

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

JOANNE MCCALL; SENATOR GERALDINE  
THOMPSON; BOB JONES;  
RABBI MERRILL SHAPIRO; REV. HARRY  
PARROTT, JR.; REV. DR. HAROLD BROCKUS;  
FLORIDA EDUCATION ASSOCIATION; FLORIDA  
SCHOOL BOARDS ASSOCIATION, INC.;  
FLORIDA CONGRESS OF PARENTS AND  
TEACHERS, INC.; FLORIDA ASSOCIATION OF  
SCHOOL ADMINISTRATORS, INC.; LEAGUE OF  
WOMEN VOTERS OF FLORIDA, INC.; and FLORIDA  
STATE CONFERENCE OF BRANCHES OF NAACP,

Plaintiffs,

v.

Case No. 2014 CA 002282

RICK SCOTT, Governor of Florida, in his official  
capacity as the head of the Florida Department of  
Revenue; PAM BONDI, Attorney General of  
Florida, in her official capacity as a member of the  
Cabinet and head of the Florida Department of  
Revenue; JEFF ATWATER, Chief Financial  
Officer, in his official capacity as a member of the  
Cabinet and head of the Florida Department of  
Revenue; ADAM PUTNAM, Commissioner of  
Agriculture, in his official capacity as a member of  
the Cabinet and head of the Florida Department of  
Revenue; PAM STEWART, Commissioner of  
Education, in her official capacity as Commissioner  
of the Florida Department of Education;  
FLORIDA DEPARTMENT OF REVENUE;  
and FLORIDA DEPARTMENT OF EDUCATION,

Defendants.

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**MOTION TO INTERVENE AND  
SUPPORTING MEMORANDUM OF LAW**

The Proposed Intervenor-Defendants, Umene Prophete, Cheryl Joseph, Rabbi Boaz Levy, Wendy Fiorilo, Febe Rodriguez, Noraida Rivera, Linzi Morris, Olivia Schaeffer, Onekia Garner, Marlene Desdunes, Andrea Wiggins, Keyla Pineda, Helean Curry, Maria Torresi, and Alyson Hochstedler (collectively the “Low Income Families”), pursuant to Florida Rule of Civil Procedure 1.230, move to intervene in this case as co-Defendants with full party status. This motion is consented to except as relates to the Low Income Families' request for full party status. Plaintiffs oppose full party status for the Low Income Families, whereas the Defendants consent to it.

**INTRODUCTION AND BACKGROUND**

1. On or about August 28, 2014, Plaintiffs filed their Complaint initiating this action and asking this Court to declare the Florida Tax Credit Scholarship Program (the “Program”) unconstitutional under Article I, Section 3, and Article IX, Section 1 of the Florida Constitution. Plaintiffs' Complaint additionally asks this Court to enjoin the further operation and implementation of the Program.

2. The proposed Intervenor-Defendant families are all parents of students currently participating in the Program. The Low Income Families have a direct and immediate interest in this action, because they will either gain or lose by the direct legal operation and effect of a judgment in this matter. If the Court grants the relief requested by Plaintiffs, which it should not, the Program would be eliminated, depriving the Low Income Families of their children’s current educational opportunities.

3. Most of the Proposed Intervenor-Defendants do not have the financial means to send their children to private school, absent the Florida Tax Credit Scholarship. Accordingly, if

the Program is eliminated they will be forced to look for alternatives or to send their children to public school -- in many instances the same public schools where their children were struggling or failing before becoming Florida Tax Credit Scholarship recipients.

4. Certain of the Proposed Intervenor-Defendant Low Income Families have not only a Florida Tax Credit Scholarship student, but also children attending a private school on a McKay Scholarship or a Personal Learning Scholarship Account (“PLSA”).<sup>1</sup> Other parents in the program also have children attending charter schools.<sup>2</sup> The Article IX, Section 1 and Article I, Section 3 arguments made by Plaintiff in this case also threaten these scholarships,<sup>3</sup> and thereby further impact the interests of the Low Income Families.

#### **The Florida Tax Credit Scholarship Program**

5. The Program was established in 2001, when the Florida Legislature authorized corporations to apply for tax credits against Florida taxes owed if the corporations made charitable contributions to non-profit entities providing scholarships to low income families.<sup>4</sup> These scholarships allow low income families to have a say in how their children are educated by providing them the option of sending their children to private schools, which the families would not be able to afford but for the scholarships.

