

**IN THE CIRCUIT COURT OF COLE COUNTY
19TH JUDICIAL CIRCUIT
STATE OF MISSOURI**

MISSOURI NATIONAL EDUCATION
ASSOCIATION, REBEKA MCINTOSH,
AND KIMBERLY DUVAL,

Plaintiffs,

v.

THE STATE OF MISSOURI ex rel.
CATHERINE HANAWAY, ATTORNEY
GENERAL et al.

Defendants.

Case No. 25AC-CC05358

ORDER AND JUDGMENT

This matter came before the Court on a bench trial on November 24 and 25, 2025. Having been duly advised of the premises, this Court finds and concludes as follows:

FINDINGS OF FACT

I. Procedural Background

1. Plaintiffs Missouri National Education Association (“Missouri NEA”), Rebeka McIntosh, and Kimberly Duvall initiated this action on June 30, 2025, by way of Petition for Declaratory and Injunctive Relief against Defendants the State of Missouri, the Governor, the Attorney General, the Treasurer, the Office of

Administration and its Commissioner, and the Missouri Empowerment Scholarship Accounts Board (collectively, “the State”).

2. On June 30, 2025, Plaintiffs also moved for a Temporary Restraining Order.

3. On July 29, 2025, Parents Kyla Knight, Cassondra Clooten, and Libby Eversgerd moved to intervene to defend the General Assembly’s appropriation to the Missouri Empowerment Scholarship Accounts Fund (“ESA Fund”), which this Court granted on August 13, 2025.

4. On August 15, 2025, the State Defendants moved to dismiss, arguing that the claims were barred by sovereign immunity and failure to sue the proper defendants, Plaintiffs lacked standing to bring their claims, and Plaintiffs failed to state a claim upon which relief could be granted.

5. On August 21, 2025, the Court heard Plaintiffs’ motion for a Temporary Restraining Order and State Defendants’ motion to dismiss, and the Court simultaneously denied both motions the next day.

6. On September 30, 2025, Plaintiffs filed the operative First Amended Petition for Declaratory and Injunctive Relief against the State Defendants.

7. The First Amended Petition raises five claims related to the constitutionality of the General Assembly’s appropriation of \$50 million to the ESA Fund in Section 12.190 of H.B. 12 (one of the fiscal-year 2026 appropriations bills) and the appropriation of \$51 million out of the ESA Fund and into scholarships provided for under the Missouri Empowerment Scholarship Accounts Program (colloquially

referred to as the “Missouri Scholars Program”), *see* §§ 135.712–719, RSMo, in Section 12.185 of H.B. 12.

8. Plaintiffs’ claims arise under the Single Subject Clause of the Missouri Constitution, Mo. Const. art. III, § 23, the specification of amount and purpose provision for appropriations, *id.* art. IV, § 23, the limitation to authorize payment of a claim made without express authority of law provision, *id.* art. III, § 39(4), the provision governing the Treasurer’s duties, *id.* art. IV, § 15, and the declaratory-judgment statute, § 536.050, RSMo.¹

9. The Court held a bench trial on November 24 and 25, 2025.

10. The Court orally ordered the parties to file proposed orders and judgments to the Court by December 8, 2025.

II. Factual Determinations

A. Stipulated Facts

11. The parties have submitted stipulated facts, all of which are reproduced in the following paragraphs with slight modifications.

12. Plaintiff Missouri NEA is a non-profit corporation organized under Missouri law, with its principal place of business in Cole County, Missouri.

13. Missouri NEA is a membership organization with 30,029 members (public-school employees, public-school retirees, and aspiring educators) as of October 31, 2025. Of this number, 28,388 members have permanent Missouri addresses.

¹ All statutory citations are to the Revised Statutes of Missouri unless otherwise noted.

14. As of October 26, 2025, Missouri NEA had 23,393 members who are employed full-time or nearly full-time in a Missouri public school district and who pay taxes to the State of Missouri because they work in Missouri. These 23,393 members include Missouri, Illinois, and Kansas residents.

15. Plaintiff Exhibit 1 is a true and correct copy of a page from Missouri NEA's website, setting forth its mission, vision, and values.

16. Plaintiff Exhibit 2 is a true and correct copy of an excerpt from Missouri NEA's Resolutions for the 2024-2025 school year. Resolution A-5 is titled, "Federally and State-Mandated Choice/Parental Options."

17. Plaintiff McIntosh is a member and currently the elected President of Missouri NEA. McIntosh is a Missouri resident, a retired elementary-school teacher previously employed by the Grandview C-4 School District, and a Missouri taxpayer.

18. Plaintiff Duvall is a member of Missouri NEA, a Missouri resident, and a Missouri taxpayer. Blue Springs R-IV School District employs Duvall as a teacher, and she serves as the elected President of the Blue Springs National Education Association. Duvall has a child who has a disability and who attends the Blue Springs R-IV School District.

19. Defendant State of Missouri is a sovereign State of the United States of America. The State, through the General Assembly, makes the laws.

20. Defendant Michael Kehoe, the Governor of Missouri, signs, assents, or vetoes legislation and executes the laws.

21. Defendant Catherine Hanaway, who was automatically substituted for Andrew Bailey under Missouri Supreme Court Rule 52.13(d), is the Attorney General of Missouri. Her duties include defending the laws against constitutional challenge.

22. Defendant Vivek Malek is the Treasurer of Missouri. His duties include receiving, investing, and holding revenues for the benefit of the funds to which they belong and disbursing them as provided by law.

23. Defendant Missouri Office of Administration is the Executive Department established by the Missouri Constitution to implement the state budget and oversee state expenditures, including the processing of warrants and certification of payments.

24. Defendant Kenneth Zellers is the Commissioner of Office of Administration, and he directs all activities of that Department.

25. Defendant Missouri Empowerment Scholarship Accounts Board (“MO Scholars Board”) is established by § 135.715.3, RSMo to assist the Treasurer with implementing the provisions of the Missouri Empowerment Scholarship Program. By law, the Treasurer chairs the MO Scholars Board, whose other members include the Commissioners of Office of Administration, Education, and Higher Education and Workforce Development; members appointed by the General Assembly and Governor; and a seventh member appointed by the other six members. § 135.715.3, RSMo.

26. To date, the Governor and General Assembly have not appointed representatives to the MO Scholars Board.

27. Intervenor-Defendant Knight resides in Springfield, Missouri. She is the parent of three children who attend Gloria Deo Academy: a daughter in eighth grade, a son in fifth grade, and a daughter in third grade. Her youngest child had received Empowerment Scholarship Account (“ESA”) scholarships under the Missouri Scholars Program for three years prior to the 2025-26 school year, and Knight received ESA scholarships for all three of her children for the 2025-26 school year.

28. Intervenor-Defendant Clooten resides in Kearney, Missouri. She is the parent of three sons who attend Northland Christian School in Kansas City: ninth, fifth, and third grades. Her youngest son had received ESA scholarships for three years prior to the 2025-26 school year, and Clooten received ESA scholarships for all three of her sons for the 2025-26 school year.

29. Intervenor-Defendant Eversgerd resides in Kirkwood, Missouri. Her youngest child previously had an individualized education plan (“IEP”) in public school and currently attends the Miriam School in St. Louis, which specializes in addressing learning disabilities. He is in eighth grade. He has received ESA scholarships for three prior years, but the donations meant that his ESA scholarship was not funded until the middle of the school year. Eversgerd received another ESA scholarship for him at the beginning of the 2025-26 school year.

30. In 2021, the General Assembly adopted and the Governor signed H.B. 349, the Missouri Empowerment Scholarship Act, which is now codified at §§ 135.712–719 and 166.700–720, RSMo. A complete copy of these statutes is set forth in Joint Exhibit 1.

31. The amount of a scholarship is governed by § 135.714. The statute sets criteria for those scholarship amounts up to certain percentages of the “state adequacy target,” based on the student’s category of qualification. § 135.714.1(6)(a), RSMo. Educational Assistance Organizations (“EAOs”) have discretion in determining the amount of scholarship payments awarded based on the state adequacy target and according to a student’s category of qualification. *Id.*

32. The “state adequacy target” is defined in § 163.011.

33. When first calculated in 2005, the state adequacy target was \$6,117. The target has increased incrementally over the years. In fiscal 2025, the target was increased from \$6,760 to \$7,145, to be phased in over two years.

34. ESA scholarships are renewable annually until the student completes high school. § 166.705.2, RSMo.

35. EAOs must ensure that students receiving ESA scholarships take annual achievement tests, and EAOs must submit the scores to the Treasurer and the Missouri Department of Elementary and Secondary Education (“DESE”) along with other student data including grade level, gender, family income level, race, graduation rates, and college attendance. § 135.714.1(9), (12), (13), (14), RSMo.

36. The Treasurer is required to conduct or contract for annual audits of parents, students, and vendors participating in the program. § 166.710.1, RSMo. The Treasurer may remove parents or students from the program, and any such decision is appealable to the Administrative Hearing Commission. *Id.* § 166.710.2.

37. The Treasurer must provide test results and associated learning gains and graduation rates via a public website. § 135.714.3(3)–(4), RSMo. The test and associated-learning-gains findings must aggregate data by the students’ grade level, gender, family income, race, and number of years of participation in the program. *Id.* § 135.714.3(3), RSMo. The Treasurer is also required to post on his website the number of students awarded ESA scholarships each year, the number of ESA scholarship recipients enrolled in each qualified school, and other data such as students’ eligibility for free and reduced lunch, and IEPs. *Id.*

38. The number of students receiving ESA scholarships was: 1,360 in 2022–2023; 1,992 in 2023–2024; and 2,677 in 2024–2025.

39. EAOs distributed a total of \$33,839,196.52 for ESA scholarships in school years 2022–2023, 2023–2024, and 2024–2025.

40. The ESA Fund, established by § 135.716.6(1), RSMo, received approximately \$1.3 million via a statutory-fee mechanism through fiscal 2024.

41. The General Assembly authorized a \$1 million supplemental appropriation for the ESA Fund in H.B. 3014 (2022) for the latter part of fiscal year 2022. Section 14.317 of that bill appropriated \$1 million from general revenue to the ESA Fund. Section 14.320 then appropriated \$1 million from the ESA Fund for “personal service and/or expense and equipment”—not to exceed 2.67 full-time equivalents.

42. On January 28, 2025, Governor Kehoe released his budget proposal for fiscal year 2026. Joint Exhibit 2 is a true and accurate copy of a summary of the Governor’s 2026 proposed budget, which is titled “Securing Missouri’s Future: Budget Priorities

Fiscal Year 2026.” The summary requested the General Assembly to appropriate \$50 million in general revenues for the Missouri Scholars Program. The Summary states, “Previously only funded through tax credits, this investment will ensure more Missouri families have access to education options that best meet the needs of their children.”

43. On May 9, 2025, the General Assembly truly agreed to and passed H.B. 12, one of the fiscal year 2026 appropriations bills.² Joint Exhibit 3 is a complete and accurate copy of H.B. 12.

