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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, METROPOLITAN NASHVILLE BOARD OF PUBLIC EDUCATION, and SHELBY COUNTY GOVERNMENT, Plaintiffs, v. TENNESSEE DEPARTMENT OF EDUCATION, PENNY SCHWINN, in her official capacity as Education Commissioner for the Tennessee Department of Education, and BILL LEE, in his official capacity as Governor for the State of Tennessee, Defendants.	Case No. 20-0143-I

BRIEF OF NATU BAH AND BUILGUISSA DIALLO IN SUPPORT OF MOTION TO INTERVENE AS DEFENDANTS

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INTRODUCTION

Natu Bah and Builguissa Diallo (collectively, "Applicants") are mothers of children currently enrolled in Tennessee public schools in Shelby County and who wish to participate in the Tennessee Education Savings Account Pilot Program ("ESA Program" or "Program"). The Program was enacted by the Tennessee General Assembly as part of the state's effort to further improve K-12 education and provide families with increased educational options. *See* TENN. CODE ANN. §§ 49-6-2601, *et seq.* Tennessee's ESA Program empowers parents with children trapped in public schools that fail to meet their needs by providing financial assistance to transfer their children to a better private school. TENN. CODE ANN. § 49-6-2602(4). Families can use ESA funds on educational resources, such as tuition, textbooks, technology, and tutoring. TENN. CODE ANN. § 49-6-2603(a)(4). Applicants seek party status to defend the constitutionality of the ESA Program.

Applicants are frustrated that the public schools their children attend are not meeting their children's individual needs. Without ESAs, Applicants cannot afford to take their children out of public school and enroll them instead in better-performing private schools. The ESA Program will finally allow Applicants and thousands of other Tennessee families to send their children to the school of their choice. Applicants and their children are the direct and intended beneficiaries of the ESA Program and are therefore the real parties in interest.

Applicants are entitled to intervene as of right under Rule 24.01 of the Tennessee Rules of Civil Procedure;[1] they have a significant interest in the ESA Program's operation that may be greatly impaired by the disposition of this matter, and their interest as parents and beneficiaries of the statute will not be adequately represented by the existing parties. Alternatively, this Court should grant Applicants permissive intervention in this case under Rule 24.02. Applicants seek to

[1] Unless otherwise noted, all references to rules of procedure are to the Tennessee Rules of Civil Procedure.

timely intervene to answer Plaintiffs' challenges to the constitutionality of the ESA Program, so their defense of the Program will share the same common legal questions that are currently before the parties. Furthermore, the existing parties will not be prejudiced by Applicants' intervention, nor will intervention unduly delay or prejudice the adjudication of the rights of the existing parties.

Party status is necessary to ensure that the interests as the ESA Program's intended beneficiaries are fully protected. Should the program be ruled unconstitutional here, Applicants will forever lose the opportunity to protect their interests. Particularly for this reason, Applicants respectfully request that they be granted leave to intervene as defendants in the instant case. Parents seeking to intervene as defendants in educational-choice litigation are routinely granted intervention in cases in which similar programs are challenged.

Finally, Plaintiffs' Complaint seeks various forms of relief including a temporary injunction. So that Applicants will have an opportunity to participate in the resolution of a motion seeking a temporary injunction (which they oppose), they respectfully request that this Court grant their Motion to Intervene before whatever hearing date is set on a motion seeking a temporary injunction.

STATEMENT OF FACTS

A. Tennessee Education Savings Accounts Pilot Program

Tennessee's ESA Program offers a lifeline to families that would like to leave public schools that do not meet their children's needs, but who lacked the financial resources to do so until now. The Program makes ESAs available to low-income and middle-income students who are being educated in school districts that have "consistently had the lowest performing schools on a historical basis," including the state's Achievement School District (ASD) and school

districts with ten or more schools identified as "priority schools" by Tennessee's accountability system or ranked "[a]mong the bottom ten percent (10%) of schools, as identified by the department [of education]." TENN. CODE ANN. §§ 49-6-2602(3)(C); 49-6-2611(a). Under the ESA Program, eligible students receive an ESA containing funds for a wide array of eligible educational expenses, including tuition, textbooks, and tutoring services. TENN. CODE ANN. § 49-6-2603(a)(4)(A)–(L). The Program is designed to aid up to 15,000 qualified Tennessee students per year by 2025. TENN. CODE ANN. § 49-6-2604(c)(5).

