

**IN THE TENNESSEE SUPREME COURT**

**THE METROPOLITAN GOVERNMENT OF  
NASHVILLE AND DAVIDSON COUNTY *et al.*,**  
Plaintiffs / Appellees,

v.

**TENNESSEE DEPARTMENT OF EDUCATION *et al.*,**  
Defendants / Appellants,

and

**NATU BAH *et al.*,**  
Intervenor-Defendants / Appellants.

On Motion for the Court to Assume Jurisdiction  
Over the Undecided Appeal of Case No. M2020-00683-COA-R9-CV,  
Pursuant to Tenn. S. Ct. R. 48

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**INTERVENOR-DEFENDANTS / APPELLANTS  
GREATER PRAISE CHRISTIAN ACADEMY; SENSATIONAL  
ENLIGHTENMENT ACADEMY INDEPENDENT SCHOOL;  
CIERA CALHOUN; ALEXANDRIA MEDLIN; AND  
DAVID WILSON, SR.'S MOTION TO ACCEPT JURISDICTION  
OF AN UNDECIDED CASE FROM THE COURT OF APPEALS**

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## PROCEDURAL HISTORY

The Appellants, Greater Praise Christian Academy; Sensational Enlightenment Academy Independent School; Ciera Calhoun; Alexandria Medlin; and David Wilson, Sr. (“Greater Praise Intervenor-Defendants” or “Appellants”) are Intervenor-Defendants in *Metro. Gov’t of Nashville and Davidson Co. v. Tenn. Dep’t of Education*, No. 20-0143-II, (“*Metro Gov’t*”), Davidson County Chancery Court (Chancellor Anne C. Martin). On May 4, 2020, the Chancery Court entered an order in *Metro Gov’t* granting Plaintiffs’ Motion for Summary Judgment on Count I of the Complaint (filed March 27, 2020) and denying the Greater Praise Intervenor-Defendants’ Motion to Dismiss Count I of the Complaint (filed March 6, 2020).<sup>1</sup> App. 003-034. The Chancery Court order also granted, *sua sponte*, permission for interlocutory appeal, pursuant to Tenn. R. App. P. 9. App. 032-033. On May 11, 2020, Appellants filed an application to the Court of Appeals, pursuant to Tenn. R. App. P. 9.<sup>2</sup> On May 13,

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<sup>1</sup> The order also denied a motion to dismiss Count I of the Complaint from the Defendants/Appellants (“State Defendants”) and a motion for judgment on the pleadings to dismiss Count I of the Complaint from Intervenor-Defendants/Appellants Natu Bah, Builguissa Diallo, Bria Davis, and Star Brumfield (“Natu Bah Intervenor-Defendants”).

<sup>2</sup> On May 6, 2020, the State Defendants and the Natu Bah Intervenor-Defendants, separately, filed with the Court of Appeals applications to appeal, pursuant to Tenn. R. App. P. 9. The Greater Praise Intervenor-Defendants’ application was filed under the same case no. as that of the State Defendants: M2020-00683-COA-R9-CV. The Natu Bah Intervenor-Defendants’ application was filed under case no. M2020-00682-COA-R9-CV. On May 19, 2020, all three Tenn. R. App. P. 9 applications were consolidated under case no. M2020-00683-COA-R9-CV.

2020, the Chancery Court entered an order denying the State Defendants' and Intervenor-Defendants' Joint Motion for Stay of Injunction During Pendency of Appeal (filed May 5, 2020). App. 035-038. On May 18, 2020, Appellants filed an application to the Court of Appeals for review of the denial of stay, pursuant to Tenn. R. App. P. 7.<sup>3</sup> Also on May 18, 2020, Plaintiffs/Appellees filed an opposition to the Tenn. R. App. P. 9 and Tenn. R. App. P. 7 motions.<sup>4</sup> On May 19, 2020, the Court of Appeals entered an Order granting the Tenn. R. App. P. 9 application for interlocutory appeal and denying the Tenn. R. App. P. 7 application to stay the trial court's injunction pending appeal.

Now that the case is pending, but undecided, before the Court of Appeals, Appellants file this motion for this Court to assume jurisdiction, pursuant to Tenn. S. Ct. R. 48 and T.C.A. § 16-3-201(d)(1-2), and in support of their motion state the following.

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<sup>3</sup> The Natu Bah Intervenor-Defendants also filed a Tenn. R. App. P. 7 application on May 14, 2020, and the State Defendants filed a Tenn. R. App. P. 7 application on May 15, 2020.

