

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

AMBER McCLOUD, individually, as a taxpayer
and as parent and next friend of A.M. and C.M., minor
children enrolled in Mingo County public school
system,

Civil Action No. __-C-__

CRYSTAL TOMBLIN, individually, as a taxpayer, and as a
parent and next friend of H.T., a minor child
enrolled in the Mingo County public school system;
CANDICE PERRY, individually, as a taxpayer, and as parent
and next friend of C.P. and C.P., minor children
enrolled in the Mingo County public school system;
KATIE BAISDEN, individually, as a taxpayer, and as parent
and next friend of B.B. and B.B., minor children enrolled
in the Mingo County public school system;
DONNA VANCE, individually, as a taxpayer, and as parent
and next friend of G.C., a minor child enrolled in the
Mingo County public school system;
LOTTIE VANCE, individually, as a taxpayer, and as parent
And next friend of N.M. and K.M., minor children enrolled in
the Mingo County public school system;
KACEY ADKINS, individually, as a taxpayer, and as parent
and next friend of E.M. and N.A., minor children enrolled
in the Mingo County public school system;
MICHAEL PERRY, individually, as a taxpayer,
and as parent and next friend of T.P., a minor child
enrolled in Mingo County public school system;
CHRISTINA HAGER, individually, as a taxpayer
And as parent and next friend of M.H., a minor child
Enrolled in Mingo County public school system;
OLIVIA DILLON, individually, as a taxpayer
and as parent and next friend of B.C., a minor child
enrolled in Mingo County public school system;
and JAMIE GORE, individually, as a taxpayer
and as parent and next friend of C.G., a minor enrolled
in Mingo County public school system, on behalf of
themselves and all similarly situated West Virginia public
school parents and taxpayers,

Judge:

Plaintiffs,

v.

LARRY PACK, in his official capacity as WEST
VIRGINIA STATE TREASURER and Chairman of the
WEST VIRGINIA HOPE SCHOLARSHIP BOARD; the
WEST VIRGINIA HOPE SCHOLARSHIP BOARD; and

MICHELE L. BLATT, in her official capacity as
WEST VIRGINIA STATE SUPERINTENDENT OF
SCHOOLS,

Defendants.

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY
RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF,
AND OTHER RELIEF**

Plaintiffs, by counsel, state as follows for their Verified Complaint against Defendants Larry Pack, in his official capacity as State Treasurer and Chairman of the West Virginia Hope Scholarship Board; the West Virginia Hope Scholarship Board (the "Board"); and Michele L. Blatt, in her official capacity as State Superintendent of Schools (collectively, "Defendants").

I. NATURE OF THE ACTION

1. This action challenges the administration of the West Virginia Hope Scholarship Program, W. Va. Code § 18-31-1 et seq. (the "Program" or "Hope"), as that Program now operates following its expansion to universal eligibility for the 2026-2027 school year.
2. In *State v. Beaver*, 248 W. Va. 177, 887 S.E.2d 610 (2022), the Supreme Court of Appeals of West Virginia held that the Hope Scholarship Act "does not facially violate the 'free schools' clause contained in article XII, section 1 of the West Virginia Constitution." Syl. Pt. 12, *Beaver*.
3. Plaintiffs do not ask this Court to disturb that holding. *Beaver* resolved a facial challenge, and the Court said so expressly, applying the rule that a facial challenger "must establish that no set of circumstances exists under which the legislation would be valid." Syl. Pt. 7, *Beaver*. Plaintiffs plead an as-applied challenge on a record that did not exist in 2022.