6. Since the Program’s inception, corporate contributions to non-profits have

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<sup>1</sup> The McKay Scholarship Program, funded by the state, provides scholarships to be used by disabled students at private schools. The PLSA Scholarship Program enables parents of special needs children to direct state provided educational funds toward a combination of programs and approved providers in order to address the unique and individualized needs of their children.

<sup>2</sup> There are nearly 230,000 students currently attending a charter school in the State of Florida.

<sup>3</sup> See *Citizens for Strong Schools, Inc. v. Florida State Board of Education*, Case No. 09-CA-4534, pending in the Second Judicial Circuit in and for Leon County, Florida in which an Article IX, Section 1 argument has been raised with respect to the Tax Credits, McKay Scholarships and charter schools in the Second Amended Complaint, ¶¶ 47-110 & 137-148, filed in May 2014 of this year.

<sup>4</sup> The Program is codified at Section 1002.395, Florida Statutes (2014).

provided funding for over 400,000 educational scholarships for some of Florida's neediest students. This year alone, over 150 corporations have donated to non-profits that provide scholarships to low income families through the Program. As of September 23, 2014, there are nearly 69,000 students in Florida studying on these scholarships.<sup>5</sup>

7. Eligibility for students to receive a Program scholarship is based on family income as measured against the federal poverty standards. *See* § 1002.395(3)(b), Fla. Stat. (2014).<sup>6</sup> The average family participating in the scholarship program this year had an annual income equivalent to a family of four earning less than \$25,000, even though families of four with an annual income up to \$44,122 are currently eligible to receive a full scholarship. These truly are the neediest of Florida's families. Based on the recent census data, these students live in families that, on average, are in the bottom 18% of the household income distribution for Florida.

8. The majority (over 70%) of current Program scholarship students are minorities. Of the current scholarship recipients, 30% are African-American, 38% are Hispanic, and 3% are mixed race.

9. This scholarship student population is not only low income and heavily minority, but also struggling academically. Before receiving a Florida Tax Credit Scholarship, many of the recipients were among the lowest of low performing students in the public schools they previously attended.

10. The parental demand for these scholarships has increased over time, and continues to far outpace supply. To illustrate, this year families started over 120,000

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<sup>5</sup>The statewide number of students participating in the Florida Tax Credit Scholarship Program is almost twice the total number of students enrolled in Leon County Public Schools.

<sup>6</sup> Students in foster care or an out-of-home placement may also be eligible for scholarships. *See* § 1002.395(3)(b)2., Fla. Stat. (2014).

applications for scholarships before the application process was cut off, but there are only funds for approximately 69,000 scholarships.

11. One factor increasing demand may be the improved performance of the students receiving Florida Tax Credit Scholarships in the private schools. Scholarship students are required to take nationally norm-referenced tests, such as the Stanford 10, and each year a report evaluates the scholarship student performance. Based on the norm-referenced tests results, these low income, low performing students are now making annual gains equivalent to the gains of the average American student. *See* [www.floridaschoolchoice.org/pdf/FTC\\_Research\\_2012-13\\_report.pdf](http://www.floridaschoolchoice.org/pdf/FTC_Research_2012-13_report.pdf).

12. Because of the Florida Tax Credit Scholarships, low income parents now have a choice. Rather than use proven methods to improve educational delivery for these needy children in regular public schools, Plaintiffs have chosen to respond to the Low Income Families' search for a better education for their children by seeking to eradicate the Low Income Families' educational options by asking this Court to eliminate the Program.

13. More than 1,500 private Florida schools, religious and non-religious, accept the 69,000 Florida Tax Credit Scholarship students. Many of these private schools also accept McKay Scholarship students. These private schools are subject to certain health, safety, and welfare requirements, such as teacher background checks, as a condition of being eligible to accept a scholarship student. In addition, schools participating in the Program must administer or make provision for scholarship students in grades 3-10 to take a nationally norm-referenced test identified by the Florida Department of Education or the statewide assessment. *See* § 1002.395(8), Fla. Stat. (2014).

