

**IN THE UNITED STATES DISTRICT COURT**  
**MIDDLE DISTRICT OF TENNESSEE**  
**NASHVILLE DIVISION**

L.E., *by his next friend and parents,* )  
SHELLEY ESQUIVEL and )  
MARIO ESQUIVEL, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
BILL LEE, in his official capacity as )  
Governor of Tennessee, et al. )  
 )  
Defendants. )

No. 3:21-CV-00835

**KNOX COUNTY BOARD OF EDUCATION AND JON RYSEWYK’S REPLY IN**  
**RESPONSE TO KNOX COUNTY DEFENDANTS’ MOTION FOR SUMMARY**  
**JUDGMENT**

Defendants Knox County Board of Education (“KCBOE”) and Superintendent Jon Rysewyk (the “Superintendent”) (collectively “Knox County Defendants”) submit this Reply in Support of the Knox County Defendants’ Motion for Summary Judgment. [Doc. 46]. In further support of that Motion, the Knox County Defendants state as follows:

Plaintiff criticizes the Knox County Defendants for not addressing whether Tennessee Code Annotated § 49-6-310 violates the Equal Protection Clause, inferring that the Knox County Defendants somehow concede that the law does indeed violate the Equal Protection Clause. Knox County Defendants have made no such concession. The Tennessee Attorney General is the proper party to defend the constitutionality of any state law. *See, e.g.*, Tenn. Code Ann. § 29-14-107(b) (permitting attorney general to be heard in any proceeding challenging the constitutionality of a state statute); Tenn. R. Civ. P. 24.02 (requiring notice be given to the attorney general in any civil

action challenging the validity of a state statute if the attorney general is not a party). Here, the State Defendants are well-represented by the Tennessee Attorney General and Knox County has adopted the arguments set forth in the State Defendants' Motion for Summary Judgment. [See Doc. 63]. The Knox County Defendants have in no way conceded the merits of Plaintiff's position.

Regarding Plaintiff's § 1983 claim, Plaintiff concedes that KCBOE is required to enforce Tennessee Code Annotated § 49-6-310. Plaintiff even acknowledges that the law has subsequently been amended to explicitly state that state education finance funds will be withheld from any local education agency that fails to adopt the required policy. However, Plaintiff asserts that KCBOE is liable under § 1983 by failing to adopt some sort of policy that would remain in effect only as long as Tennessee Code Annotated § 49-6-310 remains in effect. Essentially, Plaintiff claims that by law, KCBOE was required to predict that one day Tennessee Code Annotated § 49-6-310 would either be repealed or stricken by a court and incorporate that prediction into its policy. Plaintiff does not point to any case law which renders a local municipality liable for failing to anticipate that a state law will violate the Constitution. As explained in the Knox County Defendants' Motion for Summary Judgment, when evaluating whether a political subdivision is acting as an arm of the state, "the essential question is the degree of discretion possessed by the official . . . implementing the contested policy." *Cady v. Arenac Cnty.*, 574 F.3d 334, 343 (6th Cir. 2009). Here, the Plaintiff acknowledges and the record reflects that KCBOE had no discretion in adopting this policy under state law and thus, it was acting as an arm of the state.

For these reasons and the reasons set forth in the Knox County Defendants' Motion for Summary Judgment and Response in Opposition to Plaintiff's Motion for Summary Judgment, the Knox County Defendants respectfully request the Court grant the motion and dismiss Plaintiff's claims against these Defendants.

Respectfully submitted this the 18th day of November, 2022.

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was filed electronically on the date recorded by the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties who have filed an appearance in the case, by and through the following counsel:

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