. Lee*, 746 F. Supp. 3d 473, 509–10 (M.D. Tenn. 2024)). In response to Plaintiffs’ point on the *Small Schools* cases, State Defendants assert “that judicial decisions do not stand for propositions that were neither raised by the parties nor actually addressed by the court.” *See Staats v. McKinnon*, 206 S.W.3d 532, 550 n.41 (Tenn. Ct. App. 2006). State Defendants thus also dispute the persuasiveness of the *Haslam* Order because the *Small Schools* cases never addressed sovereign immunity.

Despite Plaintiffs’ assertions to the contrary, Governor Lee’s broad duty “to take care that the [State’s] laws be faithfully executed” and role as head of the Executive Branch under Article III of the Tennessee Constitution are not enough to conclude that he enforces the Act. *See Tenn. Conf. of NAACP*, 746 F. Supp. 3d at 509–10 (M.D. Tenn. 2024); *see also* Mem. & Final Order, *Babb*, No. 23-1600-I, at *10 (dismissing claims against Governor Lee because his role as head of the executive branch was insufficient to conclude he directly enforces state sentencing laws); Mem. & Order, *Woods v. Rausch*, No. 21-0018-II, at *5–8 (Davidson Cnty. Ch. Ct. Nov. 30, 2021) (dismissing claims against Governor Lee on the basis of sovereign immunity because his role as head of the executive branch was insufficient to conclude he enforced state sex offender registry

laws). The Court would also note that sovereign immunity was not discussed by any of the *Small Schools* Courts and that in their decisions the word “immunity” only even appears in the context of “immunities” with reference to the exact language of Article XI, Section 8, and “sovereign” not at all. See *Small Schools I*, 851 S.W.2d at 152–53; see generally *Small Schools II*, 894 S.W.2d 734; *Small Schools III*, 91 S.W. 232.

Accordingly, State Defendants’ Motion to Dismiss with respect to Governor Lee is **GRANTED** on the basis of sovereign immunity. Plaintiffs’ claims against him are hereby **DISMISSED**.

B. Justiciability

Plaintiffs assert two different theories of standing with respect to their claims: first, constitutional standing; and second, taxpayer standing. State Defendants challenge both. “Tennessee’s justiciability doctrines are by now well known. They include . . . standing” *Wygant*, 2025 WL 3537313, at *11 (citing *Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274, 281 n.5 (Tenn. 2024); *Norma Faye Pyles Lynch Fam. Purpose LLC v. Putnam Cnty.*, 301 S.W.3d 196, 203 (Tenn. 2009)). These doctrines “are rooted in our dual separation of powers provisions” and “guide courts in determining whether to hear and decide a particular case.” *Id.* (quoting *Wilmington Tr.*, 703 S.W. at 281) (citing Tenn. Const., art. II, §§ 1–2; *Wilmington Tr.*, 703 S.W. at 281; *Norma Faye*, 301 S.W.3d at 202–03). They “safeguard the separation of powers by ensuring that the judiciary exercises the judicial power, not powers belonging to the legislative or executive branches.” *Id.* (citing *Norma Faye*, 301 S.W.3d at 202–03). Therefore, Tennessee courts are “to decide, not advise, and to settle rights, not to give abstract opinions.” *State v. Wilson*, 70 Tenn. (2 Lea.) 204, 210 (1879). Their role is limited “to deciding ‘legal controversies,’” which

requires a “disputed issue [that] is real and existing, and . . . the dispute [to be] between parties with real and adverse interests.” *Norma Faye*, 301 S.W.3d at 203 (citations omitted).

1. Constitutional Standing

The Tennessee Supreme Court recently undertook something of a course correction with the state’s standing doctrine, largely setting aside the previous reliance on federal jurisprudence because, unlike the federal Constitution, the Tennessee Constitution has “no language limiting the judicial power to ‘cases’ or ‘controversies.’” *Wilmington Tr.*, 703 S.W.3d at 282–83, 286; see also *Wygant*, 2025 WL 3537313, at *16 (citing 703 S.W.3d at 282–92) (“In *Wilmington Trust*, however, we reconsidered our standing doctrine in light of the specific requirements of the Tennessee Constitution.”). In Tennessee, standing is instead guided by Article I, Section 17 and Article II, Sections 1 and 2, of the state Constitution. *Id.* at 286; *Wygant*, 2025 WL 3537313, at *16.

The Court concluded that a plaintiff need only “an *injury in law* to access the courts” under Article I, Section 17. *Wilmington Tr.*, 703 S.W.3d at 287–88 (citation omitted). This broad access, however, is tempered by separation-of-powers concerns grounded in Article II, Sections 1 and 2 of the Tennessee Constitution. Claims involving public rights—those that are ‘common to all[] and incident to citizenship itself’—present a significant risk that the judiciary will overstep the bounds of its authority and intrude upon legislative and executive prerogatives.” *Wygant*, 2025 WL 3537313, at *16 (quoting *Wilmington Tr.*, 703 S.W.3d at 289). “That’s because the protection of public rights is generally entrusted to public officials, not private citizens.” *Id.* (citing *Wilmington Tr.*, 703 S.W.3d at 289–91; *Patten v. City of Chattanooga*, 65 S.W. 414, 420 (Tenn. 1901)). “Accordingly, to safeguard the separation of powers, we have long required plaintiffs asserting public rights claims to show a special injury.” *Wygant*, 2025 WL 3537313, at *16

(collecting cases). While the Tennessee Supreme Court has not yet clearly defined the distinction between a public-rights case and a private-rights case, it is clear that seeking equitable relief from the judiciary against public officers in their official capacities, as is the case here, “is a quintessential public rights claim that threatens to intrude on the authority of other branches of government.” *Wygant*, 2025 WL 3537313, at *17; *see also Wilmington Tr.*, 703 S.W.3d at 290–91 (“Notably, in all of our prior cases in which we utilized this test, the plaintiffs sought judicial review of actions of other branches of government by challenging either statutes, constitutional amendments, or other legislative or executive acts. In each one of these cases, the defendant was a government entity or government official.”). Accordingly, the three-element constitutional standing test continues to apply here—in addition to the legal-injury requirement. *See Wygant*, 2025 WL 3537313, at *17–18.

Constitutional standing thus requires a plaintiff to establish three elements in addition to the legal injury in public-rights cases:

1) a distinct and palpable injury . . . ; 2) a causal connection between the alleged injury and the challenged conduct; and 3) the injury must be capable of being redressed by a favorable decision of the court.

Fisher v. Hargett, 604 S.W.3d 381, 396 (Tenn. 2020) (citing *City of Memphis v. Hargett*, 414 S.W.3d 88, 97 (Tenn. 2013)); *see also Am. Civ. Liberties Union of Tenn. v. Darnell*, 195 S.W.3d 612, 620 (Tenn. 2006).

i. Injury-in-law

“[T]he open courts provision requires litigants to allege injury to a recognized legal right.” *Wilmington Tr.*, 703 S.W. at 291. Here, Plaintiffs assert the Act violates both the single-system and the adequacy components of the Tennessee Constitution’s Education Clause. They allege substantial facts tending support the notion of such injuries if both components are indeed

enforceable parts of the Education Clause. Accordingly, we conclude Parent Plaintiffs have satisfied the legal injury requirement of Article I, Section 17.

ii. Injury-in-fact

An injury-in-fact is otherwise known as a “distinct and palpable injury.” *Cf. Wilmington Tr.*, 703 S.W.3d at 290–91 (citations omitted) (“In public rights claims, there must also be an injury in fact, in addition to the causation and redressability elements required by *Darnell* and *City of Memphis*.”); *Darnell*, 195 S.W.3d at 620 (requiring a “distinct and palpable injury” alongside “a causal connection” the capability of the injury of “being redressed by a favorable decision of the court”); *City of Memphis*, 414 S.W.3d at 98 (stating the same). A “distinct and palpable injury” is “an injury that is not conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general public.” *Metro. Gov’t of Nashville & Davidson Cnty.*, 645 S.W.3d at 149 (quoting *Fisher*, 604 S.W.3d at 396); *see also Darnell*, 195 S.W.3d at 620 (citations omitted) (“[C]onjectural or hypothetical injuries are not sufficient. Standing also may not be predicated upon an injury to an interest that the plaintiff shares in common with all other citizens.”). Thus, the injury must be concrete and specific to the asserting plaintiff. *See City of Memphis*, 414 S.W.3d at 100 (citation omitted).

Here, State Defendants first argue that Parent Plaintiffs have not alleged—and could not have done so credibly based upon the language of the EFS Act—that the Act is enforced *against them*, meaning their injury is merely one “share[d] in common with the general citizenry.” *See City of Memphis*, 414 S.W.3d at 98. While a state official’s actual or even imminent enforcement of a statute against a particular plaintiff may be sufficient to establish an injury in fact, there is no allegation of that here. *See Crawford v. U.S. Dep’t of Treasury*, 868 F.3d 438, 454, 458 (6th Cir. 2017). The only private persons upon whom the EFS Act imposes any requirements that State

Defendants would enforce against them, this argument continues, are the scholarship recipients and the private schools that voluntarily choose to participate in the Program. Plaintiffs respond that enforcement is not a prerequisite to injury. They argue that *Crawford* does not hold that direct regulation of, or enforcement against, a party is a prerequisite to their standing but merely that such things may provide a basis for establishing injury. *See Crawford*, 868 F.3d 438.

State Defendants additionally argue that Parent Plaintiffs have alleged no injury in fact for their single-system claim beyond an abstract, “generalized grievance.” *See Wygant*, 2025 WL 3537313, at *18–19. Plaintiffs respond that Parent Plaintiffs’ injuries arise from their children’s present enrollment in and dependence upon the public school system itself, which distinguishes them from citizens generally, taxpayers generally, and parents whose children are not enrolled. *See Curve Elementary Sch. Parent & Teachers’ Org. v. Lauderdale Cnty. Sch. Bd.*, 608 S.W.2d 855, 858–59 (Tenn. Ct. App. 1980); *Parents’ Choice Tenn. v. Golden*, 2024 WL 1670663, at *7–8; *Rutan-Ram*, 698 S.W.3d at 556. By creating a parallel system of publicly financed K-12 private education, Plaintiffs argue the State injures them and their children through maintaining two systems instead of the constitutionally prescribed one, which harms Plaintiff’s children’s interests by drawing students and State support away from public schools, worsening resource deficiencies and impairing their children’s education. In reply, State Defendants counter that the cases relied upon by Plaintiffs involved “actual, concrete, particularized injuries” suffered by the children of the plaintiffs of those cases rather than the generalized grievance Plaintiffs present here.