44. Section 12.190 of H.B. 12 appropriated \$50 million in general revenue funds to the ESA Fund.

45. Section 12.185 of H.B. 12 appropriated \$51,048,917 from the ESA Fund “[f]or the purpose of awarding scholarship accounts to qualified students as defined in Section 166.700(9), RSMo., in an order consistent with the prioritizations delineated in Section 135.714.1(4), RSMo., in amounts authorized by the formula created under 135.714.1(6), RSMo., through agreements outlined in Section 166.705, RSMo.” The difference between the two appropriations (\$1,048,917) represented the balance in the ESA Fund as of June 30, 2025.

46. After the Governor signed H.B. 12 and the new State fiscal year began on July 1, 2025, the Office of Administration transferred \$48.5 million of general revenue money to the ESA Fund.

² The full name of the bill was the “Conference Committee Substitute for Senate Substitute for Senate Committee Substitute for House Committee Substitute for House Bill No. 12.”

47. In late July 2025, after the ESA Fund received the \$48.5 million transfer of general revenues, EAOs began awarding scholarships to eligible students. By the middle of August, Treasury-program staff began receiving invoices from EAOs after student attendance was confirmed at qualified schools or programs. Treasury-program staff then submitted the invoices for payment to Office of Administration; after Office of Administration conducted statutorily required certifications to approve the expenditure, authorizations for payment issued to EAOs for payment on behalf of eligible students. Such payments will continue for as long as the families of eligible students submit for qualifying expenses and unspent awarded funds remain in their accounts.

48. Pursuant to authorizing statutes (including §§ 166.710 and 135.719, RSMo), the Treasurer’s Office filed a rule governing the MO ESA Scholarship Program (the “Original Rule”) on January 26, 2022. The rule took effect on July 30, 2022, and was later amended. The amendment became effective on May 30, 2025, and appears at 15 C.S.R. §§ 50.010–50. Joint Exhibit 4 is a true and accurate copy of the Original Rule as amended.

49. On July 15, 2025, the Treasurer’s Office published a Notice of Proposed Rescission of three sections of the Original Rule, 15 C.S.R. §§ 50-5.010–30, stating that a majority of these rules were being rewritten. The deadline for public comment on the proposed rescission of portions of the Original Rule was August 14, 2025. Joint Exhibit 5 is a true and accurate copy of the Original Rule proposed to be rescinded.

50. Also on July 15, 2025, the Treasurer's Office published a new proposed rule 15 C.S.R. § 50-5.035 titled "Grant Program." Proposed Rule 15 C.S.R. § 50-5.035 (hereafter the "Grant Rule") states:

- (1) The Missouri Empowerment Scholarship Accounts Grant Program assists certified Educational Assistance Organizations (EAOs) in awarding scholarship accounts to qualifying students.
- (2) The treasurer may promulgate rules as necessary or desirable to carry out the provisions of the Missouri Empowerment Scholarship Accounts Grant Program. The treasurer may adopt policies and operating procedures concerning its internal management of the Missouri Scholarship Accounts Grant Program.
- (3) Annual Budget. At or near the beginning of the program year, the treasurer shall provide the certified EAOs the anticipated budget authority for the program year. The anticipated budget authority may be increased or decreased during the program year.
- (4) During the program year and based upon fund availability, certified EAOs may request reimbursement of allowed expenses for qualified students.

Joint Exhibit 6 is a true and accurate copy of the new proposed Grant Rule 15 C.S.R. § 50-5.035. The deadline for public comment on the proposed Grant Rule was August 14, 2025.

51. On July 25, 2025, the Treasurer's Office filed an emergency version of 15 C.S.R. § 50-5.035 (the "Emergency Grant Rule"). The Emergency Grant Rule took effect on August 8, 2025, before the deadline for comment on the Grant Rule, before the hearing on Plaintiffs' Motion for Temporary Restraining Order on August 21, 2025, and before it was published in the Missouri Register on September 2, 2025. The Emergency Grant Rule expired on February 3, 2026. Joint Exhibit 7 is a true and accurate copy of the Emergency Grant Rule, which is identical to the proposed Grant Rule.

52. Since 2022, the Treasurer's Office and EAOs have worked with a subcontractor called FACTS to coordinate the scholarship application process with Missouri parents desiring ESA scholarships for their children.

53. The website for FACTS states, "We offer a comprehensive suite of K-12 technology solutions, including tuition management and student billing, a student information system, financial aid assessment, online admissions and enrollment solutions, professional learning and development, instruction services, and title funding consultation."

54. On February 24, 2025, FACTS began sending notices to Missouri students who were eligible for ESA scholarships. Joint Exhibit 8 is a true and accurate copy of the standard notice sent to Missouri students who were eligible for ESA scholarships in 2025-26.

55. The Treasurer set two application deadlines for ESA scholarships for the 2025-26 school year: June 30, 2025, and August 25, 2025. As of the first deadline, the Treasurer's Office had received 7,350 scholarship applications. As of August 25, 2025, the Treasurer's Office had received 8,101 applications.

56. After June 30, 2025, when the Governor signed H.B. 12, the Treasurer's Office received over 200 calls from families seeking to be included in the Missouri Scholars Program.

57. The Treasurer's Office works with EAOs to facilitate ESA scholarship awards.

58. Around the end of July 2025, EAOs began sending ESA scholarship award letters to families. Joint Exhibit 9 contains true and accurate copies of templates for the standard ESA scholarship award letters that EAOs send to qualified students.

59. As of August 18, 2025, the number of students renewing their ESA scholarships was 2,437, and the number of new students approved for ESA scholarships was 3,666. Joint Exhibit 10 is a true and accurate copy of the August 19, 2025 version of the Missouri Scholars Dashboard (School Year 2025–26), maintained by the Treasurer’s Office.

60. As of November 6, 2025, EAOs had awarded 4,013 new ESA scholarships, on top of 2,405 renewed scholarships for returning students. Joint Exhibit 11 is a true and accurate copy of the November 6, 2025 version of the Missouri Scholars Dashboard (School Year 2025–26), maintained by the Treasurer’s Office.

61. As of November 5, 2025, the Treasurer has distributed \$36.5 million in scholarship grants to EAOs, and has approved the distribution of \$1.6 million more in scholarship grants, for a one-year total of \$38.1 million.

62. Upon receipt of payment from the Treasurer, EAOs issue payments to qualifying schools, vendors, and qualified service providers.

B. Non-Stipulated Factual Findings

63. In their operative First Amended Petition, Plaintiffs did not allege specific facts speaking to irreparable harm faced by any Plaintiff, or any member of Missouri NEA, absent injunctive relief. Am. Pet. ¶¶ 23–63.

64. Plaintiffs likewise submitted no evidence and offered no testimony at trial respecting irreparable harm absent an injunction. See Pls. Pretrial Br. 55–56.

65. Trent Blair, the Director of Programs at the Missouri Treasurer’s Office, Jt. Ex. 21 (cited as “Blair Dep.”), testified. As Director of Programs, Mr. Blair helps manage the Missouri Scholars Program. Blair Dep. 19:14–15. He explained how the Missouri Scholars Program operates, the Court finds Mr. Blair’s testimony credible.

66. Regarding scholarship amounts awarded to students by EAOs, EAOs have discretion to award less than a given amount than the governing statutory criteria authorize to a particular student. *Id.* at 56:16–17.

67. If a student receives a scholarship, parents can then put the proceeds toward private-school tuition as well as other educational services by an approved “vendor”—including tutoring and therapy services. *Id.* at 65:2–66:10.

68. Scholarships can even be used to send a child to a different public school, if for any reason the child’s current public school is not meeting that child’s needs. *Id.* at 36:22–37:17.

69. Regarding payment, parents upload the receipt for their educational expense into a system called ClassWallet. *Id.* at 109:3–5. The EAO then reviews and approves an appropriate expense. *Id.* at 109:6–7. For an EAO to receive proceeds from the ESA Fund, it first invoices the Treasurer, who then reviews the invoice. *Id.* at 104:23–105:1. The Office of Administration then approves the disbursement. *Id.* at 105:2–3.

70. Statutory criteria define whether a student is qualified for a scholarship through the Missouri Scholars Program. § 135.714.1(4), RSMo. Even among qualified applications, certain students get priority—such as students who received

a scholarship in the prior year, students with siblings in the program, or students with “an approved ‘individualized education plan’ (IEP).” *Id.*

71. An injunction threatens the State’s interest in seeing that students with learning disabilities or students with disadvantaged economic backgrounds be able to enter the Missouri Scholars Program. *See id.* § 135.714.1(4)(c)–(d). Because the statute gives highest funding priority to “students who received a scholarship grant in the previous school year,” *id.* § 135.714.1(4)(a), most—if not all—new applicants for the coming 2026–27 school year would be excluded. Blair Dep. 77:6–7.

72. FACTS, not any Defendant here, decides whether a student meets the Missouri Scholars Program’s eligibility requirements. *Id.* at 62:9–16.

73. The Treasurer does not award scholarships to students. *Id.* at 134:17–24.

74. The General Assembly’s appropriation receives the same statutory treatment as any other funding stream—with a statutorily prescribed portion of the appropriation reserved for marketing and administrative purposes. *Id.* at 97:12–21, 99:13–24, 111:15–17; 127:11–14; 130:1–16.

75. Because no changes to the Missouri Scholars Program’s overall operations occurred as a result of H.B. 12, the Treasurer did not update contractual agreements with EAOs governing their obligations. *Id.* 100:3–12; Jt. Ex. 12.

76. Defendants also offered the unrebutted testimony of two parent witnesses as exemplars of the harm parents would face from an injunction.

77. One parent, LaMetria Johnson, testified at trial about the experience of her son in public school versus the private academy he now attends because of his

scholarship through the Missouri Scholars Program. Ms. Johnson explained that her son is thriving in his school. Ms. Johnson confirmed that absent the scholarship, she would be unable to send her son to his current school. The Court finds Ms. Johnson's testimony credible.

78. Defendants also proffered the deposition testimony of Lisa Smith. Plaintiffs did not object to the proffer. Ms. Smith described how her kindergarten-aged son was forced to attend a public school where he as subjected to bullying and safety threats. Smith Dep. 17:21–18:13. In an effort to rectify the situation, Ms. Smith sought to volunteer at the school, but the school prohibited her from doing so and ignored concerns that she raised. *Id.* at 18:14–19:7. Ms. Smith was forced to homeschool her son for a year. *Id.* at 20:10–16. She successfully enrolled her children in a transfer program that allowed them to attend a better public school—but the program expired. *Id.* at 20:18–21:5. After having her children participate in a virtual-school program, Ms. Smith's son received a scholarship through the Missouri Scholars Program. *Id.* at 21:9–22:22. Her son thrived with the scholarship. *Id.* at 23:7–19. She also explained that she hopes to receive a scholarship for her autistic daughter. *Id.* at 32:1–10. The Court finds Ms. Smith's testimony credible.

