

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

**GWEN FAULKENBERRY,
SPECIAL RENEE SANDERS,
ANIKA WHITFIELD
and KIMBERLY CRUTCHFIELD**

PLAINTIFFS

V. Case No. 60CV-24-_____

**ARKANSAS DEPARTMENT OF EDUCATION;
JACOB OLIVA, in His Official Capacity as Secretary
of the Arkansas Department of Education;**

**DR. SARAH MOORE, Chairwoman of the State Board
of Education; KATHY MCFETRIDGE-ROLLINS, Vice-Chair of the State
Board of Education; LISA HUNTER, JEFF WOOD, RANDY HENDERSON,
ADRIENNE WOODS, KEN BRAGG, and LEIGH S. KEENER,
Members of the Arkansas State Board of Education;**

**SARAH H. SANDERS, GOVERNOR
of the STATE OF ARKANSAS; and**

**The ARKANSAS DEPARTMENT of FINANCE
and ADMINISTRATION; and
JIM HUDSON, In His Official Capacity as
Secretary of the Arkansas Department of
Finance and Administration**

DEFENDANTS

COMPLAINT

Come the Plaintiffs Gwen Faulkenberry, Special Renee Sanders, Anika Whitfield, and Kimberly Crutchfield, by and through their attorneys, Richard Mays Law Firm, PLLC, and for their Complaint, state:

INTRODUCTION

1. This is an action for injunctive and declaratory relief brought by citizens, taxpayers and residents of the State of Arkansas pursuant to the Arkansas Declaratory Judgment Act, Arkansas Code Annotated §§ 16-111-102, challenging sections of Act 237 passed by the 2023 Arkansas General Assembly (codified as Arkansas Code Annotated §6-18-2501 *et seq.*) commonly referred to as “the LEARNS Act.” Act 237 of 2023 (the LEARNS Act) is attached to this Complaint as **Exhibit No. 1.**

2. The LEARNS Act creates what it refers to as the Arkansas Children's Educational Freedom Account Program (herein, “the Voucher Program”). Pursuant to the Voucher Program, public school funds derived from public taxes (including but not limited to income taxes [Act 118 of 1929: Section 41], sales taxes [Act 386 of 1941; Section 18], tobacco taxes [Act 152 of 1929; Section 29, among several other tobacco-tax acts], and *ad valorem* taxes) are assessed and collected under the laws of Arkansas for public schools, but are appropriated by the General Assembly and used by the Defendant Department of Education to pay for tuition, uniforms, and other goods and services from private schools and other persons or entities

identified as “service providers” for students who are eligible to enroll in a public elementary or secondary school but who, or whose parent or guardian, choose to enroll such student in private schools, home schooling, or other mode of instruction. See Ark. Code Ann. § 6–18–2501, et seq., and **Exhibit 2** to this Complaint: **Arkansas Education Freedom Accounts – Quick-Fact Guide for Families (Ark. Dept. of Education, 2023).**

3. The Defendants named herein are named only in their official capacities and are named as the State Officials responsible for the implementation, oversight and enforcement of the LEARNS Act.

4. Arkansas Constitution Article 14, Section 1, requires that “the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.”

5. To ensure the maintenance and support of that general, suitable and efficient system of free public schools, Arkansas Constitution Article 14, Section 2, further directs that, “No money or property belonging to the public school fund, or to this State, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.” Note that “public school fund” in the Constitution is lower case, meaning that it refers to any funds used for the public schools, of which there have always been a number of such funds, and not

merely one that is identified in statutes, including appropriations and the Revenue Stabilization Act, as the “Public School Fund.”

6. Article 14, Section 3, goes further to establish a funding mechanism which reserves certain property taxes to local or “common” school districts. It established a uniform *ad valorem* property tax rate of 25 mills to be levied on the assessable value of all taxable real, personal and utility property in the state to be used solely for maintenance and operation of the public schools.

7. Arkansas Constitution Article 16, Finance and Taxation, Section 11, similarly ensures, “No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for any purpose shall be used for any other purpose.”

8. The LEARNS Act violates these constitutional principles in that if a student leaves a public school, or never enrolls in a public school in the first instance, and enrolls in a private school, or chooses to home school, the LEARNS Act transfers from the taxes belonging to the State for the use and benefit of the public schools the amount of money calculated by the State as the cost of that student’s education to the private school, home school or other private provider of that student’s tuition, fees, uniforms, supplies, equipment, access to technology and other materials.

9. The Arkansas Supreme Court has consistently upheld the Constitutional requirement that public school funds may not be used for non-public school purposes. Among many others, see *Chandler v. Bd. of Trustees of the Teacher Ret. Sys.*, 236 Ark. 256, 365 S.W.2d 447 (1963); *Terry v. Thornton*, 207 Ark. 1019, 183 S.W.2d 787 (1944); *State Bd. of Educ. v. Aycock*, 198 Ark. 640, 130 S.W.2d 6 (1939); *Ward v. Bailey*, 198 Ark. 27, 127 S.W.2d 272 (1939); *Walls v. State Bd. of Educ.*, 195 Ark. 955, 116 S.W.2d 354 (1938); *Scott v. Magazine Sp. Sch. Dist.*, 173 Ark. 1077, 294 S.W. 365 (1927); *Cty. Bd. of Educ. v. Austin*, 169 Ark. 436, 276 S.W. 2 (1925); *Special Sch. Dist. v. Bangs*, 144 Ark. 34, 221 S.W. 1060 (1920).

