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Case No: 23-CI-_____

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NELSON CIRCUIT COURT
DIVISION 1
WHAS

NELSON COUNTY FORWARD, INC.,)
CAMERON JOHNSON, TIFFANIE CLARK)
and JAMIE MIRACLE)

Plaintiffs)

v.)

NELSON COUNTY BOARD OF)
EDUCATION)

Serve: Diane Berry, Chairperson)

Bardstown, KY 40004)

And)

DIANE BERRY, both individually and in her)
capacity as a member of the Nelson County)
Board of Education;)

COMPLAINT

Serve: Diane Berry, Chairperson)

Bardstown, KY 40004)

and)

TRACY BOWLING, both individually and in)
her capacity as a member of the Nelson County)
Board of Education;)

Serve: Tracy Bowling)

Boston, KY 40107)

and)

DAMON JACKEY, both individually and in his)
capacity as a member of the Nelson County)
Board of Education;)

Serve: Damon Jackey)

Bardstown, KY 40004)

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and)
)
 DAVID NORMAN, both individually and in his)
 capacity as a member of the Nelson County)
 Board of Education;)
)
 Serve: DAVID NORMAN)
)
 New Haven, KY 40051)
)
 and)
)
 AMANDA ROGERS-DEATON, both)
 individually and in her capacity as a member of)
 the Nelson County Board of Education;)
)
 Serve: Amanda Deaton)
)
 Cox's Creek, KY 40013)
)
 And)
)
 NELSON COUNTY SCHOOL DISTRICT)
 FINANCE CORPORATION)
)
 Serve: Jessica Rogers)
 288 Wildcat Lane)
 Bardstown, KY 40004)
)
 Defendants)

WHAS

Plaintiffs, by counsel, for their Intervening Complaint state as follows:

PARTIES

1. Plaintiff Nelson County Forward, Inc., is a non-profit corporation organized and existing under the laws of the Commonwealth of Kentucky. Said corporation has the right to sue or be sued in the Commonwealth of Kentucky.

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2. Plaintiff CAMERON JOHNSON is a citizen, property owner, and taxpayer residing in Nelson County Kentucky and the parent of children who attend the Nelson County School System.
3. Plaintiff TIFFANIE CLARK is an employee of the district and the parent of children who attend the Nelson County School System.
4. Plaintiff JAMIE MIRACLE is a citizen, property owner, and taxpayer residing in Nelson County Kentucky and the parent of children who attend the Nelson County School System.
5. Defendant, Nelson County Board of Education (the "Board"), is a school district organized and existing under the laws of the Commonwealth of Kentucky.
6. Defendants Diane Berry, Tracy Bowling, Damon Jackey, Amanda Deaton and David Norman are individuals, each of whom reside in Nelson County and collectively comprise the Nelson County School Board. Hereinafter, they will be collectively referred to as the "Board " in conjunction with the Nelson County School District Finance Corporation.
7. Defendant Nelson County School District Finance Corporation is a nonprofit corporation formed under the laws of the Commonwealth of Kentucky.

JURISDICTION AND VENUE

8. Jurisdiction is conferred on this court over the subject matter of this litigation pursuant to Kentucky Revised Statutes because the acts complained of occurred and lie in Nelson County, Kentucky.
9. Venue is proper in this court because the transactions out of which the Plaintiffs' cause of action arose concern children who reside and attend school in Nelson County, Kentucky and the damages suffered by the intervening plaintiffs exceed the jurisdictional threshold of this court.