14. Using Leon County as an example of the participating scholarship schools and

students, as of September 23, 2014, 482 students were participating in the Program. Roughly 73% of them are minority. These students were using scholarships at eighteen different private schools in Leon County.

**The Proposed Intervenor-Defendant Scholarship Families**

15. As previously noted, the proposed Intervenor-Defendant Low Income Families are all parents of students attending private school on a Florida Tax Credit Scholarship. Some of the Low Income Families include not only a Florida Tax Credit Scholarship student, but also a sibling or siblings of the student attending a private school on a McKay Scholarship or a PLSA scholarship.

16. These Proposed Intervenor-Defendants, the Low Income Families, representative of almost 69,000 Florida Tax Credit Scholarship students, face real harm if Plaintiffs' arguments prevail and these scholarships are terminated. They would suffer not merely the financial loss of the scholarships, but also a serious blow to the Low Income Families' educational hopes for their children. The individual declarations of the Low Income Families are attached and incorporated as Exhibits A through O.

17. Proposed Intervenor-Defendant Umene Prophete, is a parent of four boys on Florida Tax Credit Scholarships. Her sons attend Miami Union Academy in Miami-Dade County, and are enrolled in the sixth, seventh, ninth and tenth grades. All of her children have been on Florida Tax Credit Scholarships since her eldest was in first grade. She volunteers at the school to cover the costs exceeding the Florida Tax Credit Scholarship amount. Ms. Prophete was one of ten children in her family in Haiti, and it was very difficult for her siblings to attend any type of school. Because of her experiences in Haiti, where families did not having meaningful educational access, she is eternally grateful for Florida Tax Credit Scholarships.

Prophete Decl., Ex. A.

18. Proposed Intervenor-Defendant Cheryl Joseph is the parent of three daughters using Florida Tax Credit Scholarships to attend Academy Prep in Hillsborough County, and Tampa Catholic High School. Two of her daughters are enrolled in fifth and eighth grade at Academy Prep. The eldest daughter previously attended Academy Prep and is now a freshman at Tampa Catholic High School. Ms. Joseph works full time as case manager for the Tampa Housing Authority, and hopes to complete a Masters in Hospital Administration, so one day she can afford to send her children to private school without a scholarship. All of Ms. Joseph's children are excelling academically and socially. While the scholarship covers most of the academic costs, Ms. Joseph is on a payment plan for uniforms, sports participation and reduced fees for meals. If the scholarship was not available, she would try to find a way to keep her children in private school. Joseph Decl, Ex. B.

19. Proposed Intervenor-Defendant Rabbi Boaz Levy is a parent of nine children, including three sons and two daughters who attend schools in Miami-Dade County using Florida Tax Credit Scholarships. He has a daughter in tenth grade attending Sha'Arei Bina Torah Academy for Girls; a son in ninth grade attending Yeshiva Toras Chaim; a son in seventh grade attending Toras Emes Academy of Miami; a daughter in fifth grade attending Landow Yeshiva Center; and a son in third grade also attending Landow Yeshiva Center. He has had children using the Florida Tax Credit Scholarships for approximately seven years. The Florida Tax Credit Scholarship does not cover all the costs, so he has to come up with \$3,000 to \$4,000 more per child to keep them in private school. They have remortgaged their house for tuition. Their family does not own expensive cars. Rabbi Levy just bought a van for \$500. He says it does not look great, but it is safe and gets them from Point A to Point B and that is all that matters. Levy Decl.,

Ex. C.

20. Proposed Intervenor-Defendant Wendy Fiorilo is a parent of two sons using Florida Tax Credit Scholarships and a daughter using a McKay Scholarship to attend school in Orange County. Her sons are enrolled in the tenth and fifth grades at Potter's House Academy, and her daughter is enrolled in the third grade at the same school. Her eldest son first attended public school and struggled academically, never earning A's or B's. She said his teachers did not seem sympathetic to his struggles and would sometimes criticize him for not "getting it." But things changed for the better when he started attending Potter's House. He became an honor student and his social life changed dramatically. He made friends and kept them and grew into a more confident young man who enjoys going to school. Without the scholarships, Ms. Fiorilo could not afford to send her three children to private school. Fiorilo Decl., Ex. D.