B. Natu Bah

Applicant Natu Bah is the mother of two children and lives in Memphis, Tennessee where she works as an African hairbraider. Her sons Mohammed and Mouctar attend A. Maceo Walker Middle School, a public school in Shelby County, and are enrolled in eighth and sixth grade, respectively. Based on the ESA Program's requirements, Ms. Bah's sons are eligible to participate in the ESA Program. After determining that A. Maceo Walker was not a good school for her sons, Ms. Bah researched her options for private schools, including the Christian Brothers High School in Memphis, a Catholic college-preparatory high school. At Christian Brothers, for example, Ms. Bah liked the school's approach to educating students and the school's soccer program. Neither Ms. Bah nor her sons are Catholic, but they are comfortable with the religious atmosphere at Christian Brothers.

The ESA Program would be a big help to Ms. Bah because it will help offset the full cost of tuition. If she enrolled her sons at Christian Brothers, for example, the ESA Program could offset approximately 50% of the cost of tuition. The Program makes sending her sons to private school affordable and, importantly, allows Ms. Bah to remove her sons from a public school that fails to meet their educational needs. If she is unable to obtain an ESA because of Plaintiffs'

lawsuit, Ms. Bah would either have to keep her sons in failing Shelby County public schools or endure tremendous financial hardship in order to try to enroll them in a private school.

C. Builguissa Diallo

Applicant Builguissa Diallo is an African hairbraider and the mother of Bintah, her five-year old daughter. Ms. Diallo and Bintah live in Cordova, a community near Memphis in Shelby County where her daughter attends kindergarten at Macon-Hall Elementary. Based on the ESA Program's requirements, Ms. Diallo's daughter is eligible to participate in the ESA Program. After determining that Macon-Hall Elementary was not a good school for Bintah, she researched her options for private schools, including Pleasant View School in Memphis. At Pleasant View, for example, Ms. Diallo liked the school's curriculum and its approach to educating students.

The ESA Program would be a big help to Ms. Diallo because it will help offset the full cost of tuition at a private school. The Program makes sending her daughter to private school affordable and, importantly, allows Ms. Diallo to remove her daughter from Macon-Hall Elementary because the school is failing to meet her educational needs. If she is unable to obtain an ESA because of Plaintiffs' lawsuit, Ms. Diallo would either have to leave her daughter in Macon-Hall or endure tremendous financial hardship in order to try to enroll her in a private school.

ARGUMENT

The Court should allow Applicants to intervene as a matter of right under Rule 24.01, or, alternatively, permit them to intervene under Rule 24.02 (permissive intervention). As the intended beneficiaries of school-choice programs, parents of children participating in such programs are routinely granted leave to intervene when the programs are challenged in court.

See, e.g., *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Magee v. Boyd*, 175 So. 3d 79, 138 (Ala. 2015); *Kotterman v. Killian*, 972 P.2d 606, 609 (Ariz. 1999); *Owens v. Colo. Cong. of Parents, Teachers & Students*, 92 P.3d 933, 935 (Colo. 2004); *Bush v. Holmes*, 919 So. 2d 392, 398-99 (Fla. 2006); *Meredith v. Pence*, 984 N.E.2d 1213, 1217 (Ind. 2013); *Griffith v. Bower*, 747 N.E.2d 423, 425 (Ill. App. Ct. 2001); *Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016); *Chittenden Town Sch. Dist. v. Vt. Dep't of Educ.*, 738 A.2d 539, 543 (Vt. 1999) (parents were plaintiff-intervenors); *Jackson v. Benson*, 578 N.W.2d 602, 606 (Wis. 1998). The result should be the same here.

I. Applicants, as the Intended Beneficiaries of the ESA Program, Are Entitled to Intervene as of Right in This Action.

Applicants are entitled to intervene as a matter of right. Tennessee courts grant intervention as of right when "(1) the application for the intervention [is] timely; (2) the proposed intervenor has a substantial legal interest in the subject matter of the pending litigation; (3) the proposed intervenor's ability to protect that interest is impaired; and (4) the parties to the underlying suit cannot adequately represent the intervenor's interests." *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 190–91 (Tenn. 2000); *see, e.g.*, *City of Alcoa v. Tenn. Local Gov't Planning Advisory Comm.*, 123 S.W.3d 351, 353 (Tenn. Ct. App. 2003) (applying *Brown* to reverse a denial of intervention); *Gregory v. Melhorn*, No. E2012-02417-COA-R3-CV, 2013 WL 6857945, at *7 (Tenn. Ct. App. Dec. 27, 2013) (same); *Holland v. Holland*, No. E2011-00782-COA-R3-CV, 2012 WL 1691498, at *3–5 (Tenn. Ct. App. May, 15, 2012) (same). Applicants meet all of these criteria.

