IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

Andrew Spar on behalf of himself and his minor child; Laura Bell on behalf of herself and her minor child; **Tamara Haleem** on behalf of herself and her minor child; **Stephanie Vanos** on behalf of herself and her minor children; **Earlishia Oates** on behalf of herself and her minor child; **Suzanne Sapp** on behalf of herself and her minor child; **Aaryn Frick,** on behalf of herself and her minor children; **Robert Lyons**; and **Florida Education Association,**

Plaintiffs,

v. Case No.: 2026 CA 000929

Anastasios "Stasi" Kamoutsas, in his official capacity as the Commissioner of Education for the State of Florida; the **Florida Department of Education**; **Ryan Petty**, in his official capacity as Chair of the Florida State Board of Education; **MaryLynn Mager**, in her capacity as Vice Chair of the Florida State Board of Education; **Grazie P. Christie**, in her official capacity as member of the Florida State Board of Education; **Layla Collins**, in her official capacity as member of the Florida State Board of Education; **Daniel P. Foganholi, Sr.**, in his official capacity as member of the Florida State Board of Education; **Erika Fritz-Ochs**, in her official capacity as member of the Florida State Board of Education; **Luis Fuste**, in his official capacity as member of the Florida State Board of Education; and the **Florida State Board of Education**,

Defendants.
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MOTION TO INTERVENE AND MEMORANDUM OF LAW IN SUPPORT

For the reasons below, Parents Tatiana Cox Lopez, Jessica Tillmann, and Alyssa Hines, and Julie Schulman ("Parents") respectfully move for leave to intervene as defendants to defend the Family Empowerment Scholarship Programs against Plaintiffs' challenges in Counts 1, 2, and 4 of their Complaint and their demands for relief. In support of this Motion to Intervene, Parents set forth the following grounds and attach a proposed Answer as Exhibit E.

INTRODUCTION

Florida has been a national leader in providing educational choice options for its parents and students for more than two decades. Now, more than half of all Florida's K-12 students voluntarily participate in an education choice program. Like hundreds of thousands of other families, Parents have children who are currently receiving the Family Empowerment Scholarship for Educational Options or the Family Empowerment Scholarship for Students with Unique Abilities (collectively, the "Scholarship Programs"). § 1002.394, Fla. Stat. The Scholarship Programs provide education savings accounts for eligible students to fund qualified educational expenses and were enacted by the Florida Legislature to improve primary and secondary education and to provide Florida families with increased educational options. *See id.* Parents are the intended and direct beneficiaries of the Scholarship Programs and are effectively the real parties in interest for claims against those programs.

In Counts 1, 2, and 4, Plaintiffs' complaint seeks to enjoin the scholarships provided under the Scholarship Programs. Parents seek intervenor-defendant party status to defend the constitutionality of the Scholarship Programs that they depend on to afford the best educational options for their families. Intervention by Parents is warranted under Rule 1.230 of the Florida Rules of Civil Procedure. Parents have a strong interest in providing for their children's educational needs. Indeed, parents of children participating in educational choice programs are routinely granted intervention to defend the programs when they are challenged in court. *See infra* pp. 13–14 nn.3–4. This case is no different, and intervention is warranted.

This motion is based on the facts and law set forth here and on Parents' declarations, attached as Exhibits A–D.

STATEMENT OF FACTS

I. The Scholarship Programs & Plaintiffs' Challenge

The Scholarship Programs are education savings account (ESA) programs that have both existed in Florida for many years. Both programs provide ESA scholarships for qualified families to ensure all families can access the best education for their children. Participation is optional, and families may continue to attend their traditional public schools. But if a family determines that a traditional public school is not the best option for their child, the Scholarship Programs create additional opportunities and flexibility in education. They also help address disparities in educational options to children throughout the state.

The Family Empowerment Scholarship for Students with Unique Abilities ("Unique Abilities Scholarship") originated in 2014. It was originally named the Personal Learning Scholarship Accounts and provided ESAs to students with certain special needs. This program was expanded and renamed twice, first to the Gardiner Scholarship in 2016, and then to its current name in 2021. Ch. 21-27, § 4, Laws of Fla.

