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I. NATURE OF THE ACTION

1. This complaint contends that the Tennessee Education Savings Account Pilot Program (“Voucher Law”), T.C.A. §49-6-2601, *et seq.*, violates the Tennessee Constitution and state law by diverting taxpayer funds appropriated for public schools in Shelby and Davidson Counties to private schools.

2. The Voucher Law applies only to Shelby and Davidson Counties and cannot apply to any other county without legislative amendment. The Law does not, by its terms, require local approval, nor was it approved by local vote in either county. Thus, the Voucher Law directly violates the “Home Rule” provision of the Tennessee Constitution, which explicitly prohibits the imposition of laws with local effect that do not require local approval.

3. The Voucher Law was passed during the 2019 legislative session, but it did not receive an appropriation for its estimated first year funding during the 2019 legislative session. This directly violates the “Appropriation of Public Moneys” provision of the Tennessee Constitution.

4. The Voucher Law also diverts critically needed public education funding from public schools in Shelby and Davidson Counties. This diversion violates the Education and Equal Protection Clauses of the Tennessee Constitution, which guarantee all public school students an adequate and substantially equal educational opportunity.

5. Diverting public education funding from public schools to private schools also violates the Basic Education Program (“BEP”), which is the State’s school funding statute. The BEP is the mechanism used to allocate taxpayer dollars appropriated by the General Assembly to maintain and support public schools across the State, including those in Shelby

grade. Ms. McEwen's child is eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. McEwen pays state and local taxes in Davidson County, including car registration and renewal taxes.

11. Plaintiffs David P. Bichell and Terry Jo Bichell are residents of Davidson County, Tennessee. They are parents with one child currently enrolled in Metro Nashville Public Schools, an eleventh grader classified as a student with disabilities who receives special education and related services. The Drs. Bichell own property in Nashville and pay state and local taxes, including property taxes.

12. Plaintiff Lisa Mingrone is a resident of Davidson County, Tennessee. She is a parent with one minor child in fourth grade in Metro Nashville Public Schools. Ms. Mingrone owns property in Nashville and pays state and local taxes in Davidson County, including property taxes.

13. Plaintiff Claudia Russell is a resident of Davidson County, Tennessee. She is a retired public school administrator at 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 in Metro Nashville Public Schools. She began her career as a teacher and then she became an assistant principal, then a principal. She has worked in various schools in the district. Dr. Russell owns property in Nashville and pays state and local taxes in Davidson County, including property taxes.

14. Plaintiff Inez Williams is a resident of Davidson County, Tennessee. She has legal guardianship over one minor child who attends school in Metro Nashville Public Schools. The minor child is in eighth grade and is eligible for the ESA voucher program

based on their household income and the other eligibility criteria. Ms. Williams pays state and local taxes in Davidson County, including car registration and renewal taxes.

15. Plaintiff Sheron Davenport is a resident of Shelby County, Tennessee. She is a parent with two minor children currently enrolled in Shelby County Schools. Her children are in sixth and first grade at various schools in the district. Dr. Davenport owns property in Memphis and pays state and local taxes in Shelby County, including property taxes.

16. Plaintiff Heather Kenny is a resident of Shelby County, Tennessee. She is a parent with two minor children currently enrolled in Shelby County Schools. Her children are in kindergarten and second grade at various schools in the district. Ms. Kenny owns property in Memphis and pays state and local taxes in Shelby County, including property taxes.

17. Plaintiff Elise McIntosh is a resident of Shelby County, Tennessee. She is a parent with two minor children currently enrolled in Shelby County Schools. Her children are in eleventh and fourth grades at various schools in the district. Both of her children are classified as students with disabilities who receive special education or other services or accommodations in school. One of her children also identifies as LGBTQ. Ms. McIntosh's children are eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. McIntosh pays state and local taxes in Shelby County, including car registration and renewal taxes.

18. Plaintiff Tracy O'Connor is a resident of Shelby County, Tennessee. She is a parent with four minor children in Shelby County Schools. Her children are in twelfth,

ninth, eighth, and sixth grade at various schools in the district. Ms. O'Connor owns property in Memphis and pays state and local taxes in Shelby County, including property taxes.

19. Plaintiff Apryle Young is a resident of Shelby County, Tennessee. She is a parent with five children currently enrolled in Shelby County Schools. Her children are in twelfth, eleventh, tenth, ninth, and eighth grades at various schools in the district. Ms. Young's children are eligible for the ESA voucher program based on their household income and the other eligibility criteria. Ms. Young pays state and local taxes in Shelby County, including car registration and renewal taxes.

