

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

TOM FAASSE, individually, as a citizen and
taxpayer residing in Lee County, Florida,

Plaintiff,

v.

Case No. 2014 CA 001859

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; and **PAM STEWART**, Commissioner of
Education, in her official capacity as Commissioner
of the Florida Department of Education,

Defendants.

UNOPPOSED MOTION TO INTERVENE

The Proposed Intervenor-Defendants, Juliette Kleffel, Donna Berman, John and Mary Kurnik, Ashli McCall, Alisha Sloan, and Melissa Ward (hereinafter referred to as the “PLSA Families”), pursuant to Florida Rule of Civil Procedure 1.230, move to intervene as defendants in the above-styled matter, and state as follows:

Facts

1. On or about July 16, 2014, Plaintiff filed a Complaint for Declaratory Judgment seeking a declaration that Chapter 2014-184, Laws of Florida (hereinafter referred to as the “Act”), was

enacted in violation the “single subject” requirement of Article III, Section 6 of the Florida Constitution and has no force and effect.

2. The Act created the Personal Learning Scholarship Account (“PLSA”) Program. The purpose of the PLSA Program is to empower parents of special needs children to direct educational funds toward a combination of programs and approved providers in order to address the unique and individualized needs of their children as each parent sees fit.

3. Proposed Intervenor-Defendants— Juliette Kleffel, Donna Berman, John and Mary Kurnik, Ashli McCall, Alisha Sloan, and Melissa Ward—are all parents with special needs children that have applied for their children to receive Personal Learning Account Scholarships for the coming school term.

4. Proposed Intervenor-Defendant Juliette Kleffel is the parent of Faith Kleffel. Faith has Down syndrome. *See* Declaration of Juliette Kleffel in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “A.” Juliette Kleffel has applied for Faith to receive a Personal Learning Scholarship Account for the coming school year. *Id.* Faith is a qualified student to participate in the Personal Learning Scholarship Account Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* Faith needs tutoring and additional speech therapy beyond what she currently receives. *Id.* Faith is growing second ankles due to pronation and she will also need to receive physical therapy. *Id.* With a Personal Learning Scholarship Account, Juliette Kleffel will be able to obtain the additional tutoring and therapies that Faith requires. *Id.* Faith will not be able to receive the needed tutoring and therapies without a Personal Learning Scholarship Account. *Id.*

5. Proposed Intervenor-Defendant Donna Berman is the parent of Brandon Berman. Brandon has autism, congenital muscular dystrophy, and hereditary spastic paraplegia. *See*

Declaration of Donna Berman in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “B.” Donna Berman has applied for Brandon to receive a Personal Learning Scholarship Account for the coming school year. *Id.* Brandon is a qualified student to participate in the PLSA Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* Due to troubles at school and his increasing medical complexity, Brandon cannot attend high school and only receives four hours of educational instruction a week through homebound services from the public school system. *Id.* The PLSA Program will allow Donna Berman to provide Brandon with needed therapy for his autism as well as tutoring. *Id.* Without a Personal Learning Scholarship Account, Brandon will not be able to receive therapy for his autism and will continue to only receive four hours of educational instruction a week. *Id.*

6. Proposed Intervenor-Defendants John and Mary Kurnik are the parents of John Kurnik. *See* Declaration of Mary Kurnik in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “C.” John is autistic with attention deficit hyperactivity disorder. *Id.* He has generalized anxiety disorder, phonological disorder, sensory processing disorder, and central auditory processing disorder. *Id.* John and Mary Kurnik have applied for their son to receive a Personal Scholarship Account for the coming school year. *Id.* John is a qualified student to participate in the Personal Learning Scholarship Account Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* John needs to receive tutoring in math. He also needs to receive applied behavioral analysis therapy and speech therapy with an emphasis in remediation of central auditory processing problems. *Id.* Because of John’s medical expenses, John and Mary Kurnik are not able to obtain these needed services for their son. *Id.* The PLSA Program will allow John and Mary Kurnik to provide their son with math tutoring and speech therapy. *Id.* Without a Personal Learning Scholarship Account, John will not receive math tutoring and speech

therapy to his detriment. *Id.*

7. Proposed Intervenor-Defendant Ashli McCall is the parent of Emmil McCall. Emmil has autism spectrum disorder level one. *See* Declaration of Ashli McCall in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “D.” Ashli McCall has applied for Emmil to receive a Personal Learning Scholarship Account for the coming school year. *Id.* Emmil is a qualified student to participate in the Personal Learning Scholarship Account Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* Emmil’s psychologist has recommended that Emmil receive cognitive behavior therapy, applied behavioral analysis, occupational therapy, individual therapy, and family therapy. *Id.* Due to financial constraints, Emmil does not currently receive any of these therapies. *Id.* With a Personal Learning Scholarship Account, Ashli McCall can obtain curriculum and accommodating educational materials to aid in homeschooling, consider a tutor for math, and seek out therapies for Emmil. *Id.* Without jeopardizing her family’s financial stability, Ashli McCall will not be able provide Emmil with these needed materials and services if the PLSA Program is stricken. *Id.*