The Family Empowerment Scholarship for Educational Options ("Educational Options Scholarship") began in 2019. Ch. 19-23, § 6, Laws of Fla. It initially provided ESAs to students who met certain income and other eligibility requirements but were not eligible for the Unique Abilities Scholarship or its predecessor programs. It was expanded in 2022 (Ch. 22-154, § 12, Laws of Fla.) and again in 2023 (Ch. 23-16, § 5, Laws of Fla.), becoming a universal scholarship program for all children in the state.

All school-aged students in Florida are eligible for the Educational Options Scholarship, while students ages 3-22 who have an Individualized Education Plan ("IEP") under the federal Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400–1482, or a diagnosis of a qualifying condition are eligible for the Unique Abilities Scholarship. § 1002.394(3)(a)–(b), Fla. Stat. Scholarship amounts for

the Educational Options Scholarship are based on the grade level and school district in which a student was assigned, with scholarships approximating the per-student funds for their assigned school. Unique Abilities Scholarship students receive a higher amount that includes their portion of special education funds. § 1002.394(12). Parents and guardians can use Scholarship Program funds to pay for a variety of educational expenses, including tuition and fees for various kinds of qualified schools, tutoring programs, and supplies like textbooks. § 1002.394(4)(a)–(b). Unique Abilities Scholarship students can use the funds for a variety of services and therapies that can address their needs. § 1002.394(4)(b).

Plaintiffs, the Florida Education Association, a current school teacher, and seven public-school parents, filed this lawsuit on May 5, 2026, challenging the Scholarship Programs on state constitutional grounds. Plaintiffs argue that the Scholarship Programs violate Article IX, Sections 1(a) and 6 of the Florida Constitution. Compl. ¶¶ 71–80, 85–89. Plaintiffs also argue that charter schools violate Article IX, Section 1(a) of the Florida Constitution. Compl. ¶¶ 81–84. Based on these claims, Plaintiffs assert irreparable harm and ask this Court to declare that the Scholarship Programs violate Article IX of the Florida Constitution and to issue an injunction prohibiting the State from funding Scholarship Program scholarships for Florida families and prohibiting the funding of charter schools. Compl. pp. 37–38.

II. Applicant Parents and Their Interest in the Scholarship Programs

Parents Tatiana Cox Lopez, Jessica Tillmann, Alyssa Hines, and Julie Schulman are the parents of children approved for scholarships from the Scholarship Programs. *See* Exhibits A–D. Accordingly, Parents are the Scholarship Programs' direct beneficiaries. They now seek to intervene in this case to defend the Scholarship Programs and their interest in it.

A. Tatiana Cox Lopez

Tatiana Cox Lopez is a mother of two daughters in Oldsmar. *See* Exhibit A, Cox Lopez Decl., ¶¶ 1–3. Both daughters are homeschooled by Tatiana and her husband. *Id.* ¶ 2. A.C. will be entering

seventh grade in the fall, and Am.C. will be entering first grade. *Id.* A.C. has been part of the Unique Abilities Scholarship since 2024, while Am.C. started receiving a Personalized Education Plan scholarship in kindergarten. *Id.* ¶¶ 5, 6, 10, 15.

Tatiana decided to homeschool her daughters to provide them an education that best fits their learning styles. *Id.* ¶¶ 7–11, 16. A.C. has ADHD and dyslexia, and the standard classroom environment did not fit her needs, resulting in her falling behind in her classes and becoming increasingly frustrated with school. *Id.* ¶¶ 7–8. Tatiana and her husband used the unschool method to help revive A.C.'s love for learning, focusing on learning through her interests, hands-on activities, outdoor experiences, reading together, and everyday life skills. *Id.* ¶ 10. This method helped them determine how A.C. learned best without the pressure she previously felt in the classroom. *Id.* For fifth and sixth grade, the Unique Abilities Scholarship has allowed them to provide A.C. with a more structured homeschool, using the curriculum and textbooks that fit her needs as well as tutors to help her learn. *Id.* ¶ 11.