<sup>4</sup> Also on May 18, 2020, a motion for leave to file brief as *amici curiae* and an opposition to the Tenn. R. App. P. 9 and Tenn. R. App. P. 7 motions were filed by Roxanne McEwen, David P. Bichell, Terry Jo Bichell, Lisa Mingrone, Claudia Russell, Inez Williams, Sheron Davenport, Heather Kenney, Elise McIntosh, Tracy O'Connor, and Apryle Young, who are Plaintiffs in a related case in Chancery Court, Part II, for which Chancellor Martin heard oral argument jointly but has not yet ruled on a motion to consolidate. *See Roxanne McEwen et al. v. Bill Lee et al. and Natu Bah et al.*, No. 20-0242-II, Davidson County Chancery Court.

## **QUESTIONS PRESENTED**

1. Did the Chancery Court err by failing to rule on Appellants' argument that the Education Savings Account (ESA) Pilot Program does not financially harm the county government Plaintiffs, such that they do not meet the standards for injury-in-fact for standing to sue or ripeness? *See App. 031.*
2. Did the Chancery Court err by finding that the Home Rule clause of the state constitution, which prohibits, without local approval, acts applicable to "a particular county", was violated by the ESA Pilot Program, which is applicable to three local education agencies in two counties? *See App. 028-029; 031.*



## STATEMENT OF FACTS

In May 2019, the State of Tennessee enacted the Tennessee Education Savings Account (“ESA”) Pilot Program to help low-income students in low-performing school districts. Tenn. Code Ann. § 49-6-2601 – § 49-6-2612. The pilot program is open to Kindergarten-12th grade students whose annual household income is less than or equal to twice the federal income eligibility guidelines for free lunch. Tenn. Code. Ann. § 49-6-2602(3).<sup>5</sup> Eligible students must have attended a Tennessee public school the prior school year, must be entering Kindergarten for the first time, must have recently moved to Tennessee, or must have received an ESA the prior year. Tenn. Code. Ann. § 49-6-2602(3)(A).

The ESA provides each student with an individualized education savings account. Tenn. Code. Ann. § 49-6-2605(a). The amount of the ESA will be approximately \$7,100 for the school year beginning in August. App. 042. The ESA can be used for a wide variety of educational services approved by the Department of Education: private school tuition, textbooks, computers, school uniforms, school transportation, tutoring, summer or afterschool educational programs, and college admission exams. Tenn. Code. Ann. § 49-6-2603(a)(4). An ESA is different from a school voucher, which can only be used for private school tuition, because

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<sup>5</sup> The maximum eligible income is \$43,966 for a household of two, and it increases with household size. *See* Tennessee Comptroller of the Treasury, Legislative Brief, Understanding Public Chapter 506: Education Savings Accounts, Table at Page 1, available at <https://comptroller.tn.gov/content/dam/cot/orea/documents/orea-reports-2020/ESA2020Website.pdf> (updated May 2020) (retrieved May 14, 2020) (App. 039).

an ESA can be used for a variety of purposes and because it is an individualized account, in which any unused funds roll over each year and remain in the account. Tenn. Code. Ann. § 49-6-2603(l). After 12th grade, any unused ESA funds may be rolled into a college fund for tuition, fees, and textbooks at eligible colleges and universities, vocational, technical, or trade schools. Tenn. Code. Ann. § 49-6-2603(g).

Funding for the ESA Pilot Program is built on the simple principle that the dollars follow the child. The ESA is funded with the student's per pupil expenditure of state funds from the Basic Education Program (BEP), as well as the required minimum match in local funds. Tenn. Code. Ann. § 49-6-2605(a). The ESA Pilot Program rewards school districts affected by the program with three windfalls that increase their per-pupil spending. First, the program creates a ghost reimbursement for three years, in which an affected school district is paid the state and minimum local portion of the BEP to educate a child who is no longer in the system. Tenn. Code. Ann. § 49-6-2605(b)(2)(A). Second, a windfall occurs because the amount of the ESA is capped in two ways. Not all of the local portion of the BEP funds the ESA—only the minimum “required” local portion. Tenn. Code. Ann. § 49-6-2605(a). The ESA is also capped in another way: it “must not exceed the combined statewide average of required state and local BEP allocations per pupil.” *Id.* Because Plaintiffs/Appellees fund their school districts beyond the minimum required portion of the BEP, and per-pupil expenditures are higher than the statewide average, the difference between the actual local portion of the BEP and the amount going toward the ESA creates a windfall of over \$4,000 per pupil that will be used to increase the per

pupil expenditures of students remaining in the school district. App. 042. Third, at the end of three years, a school improvement fund will disburse school improvement grants for programs to support priority schools throughout the state, the vast majority of which are located in the counties represented by the Plaintiffs/Appellees. Tenn. Code. Ann. § 49-6-2605(b)(2)(B)(ii).

