

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

DAVID P. BICHELL, TERRY JO BICHELL,
LISA MINGRONE, CLAUDIA RUSSELL,
INEZ WILLIAMS, ELISE McINTOSH,
APRYLE YOUNG, DUSTIN PARK, JILL
SMILEY, and CRYSTAL BOEHM,

Plaintiffs,

VS.

BILL LEE, in his official capacity as Governor of the State of Tennessee; ROBERT EBY, in his official capacity as Chair of the Tennessee State Board of Education; DARRELL COBBINS, in his official capacity as Vice Chair of the Tennessee State Board of Education; KRISSI McINTURFF, in her official capacity as Member of the Tennessee State Board of Education; JORDAN MOLLENHOUR, in his official capacity as Member of the Tennessee State Board of Education; WARREN WELLS, in his official capacity as Member of the Tennessee State Board of Education; RYAN HOLT, in his official capacity as Member of the Tennessee State Board of Education; DR. INA MAXWELL, in her official capacity as Member of the Tennessee State Board of Education; MARSHA JOHNSON, in her official capacity as Member of the Tennessee State Board of Education; LARRY JENSEN, in his official capacity as Member of the Tennessee State Board of Education; and LIZZETTE REYNOLDS, in her official capacity as Education Commissioner for the Tennessee Department of Education,

Defendants,

– and –

NATU BAH, et al.,

Intervenor-Defendants.

Case No. 20-0242-II

Chancellor Anne C. Martin,
Chief Judge

Judge Tammy M. Harrington

Chancellor William C. Cole

PLAINTIFFS' MOTION AND MEMORANDUM FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Pursuant to Tennessee Rule of Civil Procedure 15.01, Plaintiffs request leave to file a second amended complaint. A copy of Plaintiffs' proposed second amended complaint is attached hereto as Exhibit A.

The proposed second amended complaint amends the allegations and claims set forth in the operative amended complaint, filed on August 3, 2022, primarily by: (i) adding related allegations and claims regarding the fact that, subsequent to the filing of the operative complaint, in 2023, the Targeted Voucher Law was expanded to include Hamilton County and thus began diverting funding from public schools in that county as well (*e.g.*, Ex. A, ¶¶3, 43, §V.C.); (ii) adding related allegations and claims regarding the 2025 enactment of the Universal Voucher Law, which Plaintiffs contend violates certain of the same provisions of the Tennessee Constitution as the Targeted Voucher Law (*e.g.*, Ex. A, §§V.B., VI); and (iii) adding additional plaintiffs, including those who reside in Hamilton County, and counties impacted by the Universal Voucher Law (*e.g.*, Ex. A, ¶¶19-21).

Tennessee Rules of Civil Procedure, Rule 15.01, provides:

A party may amend the party's pleadings once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for trial, the party may so amend it at any time within fifteen (15) days after it is served. Otherwise a party may amend the party's pleadings only by written consent of the adverse party or by leave of court; and leave shall be freely given when justice so requires.

Tennessee law and policy have always favored permitting litigants to amend their pleadings to enable disputes to be resolved on their merits rather than on legal technicalities. *Hardcastle v. Harris*, 170 S.W.3d 67, 80 (Tenn. Ct. App. 2004) (citing *Karash v. Pigott*, 530 S.W.2d 775, 777 (Tenn. 1975); *Patton v. Dixon*, 105 Tenn. 97, 103, 58 S.W. 299, 301 (Tenn.

1900); *Rutherford v. Rains*, 158 Tenn. Append. 35, 42 (Tenn. 1814)). This policy is reflected in Tenn. R. Civ. P. 15.01’s admonition that “leave [to amend a pleading] shall be freely given when justice so requires.” *Id.*; and see Tenn. R. Civ. P. 15.01.

When deciding whether to allow an amendment, a trial court should consider factors such as “[u]ndue delay in filing; lack of notice to the opposing party; bad faith by the moving party[;] repeated failure to cure deficiencies by previous amendments[;] undue prejudice to the opposing party[;] and futility of amendment.”

Fisher v. Smith, 699 S.W.3d 892, 899 (Tenn. Ct. App. 2023), *appeal denied* (June 28, 2023) (citations omitted). Here, each of these factors supports granting leave to amend.

First, Plaintiffs have not unduly delayed the filing of the amended complaint. Indeed, the Universal Voucher Law was signed into law mere months ago, and the State Board of Education is still in the process of promulgating rules to implement the Universal Voucher Law. Ex. A at ¶¶23, 46-53.

Second, Plaintiffs provided notice to the State Defendants of their intent to file an amended complaint in March 2025, and there can be no bad faith by Plaintiffs seeking to amend their pleadings to address allegedly unconstitutional state laws that were amended or enacted since the filing of the operative complaint.

Third, Plaintiffs have not failed “to cure deficiencies by previous amendments,” nor would amendment be futile. *Fisher*, 699 S.W.3d at 899 (citations omitted).

Moreover, as to futility, a court “should not deny a plaintiff’s Tenn. R. Civ. P. 15 Motion to Amend based on an examination of whether it states a claim on which relief can be granted . . . the better protocol is to grant the motion to amend the pleading, which will afford the adversary the opportunity to test the legal sufficiency of the amended pleading by

way of a Tenn. R. Civ. P. 12.02(6) Motion to Dismiss.” *Conley v. Life Care Ctrs. of Am., Inc.*, 236 S.W.3d 713, 724 (Tenn. Ct. App. 2007).

Fourth, Defendants cannot show undue prejudice from the proposed amendment. Depositions have yet to be completed, and the parties continue to meet and confer regarding document discovery.

Finally, “[a]n ‘amended complaint,’ . . . supersedes and destroys the original complaint as a pleading.” *Barrett v. Chesney*, 2015 WL 5679922, at *5 (Tenn. Ct. App. Sept. 28, 2015). Therefore, the State Defendants’ Motion for Partial Judgment on the Pleadings, and the Parent Intervenor-Defendants’ Renewed Motion for Partial Judgment on the Pleadings, both filed on April 24, 2025, both of which are directed toward the operative complaint, should be denied as moot, and should be renewed, if at all, after the filing of the amended complaint.

For the above-stated reasons, Plaintiffs’ Motion for Leave to Amend Complaint should be granted, and Plaintiffs should be permitted to file the Amended Complaint.

DATED: May 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served via electronic mail to the following on this 30th day of May, 2025:

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