10. The provisions of the LEARNS Act that create (and the Arkansas Board of Education/ DOE rules that implement) the Arkansas Children's Educational Freedom Account Program violate Article 14, Sections 1, 2, and 3, and Article 16, Section 11, of the Arkansas Constitution. Plaintiffs seek equitable relief from this Court in the form of a declaratory judgment that the Arkansas Children's Educational Freedom Account Program set forth at Ark. Code Ann. § 6–18–2501 to § 6–18–2511, and the corresponding Rules promulgated by the Arkansas State Board of Education, implementing the funding and payment provisions of the LEARNS Act relative to the voucher program, are unconstitutional and void.

11. Plaintiffs also seek (i) an injunction to be issued to each of the Defendants prohibiting them from further implementation of the LEARNS Act voucher program; (ii) a declaratory judgment that the Defendants have acted beyond the scope of their Constitutional authority in implementing an unconstitutional law; (iii) that, if the Court finds that the funding and payment provisions of the LEARNS Act relative to the voucher program are unconstitutional, the Plaintiffs be allowed to join all recipients of the Voucher Program funds as Defendants for purposes of recovery of all of such funds illegally expended.

PARTIES

Plaintiffs:

12. Plaintiff Gwen Faulkenberry is an individual resident and citizen of Franklin County, Arkansas, a university teacher, mother of a student in the public schools, and the owner of real and personal property in Franklin County, Arkansas, which is in the Ozark School District. Plaintiff Faulkenberry pays income taxes, sales taxes, *ad valorem* real estate taxes and other taxes, portions of which are designated for public school funding.

13. Plaintiff Special Renee Sanders is an individual resident and citizen of Drew County, Arkansas, a public-school teacher, mother of a special-needs first-grade student in the forthcoming school year in a public school in southeast

Arkansas. Plaintiff Sanders pays income taxes, sales taxes, and other taxes, portions of which are designated for public school funding.

14. Plaintiff Anika Whitfield is an individual resident and citizen of Pulaski County, Arkansas and the legal guardian of a child in the public schools. Plaintiff Whitfield pays income taxes, sales taxes *ad valorem* real estate taxes and other taxes, portions of which are designated for public school funding.

15. Plaintiff Kimberly Crutchfield is an individual resident and citizen of Pulaski County, Arkansas; mother of two (2) students in the public schools of Pulaski County, and a teacher in the public schools of Little Rock, Arkansas. Plaintiff Crutchfield pays income taxes, sales taxes, *ad valorem* real estate taxes and other taxes, portions of which are designated for public school funding.

Defendants:

16. Defendant, Arkansas Department of Education (“ADE”), is an administrative agency of the State of Arkansas, with its principal address and office in Pulaski County. The ADE administers programs affecting the public schools of Arkansas, and is charged under the LEARNS Act with implementing the LEARNS Act, including the development and implementation of regulations and procedures relating to the Voucher Program established under the LEARNS Act that would and does make public funds available to private schools in violation of the Arkansas

Constitution, and which, under the Arkansas Constitution, constitute illegal and *ultra-vires* act of the ADE.

17. Defendant, Jacob Oliva, the currently designated and serving Secretary of the ADE, is responsible for and is currently engaged in implementing, overseeing and ensuring that the duties and programs of the ADE are performed, including the implementation of the LEARNS Act and regulations implementing the Act. Secretary Oliva is sued herein in his official capacity as Secretary of the Arkansas Department of Education.

18. The nine-member Arkansas State Board of Education (“ASBE”) is the policy-making body for public elementary and secondary education in Arkansas. As such, its members are responsible under Arkansas Code Ann. §6-18-2504 for developing, adopting, approving and enforcing regulations, rules, policies and procedures of the ADE, including those required by the LEARNS Act adopted or to be adopted in implementing the Act. The members of the State Board are appointed by the Governor, and currently consist of the following members who are joined herein as Defendants in their official capacities:

- a. Defendant Dr. Sarah Moore is a member and chairperson of the ASBE.
- b. Defendant Kathy McFetridge-Rollins is a member and vice-chair of the ASBE.

- c. Defendant Lisa Hunter is member of the ASBE.
- d. Defendant Jeff Wood is a member of the ASBE.
- e. Defendant Randy Henderson is a member of the ASBE.
- f. Defendant Ken Bragg is a member of the ASBE.
- g. Defendant Adrienne Woods is a member of the ASBE.
- h. Defendant Leigh S. Keener is a member of the ASBE.