The legislation was amended late in the process to become a pilot program. The pilot program is capped at five thousand students in year one, rising to fifteen thousand students in year five. Tenn. Code. Ann. § 49-6-2604(c). An eligible student must reside in a neighborhood zoned to attend a school in the Achievement School District (ASD), which runs the state's lowest performing schools, or reside in a school district with ten or more schools identified as priority schools in 2015, with ten or more schools among the bottom ten percent of schools in 2017, and with ten or more schools identified as priority schools in 2018. Tenn. Code. Ann. § 49-6-2602(3)(C). As applied, that means that the ESA Pilot Program will begin operations this August in three school districts: the ASD, Shelby County Schools (SCS), and Metro Nashville Public Schools (MNPS). Those three school districts serve children located in two counties: Shelby<sup>6</sup> and Davidson. The ESA Pilot Program provided the reasoning for beginning the pilot program in these districts within the text of the

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<sup>6</sup> SCS (and the ASD in Shelby County) serve children residing in Memphis and unincorporated Shelby County. The remainder of the county is served by six suburban municipal school systems. See <http://www.scsk12.org/schools/files/2019/scs%20schools%2019-20%2042x42.pdf> (retrieved May 20, 2020).

act itself: the “pilot program . . . provides funding for access to additional educational options to students who reside in local education agencies [school districts] that have consistently and historically had the lowest performing schools.” Tenn. Code. Ann. § 49-6-2611(a)(1).

In order to “assist the general assembly in evaluating the efficacy” of the ESA Pilot Program, “the office of research and education accountability (OREA), in the office of the comptroller of the treasury, shall provide a report to the general assembly” at the end of the third year of the pilot program and each year thereafter. Tenn. Code. Ann. § 49-6-2611(a)(2). The report will include participating student performance, graduation rates, parental satisfaction, audit reports, and recommendations for legislative action if the list of low-performing school districts changes based on the most recent data from the Department of Education. Tenn. Code. Ann. § 49-6-2606(c); Tenn. Code. Ann. § 49-6-2611(a)(2). Armed with this information from OREA, the General Assembly can expand the ESA Pilot Program in the future if it is successful or end it if not.

## STATEMENT OF REASONS

Tenn. S. Ct. R. 48 sets forth two reasons for which this Court will assume jurisdiction over an undecided case pending in the Court of Appeals: 1) “the unusual public importance of the case” and 2) “the need for an expedited decision.” Tenn. S. Ct. R. 48(a)(1). In addition, the “reach down” statute upon which the rule is based sets forth a third requirement: 3) the case must involve one of three issues, including “[i]ssues of constitutional law.” T.C.A. § 16-3-201(d)(1-2).

This case meets all three criteria. First, the ESA Pilot Program is of unusual public importance because it is Governor Bill Lee’s signature legislative accomplishment. Second, there is a special need for an expedited decision because the school year starts in less than three months. Low-income students trapped in failing school districts and the parents and schools who serve them need clarity on whether these students can exercise the school choice that the executive and legislative branches gave them. Third, the case presents an issue of state constitutional law because the Chancery Court ruled that the ESA Pilot Program violated the Home Rule clause of the Tennessee Constitution, which prohibits, without local approval, acts applicable to “a particular county.” Tenn. Const. Art. XI, Sec. 9. *See* App. 028-029; 031.

Even Chancellor Martin, in ruling against the ESA Pilot Program, recognized that, “this is a matter appropriate for interlocutory and expedited appellate consideration” and further concluded that “[i]t is a matter of significant public interest that is extremely time sensitive.” App. 032. For that reason, she granted an interlocutory appeal *sua sponte*. App. 032-033. Also, the Court of Appeals granted the

interlocutory appeal and an expedited hearing. App. 046-047. Appellants ask this Court to agree with the conclusion of the Chancery Court and the Court of Appeals and accept their motion for jurisdiction to expedite final review of the order.