Parent Plaintiffs have alleged that the EFS Act harms their children by diverting funding from their already inadequate schools to fund private education. This is concrete, specific, and particularized to Parent Plaintiffs. Thus, the Court concludes they have established an injury-in-fact with respect to their claims for purposes of standing.

iii. Traceability

A plaintiff's injury must have a causal connection to the conduct of the adverse party. *Hargett*, 414 S.W.3d at 98 (quoting *Darnell*, 195 S.W.3d at 620). This standard is not onerous, but it requires a causal connection between the actions of the defendant and the injury complained of. *See id.*

Here, State Defendants argue Parent Plaintiffs' alleged injuries with respect to their adequacy claim are too speculative to confer standing because they are too attenuated from the EFS Program to have a causal connection to State Defendants' enforcement of the Act. First, State Defendants argue the EFS Act is separately funded from Tennessee public schools, and therefore Parent Plaintiffs can only speculate that the General Assembly will reduce funding to public schools because the legislature is also funding the EFS Program. Second, as far as harm to their children goes, Parent Plaintiffs allege only that some Tennessee school districts were under-funded before the EFS Act became law, meaning they allege non-particularized harms that are far attenuated from the EFS Act itself.

Plaintiffs counter that the preexisting inadequacy has been worsened by voucher-induced enrollment loss that they need to wait until the alleged resource deficiencies have fully materialized in a particular classroom. Thus, taking Plaintiffs' allegations as true, as the Court is required to do at this stage, Parent Plaintiffs have alleged a distinct and palpable educational injury that is caused by the ESF Program. *See Rutan-Ram*, 698 S.W.3d at 556–57 (quoting *City of Memphis*, 414 S.W.3d at 98) (Standing requires only that the injury be “‘fairly traceable’ to the conduct of the adverse party.”); *Parsons v. U.S. Dep’t of Justice*, 801 F.3d 701, 713 (citations omitted) (6th Cir. 2015) (The causation “need not be proximate,” and “the fact that an injury is indirect does not destroy standing as a matter of course.”).

The Court concludes Parent Plaintiffs have established traceability with respect to Count II for the purposes of Rule 12 because their allegations connect the ESF Program to an exacerbation of statewide resource inadequacies. They need not yet prove the Act or Program are actually causing these inadequacies.

iv. Redressability

The final element of constitutional standing is that a plaintiff must show that the injury is capable of being redressed by a favorable decision from the court. *Hargett*, 414 S.W.3d at 98; *Darnell*, 195 S.W.3d at 620. This capability of redress “must be likely, as opposed to merely speculative.” *Wilmington Trust, N.A.*, 703 S.W.3d at 283 (quoting *Lujan*, 504 U.S. at 560–61). “It is not necessary that the plaintiff’s harm ‘will be entirely redressed, as partial redress can also satisfy the standing requirement.’” *Rutan-Ram*, 698 S.W.3d at 560 (quoting *Parsons*, 801 F.3d at 716).

State Defendants argue with respect to Count II that even if all funding for the EFS Program were terminated, there is no certainty the General Assembly would pass those savings on to public schools, much less to public schools where Parent Plaintiffs’ children are educated. *See Arakaki v. Lingle*, 477 F.3d 1048, 1064 (9th Cir. 2007). Plaintiffs respond that enjoining the EFS Program would halt the challenged law and remove the alleged sources of their injuries, providing at least partial relief. *See Rutan-Ram*, 698 S.W.3d at 560.

The Court concludes Plaintiffs have established redressability with respect to Count II. Based on their allegations, the ESF Program has at least partially caused or exacerbated existing inadequacies of public schools, and so an injunction of that Program would relieve the injury at least in part.

As such, the Court further concludes that Parent Plaintiffs have demonstrated standing to a degree sufficient to survive State Defendants’ Motion to Dismiss. Therefore, State Defendants’ Motion is **DENIED** with respect to constitutional standing.

2. Taxpayer Standing

Taxpayer standing in Tennessee is doctrinally distinct from the federal approach, which is considerably narrower. *Rutan-Ram*, 698 S.W.3d at 562. While the general rule remains that “[t]he mere status of a taxpayer or voter is not sufficient to bring an action in and of itself,” *id.* (quoting *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn. Ct. App. 1980), there are two routes for taxpayers to establish standing in Tennessee, *id.* “One route hews more closely to the conventional standing analysis [and requires] a taxpayer [to] assert a ‘special interest or a special injury not common to the public generally.’” *Id.* (quoting *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010)). The other route, “long recognized by Tennessee courts, significantly departs from conventional federal taxpayer standing, providing an ‘exception’ to the rule that a special interest or injury is necessary to establish standing.” *Id.* Seeking standing this way, the taxpayer must allege (1) taxpayer status; (2) “a specific illegality in the expenditure of public funds”; and (3) that he or she “has made a prior demand on the governmental entity asking it to correct the claimed illegality.” *Id.* at 562–63 (quoting *Lewis v. Cleveland Mun. Airport Auth.*, 289 S.W.3d 808, 816 (Tenn. Ct. App. 2008)); *see also Cobb v. Shelby County Bd. of Comm’rs*, 771 S.W.2d 124, 126 (Tenn. 1989) (“Plaintiffs in the present case have alleged, and the parties have stipulated facts supporting all the elements of taxpayer standing in a case of this nature—1) taxpayer status, 2) specific illegality in the expenditure of public funds, and 3) prior demand. Plaintiffs are thus entitled to a ruling on the merits of the case.”).

State Defendants argue, however, that the Tennessee Supreme Court’s recent decisions in *Wilmington Trust* and *Wygant*, both discussed above, have undermined taxpayer standing doctrine in Tennessee. See *Memphis Pub. Co. v. Tenn. Petroleum Underground Storage Tank Bd.*, 975 S.W.2d 303, 306 (Tenn. 1998) (noting that “a change in the controlling law which has occurred between the first and second appeal” creates an exception to the law-of-the-case doctrine). The Supreme Court has been clear that

[c]laims involving public rights—those that are “common to all[] and incident to citizenship itself”—present a significant risk that the judiciary will overstep the bounds of its authority and intrude on legislative and executive prerogatives. That’s because the protection of public rights is generally entrusted to public officials, not private citizens. Accordingly, to safeguard the separation of powers, we have long required plaintiffs asserting public rights claims to show a special injury.

Wygant, 2025 WL 3537313, at *16 (quoting *Wilmington Tr.*, 703 S.W.3d at 289–91) (collecting cases). This requirement helps to “ensure[] the judicial branch operates within the judicial power to adjudicating the rights and interests of affected citizens and not entangling itself in political disputes within the province of the other branches of government.” *Wilmington Tr.*, 703 S.W.3d at 291.

Here, State Defendants assert Plaintiffs’ constitutional claims are undoubtedly public-rights claims. State Defendants argue that Plaintiffs have not asserted, for example, that the Act will increase their tax burden as state residents or even that the Act requires counties to incur debt or impose any increase on local taxes. Plaintiffs respond that neither *Wilmington Trust* nor *Wygant* addressed, much less eliminated, the established taxpayer standing doctrines. See *Harris v. Lee*, No. M2025-01915-COA-R9-CV, 2026 WL 1144357, at *9–10 (Tenn. Ct. App. Apr. 28, 2026) (continuing to apply the established taxpayer standing doctrines after *Wilmington Trust* and *Wygant* were decided). State Defendants note in reply that in *Harris*, the trial court found no basis

for taxpayer standing because no taxpayer funds had been expended and the issue was not even raised on appeal.

State Defendants alternatively argue that Plaintiffs have not alleged a “specific illegality” for taxpayer standing as required under the *Cobb* test, 771 S.W.2d at 126, and likewise required in *Rutan-Ram*, 698 S.W.3d at 562–63. Plaintiffs have alleged only that the substance of certain provisions of the EFS Act violate the Tennessee Constitution, not that state officials are “expend[ing]” funds appropriated by the Act in an illegal way. See *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010). That is not sufficient to confer taxpayer standing under *Cobb* and *Rutan-Ram*. Plaintiffs respond that the specific illegality comes from the unconstitutionality of the authorization itself, not in an official’s failure to follow that law. See *Rutan-Ram*, 698 S.W.3d at 561–64.

Here, there is no question that the *Wilmington Trust* Court said in a footnote that it was not addressing taxpayer standing in its decision. 703 S.W.3d at 290 n.14. Nevertheless, the *Wygant* Court applied these principles forcefully. See *Wygant*, 2025 WL 3537313, at *18–22. Quoting from *Patten*, 65 S.W. at 421 (emphasis added), that Court noted

It is a well-settled rule that equity will not interfere by its injunctive process in a case like this unless the complainants show that they will suffer some special injury, and not merely an injury in common with the body of the citizens. *This rule is, we believe, without exception.*

Wygant, 2025 WL 3537313, at *17 n.10. Taxpayer standing would seem to be a glaring exception to this rule. It is the reasoning of the higher court ultimately binds the lower court. *Ramos v. Louisiana*, 590 U.S. 83, 104 (2020) (“It is usually a judicial decision’s reasoning—its *ratio decidendi*—that allows it to have life and effect in the disposition of future cases.”); Brian A. Garner, *The Law of Judicial Precedent* 45 (2016) (quoting 2 John Austin, *Lectures on Jurisprudence* 622 (Robert Campbell ed., 5th ed. 1885)) (emphasis in original) (“Looking at the

general reasons alleged by the Court for its decisions, and *abstracting those reasons from the modifications which were suggested by the peculiarities of the cases*, we arrive at a *ground or principle of decision*.”). And here, that reasoning—that claims involving public rights “present a significant risk that the judiciary will overstep the bounds of its authority and intrude on legislative and executive prerogatives”—applies with equal force. The route of taxpayer standing Plaintiffs seek to utilize, which the Court recognizes fully was good Tennessee law for a long time, completely undermines the rationale for constitutional standing articulated in *Wilmington Trust* and *Wygant*. Accordingly, we hold that the Tennessee Supreme Court has abrogated the doctrine of taxpayer standing.