19. Defendant, Hon. Sarah H. Sanders, is the duly elected and serving Governor of the State of Arkansas, and as such, she promoted, proposed, endorsed, approved and signed into law the LEARNS Act. Since its adoption, she has implemented the LEARNS Act through Executive Orders and otherwise, and bears the ultimate responsibility for its development, execution and enforcement. Governor Sanders is sued herein in her official capacity as Governor of the State of Arkansas.

20. Defendant, the Arkansas Department of Finance and Administration (“ADFA”), is an administrative agency of the State of Arkansas, with its principal address and office in Pulaski County. The ADFA is charged under the LEARNS Act with implementing portions of the LEARNS Act, including the development of regulations and procedures relating to the voucher program established under the LEARNS Act, and the distribution of funds to recipients of the Voucher Program.

21. Defendant, Jim Hudson, is the currently-appointed and serving Secretary of the ADFA and is responsible for overseeing and ensuring that the duties of the ADFA are performed. Secretary Hudson is sued herein in his official capacity as Secretary of the ADFA.

22. The acts and omissions of all of the Defendants alleged herein relative to the implementation of the Voucher Program of the LEARNS Act are in violation of the express terms of the Constitution of the State of Arkansas, and as such, are *ultra vires*. Defendants, as officers, employees and agents of the State of Arkansas are not entitled to the defense of sovereign immunity for liability arising out of such *ultra vires* act.

JURISDICTION AND VENUE

23. Jurisdiction is proper in this Court pursuant to Amendment 80, Section 6, Ark. Code Ann. § 16-13-201, and Ark. Code Ann. § 16-111-102. Venue is proper in Pulaski County pursuant to Ark. Code Ann. §16-60-104.

HISTORICAL BACKGROUND OF THE LEARNS ACT

24. The LEARNS Act is not a novel proposal for the State of Arkansas. The concept has been attempted in Arkansas, before enactment of the LEARNS Act, and has been rejected by both state and federal courts. Knowledge and understanding of the historical background of voucher programs in Arkansas is important for persons

who are contemplating the legal standing of the current Voucher Program. That background, which is familiar to the court and to older generations of Arkansans, is contained in the Appendix to this Complaint.

25. Suffice it to say here, that the movement in the LEARNS Act to provide public school monies to private schools began with federal court orders to racially integrate public schools in accordance with *Brown v. Board of Education of Topeka* (1954), including multiple decisions in *Cooper v. Aaron*, 358 U.S. 1 (1958), to integrate classes and faculties in all Little Rock public schools and to include busing where necessary to achieve equality, which led in whole or in part to the creation of most of the private schools that this year will receive funding from public school funds through the Arkansas Children's Educational Freedom Account Program.

26. The first predecessor of Section 42 of LEARNS was Act 5 of the special Arkansas General Assembly session of 1958, which produced legislation allowing the governor to close public schools threatened with integration. Act 5 directed that in the event that any public schools in any school district in Arkansas were closed to avoid integration or violence, public-school monies would go to private schools that would be set up to accommodate children whose public schools were closed. Two such schools were established in the Little Rock School District in the ensuing school year, but federal courts barred the distribution of public school funds to the private schools as an effort to evade federal court orders.

27. Before the general election that followed in 1958, the Arkansas Supreme Court struck from the ballot a proposed constitutional amendment drafted by the state’s leading segregationist, Jim Johnson (a future justice of the state supreme court) that was a forerunner of Act 237 of 2023. Called the “Arkansas States Rights Amendment,” it would have directed the use of public school monies—both state and local—to pay private schools and other providers to educate the children of parents who did not want them to be in integrated public school classrooms for any reason. The unanimous court did not judge the soundness or morality of the proposal but said the short ballot title did not give voters a clue about the radical things—“the most far-reaching proposal ever offered to the state’s electorate”—that the amendment would do. *Hoban v. Hall*, 229 Ark. 416, 316 S.W. 2d 185.

ALLEGATIONS OF FACT

28. This is an action challenging the constitutionality of certain provisions of Act 237 of the Regular Session of the 2023 General Assembly of Arkansas, commonly known as “the LEARNS Act” (Act 237 is attached hereto as **Exhibit 1**). The LEARNS Act was introduced in the Arkansas Senate on February 20, 2023, as Senate Bill 294, adopted by the General Assembly on March 7, 2023, and signed into law by Defendant, Governor Sarah H. Sanders, on March 8, 2023.

The LEARNS Act

29. The LEARNS Act represents a radical and unconstitutional departure from a public school system that has endured since the establishment of the State of Arkansas. If implemented, the LEARNS Act will drain valuable and necessary resources from the public school system and create a separate and unequal dual school system that discriminates between children based on economic, racial and physical characteristics and capabilities.

30. Under Section 42 of the LEARNS ACT, Ark. Code Ann. 6-18-2501 *et. seq.* (**Exhibit 1, p. 82**), a program is established entitled the “Arkansas Children’s Educational Freedom Account Program” (“Freedom Accounts”) otherwise known as the “Voucher Program”) (LEARNS Act, Ark. Code Ann. 6-18-2502). Under the Voucher Program, public school funds derived from public taxes assessed and collected under the laws of Arkansas for the public schools may be deposited into an account (a “Freedom Account”) established by the State of Arkansas for or on behalf of an “eligible student” (*i.e.*, a resident of the State of Arkansas who is eligible to enroll in a public elementary or secondary school), and is used by the State to purchase tuition, uniforms and other goods and services for such “eligible students” directly from private schools, for home schooling, and from other private service providers. Freedom Account funds are never paid to students or their parents.