79. All factual findings and credibility determinations not expressly made herein are found in accordance with the Court's ruling. *See Prosecuting Attorney, 21st Judicial Circuit ex rel. Williams v. State*, 696 S.W.3d 853, 862–63 (Mo. banc), *cert. denied*, 145 S. Ct. 114 (2024).

CONCLUSIONS OF LAW

I. Legal Standards

Plaintiffs bear the burden of proving, by a preponderance of the evidence, that they are entitled to the injunctive and declaratory relief sought for their statutory and constitutional challenges.

When it comes to injunctive and declaratory relief, it is important to note that “[t]he primary goal of statutory interpretation is to give effect to legislative intent, which is most clearly evinced by the text of the statute.” *State ex rel. Bailey v. Fulton*, 659 S.W.3d 909, 912 (Mo. banc 2023) (citation omitted). Further, “[w]ords and phrases shall be taken in their plain or ordinary and usual sense, but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their practical import.” Mo. Rev. Stat. § 1.090, RSMo; *see also Gross v. Parson*, 624 S.W.3d 877, 884 (Mo. banc 2021) (“Accordingly, ‘[a] word not defined in a statute is given its ordinary meaning pursuant to the dictionary.’”) (quoting *Bus. Aviation, LLC v. Dir. of Revenue*, 579 S.W.3d 212, 218 (Mo. banc 2019)) (alteration in original)). Statutory interpretations that render portions of a statute superfluous are disfavored. *See State ex rel. Goldsworthy v. Kanatzar*, 543 S.W.3d 582, 586 (Mo. banc 2018).

As in all of these types of cases, the party challenging the constitutionality of a statute “bears the burden of demonstrating that the statute is unconstitutional.” *R.W. v. Sanders*, 168 S.W.3d 65, 68 (Mo. banc 2005) (citing *C.C. Dillon Co. v. City of Eureka*, 12 S.W.3d 322, 327 (Mo. banc 2000)). The challenging party “must overcome the presumption that statutes are constitutional.” *Id.* (citing *Westin Crown Plaza*

Hotel Co. v. King, 664 S.W.2d 2, 5 (Mo. banc 1984)). Statutes “will be upheld unless they ‘clearly and undoubtedly’ violate constitutional limitations.” *Id.* (quoting *In re Marriage Kohring*, 999 S.W.2d 288, 231 (Mo. banc 1999)). Any doubt concerning a statute’s constitutionality must be “resolved in favor of its validity.” *State v. Mahurin*, 799 S.W.2d 840, 842 (Mo. banc 1990) (citing *State v. Young*, 695 S.W.2d 882, 883 (Mo. banc 1985)).

“Constitutional attacks based upon the procedural limitations contained in article III, section[] . . . 23 are not favored.” *Calzone v. Interim Comm’r of Dep’t of Elementary & Secondary Educ.*, 584 S.W.3d 310, 315 (Mo. banc 2019) (citing *Strol Brewery Co. v. State*, 954 S.W.2d 323, 326 (Mo. banc 1997)). And state laws are “presumed valid and will not be held unconstitutional unless” the laws “clearly contravene[] a constitutional provision.” *Id.* (citing *Coop. Home Care, Inc. v. City of St. Louis*, 514 S.W.3d 571, 578 (Mo. banc 2017)). The plaintiff “bears the burden of establishing the statute is unconstitutional.” *City of St. Louis v. State*, 682 S.W.3d 387, 398 (Mo. banc 2024) (citing *Calzone*, 584 S.W.3d at 315).

Further, “[w]hen a constitutional and unconstitutional reading of a statute are equally possible, this Court must choose the constitutional one.” *Spradlin v. City of Fulton*, 924 S.W.2d 259, 263 (Mo. banc 1996) (citing *City of Jefferson v. Dep’t of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993)). Functionally, “[t]hese rules properly serve to channel the exercise of the court’s discretion and encourage the judicial branch to avoid the temptation to substitute its preferred policies for those adopted by the elected representatives of the people.” *Id.* “[A]n act of the legislature

approved by the governor carries with it a strong presumption of constitutionality.” *Hammerschmidt v. Boone Cnty.*, 877 S.W.2d 98, 102 (Mo. banc 1994) (citing *Westin Crown Plaza*, 664 S.W.2d at 5).

In order for Plaintiffs to show they are entitled to injunctive relief they must succeed on “the merits of [their] claims” and that “weigh[ing] the harm[s]” favors the Plaintiffs in the absence of relief. *Est. of Hutchison v. Massood*, 494 S.W.3d 595, 608 (Mo. App. W.D. 2016) (quoting *State ex rel. Koster v. Didion Land Project Ass’n*, 469 S.W.3d 914, 918 (Mo. App. E.D. 2015)). Plaintiffs must also demonstrate: “1) no adequate remedy at law; and 2) irreparable harm will result if the injunction is not awarded.” *Suppes v. Curators of Univ. of Mo.*, 613 S.W.3d 836, 847 (Mo. App. W.D. 2020) (citation omitted). The courts have warned that “[a] permanent injunction should be granted sparingly in clear cases only, and the decree should be framed to afford relief to which complainant is entitled and not to interfere with legitimate and proper action by those against whom it is directed.” *Metmor Fin., Inc. v. Landoll Corp.*, 976 S.W.2d 454, 463 (Mo. App. W.D. 1998) (citing *Cissell v. Brostron*, 395 S.W.2d 322, 325 (Mo. App. 1965); *Henson v. Payne*, 302 S.W.2d 44, 50 (Mo. App. 1956)).

The Court may grant declaratory relief only when:

(1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, ‘consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief;’ (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

Mo. Soybean Ass'n v. Mo. Clean Water Comm'n, 102 S.W.3d 10, 25 (Mo. banc 2003) (quoting *Northgate Apartments, L.P. v. City of North Kansas City*, 45 S.W.3d 475, 479 (Mo. App. W.D. 2001)). Therefore, “[w]hen seeking declaratory relief, a legally protectable interest exists if the plaintiff is directly and adversely affected by the action in question. The party seeking relief has the burden of establishing that they have standing.” *World Wide Tech., Inc. v. Off. of Admin.*, 572 S.W.3d 512, 519 (Mo. App. W.D. 2019).

II. Threshold Matters

Before the Court can address the merits of Plaintiffs’ claims, it must address three threshold matters. *First*, it must determine whether Plaintiffs have standing. *Second*, it must determine if sovereign immunity bars this suit. *Third*, it must determine whether Plaintiffs have brought their claims against the wrong defendants. The Court sides with the State on all three issues.

Plaintiffs suggest that the Court cannot revisit these issues under law of the case because this Court previously denied State Defendants’ motion to dismiss. Pls. Pretrial Br. 25. But even if the amended petition “duplicated allegations” from the initial petition,” the “abandoned petition” and the State’s motion to dismiss “bec[a]me . . . mere ‘scrap[s] of paper’” when the amended petition was filed. *McDonald v. City of Kansas City*, 285 S.W.3d 773, 774 (Mo. App. W.D. 2009) (quoting *Trimble v. Pracna*, 51 S.W.3d 481, 490 (Mo. App. S.D. 2001)). Moreover, the law of the case doctrine bars re-litigation of issues that were (or could have been) raised on appeal—so it is inapplicable here. *See Walton v. City of Berkely*, 223 S.W.3d 126, 129 (Mo. banc 2007). Therefore, the Court will consider these threshold matters again.

A. Standing

Defendants' first threshold argument is that none of the Plaintiffs have standing to bring their claims, so this Court must dismiss this case for want of a justiciable controversy.

“Dismissal for lack of subject-matter jurisdiction is proper when it appears, by suggestion of the parties or otherwise, that the court is without jurisdiction.” *Mo. Soybean*, 102 S.W.3d at 22 (citations omitted). Standing is “a matter of justiciability, that is, of a court’s authority to address a particular issue when the party suing has no justiciable interest in the subject matter of the action.” *Schweich v. Nixon*, 408 S.W.3d 769, 774 n.5 (Mo. banc 2013). Standing is a principle that, like the constitutional grant of jurisdiction (*see* Mo. Const. art. V, § 14; *J.C.W. ex rel. Webb v. Wyciskalla*, 275 S.W.3d 249, 253–54 (Mo. banc 2009)), affects a court’s ability to hear any particular case. *See, e.g., Golden v. Zwickler*, 394 U.S. 103, 108 (1969) (requiring plaintiffs to have standing to bring declaratory-judgment actions: “concrete legal issues, presented in actual cases, not abstractions are requisite. This is as true of declaratory judgments as any other field” (quoting *United Public Workers of Am. (C.I.O.) v. Mitchell*, 330 U.S. 75, 89 (1947))); *Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 737 (Mo. banc 2007) (requiring plaintiffs to have standing to bring a declaratory judgment action).

In the case at hand, Plaintiffs do not allege any injury-in-fact caused by Defendants’ disbursement of funds allocated by the General Assembly. The General Assembly’s choice to spend money on a scholarship program does not inflict harm on public schools when the legislature has not diverted funds from public schools to cover

the scholarship program. With Plaintiffs' claims built on this assumed harm to public-school teachers, students, and parents, their claims are too speculative and remote for this Court to address. Instead, Plaintiffs only assert taxpayer standing, either direct or associational, to bring these claims. The Court will first address any injury the Plaintiffs' may have suffered based on the disbursement of funds before addressing taxpayer standing.

1. Plaintiffs cannot demonstrate standing predicated on personal or organizational harm.

Plaintiffs bring claims that are far too tenuous for this Court to hear.

Standing “generally depends upon whether the plaintiff can allege ‘some threatened or actual injury resulting from the putatively illegal action.’” *Harrison v. Monroe County*, 716 S.W.2d 263, 266 (Mo. banc 1986) (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973)). That is, the plaintiff must have suffered an injury caused by the defendant’s actions. *See, e.g., W.R. Grace & Co. v. Hughlett*, 729 S.W.2d 203, 206 (Mo. banc 1987) (“For a party to have standing to challenge the constitutionality of a statute, he must demonstrate that *he* is ‘adversely affected by the statute in question’” (first emphasis added) (quoting *Ryder v. County of St. Charles*, 552 S.W.2d 705, 707 (Mo. banc 1977))). That injury must be “specific and legally cognizable” to confer standing. *Metro Auto Auction v. Dir. of Revenue*, 707 S.W.2d 397, 400 (Mo. banc 1986) (citing *Palmer v. St. Louis Cnty.*, 591 S.W.2d 39, 41 (Mo. App. E.D. 1979)); *see also Ste. Genevieve Sch. Dist. R II v. Bd. of Aldermen of City of Ste. Genevieve*, 66 S.W.3d 6, 10 (Mo. banc 2002) (“Reduced to its essence, standing roughly means that the parties seeking relief must have some personal

interest at stake in the dispute.”). “[T]he generalized interest of all citizens in constitutional governance’ does not invoke standing.” *Mo. Coal. for Env’t v. State*, 579 S.W.3d 924, 927 (Mo. banc 2019) (alteration in original) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 160 (1990)). Finally, the plaintiff must seek relief that would remedy the injury. “If the plaintiff’s grounds for relief and remedy sought cannot alleviate the alleged injury, then, by necessity, the litigation cannot vindicate the plaintiff’s alleged personal interest or stake in the outcome of the litigation. If that is the case, then the plaintiff has no standing to bring the claims he or she alleges.” *St. Louis Cnty. v. State*, 424 S.W.3d 450, 453 (Mo. banc 2014).