Without the Scholarship Programs, Tatiana's family would face significant harm. *Id.* ¶ 13. Her family would struggle to provide the resources A.C. needs, creating a major financial burden that might force them to re-enroll A.C. in traditional classrooms despite her previous difficulties in those classes. *Id.*

B. Jessica Tillmann

Jessica Tillmann is a mother of four children in Longwood. *See* Exhibit B, Tillmann Decl., ¶¶ 1–3. Her daughter J.T. will be entering twelfth grade in the fall, her son C.G.T. will be entering fourth grade, her son C.T.T. will be entering second grade, and her daughter G.T. will be entering kindergarten. *Id.* ¶ 2. J.T. attends private school part-time as part of a Personalized Education Plan that includes dual enrollment at the local junior college. *Id.* ¶¶ 2, 5. Her son C.G.T. attends private

school using the Unique Abilities Scholarship, while her son C.T.T. and her daughter G.T. attend private school using the Educational Options Scholarship. *Id.* ¶¶ 2, 5, 11–12.

Although J.T. is currently in private school, she attended local public schools for kindergarten through sixth grade. *Id.* ¶¶ 6–7. Jessica and her husband moved to Seminole County because of its great public schools, and the schools lived up to that reputation for the first few years of J.T.'s schooling. *Id.* Unfortunately, COVID changed that experience, and J.T. was not learning as well with either the COVID-restricted in-person learning or with remote learning. *Id.* ¶ 8. The decline in the public schools prompted Jessica to use Florida's scholarships to pursue a better option for J.T. and for C.G.T. when he was entering kindergarten in the fall of 2021. *Id.* ¶ 9. She enrolled them both in Smith Preparatory Academy, which she chose because of its Classical Christian curriculum and its affordability with the scholarship. *Id.*

When J.T. was entering high school in the fall of 2023, Jessica considered moving J.T. and C.G.T. back to public school. *Id.* ¶¶ 10, 13–14. They toured both public schools that J.T. and C.G.T. would respectively attend. *Id.* ¶¶ 13–14. Unfortunately, the high school was not as responsive to questions and concerns as the local public schools had been before COVID, and the elementary school was too large to be a good fit for C.G.T. after his experience in smaller classes. *Id.* Because the local public schools do not offer the same quality of education they offered before COVID, Jessica chose instead to enroll J.T., C.G.T., and eventually their younger siblings in another private school, Champion Preparatory Academy, using the Scholarship Programs. *Id.* ¶¶ 10, 16.

Even with the scholarships, tuition at private schools is difficult to afford for all four children. *Id.* ¶ 11. Jessica intends to enroll the three younger children at more affordable private schools in that area starting in the fall. *Id.* ¶ 12.

Without the Scholarship Programs, Jessica's family would face significant harm. *Id.* ¶ 17. She could not afford to keep all four children in private school, and whichever of the children had to return to public school would suffer harm to their academic development. *Id.*

C. Alyssa Hines

Alyssa Hines is a mother of two children in Temple Terrace. *See* Exhibit C, Hines Decl., ¶¶ 1–3. Her daughter A.H. will be entering fifth grade in the fall, and her son E.H. will be entering second grade. *Id.* ¶ 2. Both children use the Educational Options scholarship to attend private school. *Id.* ¶¶ 2, 5.

Alyssa loved public school growing up, and she really wanted her children to attend public school as well. *Id.* ¶¶ 6–8. Unfortunately, the local public schools have issues with gangs and bullying, and Alyssa could not find a public school in their zoned district that would be safe enough for her children to attend. *See id.* She searched online for private school options, but her family could not afford multiple years of tuition for even one of the children. *Id.* ¶ 7. She learned about the scholarships when searching for ways to afford private school for her children, and the scholarship has allowed her family to afford tuition for both children. *Id.* ¶¶ 7, 9. In addition to being safe for the kids, the private school option has also allowed her kids to learn in an environment that avoids electronic technology, focusing on learning from books and pencil and paper in a way that has helped both A.H. and E.H. succeed academically. *Id.* ¶ 9.