“In public rights claims, there must also be an injury in fact, in addition to the causation and redressability elements required by *Darnell* and *City of Memphis*.” *Wilmington Tr.*, 703 S.W.3d at 290–91 (citations omitted). A “distinct and palpable injury” is “an injury that is not conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general public.” *Metro. Gov’t of Nashville & Davidson Cnty.*, 645 S.W.3d at 149. And here, Taxpayer Plaintiffs have failed to allege a concrete and particularized injury sufficient to support their theory of standing because the allegation that the treasury is expending money pursuant to an unconstitutional statute is precise sort of generalized grievance that without more serves only to draw the judiciary into conflict with its co-equal branches over matters that ought to be decided by the people’s elected representatives. See *Patten*, 65 S.W. at 420.

Accordingly, State Defendants’ Motion to Dismiss is **GRANTED** with respect to Taxpayer Plaintiffs. Taxpayer Plaintiffs and their claims are **DISMISSED** from this action.

C. *Parent Plaintiffs' Claims*

1. Original Public Meaning of the Education Clause

As discussed above, *see supra* Part III.B.2, the Tennessee Supreme Court has directed that the breadth of the Education Clause must be uncovered in the text's original public meaning. *See McNabb*, 710 S.W.3d at 658–59. Such an inquiry requires first an examination of the provision's plain language. *Id.* at 658. Then, to understand that plain language, a court is to consider not the subjective intent of the drafters but how a reasonable reader would have understood the language at the time it was issued. *Id.* This involves consideration of the dictionary definitions published around the time the constitutional language was approved and of the usages and historical practices at the time of the adoption of the text. *Id.* at 658–59. Lastly, a court is to apply canons of construction such as consistent usage or no surplusage. *Id.*

i. Text of Tennessee's Education Clause and Its History

“[W]e begin by reading the plain language and giving terms ‘their ordinary and inherent meaning.’” *McNabb*, 710 S.W.3d at 568 (quoting *State v. Phillips*, 21 S.W.2d 4, 5 (Tenn. 1929)).

At present, the Education Clause reads as follows:

The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such postsecondary educational institutions, including public institutions of higher learning, as it determines.

Tenn. Const. art. XI, § 12.

The first Tennessee Constitution, however, contained no education provision. *See generally* Tenn. Const. (1796). The second Constitution, effective in 1835, provided:

Knowledge, learning and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities, and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end; it shall be the duty of the general Assembly in all future

periods of this government, to cherish literature and science. And the fund called the Common school fund, and all the lands and proceeds thereof, dividends, stocks, and other property of every description whatever, heretofore by law appropriated by the general Assembly of this State, for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriation; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be diverted to any other use than the support and encouragement of common schools; and it shall be the duty of the general Assembly, to appoint a board of commissioners for such term of time as they may think proper, who shall have the general superintendence of said fund, and who shall make a report of the condition of the same, from time to time, under such rules, regulations and restrictions, as may be required by law; provided, that if at any time hereafter a division of the public lands of the United States, or of the money arising from the sales of such lands, shall be made among the individual States, the part of such lands, or money, coming to this State, shall be devoted to the purposes of education and internal improvement; and shall never be applied to any other purpose.

Tenn. Const. art. XI, § 10 (1835). The next section then added that:

The above provisions shall not be construed to prevent the Legislature from carrying into effect any laws that have been passed in favor of the Colleges, Universities or Academies, or from authorizing heirs or distributees to receive and enjoy escheated property, under such rules and regulations as from time to time may be prescribed by law.

Tenn. Const. art. XI, § 11 (1835).

The provision was modified for the 1870 Constitution, including the unification of the two 1835 provisions.

Knowledge, learning, and virtue, being essential to the preservation of republican institutions, and the diffusion of the opportunities and advantages of education throughout the different portions of the State, being highly conducive to the promotion of this end, it shall be the duty of the General Assembly in all future periods of this Government, to cherish literature and science. And the fund called common school fund, and all the lands and proceeds thereof, dividen[d]s, stocks, and other property of every description whatever, heretofore by law appropriated by the General Assembly of this State for the use of common schools, and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriation; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people

thereof; and no law shall be made authorizing said fund or any part thereof to be divested to any other use than the support and encouragement of common schools. *The State taxes, derived hereafter from polls shall be appropriated to educational purposes, in such manner as the General Assembly shall from time to time direct by law. No school established or aided under this section shall allow white and negro children to be received as scholars together in the same school.* The above provisions shall not prevent the Legislature from carrying into effect any laws that have been passed in favor of the Colleges, Universities or Academies, or from authorizing heirs or distributees to receive and enjoy escheated property under such laws as may be passed from time to time.

Tenn. Const. art. XI, § 12 (1870) (emphasis added).

More than a century later, the present version of the Education Clause was ratified in 1978. Most notably, the “it shall be the duty . . . to cherish” became “shall provide for the maintenance, support, and eligibility standards;” and the object of that duty went from “literature and science” to “a system of free public schools.” *Comp Tenn. Const. art. XI, § 12, with Tenn. Const. art. XI, § 12 (1870).* The 1977 Limited Constitutional Convention’s proposed changes also included the removal of the perpetual fund, the anti-diversion command, the poll-tax earmark, the segregation command. *Comp Tenn. Const. art. XI, § 12, with Tenn. Const. art. XI, § 12 (1870).* Additionally, the preservation of existing laws on colleges, universities, and academies became “may establish and support such post-secondary educational institutions, including public institutions of higher learning.” *Comp Tenn. Const. art. XI, § 12, with Tenn. Const. art. XI, § 12 (1870).* The first sentence imposes no actor with a duty, uses no obligatory verb, and identifies no specific object of the encouragement beyond “education.” It reads as something between a prefatory clause and a finding or a “whereas” statement of the People of Tennessee. The second sentence, on the other hand, would appear to be mandatory because its plain language places an affirmative obligation upon the General Assembly “to provide” and giving it specific objects of that provision. The third sentence, meanwhile, is permissive, ostensibly enlarging the educational category with discretion for the legislature.

It is equally important to note which words are not there. “[W]e construe a constitutional provision as it is written.” *McNabb*, 710 S.W.3d at 659; *see also Robinson v. Fulton*, 140 S.W.3d 312, 318 (Tenn. Ct. App. 2003) (noting that courts “are ‘not at liberty to depart from the words of [the text]’”). “It is not this Court’s role to create ambiguity.” *McNabb*, 710 S.W.3d at 659. There are no quality or universality adjectives in Tennessee’s Education Clause.³ Nor is there any anti-

³ *See, e.g.*, Alaska Const. art. VII, § 1 (emphasis added) (“The legislature shall by general law establish and maintain a system of public schools *open to all children of the State*, and may provide for other public educational institutions.”); Ariz. Const. art. XI, § 1 (emphasis added) (“The legislature shall enact such laws as shall provide for the establishment and maintenance of *a general and uniform* public school system”); Ark. Const. art. XIV, § 1 (emphasis added) (“Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a *general, suitable and efficient* system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.”); Colo. Const. art. IX, § 2 (emphasis added) (“The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a *thorough and uniform* system of free public schools throughout the state”); Del. Const. art. X, § 1 (emphasis added) (“The General Assembly shall provide for the establishment and maintenance of *a general and efficient* system of free public schools”); Fla. Const. art. IX, § 1 (emphasis added) (“It is, therefore, *a paramount duty* of the state to make *adequate* provision for the education of *all children residing within its borders*. *Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality* system of free public schools that allows students to obtain a *high quality* education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require. To assure that children attending public schools obtain a *high quality* education, the legislature shall make adequate provision to ensure that, by the beginning of the 2010 school year, there are a sufficient number of classrooms so that”); Ga. Const. art. VIII, § 1 (emphasis added) (“The provision of an *adequate* public education *for the citizens* shall be a *primary obligation* of the State of Georgia.”); Idaho Const. art. IX, § 1 (emphasis added) (“The stability of a republican form of government depending mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho, to establish and maintain *a general, uniform and thorough* system of public, free common schools.”); Ky. Const. § 183 (emphasis added) (“The General Assembly shall, by appropriate legislation, provide for an *efficient* system of common schools throughout the State.”); Md. Const., art. VIII, § 1 (emphasis added) (“The General Assembly, at its First Session after the adoption of this Constitution, shall by Law establish throughout the State *a thorough and efficient* System of Free Public Schools; and shall provide by taxation, or otherwise, for their maintenance.”); N.C. Const. art. IX, § 2 (emphasis added) (“The General Assembly shall provide by taxation and otherwise for *a general and uniform* system of free public schools”); N.D. Const. art. VII, § 1 (emphasis added) (“A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be *open to all children of the state of North Dakota* and free from sectarian control.”); N.J. Const. art. VIII, § 4, ¶ 1 (emphasis added) (“The Legislature shall provide for the maintenance and support of *a thorough and efficient* system of free public schools for the instruction of *all the children in the State* between the ages of five and eighteen years.”); N.M. Const. art. XII, § 1 (emphasis added) (“A *uniform* system of free public schools *sufficient* for the education of, and open to, *all the children of school age in the state* shall be established and maintained.”); Ohio Const. art. VI, § 2 (emphasis added) (“The general assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure *a thorough and efficient* system of common schools throughout the State”); Penn. Const. art. III, § 14 (emphasis added) (“The General Assembly shall provide for the maintenance and support of *a thorough and efficient* system of public education to serve the needs of the Commonwealth.”); S.C. Const. art. XI, § 3 (emphasis added) (“The General Assembly shall provide for the maintenance and support of a system of free public schools *open to all children in the State*.”); Tex. Const. art. VII, § 1 (emphasis added) (“A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of *an efficient* system

aid or anti-diversion clause.⁴ In fact, such a clause was removed by the 1977 Limited Convention. See Tenn. Const. art. XI, § 12 (1870) (“ . . . and all such as shall hereafter be appropriated, shall remain a perpetual fund, the principal of which shall never be diminished by legislative appropriation; and the interest thereof shall be inviolably appropriated to the support and encouragement of common schools throughout the State, and for the equal benefit of all the people thereof; and no law shall be made authorizing said fund or any part thereof to be divested to any other use than the support and encouragement of common schools.”); Tenn. Const. art. XI, § 12 (1835) (stating the same).

ii. Lexical Record of the Education Clause.

“[W]e consider contemporaneous dictionary definitions.” *McNabb*, 710 S.W.3d at 658–659 (citations omitted); see also Antonin Scalia and Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012) 419 (“Dictionaries tend to lag behind linguistic realities If you are seeking to ascertain the meaning of a term in an 1819 statute, it is generally quite permissible to consult an 1828 dictionary.”). As such, the Court looks to the following dictionaries: *The Random House Dictionary of the English Language* (2d ed. 1987) (relied upon

of public free schools.”); Utah Const., art. X, § 1 (emphasis added) (“The Legislature shall provide for the establishment and maintenance of the state’s education systems including: (a) a public education system, which shall be *open to all children of the state*; and (b) a higher education system.”); W. Va. Const. art. XII, § 1 (emphasis added) (“The Legislature shall provide, by general law, for a *thorough and efficient* system of free schools”).