4. *Beaver* itself identified the case that would be different. The Court explained that the 2022 respondents had relied on a chain of contingencies: that Hope might draw students out of public schools, that the resulting enrollment decline might render the school aid formula inadequate, and that the Legislature might then fail to adjust the formula or supplement school funding. The Court held those "hypothetical harms" insufficient to invalidate the Act on its face.
5. The Court then reserved the claim Plaintiffs now bring: "if the Legislature should fail to sufficiently fund public schools due to a decrease in public school enrollment, such that it is no longer complying with its duty under article XII, section 1 to provide a thorough and efficient system of free schools," the challengers "could challenge such inaction by the Legislature at that time." *Beaver*, 248 W. Va. at 198, 887 S.E.2d at 631 (emphasis in original).
6. The contingencies *Beaver* treated as speculative have occurred and are now measurable. Public school enrollment has declined statewide. The Program has grown from the roughly 3,000 applicants of record at the time *Beaver* was decided to, on information and belief, substantially more applications for 2026-2027, its first year of universal eligibility, at a cost that has grown by roughly an order of magnitude over the same period. County school systems have entered fiscal distress, and one of them, Mingo County, has been placed under State control.
7. In 2025 and 2026 the West Virginia House of Delegates commissioned the RAND Corporation to review the State's school aid funding formula. RAND recommended that the State increase funding through the school aid formula, found that West Virginia under-allocates resources to districts serving higher-cost students, and recommended

"against the current planned expansion of eligibility for the Hope Scholarship program in school year 2026-27." The Legislature expanded eligibility anyway.

8. Plaintiffs are Mingo County parents and taxpayers whose children attend public schools, including Dingess Elementary School, which, on information and belief and as further alleged in Section IV.D and in the companion action referenced below, the county has proposed to close. No participating private school sits within a reasonable commute of their homes. They bear the fiscal consequences of the Program without practical access to the choice the Program was enacted to provide.
9. Plaintiffs seek a declaration of rights under the Uniform Declaratory Judgments Act, W. Va. Code § 55-13-1 et seq., and narrowly drawn injunctive relief directed at the 2026-2027 universal eligibility expansion. Plaintiffs do not seek money damages, do not seek to recover funds already disbursed, and do not seek relief that would disturb the accounts of students already enrolled in the Program.

II. PARTIES

10. Plaintiff Amber McCloud is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of A.M. and C.M., students enrolled in the Mingo County public school system.
11. Plaintiff Crystal Tomblin is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of H.T., a student enrolled at Dingess Elementary School in the Mingo County public school system.

12. Plaintiff Candice Perry is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of C.P. and C.P., students enrolled in the Mingo County public school system.
13. Plaintiff Katie Baisden is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of B.B. and B.B., students enrolled in the Mingo County public school system.
14. Plaintiff Donna Vance is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of G.C., a student enrolled in the Mingo County public school system.
15. Plaintiff Lottie Vance is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of N.M. and K.M., students enrolled in the Mingo County public school system.
16. Plaintiff Kacey Adkins is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of E.M. and N.A., students enrolled in the Mingo County public school system.
17. Plaintiff Michael Perry is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of T.P., a student enrolled in the Mingo County public school system.
18. Plaintiff Christina Hager is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of M.H., a student enrolled in the Mingo County public school system.

19. Plaintiff Olivia Dillon is an adult resident and taxpayer of Mingo County, West Virginia, and the parent and legal guardian of B.C., a student enrolled in the Mingo County public school system.
20. Plaintiffs sue in their individual capacities as taxpayers challenging the expenditure of public funds, and as parents of children enrolled in a public school system whose funding is affected by the challenged expenditures.
21. Defendant Larry Pack is the State Treasurer of West Virginia and, by statute, the chairman and presiding officer of the West Virginia Hope Scholarship Board. W. Va. Code § 18-31-3(d). He is sued in his official capacity only.
22. Defendant West Virginia Hope Scholarship Board is the State entity created by W. Va. Code § 18-31-3 to administer the Program. The Board approves participating education service providers, calculates and disburses awards, and promulgates Program rules. W. Va. Code §§ 18-31-3, 18-31-6, 18-31-10.
23. The Board also certifies to the Department of Education, by December 10 of each year, the estimated number of Hope Scholarship applications for the coming fiscal year. W. Va. Code § 18-9A-25(a). That certification drives the size of the appropriation the Department must request.
24. Defendant Michele L. Blatt is the State Superintendent of Schools and is sued in her official capacity only. The Department of Education transfers the appropriated funds to the Board under W. Va. Code § 18-9A-25(a), and the State Superintendent may provide staff to the Board on request. W. Va. Code § 18-31-3(e).