Without the Scholarship Programs, Alyssa's family would face significant harm. *Id.* ¶ 10. She could not afford tuition for the children, and because she does not want to send them to an unsafe school, she would either have to find a second job to afford tuition or quit her current job to focus on homeschooling. *Id.* Neither losing their current school or spending less time with their mother would be good options for A.H. and E.H. *Id.*

D. Julie Schulman

Julie Schulman is a mother of two children in Boca Raton. *See* Exhibit D, Schulman Decl., ¶¶ 1–3. Her daughter R.S. will be entering fourth grade in the fall, and her son J.S. will be entering second grade *Id.* ¶ 2. R.S. attends Katz Hillel Day School, a private school in Boca Raton, using the Educational Options Scholarship. *Id.* ¶¶ 2, 5. J.S. attends his local public elementary school, Sandpiper Shores Elementary School. *Id.* ¶ 2.

Julie chose to enroll her children in different schools because of their different needs. *See id.* ¶¶ 6–11. R.S. attends Katz Hillel because it provides the academic challenge she needs, the academic support in math where she needs more help, and the religious education that matches what she learns at home. *Id.* ¶¶ 6–7. J.S. attends Sandpiper Shores because he has unique educational needs, and the public school is better able to meet those needs than any private school Julie has found. *Id.* ¶ 8. J.S. has an Individualized Education Program through this school, and he receives needed therapies both through his school and through additional private sessions. *Id.* ¶ 9. The public school also provides a summer school that allows him to receive needed services under his IEP. *Id.* ¶ 10.

Without the Scholarship Programs, Julie's family would face significant harm. *Id.* ¶ 12. They would have to choose between J.S.'s additional therapy services or R.S.'s tuition, and they would likely suffer financial harm to their other needs even with those harms to their children's education. *Id.*

ARGUMENT

This Court should allow Parents to intervene in this case. Parents have children who are participants in the Scholarship Programs, and thus, are the intended beneficiaries of these programs. Parents and guardians of participating children, as the intended beneficiaries of the educational choice programs, are routinely granted leave when their constitutionality is challenged. *See infra* pp.13–14 nn.3–4.

The Florida Rules of Civil Procedure provide that:

> Anyone claiming an interest in pending litigation may at any time be permitted to assert his right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion.

Fla. R. Civ. P. 1.230.

Florida courts apply a two-part test on a motion to intervene. *Lexington Ins. Co. v. James*, 295 So. 3d 367, 371 (Fla. 1st DCA 2020). "First, the trial court must determine that the interest asserted is appropriate to support intervention." *Id.* (quoting *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507–08 (Fla. 1992)). If the "requisite interest exists, the court should "consider a number of factors," such as "the size of the interest, the potential for conflicts or new issues, and any other relevant circumstance." *Id.* (quoting same). "Second, the court must determine the parameters of the intervention." *Id.* (quoting same). The parameters are ones that "protect the interests of all parties." *Id.* (quoting same). And while Florida courts presume that the proposed intervenor seeks a status subordinate to the main parties (preventing the intervenor from acting independently to protect their rights), courts may order intervention without subordination. *See* Fla. R. Civ. P. 1.230 ("unless otherwise ordered by the court"). Here, for reasons discussed below, Parents seek intervention *without* subordination.

Intervention should be liberally allowed. *Miracle House Corp. v. Haige*, 96 So. 2d 417 (Fla. 1957). An intervenor must accept the record and pleadings as he or she finds them and cannot raise new issues, although he or she may argue the issues as they apply to him or her as a party. *Riviera Club v. Belle Mead Dev. Corp.*, 141 Fla. 538, 194 So. 783 (Fla. 1940); *Williams v. Nussbaum*, 419 So. 2d 715 (Fla. 1st DCA 1982). Moreover, "[a] proposed intervenor's interest may be in the entire suit, or some part thereof." *Nat'l Wildlife Fed'n, Inc. v. Glisson*, 531 So. 2d 996, 998 (Fla. 1st DCA 1988).

A. Parents—direct beneficiaries of the Scholarship Program—have a weighty interest to intervene, have moved timely, and will not prejudice existing parties.