In sum, standing exists if a plaintiff meets a three-pronged test: (1) suffered an injury to a cognizable interest; (2) caused by the defendant that; and (3) a court order would redress. Whether those conditions exists is a burden the plaintiff must bear. *See, e.g., Manzara v. State*, 343 S.W.3d 656, 659 (Mo. banc 2011). Moreover, because “standing is not dispensed in gross,” each “plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) (quoting *Davis v. FEC*, 554 U.S. 724, 734 (2008)). Thus, standing is analyzed separately for each plaintiff. *See, e.g., Ste. Genevieve Sch. Dist. R II*, 66 S.W.3d at 10–11 (analyzing separately the standing of each plaintiff); *Mo. Coal. for Env’t v. Joint Comm. on Admin. Rules*, 948 S.W.2d 125, 131–32 (Mo. banc 1997) (analyzing each plaintiffs’ standing for each claim for relief they brought).

Plaintiffs’ alleged injuries to their claimed interests predicating this case prove too speculative and indirect. The Amended Petition does not articulate a single concrete harm that will befall Plaintiffs from H.B. 12’s funding boost to Missouri’s scholarship program for needy families. The closest Plaintiffs come to articulating even a speculative harm is Ms. Duvall’s statement that “Duvall is concerned that the unauthorized appropriation of general revenues for private school scholarships will inevitably impair the ability of public school districts to adequately serve their students, including students with disabilities like her child.” Amended Pet. at ¶12. In other words, the Amended Petition (or more accurately, Ms. Duvall) roots the claims in the assumption that any public funds potentially flowing to private schools will necessarily harm public schools and their students. *See id.*

This singular alleged harm fails to show standing for several reasons. First and foremost, a plaintiff must demonstrate that it “is adversely affected by the statute in question.” *Mo. Coal. for Env’t*, 579 S.W.3d at 927. Nothing in H.B. 12 threatens or implicates spending for public schools. *See Jt. Ex. 3*, at 9. The \$50,000,000 in funds appropriated came from the General Revenue Fund. *Id.* Funding for public schools, however, comes from entirely separate funding streams and has its own dedicated fund. *See* § 166.011, RSMo (creating the fund). Indeed, that statute specifically prohibits diverting public-school funds for any “uses or purposes whatsoever.” *Id.* Public-school funding is also prescribed by a specific statutory formula—not subject to annual legislative-funding judgments by the General Assembly, as would be true of programs funded by general-revenue bills. *See Comm.*

for Educ. Equal. v. State, 294 S.W.3d 477, 482–83 (Mo. banc 2009) (describing the method for public-school funding).

Moreover, to the extent there is any impact from H.B. 12 on public-school programming (in addition to money that ends up flowing to public schools because of the appropriation; *see* Blair Dep. 36:22–37:17 (explaining how this can happen)), there may actually be a *benefit* to public schools. In general, children who leave public schools due to a scholarship for this program will still have their spots at their local public school paid for in accordance with State law. Specifically, several mechanisms protect public school funding “to each school district qualified to receive state aid” in the event of a reduction in student enrollment. § 163.031.1, RSMo; *see also* § 163.021.1(2), RSMo (defining qualifications for student aid such as a minimum number of days in school, keeping “adequate and accurate records of attendance,” etc.).

These provisions help schools to maintain financial stability and continue to deliver quality education despite fluctuations in student numbers. They also ensure that for districts with an average daily attendance of more than 350 students, the state revenue per weighted average daily attendance will not fall below the amount received in the 2005–06 school year, adjusted for the dollar value modifier (an inflation adjustment) and less any increase in revenue from the classroom trust fund. § 163.031.2(1)(a), RSMo. This provision effectively sets a baseline for funding, protecting districts from sudden drops in state aid due to decreased enrollment. *Id.*

For districts with an average daily attendance of 350 or fewer students, Missouri law guarantees that state aid will not be less than the greater amount received in either the 2004–05 or 2005–06 school year, again adjusted for the “dollar value modifier.” § 163.031.2(2)(a), RSMo. The practical effect of this clause provides a safety net for smaller districts, which may be more vulnerable to enrollment changes. This “hold harmless” provision means that even if a district’s enrollment drops significantly (*e.g.*, due to students leaving for other schools), an otherwise qualified school district will not see a corresponding reduction in state funding. Hence, any concern that the General Assembly will in effect divert resources from public schools in favor of private schools through appropriations to the Missouri Scholars Program is not only speculative, but unrealistic given Missouri law. Thus, Plaintiffs have failed to allege an injury to their interests that would confer standing.³

2. Taxpayer standing does not salvage Plaintiffs’ claims.

Taxpayer standing to challenge a state law exists only in limited circumstances—none of which are applicable here. Taxpayer standing does not provide a vehicle for citizens to air generalized political grievances. Rather, as the Missouri Supreme Court has explained, “a taxpayer must establish that one of three conditions exists: (1) a direct expenditure of funds generated through taxation; (2) an increased levy in taxes; or (3) a pecuniary loss attributable to the challenged transaction of a municipality.” *See Manzara*, 343 S.W.3d at 659 (citing *Mo. Laborers*

³ Even if this Court concludes that Plaintiffs have alleged injuries sufficient for standing purposes, the tenuous harms asserted cannot qualify as irreparable harms warranting a permanent injunction, as discussed in Part IV, *infra*.

Dist. Council v. St. Louis Cnty., 781 S.W.2d 43, 47 (Mo. banc 1989)). Plaintiffs only argue that they have standing through the “direct expenditure[s] of funds generated through taxation.” Pls. Pretrial Br. 26 (alteration in original).

As the Missouri Supreme Court has held, a “direct expenditure of funds generated through taxation” occurs *only* in instances where there is “*a sum paid out, without any intervening agency or step*, of money or other liquid assets that come into existence through the means by which the state obtains the revenue required for its activities.” *Manzara*, 343 S.W.3d at 661 (emphasis added). In other words, taxpayer standing for such a claim exists only when the challenged action directly results in “mov[ing] money out of the public treasury” without “any intervening agency or step.” *Id.* at 660.

Plaintiffs’ challenges to the General Assembly’s appropriation or the Treasurer’s actions under H.B. 12 (Counts I, II, and IV) do not meet this requirement. As the stipulated facts in this case make clear, no money goes directly from the General Assembly to scholarship awardees—several intervening “step[s]” occur. *Id.* Even the Treasurer does not have the final say in making payments: After the appropriations are removed from the General Revenue Fund, it remains incumbent on the Office of Administration to certify expenditures to fulfill invoices from EAOs. *See* Joint Stip. ¶¶ 35–36.

Plaintiffs contend that the governing *Manzara* case is inapplicable because it involved tax credits rather than direct expenditures. Pls. Pretrial Br. 26. But the Missouri Supreme Court’s analysis of what qualifies as “a direct expenditure of funds

generated through taxation” was not limited to tax credits. *See* 343 S.W.3d at 659–60. It instead broadly explained that “any intervening agency or step” following “a sum paid out” precludes standing. *Id.* Only after establishing this definition of a direct expenditure did the Missouri Supreme Court find a lack of standing to challenge a tax credit. *See id.* at 660.

In Counts I, II, and IV, Plaintiffs predicate their alleged taxpayer harm on actions taken by the General Assembly and the Treasurer. No money flows directly from either the General Assembly or the Treasurer to recipients. Plaintiffs therefore cannot demonstrate that H.B. 12 compels the General Assembly or the Treasurer to “pay out” a sum “without any intervening agency or step”—precluding standing for these counts. *Manzara*, 343 S.W.3d at 660.

Counts III and V fail for a similar reason. Scholarship awards cannot and will not flow to recipients except upon an EAO’s determining that a student is qualified. *See* § 135.714, RSMo. Indeed, no student or parent applies to any Defendant in this case, no Defendant has a direct relationship with any scholarship recipient, and payment of EAO invoices to Treasury program staff occur only after approval from the Office of Administration. Joint Stip. ¶ 36; *see also* TRO Hearing Tr. 66:5–7 (explaining the lack of relationship between the Treasurer and recipients). Even review of applicant qualification is done by an outside entity, FACTS. *See* Joint Stip. ¶ 41; TRO Hearing Tr. 66:19–67:7; Blair Dep. 62:11–16. In short, it is the EAOs and FACTS, not any Defendant here, who decide to award scholarships and then make

the payments to recipients. Because there remains an “intervening agency or step” between Defendants and scholarship recipients, standing for Counts III and V fails.

As Missouri NEA’s standing is predicated on individual Plaintiffs’ taxpayer standing, Missouri NEA thus also lacks associational standing to bring this suit. *See E. Mo. Coal. of Police v. City of Chesterfield*, 386 S.W.3d 755, 759 (Mo. banc 2012) (“To gain associational standing in Missouri, an association must show: (1) its members would have standing to sue in their own right; (2) the interests that the association seeks to protect are germane to the organization’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of individual members.”) (citing *St. Louis Ass’n of Realtors v. City of Ferguson*, 354 S.W.3d 620, 623 (Mo. banc 2011)). The Amended Petition fails to plead any facts substantiating Missouri NEA’s ability to bring such a claim. *See* Amended Pet. ¶¶ 10–13. And regardless, for the reasons explained, the association would be unable to establish that a member could bring a non-speculative claim against H.B. 12. The Court therefore dismisses this case for lack of standing. Nonetheless, the Court will examine why other grounds Defendants assert for dismissal dispose of Plaintiffs’ claims.

B. Sovereign immunity bars this suit.

Defendants’ second threshold argument is that sovereign immunity bars these claims.

“[I]n the absence of an express statutory exception to sovereign immunity, or a recognized common law exception . . . , sovereign immunity is the rule and applies to all suits against public entities.” *Ramirez v. Mo. Prosecuting Att’ys*, 694 S.W.3d 432, 436 (Mo. banc. 2024) (alterations in original) (citation omitted). “Sovereign

immunity is the rule, not the exception. Unless it is waived or a statutory or recognized common law exception, such as consent, is applicable, sovereign immunity applies.” *Metro. St. Louis Sewer Dist. v. City of Bellefontaine Neighbors*, 476 S.W.3d 913, 914 (Mo. banc 2016). The sovereign immunity rules are the same regardless of the state instrumentality sued, regardless of the relief sought, and regardless of the cause of action invoked. *See Ramirez*, 694 S.W.3d at 436–38. Plaintiffs have articulated no applicable exception to sovereign immunity.