### **I. The ESA Pilot Program is of unusual public importance.**

Few things are more important to Tennessee than the education of the next generation. That is why taxpayers commit billions of dollars each year to K-12 education.<sup>7</sup> Education is provided for in the state constitution, and it often comes before this Court because of its importance.<sup>8</sup> It is not an exaggeration to say that the Court’s decision in this case will affect thousands of children for years to come.<sup>9</sup>

The Court may also take judicial notice of the fact that this is an issue of significant importance to the governor and General Assembly. Each of our state’s recent governors has attempted a different fix for the persistent reality of failing public schools in our urban centers: charter schools, the Achievement School District, and now Education Savings

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<sup>7</sup> Office of the Comptroller of the Treasury, “Basic Education Program,” available online at <https://comptroller.tn.gov/office-functions/research-and-education-accountability/legislative-toolkit/bep.html> (“The BEP represents a huge portion of the state budget – over \$4.8 billion dollars, or more than a quarter of total state dollars in the budget.”) (retrieved May 8, 2020).

<sup>8</sup> “The state of Tennessee recognizes the inherent value of education and encourages its support.” Tenn. Const. Art. XI, Sec. 12; *see also Tenn. Small Sch. Sys. v. McWherter*, 91 S.W.3d 232, 233 (Tenn. 2002).

<sup>9</sup> T.C.A. § 49-6-2604(c) (permitting the ESA Pilot Program to grow to 15,000 enrollees per year).

Accounts. Governor Lee ran on this program as the core plank of his education agenda.<sup>10</sup> He has highlighted it in his State of the State addresses.<sup>11</sup> It passed the General Assembly on a bipartisan basis,<sup>12</sup> and its implementation and this litigation has drawn substantial media attention.<sup>13</sup> All of these facts point to the public importance of this issue to Tennessee.

## **II. The August start to the school year presents a special need for an expedited decision.**

The start of the next school year is less than three months away. Metropolitan Nashville Public Schools was scheduled to start on August 4, and Shelby County Schools was scheduled to begin a week later on August 10, though the COVID-19 pandemic has recently placed these dates in question.<sup>14</sup> However, most private schools, which are generally

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<sup>10</sup> Bill Lee, *This Road I'm On*, 163-66 (2018).

<sup>11</sup> “2019 State of the State Address,” Office of the Governor (March 4, 2019), available at <https://www.tn.gov/governor/sots/state-of-the-state-2019-address.html>; “2020 State of the State Address,” Office of the Governor (February 3, 2020), available at <https://www.tn.gov/governor/sots/2020-state-of-the-state-address.html>.

<sup>12</sup> “Votes” tab, House Bill 0939, 111th General Assembly, available at <http://wapp.capitol.tn.gov/apps/BillInfo/Default.aspx?BillNumber=HB0939> (retrieved May 20, 2020).

<sup>13</sup> Mariah Timms, Duane W. Gang and Natalie Allison, “Judge rules Gov. Bill Lee's education savings account program unconstitutional,” *Tennessean* (May 4, 2020), available at <https://www.tennessean.com/story/news/education/2020/05/04/judge-rules-gov-bill-lees-education-savings-account-program-unconstitutional/3068998001/>.

<sup>14</sup> Metro Nashville Public Schools calendar, available at <https://www.mnps.org/district-calendar> (initially retrieved May 7, 2020)

smaller and more nimble to adjust to change, still plan to open on time in August. *See* Affidavit of Kay Johnson, April 14, 2020. App. 050.

Each day without an appellate decision between now and August is precious because there is much work to be done in preparation for the school year. Even though the ESA application deadline ended on May 7, 2020, the state still must process hundreds of outstanding applications, including many for which minor errors need to be corrected by parents. App. 053-055. Once notified of their children's acceptance to the program, parents must apply their children to private schools. Private schools must process those applications and hire the requisite number of teachers to accommodate the students. App. 059-060. In short, if this program is going to begin in the 2020-21 school year, as the statute permits, *see* T.C.A. § 49-6-2604(b), an appellate decision must issue in days or weeks but not months. Unfortunately, the Court of Appeals set a hearing date of August 5, 2020, which is days or weeks later than necessary for the program to begin on time. App. 047. An appeal from the Court of Appeals to this Court in August will be too late.