20.

and policies, organization and structure of public schools, licensure of teachers, and distribution of public funds among public schools. T.C.A. §49-1-302. The Voucher Law authorizes the State Board of Education to promulgate rules to effectuate the purposes of the Law. T.C.A. §49-6-2610. In November 2019, the State Board approved rules to effectuate the Voucher Law. Tenn. Comp. R. & Regs. 0520-01-16. These Defendants are 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. 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.

22.

T.C.A. §49-6-2604. Defendant Schwinn is being sued in her official capacity and has an office at 710 James Robertson Parkway, Nashville, Tennessee 37243. Service on Commissioner Schwinn may be perfected by delivering a copy of the summons and complaint to the Attorney General or at her State office.

IV. RELEVANT LAW

A.

24. The “Home Rule” provision of the Tennessee Constitution mandates that the General Assembly is prohibited from enacting laws that are “local in form or effect” without requiring local approval.

25. Article XI, §9, provides in relevant part that:

any act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

B.

Provision

26. The “Appropriation of Public Moneys” provision of the Tennessee Constitution requires the General Assembly to appropriate the estimated first year’s funding for every law passed during a legislative session.

27. Article II, §24, of the Tennessee Constitution provides in relevant part that:

Any law requiring the expenditure of state funds shall be null and void unless,

29. Additionally, under Tennessee law, “[n]o money shall be drawn from the state treasury except in accordance with appropriations duly authorized by law.” T.C.A. §9-4-601(a)(1).

C.
Guarantees

30. The Tennessee Constitution guarantees all children residing in the State the opportunity to obtain an education in Tennessee’s “system of free public schools.”

31. Article XI, §12, of the Tennessee Constitution, the Education Clause, provides in relevant part:

The state of Tennessee recognizes the inherent value of education and

“obligation to maintain and support a system of free public schools that affords substantially equal educational opportunities to all students” throughout the State. *Tenn. Small Sch. Sys. v. McWherter (Small School Systems I)*, 851 S.W.2d 139, 140-41 (Tenn. 1993).

34.

43. Upon information and belief, in spring of each year, the State calculates the state and local shares of Davidson County's BEP allocation to maintain and support Metro Nashville Public Schools. Further upon information and belief, the State pays its share of the BEP to Davidson County in October and February of each year. Upon information and belief, Davidson County collects local property taxes from October through February every year, and the County pays the largest portion of its local taxes to maintain and support Metro Nashville Public Schools. Upon information and belief, Davidson County pays the local share of its BEP allocation to maintain and support Metro Nashville Public Schools in March of each year.

44. Upon information and belief, in spring of each year, the State calculates the state and local shares of Shelby County's BEP allocation. Further upon information and belief, pursuant to the BEP, the State calculates Shelby County's local BEP share based on

45. As the Tennessee Supreme Court observed, the BEP contains essential governance and accountability provisions for LEAs, including:

mandatory performance standards; local management within established principles; performance audits that objectively measure results; public disclosure by each local system of objectives, strategies, and results; removal from office of local officials unwilling or unable to effectively manage a local system; and final responsibility upon the State officials for an effective educational system throughout the State.

Small School Systems II, 894 S.W.2d at 739. The Supreme Court emphasized that each of these governance and accountability provisions is integral to the BEP. *Id.*

46. In order to receive BEP funds, LEAs must “meet the requirements of state law as to the operation of the system and of the rules, regulations, and minimum standards of the state board for the operation of schools.” T.C.A. §49-3-353.

V. FACTUAL ALLEGATIONS

A. Enactment of the Voucher Law

47. During the 2019 session, the Tennessee Legislature enacted the Voucher Law, T.C.A. §49-6-2601, *et seq.* On May 24, 2019, Governor Lee signed the bill into law.

48. As discussed below, the Voucher Law establishes a voucher program exclusively in Davidson and Shelby Counties.

49. The Voucher Law diverts taxpayer funds that were appropriated to maintain and support public schools in Shelby County Schools and Metro Nashville Public Schools to private schools and other private education expenses. BEP funds otherwise payable to Shelby County Schools and Metro Nashville Public Schools will now be deposited into an “Education Savings Account” (“ESA”) for each participating voucher student.

50. The General Assembly did not make an appropriation for the estimated first year's funding of the Voucher Law during the session in which it was enacted.