Plaintiffs rely solely on the Declaratory Judgment Act’s use of “statute” to suggest that the State waived its sovereign immunity in this case by virtue of them challenging a statute. *See* Pls. Pretrial Br. 28–29. But Plaintiffs provide no citation for this claim, and the Court is aware of none. Indeed, if accepted, Plaintiffs’ argument would eviscerate the doctrine of sovereign immunity and authorize a suit whenever the plaintiff sought declaratory relief predicated on some alleged statutory act.

The cases Plaintiffs invoke endorse no such position. Rather, each case cited by Plaintiffs analyzed the waiver of sovereign immunity based on the challenged statute, not a plaintiff’s request for declaratory relief. *See, e.g., Kuble v. Brooks*, 141 S.W.3d 21, 28–30 (Mo. banc 2004) (analyzing statutory exceptions of sovereign immunity (§ 537.600) to determine waiver of sovereign immunity); *V.S. DiCarlo Constr. Co. v. State*, 485 S.W.2d 52, 56 (Mo. banc 1972) (analyzing contracts provision (§ 490.460, RSMo) to determine waiver of sovereign immunity); *Bush v. State Highway Comm’n of Mo.*, 46 S.W.2d 854, 856 (Mo. 1932) (statute stated the

commission “may sue and be sued in its official name”). Thus, contrary to Plaintiffs’ assertions, the Declaratory Judgment Act provides no such blanket waiver of the State’s sovereign immunity. *See, e.g., State ex rel. Kansas City Symphony v. State*, 311 S.W.3d 272, 275–76 (Mo. App. W.D. 2010) (“Having failed to overcome sovereign immunity on the declaratory judgment claim . . .”).

And Plaintiffs cannot rely on cases where Missouri courts have issued injunctions against the State or its officers because sovereign immunity is not jurisdictional—meaning that the court has no obligation to address it *sua sponte* and it can be waived. *Hays v. Dep’t of Corr.*, 690 S.W.3d 523, 528–29 (Mo. App. E.D. 2024), *transfer denied* (July 9, 2024). As in *Ramirez*, where the Missouri Supreme Court just last year affirmed a trial court’s grant of summary judgment in another suit against the Treasurer over allocation of funds, this suit cannot proceed because it is barred by sovereign immunity. *See* 694 S.W.3d at 436. Therefore, this Court enters judgment in favor of the State on the basis of sovereign immunity.

3. Plaintiffs have sued the wrong defendants.

The State’s third threshold argument is that Plaintiffs have brought these claims against the wrong defendants.

Plaintiffs say that they sued “all of the parties connected with the ESA appropriations.” Pls. Pretrial Br. 32. Yet they fail to name any party actually responsible for making scholarship determinations or paying out scholarship proceeds to vendors. *See supra* ¶¶ 52, 68–71, 79. Hence, the entities responsible for the alleged injury Plaintiffs complain of—payment of money to non-public educational entities—are not before this Court.

Mere connection with an appropriation that Plaintiffs do not like is an insufficient basis to sue an officer of the State. *See Ex parte Young*, 209 U.S. 123, 157 (1908) (“[I]t is plain that such officer must have some connection with the enforcement of the act.”); *see also Carson v. Sullivan*, 223 S.W. 571, 571 (Mo. banc 1920) (following *Ex parte Young*).

Plaintiffs fail to develop how any of the named parties have some connection to enforcement of H.B. 12—decisions to disburse scholarship proceeds. As Plaintiffs state, they named the State because it “encompass[es] the General Assembly which enacted H.B. 12.” Pls. Pretrial Br. 32. This runs headlong into the sovereign-immunity bar discussed above. For the Governor, Plaintiffs state that he “signed H.B. 12,” and once again this lacks any connection with decisions to disburse funds. *Id.* Same for the Attorney General, who, according to Plaintiffs, “defends the constitutionality of state statutes.” *Id.*

Plaintiffs assert that the Treasurer “oversees the MOScholars [sic] Program.” *Id.* But “overseeing” is not a sufficient connection with exercise of statutory authority. *See Church v. Missouri*, 913 F.3d 736, 749 (8th Cir. 2019) (general authority to oversee without “*methods of enforcement*” insufficient). For the Office of Administration and its Commissioner, Plaintiffs argue that they “certify requests for payment of general revenues.” Pls. Pretrial Br. 32. But certifying payments is “administrative or ministerial,” which does not provide a sufficient connection to enforcement. *See Church*, 913 F.3d at 750 (quoting *Balogh v. Lombardi*, 816 F.3d 536, 539 (8th Cir. 2016)). Ultimately, other entities (EAOs and FACTS) make the

bottom-line decision whether to award and pay funds. *See supra* ¶¶ 52, 68–71, 79; *see* § 135.714, RSMo. And lastly, the Missouri Empowerment Scholarship Accounts Board, which as Plaintiffs state “has never been constituted,” Pls. Pretrial Br. 32, cannot be a proper defendant. *See Ex parte Young*, 209 U.S. at 156 (officer must “threaten and [be] about to commence proceedings”). Because the evidence establishes that other independent actors are responsible for awarding scholarships, setting how much money will be awarded, and ultimately reimbursing vendors for educational expenses, *see supra* ¶¶ 52, 68–71, 79, Plaintiffs have not articulated why any of the defendants here is proper.

The government Defendants merely allocate funds into a preexisting (and unchallenged) statutory program and process payments. Joint Stip. ¶¶ 35–36. The entities truly adverse to Plaintiffs’ interests are the EAOs and FACTS. Plaintiffs have not sued any of these groups.

Plaintiffs’ suggestion at trial that they must sue government entities to obtain constitutional redress also fails. Private parties acting under color of law can be proper defendants to a claim that a law is unconstitutional. *See, e.g., Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 429–30 (1855) (involving a constitutional challenge to an act of Congress with a private party acting under the statute’s prerogatives as defendant). So this Court dismisses all claims against all Defendants.

III. The Merits

Although the Court’s determination on the threshold matters fully disposes of this suit, this Court exercises its discretion to address the substantive merits of

Plaintiffs' claims so that this entire case can be addressed in a single appeal without a remand. Ultimately, assuming a justiciable controversy, this Court concludes that all of Plaintiffs' claims fail.

Missouri's Constitution vests the General Assembly with broad authority to appropriate funds to legislatively created programs meant to benefit the People of Missouri. Mo. Const. art. IV, § 28; *id.* art. III, § 36. Plaintiffs seek an injunction to halt Missouri's appropriation to the ESA Fund. In its essence, this dispute boils down to whether the General Assembly can appropriate money to a program created by statute when the underlying statutory framework does not explicitly state that the program may be funded by appropriations. *Compare* § 135.716.6(1), RSMo ("There is hereby created in the state treasury the 'Missouri Empowerment Scholarship Accounts Fund', which shall consist of moneys collected under this section."), *with e.g.*, § 162.975.2, RSMo (1990) ("Funds shall be appropriated annually for such program from general revenue funds and shall be separate from the funds apportioned for the school foundation program.").

Plaintiffs claim that H.B. 12 violates several constitutional provisions, but legislative acts "carr[y] a strong presumption of constitutionality." *See Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d 267, 269 (Mo. banc 2002) (quoting *Hammerschmidt*, 877 S.W.2d at 102). Plaintiffs, as challengers of the appropriation, bear the burden of demonstrating a clear and undeniable violation of the Constitution. *See id.* Plaintiffs' claims do not overcome this presumption. All Counts fail because H.B. 12 is a valid exercise of the General Assembly's

appropriation authority and Plaintiffs have not shown that an appropriation into a statutorily created fund, even when underlying statutory framework is silent about appropriations, is impermissible. Therefore, this Court denies Plaintiffs' request for declaratory and injunctive relief.

A. Count I—the appropriation complies with Article III, Section 23 of the Missouri Constitution (single subject).

Plaintiffs claim that H.B. 12 violates Article III, § 23 by creating a new voucher program in violation of the single-subject rule. Amended Pet. ¶¶ 64–81. But nothing in the statutes establishing the Missouri Scholars Program expressly prevents the legislature from directing appropriations to fund the Missouri Scholars Program. Hence, the appropriation does not qualify as an impermissible amendment to the Program's statutes. Moreover, controlling precedent confirms that—absent a direct prohibition on appropriations—a later appropriation serves as strong evidence that the General Assembly intended to fund a statutory program with general revenues.

1. The General Assembly can fund the Missouri Scholars Program.

As both sides agree, nothing in the statutes governing the Missouri Scholars Program expressly proscribes appropriations made by the General Assembly. Plaintiffs thus assert that the statute's structure does not permit appropriations by the legislature to fund scholarships—making the appropriation an improper amendment to the governing statutes. But for Plaintiffs to prevail, this Court would have to find statutory prohibitions not articulated in the statute's text. This Court cannot do that.

Article III, § 23 of the Missouri Constitution provides that “[n]o bill shall contain more than one subject which shall be clearly expressed in its title, except . . . general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated.” Mo. Const. art. III, § 23. An appropriation is a legislative enactment that “set[s] aside moneys for specified purposes.” *Planned Parenthood of St. Louis Region v. Dep’t of Social Servs., Div. of Med. Servs.*, 602 S.W.3d 201, 207 (Mo. banc 2020) (quoting *State ex rel. Hueller v. Thompson*, 289 S.W. 338, 340–41 (Mo. banc. 1926)). The Missouri Supreme Court has explained that while § 23 generally prohibits bills with more than one subject, it includes an express “exception to that prohibition for appropriation bills because such bills necessarily include multiple subjects.” *Id.*

But the Missouri Supreme Court has recognized a limited exception to the exception whereby “any bill that purports to combine appropriations with the enactment or amendment of general or substantive law necessarily contains more than one subject in violation of article III, section 23.” *Id.* at 207 (citing *State ex rel. Davis v. Smith*, 75 S.W.2d 828, 830 (Mo. banc 1934)).⁴ Importantly, an appropriations bill only contains “the enactment or amendment of general or substantive law” where the language of the bill “is in direct conflict” with current law. *Id.* at 208 (majority opinion). “If the conflict between two statutes is less than direct, *e.g.*, an ambiguity in the general statute, then such a conflict may be resolved by relying upon the

⁴ H.B. 12 satisfies Missouri’s clear-title requirements (as the petition all but admits): H.B. 12, is unambiguously “an appropriations bill” (Am. Pet. ¶ 2).

appropriation as strong evidence of the legislature’s intention in adopting the general statute.” *Rolla 31 Sch. Dist. v. State*, 837 S.W.2d 1, 4 (Mo. banc 1992).