25. The State Superintendent and the West Virginia Board of Education also bear an independent constitutional duty in this area. Under their general supervisory powers over education, W. Va. Const. art. XII, § 2, and their duties under Chapter 18 of the West Virginia Code, they "have a duty to ensure the complete executive delivery and maintenance of a 'thorough and efficient system of free schools' in West Virginia." Syl. Pt. 1, in part, *Pauley v. Bailey*, 174 W. Va. 167, 324 S.E.2d 128 (1984).
26. That duty is not abstract as to these Plaintiffs. In March 2025 the West Virginia Board of Education intervened in and took control of the operations of Mingo County Schools. On May 14, 2025, the State Board detailed the problems that led to the takeover, and Superintendent Blatt stated that the Mingo County Board of Education had failed to act on a statutory obligation, interrupting day-to-day operations of the school system. Mingo County Schools has since been operated under State supervision.
27. The State of West Virginia is not named as a defendant. Article VI, § 35 of the West Virginia Constitution provides that the State "shall never be made defendant in any court of law or equity," subject to exceptions not applicable here. Plaintiffs accordingly proceed against the responsible officers and the administering board in their official capacities, and seek only prospective declaratory and injunctive relief.

III. JURISDICTION, VENUE, STANDING, AND RIPENESS

28. This Court has original and general jurisdiction over this action. W. Va. Code § 51-2-2(d).

29. The Uniform Declaratory Judgments Act empowers courts of record to declare the rights, status, and other legal relations of the parties, whether or not further relief is or could be claimed. W. Va. Code § 55-13-1.
30. Rule 65 of the West Virginia Rules of Civil Procedure supplies the authority for the temporary restraining order and the preliminary and permanent injunctive relief sought in Sections IX and X.
31. Venue is proper in Kanawha County under W. Va. Code § 56-1-1(a)(1). Defendants perform their official duties in Kanawha County, the Board and the Treasurer's Office are headquartered in Kanawha County, and the prior constitutional challenge to this Program was litigated in the Circuit Court of Kanawha County.
32. Plaintiffs have standing as taxpayers challenging an allegedly unconstitutional expenditure of public funds. In *Beaver*, the Supreme Court of Appeals rejected the State's argument that a materially similar challenge should be dismissed for lack of standing and ripeness, holding that "under the specific facts of this case, the circuit court did not lack jurisdiction." *Beaver*, 248 W. Va. at 189 n.14, 887 S.E.2d at 622 n.14.
33. In reaching that conclusion the Court observed that "[i]n West Virginia the . . . doctrine of standing is not usually employed to avoid a frontal confrontation with an issue of legitimate public concern," *State ex rel. Alsop v. McCartney*, 159 W. Va. 829, 838, 228 S.E.2d 278, 283 (1976), and cited decisions from other jurisdictions recognizing taxpayer standing to challenge voucher and education savings account programs on state constitutional grounds. See *Meredith v. Pence*, 984 N.E.2d 1213 (Ind. 2013); *Schwartz v. Lopez*, 132 Nev. 732, 382 P.3d 886 (2016).

34. Plaintiffs also have standing as parents of children enrolled in the Mingo County public school system. Their children's school is the subject of a proposed closure, and the county system in which they are enrolled is under State control following a finding of operational failure. Their injury is neither generalized nor hypothetical.
35. The claims are ripe. *Beaver* held that a challenge premised on a chain of future contingencies was not ripe for facial adjudication in 2022, and identified the point at which such a claim could be brought. Those contingencies have occurred. The Program's cost is now known rather than projected, its eligibility rules are now universal rather than prospective, and the fiscal condition of at least one affected county system has been adjudicated by the State Board of Education itself.
36. Plaintiffs have no adequate remedy at law. Once Hope Scholarship funds are disbursed into individual accounts and spent, they cannot practicably be recovered, and Plaintiffs seek no such recovery.