⁴ See Alaska art. VII, § 1 (“No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.”); Del. Const. art. X, § 3 (emphasis added) (“*No portion of any fund* now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, *shall be appropriated to, or used by, or in aid of any sectarian, church, or denominational school . . .*”); Ky. Const. § 184 (emphasis added) (“The interest and dividends of said fund, together with any sum which may be produced by taxation or otherwise for purposes of common school education, shall be appropriated *to the common schools, and to no other purpose.*”), § 186 (emphasis added) (“*All funds accruing to the school fund shall be used for the maintenance of the public schools of the Commonwealth, and for no other purpose.*”); Mich. Const. art. VIII, § 2, ¶ 2 (emphasis added) (“*No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, pre-elementary, elementary, or secondary school.*”); S.C. Const. art. XI, § 4 (emphasis added) (“*No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution.*”).

by the *Small Schools I* Court), *Black's Law Dictionary* (Rev. 4th ed. 1968), and *Webster's Third New International Dictionary of the English Language* (1966).

Black's defines "system" as an "[o]rderly combination or arrangement, as of particulars, parts, or elements into a whole; especially such combination according to some rational principle; any methodic arrangement of parts." System, *Black's Law Dictionary* 1621. *Webster's* defines it as (1) "a complex unity formed of many often diverse parts subject to a common plan or serving a common purpose"; (2) "an aggregation or assemblage of objects joined in regular interaction or interdependence"; (3) "a set of units combined by nature or art to form an integral, organic, or organized whole"; (4) "an orderly working totality"; or (5) "a coherent unification." System, *Webster's Third New International Dictionary* 2322. And *Random House* defines it as (1) "an assemblage or combination of things or parts forming a complex or unitary whole"; (2) "any assemblage or set of correlated members"; (3) "a coordinated body of methods or a scheme or plan of procedure"; (4) "due method or orderly manner of arrangement or procedure"; (5) "any formulated, regular, or special method or plan of procedure"; or (6) a "due method or orderly manner of arrangement or procedure." System, *The Random House Dictionary of the English Language* 1930.

Black's defines "school" as (1) "[a]n institution or place for instruction or education"; or (2) "[a]n institution of learning of a lower grade, below a college or a university. A place of primary instruction. The term generally refers to the common or public schools, maintained at the expense of the public." School, *Black's Law Dictionary* 1511. *Webster's* defines it as (1) "an organized body of scholars and teachers"; (2) "the body of pupils or students attending a school"; (3) "an organized source of education or training; as . . . [(a)] an institution for the teaching of children or others . . . [(b)] a place where instruction is given . . . [or (c)] a building or group of

buildings in which a school is conducted;” (4) “the process of being instructed or educated in institutions for teaching the young.” School, *Webster’s Third New International Dictionary* 2031. *Random House* defines it as (1) “an institution where instruction is given, esp[ecially] to persons under college age”; (2) “an institution for instruction in a particular skill or field”; (3) “a college or university”; (4) “a building housing a school”; or (5) “the body of students, or students and teachers, belonging to an educational institution.” School, *The Random House Dictionary of the English Language* 1715.

Black’s defines “free”⁵ as “[a]vailable to all citizens alike without charge; as a free school” and “free school” as a school “[w]here no charge is made for tuition.” Free & Free School, *Black’s Law Dictionary* 791–92. But see Free school, *The Random House Dictionary of the English Language* 764 (“[A] privately run school organized as an alternative to the traditional public or private school, usually following a highly flexible approach to the curriculum and teaching methods.”). *Webster’s* defines “free” as (1) “not costing or charging anything (a ~ school,)” (2) “given or furnished without payment,” or (3) “admitted without payment.” Free, *Webster’s Third New International Dictionary* 905. *Random House* defines it as “provided without, or not subject to, a charge or payment.” Free, *The Random House Dictionary of the English Language* 763.

Black’s notes that “shall,” “[a]s used in statutes, contracts, or the like, . . . generally imperative or mandatory.” Shall, *Black’s Law Dictionary* 1541. It goes on to say, however:

But it may be construed as merely permissive or directory, (as equivalent to “may,”) to carry out the legislative intention and in cases where no right or benefit to any one depends on its being taken in the imperative sense, and where no public or private right is impaired by its interpretation in the other sense. *Spaulding & Kimball v. Etna Chemical Co.*, 98 Vt. 169, 126 A. 588, 589; *Wisdom v. Board of Sup’rs of Polk Cnty.*, 236 Iowa 669, 19 N.W.2d 602, 607, 608. Also, as against the government, it is to be construed as “may,” unless a contrary intention is manifest. *Cairo & Fulton R. Co. v. Hecht*, 95 U.S. 170, 24 L.Ed 423.

⁵ The vast majority of definitions in all three dictionaries use the term “free” in the sense of liberty, which is inapplicable in this context.

Shall, *Black's Law Dictionary* 1541–42. *Webster's* explains that the term as “used to express a command or exhortation” and “used in laws, regulations, or directives to express what is mandatory.” Shall, *Webster's Third New International Dictionary* 2085. *Random House* states that it “([as used]in laws, directives, etc.)” means “must; is or are obliged to.” Shall, *The Random House Dictionary of the English Language* 1757–58.

Black's defines “provide” as “[t]o make, procure, or furnish for future use, prepare,” and “[t]o supply; to afford; to contribute.” Provide, *Black's Law Dictionary* 1388. *Webster's* defines it as (1) “to take precautionary measures[; or to] make provision[(]used with against or for[)]”; (2) “to supply what is needed for sustenance or support”; (3) “to fit out or fit up”; or (4) “to supply for use.” Provide, *Webster's Third New International Dictionary* 1827. *Random House* defines it as (1) “to make available; furnish”; (2) “to supply or equip”; (3) “to afford or yield”; (4) “to arrange for or stipulate beforehand, as by a law or proviso”;⁶ (5) “to prepare or procure beforehand”;⁷ (6) “to take measures with due foresight (usually fol[lowed] by for or against)”; (7) “to make provision for supplying means of support”; or (8) “to supply means of support (often fol[lowed] by for).” Provide, *The Random House Dictionary of the English Language* 1556.

Black's defines “maintenance” as (1) “keeping up, supporting,” (2) “livelihood,” or (3) “means of sustenance.” Maintenance, *Black's Law Dictionary* 1106. *Webster's* defines it as (1) “the act of providing means of support for someone”; (2) “the provisions, supplies, or funds needed to live on”; (3) “the labor of keeping something (as buildings or equipment) in a state of

⁶ This definition is specifically noted as pertaining to the legal sense of the word. Provide, *The Random House Dictionary of the English Language* 1556.

⁷ This definition is specifically noted as an archaic usage of the word. Provide, *The Random House Dictionary of the English Language* 1556.

repair or efficiency”; or (4) “the action of preserving or supporting (as a condition or institution).” Maintenance, *Webster’s Third New International Dictionary* 1362. *Random House* defines it as (1) “the act of maintaining”; (2) “the state of being maintained”; (3) “care or upkeep, as of machinery or property”; or (4) “means of subsistence; livelihood.” Maintenance, *The Random House Dictionary of the English Language* 1160.

Black’s defines “support”⁸ as (1) “[t]hat which furnishes a livelihood”; (2) “a source or means of living”; or (3) “subsistence, sustenance, or living.” Support, *Black’s Law Dictionary* 1609. *Webster’s* defines it as (1) “the act, process, or operation of supporting”;⁹ or (2) “a means of livelihood, sustenance, or existence.” Support, *Webster’s Third New International Dictionary* 2297. *Random House* defines it as (1) “the act or an instance of supporting”; (2) “maintenance, as of a person or family, with necessities, means, or funds”; or (3) “a person or thing that supports, as financially.”¹⁰ Support, *The Random House Dictionary of the English Language* 1912.

Black’s defines “eligibility” as “[p]roper to be chosen; qualified to be elected; legally qualified.” Eligibility, *Black’s Law Dictionary* 612. *Webster’s* defines it as “the quality or state

⁸ Because “support,” like “maintenance” and “eligibility standards,” is the object of what the legislature “shall provide for,” I have provided primarily the definitions of the noun “support.” See Tenn. Const. art. XI, § 12 (emphasis added) (“*The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools.*”). Because some of the definitions incorporate the verb, however, I provide those in footnotes when needed to avoid a circular definition. See *infra* notes 8–9.

⁹ The following is provided because one of the *Webster’s* definitions incorporated “support” as a verb:
to uphold by aid, countenance, or adherence : actively promote the interests or cause of . . . (an established judicial system [support]ed by the executive power of the state —John MacNeill) . . .
to hold up or in position : serve as a foundation or prop for.
Support, *Webster’s Third New International Dictionary* 2297.

¹⁰ The following is provided because one of the *Random House* definitions also incorporated “support” as a verb:
1. to bear or hold up . . . 2. to sustain or withstand . . . without giving way . . . 4. to sustain . . .
under trial or affliction . . . 5. to maintain (a person, family, establishment, institution, etc.) by
supplying with things necessary to existence; provide for: to support a family. 6. to uphold (a person,
cause, policy, etc.) by aid, countenance, one’s vote . . .
Support, *The Random House Dictionary of the English Language* 1911–12.

of being eligible.”¹¹ Eligibility, *Webster’s Third New International Dictionary* 736. *Random House* defines “eligible”¹² as (1) “fit or proper to be chosen; worthy of choice; desirable”; (2) “meeting the stipulated requirements, as to participate, compete, or work; qualified”; or (3) “legally qualified to be elected or appointed to office.” Eligible, *The Random House Dictionary of the English Language* 632.

Black’s defines “standard” as “[s]tability, general recognition, and conformity to established practice.” Standard, *Black’s Law Dictionary* 1576. *Webster’s* defines it as (1) “something that is established by authority, custom, or general consent as a model or example to be followed”; (2) “a definite level or degree of quality that is proper and adequate for a specific purpose”; (3) “something that is set up and established by authority as a rule for the measure of quantity, weight, extent, value, or quality”; or (4) “a carefully thought-out method of performing a task.” Standard, *Webster’s Third New International Dictionary* 2223. *Random House* defines it as (1) “something considered by an authority or by general consent as a basis of comparison; an approved model”; (2) “a rule or principle that is used as a basis for judgment”; or (3) “an average or normal requirement, quality, quantity, level, grade, etc”; and when used in the plural “standards,” it means “those morals, ethics, habits, etc., established by authority, custom, or an individual as acceptable.” Standard, *The Random House Dictionary of the English Language* 1857.