Plaintiffs do not dispute that H.B. 12 is a general-appropriations bill subject to the exception of Article III, Section 23. H.B. 12, like any typical appropriations bill, “set[s] aside moneys for specified purposes.” *Planned Parenthood*, 602 S.W.3d at 207 (citation omitted). The measure allocates revenue for scores of different state programs and agencies through one general appropriation. *See generally* Jt. Ex. 3.⁵ H.B. 12 does not purport to amend any general statutes. Thus, the single-subject provision does not facially apply to H.B. 12. *See Rolla 31*, 837 S.W.2d at 4 (noting an appropriations bill limited to “appropriations only” does not run afoul of Section 23).

Instead, Plaintiffs claim that “[a]ny transfer of the \$50 million appropriation to the ESA Fund and any expenditures from the \$51 million appropriation out of the ESA Fund for purposes of scholarships would be unauthorized by law.” Am. Pet. ¶ 75. To succeed in their challenge under the Missouri Supreme Court’s understanding of Article III, Section 23, Plaintiffs must show that the underlying statutes *expressly prohibit* the appropriations made by the General Assembly. *See Rolla 31*, 837 S.W.2d at 4–5 (emphasizing how there must be an irreconcilable conflict between the

⁵ H.B. 12 is twenty-three pages of line items and dollar amounts covering funding for programs ranging from the “Office of the State Public Defender,” Jt. Ex. 3, at 20, to “funding treatment court programs focused on Missourians with substance use, mental health, or co-occurring disorders related to alcohol, opioid, and methamphetamine addiction,” *id.* at 19, to “the salaries of the Circuit Court Judges, Associate Circuit Court Judges,” etc., *id.* at 17–18, to “preserving legal, historical, and genealogical materials and making them available to the public,” *id.* at 7, and myriad other programs and agencies—all from various funds or the general revenue.

previously enacted “general statute” and a later appropriation). Anything less than a direct conflict counsels in favor of finding that the appropriations satisfy Section 23.

While Plaintiffs contend that H.B. 12 “directly conflicts with the underlying statutory framework,” Am. Pet. ¶ 52, they fail to show this direct conflict. Specifically, Plaintiffs assert that the Missouri Scholars Program’s statutory scheme “does not *authorize* the distribution of general revenues or dedicated administrative/marketing funds for student scholarships.” *Id.* (emphasis added). But claiming that a statute does not expressly “authorize” a funds distribution cannot predicate a single-subject violation.

The pertinent question under Section 23 is not whether the underlying statute *allows* beyond doubt an appropriation from the treasury—it is instead whether the statute obviously *prohibits* the General Assembly’s action. *See Rolla 31*, 837 S.W.2d at 4 (explaining the need for an irreconcilable conflict); *Davis*, 75 S.W.2d at 830 (finding such a conflict because the preexisting legislation expressly proscribed the appropriation made by a later appropriations bill). This follows the Missouri Supreme Court’s general presumption that where the General Assembly knows how to include specific statutory language (as evidenced in other acts) but does not, the omission is intentional and significant. *Cf. Fid. Sec. Life Ins. Co. v. Dir. of Revenue*, 32 S.W.3d 527, 529 (Mo. banc 2000).

Plaintiffs rely exclusively on *State ex rel. Hueller v. Thompson*, 289 S.W. 338 (Mo. banc 1926), to argue there is a direct conflict between H.B. 12 and the Missouri

Scholars Programs. *See* Pls. Pretrial Br. 36–37 (“identified once case like the present”). But *Hueller* lends Plaintiffs no support. In *Hueller*, when the general statute was silent about salaries of inferior officers, the General Assembly attempted limit their salaries through an appropriations act. *See id.* at 340. Said differently, the General Assembly attempted “to inject general legislation” into this appropriations act. *Id.* This “inject[ion]” of substantive requirements into the appropriations act created the single-subject violation. *See id.* at 341. In the present case, the Missouri Scholars Program statute is silent about appropriations, but H.B. 12 is a mere appropriations bill. It contains no “inject[ion]” of substantive new requirements governing the Missouri Scholars Program, so there is not a single subject violation. *Hueller* does not support Plaintiffs’ contention that there is a direct conflict. And to the extent that *Hueller* could be read to suggest that indirect conflicts between statutes and appropriations can create a single-subject violation, such a position is now supplanted by *Rolla 31*’s requiring a direct conflict. *See* 837 S.W.2d at 4.

Given the absence of a direct conflict with the Missouri Scholars Program’s statutes, H.B. 12’s appropriations are constitutional. As Plaintiffs acknowledged, Am. Pet. ¶ 23, the General Assembly previously created the Program for needy Missouri students to receive funds to support their educational needs. §§ 135.712–719, 166.700–720, RSMo. And importantly, H.B. 12 is not the first time that the General Assembly has made appropriations into the ESA Fund—it appropriated \$1 million for the Fund in 2022. *See* Joint Stip. ¶ 30. Plaintiffs predicate their entire

case on the assumption that only tax-credit donations can fund the Program and its operations. *See, e.g.*, Pls. Pretrial Br. 1. They never explain why this \$1 million appropriation was mechanically permissible, but the \$50 million appropriation was not.⁶ Ultimately, no language in the statute expressly prohibits legislative appropriations to fund scholarships—leaving Plaintiffs with no case.

The language in § 135.716.6(1) providing that “the ‘Missouri Empowerment Scholarship Accounts Fund . . . shall consist of moneys collected under this section,” does not limit the General Assembly’s ability to appropriate funds from the General Revenue Fund. On the contrary, the statute makes clear that the Treasurer is free to use money deposited in the fund “for the purposes of sections 135.712 to 135.719.” § 135.716.6(1), RSMo. Hence the statute countenances use of “moneys in the fund” to support *any* operations (including scholarship funding) of the Missouri Scholars Program. *Id.* Had the General Assembly intended to limit its own ability to help further the Program’s core purpose, it certainly knew how to write one. It did not.

The most Plaintiffs can do is question how the General Assembly chose to distribute its expenditure. The Missouri Scholars Program statute “created in the

⁶ The answer cannot be that the \$1 million appropriation was only to cover administrative expenses. The statute already provided a means for funding administrative expenses, requiring EAOs to contribute 4 percent of qualifying contributions into the ESA Fund to cover marketing and administrative expenses. § 135.715.4, RSMo. The statute is just as silent on whether the General Assembly can supplement these EAO payments for marketing and administrative expenses as it is on the supplementing scholarship proceeds. The fact that the legislature in 2022 saw no impediment to appropriating general revenue to help cover the Program’s expenses, *see* Joint Stip. ¶ 30, cuts sharply against Plaintiffs’ taxpayer-contributions-only thesis for their case.

state treasury the “Missouri Empowerment Scholarship Accounts Fund” (ESA Fund). *Id.* § 135.716.6(1). It was in this preexisting fund—dedicated to furthering “the purposes of” the Missouri Scholars Program, *id.*—that the legislature chose to reserve the appropriation prior to the money being distributed. Jt. Ex. 3, at 9.

Plaintiffs grasp onto a provision in the statute requiring that four percent of taxpayer contributions to the program be placed in the ESA Fund “for marketing and administrative expenses or the costs incurred in administering the program.” § 135.715.4, RSMo.; *see, e.g.*, Am. Pet. ¶ 70; Pls. Pretrial Br. ¶ 44. From this, Plaintiffs infer that any moneys in the ESA Fund can be used only for marketing and administrative purposes—and not any other purpose, including funding scholarships. *See* Pls. Pretrial Br. 40.

No such restriction exists on this face of the statute. The provision that creates the ESA Fund suggests no limit on the use of money in the fund—on the contrary, the statute broadly countenances using that money to further the “purposes” of the Missouri Scholars Program. § 135.716.6(1), RSMo. Nor does the statute expressly prohibit the General Assembly from depositing money into the ESA Fund to further the scholarship program’s purposes. *Id.*

The absence of any clear prohibitions on the depositing and use of money in the ESA Fund for scholarships makes this an easy case—H.B. 12 does not “directly conflict” with Section 135.716.6(1) and is thus consistent with Article III, § 23. The fact that another provision (§ 135.715.4) directs that money reserved for marketing and administrative expenses shall be deposited in the ESA Fund does not, standing

alone, command the conclusion that all funds in the ESA Fund can be used only for those purposes. Said simply, there is no irreconcilable conflict between the existing statutes and H.B. 12's appropriation. *See Rolla 31*, 837 S.W.2d at 4.

2. Controlling precedent confirms that courts should read statutes harmoniously with appropriations.

To the extent any doubt remains about the viability of Plaintiffs' single-subject challenge, precedent squarely forecloses it. Indeed, the Missouri Supreme Court has counseled courts to interpret the preexisting statute in light of a later appropriation. *See Rolla 31*, 837 S.W.2d at 5 (emphasizing "the desirability and wisdom of considering the legislature's language in the appropriation when determining its intended meaning for the general statute"). Here, because the statutes do not explicitly foreclose appropriations to the Missouri Scholars Program or using funds in the ESA Fund to further the Program's purpose (scholarships), the Court must read the statute harmoniously with the appropriation.

In *Rolla 31*, school districts challenged a state appropriation for special-education programs for three- and four-year-old children, arguing it violated statutory restrictions on funding sources. 837 S.W.2d at 1. The court upheld the appropriation, finding it did not improperly attempt to amend the general statute or otherwise directly conflict with the preexisting statute. *Id.* at 4–5. The court emphasized that when an asserted "conflict between two statutes is less than direct, e.g., an ambiguity in the general statute, then such a conflict may be resolved by relying upon the appropriation as strong evidence of the legislature's intention in adopting the general statute." *Id.* at 4. This resolves this claim.

Plaintiffs are unable to point to an actual conflict between H.B. 12 and the Missouri Scholar Program’s terms. As they concede, “the MOScholars Act does not expressly prohibit the use of general revenues to fund scholarships.” Pls. Pretrial Br. 41. They seek to create such a conflict through the absence of any statutory language proscribing appropriations by the legislature for the Program. *Id.* at 37–38. But the absence of any statutory language proscribing appropriations by the legislature does not create a single subject violation. “[T]he appropriation need not be viewed as an amendment of the general statute and the constitutional provision limiting the subject of an appropriation bill does not apply.” *Rolla 31*, 837 S.W.2d at 4.

Plaintiffs contend that *Rolla 31* is inapposite because the statute at issue anticipated an appropriation to the fund. *See* Pls. Pretrial Br. 37–39. But as Plaintiffs admit, the Missouri Scholars Program statute is silent about if the Missouri Empowerment Scholarship Accounts Fund is to be funded by appropriations. It is axiomatic that statutory silence in the general statute cannot create direct conflict with the appropriations bill. *See City of St. Louis v. Klausmeier*, 112 S.W. 516, 518 (Mo. 1908) (“If either [statute] is silent where the other speaks, there can be no conflict between them.”). Therefore, *Rolla 31*’s instruction that for less than a direct conflict “an ambiguity in the general statute . . . may be resolved by relying upon the appropriation” applies. 837 S.W.2d at 4.