First, Parents have the requisite interest to intervene. An interest for intervention "must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal effect and operation of the judgment." *Lexington Ins. Co.*, 295 So. 3d at 370–71 (quoting *Union Cent. Life Ins. Co.*, 593 So. 2d at 507). As the parents of children who are eligible to participate in the Scholarship Programs, Parents have a current, significant interest in the continued existence of the programs and will lose scholarships by direct operation of any judgment enjoining funding. This immediate financial interest is precisely the type of interest that Rule 1.230 is designed to protect.

Although the Florida Supreme Court has not addressed the precise question of how Rule 1.230 affects program beneficiaries when only state defendants are named in the Complaint, this Court may look to the decisions of the federal courts in applying Federal Rule of Civil Procedure Rule 24 because the Florida rule and the modern federal rule are both based on the old federal equity rule regarding interests supporting intervention. *See* Fla. R. Civ. P. 1.230 1967 author's cmt. ("In Federal practice, intervention is covered by Rule 24, Federal Rules of Civil Procedure. This rule was derived from old federal equity rule 37, which formed the basis for our Rule 1.230.").

Federal courts have repeatedly held that the beneficiaries of a government program or law have the requisite interest to intervene as a matter of right when the program or law is challenged. *E.g.*, *Texas v. United States*, 805 F.3d 653, 660 (5th Cir. 2015) (allowing immigrant parents to intervene as the "intended beneficiaries of the challenged federal policy" deferring deportation of parents of U.S. citizens); *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 [we]re the statute's direct beneficiaries"); *State of California ex rel. Lockyer v. United States*, 450 F.3d 436, 441 (9th Cir. 2006) (allowing health care providers to intervene to defend conscience protection law because

"[t]hey [we]re the intended beneficiaries of th[e] law"); *Cotter v. Mass. Ass'n of Minority Law Enforcement Officers*, 219 F.3d 31, 37 (1st Cir. 2000) (permitting minority police officers to intervene to defend police department's promotion of minority officers); *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980) (allowing small farmers to intervene to defend rulemaking under reclamation act because farmers were "precisely those Congress intended to protect with the reclamation acts"); *Associated Gen. Contractors of Am. v. Cal. Dep't of Transp.*, No. 09-01622, 2009 WL 5206722, at *2 (E.D. Cal. Dec. 22, 2009) ("Intervenors have a protectable interest in the lawsuit, as they represent the intended beneficiaries of the government program at issue."); *United States v. Dixwell Hous. Dev. Corp.*, 71 F.R.D. 558, 560 (D. Conn. 1976) (allowing housing project tenants to intervene to defend portions of the National Housing Act because "their interest as beneficiaries of two aspects of the . . . Act" was "sufficient to support intervention").

Parents' interest in this litigation is also inextricably intertwined with their fundamental liberty interest in "direct[ing] the upbringing and education of" their children. *Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925); *see also Meyer v. Nebraska*, 262 U.S. 390, 401 (1923) (recognizing the right of parents "to control the education of their own"). The very purpose of the Scholarship Programs, after all, is to empower parents and guardians to exercise this liberty interest. The U.S. Supreme Court has repeatedly held that this liberty interest includes a parent's right to choose the most appropriate schooling for her child.[1] Plaintiffs also are directly targeting this interest because their primary

[1] *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972) (recognizing "the right of parents to provide an equivalent education in a privately operated system" and that "the values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society"); *Pierce*, 268 U.S. at 534–35 (recognizing the "liberty of parents and guardians to direct the upbringing and education of children under their control"); *id.* at 535 ("The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only."); *Meyer*, 262 U.S. at 399, 400 (holding that the Due Process Clause protects the liberty "to acquire useful knowledge . . . and bring up children," including "the right of parents to engage [a private teacher] to instruct their children"); *see also Espinoza v. Mont. Dep't of Revenue*, 591 U.S.464, 486 (2020) ("[W]e have

argument against the Scholarship Programs is that participants like Parents are enrolling their children in schools that the Plaintiffs do not like. *See, e.g.*, Compl. ¶¶ 73, 88. Arguing that the State Defendants should prevent Parents from using scholarship funds for current schools directly implicates Parents' interests in the upbringing of their children.