21. Proposed Intervenor-Defendant Febe Rodriguez is a parent of four children, three of whom attend St. James Christian Academy in St. Lucie County. Her eldest son attends seventh grade on a McKay Scholarship, and she has a daughter attending fourth grade and another son attending kindergarten, both on Florida Tax Credit Scholarships. Her eldest son had been receiving D's and F's in public school, but that turned around after he started attending private school. When Ms. Rodriguez saw how well he was doing, she decided to send her daughter and younger son to the same school. In the case of her daughter, Ms. Rodriguez was also upset that the teachers in her third grade public school class waited until the end of the year to report that she should go to summer school. She asks: "Why would they wait until the end of the year to tell me she was struggling?" Whereas the Florida Tax Credit Scholarships cover tuition costs, the family still has to pay for uniforms, lunch and transportation. If it was not for the scholarships, she would choose to homeschool the children, rather than send them back to public school.

Rodriguez Decl., Ex. E.

22. Proposed Intervenor-Defendant Noraida Rivera is a parent of two children who attend Father's Harbor Academy in Duval County. Her daughter is diagnosed with Apraxia and attends sixth grade on a McKay Scholarship, and her son attends fourth grade on a Florida Tax Credit Scholarship. Prior to receiving McKay and Florida Tax Credit Scholarships, her children attended their neighborhood public school. Ms. Rivera and her husband came from Puerto Rico seven years ago. They decided to move to Jacksonville because her daughter was not getting the therapy that she needed. If the scholarships did not exist, she says she would have to homeschool her children because she knows her daughter would not be able to thrive in a public school setting. Rivera Decl., Ex. F.

23. Proposed Intervenor-Defendant Linzi Morris is a medical assistant and a single mother who has two daughters using Florida Tax Credit Scholarships to attend school in Hillsborough County. One daughter previously attended Academy Prep on a Florida Tax Credit Scholarship and is now using a Florida Tax Credit Scholarship to attend the tenth grade at Tampa Catholic High School. Her other daughter is enrolled in sixth grade at Academy Prep on a Florida Tax Credit Scholarship. She gets up at 5:00 a.m. every morning and drives from Riverview to Ybor City so her kids can attend Academy Prep. She says it offers a top-notch education that will propel them into strong high school and college programs. Ms. Morris first sent her children to a local public elementary school, which she says worked well, but she was "deathly afraid of sending them to the public middle school or high school." Academy Prep has an established reputation for its ability to launch disadvantaged children into prestigious high schools and universities. "It has been such a good experience for them," she says. "It has exposed them to so many different things – museums, organic gardens - even a rodeo last

weekend!” Without the scholarship, her children would not be able to attend Academy Prep and Tampa Catholic High School, where they have fabulous teachers. Morris Decl, Ex. G.

24. Proposed Intervenor-Defendant Olivia Schaeffer is a parent of four students attending Wade Christian Academy in Brevard County. Her two daughters attend eighth and fifth grades and one son attends first grade on Florida Tax Credit Scholarships. Her other son attends third grade on a McKay Scholarship. Her third grade son, who has autism and epilepsy, failed kindergarten in public school. There, he was in a large class with severely disabled children. Now, he is in private school with his siblings, where he receives additional tutoring and is earning mostly A’s and B’s in a class of only seven students. Her other son is a top reader in his first-grade class. Her girls are learning piano, participating in spelling bees and playing volleyball. Ms. Schaeffer would homeschool her children before she would consider placing them back in public school because of how well they are doing. Schaeffer Decl, Ex. H.

25. Proposed Intervenor-Defendant Onekia Garner has two children attending St. Mary’s Cathedral School in Miami-Dade County. Her daughter is in sixth grade on a McKay Scholarship, and her son is in kindergarten on a Florida Tax Credit Scholarship. Ms. Garner likes her children’s private school because it offers a more intimate environment. Class sizes are smaller and the education is more personal. “If I need to meet with a teacher, I can just call them,” she says. “They are very responsive.” She favors school choice because all children learn differently. In private schools, it is up to the parents and to the teacher what the child needs. Garner Decl., Ex. I.