IV. FACTUAL BACKGROUND

37. The Legislature enacted the Hope Scholarship Act in 2021. The Act creates education savings accounts that participating families may use for private school tuition, home school curricula, tutoring, and other statutorily defined qualifying expenses. W. Va. Code § 18-31-7.
38. The Act creates in the State Treasury a special revenue fund, the West Virginia Hope Scholarship Program Fund, administered by the Treasurer and consisting of funds transferred by the Department of Education under W. Va. Code § 18-9A-25. W. Va. Code § 18-31-6(a).

39. Section 18-9A-25(a) directs that, "in addition to all other amounts required by this article," the Department of Education shall include in its budget request, and the Governor shall include in each budget bill, an appropriation calculated as follows: the greater of two percent of net public school enrollment adjusted for state aid purposes, or the total number of estimated Hope Scholarship applications for the fiscal year, multiplied by "the prior year's statewide average net state aid allotted per pupil."
40. The multiplicand in that calculation is the public school figure. The size of the Hope appropriation is therefore fixed by reference to the same per-pupil state aid amount that the school aid formula generates for county boards of education.
41. The individual award is set the same way. Each Hope Scholarship equals 100 percent of the prior year's statewide average net state aid share allotted per pupil, based on net enrollment adjusted for state aid purposes, prorated if the student does not participate for the full fiscal year. W. Va. Code § 18-31-6(b).
42. "Net enrollment" means the number of pupils enrolled in the public schools of the county, and the enrollment figures for one year are used in the School Aid Formula calculation for the following year. W. Va. Code §§ 18-9A-2(i), 18-31-6(b). A student who leaves a county's public schools for the Program therefore reduces that county's state aid allocation in the following year.
43. A Hope Scholarship student who wishes to take individual classes or participate in extracurricular programs at a public school must pay tuition for those services, and is excluded from net enrollment for state aid purposes. W. Va. Code § 18-31-8(f).

44. Plaintiffs do not allege that the Act on its face redirects money out of the school aid formula appropriation. *Beaver* held otherwise, reasoning that the Program "does not take money directly from the school funding formula" and is funded by a separate general revenue appropriation. Plaintiffs allege the relationship the statutory text actually creates: an appropriation whose size is calculated from the public school per-pupil figure, awarded to students whose departure reduces their county's allocation in the following year, drawn from the same general revenue that funds the formula, and now grown to a scale that was not before the Court in 2022.
45. When *Beaver* was decided, the Program was new. The record before the Court reflected that roughly 3,000 students had applied at \$4,300 per student, a cost the State's counsel described in the circuit court as \$12.9 million.
46. For the 2023-2024 school year, the per-student scholarship amount was approximately \$4,900.
47. As of the 2024-2025 school year, the Program served an estimated 10,542 students, approximately eighteen percent of whom were rising kindergarteners, against a statewide public school enrollment of approximately 241,000 students.
48. On information and belief, the Program's appropriation for the 2025-2026 school year was on the order of \$100 million.
49. The 2026-2027 school year is the Program's first year of universal eligibility. The requirement that a participant have been enrolled in and attending a public school has been eliminated, and the Program is open to all West Virginia K-12 students regardless of prior public school enrollment.

50. On information and belief, the Program's appropriation for the 2026-2027 school year is on the order of several hundred million dollars, and applications received in the run-up to that school year materially exceeded prior-year totals. The precise appropriation figure, the total number of applications received, and any Treasurer's Office estimate of ultimate need are matters of public record subject to proof.
51. On information and belief, the per-student award for the 2026-2027 school year is calculated, as W. Va. Code § 18-31-6(b) requires, from the state aid per-pupil figure otherwise generated for county boards of education. The precise per-student award amount for that year is a matter of public record subject to proof.
52. On information and belief, the Program's appropriation has grown from the \$12.9 million figure the State's counsel represented in the *Beaver* circuit court to a 2026-2027 appropriation larger by roughly an order of magnitude, and that appropriation has grown substantially in the two budget cycles immediately preceding this action. The specific appropriation figures for each year are matters of public record subject to proof.
53. The West Virginia House of Delegates funded and sponsored an independent RAND Corporation review of the design and adequacy of the State's school aid funding formula. The West Virginia Department of Education and the State Treasurer's Office provided RAND with data and records for the study.
54. RAND found that West Virginia's overall education spending is close to the national average while its students face well above average socioeconomic and academic challenges, that the State ranks fifth nationally in the proportion of students eligible for special education services and eighth in the proportion of families with children living in

poverty, and that West Virginia ranks 48th of 50 states in eighth grade NAEP reading and mathematics proficiency.