Thus, the dictionaries suggest contemporaneous understanding of the Education Clause’s disputed second sentence would roughly amount to stating that ‘the General Assembly must supply

¹¹ The adjective “eligible” is defined here as (1) “fitted or qualified to be chosen or used”; or (2) “entitled to something.” Eligibility, *Webster’s Third New International Dictionary* 736; cf. *supra* notes 7–9.

¹² “Eligibility” only appears as an undefined derivative of “eligible.” See Eligible, *The Random House Dictionary of the English Language* 632.

the means for the continued existence and upkeep, necessities, means, or funds, and rules of participation for an orderly arrangement of the teaching of children without requiring payment.’ But the inquiry does not end there.

iii. Historical Usages and Practices

“[W]e consider . . . also usages and historical practices at the time of the adoption of the text.” *McNabb*, 710 S.W.3d at 658–59 (citing *Peay v. Nolan*, 7 S.W.2d 815, 817 (Tenn. 1928); *Richardson v. Young*, 125 S.W. 664, 674 (Tenn. 1910); *Grainger Cnty. v. State*, 80 S.W. 750, 751 (Tenn. 1904)). In doing so, the Court turns to the 1977 Limited Convention itself:

The complaint further alleged that *Chapter 848 of the Public Acts of 1976 calling for the limited constitutional convention provided that the convention was to be limited to consideration of and action upon specified parts of the Constitution including only that part of Article XI, Section 12, relative to the segregation of white and Negro school children*; that the amendment proposed by the limited constitutional convention to Article XI, Section 12, went beyond the limited subject matter of the convention call by repealing the existing Article XI, Section 12, in its entirety and substituting in lieu thereof an entirely new Article XI, Section 12; that the amendment to Article XI, Section 12, is void because it exceeds the express limitations stated in Chapter 848 of the Public Acts of 1976 and is ineffective according to the terms of Article XI, Section 3, of the Tennessee Constitution.

Parks v. Alexander, 608 S.W.2d 881, 884 (Tenn. 1980) (emphasis added) (describing the plaintiffs’ characterization of events, not a finding of the Court).¹³ At the 1977 Limited Constitutional Convention, “[o]ne delegate, Walter Helms of Humboldt, reported” as follows:

We wanted a standard sort of article in the Constitution that would leave the legislature free to act as conditions and circumstances change, to provide the necessary types of programs across the State that the people need and to fund it in a way that was feasible at that particular time. All of us have seen periods of maybe abundance and periods of scarcity. We cannot predict those. *The legislature needs a free hand in the funding of its programs.*

¹³ What is also notable from this case is that those same plaintiffs also asserted that the 1870 Education Clause “constituted a limitation on the State’s power to appropriate funds to support nonpublic schools; that since the repeal of the limitation, the General Assembly has enacted legislation which would not have been constitutional prior to the said repeal.” *Parks*, 608 S.W.2d at 884. The Court reached none of these questions, dismissing the action on the justiciability bases of standing and the political question doctrine. *Id.* at 891–92.

Small Schools I, 851 S.W.2d at 151 (quoting *The Journal of the Debates of the Constitutional Convention of the State of Tennessee* 395 (Sept. 28, 1977) [hereinafter “*Journal of the 1977 Convention*”]) (emphasis in original). Earlier, Oris Hyder had asked:

[W]hat does the committee mean in the wording of the first sentence of the section? “The State of Tennessee recognizes the inherent value of education and encourages its support.” Do you mean the people of the State, the government of the State, or what? What is meant by that sentence? Is it not superfluous to have it in there because then you go on to provide for it, which, of course, indicates that this Constitution believes in it and supports it?

John Dinan, *The Meaning of the State Constitutional Education Clauses*, 70 Albany Law Rev. 927, 940–41 (2007) (quoting *Journal of the 1977 Convention* 383). Mr. Helms responded:

Education came into the Constitution almost as a memorial. The precedent was set in the ordinances of 1785 and 1787 at the time the Northwest Territory was opened up. . . . So, it came to be written into the Constitutions of that day, some type of memorializing statement, indicating that you would consider education and give education a place in the state. Constitutions following the Northwest Ordinance precedent, put this in their constitutions. The State Constitution of 1796, first one for Tennessee, did not include such memorializing statements simply because we organized under an ordinance other than the Northwest Ordinance. We did, in the next Constitution in 1834, include this short title, Education is to be Cherished. It is a tribute or memorial to education. We have shortened that memorial by saying that there is an inherent value in education. In other words, it is a good that should be supported by the State. That is the reason . . . for including that. It is a historical sort of precedent.

Dinan, 70 Albany Law Rev. at 941 (quoting *Journal of the 1977 Convention* 383).

Delegate Pleasant moved to confine sentence three to “public” institutions; that Delegate Wilder objected that inserting “public” would preclude aid to students at private institutions such as Meharry Medical College; that Delegate Rowe made a parallel point; and then the amendment failed 3 to 80. See *Journal of the 1977 Convention* 408–11 (provided by Plaintiffs).

iv. Canons of Construction

“Original public meaning is discerned through consideration of the [] text in light of ‘well-established canons of [] construction.’” *McNabb*, 710 S.W.3d at 658 (quoting *State v. Deberry*,

651 S.W.3d 918, 924 (Tenn. 2022)); *see also Kisor v. Wilkie*, 588 U.S. 558, 621–22, (2019) (Gorsuch, J., concurring in the judgment) (“[Judges have employed] traditional tools of interpretation . . . for centuries to elucidate the law’s original public meaning.”).

“In this process, we construe the Tennessee Constitution as a single, unified document. No provision will be given construction that would ‘impair or destroy any other part.’” *McNabb*, 710 S.W.3d at 659 (quoting *Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990)); *see also Davis v. Williams*, 12 S.W.2d 532, 535 (Tenn. 1928) (quoting *Prescott v. Duncan*, 148 S.W. 229, 234 (Tenn. 1912)) (“State constitutions are adopted as a whole, and a clause which, standing by itself, might seem of doubtful import may yet be made plain by comparison with other clauses or portions of the same instrument, therefore it is a proper rule of construction that the whole is to be examined with a view to arriving at the true intent of each part.”); *Mayhew v. Wilder*, 46 S.W.3d 760, 772 (Tenn. Ct. App. 2001) (citing *Wolf v. Sundquist*, 955 S.W.2d 626, 630 (Tenn. Ct. App. 1997)) (“[W]e must construe our Constitution as a whole to harmonize and give effect to each of its provisions.”). Here, Article II, Section 3 vests “[t]he Legislative authority of this State” in the “General Assembly.” Tenn. Const. art. II, § 3. While the Separation of Powers provisions prevent the judiciary from coopting such authority, Tenn. Const. art. II, § 1–2, and the investiture of power by Article II, Section 3 is inherently broad, these provisions cannot render Article XI, Section 12 a nullity that requires nothing of the General Assembly. Likewise, as is central to Plaintiffs’ argument under their single-system claim, the Education Clause’s three sentences should not be read in isolation from one another.

Another relevant canon of construction, often referred to as *expressio unius*, was utilized by the Florida Supreme Court in *Bush v. Holmes*, 919 So. 2d 392, 407–08 (Fla. 2006), in analyzing a similar provision in the Florida Constitution and is relied upon here by Plaintiffs. Defendants

contest its application to this case. *Expressio unius est exclusio alterius*—the expression of one thing is the exclusion of another—is a well-settled statutory canon, sometimes call the negative-implication canon. See Scalia & Garner, *Reading Law* 107 (“The expression of one thing implies the exclusion of others. . . . it must be applied with great caution, since its application depends so much on context.”). It is clear, however, that this canon is uniquely unsuited to the construction of state constitutional provisions. See *Gangemi v. Berry*, 134 A.2d 1, 11 (N.J. 1957) (citations omitted) (“The Legislature is invested with all powers not forbidden. And great caution is necessary in the use of the legal axiom *Expressio unius est exclusio alterius*, for it is not of universal application, but ‘depends upon the intention of the party as it can be discovered upon the face of the instrument or upon the transaction.’ The maxim that the express mention of one thing implies the exclusion of another is purely interpretive in aid of intention, and not a rule of law; and it is not to have an arbitrary application at variance with its true purpose. The rule ‘is not to be applied with the same rigor in construing a state constitution as a statute’; ‘. . . only those things expressed in such positive affirmative terms as plainly imply the negative of what is not mentioned will be considered as inhibiting the powers of the legislature.’ The implication must be clear and compelling, a necessary consequence, not a conjectural or purely theoretical concept.”); *Lyons v. Sec. of Commonwealth*, 192 N.E.3d 1078, 1092–93 (Mass. 2022) (citations omitted (“The plaintiffs have not cited to any case that discusses the appropriateness or contours of applying the maxim of *expressio unius est exclusio alterius* to interpret the Massachusetts Constitution. It is a maxim that has oft been considered in connection with interpreting statutes. Even in the statutory context, however, it ‘requires great caution in its application’ and ‘will be disregarded where its application would thwart the legislative intent made apparent by the entire act’ or ‘lead to an illogical result.’ It is ‘a guide to construction, not a positive command’ and ‘at most only a fallible

aid to decision’’). *But see Holmes*, 919 So. 2d at 407–08 (applying the doctrine to a similar provision in the Florida Constitution). As such, we will tread carefully when considering the application of this canon in the context of Plaintiffs’ single-system claim.

2. Single-System Claim

Plaintiffs’ First Cause of Action in their Amended Complaint alleges the violation of the State’s obligation to maintain and support a single system of public schools under the Education Clause of the Tennessee Constitution. Plaintiffs assert that the mandate of the Education Clause is singular and specifies a public education, meaning that it does not permit the General Assembly to maintain and support schools outside the system of free public schools.

State Defendants first point to Article II, Section 3’s investment of the General Assembly with the entirety of the legislative function, including “the power and authority over public education.” *See Lawrence Cnty. Educ. Ass’n v. Lawrence Cnty. Bd. of Educ.*, 244 S.W.3d 302, 310 (Tenn. 2007) (citing *Southern Constructors, Inc. v. Loudon Cnty. Bd. of Educ.*, 58 S.W.3d 706 (Tenn. 2001)). Defendants argue that the Education Clause does not limit the General Assembly’s otherwise plenary power, and there is no textual indication that this power excludes granting students public funds to attend non-public schools. *See id.* at 310 n.5.