26. Proposed Intervenor-Defendant Marlene Desdunes is the single mother of three school-aged children. She is also a teacher, member of FEA, and a former union organizer. One of her daughters attends fifth grade at St. Mary’s Cathedral in Miami-Dade County on a Florida

Tax Credit Scholarship. Her other daughter attends sixth grade at St. Mary's Cathedral on a McKay Scholarship. Her son is in eleventh grade at Miami Northwestern High. Ms. Desdunes has been teaching since 1991. She taught in private schools in North Carolina and public schools in Florida commencing in 1998. About private school teachers, she says: "They are not getting rich. They take this job as a ministry or a calling. They're working from their hearts, not their pockets. And they teach their children from their point of need." Her older daughter was diagnosed with PKU (Phenylketonuria) and struggles with speech/language processing. She would be lost at a public school, but at St. Mary's has done well. "The power of choice is amazing," Ms. Desdune says, "because when parents make a choice of how they want to educate their children, they are more engaged with their children." She could not afford to send her children to private school without the scholarships. Desdunes Decl., Ex. J.

27. Proposed Intervenor-Defendant Andrea Wiggins has a degree in deaf education and is a freelance sign language interpreter, a substitute teacher and tutor at Resurrection Catholic School, and a parent of five students in Polk County. When Andrea and her husband were trying to have children, they were told it would never happen, so they decided to adopt. She has one daughter attending kindergarten at Resurrection Catholic on a McKay Scholarship, and a second daughter in the third grade and a son in the eighth grade also attending Resurrection Catholic School on Florida Tax Credit Scholarships. She also has a third daughter in the sixth grade attending Resurrection Catholic School on a PLSA scholarship. This adopted daughter was a "crack baby," and has a severe learning delay, severe anxiety, ADHD, mood disorder and struggles with short-term memory issues. Her adopted daughter uses the scholarship for tuition and extra tutoring. Her biological daughter is also on a McKay Scholarship for a severe language delay and speech deficit. During the housing crash in 2008-2009, the family home went through

foreclosure and she struggled financially. “[I] didn’t know if [I] was going to have to pull the kids from Resurrection,” she says, “and that was more of a stressor for me than anything else financially.” She could not afford to send her children to private school without the scholarships. Wiggins Decl., Ex. K.

28. Proposed Intervenor-Defendant Keyla Pineda is a parent of a daughter attending sixth grade at Sha’Arei Bina Torah Academy for Girls on a Florida Tax Credit Scholarship in Miami-Dade County. Keyla Pineda and her husband, Jose Lopez, fled Venezuela in 1999, when Hugo Chavez became president in their homeland. She has her green card and works fifteen hours per week as a behavior assistant for a doctor. Their daughter attended public school through the beginning of third grade when the family became more devout Jews and enrolled her in Hebrew Academy Day School in Margate. It was hard for her daughter in the public schools. Some of the children made fun of her for eating Kosher food, and they had to keep her home when the school was celebrating non-Jewish holidays. They pay \$300 a month to Sha’Arei Bina Torah Academy for Girls, in addition to the scholarship amount, and have a tight budget. “The priority is bills and school,” she says. “We don’t go out to eat often or buy a lot of clothes or shoes. We handle the basics.” Pineda Decl., Ex. L.

29. Proposed Intervenor-Defendant Helean Curry is the parent of a son on a Florida Tax Credit Scholarship attending third grade at Metropolitan Christian Academy of the Arts in Gadsden County. Her daughter previously used a Florida Tax Credit Scholarship but is now a high school graduate. Ms. Curry grew up with twelve siblings in a four-bedroom “shotgun house” on a farm in Havana. While she learned a lot of life skills and to be resourceful, she wanted more for her two children. She made a promise to herself to never return to the farm lifestyle once she left. In Tallahassee, she launched a career that was cut short when she was

diagnosed with aplastic anemia after the birth of her daughter. She had to stop working. As a single mother on disability, she was thankful to find out that the Florida Tax Credit Scholarship could help her send her children to a school where they could receive one-on-one attention from their teachers and benefit from a smaller school environment. Without the scholarship, her son would not be able to attend Metropolitan Christian Academy of the Arts, where she says he benefits from the smaller classrooms and close relationships with the teachers. Curry Decl., Ex. M.