55. RAND recommended that the State "increase funding through the school aid formula while simultaneously working to improve system effectiveness," and found that, compared to other states, West Virginia under-allocates resources to districts serving students who cost more to educate.

56. RAND further found that substantial declines in student enrollment have contributed to rising fixed costs of delivering education in many counties, and noted the National Center for Education Statistics forecast that West Virginia public school enrollment will continue to decline by approximately thirteen percent between Fall 2022 and Fall 2031.

57. As to the 2026-2027 expansion, RAND estimated a pool of approximately 36,000 newly eligible school-aged youth, of whom approximately thirty-eight percent were already attending private schools and approximately sixty-two percent were already being home-schooled. RAND estimated that participation by half of that newly eligible population would impose a new cost of approximately \$105 million annually.

58. RAND concluded that this newly eligible population is "much more likely to use the scholarship as a partial or full substitute for educational spending they would have undertaken regardless of the Hope program," and that resources spent on the expansion "are likely to be less efficient . . . than the current version of the Hope program or the use of state resources directly towards the delivery of public educational services."

59. RAND recommended "against the current planned expansion of eligibility for the Hope Scholarship program in school year 2026-27," recommended that the State consider

income-based eligibility thresholds, and recommended that unused scholarship funds return to the State or be subject to rollover caps.

60. The Legislature implemented the expansion notwithstanding that recommendation, and did so in the same period in which it left the formula recommendations unaddressed.

61. In March 2025 the West Virginia Board of Education took control of the operations of Mingo County Schools, citing a need for immediate intervention.

62. On May 14, 2025, the State Board detailed the problems that had led to the takeover. Superintendent Blatt stated that the Mingo County Board of Education had failed to act on a statutory obligation, and that the failure had interrupted the day-to-day operations of the school system.

63. On information and belief, and as alleged more fully in the companion action captioned *Crystal Tomblin, et al. v. Mingo County Board of Education, et al.*, filed contemporaneously with this Complaint, the Mingo County Board of Education has proposed closing Dingess Elementary School after the 2026-2027 school year, citing declining enrollment and financial pressures.

64. Dingess is a small, rural community. There is no participating Hope Scholarship education service provider offering a full-time school program within a reasonable commuting distance of Plaintiffs' homes.

65. Plaintiffs' children cannot, as a practical matter, use a Hope Scholarship as a substitute for their public school. If Dingess Elementary closes, their alternative is a longer bus ride to a consolidated school, not a private school.

66. RAND's analysis confirms the structural point. Small and sparse districts face substantially higher per-student costs because of worse economies of scale, difficulty recruiting and retaining staff, and higher costs of basic services, and West Virginia's formula recognizes this through an enrollment adjustment for districts below 1,400 students. Enrollment loss in a small rural county is not cost-neutral; the fixed costs of operating a school do not fall with each departing student.
67. *Beaver* rested on three findings. First, the Act contains no language mandating a reduction in public school funding. Second, whether public schools would be sufficiently funded following an enrollment decline depended on "an independent decision of the Legislature" not dictated by the Act. Third, the harms alleged were hypothetical and future.
68. Plaintiffs accept the first finding. The Act contains no such language, and Plaintiffs do not contend otherwise.
69. As to the second, the independent legislative decisions *Beaver* identified have now been made and are matters of public record: the Legislature expanded eligibility, appropriated the resulting sum, and declined to adopt the formula increases its own commissioned analysis recommended.
70. As to the third, the harms are no longer hypothetical. Enrollment has declined. The appropriation has grown by more than an order of magnitude. A county system has failed and been taken over by the State. A school is proposed for closure.
71. *Beaver* observed that "there is no ceiling in the school funding formula and the Legislature may adjust it in any manner it deems appropriate to meet its constitutional

obligation to provide a thorough and efficient system of free schools if faced with an enrollment decrease." Plaintiffs allege that the Legislature has faced that decrease and has not made the adjustment.