Parents should be granted intervention because Plaintiffs' lawsuit may impair or impede Parents' ability to protect their interest. If Plaintiffs prevail, Parents will lose their scholarships under the Scholarship Programs and will have no opportunity to defend their interests in those scholarships in any separate lawsuit. "[A] lost opportunity to seek a government benefit"—including, specifically, participation in an educational choice program—is an "injury in fact" that satisfies even the stringent Article III standing requirements of the U.S. Constitution. *Carson ex rel. O.C. v. Makin*, 979 F.3d 21, 31 (1st Cir. 2020), *reversed on other grounds*, 596 U.S. 767 (2022). As one recent court decision granting parents' intervention in a similar case stated, "no one can dispute that parents have a particularly strong interest in the education of their children, and, particularly, parents who are participating in the account program and benefitting from it and stand to lose that benefit if the Court were to find the program unconstitutional." Doc. 43, *Faulkenberry v. Ark. Dep't of Educ.*, No. 4:25cv592 (E.D. Ark. Feb. 17, 2026), at 103.

And on a fundamental level, "[a]n applicant's interest is plainly impaired if disposition of the action in which intervention is sought will prevent any future attempts by the applicant to pursue its interest." James Wm. Moore et al., 6 *Moore's Federal Practice* § 24.03 (3d ed. supp. 2007); see *Nixon*, 34

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long recognized the rights of parents to direct 'the religious upbringing' of their children. Many parents exercise that right by sending their children to religious schools, a choice protected by the Constitution." (citation omitted)); *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) ("In a long line of cases, we have held that . . . the 'liberty' specially protected by the Due Process Clause includes the right[] . . . to direct the education and upbringing of one's children . . . ."); *Troxel v. Granville*, 530 U.S. 57, 65 (2000) (plurality) ("The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court.").

S.W.3d at 131. That is the case here. Parents and their children not only stand to lose their aid—they "have no alternative forum where they can mount a robust defense." *Lockyer*, 450 F.3d at 442. Should the Scholarship Programs be ruled unconstitutional, "the beneficiaries under the [Program]"—Parents and their children—"would have no chance in future proceedings to have its constitutionality upheld." *Saunders, v. Superior Ct.*, 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.

With that requisite interest acknowledged, the Court can also grant Parents intervention to defend against Counts 1, 2, and 4 without prejudicing the existing parties. This motion is timely, as it is filed within days of the complaint and well before the close of pleadings, let alone commencement of discovery or other proceedings. *See Nat'l Wildlife Fed'n Inc. v. Glisson*, 531 So. 2d 996, 997–98 (Fla. 1st DCA 1988). Parents are also amenable to proceeding on any schedule agreed to by Plaintiffs and the State Defendants in order to prevent any delay or disruption to the case.

B. Parents should be granted intervention on Counts 1, 2, and 4 *without* subordination because only they, not named defendants, stand to suffer direct harm from an injunction and can advance fundamental parental rights at stake.

Second, Parents also respectfully request that intervention be limited to Counts 1, 2, and 4 but also be granted without subordination to parties. The most direct impact of those counts is on Parents, not the State Defendants. Parents should have full rights of argument and appeal because of the disproportionate impact that those counts have on them relative to the other parties.

For one example, the State Defendants are not in the best position to protect the equitable interests of parents. The equitable nature of injunctive relief means that the court must "balance[e] the relative conveniences of the parties." *See Ortega Co. v. Justiss*, 175 So. 2d 554, 559–60 (Fla. 1st DCA 1965); *accord Lee County v. Fort Myers Airways, Inc.*, 688 So. 2d 389, 390 (Fla. 2d DCA 1997); *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 740 (Fla. 3d DCA 1982). The purpose of this rule is to prevent an injunction where the harm of the injunction "is wholly disproportionate to the benefit to the other

party." *Lee County*, 688 So. 2d at 390. An injunction against spending money on the program simply would not harm the State Defendants in the way it would utterly disrupt the education and lives of Parents' children and thereby impose an extremely disproportionate remedy. The State also lacks relevant knowledge regarding the children, their experiences in the Scholarship Programs, and the injury that any injunction would inflict on Parents.