30. Proposed Intervenor-Defendant Maria Torresi is the single mother of two school-age children, one of whom is a first-grader at Gladeview Christian School in Miami, Florida on a Florida Tax Credit Scholarship and another of whom is a senior and attends Doral Academy Charter High School. She also has grown children and a child who is not yet school-age. When Ms. Torresi learned of the Program, she thought it was too good to be true. Safety and academics have been twin concerns of her sending her children to public schools. Ms. Torresi was assaulted in public school and considers Gladeview a much safer place for her daughter. Ms. Torresi's older children suffered academically in public schools. She refinanced her house to send her eldest daughter to private school after the public school sent her to summer school without warning and proposed to pass her to the next grade with all D's. The teachers at Gladeview are more invested in her daughter's life than were Ms. Torresi's public school teachers. Both her daughter and son are doing well academically now. If her daughter was not eligible for a scholarship, Ms. Torresi would send her to a charter school rather than a public school, but this would be traumatic for her. Torresi Decl., Ex. N.

31. Proposed Intervenor-Defendant Alyson Hochstedler is the mother of two children who attend Christ Classical Academy in Tallahassee on Florida Tax Credit Scholarships. One of

her boys endured three years of relentless bullying in public school. Ms. Hochstedler repeatedly brought the bullying to the attention of school authorities. In some cases, the bullies were suspended and/or put into other classes, but the bullying continued. Her son has not experienced any bullying at his new school. He knows that the adults will hold other students accountable. Ms. Hochstedler is grateful for Florida Tax Credit Scholarships because she was running out of options for her son. Hochstedler Decl., Ex. O.

### **ARGUMENT AND LEGAL AUTHORITIES**

32. Rule 1.230 of the Florida Rules of Civil Procedure provides that “[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a 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. Pro. 1.230.

33. The parties have consented to the Low Income Families' right to intervene in this lawsuit, but disagree with respect to the Low Income Families' right to be treated like full parties in interest as in similar lawsuits. Plaintiffs oppose full party status for the Low Income Families, whereas the Defendants consent to it.

#### **Consented to Intervention Right**

34. The parties have agreed that the Low Income Families have the requisite interest to support intervention in this lawsuit and agree that the Court should decide to permit the Low Income Families to intervene.

35. Intervention should be permitted where the parties' interests are ““of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment. In other words, the interest must be that created by a claim to the

demand in suit or some part thereof . . . which is the subject of the litigation.” *Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505, 507 (Fla. 1992), quoting *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918); *see also Litvak v. Scylla Prop., LLC*, 946 So. 2d 1165, 1172 (Fla. 1st DCA 2006).

36. Moreover, “[i]ntervention should be liberally allowed.” *Nat’l Wildlife Fed’n Inc. v. Glisson*, 531 So. 2d 996, 997 (Fla. 1st DCA 1988), citing *Miracle House Corp. v. Haige*, 96 So. 2d 417 (Fla. 1957); *see also Grimes v. Walton Cnty.*, 591 So. 2d 1091, 1093-94 (Fla. 1st DCA 1992) (“Consistent with the policies which the Rule is intended to advance, the Rule should, in general, be liberally construed”).

37. There is no disagreement that the Low Income Families have a direct and immediate interest in the outcome of Plaintiffs' challenge to the Program and will suffer harm if the relief requested by the Plaintiffs is granted, because they will lose the scholarship funding that currently enables them to send their children to private school.

38. Given their direct and tangible rights and interests, parents and children have repeatedly been allowed to intervene to defend school choice programs in Florida and around the country. *See, e.g., Bush v. Holmes*, 919 So. 2d 392 (Fla. 2006); *Niehaus v. Huppenthal*, 310 P. 3d 983 (Ariz. Ct. App. 2013), *rev. denied* (Mar. 21, 2014); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *La. Fed. of Teachers v. State*, 118 So. 3d 1033 (La. 2013); *Meredith v. Pence*, 984 N.E. 2d 1213 (Ind. 2013); *Kotterman v. Killian*, 972 P. 2d 606 (Ariz. 1999); *Owens v. Colo. Cong. of Parents, Teachers, and Students*, 92 P. 3d 933 (Colo. 2004); and *Jackson v. Benson*, 578 N.W.2d 602 (Wis. 1998), *cert. denied*, 525 U.S. 997 (1998)