**V. COUNT I — Declaratory Judgment: The Program, as Now Funded and Administered,
Is Inconsistent With Article XII, § 1**

72. Plaintiffs incorporate by reference all preceding paragraphs.

73. "The legislature shall provide, by general law, for a thorough and efficient system of free schools." W. Va. Const. art. XII, § 1.

74. The obligation is mandatory. "The Thorough and Efficient Clause contained in Article XII, Section 1 of the West Virginia Constitution requires the Legislature to develop a high quality State-wide education system." Syl. Pt. 5, *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979).

75. A thorough and efficient system "develops, as best the state of education expertise allows, the minds, bodies and social morality of its charges to prepare them for useful and happy occupations, recreation and citizenship, and does so economically." *Pauley*, 162 W. Va. at 705, 255 S.E.2d at 877.

76. Sufficient funding is implicit in that definition. *Beaver*, 248 W. Va. at 197, 887 S.E.2d at 630 (citing *Pauley*, 162 W. Va. at 706, 255 S.E.2d at 877).

77. Public education holds "a constitutionally preferred status" in this State, and for that reason "expenditures for public education cannot be reduced . . . in the absence of a compelling factual record to demonstrate the necessity therefor." Syl. Pt. 2, in part, *State*

ex rel. Bd. of Educ. of Kanawha Cnty. v. Rockefeller, 167 W. Va. 72, 281 S.E.2d 131 (1981).

78. *Beaver* did not decide the question presented here. The Court applied the facial standard, under which a challenger must show that "no set of circumstances exists under which the legislation would be valid," and held only that the Act is not facially invalid. Syl. Pts. 7, 12, *Beaver*.

79. The Court left the as-applied question open, holding that a challenge to legislative inaction on public school funding following an enrollment decrease could be brought "at that time."

80. Plaintiffs allege that the conditions the Court described have materialized. On information and belief, the Program's appropriation has grown from the \$12.9 million figure the State's counsel represented in the *Beaver* circuit court to a current appropriation larger by roughly an order of magnitude. Public school enrollment has declined and is forecast to continue declining. County boards, including Mingo County, have experienced fiscal distress severe enough to prompt State intervention and proposed school closures.

81. Plaintiffs further allege that the Legislature has not made the corresponding adjustment. Its own commissioned analysis recommended increased formula funding, increased allocations to high-need districts, and cancellation of the eligibility expansion. The Legislature adopted none of those recommendations and implemented the expansion.

82. As applied to this record, the Program's operation and continued expansion, coupled with the absence of corresponding formula support for affected county boards, is inconsistent

with the constitutional obligation to maintain a thorough and efficient system of free schools, and with Defendants' duty to ensure the executive delivery and maintenance of that system.

83. Plaintiffs recognize that the appropriation power belongs to the Legislature and that this Court does not sit as a superlegislature. Plaintiffs do not ask this Court to set an appropriation level, to direct the Legislature to adopt any particular formula, or to substitute its judgment for the Legislature's on the merits of school choice. Plaintiffs ask for a declaration of rights and obligations under Article XII, § 1 as applied to the Program's current scale and effects, and for injunctive relief limited to the 2026-2027 expansion.

84. Plaintiffs are entitled to that declaration.

VI. COUNT II — Declaratory Judgment: Compelled Support of Religious Instruction Under Article III, § 15

85. Plaintiffs incorporate by reference all preceding paragraphs. This Count is pleaded in the alternative to Count I.

86. Article III, § 15 of the West Virginia Constitution provides that "[n]o man shall be compelled to frequent or support any religious worship, place or ministry whatsoever," that "the legislature shall not . . . confer any peculiar privileges or advantages on any sect or denomination," and that the Legislature shall not "pass any law requiring or

authorizing any religious society, or the people of any district within this State, to levy on themselves, or others, any tax . . . for the support of any church or ministry."

