

# ATTACHMENT 4

Tennessee Attorney General's  
Notice of Intent to Participate  
and File Brief, August 7, 2023

**IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE**

<b>JEREMY N. MILLER,</b>	)	
	)	
<b>Plaintiff-Appellant,</b>	)	
	)	<b>No. M2022-00759-COA-R3-CV</b>
<b>v.</b>	)	
	)	<b>Montgomery Chancery</b>
<b>CASI A. MILLER</b>	)	<b>No. MC CH CV DI 11-121</b>
	)	
<b>Defendant-Appellee.</b>	)	

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**STATE OF TENNESSEE’S NOTICE OF INTENT  
TO FILE A BRIEF**

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In accordance with this Court’s order of July 13, 2023, the State of Tennessee respectfully gives notice of its intent to file a brief in this case under Tenn. R. App. P. 32(c)—unless this Court determines that Plaintiff-Appellant, Jeremy Miller, has waived his challenge to the constitutionality of Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(1). And the State submits that this issue *has* been waived, for the reasons discussed below.

Plaintiff has argued on appeal that the Rule—which requires veteran disability benefits to be considered as gross income for the purpose of calculating child support—is preempted by federal law. (Br. Appellant, 6-14.) This Court noted in its July 13 order that while Plaintiff raised this issue in the trial court, he did not provide notice to the Attorney General, as required by Tenn. R. Civ. P. 24.04 and Tenn. Code Ann. § 29-14-107; nor had Plaintiff provided notice on appeal, as

required by Tenn. R. App. P. 32. The Court ordered Plaintiff to provide copies of the parties' briefs to the Attorney General; those briefs were served on the Attorney General on July 25, 2023. The Court ordered the Attorney General to "notify this Court if it wishes to be heard in this appeal" and "if so, what relief is appropriate in light of the lack of compliance with Tennessee Code Annotated § 29-14-107, Tennessee Rule of Civil Procedure 24.04, and Tennessee Rule of Appellate Procedure 32." (Order, 1-2.)

The State intends to participate in this appeal for the limited purpose of defending the constitutionality of Rule 1240-02-04-.04(3)(a)(1). However, given Plaintiff's failure to provide the requisite notice to the Attorney General in the trial court, Plaintiff's constitutional challenge should be deemed waived.

The purpose of providing notice to the Attorney General is to allow the State "to protect the public's interest in the result of the suit." Tenn. R. Civ. P. 24.04, *Advisory Comm'n Comment* (citing *Cummings v. Shipp*, 3 S.W.2d 1062 (1928)). Here, the State has an interest in ensuring that children in Tennessee are financially supported by their parents through the setting and enforcement of child support. *See State ex rel. Johnson v. Mayfield*, No. W2005-02709-COA-R3-JV, 2006 WL 3041865, at \*6 (Tenn. Ct. App. Oct. 26, 2006) (noting the State's interest "in ensuring that biological and adoptive parents support their children" and "in safeguarding public funds by making certain that biological parents fulfill their duties to support their children") (no perm. app. filed). The Tennessee Department of Human Services administers the child-support program operated pursuant to Title IV-D of the Social Security Act. *See*

Tenn. Code Ann. § 71-1-132. And the Department promulgates the child support guidelines, one of which is the subject of Plaintiff's constitutional challenge. *See* 42 U.S.C. § 667(a) ("Each State, as a condition for having its State plan approved under this part, must establish guidelines for child support award amounts within the State."); Tenn. Code Ann. § 71-1-132 (providing rulemaking authority); Tenn. Comp. R. & Regs. 1240-02-04 (child support guidelines).

"Before [this Court] can consider an attack on the constitutionality of a statute, the record must reflect compliance" with the laws requiring that the Attorney General be provided notice of the challenge. *Tennison Bros., Inc. v. Thomas*, 556 S.W.3d 697, 731 (Tenn. Ct. App. 2017). Failure to provide such notice results in waiver of the issue. *See id.* at 731. "The Tennessee Supreme Court has noted that the failure to provide notice of a constitutional challenge to the Attorney General . . . is fatal 'except to the extent the challenged statutes are so clearly or blatantly unconstitutional as to obviate the necessity for any discussion.'" *Buettner v. Buettner*, 183 S.W.3d 354, 358 (Tenn. Ct. App. 2005) (quoting *In re Adoption of E.N.R.*, 42 S.W.3d 26, 28 (Tenn.2001)). And "[t]he child support guidelines are not clearly or blatantly unconstitutional." *Id.*; *see also id.* (finding the constitutional challenge waived).

It matters not that Plaintiff bases his constitutional challenge on federal preemption principles. "Statutory preemption arguments are not treated differently than other arguments with regard to waiver." *Roberts v. Roberts*, No. M2017-00479-COA-R3-CV, 2018 WL 1792017, at \*9 (Tenn. Ct. App. Apr. 16, 2018) (no perm. app. filed). "[T]he United States Supreme Court has held that courts have discretion to rule that

preemption arguments were waived by failure to timely raise and properly support arguments to that effect.” *Id.* (citing *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 487 (2008)). And this Court has found federal-preemption issues waived when the circumstances warranted such a finding. *See Roberts*, 2018 WL 1792017, at \*8-9; *Dajani v. New S. Fed. Sav. Bank*, No. M2007-02444-COA-R3-CV, 2008 WL 5206275, at \*4 (Tenn. Ct. App. Dec. 12, 2008); *Wells v. Tenn. Homesafe Inspections, LLC*, No. M2008-00224-COA-R3-CV, 2008 WL 5234724, at \*3 (Tenn. Ct. App. Dec. 15, 2008).

The circumstances here warrant a finding that Plaintiff’s preemption challenge is waived. If the Court should determine otherwise, however, the State respectfully requests that it be afforded 30 days from the date of the Court’s ruling to obtain and review the appellate record and to file a brief in support of the constitutionality of Tenn. Comp. R. & Regs. 1240-02-04-.04(3)(a)(1).

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appearance has been forwarded by this Court's electronic filing system and/or first-class U.S. Mail, postage paid to:

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on this the 7th day of August 2023.

/s/ Amber L. Barker  
**AMBER L. BARKER**  
Senior Assistant Attorney General