Parents also seek intervention without subordination to protect their parental rights that the State Defendants cannot invoke. This right should not be subordinated to the state's interests because the state is not a parent and cannot invoke those rights in defense against the claims. Plaintiffs' theory threatens federal parental rights because it posits a right for outsiders to interfere in how Parents educate their children. Again, under federal law, Parents have a fundamental right to direct the education and upbringing of their children. *Pierce*, 268 U.S. 510 at 534–35; *Meyer*, 262 U.S. at 390, 401. Under Plaintiffs' interpretation of Florida law, Parents' children also have their own constitutional right to a "uniform, efficient, safe, secure, and high quality" education, Art. IX, § 1, Fla. Const., which implies these Plaintiffs can invoke the children's rights to challenge the Scholarship Programs, regardless of Parents' views (and decisions) as to the best education options for the children. Such reassignment of the children's rights from their Parents to the Plaintiffs would violate federal law, and permitting Parents to intervene without subordination is necessary to fully defend those federal rights in this court and in any appeal.

Past experience in education choice litigation reaffirms that Parents risk real harm if their interests are subordinated to the government's interests. For example, in *Arizona Christian School Tuition Organization v. Winn*, 563 U.S. 125 (2011), parent intervenors successfully argued that the plaintiffs challenging the educational choice program lacked standing, an issue that the state conceded. The state similarly conceded standing in *Duncan v. State*, 102 A.3d 913 (N.H. 2014), while the parent intervenors successfully argued that the statute conferring standing was unconstitutional. In *Kotterman v. Killian*,

972 P.2d 606 (Ariz. 1999), parent intervenors—not the state—urged and convinced the court to confront the bigoted origins of the provision of the Arizona Constitution that the plaintiffs were using to attack the state's educational choice program. And parent-intervenors' argument about interpreting Tennessee's Home Rule Amendment, a position the state only later embraced, proved decisive to upholding the state's program. *See Metro. Gov't of Nashville & Davidson Cnty. v. Tenn. Dep't of Educ.*, 645 S.W.3d 141, 151–52 (Tenn. 2022) (noting that "[i]ntervenors, and now the State as well," had advanced the argument).

Furthermore, participation of Parents' counsel will also assist this Court in its resolution of the questions before it. Attorneys from EdChoice Legal Advocates are currently representing intervenors as lead counsel in the defense of educational choice programs in multiple states, including defending Arkansas's education savings account program, Montana's education savings account program for students with special needs, Missouri's tax credit scholarship program, and Wyoming's education savings account program. *See, e.g.*, *Lara v. Faulkenberry*, 725 S.W.3d 26 (Ark. 2025); *Faulkenberry v. Ark. Dep't of Educ.*, No. 4:25cv592 (E.D. Ark.); *Mo. Nat'l Educ. Ass'n v. Missouri*, No. 25AC-CC05358 (Cole Cnty. Cir. Ct.); *Mont. Quality Educ. Coal. v. Montana*, No. ADV-25-2024-0000044-IJ (Lewis & Clark Cnty. Dist. Ct.); *Wyo. Educ. Ass'n v. Degenfelder*, No. 2025-CV-020336 (Laramie Cnty. Dist. Ct.). In addition, EdChoice Legal Advocates has partnered with Institute for Justice as co-counsel in education choice defense cases in Tennessee, Ohio, and Utah. *See, e.g.*, *Bichell, et al. v. Lee, et al. and Natu Bah, et al.*, No. 20-0242-II (Davidson Cnty. Chancery Ct.); *Columbus City Sch. Dist. v. Ohio*, No. 22-CV-67 (Franklin Cnty. Dist. Ct.); *Labresh v. Cox*, No. 240904193 (Salt Lake City Cnty. Dist. Ct.). Because of that experience and that partnership, EdChoice Legal Advocates offers this court unique expertise developed over decades of litigating educational choice programs.[2] Further, counsel