87. This provision was not raised or decided in *Beaver*. The constitutional challenges resolved there arose under Article XII, §§ 1, 2, 4, and 5, Article X, § 5, and the special legislation clause.
88. Article III, § 15 is textually distinct from the Establishment Clause of the First Amendment. It speaks in terms of compelled individual support and of taxation for the support of a church or ministry, rather than in terms of an establishment of religion.
89. Plaintiffs are West Virginia taxpayers. A portion of the tax revenue they contribute is appropriated to the Program and paid, through education savings accounts, to schools operated by or affiliated with religious denominations for tuition and religious educational instruction.
90. Plaintiffs do not contend that religious schools may be excluded from an otherwise generally available public benefit on the basis of their religious character. Plaintiffs acknowledge that the United States Supreme Court has held that a State "cannot disqualify some private schools solely because they are religious," *Carson v. Makin*, 596 U.S. 767, 780 (2022), and that a state no-aid provision applied to bar religious schools from public benefits solely because of their religious character is subject to strict scrutiny under the Free Exercise Clause, *Espinoza v. Montana Department of Revenue*, 591 U.S. 464 (2020). Plaintiffs do not seek that remedy and do not ask this Court to order it.
91. Plaintiffs instead contend that Article III, § 15 constrains the scale and structure of the appropriation itself, and that the remedy for a violation is a limitation on the

appropriation as a whole rather than the exclusion of religious providers from a program that continues to operate.

92. Plaintiffs are entitled to a declaration of their rights under Article III, § 15 as applied to the Program as now funded and administered.

VII. COUNT III — Declaratory Judgment: The Program's Geographic Operation Denies

Equal Protection Under Article III, § 10

93. Plaintiffs incorporate by reference all preceding paragraphs. This Count is pleaded in the alternative to Count I.

94. Article III, § 10 of the West Virginia Constitution has been recognized as embodying the guarantee of equal protection of the laws. See *Pauley v. Bailey*, 174 W. Va. 167, 169 n.2, 324 S.E.2d 128, 130 n.2 (1984) (Article III, §§ 10 and 17 "have been considered by this Court to embody the concept of equal protection under the law").

95. Education is a fundamental constitutional right in West Virginia. "The mandatory requirements of 'a thorough and efficient system of free schools' found in Article XII, Section 1 of the West Virginia Constitution, make education a fundamental, constitutional right in this State." Syl. Pt. 3, *Pauley v. Kelly*, 162 W. Va. 672, 255 S.E.2d 859 (1979).

96. "If the State takes some action which denies or infringes upon a person's fundamental right to an education, then strict scrutiny will apply and the State must prove that its action is necessary to serve some compelling State interest," and any such denial or infringement "must be narrowly tailored." Syl. Pt. 2, *Cathe A. v. Doddridge County Board of Education*, 200 W. Va. 521, 490 S.E.2d 340 (1997).

97. *Beaver* rejected two theories of infringement: that the Act trades a student's right to a public education for a sum of money, and that the Act reduces funds available to public schools through a state-incentivized reduction in enrollment. Plaintiffs do not replead either theory.
98. Plaintiffs plead a different theory, which *Beaver* did not address: that the Program as administered distributes its benefit according to the geographic supply of participating providers, while distributing its fiscal consequences uniformly across all county school systems.
99. Families in counties with a supply of nearby participating private schools have practical access to the choice the Program provides. Families in rural communities such as Dingess, where no participating provider offers a full-time school program within reasonable commuting distance, have no such access.
100. Every county school system, including those serving communities with no practical access, bears the consequences of an enrollment-linked funding structure and of a competing claim on the same general revenue.
101. This geographically determined disparity falls disproportionately on rural, lower-income communities that depend on a single remaining local public school, and is not narrowly tailored to any compelling State interest. In the alternative, and to the extent this Court concludes that heightened scrutiny does not apply, the disparity lacks a rational relationship to any legitimate governmental purpose as applied to those communities.
102. Plaintiffs are entitled to a declaration of their rights under Article III, § 10.