Intervenor-Defendants add that, in contrast to the federal government’s limited and enumerated powers, the General Assembly has plenary power unless the federal or state constitution expressly limits it. *See Murphy v. NCAA*, 584 U.S. 453, 471 (2018) (“The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms.”); *Southern Constructors, Inc.*, 58 S.W.3d at 711 (“Article II, section 3 of our Constitution confers upon the General Assembly the whole of the state’s legislative power”); *Andrews v. State*, 50

Tenn. (3 Heisk.) 165, 175 (1871) (citations omitted) (“First, it may be assumed as almost an axiom in our law, with reference to the Legislatures, or law-making body of the States, that there is no limitation upon their powers, except such as are found either in the Constitution of [t]he United States, or of the State itself. Plenary power in the Legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power, is an exception.”). They also argue that courts interpreting similar “encourage education” provisions have found they permit school-choice programs. *See Meredith v. Pence*, 984 N.E.2d 1213, 1224–25 (Ind. 2013) (citations omitted) (“[T]he Education Clause directs the legislature generally to encourage improvement in education in Indiana, and this imperative is broader than and in addition to the duty to provide for a system of common schools. Each may be accomplished without reference to the other. Considering that the voucher-program statute does not alter the structure or components of the public school system, it appears to fall under the first imperative (“to encourage”) and not the second (“to provide”). The General Assembly’s ‘specific task with performance standards (“general and uniform,” “tuition without charge,” and “equally open to all”)’ falls under the second imperative, ‘to provide, by law, for a general and uniform system of Common Schools,’ and is not implicated by the school voucher program.”); *Schwartz v. Lopez*, 382 P.3d 886, 897 (Nev. 2016) (“To accept the narrow reading urged by the plaintiffs would mean that the public school system is the only means by which the Legislature could encourage education in Nevada. We decline to adopt such a limited interpretation.”); *cf. Smith v. BlueCross BlueShield of Tenn.*, 710 S.W.3d 686, 698–700 (Tenn. 2025) (considering other states’ interpretations of similar constitutional provisions); *Plasti-Line, Inc. v. Tenn. Human Rts. Comm’n*, 746 S.W.2d 691, 692 (Tenn. 1988) (“We find the reasoning in those cases persuasive. While the constitutions of those states are not identical to those in Tennessee, they are in most respects similar. The interpretations of the constitutions of those states

are also consistent with cases from this Court construing the provisions of the Tennessee Constitution.”).

Plaintiffs first respond that legislative power is broad only within constitutional bounds, and Defendants’ own authority expressly recognizes constitutional limitations “defined by fair construction and implication.” *Andrews*, 50 Tenn. at 175–76. In other words, Defendants cannot rely on an overly strict, literalist reading of the constitutional text. Plaintiffs also argue that the Court of Appeals determined that the plenary power derived from Article XI, Section 12 relates to public schools, not private ones, and while the decision was overturned by the Tennessee Supreme Court, the Court never reached that issue so it remains binding. *See Metro. Gov’t of Nashville & Davidson Cnty. v. Tenn. Dep’t of Educ.*, No. M2020-00683-COA-R9-CV, 2020 WL 5807636, at *8 (Tenn. Ct. App. Sept. 29, 2020), *affirmed in part and reversed in part*, 645 S.W.3d 141, 146–47 (Tenn. 2022). Plaintiffs add that the cases relied upon by Defendants cast the legislative power in broad terms in reliance on the constitutional text, meaning the General Assembly has broad plenary authority over *public* education.

Intervenor-Defendants counter that the baseline of the state’s power under its constitution compared to the federal government and the United States Constitution. State Defendants add that the overruled and unreported Court of Appeals opinion has neither binding authority nor persuasive power because the opinion’s understanding of the source of the General Assembly’s plenary power of education contradicts Tennessee Supreme Court authority.

The Court cannot conclude that the General Assembly’s legislative power precludes Plaintiffs’ claim. To decide that the legislature’s plenary power precludes the application of the Education Clause would be to read that Clause as standing as nothing more than a tribute to education or perhaps an aspirational statement of intent. The Court agrees with Plaintiffs that the

General Assembly’s plenary power is vast but shaped by the text of the Constitution. The command of the Education Clause’s second sentence has meaning, and that meaning limits the exercise of legislative power. Accordingly, the Court declines to grant Defendants’ Motions on the basis of the legislature’s plenary power over education.

Defendants next apply the *McNabb* Court’s original-public-meaning method, analyzing “provide,” “maintenance, support, and eligibility standards” using the *Random House* dictionary relied upon by the *Small Schools I* Court, and conclude the Education Clause creates a duty to legislate a free public school system into continued existence without restricting support for education outside that system, noting the word “single” appears nowhere in the constitutional text. Silence, State Defendants assert, is not ambiguity but means the ordinary background law applies. *See New Jersey v. New York*, 523 U.S. 767, 783 & n.6 (1998); *see also id.* at 813 (Breyer, J., concurring). Thus, the Education Clause’s silence about private-school funding leaves the General Assembly’s background plenary power in control. Defendants distinguish *Holmes*, 919 So. 2d at 406–08, and the Florida court’s use of the canon *expressio unius est exclusio alterius* therein because there is no ambiguity here requiring a resort to canons of construction as well as the general principle that *expressio unius* does not work with state constitutions because, unlike the federal constitution, they permit what is not prohibited. State Defendants further note that every other court, except the *Holmes* court, has rejected this argument.

Plaintiffs respond that Defendants’ construction simply cannot be reconciled with the Education Clause as a whole because if the first sentence conferred unrestricted legislative authority to finance any educational institution at any level, the third sentence’s express grant of discretion over postsecondary institutions would be unnecessary. *See McNabb*, 710 S.W.3d at 659 (citation omitted) (“No provision will be given construction that would ‘impair or destroy any

other part.”). Similarly, if the second sentence imposed only a minimum duty while leaving the General Assembly free to support an equivalent private K through 12 system, there would be no reason for the Constitution to distinguish between public and private institutions in the third. Plaintiffs also argue that the lack of the word “single” makes no difference because the Tennessee Supreme Court has long described the constitutional design as a “single state system” of public education. *See Donathan v. McMinn Cnty.*, 213 S.W.2d 173, 179 (Tenn. 1948) (stating that the Legislature “has attempted by general law to provide for one system of public schools in all the counties of the State”); *see also State v. Mayor & Aldermen of Dyersburg*, 235 S.W.2d 814, 818 (Tenn. 1951) (quoting the same). Plaintiffs further respond to Defendants’ argument against the use of *expressio unius* with Tennessee authority that it can apply to the constitutional text. *See Blount Cnty. Bd. of Educ. v. City of Maryville*, 574 S.W.3d 849, 854 (Tenn. 2019); *Southern v. Beeler*, 195 S.W.2d 857, 866–67 (Tenn. 1946).

In reply, Defendants assert that the Education Clause contains no limiting language beyond requiring the General Assembly to fund a public school system. They additionally argue the history of the provision supports this reading.

Due to its residual sovereignty, which was only partially yielded upon ratification of the United States Constitution, a state inherently has the power to do anything not prohibited by the federal Constitution or its own constitution. *Murphy*, 584 U.S. at 471 (“The Constitution confers on Congress not plenary legislative power but only certain enumerated powers. Therefore, all other legislative power is reserved for the States, as the Tenth Amendment confirms.”); *Andrews*, 50 Tenn. at 175 (citations omitted) (“First, it may be assumed as almost an axiom in our law, with reference to the Legislatures, or law-making body of the States, that there is no limitation upon their powers, except such as are found either in the Constitution of [t]he United States, or of the

State itself. Plenary power in the Legislature, for all purposes of civil government, is the rule. A prohibition to exercise a particular power, is an exception.”). The statutory canon of construction *expressio unius* for that reason simply doesn’t work in the context of a state constitution. See *Gangemi*, 134 A.2d at 11; *Lyons*, 192 N.E.3d at 1092–93. Nor is Plaintiffs’ asserted authority to the contrary persuasive because neither case supports Plaintiffs’ proposition. The *City of Maryville* Court simply discussed the trial court applying the canon to *statutory* text, not *constitutional* text. 574 S.W.3d at 854 (emphasis in original) (“Applying the maxim *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of all things not expressly mentioned) to interpret the distribution statute, the trial court determined that municipalities that *do* operate their own school system are *not* required to remit any tax proceeds to the county school fund; rather, they are directed to keep the education portion of the LBD tax proceeds for their own school system.”). The same is true of the *Southern* Court. See 195 S.W.2d at 866–67 (“Now since the statute mentions only one subject, i.e., the division of elementary school funds, we are justified in concluding, inferentially, at least, that high school funds were excluded by this legislative direction. Normally it is a rule of construction, well recognized by the courts, that the mention of one subject in an act means the exclusion of other subjects. This implied prohibition is made stronger in the instant case by the statute 2348(6) which makes it the duty of the county trustee ‘To hold all high school funds in separate account to be disbursed on warrants of the county board of education for county high school purposes.’”).

Nevertheless, *Holmes*, 919 So. 2d 392, deserves careful consideration because Plaintiffs are correct that its reasoning tracks their own. The Court finds, however, that the *Holmes* decision is materially distinguishable on textual grounds independent of *expressio unius*. First, it did not rest on “a system of free public schools” standing alone; the Florida Supreme Court read that

phrase together with a companion provision, Article IX, Section 6, which separately restricts a specific school-trust fund to appropriation “only to the support and maintenance of free public schools.” *Holmes*, 919 So. 2d at 410–11 (reading the two provisions *in pari materia*). This is an express exclusivity term with no counterpart anywhere in Tennessee’s Education Clause, the closest analogue having been removed from the previous version of the Clause. The Florida court also treated its clause’s separate “uniform” requirement as doing independent work: because a voucher program funds private schools that are “not ‘uniform’ when compared with each other or the public system,” the program violated “the constitutional mandate for a uniform system of free public schools” apart from any exclusivity holding. *Id.* at 398. Tennessee’s second sentence contains neither a textual sibling comparable to section 6 nor a “uniform” requirement of its own.