A. Applicants' Motion is Timely.

First, the Applicants' motion to intervene—filed four days after Plaintiffs filed their Complaint—is timely. The timeliness for intervention "is governed by equitable principles." *Am. Materials Techs., LLC v. Chattanooga*, 42 S.W.3d 914, 916 (Tenn. Ct. App. 2000). Factors courts consider include:

> "(1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervener [sic] knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties . . .; and (5) the existence of unusual circumstances militating against or in favor of intervention."

Id. (internal citations omitted).

These factors are all satisfied in this case because Applicants' motion comes at the commencement of the litigation. *See, e.g.*, *Mills. v. Shelby Cty. Election Comm'n*, 218 S.W.3d 33, 35 (Tenn. Ct. App. 2006) (allowing intervention sought one month after suit filed); *Am. Materials Techs.*, 42 S.W.3d at 917 (stating that movants should have moved to intervene "during the parties' negotiations and before entry of the consent judgment"); *cf.*, *Hamilton Nat. Bank v. Woods*, 238 S.W.2d 109, 112 (Tenn. Ct. App. 1948) (recognizing that a motion for intervention could be appropriate "even after judgment, provided the rights of the original litigants are not injuriously affected"). Furthermore, Applicants agree to abide by any scheduling order that the Court may enter while their motion to intervene remains pending. Granting Applicants' motion to intervene will not delay the resolution of this lawsuit. As the intended beneficiaries of the ESA Program, Applicants seek a prompt resolution of this action.

B. Applicants Have a Substantial Legal Interest in This Litigation.

Applicants have a substantial interest in the ESA Program, which is the subject of Plaintiffs' lawsuit. *See* Rule 24.01(2) (requiring "an interest relating to the property or

transaction which is the subject of the action"). Both Applicants currently have children in Shelby County public schools that are failing to meet their educational needs. Applicants have an interest in ensuring that their children benefit from the ESA Program because it allows the Applicants to enroll their children in better-performing private schools that actually meet their needs. Plaintiffs have directly threatened that interest with their lawsuit.

"While the precise nature of the [substantial] interest required to intervene as of right has eluded exact definition" in Tennessee courts, it "must involve a direct claim on the subject matter of the suit such that the intervenor will either gain or lose by direct operation of the judgement." *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 192. Federal case law addressing intervention can supplement Tennessee courts in this jurisprudence. *Am. Materials Techs.*, 42 S.W.3d at 916 (adopting the Sixth Circuit standard of review for a motion to intervene as of right when Tennessee courts had not previously adopted one). Tennessee courts frequently rely on Sixth Circuit authority to inform intervenor standards since "the Tennessee Rule on intervention is substantially identical to the Federal rule." *Id*. To that end, the Sixth Circuit "has opted for a rather expansive notion of the [sufficient interest requirement]" that "is necessarily fact-specific" and does not require "a specific legal or equitable interest." *Mich. State AFL-CIO v. Miller*, 103 F.3d 1240, 1245–47 (6th Cir. 1997) (internal citations omitted) (granting a motion to intervene where the intervenor had no specific interest in the litigation, but had been a "vital participant in the political process that resulted" in the challenged policy amendments). Applicants' actual and specific legal and equitable interests easily satisfy this standard.