31. The Arkansas Education Freedom Accounts Quick-Fact Guide for Families (**Exhibit No. 2** hereto), published by the Arkansas Department of Education, states:

Signed into law as part of Governor Sanders' LEARNS education legislation, Education Freedom Accounts may be used by eligible families to cover private school tuition, fees, uniforms, and some other required expenses. Education Freedom Accounts provide funding up to 90% of the States' prior year per-student foundation funding amount.

32. The LEARNS Act does not provide an alternative source to public school monies for financing the vouchers. However, the legislature and governor seek to do that with a nomenclature change in the annual act distributing general revenues, the Revenue Stabilization Acts of 2023 and 2024.

33. Neither Section 42 of the LEARNS Act, which comprises the full text of the Freedom Accounts program, nor any other portion of the Act specifies the source of funds that are to be paid for the education of children at private schools or to other providers of normal school services, including parents. Since the entire Section is included in the functions of the state Department of Education and the state Board of Education, the presumption must be that those costs will be borne through appropriations for the agency and its board.

34. Section 42 of the LEARNS Act specifies that the Freedom Accounts program and all the particulars identified in the act will be administered by the ADE

and the ASBE, which itself is manifestly a violation of Section 2 of the Education article and Section 11 of the Finance and Taxation article since public school funds will pay the costs of administering the private-school funding program.

35. Pursuant to the LEARNS Act Section 42 (Ark. Code Ann. §6-18-2505(a)(1)), the amount of money to be allocated to the eligible student's Freedom Account is an amount equal to ninety percent (90%) of the prior year's statewide "foundation funding" allotted per student under Ark. Code Ann. §6-20-2305, which is currently approximately \$6,600.00. See **Ex. 2, "Arkansas EFA Quick-Fact Guide for Families."**

36. Money allocated into a student's Freedom Account may thereafter be used by the Defendant, Arkansas Department of Education (ADE), on behalf of the participating student and/or the student's parent(s) or guardian to directly pay to the "Participating Schools" (*i.e.*, "a private elementary or private secondary school") (**Ex. 1, p. 83, line 25**), or to a "Participating Service Provider" (*i.e.*, a "person or entity, including a participating public or private school that receives payments from program accounts to provide goods and services that are covered as qualifying expenses ...") chosen by the student or the parent or guardian of the student. (Ark. Code Ann. §6-18-2505).

37. Such payments are made by the ADE from the Participating Student's account directly to the participating private schools, home school, or participating

service providers at the direction of the participating student’s parent, in four (4) equal quarterly installments. Ark. Code Ann. §6-18-2505(b)(1). See also **Ex. 2, “Arkansas EFA Quick-Fact Guide for Families.”** p. 3 (“Payments will be sent directly to participating schools and service providers through ClassWallet, a digital wallet and accounts payable platform.”)

38. “Participating Schools” and “Participating Service Providers” as defined in the LEARNS Act are not “common schools” or “public schools” as those terms are used in Articles 14 and 16 of the Arkansas Constitution.

39. The LEARNS Act does not contain, authorize or impose any new tax which would be used to fund the Voucher Program, leaving such funds to be derived from existing taxes imposed by local school districts and the State of Arkansas for the public schools. The Revenue Stabilization Acts of 2023 and 2024 separate the school voucher appropriation from all the other school appropriations and lists it among a handful of non-education agencies and programs under the title “Other” general revenue funds. Moving the private-voucher account away from all the other education funds in the Revenue Stabilization Act presumably seeks to avoid the appearance of unconstitutionally using “public school” or “common school” funds to fund the Voucher Program.

40. The Voucher Program was first available beginning June 19, 2023 for the school year 2023-2024 to students who had a parent who was a resident of the State of Arkansas, was eligible to enroll in a public elementary or secondary school in this state, and who met one or more of the applicable criteria: (i) children with disabilities; (ii) children who were homeless; (iii) a foster child; (iv) a member of the Succeed Scholarship Program; (v) a child of an active-duty uniformed personnel; (vi) a child enrolling in kindergarten for the first time, or (vii) a child who was enrolled the previous year in a public school that failed to meet certain performance criteria. A maximum of one and five-tenths percent (1.5%) of the 2022-2023 total public school student enrollment could be approved to participate in the Arkansas Children's Educational Freedom Account Program. Ark. Code Ann. § 6-18-2506.

41. The Revenue Stabilization Act allotted \$31,701,900.00 for the voucher program for the school year 2023-2024. (**See Exhibit 3, 2023-24 Revenue Stabilization Act**).