VIII. COUNT IV — Declaratory Judgment: Article X, § 6

103. Plaintiffs incorporate by reference all preceding paragraphs. This Count is pleaded in the alternative to Counts I through III and is asserted to preserve the theory pending development of the disbursement record sought in Section IX.
104. Article X, § 6 of the West Virginia Constitution restricts the credit of the State from being granted to, or in aid of, any county, city, township, corporation, or person.
105. Program funds are paid to private and religious corporations for tuition and services.
106. Plaintiffs allege, on information and belief, that those disbursements are made without disbursement-specific public purpose findings and without the accountability and oversight ordinarily attending the expenditure of public funds for a public purpose. The accounting sought in Section IX is directed in part at establishing the factual predicate for this Count.
107. Plaintiffs seek a declaration of their rights under Article X, § 6 to the extent the disbursement record supports it.

IX. REQUEST FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

108. Plaintiffs incorporate by reference all preceding paragraphs and move, under Rule 65 of the West Virginia Rules of Civil Procedure, for a temporary restraining order and, thereafter, a preliminary injunction.
109. The power to grant, refuse, modify, continue, or dissolve a temporary or preliminary injunction rests in the sound discretion of the trial court according to the facts and circumstances of the particular case. See Syl. Pt. 3, *Beaver* (quoting Syl. Pt. 1,

Baisden v. W. Va. Secondary Schools Activities Comm'n, 211 W. Va. 725, 568 S.E.2d 32 (2002)).

110. Plaintiffs request relief narrowly tailored to two things: (a) an order enjoining further disbursement of Hope Scholarship funds to new, first-time applicants who became eligible only by operation of the 2026-2027 universal eligibility expansion, pending final resolution of this action; and (b) an order requiring Defendants to provide an accounting of Program disbursements by county and by recipient type, distinguishing public, private religious, private non-religious, and home school recipients, sufficient to permit the Court and the parties to evaluate the as-applied claims.
111. Plaintiffs do not seek to enjoin the Program as a whole, do not seek to interrupt disbursements to students enrolled under the pre-expansion eligibility rules, and do not seek recovery of funds already disbursed.
112. Likelihood of success. *Beaver* forecloses a facial challenge and Plaintiffs do not bring one. The question presented is the one *Beaver* reserved, and the record now includes the Legislature's own commissioned finding that the State under-funds high-need districts and should not have adopted the expansion. Plaintiffs acknowledge that no West Virginia decision has yet applied Article XII, § 1 to invalidate an appropriation to a program operating alongside the public schools, and that the relief sought is therefore novel in this State.
113. Irreparable harm. Funds disbursed into individual education savings accounts and spent cannot practicably be recovered. During the pendency of this action, county school systems will make binding decisions, including the proposed closure of Dingess

Elementary School, based on funding conditions to which the Program is alleged to contribute. A school that closes does not reopen on remand.

114. Balance of equities. The relief requested would not affect any currently enrolled Hope Scholarship recipient. It would hold in place the eligibility rules that governed the Program through the 2025-2026 school year while this action proceeds.

115. Public interest. The public interest lies in resolving the constitutionality of an expansion of this scale before it is fully executed rather than after, and in preserving the operational status quo of both systems while that question is decided.

116. Plaintiffs will post such bond as the Court deems proper under Rule 65(c) and submit that, given the public interest at stake and Plaintiffs' means, a nominal bond is appropriate.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue a temporary restraining order and, thereafter, a preliminary injunction as described in Section IX;
2. Declare that the Hope Scholarship Program, as currently funded and administered, is inconsistent with Article XII, § 1 of the West Virginia Constitution as applied to its current scale and its fiscal effects on county public school systems;
3. Declare the rights of the parties under Article III, § 15 of the West Virginia Constitution as applied to Program disbursements for religious educational instruction;

4. Declare that the Program's geographically disparate operation violates Article III, § 10 of the West Virginia Constitution as applied to communities without practical access to a participating provider;
5. Declare the rights of the parties under Article X, § 6 of the West Virginia Constitution to the extent supported by the disbursement record;
6. Enter a permanent injunction consistent with the Court's declaratory rulings;
7. Order the accounting described in Section IX;
8. Award Plaintiffs their costs and, to the extent authorized by law, reasonable attorney's fees; and
9. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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