39. Recently, when the Federal District Court for the Eastern District of Louisiana denied the intervention of parents of children receiving voucher scholarships in a case involving a Louisiana voucher program, the U.S. Court of Appeals for the Fifth Circuit reversed the district

court's denial and allowed the parents to intervene. *Brumfield v. Dodd*, 749 F. 3d 339 (5th Cir. 2014). The court observed, "The possibility is therefore real that if the parents are not able adequately to protect their interests, some students who otherwise would get vouchers might not get them or might not get to select a particular school they otherwise would choose. The parents need not wait to see whether that ultimately happens; they have already described an interest justifying intervention." *Id.* at 344

40. The ruling in *Brumfield* is fully consistent with Florida law which recognizes an intervention right when the rights of intervenors will not be adequately protected by the parties. *Bay Park Towers Condo. Ass'n, Inc. v. H.J. Ross & Assocs.*, 503 So. 2d 1333 (Fla. 3d DCA 1987) (holding that intervention of a condominium association was required because the individual unit owners have no direct interest in damages caused to the common elements); *Brickell Bay Condo. Ass'n, Inc. v. Forte*, 410 So. 2d 522 (Fla. 3d DCA 1982) (holding that that the trial court abused its discretion in denying the association's application to intervene where (1) the association had a direct interest in the outcome of the litigation and (2) the interests of the association would not be fully protected by the original plaintiff).

41. Because no party in interest to this lawsuit disputes that the Low Income Families have met the requirements for intervention in this lawsuit, and, indeed, the Low Income Families exceed the threshold set forth in Rule 1.230 of the Florida Rules of Civil Procedure, and because Defendants will not adequately protect their interests, this Court should approve intervention.

#### **Partially Consented to Intervention Scope**

42. Although all of the parties to this lawsuit have agreed that the Low Income Families should be authorized to intervene in this lawsuit, they disagree over the scope of that intervention. Plaintiffs contend that the Low Income Families' intervention should be

“subordinate to and in recognition of, the propriety of the main proceeding,” whereas the Low Income Families and Defendants respectfully ask this Court to exercise its discretion to grant the Low Income Families full-party standing as permitted by Florida Rule of Civil Procedure 1.230.

43. Without disparaging the interests of the Defendants in this lawsuit, it is beyond peradventure that the Low Income Families' interest in the continued implementation of the Program is even more direct substantial, and immediate. Whereas Defendants, or some of them, have a duty to defend the constitutionality of the law establishing the Program, Proposed Intervenor-Defendant Wendy Fiorilo, Marlene Desdunes, Linzi Morris, Andrea Wiggins, and Helean Curry would not be able to continue to send their children to the private schools they are attending in the absence of the Program. Most of the Low Income Families would look for alternatives. Febe Rodriguez, Noraida Rivera and Olivia Schaeffer would homeschool their children. Maria Torresi would try to send her child to a charter school, but Plaintiffs' theory of the case threatens this option as well. Ultimately, most of the Low Income Families would have no choice but to remove their children from private school and put them back in public schools.

44. The Low Income Families are convinced that private or charter schools are the best options for their children. Several proposed Intervenor-Defendants such as Wendy Fiorilo report that their children were not excelling in public schools and several more such as Febe Rodriguez, Olivia Schaeffer, and Maria Torresi report that they were failing in public schools. Many of the Low Income Families such as Wendy Fiorilo, Febe Rodriguez, Onekia Garner, Marlene Desdunes, and Helean Curry report that teachers and administrators were not as responsive to them or sympathetic to or engaged with their children. In fact, Alyson Hochstedler's son suffered through three years of relentless bullying. Their children have all excelled in private schools on Florida Tax Credit Scholarships. In the absence of the Program,

the Low Income Families reasonably fear for the educational future of their children, not to mention their safety. In fact, Linzi Morris says she is “deathly afraid of sending” her children to public middle or high school.