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ALLEGATIONS COMMON TO ALL CLAIMS

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THE COMMUNITY CAMPUS MODEL

10. In an effort to promote educational equality for all students in the district, capitalize on efficiencies, minimize waste and redundancy and plan for the next several decades for the future of public education in Nelson County, the Board decided in 2021 to embark upon a comprehensive plan to change the structure of its schools.
11. Between April 26, 2021 and May 18, 2021, eight community discussions were held at elementary, middle and high schools throughout the district listening to priorities and concerns from educators, parents, citizens, industry and students about the future of public education in Nelson County.
12. The Board sought and was granted authority by the Kentucky Department of Education to reconvene its Local Planning Committee (LPC) to consider such changes.
13. On September 30, 2021 at a special called meeting, the School Board unanimously approved the selection of members of the Local Planning Committee (hereinafter "LPC").
14. The approved members included 19 persons in all consisting of parents, teachers, principals, community members, a representative from the central office of the Board, the planning and zoning director for Nelson County and one member from the Board.
15. The LPC began meeting on October 20, 2021. Among other things, the LPC reviewed the then existing facilities plan, building conditions, funding patterns, the cost of delivery of services under the existing model, the history of facility planning in Nelson County, current district goals and needs, building capacity, enrollment data, projections of enrollment data into the future and traffic data.

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16. On December 3, 2021 at a specially called meeting of the Board, the draft District Facility Plan proposed by the Local Planning Committee was presented to the Board. This plan had been reviewed by the Kentucky Department of Education and approved by the Local Planning Committee. The Board approved the District Facility Plan by a vote of 4-1.
17. On December 3, 2021, the Board unanimously instructed the Superintendent to schedule and administer a local public hearing to receive comments on the District Facility Plan.
18. On December 20, 2021, the hearing officer conducted a public hearing and submitted her report to the Board.
19. On December 21, 2021, the Board unanimously approved the hearing officer's report regarding the District Facilities Plan.
20. On January 11, 2022, the Board unanimously approved the first vote to begin publicly advertising for architects and construction managers through letters of interest regarding potential draft DFP projects.
21. On January 25, 2022, Superintendent Bradley led a discussion of the facility planning timeline and development of the design process. No decisions were made, but the Board was informed of the progress of the planning process.
22. On February 7, 2022, current Board Member Amanda Rogers Deaton, along with other plaintiffs, filed suit against the Nelson County Board of Education in an effort to stop progress of the Board.
23. On February 15, 2022, Superintendent Bradley and Amy Owens presented the initial project applications (called a BG1) for Nelson County High School, Thomas Nelson High School, Cox's Creek High School, New Haven and the Bus Garage and Maintenance Garage. Each BG1 was approved unanimously by the Board.

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24. At that same meeting, the Board unanimously approved the selection of:
- a. Pickett & Passafiume as the architect firm for Coxs Creek and New Haven renovations;
 - b. Studio Kremer as the architect firm for the remaining projects;
 - c. Codell Construction as the construction manager for each project.
25. On March 15, 2022, the Board unanimously approved or authorized:
- a. Updated BG1s that had been previously approved by the Board on February 15, 2021;
 - b. The architect and contractor agreements;
 - c. Superintendent Bradley to sign a formal offer for property adjacent to Thomas Nelson High School for \$625,000 which offer had been approved by the Kentucky Department of Education.
26. On March 18, 2022, a motion was filed by the original plaintiffs in this law suit to “drop” Amanda Rogers Deaton as a plaintiff in the case, without prejudice. No reasons supporting the request for “dropping” her as a plaintiff were given. Mrs. Rogers Deaton was later elected as a member of the Board.
27. On April 19, 2022, Studio Kremer and Pickett and Passafiume provided an introductory overview of schematic design stages to the Board.
28. On June 7, 2022, the Board unanimously approved the Thomas Nelson High School schematic design proposal.
29. On June 7, 2022, the Nelson County Board of Education took title to property adjacent to Thomas Nelson High School.
30. On June 21, 2022, the Board unanimously:
- a. Recommitted over \$1,000,000 in funds to be used towards approved facility plans;