51. Despite the absence of an appropriation for the estimated funding of the Voucher Law in fiscal year 2019, Defendant Department of Education entered into a \$2.5 million contract in November 2019 with ClassWallet, a private, for-profit company based in Florida. Under this contract, ClassWallet will oversee online application and payment systems for the voucher program. ClassWallet began work under this contract in November 2019.

52. Defendant Department of Education paid ClassWallet approximately \$1.2 million in 2019 for performance under this contract, despite the fact that no money was appropriated for the first year of the Voucher Law. According to testimony by the Department of Education's deputy commissioner before the General Assembly's Joint Government Operations Committee on January 27, 2020, the Department of Education diverted funds appropriated by the General Assembly for the unrelated "Career Ladder" program for public school teachers to pay ClassWallet for services performed to implement the Voucher Law.

B. The Voucher Law Targets Shelby and Davidson Counties

53. The Voucher Law applies to public schools and students in only two Tennessee counties: Shelby and Davidson.

54. The eligibility criteria for participation in the ESA voucher requires that a student:

- (i) Is zoned to attend a school in an LEA, excluding the achievement school district (ASD), with ten (10) or more schools:

- (a) Identified as priority schools in 2015, as defined by the state’s accountability system pursuant to §49-1-602;
 - (b) Among the bottom ten percent (10%) of schools, as identified by the department in 2017 in accordance with §49-1-602(b)(3); and
 - (c) Identified as priority schools in 2018, as defined by the state’s accountability system pursuant to §49-1-602; or
- (ii) Is zoned to attend a school that is in the ASD on May 24, 2019.

T.C.A. §49-6-2602(3)(C).

55. In the entire State of Tennessee, the only LEAs that meet the specific criteria in subsection (i) above are Shelby County Schools and Metro Nashville Public Schools.

56. As of the date specified in subsection (ii) – May 24, 2019 – all of the public schools in the ASD were located in Shelby and Davidson Counties.

57. Because the Voucher Law links its eligibility criteria to facts that existed between 2015 and 2019, it is impossible, without a legislative amendment passed by the General Assembly, for any public school that is not located in Shelby or Davidson Counties to be subject to the Voucher Law.

58. The history of the Voucher Law makes clear that the General Assembly intended the Law to apply only to Shelby and Davidson Counties. When the bill was first introduced, it applied to five counties – Shelby, Davidson, Hamilton, Madison, and Knox – but three were removed to secure the votes needed for passage by the General Assembly.

59. There are numerous references in the legislative record demonstrating the General Assembly’s intent to limit the Voucher Law to Shelby County Schools and Metro Nashville Public Schools. For example, on April 25, 2019, Senator Joey Hensley explicitly

stated during debate on the Senate Floor that the Voucher Law would cover only Davidson and Shelby County schools.

60. When the votes on the Voucher Law were cast and there was a 49-49 tie, then-Speaker Glen Casada held the vote open for over 38 minutes. During that time, he engaged in a lengthy discussion with Knoxville Representative Jason Zachary, who opposed the bill, on a balcony behind the House building. After that discussion, Knox County was no longer subject to the Voucher Law, Representative Zachary switched his vote, and the bill passed.

61. On November 15, 2019, the State Board adopted administrative rules to implement the Voucher Law. Those rules were approved by the Joint Government Operations Committee on January 27, 2020. The rules confirm that a student is eligible for a voucher only if the student “[i]s zoned to attend a school in Shelby County Schools, Metropolitan Nashville Public Schools, or is zoned to attend a school that was in the Achievement School District on May 24, 2019.” Tenn. Comp. R. & Regs. §§0520-01-16.02(11)(b).

62. Because the Voucher Law requires that the funds deposited into ESAs “be subtracted from the State BEP funds otherwise payable to the LEA,” T.C.A. §49-6-2605(b)(1), the only public schools that will lose BEP funds under the Voucher Law are those in Shelby and Davidson Counties.

63. The Voucher Law further guarantees that only public schools located in Shelby and Davidson Counties will have BEP funds diverted to ESAs by providing that,

Nashville Public Schools will be diverted to the voucher program prior to the first payment of the State's share to each county.

67. Currently, the statewide average of the State and local BEP allocation is over \$7,500 per pupil. Therefore, Shelby County Schools and Metro Nashville Public Schools will lose more than \$7,500 for every student participating in the voucher program.