Moreover, *Holmes*’ exclusivity holding rested on the proposition that where a constitution prescribes the manner of doing a thing, the manner prescribed is exclusive. *Holmes*, 919 So. 2d at 407–08. This is the contested *expressio unius* canon. That reasoning applies only where the relevant textual enumeration was plausibly meant to be exhaustive—which is not the context of a state constitution as discussed above. Thus, as a general matter, the canon is a poor fit for a provision that imposes an affirmative duty rather than an enumerated grant of power, since affirmative duties are not naturally read as implicit ceilings on *state* legislative authority.

For these reasons, the Court concludes that the text of the Education Clause cannot support a claim premised upon the reading that it prohibits the funding of non-public education. Accordingly, Defendants’ Motions are **GRANTED** with respect to Plaintiffs’ First Cause of Action, and that claim is **DISMISSED**.

3. Adequacy Claim

Plaintiffs' Second Cause of Action alleges a violation of the requirement of an adequate public education for every child under the Education Clause of the Tennessee Constitution. Plaintiffs' assert, relying upon *Small Schools I*, 851 S.W.2d at 150–51, that the Education Clause requires the State to “maintain and support a system of free public schools” that provides every child with an adequate education. An adequate education, the *Small Schools I* Court explained, is an education that provides “the opportunity to acquire general knowledge, develop the powers of reasoning and judgment, and generally prepare students intellectually for a mature life.” *Id.* Anything less than this, Plaintiffs continue, violates the Education Clause. Plaintiffs allege the ESF Act violates this constitutional guarantee by diverting hundreds of millions of dollars in state funding away from public schools and by reducing the amount of public funding available for public schools. The effect of this diversion is to exacerbate an already deficient educational system that is lacking in the educational staff, services, and critical programs necessary to enable all of Tennessee's children to learn successfully.

State Defendants make two preliminary arguments that the Court must address at the outset. They first argue that the Education Clause merely mandates that the General Assembly keep a free public school system in existence and does not address any requisite level of funding. *See Lawrence Cnty. Educ. Ass'n*, 244 S.W.3d at 310 n.5 (recognizing the “constitutional duty of the General Assembly to provide a free public school system”). State Defendants assert the Clause must be read in harmony with Article II, Section 3 (legislative power), Article II, Section 2 (separation of powers), and Article II, Section 24 (exclusive taxing and appropriations power). *See Vollmer v. City of Memphis*, 792 S.W.2d 446, 448 (Tenn. 1990) (Legislative “requirements” in one clause “must be defined” by reference to “[l]egislative powers enumerated” in another clause.).

State Defendants further argue that the 1835 and 1870 Constitutions imposed no funding level, and the 1977 delegates pursued continuity, not innovation. In doing so, they also argue—as they must in order to sustain this argument—that the *Small Schools I* decision was wrong to conclude the Education Clause includes an adequacy component and did so in error. Second, State Defendants argue that the adequacy claim presents a non-justiciable political question. See *Bredesen v. Tenn. Judicial Selection Comm’n*, 214 S.W.3d 419, 435 (Tenn. 2007) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

The Court can only assume that State Defendants are preparing such arguments for the Tennessee Supreme Court because this Court is powerless to conclude the *Small Schools I* Court was in error with respect to either. See Garner, *The Law of Judicial Precedent* 27, 33 (“The decisions of a state’s high court furnish binding precedents to guide all the courts over which it exercises appellate jurisdiction. The judges of all the inferior courts are bound to accept and follow those precedents completely, without regard to their own previous decisions or their independent views of the law.”).

The defendants contend that the 1978 amendment to the Education Clause “provides no standard against which the quality of education . . . may be judged” and, therefore, there is no standard whereby the courts can measure the adequacy of funding or the educational program itself. . . .

The defendants’ argument overlooks the plain meaning of Article XI, Section 12. . . . Contrary to the defendants’ assertion, *this is an enforceable* standard for assessing the educational opportunities provided in the several districts throughout the state.

Small Schools I, 851 S.W.2d at 150 (emphasis added). The Supreme Court was clear that the Education Clause contains a quality component and that such component is judicially enforceable. This Court must apply that decision, and in doing so, it must reject State Defendants’ arguments.

Intervenor-Defendants next argue that, while *Small Schools I* recognizes an adequacy claim, such a claim is necessarily limited to the funding and management of the public school

system, which is not what the ESF Act does. In other words, Plaintiffs have challenged the wrong statute for an adequacy claim. Intervenor-Defendants assert that under Plaintiffs' theory, any plaintiff could simply challenge any state program under the Education Clause if it expends funds that could otherwise improve the allegedly inadequate public-school system.

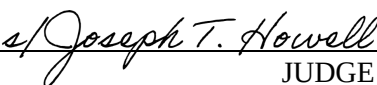
The Court finds this argument persuasive. A constitutional challenge premised upon the inadequacy of the public-school system inherently must challenge a statute like TISA that actually funds said public-school system. As Plaintiffs allege here, the public-school system's inadequacy predates the ESF Act. And the inadequacy predates the ESF Act because the laws that actually "provide for the maintenance, support and eligibility standards of a system of free public schools" do so, according to Plaintiffs, inadequately. The ESF Act and Program do not fund the allegedly inadequate public-school system, and Plaintiffs make no allegation that they do. It follows therefrom that Plaintiffs cannot state a claim against State Defendants for their enforcement of the ESF Act and Program as violative of any adequacy requirement of the Education Clause.

As such, Defendants' Motions are **GRANTED** with respect to Plaintiffs' Second Cause of Act, and that claim is **DISMISSED**.

V. Conclusion

For the foregoing reasons, Defendants' Rule 12 Motions are both **GRANTED**. This case is **DISMISSED** in its entirety.

It is so ORDERED.


JUDGE JOSEPH T. HOWELL


CHANCELLOR JOHN C. RAMBO

PARTIAL DISSENT FROM THE COURT’S ORDER

I join the majority of the Panel except for its conclusions under Parts IV.B.2 (Taxpayer Standing) and IV.C.3 (Plaintiffs’ Adequacy Claim) as well as the dispositions that follow from those conclusions, from which I respectfully dissent. Contrary to how it may seem, the gulf between my colleagues and myself is not wide. I agree with the majority that Parent Plaintiffs clearly have constitutional standing to bring their claims. We also agree that the original public meaning of the Education Clause does not support Plaintiffs’ single-system claim. Further, we agree that an adequacy claim is a viable Education Clause claim pursuant to the *Small Schools* trilogy and not a non-justiciable political question. In fact, there is no disagreement between us on any matter reached as to what the Tennessee Constitution means or requires. Our disagreements come down to one’s understanding of how binding precedent is abrogated and how forcefully one applies the light burden of Rule 12. That is the entirety of the disagreement amongst the three judges that serve on this Panel. Yet, however minor those disagreements are in the broader scheme of our constitutional order, they here result in the dismissal of this case, and I cannot agree that this case should be dismissed in its entirety. For that reason, I feel compelled to articulate the bases of my disagreement with my colleagues.

I. Taxpayer Standing

“The mere status of a taxpayer or voter is not sufficient to bring an action in and of itself.” *Parks v. Alexander*, 608 S.W.2d 881, 885 (Tenn. 1980). “There are, however, essentially two routes for taxpayers seeking to establish standing in Tennessee. One route hews more closely to the conventional standing analysis delineated above in addressing the [plaintiffs’] standing. When traversing this route to establish standing, a taxpayer must assert a ‘special interest or a special

injury not common to the public generally.” *Rutan-Ram v. Tenn. Dep’t of Children’s Servs.*, 698 S.W.3d 540, 562 (Tenn. Ct. App. 2023) (quoting *Fannon v. City of LaFollette*, 329 S.W.3d 418, 427 (Tenn. 2010)); see *Patten v. City of Chattanooga*, 65 S.W. 414, 420 (Tenn. 1901). “The second route, which has been long recognized by Tennessee courts, significantly departs from conventional federal taxpayer standing, providing an ‘exception’ to the rule that a special interest or injury is necessary to establish standing.” *Rutan-Ram*, 698 S.W.3d at 562 (collecting cases) (emphasis added). “When traversing this second route, Tennessee courts ‘typically confer standing when a taxpayer (1) alleges a “specific illegality in the expenditure of public funds” and (2) has made a prior demand on the governmental entity asking it to correct the alleged illegality.’” *Id.* at 562–63 (emphasis added). This is known as the *Cobb* test for taxpayer standing. See *Cobb v. Shelby Cnty. Bd. of Comm’rs*, 771 S.W.2d 124, 126 (Tenn. 1989) (“[T]he elements of taxpayer standing in a case of this nature[are] 1) taxpayer status, 2) specific illegality in the expenditure of public funds, and 3) prior demand.”).

State Defendants argue, however, that the Tennessee Supreme Court’s decisions in *Wygant v. Lee*, --- S.W.3d ----, No. M2023-01686-SC-R3-CV, 2025 WL 3537313 (Tenn. Dec. 10, 2025), and *Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274 (Tenn. 2024), are intervening authority since the Court of Appeals articulated this doctrine in *Rutan-Ram*, and these intervening authorities abrogate this second route of taxpayer standing entirely. In the alternative, State Defendants argue that Plaintiffs have not satisfied the *Cobb* test because the unconstitutionality of a statute that appropriates money for a program is not a “specific illegality” in the sense required by the *Cobb* test. State Defendants’ alternative argument was shut down by the *Rutan-Ram* court. See 698 S.W.3d at 566–67. The majority does not conclude that Plaintiffs have failed to establish any element of the *Cobb* test—nor could they. All three are sufficiently alleged in the Amended

Complaint. I likewise would conclude that Plaintiffs have satisfied the *Cobb* test for taxpayer standing.

This leaves only State Defendants’ primary argument, that *Wygant* and *Wilmington Trust* have abrogated Tennessee’s taxpayer standing *through silence*. State Defendants are asking this Court to take an inferential step that the Tennessee Supreme Court has already declined to take *twice*. In *Wilmington Trust*, the Court expressly disclaimed application to taxpayer standing. 703 S.W.3d at 290 n.14 (“This is not a taxpayer standing case. Therefore, our analysis does not address taxpayer standing issues.”). In *Wygant*, the Court fails to mention it at all. See generally 2025 WL 3537313. The Tennessee Supreme Court knows full well how to abrogate a longstanding doctrine of law, and when it takes that step it does not do so through hints and riddles that lower courts must guess at. The misguided step the majority takes today in deciding that the Tennessee Supreme Court has abrogated taxpayer standing *on behalf of the Tennessee Supreme Court* is at best presumptuous and at worst erroneous.