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- b. Approved the BG1 for The UP Center – ATC renovation;
- c. Following nearly four months of collaborative design process, approved the ^{WHAS}New Haven School schematic providing for a complete remodel of the New Haven School which would provide for the next 30 years of learning for the New Haven Community.
31. On July 19, 2022, the Board unanimously:
- Passed the Cox’s Creek Elementary schematic design that was presented;
 - Passed the Nelson County High School initial schematic design that was presented.
32. On September 20, 2022, the Board unanimously:
- Voted to approve the overview of the TNHS design development;
 - Voted to close on the purchase of the land project adjacent to the TNHS.
33. On October 18, 2022, the Board unanimously:
- Voted to approve a request to reconvene the LPC for consideration of proposed modifications to the DFP addressing proposed work at the Nelson County Community Campus (hereinafter NCCC);
 - Voted to approve waivers and authorized a letter to be sent to KDE for consideration.
34. On November 8, 2022, general elections were held. In those elections:
- David Norman won the District 1 School Board seat receiving 25% of the total registered voters in his precincts and 4% of the total registered voters in Nelson County;
 - Amanda Deaton won the District 4 School Board seat receiving 25% of the total registered voters in her precincts and 6% of the total registered voters in Nelson County.

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- c. Combined, candidates Deaton and Norman were elected by 9% of the total registered voters in Nelson County.

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35. Mr. Norman received over 63% of his campaign contributions from the plaintiffs in the lawsuit or members of an organization that have a lawsuit against the Board.

36. On November 15, 2022, the Board unanimously:

- a. Approved a schematic design for the new bus maintenance facility which was part of the District Facilities Plan that allows for future expansion of the UP Center and the Nelson County Community Campus;
- b. Approved a minor modification of the DFP to allow for the revised design approach for the Nelson County Community Campus Project;
- c. Approved the construction documents as requested by the Thomas Nelson Community Campus (hereinafter "TNCC") design team, stakeholder team and the Architect.
- d. Authorized the construction manager to release the TNCC project for bidding.

37. On December 14, 2022, the Board:

- a. Received notice from the Construction Manager that bids were received at the Central Office during that week;
- b. Received a revised BG1 to reflect the most up to date projections based off of the bids received;
- c. Received an updated design for the New Haven Elementary School;
- d. Received development drawings and associated documents from the Kentucky Department of Education for updates to the bus and maintenance garage construction;
- e. Received an update to the Nelson County Community Campus master plan;

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- f. Discussed the issuance of bonds as the next state in project development for the construction projects.

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38. Nelson County's DFP was approved by the Kentucky Department of Education, the Board has not expired and is in full force and effect.
39. Pursuant to 702 KAR 4:180, the DFP that has been approved by both the KDE and the Board is the facilities plan of the local school district and shall be implemented to the extent that the financial ability of the district permits as determined by the Commissioner of Education and the School Facilities Construction Commission.
40. On January 10, 2023, the new board members were sworn in and updated by Superintendent Bradley about the district's current financial standing, projections around the next 20 years and the facility planning process and vision that has taken place over the past 20 months.

BOARD IRREGULARITIES WITH REGARD TO COMMUNITY CAMPUS

41. Despite nearly two years of planning and collaboration with experts, educators, administrators, community members, the Kentucky Department of Education and having voted over twenty times to advance the Community Campus plans, on January 13, 2023 Board Chair Diane Berry sent an email to Billy McClure indicating that the Board would scrap all of the plans for the Community Campus model and would merge Nelson County and Thomas Nelson High Schools without so much as a single hearing from stakeholders.
42. On January 17, 2023,
- a. The Board heard from numerous guest speakers opposed to the merger of the two high schools;
 - b. Initially failed to approve a motion to accept the bid recommendation from Codell Construction for the TNCC bids;

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c. Then, upon a motion made by Diane Berry, moved to revisit the Community Campus discussion;

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d. Upon reconsideration, accepted the bids for the TNCC project;

e. Approved the New Haven School's BG1, 2 and 3 for New Haven as a primary through 5th grade school.

43. Pursuant to Board Policy 01.44, the only individual who can call a special board meeting is the Chairperson, currently Diane Berry. Special meetings may also be called by three members of the Board.

44. Upon information and belief, Board Chairperson Diane Berry called a special meeting for January 26, 2023 for the sole purpose of authorizing the Nelson County School District Finance Corporation (hereinafter "Finance Corporation") to issue revenue bonds to fund the contracts that had been approved at the January 17, 2023 meeting.

