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

Andrew Spar on behalf of himself and his minor child, *et al.*,

Plaintiffs,

v. Case No.: 2026-CA-000929

Anastasios "Stasi" Kamoutsas, in his official capacity as the Commissioner of Education for the State of Florida, *et al.*,

Defendants.

_____/

PLAINTIFFS' RESPONSE TO MOTION TO INTERVENE

Plaintiffs, pursuant to Rule 1.230 of the Florida Rules of Civil Procedure and Section 2.4 of the *Policies, Procedures and Preferences for All Circuit Cases Assigned to Judge J. Lee Marsh*, file this response to the Motion to Intervene and Supporting Memorandum of Law filed by proposed intervening parents Lopez, *et al.* ("Proposed Intervenors")

The rule of civil procedure governing interventions in Florida provides:

> Anyone 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. P. 1.230 (emphasis added). Plaintiff agrees with the Proposed Intervenors assertion that the Florida Supreme Court directs trial courts to conduct a two-part test to determine the appropriateness of the intervention and the scope of that intervention. First, the court must determine whether the asserted interest is appropriate to support intervention and, if so, it must exercise its discretion to determine whether to permit intervention. *Union Cent. Life Ins. Co. v.*

Carlisl, 593 So. 2d 505, 507 (Fla. 1992). Second, the court must determine the parameters of the intervention, stating: "[I]nterventions should be limited to the extent necessary to protect the interest of all parties." *Id.* At 508.

Plaintiffs do not dispute that the Proposed Intervenors have asserted an interest that satisfies the first step. Plaintiffs agree that a judgment in favor of the Plaintiffs may result in the discontinuation of taxpayer funding for their elected private method of education, though the choice of type of education at their own expense will remain available. This potential consequence likely supports intervention. *Id.* at 507.

Where Plaintiffs and the Proposed Intervenors do not agree is on the second step of the court's analysis, the "parameters of the intervention." The Proposed Intervenors ask the court to disregard the Rule 1.230 expectation that "the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding" and to use its discretion to grant them the "full rights of argument and appeal." (Motion at 13). They do not assert sufficient justification for this increased status. Granting intervenor status consistent with Rule 1.230 and subordinate to the parties will "assure the right to be heard and the ability to appeal an adverse ruling." *Id.* at 507. The limitation provided is the restriction from raising new issues not raised by the Defendants, including challenges to the sufficiency of the pleadings, the propriety of the procedures, or dismissal or delay absent the court's permission. *See, Riviera Club v. Belle Mead Dev. Corp.*, 194 So. 783 at 785 (Fla. 1939); *Williams v. Nussbaum,* 419 So. 2d 715 (Fla. 1st DCA 1982).

Florida courts have identified two circumstances where it is appropriate for intervenors to be afforded the same status as the parties to the litigation. First, when the party seeking to intervene is indispensable. The "proper and controlling standard for intervention is not whether the party seeking to intervene is indispensable in the simple and literal meaning of the word, but more

directly, whether the party's interest in the litigation is of a direct and immediate character, as determined by the complete analysis enunciated by the Florida Supreme Court." *Southern Comfort Grill, Inc. v. Hanks Const., LLC*, 162 So. 3d 144 (Fla. 4th DCA 2015). In the present matter, a lawsuit challenging the constitutionality of a statutory framework, the proper defendant is the state official designated to enforce the statute. *Atwater v. City of Weston,* 64 So. 3d 701,703 (Fla. 1st DCA 2011). The Proposed Intervenors ask the court to find this direct and immediate impact based upon a right to public funding of their educational choice, and assert that this lawsuit would impact their education. The Proposed Intervenors however retain choice in their children's upbringing and education; this suit raises the question of whether the current statutory scheme satisfies the constitutional requirements not whether parents maintain a fundamental right to direct their family's education. The Proposed Intervenors have not asserted sufficient facts to establish that their interest is direct and immediate and that they are, therefore, indispensable.

The second situation in which courts have granted full party status is for members of a class, when asserting their objection to class certification as it is their own lawsuit upon which they wish to be heard. *See Litvak v. Scylla Properties, LLC*, 946 So. 2d 1165 (Fla. 1st DCA 2006). ("Since class members are bound by decisions affecting the class, intervention as a named party is an obvious, sanctioned and sensible way for the appellants, nonnamed members of a mandatory class, to protect their interests, including the asserted right to opt out altogether."). This case is not a class action, and similar circumstances do not present themselves.

As these two circumstances are not present, Proposed Intervenors' primary substantive argument is for judicial discretion. They suggest, without expressly stating, what arguments they plan to raise that are relevant to this case and will not be raised by the proper defendants that they, not the Defendants, are uniquely situated as parents and therefore are better able to adequately

defend the constitutionality of the statutory system at question than the implementing agency. Proposed Intervenors' conclusion that parents have a fundamental right to decide how to educate and raise their children is not at issue when the court is asked to evaluate the constitutionality of the program. Again, while they may be impacted by the outcome in terms of loss of state funding, the assertions of their fundamental right to decide their education is not at risk, and this interest is not sufficient to warrant full party status. Finally, while Plaintiff does not dispute the acumen of undersigned counsel for Proposed Intervenors nor their experience in other jurisdictions, this experience does not require an expansion in the scope of their involvement. They can adequately advocate for their interests while remaining subordinate to the parties.

Florida courts have consistently honored the principle that intervention, in all but the rarest circumstances, but "in subordination to, and in recognition of, the propriety of the main proceeding." Fla. R. Civ. P. 1.230. Plaintiffs have not objected to the Proposed Intervenors' participation in this action under terms that enable them to argue and be heard on issues which apply to them and the ability to appeal an adverse ruling. While we do not doubt that the Proposed Intervenors support the policy at issue, and that they believe it benefits their specific circumstances, these considerations are far beyond the scope of the court's review of the laws' constitutionality. *Scott v. Williams,* 107 So. 2d 379, 285 (Fla. 2013). Accordingly, these interests provide no support for the unlimited intervention sought here.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Court enter an order Granting In Part and Denying in Part the Proposed Intervenors' Motion to Intervene, providing that the Proposed Intervenors be GRANTED intervention in this action in subordination to, and in

recognition of, the propriety of the main proceeding, and that their request for full party status is DENIED.

Respectfully submitted,

/s/Martin F. Powell
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed via the Florida Courts E-Filing Portal and a copy of said document has been served via the Florida Courts E-Filing Portal on this 30th day of June 2026, to all counsel of record.

/s/Martin F. Powell
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