Without the Court granting this motion, the administration will miss out on an entire year of its signature education reform program, Intervenor-Defendant schools will miss an entire year of serving an

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and updated by retrieval on May 20, 2020); Shelby County Schools calendar, available at [http://www.scsk12.org/news/ckfinder/userfiles/files/2020-21\\_SCS\\_Student\\_Calendar.pdf](http://www.scsk12.org/news/ckfinder/userfiles/files/2020-21_SCS_Student_Calendar.pdf) (retrieved May 20, 2020); Shelby County Schools Contingency Plan for Reopening Schools, available at <http://www.scsk12.org/newsroom/#/article/1215> (retrieved May 20, 2020).



expanded number of students, and Intervenor-Defendant parents will all see their children forced to spend another year in failing public school systems.

Intervenor-Defendant Alexandria Medlin will be forced to make a particularly difficult decision for her daughter. Her daughter is entering Kindergarten next year. App. 062. If the injunction on the ESA Pilot Program is not lifted for another year, she will be forced to make a decision between two bad choices: enroll her daughter in the large, failing public school in her neighborhood and have the beginning of her learning career forever shaped by this environment or scrape to find the money to pay for the small, neighborhood private school that she has identified will to set the tone for her entire educational career.

The children of Intervenor-Defendants Ciera Calhoun and David Wilson, Sr. also face a grim prospect if the injunction on the ESA Pilot Program is not lifted. Though they live in Memphis and Nashville, respectively, their children are all zoned to attend schools in the Achievement School District, which runs the worst of the worst schools in the state.<sup>15</sup> App. 064; 066. If the injunction is not lifted prior to August, these children will all be forced to spend another year in a failing school.

Expedited interlocutory appeals are appropriate when “an important right will be lost if review is delayed until a final judgment has

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<sup>15</sup> While the ASD has the authority to take over any school in the bottom 5% in the state, it has done so only for a handful of schools in particularly bad neighborhoods in Memphis and Nashville. *See* <http://achievementschooldistrict.org/index.php/schools/> (retrieved May 20, 2020).

been entered.” *State v. Tuttle*, No. M2013-01535-CCA-R9-CD, 2013 Tenn. Crim. App. LEXIS 1161, \*2 (Aug. 26, 2013). In this case, Intervenor-Defendants’ children will lose an entire year trapped in failing schools, an avoidable tragedy which is an actual, individual injury to a student. *See Martinez v. Malloy*, 350 F. Supp. 3d 74, 87 (D. Conn. 2018). If an expedited appellate decision is not granted, the children of Intervenor-Defendants and thousands of others will be “forced into a system that continually fails them” and denied a quality education for another whole school year. *See Zelman v. Simmons-Harris*, 536 U.S. 639, 676 (2002) (Thomas, J., concurring).

### **III. Whether the legislature can begin a pilot program in two counties is an important issue of constitutional law.**

The Home Rule clause of the Tennessee Constitution provides:

The General Assembly shall have no power to pass a special, local or private act having the effect of removing the incumbent from any municipal or county office or abridging the term or altering the salary prior to the end of the term for which such public officer was selected, and 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 of 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.

Tenn. Const. Art. XI, Sec. 9 (emphasis added). According to the plain meaning, the Home Rule clause only prohibits legislation targeting one specific county.

The Chancery Court’s ruling that a pilot program beginning in three school districts in two counties runs afoul of the Home Rule clause is contrary to the plain meaning of the clause and raises an issue of profound importance to the state. This Court should resolve whether legislation affecting multiple counties can also be considered “applicable to a particular county.” *Id.* Resolution of the issue will be helpful not only in this case, but it will guide the General Assembly in future instances in which it wishes to adopt a geographically targeted pilot program.

Tennessee law on the Home Rule clause is inconsistent and in need of attention in the modern era. This Court has not addressed the important issue in almost thirty years—since *Civil Service Merit Bd. v. Burson*, 816 S.W.2d 725 (Tenn. 1991).

The three cases that Plaintiffs/Appellees primarily relied on in Chancery Court all involved laws affecting only one county or municipality: *Farris v. Blanton*, 528 S.W.2d 549 (Tenn. 1975); *Lawler v. McCanless*, 417 S.W.2d 548, 553 (Tenn. 1967); and *Bd. of Educ. v. Memphis City Bd. of Educ.*, 911 F. Supp. 2d 631, 656 (W.D. Tenn. 2012). Many other cases in which the clause has been invoked also involved laws affecting only one county or municipality. *See Burson*, 816 S.W.2d at 728; *Metro. Gov’t of Nashville & Davidson County v. Reynolds*, 512 S.W.2d 6, 9-10 (Tenn. 1974); *Doyle v. Metro. Gov’t of Nashville & Davidson Cty.*, 471 S.W.2d 371, 373 (Tenn. 1971); *Cty. of Shelby v. McWherter*, 936 S.W.2d 923 (Tenn. Ct. App. 1996).