45. The approval of the Finance Corporation is needed to issue the revenue bonds to fund the contracts.

46. The members of the Board create a majority of the voting officers of the Finance Corporation. Therefore, the Board members are the persons who would vote to issue the revenue bonds.

47. At that specially called meeting of the Board on January 26, 2023 for the sole purpose of issuing the revenue bonds, without any substantive discussion the Board failed to authorize issuance of the revenue bonds and did not convene a meeting of the Finance Corporation to even consider issuance of the revenue bonds.

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48. Despite having called the meeting for the sole purpose of issuing the revenue bonds to fund the contracts that had been approved, Diane Berry voted not to approve the resolution to issue the bonds. **WHAS**
49. Upon information and belief, Board Chairperson Diane Berry again called a special meeting for February 9, 2023 for the sole purpose of authorizing the Nelson County School District Finance Corporation to issue revenue bonds to fund the bids that had been accepted at the January 17, 2023 meeting.
50. Despite having called the meeting for the sole purpose of issuing the revenue bonds to fund the bids that had been accepted, Diane Berry moved to adjourn the specially called meeting of February 9, 2023 with no discussion. Said motion carried and the special meeting that she called was immediately adjourned upon her motion.
51. Upon information and belief, Board Chairperson Diane Berry called a third special meeting for February 15, 2023 for the sole purpose of authorizing the Nelson County School District Finance Corporation to issue revenue bonds to fund the bids that had been accepted at the January 17, 2023 meeting.
52. Upon information and belief, Chairperson Diane Berry told some of her constituents and other members of the community that she intended to call a special meeting for February 15, 2023 and that the “financial part of this deal would pass”, indicating that she would vote to issue the revenue bonds.
53. At the specially called meeting on February 15, 2023, a motion was again made to issue the revenue bonds to fund the bids that were previously accepted by the Board. Without any substantive discussion, the Board voted 3-2 not to issue the bonds.
54. On February 21, 2023, without any substantial discussion;

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- a. The board authorized the Board Chair and Superintendent Bradley to release, reject and cancel all bids received for the TNCC project;
- b. Tabled the NCCC master plan proposal.

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55. Upon information and belief, by failing to issue the revenue bonds the Board wasted over one million four hundred thousand dollars (\$1,400,000.00) of taxpayer money in architect fees; six hundred twenty-five thousand dollars (\$625,000) of taxpayer money in the purchase of real property and an as yet undetermined amount of money on attorney fees, cancellation costs and other costs.
56. Since January 1, 2023, the DFP has been in effect and not changes have been proposed by the Board, made by the Board or approved by the Kentucky Board of Education.
57. The Kentucky Department of Education utilizes the Kentucky Facilities Inventory and Classification System (hereinafter KFICS) to assess public school buildings' physical condition and educational suitability to provide funding for certain brick and mortar projects that satisfy the criteria for funding.
58. Although Nelson County qualifies for inclusion in KFICS funding consideration due to its multiple nickel equivalent tax for facilities, due to the Board's unwillingness to move forward on the current DFP, KFICS funding will not be made available to Nelson County.
59. The Nelson County School System is ineligible for KFICS funding due to the Board's inexplicable refusal to take action on the existing DFP.
60. At the September 19, 2023 Board meeting there was discussion among the board about moving forward with projects that were not in compliance with the existing DFP.

BOARD IRREGULARITIES WITH REGARD TO THE SUPERINTENDENT

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61. The Board is required to evaluate the Superintendent's performance annually. (Board Policy 02.14).

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62. The Kentucky Department of Education has approved forms and procedures to be used by the Board in its evaluation of the Superintendent. (Board policy 02.14).

63. Any preliminary discussions relating to the evaluation of the Superintendent by the Board prior to the summative evaluation shall be conducted in a closed session at a meeting of the Board. (Board policy 02.14).