[2] These programs include Arizona's individual tax credit scholarship program, *Ariz. Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125 (2011); *Kotterman v. Killian*, 972 P.2d 606 (Ariz. 1999); Ohio's Pilot

from Shutts & Bowen LLP offers this court unique expertise having been involved in both implementing and defending school choice policies in Florida for more than a decade.[3]

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In short, intervention is warranted for Parents to protect their interests in the Scholarship Programs that the suit threatens in Counts 1, 2, and 4. No parameters are needed beyond limiting intervention to those counts because the motion is timely, and intervention should also be granted without subordination to avoid prejudice to Parents' equitable interests and federal parental rights that are threatened by the Complaint. For these reasons, intervention as of right is warranted.

CONCLUSION

In nearly every legal challenge to an educational choice program over the last three decades, parents who have sought to intervene to defend the program have been permitted to do so. If the funding for the Scholarship Programs is declared unconstitutional, Parents and many other Florida parents will forever lose the opportunity to protect their interest in the greater educational opportunity

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Project Scholarship Program, *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *Simmons-Harris v. Goff*, 711 N.E.2d 203 (Ohio 1999); Douglas County, Colorado's voucher program, *Doyle v. Taxpayers for Pub. Educ.*, 582 U.S. 950 (2017) (mem.); West Virginia's educational savings account program, *State v. Beaver*, 887 S.E.2d 610 (W. Va. 2022); Tennessee's education savings account program, *Metro. Gov't of Nashville & Davidson Cnty. v. Tennessee Dep't of Educ.*, 645 S.W.3d 141 (Tenn. 2022); Georgia's tax credit scholarship program, *Gaddy v. Ga. Dep't of Revenue*, 802 S.E.2d 225 (Ga. 2017); North Carolina's voucher program, *Hart v. State*, 774 S.E.2d 281 (N.C. 2015); Alabama's tax credit scholarship program, *Magee v. Boyd*, 175 So. 3d 79 (Ala. 2015); New Hampshire's tax credit scholarship program, *Duncan v. State*, 102 A.3d 913 (N.H. 2014); Indiana's voucher program, *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); Arizona's educational savings account program, *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013); Arizona's corporate tax credit scholarship program, *Green v. Garriott*, 212 P.3d 96 (Ariz. Ct. App. 2009); Illinois' 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); and Milwaukee's voucher program, *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998); *Davis v. Grover*, 480 N.W.2d 460 (Wis. 1992).

[3] Counsel Benjamin J. Gibson is a former Chair of the State Board of Education, serving on the Board from 2017-2025 and implementing the school choice policies being challenged and is a former Deputy General Counsel for the Governor overseeing education litigation from 2012-2017; counsel Daniel E. Nordby is a former Assistant General Counsel for the Department of Education and oversaw education litigation as a former General Counsel for the Governor from 2017-2018.

that the Scholarship Programs provides. To protect the educational futures of their children, Parents should be allowed to intervene as defendants. Parents, therefore, respectfully request that this Court grant them leave to intervene without subordination as defendants in this case.

DATED: June 18, 2026

Respectfully submitted,

/s/ Benjamin J. Gibson

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*Applications to appear *pro hac vice* forthcoming.

CERTIFICATE OF GOOD FAITH CONFERENCE

I certify that prior to filing this motion, I discussed the relief requested in this motion by telephone with Martin F. Powell, counsel for the named Plaintiffs, and in subsequent emails on June 16, 2026, and Plaintiffs do not object to intervention, but do not consent to intervention with full party status without subordination. I certify that prior to filing this motion, I discussed the relief requested in this motion by telephone with David Dewhirst counsel for the named Defendants, on June 18, 2026, and Defendants do not object to the relief requested in the motion.

/s/ Benjamin J. Gibson
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed and served via the Court's electronic filing system on all counsel of record this 18th day of June, 2026. I further certify that a true and correct copy of the foregoing motion was served via email to David Dewhirst and Jason Gonzalez, counsel for the named Defendants.

/s/ Benjamin J. Gibson
Attorney