8. Proposed Intervenor-Defendant Alisha Sloan is the parent of Christopher Sloan. *See* Declaration of Alisha Sloan in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “E.” Christopher has autism. *Id.* Alisha Sloan has applied for Christopher to receive a Personal Learning Scholarship Account for the coming school year. *Id.* Christopher is a qualified student to participate in the Personal Learning Scholarship Account Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* Christopher needs to receive speech therapy and occupational therapy. *Id.* Because insurance no longer covers these therapies, Alisha Sloan cannot provide them for Christopher. *Id.* With a Personal Learning Scholarship Account, Alisha Sloan will be able to provide Christopher with speech therapy and occupational therapy as well as purchase

curriculum and educational materials to aid in his homeschooling. *Id.* Christopher will not be able to receive these therapies or many of the educational materials he needs without a Personal Learning Scholarship Account. *Id.*

9. Proposed Intervenor-Defendant Melissa Ward is the parent of Ethan Ward. *See* Declaration of Melissa Ward in Support of Unopposed Motion to Intervene, attached hereto as Exhibit “F.” Ethan has cerebral palsy. *Id.* Melissa Ward has applied for Ethan to receive a Personal Learning Scholarship Account for the coming school year. *Id.* Ethan is a qualified student to participate in the Personal Learning Scholarship Account Program under Fla. Stat. § 1002.385 (3)(a)(3). *Id.* Ethan receives some physical therapy for his gross motor skills and fine motor skills challenges. *Id.* Ethan also stutters and has a diagnosed math difficulty. *Id.* Because of the costs of Ethan’s medical expenses and therapies, Melissa Ward cannot provide Ethan with speech therapy and math tutoring. *Id.* With a Personal Learning Scholarship Account, Melissa Ward will be able to provide Ethan with both occupational and physical therapies and he could begin speech therapy as well as math tutoring. *Id.* Ethan will not be able to receive the additional therapies and tutoring he needs without the PLSA Program. *Id.*

Legal Argument

10. 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.” Fla. R. Civ. Pro. 1.230.

11. 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).

12. 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”).

13. The PLSA Families have a direct and immediate interest in the outcome of Plaintiff’s challenge to the Act, unlike the Plaintiff’s interest in bringing this case. Should Plaintiff’s requested relief be granted, the PLSA Families will be deprived of the opportunity to receive Personal Learning Scholarship Accounts and will not be able to adequately address the unique educational needs of their children.

14. While the State of Florida has a duty to defend the constitutionality of this law, the PLSA Families’ interest in defending this program that will provide crucial assistance to their children, is a direct interest in the outcome of this case unique to them. Simply put, the State’s institutional interests do not equate with those of the PLSA Families, whose only concern is improving the educational opportunities of their children. The PLSA Families’ interests flow from the right to education conferred by Fla. Const. Art. IX, §1, and from their children’s eligibility to participate in the PLSA Program and their desire to enroll in the program. The existing parties’ interests are more remote than the interests of the PLSA Families, who are seeking to defend their interest in the PLSA Program and the Act.

15. Given their direct, distinct, and tangible rights and interests, parents and children have repeatedly intervened to defend school choice programs. See, e.g., *Bush v. Holmes*, 919 So. 2d

392 (Fla. 2006); *Niehaus v. Huppenthal*, 310 P.3d 983 (Ariz. Ct. App. 2013), review denied (Mar. 21, 2014); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002); *La. Fed. of Teachers v. State*, No. 2013-CA-0120, 2013 WL 1878913 (La. May 7, 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). 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*, 13-31262, 2014 WL 1395663 (5th Cir. Apr. 10, 2014).

16. Finally, the granting of this Motion to Intervene will not unduly delay this action or prejudice any of the parties 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).

Conclusion

17. The PLSA Families should be allowed to intervene. The PLSA Families have a direct and immediate interest in the outcome of this case and their interests are unique to them. Should Plaintiff prevail and the Act is stricken, the PLSA Program will be unavailable to the PLSA Families and they will not be able to more adequately address the unique and specialized needs of their children. This harm gives the PLSA Families a more immediate and direct interest in the outcome of this case than the existing parties.

18. The PLSA Families' Counsel has consulted with Ron Meyer, attorney for Plaintiff Tom Faasse. Plaintiff does not object to PLSA Families' intervention in this case.

19. The PLSA Families' Counsel has consulted with Defendants' Counsel, Deputy Solicitor General Rachel Nordby. Defendants do not object to PLSA Families' intervention in this case.

WHEREFORE, Juliette Kleffel, Donna Berman, John and Mary Kurnik, Ashli McCall, Alisha Sloan, and Melissa Ward respectfully request this Court to grant their motion to intervene as party defendants, 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,

/s/ Jared Blanchard
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