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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. No. 20-0143-II

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.

GREATER PRAISE CHRISTIAN ACADEMY;
SENSATIONAL ENLIGHTENMENT ACADEMY INDEPENDENT SCHOOL;
CIERA CALHOUN; ALEXANDRIA MEDLIN; AND DAVID WILSON, SR.'S
[PROPOSED] MOTION TO DISMISS UNDER RULE 12.02(8) AND 12.02(6)

COME NOW Greater Praise Christian Academy and Sensational Enlightenment Academy Independent School (the "Schools") and Ciera Calhoun; Alexandria Medlin; and David Wilson, Sr., on behalf of themselves and their minor children (the "Parents"), by counsel and pursuant to Rules 12.02(8) and 12.02(6) of the Tennessee Rules of Civil Procedure, and respectfully move this Court to dismiss the above-captioned case with prejudice. As grounds for this motion and as more fully set forth below in their memorandum of law and facts in support hereof, the Schools and Parents state as follows.

Plaintiff Metropolitan Nashville Board of Public Education should be dismissed as a

party from the case, pursuant to Tenn. R. Civ. P. 12.02(8) and 9.01, because the party does not have the capacity to bring the lawsuit. Tenn. Code Ann. § 49-6-2611(d) specifically bars a "local board of education," which is a creature of the state, from challenging the legality of the Tennessee Education Savings Account ("ESA") Pilot Program, Tenn. Code Ann. § 49-6-2601 – § 49-6-2612.

Count I of the Complaint, alleged violation of Article XI, Section 9 of the Tennessee Constitution, should be dismissed because the ESA Pilot Program is not "applicable to a particular county or municipality," as required for a violation of that constitutional provision.

Count II of the Complaint, alleged violation of the Tennessee Constitution's Equal Protection clauses in Article I, Section 8 and Article XI, Section 8, should be dismissed because the legislature expressed a rational basis to begin the ESA Pilot Program with "the LEAs that have consistently had the lowest performing schools on a historical basis." Tenn. Code Ann. § 49-6-2611(a)(1).

Count III of the Complaint, alleged violation of Article XI, Section 12 of the Tennessee Constitution, should be dismissed for three reasons. First, when school districts lose students, they may reduce their funding. *See* Opinion of Attorney General Robert E. Cooper, Jr., No. 08-194 (Dec. 29, 2008). Second, the education clause does not require equality of funding but quality and equality of education. *Tenn. Small Sch. Sys. v. McWherter*, 851 S.W.2d 139, 156 (Tenn. 1993). Third, the clause allows for innovation through pilot programs: "Given the very nature of education, an adequate system, by all reasonable standards, would include innovative and progressive features and programs." *Id; see also* Opinion of Attorney General Robert E. Cooper, Jr., No. 13-27, at *7-8 (March 26, 2013).

Therefore, the Schools and Parents respectfully request that this Court grant its motion to

dismiss in its entirety and enter a final judgment dismissing the case with prejudice and charging all court costs to Plaintiffs.

Respectfully submitted,

/s/ Brian K. Kelsey___________________________

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