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

JOANNE McCALL, *et al.*,

Plaintiffs,

v. Case No. 2014-CA-2282

RICK SCOTT, Governor of Florida, in his official capacity as head of the Florida Department of Revenue, *et al.*,

Defendants,

and

UMENE PROPHETE, *et al.*,

Intervenor-Defendants.
_____/

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiffs/Appellants Joanne McCall, Senator Geraldine Thompson, Rabbi Merrill Shapiro, Rev. Harry Parrott, Jr., Rev. Dr. Harold Brockus, Florida Education Association, Florida Congress of Parents and Teachers, Inc., League of Women Voters of Florida, Inc., and Florida State Conference of Branches of NAACP, appeal to the First District Court of Appeal the order of this court rendered May 18, 2015. The nature of the order is an Order Granting Motions to Dismiss With Prejudice. A conformed copy of the order is attached hereto.

[*Signature on following page*]

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to Fla. R. Jud. Admin. 2.516(b)(1), a copy of the foregoing has been provided by e-mail through the Florida Courts e-filing Portal on this 15th day of June, 2015, to:

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

JOANNE McCALL, *et al.*, Plaintiffs, v. RICK SCOTT, Governor of Florida, in his official capacity as the head of the Florida Department of Revenue, *et al.*, Defendants, and UMENE PROPHETE, *et al.*, Intervenor-Defendants.	Case No. 2014 CA 002282

ORDER GRANTING MOTIONS TO DISMISS WITH PREJUDICE

THIS CAUSE was considered by the Court upon Defendants' and Intervenors' Motions to Dismiss. Having considered the motions, the memoranda in support and in opposition, and the pleadings, having heard argument, and being otherwise fully advised in the premises, the Court finds and rules as follows:

1. Plaintiffs initiated this action on August 28, 2014, challenging the constitutionality of Section 1002.395, Florida Statutes, the Florida Tax Credit Scholarship Program as an alleged violation of Article I, Section 3, and Article IX, Section 1, of the Florida Constitution.
2. Defendants and Intervenors moved to dismiss Plaintiffs' Complaint on the grounds that Plaintiffs lack taxpayer standing and have not alleged any special injury supporting standing to challenge the Tax Credit Program.

3. The First District Court of Appeal has held that a complaint must be dismissed for lack of taxpayer standing where Plaintiffs do not challenge appropriations. *Council for Secular Humanism, Inc. v. McNeil*, 44 So. 3d 112, 121 (Fla. 1st DCA 2010) ("To withstand dismissal on standing grounds . . . the challenge must be to legislative appropriations.").
4. The First District has carefully distinguished between tax exemptions and credits, on the one hand, and appropriations from the treasury, on the other. *Bush v. Holmes*, 886 So. 2d 340, 356 (Fla. 1st DCA 2004) (state government may provide "a form of assistance to a religious institution through such mechanisms as tax exemptions, revenue bonds, and similar state involvement" because "[t]hese forms of assistance constitute substantially different forms of aid than the transfer of public funds"); *id.* at 356-57 ("[I]n the case of direct subsidy, the state forcibly diverts the income of both believers and nonbelievers to churches," while "[i]n the case of an exemption, the state merely refrains from diverting to its own uses income independently generated by the churches through voluntary contributions.").
5. In this case, Plaintiffs object to tax credits extended to third parties. Because Plaintiffs do not challenge a program funded by legislative appropriations, Plaintiffs do not have taxpayer standing to bring this action.
6. Plaintiff's Complaint also does not allege special injury sufficient to confer standing on Plaintiffs to challenge the constitutionality of the Tax Credit Program. At the hearing, the Court asked Plaintiffs to identify any allegation of special injury, and they referred only to paragraph 19 of the Complaint, which alleges that "many of the plaintiffs (and members of the plaintiff organizations) whose children attend public schools, or who are teachers or administrators in the public schools, have been and will continue to be injured

by the Scholarship Program's diversion of resources from the public schools." Compl. ¶ 19. But whether any diminution of public school resources resulting from the Tax Credit Program will actually take place is speculative, as is any claim that any such diminution would result in reduced per-pupil spending or in any adverse impact on the quality of education. *See Duncan v. State*, 102 A.3d 913, 926-27 (N.H. 2014) ("[T]he purported injury asserted here—the loss of money to local school districts—is necessarily speculative . . . [and] requires speculation about whether a decrease in students will reduce public school costs and about how the legislature will respond to the decrease in students attending public schools"); *see also Ariz. Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1443 (2011) ("[C]laims of taxpayer standing rest on unjustifiable economic and political speculation. When a government . . . declines to impose a tax, its budget does not necessarily suffer."). Hence, any claim of special injury to any Plaintiff is speculative and conclusory.

7. This Court need not defer to a speculative and conclusory allegation, such as pleaded here, that some Plaintiffs have been "injured" by the Tax Credit Program. *W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (courts "need not accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party"); *accord* Order Granting Motions to Dismiss With Prejudice at 2, *Faasse v. Scott*, No. 2014 CA 1859 (Fla. 2d Cir. Dec. 30, 2014) (complaint "fails to allege a legally sufficient basis to sustain a finding of special injury").

8. Accordingly, the Complaint fails to allege a legally sufficient basis to sustain Plaintiffs' standing based on taxpayer status or on special injury.

9. In response to a question from the Court at the hearing, Plaintiffs declined to offer additional factual allegations in support of their standing other than those in the Complaint. Thus, the Court concludes that further amendments will not result in a legally sufficient complaint.

It is therefore **ORDERED** and **ADJUDGED** that the respective motions to dismiss are granted, and the Complaint is **DISMISSED** with prejudice.

DONE AND ORDERED in Tallahassee, Leon County, Florida, on ~~February~~ May 18th, 2015.

GEORGE S. REYNOLDS III
Circuit Judge