42. For the 2024-25 school year eligibility for the voucher program was enlarged to include students who were eligible the previous year or who were enrolled in public schools rated “D” or “F” under sections 6-15-2105 and 6-15-2106, and students whose parents are veterans identified under Title 38 of the US Code, or in the military reserves, or first responders or law-enforcement officers. A maximum

of 3% of the 2022-2023 total public school student enrollment were to be approved to participate in the voucher program.

43. For the school year 2024-2025, the Revenue Stabilization Act allocated \$97,487,318.00 for the Voucher Program, a 300% increase over the previous school year allocation. (See **Exhibit 4, 2024-25 Revenue Stabilization Act**) As of the end of May, 2024, the Arkansas Department of Education has approved 106 private schools to participate in the Voucher Program and 13 additional private school applications are pending for approval. Approximately 7,280 students have applied for an Educational Freedom Account, and 6,171 students have been approved. (Source, Arkansas Democrat-Gazette, “*State clears 106 private schools for voucher cash,*” June 2, 2024.)

44. For the 2025-26 school year and each year thereafter, the LEARNS Act declares that there will be no limitation on student participation in the Arkansas Children’s Educational Freedom Account Program; *i.e.*, the program will be available, beginning with the 2025-26 school year, to all students who are residents of Arkansas. Ark. Code Ann. § 6-18-2506. This will result in another large increase in amounts allocated from public school funds to support the Voucher Program.

45. The Act requires every parent who enrolls a child in the voucher program to sign an agreement promising not to enroll the child in a public school while participating in the voucher program, although the child could take approved

courses at a public school if it is participating as an approved provider of services for children in voucher programs.

Sources of Funding for Arkansas Public Schools

46. Each year, the Arkansas legislature uses a matrix contained in Ark. Code Ann. §6-20-2305 to determine the amount of money necessary in its judgment to provide an Arkansas public school student with an adequate education. For school year 2023-2024, this amount is \$7,618.00. This amount is described as “foundation funding.” The foundation funding comprises two parts—the local contribution and the state equalization aid.

47. The local contribution is generated in each district by a uniform rate of taxation (“URT”) of 25 mills on taxable real, personal and utility property, with the proceeds thereof to be used solely for the maintenance and operation of public schools. No portion of the funds generated by the URT may be retained by the State. See Article 14, Section 3, as modified by Amendment 74; Ark. Code Ann. 6-20-2303(26). In the vast majority of Arkansas school districts, the funds generated by the URT are less than the foundation funding amount.

48. The State of Arkansas deducts the per-pupil local contribution from the foundation funding amount and pays the difference to local districts as “foundation aid” or “equalization funding.”

49. The calculations of the local contribution and state equalization are made on a per-pupil basis. Because the local contribution is based on the taxable real, personal and utility property located in the school district, the total amount of money generated by the URT is not impacted by the number of public school students who attend public schools within the taxing district.

50. When a student enrolls in a private school or elects to be home schooled using the Voucher Program funding, the student's public school district local tax generated by the 25-mill URT imposed by Amendment 70 to the Constitution remains the same but is allocated over fewer students. In other words, the total local funds generated by the URT, which is the "local contribution" to the foundation funding described in LEARNS, does not decrease in total when a student enrolls in a private school or is home schooled, and therefore it is larger on a per-pupil basis.

51. However, the state's contribution to a local district's foundation funding, known as "foundation aid" or "equalization funding," is reduced every time a student either leaves a public school or fails to enroll in a public school.

52. When a student is home-schooled using the Voucher Program funding, the resident public school district's local tax generated by the 25-mill URT remains the same but is allocated over fewer students. The state's amount of equalization funding goes down in this case.

53. As a consequence of the lower number of public school students in the foundation funding calculation, the local contribution to foundation funding thereby increases on a per-student basis. The per-student increase from the local contribution results in a reduction in the amount of foundation aid provided by the equalization funding to public schools, thereby providing the money which the State then gives to private schools and private providers under LEARNS.

54. The State of Arkansas, through the Defendant DOE, is thus using state tax dollars that are not paid to local public school districts to fund Education Freedom Accounts (Vouchers) for the benefit of private persons, private schools and private service providers. Through this “shell game” funding mechanism, local taxpayers are the ones actually paying the money through local and state tax levies that is going to private schools and being used for purely private purposes.

55. Through this funding mechanism established by the State, which is built into the State school-funding formula and used by LEARNS, the State has incentivized students to leave the constitutionally mandated system of public schools. This state action has thereby reduced the amount of state tax dollars which are paid to local public school districts and shifted the burden of funding vouchers to local school districts in violation of the Arkansas Constitution.

56. The LEARNS Act, having already been signed into law, the Defendants in 2023 set about to gloss over the problem of using public school funds for private

schools and home schooling through use of other appropriations and the Revenue Stabilization Act. The Revenue Stabilization Act is the concluding enactment of regular and fiscal sessions of the Legislature that distributes tax receipts among the many programs that are funded by taxes that specify they are to be used for such services as public schools and the state's charitable and eleemosynary institutions.