Indeed, case law applying FED. R. CIV. P. Rule 24(a)(2), the federal equivalent of Rule 24.01, reinforces the conclusion that Applicants have requisite interest to intervene as of right. Federal courts have repeatedly held that the intended beneficiaries of a government program

have sufficient interest to intervene when that program is challenged. *See, e.g.*, *Texas v. United States*, 805 F.3d 653, 660 (5th Cir. 2015) (allowing alien immigrant parents of minor U.S. citizens to intervene as defendants in a lawsuit challenging a deferred deportation program because they were "the intended beneficiaries of the challenged federal policy"); *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 572 (7th Cir. 2009) (allowing Wisconsin retailers to intervene in a lawsuit challenging the state's gasoline price-competition law because "[t]hey are the statute's direct beneficiaries"); *California ex rel. Lockyer v. United States*, 450 F.3d 436, 442 (9th Cir. 2006) (allowing health care providers to intervene as of right to defend conscience protection law because "Congress passed the [law] to protect health care providers like those represented by the proposed intervenors: They are the intended beneficiaries of this law") (internal quotation marks omitted).[2]

As the direct beneficiaries of Tennessee's ESA Program, Applicants possess the requisite interest to intervene as a matter of right in this case.

C. Applicants' Ability to Protect Their Interest Is Impaired Without Intervention.

Next, the disposition of this action "may as a practical matter impair or impede [Applicants'] ability to protect [their] interest." *See* Rule 24.01(2). Federal intervention standards are again informative. Under the federal rules, an intervenor must "show only that impairment of its substantial legal interest is possible if intervention is denied." *Miller*, 103 F.3d at 1247 (citation omitted). This practical impairment burden is "minimal," even allowing for the consideration of "potential stare decisis effects" and "the time-sensitive nature of a case." *Id*.

[2] *See also Cty. of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (allowing small farmers to intervene as of right to defend rulemaking under reclamation acts because small farmers were "precisely those Congress intended to protect with the reclamation acts"); *United States v. Dixwell Hous. Dev. Corp.*, 71 F.R.D. 558, 560 (D. Conn. 1976) (allowing housing project tenants to intervene as of right to defend portions of National Housing Act because "their interest as beneficiaries of two aspects of the . . . Act" was "sufficient to support intervention").

Thus, intervention is regularly allowed when prospective intervenors can show a lawsuit could harm their interests. *See, e.g.*, *Davis v. Lifetime Capital, Inc.*, 560 F. App'x 477, 496 (6th Cir. 2014) (granting a motion to intervene where the intervenor sought to recover funds allegedly seized by a court-appointed receiver in an ongoing fraud case); *Ne. Ohio Coal. for Homeless and Serv. Emps. Int'l. Union v. Blackwell*, 467 F.3d 999, 1008 (6th Cir. 2006) (granting the State of Ohio's motion to intervene in lawsuit defending the state's voter-identification laws); *Miller*, 103 F.3d at 1247 (granting Chamber of Commerce motion to intervene as defendants in a lawsuit challenging Michigan campaign finance laws because otherwise forthcoming elections might not be subject to the "legislatively approved terms" the Chamber "believe[d] to be fair and constitutional.").

Applicants can make the same showing. Their interest in participating in the ESA Program to offset the cost of their children's tuition—not merely a financial interest, as in some of the cases cited *supra*, but also an educational one—would obviously be impeded or impaired by a decision that the Program is unconstitutional. Here, the result Plaintiffs seek would directly impair Applicants' legal interests. Their opportunity to obtain ESAs would be taken away completely if the ESA Program is held unconstitutional, and they would instead be forced to keep their children in public schools that have failed to meet their children's educational needs. Moreover, Applicants' interests are unable to "be litigated in . . . other lawsuits" if intervention is denied. *Brown & Williamson Tobacco Corp.*, 18 S.W.3d at 192. They "have no alternative forum where they can mount a robust defense of the" Program. *Lockyer*, 450 F.3d at 441 (holding that "intended beneficiaries" of statute had right to intervene in challenge to federal funding statute where they had no alternative forum to defend statute). Should the ESA Program be ruled unconstitutional, Applicants and their children, "the beneficiaries under the act would have no

chance in future proceedings to have its constitutionality upheld." *Saunders v. Super. Ct. in and for Maricopa Cty.*, 510 P.2d 740, 741–42 (Ariz. 1973). "This practical disadvantage to the protection of their interest . . . warrants their intervention as of right." *Id.* at 742. Thus, this factor also favors Applicants' intervention as of right in this case.