However, Appellees did point the chancellor to the case of *Leech v. Wayne County*, 588 S.W.2d 270 (Tenn. 1979). In that case, the Court struck down a statute affecting two counties by using a population

bracket gimmick to target certain counties and not others. *Id.* at 274. At times, Tennessee courts have upheld laws utilizing population brackets, e.g., *Burson*, and at times, they have not, e.g., *Leech*. However, none of the later cases explicitly overruled the prior decisions, leaving the caselaw in conflict. *Burson* simply ignored *Leech* in its discussion of the Home Rule clause, even though the opinion went on to cite *Leech* in a different section. The current case is a perfect vehicle to bring clarity to the law and to put this Court's stamp of interpretation on this important constitutional issue.

In addition, this case resembles many others in which the Court has granted motions to assume appellate jurisdiction or done so on its own motion. Most relevantly, this Court heard *Small Schools III* by granting a motion to take jurisdiction under T.C.A. § 16-3-201(d)(1-2) to ensure clarity for the state and school districts as to the status of Basic Education Program (BEP) funding. *Tenn. Small Sch. Sys. v. McWherter*, 91 S.W.3d 232, 233 (Tenn. 2002). This Court has a long history of assuming jurisdiction over important, timely cases, many of which did not raise constitutional issues as important as this one, so this case fits well within the body of law.<sup>16</sup>

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<sup>16</sup> See *State ex rel. Cohen v. Darnell*, 885 S.W.2d 61, 62 (Tenn. 1994) (ballot question scheduled for upcoming election); *Tenn. Mun. League v. Thompson*, 958 S.W.2d 333, 334 (Tenn. 1997) (municipal incorporation); *City of Memphis v. Shelby Cty. Election Comm'n*, 146 S.W.3d 531, 534 (Tenn. 2004) (referendum scheduled for upcoming election); *ACLU v. Darnell*, 195 S.W.3d 612, 615 (Tenn. 2006) (referendum scheduled for upcoming election); *Jordan v. Knox Cty.*, 213 S.W.3d 751, 762 (Tenn. 2007) (county charter); *Bredesen v. Tenn. Judicial Selection Comm'n*, 214 S.W.3d 419, 423 (Tenn. 2007) (judicial selection); *West v. Schofield*,

## STATEMENT OF RELIEF

Because this case meets all three criteria set forth in Tenn. S. Ct. R. 48 and T.C.A. § 16-3-201(d)(1-2), Appellants respectfully move the Court to immediately issue an order assuming jurisdiction over the case. In addition, Appellants request the Court immediately to issue a stay of the Chancery Court's injunction of the ESA Pilot Program while the appeal is pending. Finally, Appellants request the Court to reverse the order of the Chancery Court finding the ESA Pilot Program to be unconstitutional, and they ask that their Motion to Dismiss the lawsuit in its entirety be granted in this case and in the related case of *Roxanne McEwen et al. v. Bill Lee et al. and Natu Bah et al.*, No. 20-0242-II, Davidson County Chancery Court.

Dated: May 20, 2020

Respectfully submitted,

/s/ Brian K. Kelsey

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468 S.W.3d 482, 489 (Tenn. 2015) (death penalty protocol); *Wallace v. Metro. Gov't of Nashville*, 546 S.W.3d 47, 49 (Tenn. 2018) (vacancy scheduled for upcoming election).

*Counsel for Greater Praise Christian Academy; Sensational Enlightenment Academy Independent School; Ciera Calhoun; Alexandria Medlin; & David Wilson, Sr.*

**CERTIFICATE OF COMPLIANCE**

This motion complies with Tenn. S. Ct. R. 46 (3.02) because it contains 4,082 words, excluding those sections mentioned by the rule. It has been prepared using Microsoft Word in 14-point Century Schoolbook font with 1.5-spaced lines.

Dated: May 20, 2020

/s/ Brian K. Kelsey  
Brian K. Kelsey

## CERTIFICATE OF SERVICE

I certify that a true and exact copy of the foregoing document was served via Tenn. S. Ct. R. 46A through the e-filing system and was forwarded to the to the attorneys listed below via the e-mail addresses below on this 20th day of May, 2020.

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