57. The appropriations and the Revenue Stabilization Acts enacted in 2023 and 2024 attempted to justify spending public school funds for private schools by separating the line item for the Voucher Accounts from all the other school programs identified by names like "Public School Fund" and "General Education Fund" (containing some fifteen components), and moving the Voucher Program line item instead to another section of the appropriations and Revenue Stabilization Acts labeled "OTHER FUNDS."

58. Under that "OTHER FUNDS" category, in the 2023 Revenue Stabilization Act, appears: "DESE – Education Freedom Accounts," followed by the allocations of \$31,701,900 for fiscal 2023-24 and \$97,487,318 for fiscal 2024-2025. See the appropriations and Revenue Stabilization Acts of 2023 and 2024 attached hereto as **Exhibits 3 and 5 (2023-24) and 4 and 6 (2024-25)**. Additionally, the appropriation bill for the Education Department, introduced after the enactment of the LEARNS Act in 2023, lists the appropriation (the maximum amount that the Education Department can spend on the program if the funds become available) for

the vouchers and says that it is appropriated to the agency by the “Arkansas Children’s Educational Freedom Account Fund,” as if the voucher fund had an entirely separate but unidentified and mysterious source of money besides the taxes levied by law for the public schools and certain other public programs like the state’s charitable institutions and colleges.

59. The Constitutional prohibition against spending public school funds, or funds of the State for the benefit of schools or universities, for any other than for the respective purposes to which it belongs cannot be ignored by changing the nomenclature of the funding sources. Further, in school year 2025-2026 and thereafter, every child in the state who is eligible to go to Arkansas public schools will become eligible for private education vouchers. Such expansion of the program will ultimately require hundreds of millions of dollars.

60. Thus, the Voucher Plan is a funding plan which, by design, takes state money which otherwise would be used to enhance public schools and diverts that money to private schools and other providers under the LEARNS Act in violation of Article 14, §2 of the Arkansas Constitution.

COUNT I

VIOLATION OF ARTICLE 14, §1 OF THE ARKANSAS CONSTITUTION

61. All of the allegations set forth in the previous paragraphs are hereby incorporated in support of this Count I.

62. Article 14, §1, of the Arkansas Constitution states as follows:

§ 1. Free public schools

Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education.

63. Section 1 dictates that the State shall maintain a general, suitable and efficient system of free public schools, meaning that the students shall not be required to pay any sum for their elementary and secondary public school education in addition to that paid by the State. This requirement excludes, by its plain terms, any other system which is not free and not public.

64. Nowhere in the Arkansas Constitution is there authorization for the use of state tax revenue for the stated purpose of funding private schools and paying private providers of services, such as “home schools.”

65. Nor does the LEARNS Act require private schools and participating vendors to provide their services to students at no additional cost. These schools and providers are at liberty to charge additional tuition, fees, materials costs and other amounts to students who receive vouchers, thereby depriving those students of the free public education that the Arkansas Constitution requires of the State. Thus,

private schools are not part of a general, suitable and efficient system of free public schools.

66. In addition, the private “Participating Schools” are not “public” or “common” schools under Arkansas law because they may exclude students from enrollment based on the Participating School’s own enrollment policies. There is no authorization under the Arkansas Constitution for such schools.

67. Therefore, the Voucher Program, by its own plain terms, violates Article 14, Section 1 of the Arkansas Constitution.

COUNT II

VIOLATION OF ARTICLE 14, §2 OF THE ARKANSAS CONSTITUTION

68. All of the factual allegations set forth in the previous paragraphs are hereby incorporated in support of this Count II.

69. The Voucher Program established under the LEARNS Act, by which public funds assessed and collected for the use and benefit of the public schools of Arkansas may be paid to private schools or to “participating service providers,” also violates Article 14, Section 2 of the Constitution of Arkansas, which provides as follows:

§ 2. Public school fund—Use

No money or property belonging to the public school fund, or to this State, for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

70. Article 14, Section 2, of the Arkansas Constitution prohibits “money or property belonging to *the public school fund*” from being diverted to other purposes. The words “public school fund” are in lower case, meaning that it is a common noun, not the name of a specific, named fund, and that it applies to all money raised for the public schools no matter what the authors of a bill may choose to call it.

71. The Voucher Program takes revenues which belong to the public school fund or to this State and expends those funds for private purposes which are not authorized by the Constitution. There is no specific fund entitled “the Public School Fund” into which all money intended for the public schools is appropriated or deposited. The “Public School Fund” identified in appropriations and the Revenue Stabilization Act is currently only one of many public school funds, each distributing tax receipts for one or more programs for public school students, such as school construction. The State’s practice of allocating an appropriation to a fund or account for private schools in the Revenue Stabilization Act that bears a name other than Public School Funds does not avoid the constitutional prohibition contained in Article 14, Section 2. Similar constitutional and statutory references to “common schools” use lower case.

72. Further, Article 14, Section 2 also prohibits “money or property belonging ... to *this State, for the benefit of schools or universities*” from being diverted to any other purpose. Thus, the framers of Section 2 inserted two phrases that make clear that regardless of whether money is considered to be “public school funds” or “money or property belonging to the State for the benefit of schools or universities,” it can never be used for any other than for those respective purposes.