64. Despite this policy and without the Board having any public discussion or discussions in closed session about the evaluation of the Superintendent, on or about April 4, 2023, Attorney Jake Thompson of the firm Crawford & Baxter, P.S.C in Carrollton, Kentucky, sent an email to Superintendent Bradley inquiring about buying out the superintendent's employment contract and negotiating a settlement of all claims against the District, contractual and otherwise.

65. Attorney Thompson was acting on behalf of one or more of the Nelson County School Board members, individually.

66. Per KRS 160.160 (1), each Board of Education shall be a body politic and corporate with perpetual succession.

67. Only when the board gathers as a corporate body do the members have the ability to take action on behalf of the district. They cannot direct any action in the district outside of those meetings. With the exception of the chairperson's authority to call a special meeting, outside of a board meeting, individual board members have no more authority than an individual citizen to direct the affairs of the district.

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68. At the April 18, 2023 meeting, Board Member Damon Jackey expressed his concern about the existence of a “shadow board” that was working outside of the regularly scheduled board meetings.
69. The actions of any “shadow board” are in direct violation of Kentucky’s Open Meetings Act, KRS 61.800 *et. seq.*

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ARBITRARY AND CAPRICIOUS ACTIONS

70. The actions of the Board as described above are arbitrary, capricious, and in violation of Kentucky Revised Statutes, Kentucky Administrative Regulations, and any other laws applicable to the exercise of their powers.
71. The actions of the Board are not taken in good faith and do not rest upon sound, just and reasonable basis and with due regard to the public interest and the consequences upon the children affected.

COUNT I - THE BOARD’S ACTIONS ARE ARBITRARY, CAPRICIOUS, UNREASONABLE AND VIOLATE THE KENTUCKY CONSTITUTION

72. The allegations contained in Paragraphs 1-71 hereinabove are incorporated by reference.
73. The individual members and the Board as a body must act in good faith, upon a sound, just and reasonable basis, and have due regard for the public interest and consequences of its actions upon the children affected.
74. If the actions of the individual members and the Board as a body rests upon reasons so unsubstantial, or the consequences are so unjust as to work a hardship, judicial power may be interposed to protect the rights of persons adversely affected.
75. The decisions of the individual defendants and the Board as a body to vote over 20 times to advance the Community Campus model, to accept the bids for the TNCC project, call three special meetings to issue the revenue bonds for same but refuse each of the three times to

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issue the bonds without any substantial discussion or explanation to the community is arbitrary, capricious, unreasonable, in bad faith, lacks a just or reasonable basis, ignores the public interest and the consequences of the Board's actions on the children affected.

WHAS

76. The arbitrary and capricious actions of individual defendants and the Board as a body have resulted in a waste of taxpayer dollars, have resulted in inequitable educational and extra-curricular opportunities for students in different schools, have created a hostile workplace for employees of the district, ignore the current and future needs of students and public education in Nelson County and are grounded in motivations other than those for the best interest of the students.
77. The arbitrary and capricious actions of the individual defendants and the Board should be overturned.

COUNT II - NEGLIGENT REPRESENTATION

78. The allegations contained in Paragraphs 1-77 hereinabove are incorporated by reference.
79. The Board Defendants have a duty of care and a duty of loyalty to the individual Plaintiffs as well as all Nelson County taxpayers to use reasonable care to establish equitable educational opportunities in all district schools in the County and appropriately and efficiently manage district funds.
80. The individual defendants and the Board as a body have breached their duties by consciously disregarding the expertise, planning and input of the members of the LPC and KDE and by wasting at a minimum two million (\$2,000,000.00) taxpayer dollars in design fees and property acquisition costs.
81. The individual defendants and the Board as a body have breached their duties by accepting bids to build projects then failing to fund those contracts and canceling same.

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82. Board members have breached their individual duties as board members by substituting their biased and potentially conflicted positions with the findings and recommendations of the LPC and KDE and/or by their other acts and omissions as alleged herein and/or as may be established by the evidence.
83. The individual defendants and the Board as a body have breached their duties by failing to fulfill its duty under 702 KAR 4:180 (4).
84. By preventing the District from moving forward on construction projects, board members have further breached their individual duties as board members by substituting their biased and potentially conflicted positions with the findings and recommendations of the LPC and KDE and making Nelson County ineligible for KFICS funds.
85. This breach of duty by the individual defendants and the Board as a body have directly and proximately caused the Plaintiffs to sustain damages in excess of the jurisdictional limit of this court.