D. Applicants' Interest Will Not Be Adequately Represented or Protected by the Parties.

Finally, Applicants' interests are not "adequately represented" by the existing parties. *See* Rule 24.01(2). When applicants for intervention have different interests in the subject matter of the litigation than existing parties, representation is inadequate.[3] This is particularly true when a government entity is involved because the government's interest in the outcome of a proceeding generally implicates broad public policy concerns; whereas the individual's interest is necessarily narrower. *See, e.g.*, *Utah Ass'n of Ctys. v. Clinton*, 255 F.3d 1246, 1255–56 (10th Cir. 2001) (granting intervention because "the government's representation of the public interest generally cannot be assumed to be identical to the individual parochial interest of a particular member of the public"). Indeed, federal courts applying Federal Rule of Civil Procedure 24(a) have repeatedly recognized that the interest of an individual participating in a government program is distinct from the broader interest of the government in running that program: Because of these distinct interests, individual participants in the program are not adequately represented by the government in lawsuits about those programs, and may therefore intervene as of right in those lawsuits. Examples abound.[4]

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[3] The U.S. Supreme Court has recognized that the applicant's burden of showing inadequate representation under Fed. R. Civ. P. 24 "should be treated as minimal." *Trbovich v. United Mine Workers of America*, 404 U.S. 528, 538 n.10 (1972). It is sufficient for the applicant to show that "representation of his interest 'may be' inadequate." *Id*.

[4] *See e.g.*, *Trbovich*, 404 U.S. at 539 (holding Secretary of Labor could not provide adequate representation and allowing intervention because union member's interest was narrower than the Secretary's broader interest in "assuring free and democratic union elections"); *Californians for Safe & Competitive Dump Truck Transp. v. Mendonca*, 152 F.3d 1184, 1190 (9th Cir. 1998) ("[B]ecause the employment interests of IBT's members [in law guaranteeing them a prevailing wage] were potentially more narrow and parochial than the interests of the public at

In this case Defendants, who are answerable to the public at large, have a broad interest in administering the ESA Program as part of Tennessee's overall approach to K-12 education. Applicants have a narrower interest in using the ESAs to provide their children with the best possible education—an education fitted to what Applicants believe their children's educational needs to be. Moreover, Applicants' interests, unlike Defendants, stem from the fundamental "liberty of parents and guardians to direct the upbringing and education of children under their control." *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925). Additionally, due to their interests being distinct from Defendants', the harm that Applicants will suffer to those interests is also distinct from the harm Defendants will suffer if the program is enjoined. Thus, Applicants have an even greater stake in avoiding the disruption that would be caused by enjoining the program than do Defendants.

Here, while the State has a general interest in protecting its laws and executing the General Assembly's education policy, Parent-Applicants have a personal interest in ensuring that the ESA Program can be utilized by Tennessee families. Without the Program, Applicants and similarly situated low-and-middle income families will have no choice but to keep their children in public schools that are failing to meet their educational needs. Unlike the State, Applicants are in a position to see personal, concrete benefits for their children and families if the ESA Program is upheld, and personal, concrete injury if it is found invalid.

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large, IBT demonstrated that the representation of its interests by the named defendants-appellees may have been inadequate."); *Sierra Club v. Glickman*, 82 F.3d 106, 110 (5th Cir. 1996) (permitting intervention by Farm Bureau in case where the USDA was a defendant because, *inter alia*, the Bureau's members were beneficiaries of a government aquifer and had distinct economic concerns that the government did not share); *Nat'l Farm Lines v. I.C.C.*, 564 F.2d 381, 384 (10th Cir. 1977) ("We have here also the familiar situation in which the governmental agency is seeking to protect not only the interest of the public but also the private interest of the petitioners [who sought to protect regulations that financially benefitted them] in intervention, a task which is on its face impossible."); *Wildearth Guardians v. Salazar*, 272 F.R.D. 4, 15 (D.D.C. 2010) (permitting intervention of coal company in federal land-lease program and stating that "it is well-established that governmental entities generally cannot represent the 'more narrow and parochial financial interest' of a private party.").

Notably, while Defendants and Applicants each desire to see the ESA Program upheld, their different interests create the possibility of disagreement over litigation approach. *See, e.g.*, *Trbovich*, 404 U.S. at 538-39 (finding intervenors showed inadequate representation when they preferred a different litigation strategy than what was being employed by the Secretary of Labor). Indeed, past experience in school-choice litigation confirms that the government and intervenors may disagree over litigation approaches and will not necessarily raise the same arguments. In *Arizona Christian School Tuition Organization v. Winn*, for example, intervenors successfully argued that the plaintiffs challenging the school-choice program at issue lacked standing, while the state conceded that plaintiffs had standing. 563 U.S. at 125. In *Duncan v. State*, 102 A.3d 913 (N.H. 2014), the state conceded plaintiffs' standing while the parent-intervenors successfully argued that the statute conferring standing was unconstitutional, resulting in dismissal of the case. Similarly, it was the intervenors and not the state in *Kotterman* who urged the court to confront the role that anti-religious bigotry played in the "Blaine Amendments" found in many state constitutions. 972 P.2d at 606.