73. Since 1874, the state has identified school appropriations every two years by many different names, including “Common School Fund” or “Public School Fund.” The current Revenue Stabilization Act and individual appropriations for various school programs includes two dozen different funds authorizing expenditures for various elements of elementary and secondary education, but also includes a separate allotment for the private-school vouchers under the name of “Arkansas Freedom Education Accounts.”

74. Carving out public funds for a non-public school voucher program, identifying it with a name other than “Public School Fund,” and then separating it from other education funds and moving to a catch-all section of miscellaneous appropriations flouts and makes a mockery of the constitutional restraint in Article 14, §2. Simply moving the appropriation for the Voucher Program to a separate part of the Revenue Stabilization Act and calling it something other than a public or common school fund does not render it constitutional. It is, after all, labeled

“Arkansas Freedom Education Accounts,” (see **Exhibit 2**), is clearly for educational purposes (although not of a type permitted to be funded by the State under the Arkansas Constitution), and constitutes public funds. Under Article 14, §2, it cannot be used for any purpose other than public schools.

COUNT III

VIOLATION OF ARTICLE 14, §3 OF THE ARKANSAS CONSTITUTION

75. All of the factual allegations set forth in the previous paragraphs are hereby incorporated in support of this Count III.

76. The Voucher Program established under the LEARNS Act, by which public funds assessed and collected for the use and benefit of the public schools of Arkansas may be paid to private schools, home schooling or to participating service providers, violates Article 14, Section 3 (a) and (b)(1) and (3) of the Constitution of Arkansas, which state in relevant part:

§ 3(a). School districts – Tax levies

(a) The General Assembly shall provide for the support of *common schools* by general law. In order to provide quality education, it is the goal of this state to provide a fair system for the distribution of funds. It is recognized that, in providing such a system, some funding variations may be necessary. The primary reason for allowing such variations is to allow school districts, to the extent permissible, to raise additional funds to enhance the educational system within the school district. It is further recognized that funding variations or restrictions thereon may be necessary in order to comply with,

or due to, other provisions of this Constitution, the United States Constitution, state or federal laws, or court orders. (Italics added)

(b)(1) There is established a uniform rate of ad valorem property tax of twenty-five (25) mills to be levied on the assessed value of all taxable real, personal, and utility property in the state *to be used solely for maintenance and operation of the schools.* (Italics added)

(2) ...

(3) The uniform rate of tax shall be assessed and collected in the same manner as other school property taxes, but the net revenues from the uniform rate of tax shall be remitted to the State Treasurer and distributed by the state to the school districts as provided by law. *No portion of the revenues from the uniform rate of tax shall be retained by the state. The revenues so distributed shall be used by the school districts solely for maintenance and operation of schools.* (Italics added)

...

(c)(1) In addition to the uniform rate of tax provided in subsection (b), school districts are authorized to levy, by a vote of the qualified electors respectively thereof, an annual ad valorem property tax on the assessed value of taxable real, personal, and utility property *for the maintenance and operation of schools and the retirement of indebtedness.* (Italics added)

(2) ... (n/a)

(3) No tax levied pursuant to subsection (c)(1) of this section shall be appropriated to any other district than that for which it is levied.

77. Article 14, Section 3 specifically states that “The General Assembly shall provide for the support of common schools by general law,” and that the money produced by the ad valorem property tax is “to be used solely for maintenance and

operation of the schools.” The legal maxim *expressio unius est exclusio alterius*, also known as the negative-implication canon, means that “the express designation of one thing may properly be construed to mean the exclusion of another.” *State ex rel. Rutledge v. Purdue Pharma L.P.*, 624 S.W.3d 106, 111, 2021 Ark. 133, 9–10 (2021) (citing *Buonaiuto v. Gibson*, 2020 Ark. 352, at 8, 609 S.W.3d 381, 386; and Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, 107 (2012) *10 (describing the maxim as an interpretative canon known as “negative implication”).

78. The specific authorization of tax levies in support of common schools results in the constitutional exclusion of support for schools which are not “common schools” or “public schools,” especially when read in light of the very specific requirement that Arkansas maintain “a general, suitable and efficient system of free public schools...” which is clearly stated in Article 14, §1. There is no ambiguity in Sections 1, 2 or 3 of Article 14 of the Arkansas Constitution, and it cannot be read to include private or home schools, or any other form of education other than free public schools.

79. The State is employing the funding mechanism for public schools to support a different group of private schools by effectively diverting local tax revenues to fund vouchers, all in violation of the foregoing provisions of Article 14, Section 3 of the Arkansas Constitution.

COUNT IV

VIOLATION OF ARTICLE 16, SECTION 11 OF THE ARKANSAS CONSTITUTION

80. All of the factual allegations set forth in the previous paragraphs are hereby incorporated in support of this Count IV.