Plaintiffs assert that *Rolla 31* applies only in cases where the statute is ambiguous. Pls. Pretrial Br. 37–38, 42. The opinion did not limit its analysis solely to instances of statutory ambiguity. Rather, the case applies in any circumstance

where a less-than-direct conflict exists between a statute and an appropriation—with ambiguities cited as an example. *See* 837 S.W.2d at 4 (“If the conflict between two statutes is less than direct, *e.g.*, *an ambiguity* in the general statute, then such a conflict may be resolved by relying upon the appropriation as strong evidence of the legislature’s intention in adopting the general statute.” (emphasis added)).

Faced with controlling language in *Rolla 31*, Plaintiffs attempt to limit the case to its facts. Pls. Pretrial Br. 37–38. Again, that ignores the case’s governing features. Certainly, the court applied its analysis to the statutory scheme it faced. *See* 837 S.W.2d at 5. But the court also broadly expounded upon what qualifies as an unconstitutional single-subject violation for an appropriation. *See id.* at 4. Tellingly, the court cited the dissenting opinion in *State ex rel. Davis v. Smith* to arrive at the conclusion that courts should read later appropriations harmoniously with preexisting statutes. *See id.* Ultimately, the court fixed its governing standard—requiring that any “less than direct” conflict between a statute and an appropriation be resolved in favor of the appropriation’s validity. *Id.*

With no direct conflict, Plaintiffs are forced to argue that a latent conflict exists in operation. Specifically, they contend that the Treasurer has needed to implement “out of whole cloth” measures to disburse the scholarship funds. Pls. Pretrial Br. 44. They emphasize how the Treasurer “has had to hire a new employee” and implement invoicing processes. *Id.* at 44–45. But the Treasurer’s implementing protocols or hiring a new employee are hardly novel red flags for an irreconcilable single-subject conflict. As the Missouri Supreme Court has explained, “[w]hen [a] statute is

silent . . . on an issue, the [Treasurer] has the power to form policy and make necessary rules to fill gaps left by the legislature.” *Farrow v. St. Francis Med. Ctr.*, 407 S.W.3d 579, 592 (Mo. banc 2013). Legislatures frequently leave it to administrators “to fill up the details” of implementing a governmental program. *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 43 (1825). Plaintiffs’ attempt to conjure up an irreconcilable statutory conflict based on normal (and minimal) ministerial functioning necessarily falls short.

The evidentiary record here shows that operational changes to the Missouri Scholars Program have been minimal. The Treasurer did not need to alter any agreements with EAOs. *See supra* ¶ 82. The General Assembly’s appropriation receives the same statutory treatment as other funding streams. *See supra* ¶ 81. And FACTS and EAOs, not the Treasurer, continue to handle scholarship applications and the disbursement of funds to venders. Joint Stip. ¶¶ 41–43; 46. At bottom, the main change from the appropriation is the number of children who can now benefit from the Missouri Scholars Program. *Id.* ¶ 48. Therefore, none of Defendants’ actions here reveals an irreconcilable statutory conflict between the Missouri Scholars Program and H.B. 12. Plaintiffs’ attempt to imply a conflict from ministerial functions following an appropriation fails.

Finally, finding no conflict in this case comports with this Court’s obligations under the doctrine of constitutional avoidance. This Court must resolve doubt about the constitutionality of H.B. 12 “in favor of [its] validity.” *Mahurin*, 799 S.W.2d at 842 (citing *State v. Young*, 695 S.W.2d at 883 (Mo. banc 1985)). With no outright

disallowance of legislative appropriations in the Missouri Scholars Program’s statutes, the Court can conclude that the General Assembly remained free to appropriate funds for scholarships. In short, by applying *Rolla 31* and finding no irreconcilable conflict between the preexisting statutes and H.B. 12, this Court satisfies its obligation to construe any doubt in favor constitutional validity.

The Court accordingly awards judgment to Defendants on Count I.

B. Count II—H.B. 12’s reference to other statutes does not create a constitutional violation.

Plaintiffs assert that H.B. 12 violates Article IV, § 23 of the Missouri Constitution by referencing Missouri Scholars Program statutes and “leav[ing] important questions unanswered.” Pls. Pretrial Br. 46. That constitutional provision requires that “[e]very appropriation law shall distinctly specify the amount and purpose of the appropriation without reference to any other law to fix the amount or purpose.” Mo. Const. art. IV, § 23. The key consideration is simply whether the appropriation “distinctly specif[ies] the amount and purpose of the appropriation.” *State ex inf. Danforth v. Merrell*, 530 S.W.2d 209, 212 (Mo. banc 1975) (quoting Mo. Const. art. IV, § 23). The Missouri Supreme Court applies a “presumption . . . that in enacting the appropriation laws . . . the general assembly complied with provisions of [Section] 23.” *Id.* at 213.

Plaintiffs do not dispute that H.B. 12 “‘distinctly’ states” a “purpose.” Pls. Pretrial Br. 45. That ends the inquiry—the central policy questions about how appropriation proceeds shall be used (for scholarships) are answered. H.B. 12 is consistent with Article IV, Section 23 of the Missouri Constitution.

H.B. 12's including statutory references is by no means unique. Indeed, H.B. 12 contains many other statutory references associated with other programs—for instance:

For reimbursement to victims of securities fraud and other violations pursuant to Section 409.6-603, RSMo[.]

Jt. Ex. 3, at 7.

For funding the Circuit Courts, provided twenty-five percent (25%) flexibility is allowed between personal service and expense and equipment, and . . . between Sections 12.300 through 12.380, excluding Sections 12.325 and 12.375 Personal Service \$125,014,050 Annual salary adjustment in accordance with Section 476.405, RSMo[.]

Id. at 16.

Plaintiffs concede these appropriations are constitutional. They attempt to distinguish these appropriations from those to the Missouri Scholars Program by arguing that these other appropriations reflect an “already existing general statutory framework.” Pls. Pretrial Br. 46. They say that the distinct purpose specified by the General Assembly in H.B. 12 is insufficient because “the underlying MOScholars Act says nothing about using general revenues.” Pls Pretrial. Br. 45. In doing so, Plaintiffs’ argument doubles back on their single-subject position in Count I. For the reasons stated above, this Court rejects this argument.

Therefore, this Court enters judgment for Defendants on Count II.

C. Count III—H.B. 12 complies with Article III, Section 39(4) of the Missouri Constitution.

Plaintiffs’ third count invokes the limitation on the General Assembly’s authority to appropriate money, Article III, Section 39(4): The General Assembly cannot “pay or . . . authorize the payment of any claim against the state . . . under

any agreement or contract made without express authority of law.” Mo. Const. art. III, § 39(4). Plaintiffs claim that the Missouri Scholars Program statutes contain no authority for the State to transfer general revenues into the ESA Fund for the purposes of scholarships. So, according to Plaintiffs, the \$50 million appropriation to the ESA Fund and any expenditures from the ESA Fund are made without express authority of law.

But this constitutional provision does not deal with appropriations made by the State; “this constitutional limitation precludes payment of any such claim under an unauthorized contract or outside the terms of a legal contract.” *State ex rel. State Highway Comm’n v. Camden Cnty.*, 394 S.W.2d 71, 78 (Mo. App. S.D. 1965) (citing *Spitcaufsky v. State Hwy. Com’n of Missouri*, 159 S.W.2d 647, 651 (Mo. 1941)).

Plaintiffs’ argument that H.B. 12’s appropriation to the ESA Fund was without express authority ignores these central words in Section 39(4)—“any claim against the state.” A “claim” is “[a] demand for money, property, or a legal remedy to which one asserts a right; especially, the part of a complaint in a civil action specifying what relief the plaintiff asks for.” Black’s Law Dictionary (12th ed. 2024). Without any claim at issue, there can be no violation of Section 39(4).

And taking Plaintiffs’ arguments at face value, they still fail. Plaintiffs again rest their contention here on whether retaining money meant for scholarship proceeds in the ESA Fund is lawful. Pls. Pretrial Br. 48–49. For the reasons explained with respect to Count I, H.B. 12’s use of the ESA Fund for such an appropriation is lawful, and hence authorized.

Ultimately, the purpose of the Missouri Scholars Program could not be clearer from the statutes: “Ensure that grants are distributed to scholarship accounts of qualified students,” § 135.714(4), RSMo., and “[d]istribute scholarship account payments,” § 135.714.1(6)(a), RSMo. Plaintiffs’ contention that the legislature implicitly divested itself of authority to fund a state-created program would violate the basic canon that “a statutory scheme ‘should avoid unreasonable or absurd results.’” *State ex rel. Hillman v. Beger*, 566 S.W.3d 600, 608 (Mo. banc 2019) (quoting *Aquila Foreign Qualifications Corp. v. Dir. of Revenue*, 362 S.W.3d 1, 4 (Mo. banc 2012)). The same goes for any argument that money cannot be drawn to pay EAOs from a fund (the ESA Fund) created “for the purposes of” a scholarship program. § 135.716.6(1), RSMo; see Joint Stip. ¶ 36 (describing the payment process).

Therefore, this Court enters judgment for Defendants on Count III.

D. Count IV—H.B. 12 complies with Article IV, Section 15 of the Missouri Constitution.

Plaintiffs assert that H.B. 12 imposes duties on the State Treasurer beyond those authorized by Article IV, Section 15. Pls. Pretrial Br. 49. Plaintiffs’ claim rests on two theories, but both fail.

First, Plaintiffs contend that payments to EAOs from the ESA Fund violates Section 15 because making those payments exceeds the Treasurer’s constitutionally delineated role. *Id.* Section 15 provides that “[a]ll revenue collected and moneys received by the state which are state funds or funds received from the United States government shall go promptly into the state treasury . . . [and] the state treasurer shall deposit all moneys in the state treasury . . . and he shall hold them for the

benefit of the respective funds to which they belong and disburse them as provided by law.” Mo. Const. art. IV, § 15. Plaintiffs again argue that H.B. 12 permits an unconstitutional transfer of funds from the general revenue fund to the ESA Fund. Pls. Pretrial Br. 49. But for all the reasons explained in this Court’s opinion on Count I, this transfer of funds was not unconstitutional. Therefore, this theory fails.

Second, Plaintiffs assert that H.B. 12 (and the Missouri Scholars Program statutes generally) impose duties on the Treasurer “far afield” of his constitutional duties. Pls. Pretrial Br. 50. Article IV, § 15 states that “[n]o duty shall be imposed on the state treasurer by law which is not related to the receipt, investment, custody and disbursement of state funds” The “myriad functions” cited by Plaintiffs do not come from H.B. 12 itself, but from the Missouri Scholars Program provisions, Pls. Pretrial Br. 51, which Plaintiffs admit that they lack standing to challenge, Am. Pet. ¶ 102. Plaintiffs try to get around this lack of standing by claiming that H.B. 12 is “tainted by the scope of duties problems” in the existing Missouri Scholars Program statute—but they nonetheless are challenging the Missouri Scholars Program for which they lack standing. *See Manzara*, 343 S.W.3d at 663.