Accordingly, I would conclude Plaintiffs have demonstrated taxpayer standing and deny State Defendants’ Motion with respect to that doctrine.

II. Parent Plaintiffs’ Adequacy Claim

With respect to Plaintiffs’ adequacy claim, I agree with the majority wholeheartedly as to their reading of *Small Schools I* and its continued application, both of which render Defendants’ arguments that the *Small Schools I* Court was in error and that the claim presents a non-justiciable political questions non-starters before this Court. I strongly disagree, however, that Plaintiffs’ allegations are deficient in alleging an adequacy claim against the ESF Act. Crucially, Plaintiffs’ allegations link the alleged, ongoing deficiencies in Tennessee’s public-school system to the ESF Program:

By diverting hundreds of millions of dollars in state funding away from public schools, and by reducing the amount of public funding available for public schools, the [ESF Act] deprives students of the teachers, support staff, services, and learning environments necessary to ensure the adequate educational opportunities guaranteed by the Tennessee Constitution.

Am. Compl., ¶ 142.

The [Act]’s limited “hold harmless” provision does not remedy these losses. It merely preserves prior-year funding levels for a small number of districts and fails to account for rising costs or the cumulative impact of annual voucher expansion.

Am. Compl., ¶ 143.

[T]he [ESF Act] incentivizes funding loss for districts as well as reduces funding available for public schools, resulting in the deprivation of resources necessary to provide a constitutionally adequate education

Am. Compl., ¶ 144.

These alone ought to be sufficient because they are more than mere legal conclusions about the Act that the Court could disregard. They are concrete, factual allegations about what the ESF Act actually does. And Plaintiffs elaborate in great detail. From Paragraph 81 through Paragraph 109, Plaintiffs set out substantial facts of the alleged inadequacies of multiple school districts throughout Tennessee. *See* Am. Compl. ¶¶ 81–109. Plaintiffs also set forth in specific allegations how the ESF Act exacerbates these inadequacies:

110. Every Tennessee school district is subject to loss of state funding as a result of the [ESF Act]. In the 2025-2026 school year, students in 86 of Tennessee’s 95 counties received a voucher.

111. For the upcoming 2026-2027 school year, all 35,000 available vouchers have been awarded for students in 93 of Tennessee’s 95 counties.

112. The [ESF Act] encourages students to leave the public school system. Because TISA funding for public schools relies, in large part, on total enrollment, each student who exits a public school to use a voucher reduces the district’s funding allocation. T.C.A. § 49-3-105.

113. Each public-school student who uses a universal voucher reduces the district’s funding by at least the TISA base amount, plus any additional weighted funding associated with that student.

114. Moreover, the [ESF Act] deprives public school districts of funding by reducing the overall level of public funding available to invest in public schools. Evidence shows that states with less money in the public fisc invest less in public schools.

115. Furthermore, for Hamilton County Schools, Metro Nashville Public Schools and Shelby County Schools, the harm of the [ESF Act] compounds the deprivation of state funds caused by the State's enactment of the [ESA Act], T.C.A. § 49-6-2601, *et seq.* Under the [ESA Act], the State has already deprived these three districts of tens of millions of dollars in state education funding that was intended to meet the State's obligation to provide an adequate education to students in those public school districts.

116. Similarly, Tennessee elected to participate in the federal tax credit voucher program, which takes effect in 2027, and allows scholarship granting organizations to hand out private school vouchers. 2026 Tenn. Pub. Acts, ch. 720 (S.B. 2206) (to be codified at T.C.A. §§ 49-1-1301-1305); 26 U.S.C. § 25F. The state's forthcoming participation in the federal voucher program will further incentivize students to leave the public school system, resulting in loss of district funding for each student who disenrolls.

117. In the 2025-2026 school year, the maximum number of 20,000 vouchers were distributed pursuant to the [ESF Act], costing the State at least \$145.9 million.

118. TDOE is now required to make up to 35,000 universal vouchers available for the 2026-2027 school year. 2026 Tenn. Pub. Acts, ch. 963, § 2 (H.B. 2532) (to be codified at T.C.A. § 49-6-3504(f)). The Tennessee General Assembly Fiscal Review Committee estimates that distributing 15,000 more vouchers will cost the state an additional \$112,950,000 (for a total of \$263,550,000) in fiscal year 2026-2027.

119. The [ESF Act] mandates that, subject to appropriation, every eligible applicant must be provided with a voucher equal to the TISA base funding amount. T.C.A. § 49-6-3505; T.C.A. § 49-3-104(2). The fiscal impact of the [ESF Act] will grow each year as both the TISA base funding amount and the voucher program's enrollment cap increase. The Tennessee General Assembly Fiscal Review Committee initially estimated that the law would cost the State \$188.1 million in the 2026–2027 school year and approximately \$1 billion during its first five years of operation. This estimation did not take into account the rapid expansion of the universal voucher program under the 2026 amendments, which will lead to far greater annual expenditures. By 2039, the program could fund as many as 100,000 vouchers annually. *See* T.C.A. § 49-6-3504(b)(1).

120. Meanwhile, school districts must pay fixed costs to operate their schools, regardless of enrollment decline due to the [ESF Act]. These fixed costs include facilities repair and maintenance, teacher and staff pensions, debt service, long-term contracts, and school libraries. Districts cannot reduce these fixed costs proportionate to the enrollment loss.

121. Moreover, even variable costs – such as staffing, programs, and services – cannot be reduced in full proportion to the number of students who exit. A loss of students across multiple classrooms or schools does not allow a district to

eliminate teaching positions or programs, yet it still results in reduced state funding. Consequently, districts cannot offset the financial losses caused by the [ESF Act] through operational reductions.

122. Because participation in the [ESF Program] is more concentrated in some districts, these districts are more likely to suffer substantial harm to budgets and resources.

123. The strains on district budgets from the [ESF Act] are compounded when students participate in the voucher program and then return to a public school. Under the law, those voucher funds are not restored to the district, but instead revert to the State Treasury for reallocation to a new voucher applicant. T.C.A. § 49-6-3506; T.C.A. § 49-6-3504(b). Return of voucher students to public schools is not uncommon.

124. Additionally, because the [ESF Act] permits private schools to deny enrollment or services to students with higher needs, including students with disabilities, it will likely increase the concentration of higher need, more costly-to-educate students in public schools, which are already left with less money available for these students' support and growth.

125. Nothing in the law prevents families from receiving vouchers to subsidize an educational choice they were already able to afford. The State will continue to divert public dollars to the voucher program that could otherwise work to fulfill its constitutional public education duty – all the while using these public funds to subsidize private education for families who already could afford and already did cover the cost of private school tuition. The reduction in funds available to districts further impedes their ability to provide essential educational resources to ensure that students receive a constitutionally adequate education.

Am. Compl., ¶¶ 109–25 (footnotes omitted); *see also id.*, ¶¶ 126–29 (“The [ESF Act]’s so-called ‘hold harmless’ provision, even where it applies, does not meaningfully compensate for the loss of funds from public schools. For example, only districts that experience sufficient disenrollment to reduce their total allocation below the statute’s threshold amount qualify for hold-harmless funds. As a result, only a small fraction of school districts will receive any relief through the hold harmless provision. The Tennessee General Assembly Fiscal Review Committee estimated that in 2025-2026 only 12 of Tennessee’s 147 districts would meet the criteria to receive hold harmless funds, with an estimated \$3,328,662 in ‘hold harmless’ allocations. In 2026-2027, prior to the 2026 amendments to the [ESF Act], it was projected that only 15 of Tennessee’s 147 school districts will qualify for hold harmless funds, with an estimated \$5,323,643 in ‘hold harmless’

allocations. The 2026 amendments to the hold harmless provision will likely result in even fewer districts receiving relief. For example, conditioning hold harmless funding on the collection of students' social security numbers creates a barrier for districts to receive the funding. Such a policy is a costly administrative burden. Moreover, families may not have or want to disclose this sensitive information. A district policy mandating disclosure of students' social security numbers may also trigger further disenrollment in the district and increased absenteeism.”).

“In considering a motion to dismiss, courts ‘must construe the complaint liberally, presuming all factual allegations to be true and giving the plaintiff the benefit of all reasonable inferences.’” *Webb v. Nashville Area Habitat for Humanity, Inc.*, 346 S.W.3d 422, 426 (Tenn. 2011) (quoting *Tigg v. Pirelli Tire Corp.*, 232 S.W.3d 28, 31–32 (Tenn. 2007)). “Tennessee follows a liberal notice pleading standard, which recognizes that the primary purpose of pleadings is to provide notice of the issues presented to the opposing party and court.” *Id.* at 426 (citing *Leach v. Taylor*, 124 S.W.3d 87, 92–93 (Tenn. 2004); *Abshire v. Methodist Healthcare–Memphis Hosps.*, 325 S.W.3d 98, 103 (Tenn. 2010)). In *Webb*, the Tennessee Supreme Court addressed directly the then-new stricter, federal pleading standard: “We decline to adopt the new plausibility standard and adhere, for the following reasons, to the notice pleading standard and the principles . . . that have long governed Tennessee pleading practice.” *Id.* at 430.

Thus, Rule 12, quite deliberately, does not place a heavy burden on a plaintiff. If a court concludes that a plaintiff has constitutional standing, as this Court has, that an adequacy claim is viable under the Education Clause, as this Court has, and that a plaintiff has alleged substantial, concrete facts connecting a particular statute to the alleged inadequacy in the public-school system, as these Plaintiffs have, I cannot see how anything logically follows from those premises other than the conclusion that Plaintiffs have met their notice-pleading burden. In fact, I cannot see how

the allegations before us would even fail to satisfy the stricter federal standard because Plaintiffs' adequacy claim is plausible since it is supported by concrete, specific factual allegations related to the inadequacy of the public schools, the further diversion of public-school funds by the ESF Act, and the exacerbation of the public schools' inadequacy. I am not sure what more Plaintiffs could have done in this instance beyond the presentation of proof of their allegations, which they are by no means required to do at this stage.

Accordingly, I would conclude Plaintiffs have stated their adequacy claim and deny Defendants' Motions with respect to that claim.

III. Conclusion

For these reasons, I would hold that Plaintiffs have demonstrated taxpayer standing and sufficiently alleged their adequacy claim. While I otherwise join the majority's order, on these issues and the resulting granting of Defendants' Motions and dismissal of Plaintiffs' Amended Complaint, I must respectfully dissent.

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

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RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

s/Megan Carter
Deputy Clerk & Master

October 19, 2026
Date