81. The 25-mill tax on real, personal and utility property levied for local school districts, is, in the two-step LEARNS funding mechanism, being used at least in part to fund the LEARNS Act. This is clearly a different purpose than the purpose for which those taxes were levied. This is a violation of Article 16, section 11 of the Arkansas Constitution, which states:

§ 11. Tax levies—Requirements

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same; and no moneys arising from a tax levied for any purpose *shall ever be used for any other purpose.* (Italics added)

82. Amendment 74 of the Arkansas Constitution amended Article 14, §3 to expressly require that the funds generated by the 25-mill uniform rate of taxation therein described be used solely for the maintenance and operation of the schools in school districts. Such taxes must be distributed to the schools within the taxing district, and “No portion of the revenues from the uniform rate of tax shall be retained by the State.”

83. Furthermore, the Voucher Program of the LEARNS Act uses state tax monies to provide a direct benefit to private schools and private service providers in violation of the purposes for which all other relevant taxes were levied.

84. Because the Voucher Program of the LEARNS Act authorizes the transfer of public funds raised by taxes specifically dedicated to and for the use only of the public schools of Arkansas, such as, by way of example, income taxes (Act 385 of 1941: Section 17), sales taxes (Act 118 of 1929; Section 41), tobacco taxes (Act 152 of 1929; Section 29), and ad valorem taxes, to private schools and other forms of instruction such as home schooling, such program violates the above-mentioned provisions of the Arkansas Constitution, and should be declared unconstitutional and invalid.

85. The funding mechanisms and incentives for vouchers reduce the number of students in traditional public schools, and effectively fund the state vouchers in part with funds which formerly were distributed to traditional public schools. This scheme results in the local school tax funds generated by the 25-mill uniform rate of taxation being shuffled to the state, and then used to fund school vouchers.

COUNT V

VIOLATION OF ARTICLE 16, SECTION 13 OF THE ARKANSAS CONSTITUTION

86. All of the factual allegations set forth in the previous paragraphs are hereby incorporated in support of this Count VI.

87. Article 16, Section 13 of the Constitution of the State of Arkansas provides as follows:

Art. 16, § 13

Any citizen of any county, city or town may institute suit, in behalf of himself and all others interested, to protect the inhabitants thereof against the enforcement of any illegal exactions whatever.

88. In promoting and engaging in the actions described in the preceding allegations, Defendants have expended and/or authorized the expenditure of funds and other resources of the State of Arkansas on purposes, activities and in other ways to implement the Voucher Program authorized by the LEARNS Act that were at the time of such actions and continue to be in violation of the Constitution of the State of Arkansas, thus rendering such expenditures to be illegal exactions under Arkansas Constitution Article 16, Section 13.

89. The recipients of such expenditures have received illegal exactions, and should be required to reimburse the State of Arkansas for any amounts received by them under the Voucher Program.

90. In the event that the Court finds that the expenditures by the Defendants of state funds under and pursuant to the Voucher Program were in violation of the Arkansas Constitution, the Court should permit the Plaintiffs to join the recipients of such funds as Defendants herein and determine the liability of such recipients for repayment of all sums paid to them under the Voucher Program as illegal exactions.

WHEREFORE, Plaintiffs request relief as follows:

- i) The Court enter a Declaratory Judgment declaring that the Voucher Program (*i.e.*, the “Arkansas Children’s Educational Freedom Account Program”) is unconstitutional; that the same is void and of no further effect; and that further implementation of the Voucher Program of the LEARNS Act by the Defendants and their successors in office be permanently enjoined.
- ii) That upon such finding, the Plaintiffs be authorized by the Court to join in this case all private schools and private providers to whom funds of the State were paid under and pursuant to the Voucher Program, for adjudication as to their liability to refund such funds to the State of Arkansas;
- iii) That Plaintiffs be awarded their costs expended, and that reasonable attorneys’ fees be awarded to counsel to the Plaintiffs for their work in

the public interest of insuring state tax monies are expended in a lawful manner; and

- iv) That the Court grant to Plaintiffs all other relief which is just and equitable.

Respectfully submitted,

RICHARD MAYS LAW FIRM PLLC

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VERIFICATION

STATE OF ARKANSAS)
)ss.
COUNTY OF PULASKI)

On the date set forth below came before me, a Notary Public in and for the State and County aforesaid, Anita Whitfield, who, after being identified as such by government-issued identification, and after being sworn to tell the truth, stated that she is the same person of that name who is a Plaintiff in the above and foregoing Complaint; that she has read the Complaint; and that the facts and allegations contained therein are true and correct to the best of her knowledge, information and belief.

Anita Whitfield

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 7th day of June, 2024.

Nina J. Jackson
Notary Public



VERIFICATION

STATE OF ARKANSAS)
)**ss.**
COUNTY OF PULASKI)

On the date set forth below came before me, a Notary Public in and for the State and County aforesaid, Special Sanders, who, after being identified as such by government-issued identification, and after being sworn to tell the truth, stated that she is the same person of that name who is a Plaintiff in the above and foregoing Complaint; that she has read the Complaint; and that the facts and allegations contained therein are true and correct to the best of her knowledge, information and belief.

Special Sanders

SUBSCRIBED AND SWORN TO before me, a Notary Public, on this 7th day of June, 2024.

Nina J. Jackson
Notary Public