COUNT III – DECLARATORY JUDGMENT

86. The allegations contained in Paragraphs 1-85 hereinabove are incorporated by reference.
87. Plaintiffs seek a declaratory judgment finding that the selection process, meetings and recommendations of the LPC for the new DFP were appropriate in every respect.
88. Plaintiffs seek a declaratory judgment finding that the amended DFP was appropriate in every respect.
89. Plaintiffs seek a declaratory judgment finding that the actions of the Board in failing to issue the revenue bonds was arbitrary, capricious, and unlawful.
90. The plaintiffs seek entry of an order by this Court approving the Community Campus model in substitution of the arbitrary and capricious actions of the Board.

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91. The plaintiffs seek entry of an order by this Court mandating compliance with 702 KAR

4:180 and other laws surrounding implementation of the current DFP and preventing the

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advancement of any construction projects not in compliance with the current DFP.

COUNT IV – IRRECONCILABLE CONFLICT OF INTEREST AND VIOLATION OF KENTUCKY OPEN MEETINGS ACT

92. The allegations contained in Paragraphs 1-91 hereinabove are incorporated by reference.

93. By contacting an attorney to act on behalf of one or more of the members of the Board to

explore the early termination of the Superintendent’s contract, certain as yet unidentified

individual defendants have demonstrated an inability to abide by the policy, regulations and

statutes they are required to follow in all matters relating to the Superintendent’s contract.

94. All member of the “shadow board” must be identified, the items discussed among them

exposed and the individual defendant members of the “shadow board” must recuse

themselves from participating in any discussions of matters considered by the “shadow

board” due to the conflict of interest created by their actions and violations of Kentucky’s

Open Meetings Act.

COUNT V - INJUNCTIVE RELIEF

95. The allegations contained in Paragraphs 1-94 hereinabove are incorporated by reference.

96. Plaintiffs will suffer irrevocable and irreparable harm if the Board fails to issue the revenue

bonds for the construction of the DFP through the loss of over two million dollars, the

continued expenditure of unnecessary money on inefficient management of the school

system, inequitable educational and extra-curricular opportunities for students and the loss of

matching money from the Commonwealth.

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97. Plaintiffs' rights are being or will be violated by the Board Defendants leaving the plaintiffs to suffer immediate and irreparable injury, loss, or damage pending a final judgment in this action.

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98. In the event that injunctive relief is required during the pendency of this action, an appropriate affidavit or other evidence will be filed under CR 65 *et. seq.*

WHEREFORE, the plaintiffs, pray and demand as follows, to wit:

1. That this Court enter an order finding the actions of the Board in seating the LPC and amending the DFP was appropriate and legal in every respect;
2. That this court enter an order requiring the Board to rescind its February 21, 2023 actions to release, reject and cancel all bids received for the TNCC project as arbitrary, capricious and unsound;
3. That this court enter an order requiring the Board to issue the required revenue bonds to fund the projects or, in the alternative, to substitute its judgment for the arbitrary and capricious decisions of the Board;
4. That this Court enjoin any members of the board from voting on any matter in which they are found to have a real or perceived conflict of interest;
5. That this Court enjoin any members of the board from voting on any matter where they have participated in a “shadow board” or have otherwise violated the spirit or intent of Kentucky’s Open Meetings Law;
6. That plaintiffs recover their costs herein expended, including a reasonable fee for their attorney;
7. For the right to amend pleadings as mandated by the discovery of additional evidence;
8. For a trial by jury on all issues so triable;

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- 9. For any other relief, whether sounding in law or equity, to which plaintiffs may appear entitled.

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Respectfully Submitted,

HITE LAW GROUP, PLLC

/s/ Matthew Hite

Hon. Matthew Hite

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