45. The proposed Intervenor-Defendants' interests are direct, substantial and immediate, and will not vary over the course of this litigation, whereas the Defendants' interests in this lawsuit are liable to shift with the political winds. Overturning the lower court's decision to prevent them from intervening to defend the Louisiana scholarship program in *Brumfield*, 749 F. 3d at 344, the court observed that “These parents and their children were its primary intended beneficiaries. They therefore assert not only a matter of public interest but matters more relevant to them than to anyone else.” The same is true in this case. In federal court, the intervenor has the same rights as the original parties in the action. *See United States v. City of Hialeah*, 899 F. Supp. 603, 611 (S.D. Fla. 1994), *aff'd*, 140 F. 3d 968 (11th Cir. 1998). Here, we ask that this Court exercise its discretion to provide the Low Income Families intervention rights similar to those afforded to intervenors under federal law.

46. As in *Brumfield*, it can also be said in this case that the interests of the state and parents are not necessarily fully aligned no matter how vigorously both oppose the Plaintiffs' arguments. 749 F. 3d at 345-46. Inasmuch as the pleadings are not yet closed and even after they are closed the parties will have a continuing ability to amend them with leave of this court, the proposed Intervenor-Defendants cannot be certain whether or to what extent their defenses or claims in this lawsuit will vary from the Defendants. Far from a reason not to approve full party status for the Low Income Families, the court in *Brumfield* treated this variance in interests as a reason to approve intervention. *Id.* at 346.

47. In similar lawsuits involving corporate income tax scholarships, intervenors have

raised defenses or stated claims that were ultimately the basis of court decisions. In fact, the United States Supreme Court decided a corporate income tax scholarship case on the basis of an intervenor's standing defense. *Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S.Ct. 1436, 1441 (2011) (taxpayers lack standing to allege that Arizona's tuition tax credit, which allowed Arizona income taxpayers who voluntarily contributed money to a student tuition organization to receive a dollar-for-dollar tax credit, violated the Establishment Clause). *Winn* is on all fours with this lawsuit and strongly supports full-party status for the Low Income Families.

48. Likewise, the court in *Niehaus*, 310 P. 3d at 985, affirmed the intervenors' dismissal of a lawsuit challenging the constitutionality of Empowerment Scholarship Accounts, which provides scholarships to students with disabilities, ruling that it did not violate the religion clause or aid clause of the Arizona Constitution or unconstitutionally condition receipt of a government benefit on waiver of a constitutional right to free public education. Intervenors were responsible for dismissing the last argument. *Id.* Similarly, the court in *Meredith*, 984 N.E. 2d at 1217, affirmed the intervenors' motion for summary judgment, finding that the state's statutory school voucher program does not conflict with the Education Clause or certain religion clauses in the Indiana Constitution. Each of these cases raised arguments similar to the Plaintiffs' in this one and, once again, support full-party status for the Low Income Families.

49. Furthermore, this is not a case where recognizing full party status for the intervenors will prejudice the Plaintiffs or unduly delay the lawsuit because the action has only recently commenced and the pleadings are still open. *See Hartford Fire Ins. Co. v. School Bd.*, 661 So. 2d 111, 112 (Fla. 3d DCA 1995) (permitting intervention is appropriate when it will not cause delay or disruption); *Sweetwater Country Club Homeowners Ass'n, Inc. v. Huskey Co.*, 613 So. 2d 936, 940 (Fla. 5th DCA 1993) (reversing a trial court determination that an intervention

was untimely because “the record indicates that [the case] had not progressed past the pleadings” and because the intervention “would not have delayed any hearing since none had been scheduled”). This lack of prejudice or delay also favors the grant of full party status to the Low Income Families.

### **CERTIFICATION**

Undersigned counsel has consulted with the State of Florida Solicitor General who is representing the existing Defendants in this matter and is authorized to represent that the state Defendants consent to the intervention of the Low Income Families as Co-Defendants with full party status. Undersigned counsel has also consulted with counsel for Plaintiffs who represents that Plaintiffs do not object to intervention by the Low Income Families, but do object to their intervention with full party status and believe the intervention of the Low Income Families should be subordinate to that of the original parties to this case.

WHEREFORE, the Proposed-Intervenor Low Income Families, request to intervene as Defendants with full party status, not subordinate to the other parties, and that the Court direct the Clerk to amend the style in this case to reflect the interventions, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed this \_\_\_th day of October, 2014 to:

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