Even if Plaintiffs have standing, this theory also fails. First, Plaintiffs failed to develop this legal theory in their Amended Petition. Plaintiffs merely asserted that the Missouri Scholars Program imposes “myriad” unconstitutional duties on the Treasurer and cited a list of statutory provisions. But these claims are pure “legal conclusions” and without more cannot support a petition. *See Ryno v. Hillman*, 641

S.W.3d 385, 389 (Mo. App. S.D. 2022) (“[D]isregard[ing] conclusory allegations of fact and legal conclusions.”). Therefore, this Court dismisses this claim.

But in any event, the inchoate argument fails. *See Farmer v. Kinder*, 89 S.W.3d 447, 452–53 (Mo. banc 2002) (per curiam) (discussing the Treasurer’s enumerated constitutional duties). In *Farmer*, when a statute authorized the Treasurer to “collect” funds, the Missouri Supreme Court held the Treasurer’s duties under Section 15 were limited to the “very specific” enumerated powers: “receipt, investment, custody and disbursement.” *Id.* at 453. The Treasurer, as “*custodian* of all state funds,” “receives and holds funds.” *Id.* (quoting Mo. Const. art. IV, § 15). “[A]djust[ing] the cap on tax credit” and “allocating tax credits” clearly relate to the receipt and disbursement of funds. Pls. Pretrial Br. 51 (citing § 135.713.3, RSMo).

So the question becomes whether any of Plaintiffs’ cited duties go beyond being a custodian of funds. Going through their list, all are related to the “receipt, investment, custody, and disbursement” of funds according to the Missouri Scholars Program’s purpose. “Certify[ing] organizations” receiving funds relates to the custody and disbursement of the funds. *See id.* (citing §§ 135.712.2(1), 135.715.2, RSMo). As is “conduct[ing] audits” and “remov[ing] parents or students from the program for cause.” *Id.* (citing § 166.710.1–2, RSMo). “Publish[ing] test and graduation results” and “post[ing] . . . the number” of participating students and schools reasonably relates to being a custodian of funds by allowing Missourians to see the results of the scholarship program. *Id.* (citing §§ 135.714.3, 135.714.4, RSMo).

Plaintiffs rely exclusively on *Farmer* to suggest that these duties go beyond the Treasurer’s constitutional duties. Pls. Pretrial Br. 50–52. In *Farmer*, the Treasurer “collect[ing]” funds went beyond his constitutional duties because the Constitution explicitly provides that “[t]he department [of revenue] shall collect all taxes and fees payable to the state.” 89 S.W.3d at 453 (quoting Mo. Const. art. IV, § 22). So it was the character of collecting funds that created the constitutional problem. *See id.* (“[A] custodian receives and holds funds; it does not collect them.”) It is not a magical words requirement. The character of the actions to which Plaintiffs object are not akin to collecting but are consistent with “guard[ing] and protect[ing] or maintain[ing]” the ESA Fund for effective program management. *See id.* Plaintiff objects to the Treasurer’s office “hir[ing] additional staff” and running a “parent portal” to administer the Program. Pls. Pretrial Br. 52. Under Plaintiffs’ theory, the Treasurer cannot have any personnel aid in his responsibilities for any other program or have a website for the administration of state services. This goes too far.

All told, Section 15 imposes no limitations on the Treasurer’s ability to release proceeds to be used for Scholarships from the ESA Fund. And to the extent Plaintiffs challenge the Treasurer’s actions under the existing scholarship program, they lack standing, fail to state a claim, and fail on the merits. This Court enters judgment in favor of the Defendants on Count IV.

E. Count V—The Emergency Grant Rule complies with law.

Finally, Plaintiffs’ challenge to the Emergency Grant Rule fails. Plaintiffs’ claim that the rule is invalid depends upon their other claims. *See Am. Pet.* ¶ 109 (“The Emergency Grant Rule is invalid, because no valid Missouri statute authorizes

the distribution of general revenues or funds earmarked to the ESA Fund for marketing/administrative purposes for K-12 scholarship grants for students to attend private schools.”). For all the reasons explained in Counts I–IV, H.B. 12 complies with the Missouri Constitution and the Missouri Scholars Program statutes, so this dependent challenge necessarily falls.

Plaintiffs’ claim also fails for more specific reasons. It is of course true that “a regulation must be within the authority of a statute and ‘cannot expand or modify a statute.’” *Am. Fed’n of State, Cnty. & Mun. Emps., AFL-CIO Council 61 v. State*, 653 S.W.3d 111, 128 (Mo. banc 2022) (quoting *Union Elec. Co. v. Dir. of Revenue*, 425 S.W.3d 118, 126 (Mo banc. 2014)); *see also* § 536.014 (“No department, agency, commission or board rule shall be valid in the event that: (1) There is an absence of statutory authority for the rule or any portion thereof; or (2) [t]he rule is in conflict with state law . . .”). But “[w]hen the statute is silent . . . on an issue, the [Treasurer] has the power to form policy and make necessary rules to fill gaps left by the legislature.” *Farrow*, 407 S.W.3d at 592. As Plaintiffs admit, the Missouri Scholars Program statute is silent about a direct appropriation. *See* Pls. Pretrial Br. 41. So the Treasurer “fill[ing] the gap left by the legislature” is a permissible delegation of power. *Id.* Plaintiffs do not point to any specific “conflict between the regulation and the statute,” *id.*, and this Court will not find one on its own accord, *see United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991) (per curiam) (“Judges are not like pigs, hunting for truffles buried in briefs.”).

Therefore, the Court enters judgment for Defendants on Count V.

IV. Plaintiffs have not shown entitlement to an injunction.

Given the legal deficiencies in all Counts, Plaintiffs' requests for permanent-injunctive relief necessarily fail. *See Est. of Hutchison*, 494 S.W.3d at 608 (explaining that “at the permanent injunction stage, the trial court must finally determine the merits of the claims” (citation omitted)).⁷ The merits favor the Defendants (and Interveners) here—and so do the equities.

Plaintiffs have not articulated any harm warranting a permanent injunction. In litigating this case, Plaintiffs have never alleged that they will incur any irreparable harm particular to them. *See supra* ¶ 63. The record is likewise devoid of any evidence of substantiated harm, let alone irreparable harm. *See supra* ¶ 64. And, at trial, Plaintiffs offered no testimony addressing any irreparable harm they face.

Plaintiffs also did not attempt to argue that they face irreparable harm in their briefing. Instead, they rely entirely on the statement that “being subject to an unconstitutional statute, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” Pls. Pretrial Br. 55 (quoting *Rebman v. Parson*, 576 S.W.3d 605, 612 (Mo. banc 2019)). But Plaintiffs have put forward no evidence that H.B. 12's appropriations affect them (or any of the association's members) personally. *See supra* ¶ 64. And, as explained with respect to standing, fears of indirect harm to

⁷ The Court has already denied Plaintiffs' request for temporary-injunctive relief, mooted their prayer for such relief in their Amended Petition.

the functioning of public schools prove baseless as a statutory and programmatic matter. *See supra* ¶¶ 102–06.

Evidence in this case even details how public schools could benefit from the Missouri Scholars Program. Not all children who receive scholarships through the Missouri Scholars Program will leave the public-school system—scholarships do not solely cover private-school tuition. Parents can use the scholarship to transfer the child to another public school that better meets the child’s needs. *See Blair Dep.* 36:22–37:17 (explaining how funds can be used for such transfers). Parents may also have funds cover educational-support services—such as tutoring or therapy. *Id.* at 65:2–66:10 (describing as much). Thus, Plaintiffs cannot maintain that the appropriation presents a sure and unilateral harm to the integrity of public schools. And the lack of any evidence to substantiate a claim of irreparable harm to Plaintiffs or their members warrants a per se denial of request for an injunction. *See Rebman*, 576 S.W.3d at 612 (finding irreparable harm based on how the governmental action impacted the plaintiff).

An injunction in this case would significantly harm innocent third parties and the State. *See supra* ¶¶ 72–78, 84–85.

Indeed, a mid-school-year injunction will risk putting economically disadvantaged families currently receiving scholarships in a financial lurch. *See supra* ¶ 73. Under the statute, parents have the option of receiving payments “either four times per year or in a single lump sum at the beginning of the year.” § 135.714.1(6)(a), RSMo. Payments are due to “continue for as long as the families of

eligible students submit for qualifying expenses and unspent awarded funds remain in their accounts.” Joint Stip. ¶ 36. As of early November, the Treasurer has distributed only \$36.5 million to EAOs. *See id.* ¶ 50; *accord* Blair Dep. 142:14–143:3 (explaining how more payments will be made). Ordering the cessation of payments would risk putting families in a truly impossible situation—not receiving scholarship proceeds they believed were coming in the midst of the academic year. This could leave families financially liable unpaid education providers. *See* Joint Stip. ¶ 51 (explaining how providers receive payment from EAOs after the Treasurer issues payments to the EAOs).

Likewise, an injunction would threaten EAOs’ ability to receive payment for awarded scholarships. *See id.*; *see also* Blair Dep. 104:23–105:3, 142:14–143:3 (describing the invoicing process).

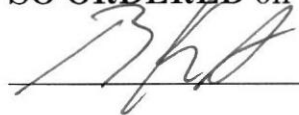
Meanwhile, for the reasons explained with respect to Plaintiffs’ standing, Plaintiffs have only asserted unrealistic fears of negative impacts to public schools. That cannot compare to the very real harm that the State, EAOs, and families relying on the Missouri Scholars Program face from an injunction. *See supra* ¶¶ 72–78, 84–85; *see also Trump v. CASA, Inc.*, 606 U.S. 831, 854 (2025) (“[I]n equity, ‘the broader and deeper the remedy the plaintiff wants, the stronger the plaintiff’s story needs to be.’” (quoting Samuel Bray & Paul Miller, *Getting into Equity*, 97 NOTRE DAME L. REV. 1763, 1797 (2022))). Plaintiffs have therefore failed to carry their burden of showing a harm warranting a permanent injunction. *See Suppes*, 613 S.W.3d at 847 (citation omitted).

ORDER AND JUDGMENT

Now, therefore, this Court rules as follows:

- a. The Court **DISMISSES** this case with prejudice.
- b. Alternatively, the Court enters judgment in favor of the State Defendants on all counts of the First Amended Petition.
- c. The Court **DENIES** all relief requested in the First Amended Petition.
- d. To the extent any motions or claims for relief remain outstanding and are not addressed herein, those motions or claims for relief are **DENIED**.
- e. All prior rulings are **INCORPORATED HEREIN BY REFERENCE** to the extent necessary to create a final and appealable order.
- f. Costs are **TAXED** to Plaintiffs.
- g. This is the final order and judgment of this Court.

SO ORDERED on this 14 day of APRIL, 2026.



The Honorable Brian K. Stumpe