Because the only way to guarantee that Applicants' interests will be adequately represented is for them to participate in the litigation, Applicants should be allowed to intervene as a matter of right. Party status is necessary to ensure that the intended beneficiaries of the ESA Program may, like the intervenors in *Winn*, *Duncan*, and *Kotterman*, protect their rights vigorously and completely.

II. Alternatively, Applicants Should Be Granted Permissive Intervention to Defend Tennessee's ESA Program as Its Intended Beneficiaries.

Applicants alternately seek permissive intervention pursuant to Rule 24.02. Permissive intervention is granted when, upon timely motion, "a movant's claim or defense and the main action have a question of law or fact in common." Rule 24.02(2); Fed. R. Civ. P. 24(b)(1)(B).

"In exercising discretion the court shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Rule 24.02(2). Applicants here satisfy this standard.

First, Applicants' defense of the ESA Program will only involve the legal issues that are currently before the Court—that is, whether Tennessee's ESA Program violates provisions of the Tennessee Constitution. Applicants will focus solely on the constitutional claims brought by Plaintiff and will not bring any cross-claims or introduce any issues unrelated to Plaintiffs' constitutional challenge.

Second, Applicants' participation will not prejudice the parties already before the Court. Rather, Applicants' participation will aid the parties and the Court in resolving the issues at bar in this case. As discussed above, Applicants' intervention is timely and will not delay any proceedings. *Supra*, Part I.A. Nor will intervention prejudice the existing parties by bringing "any new claims or issues." *Kocher v. Bearden*, 546 S.W.3d 78, 84 (Tenn. Ct. App. 2017). Instead, Applicants' intervention will aid the parties and the Court in adjudicating the issues in this case. Applicants' counsel has significant experience representing intervening parents in their defense of educational-choice programs facing constitutional challenges.[5]

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[5] Nevada's education savings account program, *Schwartz v. Lopez*, 382 P.3d 886, 894 (Nev. 2016). Alabama's Education Tax Credit and Scholarship program, *Magee v. Boyd*, 175 So. 3d 79, 138 (Ala. 2015). New Hampshire's Education Tax Credit Program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014). Arizona's Empowerment Scholarship Account program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013). Indiana's Choice Scholarship Program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013). Arizona's scholarship tax credit programs, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011) (individual scholarship tax credit program), *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009) (corporate tax credit program), and *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999) (individual tax credit program). Illinois' Educational Expenses Tax Credit Program, *Toney v. Bower*, 744 N.E.2d 351 (Ill. App. Ct. 2001); *Griffith v. Bower*, 747 N.E.2d 423 (Ill. App. Ct. 2001). Ohio's Pilot Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999). Milwaukee's Parental Choice Program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998) and *Davis v. Rover*, 480 N.W.2d 460 (Wis. 1992).

Applicants respectfully ask the Court to grant them party status. Like parents who have intervened in other school-choice cases, Applicants are best situated to assist the Court in understanding the real-world need for, and effects of, the educational opportunities provided by the ESA Program. Indeed, Applicants are the Program's intended beneficiaries: Tennessee parents seeking to get their children out of failing schools and into schools that meet their needs.

CONCLUSION

In every legal challenge to an educational-choice program over the past two decades, parents have been permitted to intervene and represent their unique interests. Applicants respectfully request that they are permitted to do the same here. Should the program be ruled unconstitutional in this case, Applicants will forever lose the opportunity to protect their interests. Particularly for this reason, Applicants seek leave to intervene as defendants.

WHEREFORE, Applicants respectfully request that this Court grant them leave to intervene as defendants in this case.

Dated: February 10, 2020.

Respectfully submitted,

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* Pro Hac Vice Admission Pending

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of February, 2020, I caused the foregoing Brief of Natu Bah and Builguissa Diallo in Support of Motion to Intervene as Defendants to be served on counsel for Plaintiffs, Defendants, and the Tennessee Attorney General via United States mail.

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