68. The Voucher Law allows up to 5,000 vouchers during the first school year that the program is implemented. T.C.A. §49-6-2604(a)(6). In each subsequent school year, the law allows an increase of 2,500 vouchers. *Id.* In the fifth year and thereafter, the law allows up to 15,000 vouchers. *Id.*

69. In year one, up to \$37 million in BEP funds will be diverted from Shelby County Schools and Metro Nashville Public Schools if 5,000 students use a voucher. By year five, ***over \$375 million***

Your State?, Education Law Center (2019), <https://edlawcenter.org/assets/Making-the-Grade/Making%20the%20Grade%202019.pdf>.

71. The State's own reports confirm the inadequacy of BEP funding. For example,

73. The over \$375 million that will be diverted from Shelby County Schools and Metro Nashville Public Schools under the Voucher Law will drastically exacerbate the current underfunding of Shelby County Schools and Metro Nashville Public Schools under the BEP. The Voucher Law will require Shelby County Schools and Metro Nashville Public Schools to make further reductions in teachers, support staff, technology, and other resources essential to providing a constitutionally adequate education to Shelby County Schools' and Metro Nashville Public Schools' students.

74. The Voucher Law authorizes grants for Shelby County Schools and Metro Nashville Public Schools from a "school improvement fund" for up to three years. T.C.A. §49-6-2605(b)(2). These grants are expressly subject to an appropriation of funds by the General Assembly each year. *Id.* Governor Lee's proposed budget does not include an appropriation that would cover the school improvement grants for Shelby County Schools and Metro Nashville Public Schools.

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school year in which the student began participating in the program.” T.C.A. §49-6-2605(b)(2)(A)(i). This does not include students who are “eligible for the first time to enroll in a Tennessee school” – for example, those entering kindergarten – who are also eligible for the voucher program. T.C.A. §49-6-2602(3)(A)(ii).

77. In addition to the initial loss of BEP funds by Shelby County Schools and Metro Nashville Public Schools, the Voucher Law provides that, when an ESA account is closed for any number of reasons, the remaining funds are returned to the State’s BEP account rather than returned to Shelby County Schools or Metro Nashville Public Schools. T.C.A. §§49-6-2603(e), 49-6-

80. As set forth in ¶¶93-94, *infra*, the Voucher Law permits private schools participating in the voucher program to deny enrollment to students with increased needs, including students with disabilities, who may be more expensive to educate. As a result, the Voucher Law will likely increase the concentration of more costly-to-educate students in Shelby County Schools and Metro Nashville Public Schools, with less money available for their support and growth.

district of residence, and a minimum age for students entering kindergarten. Tenn. Comp. R. & Regs. §0520-07-02-.04. The criteria used by regional accrediting agencies varies.

87. Unlike for private schools, Tennessee’s regulations governing public schools require the State Board to “adopt academic standards for each subject area, grades kindergarten (K) through twelve (12)” that “specify learning expectations and include performance indicators.” Tenn. Comp. R. & Regs. §0520-01-03-.05. The State Board has adopted detailed academic standards in a range of subjects. *See* Tennessee Department of Education, Academic Standards, <https://www.tn.gov/education/instruction/academic-standards.html>. These standards must be “the basis for planning instructional programs in

91. The Voucher Law does not prohibit participating schools from refusing admission based on disability, religion, English language ability, LGBTQ status, or family income level. The Voucher Law explicitly states that accepting ESA voucher money will

112. The private schools authorized by the Voucher Law to participate in the voucher program are not – and cannot, by the express terms of the Law – be part of the State of Tennessee’s system of free public schools.

113. Under the Voucher Law, participating private schools are not required to comply with the same academic and eligibility standards required by State law for Tennessee’s system of free public schools.

114.

VII. DECLARATORY AND INJUNCTIVE RELIEF

132. Plaintiffs incorporate all allegations in all preceding paragraphs as if fully set forth herein. Plaintiffs seek a judgment declaring that the Voucher Law violates the Tennessee Constitution's provisions on Home Rule, Education, Equal Protection, and Appropriation of Public Moneys, as well as the BEP statute and T.C.A. §9-4-601, and a permanent injunction preventing enforcement of the Voucher Law.

133. Plaintiffs have suffered and will continue to suffer irreparable harm if the Voucher Law continues to be implemented by Defendants. Diversion of public education funding to the voucher program will result in the loss of millions of dollars in BEP funds that Shelby County Schools and Metro Nashville Public Schools need to provn.-8(ools)28(need)364ielby Co

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