

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED
05/19/2020
Clerk of the
Appellate Courts

**METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON
COUNTY ET AL. v. TENNESSEE DEPARTMENT OF EDUCATION ET
AL.**

**Chancery Court for Davidson County
No. 20-0143-II**

**No. M2020-00682-COA-R9-CV
and
No. M2020-00683-COA-R9-CV**

ORDER

Governor Bill Lee, the Tennessee Department of Education, and Penny Schwinn, Commissioner of the Tennessee Department of Education (“the State Defendants”) have filed a Tenn. R. App. P. 9 application for permission to appeal from an order entered by the Chancery Court for Davidson County declaring the Tennessee Education Savings Account Pilot Program (“ESA Program”), Tenn. Code Ann. §§ 49-6-2601 to -2612, to be unconstitutional and enjoining its implementation and enforcement. Two groups of intervening defendants have also filed Tenn. R. App. P. 9 applications for permission to appeal.¹ The trial court entered its judgment on May 4, 2020, but sua sponte granted permission to appeal under Tenn. R. App. P. 9. On May 13, 2020, the trial court denied the defendants’ joint motion for a stay pending appeal. Thus, the defendants have also moved this Court for review of the May 13, 2020 order and for a stay pending appeal under Tenn. R. App. P. 7 and Tenn. R. Civ. P. 62.

Having reviewed the applications, the answer, and the supporting documents, we concur with the trial court that this is an appropriate case for an interlocutory appeal as to two of the issues raised. We also find that the appeal should be expedited. We decline,

¹ One of the intervening defendants’ applications was assigned the same appeal number as the State Defendants’ application, M2020-00683-COA-R9-CV. The other intervening defendants’ application was assigned a different appeal number, M2020-00682-COA-R9-CV. All three applications shall be consolidated under No. M2020-00683-COA-R9-CV.

however, to stay the trial court's judgment pending resolution of the appeal.

It is, therefore, ordered that the applications for permission to appeal are granted. The appeals shall be consolidated under No. M2020-00683-COA-R9-CV. The State Defendants and the intervening defendants shall all proceed as appellants for the purposes of briefing and oral argument. The issues on appeal shall be limited to the following:

- 1) Whether the trial court erred in ruling that the ESA Program violates the Home Rule Amendment, Article XI, Section 9, of the Tennessee Constitution;
- 2) Whether the trial court erred in ruling that the county government plaintiffs have standing to challenge the constitutionality of the ESA Program under the Home Rule Amendment.

It is further ordered that the trial court clerk shall prepare and transmit a record within twenty (20) days following the entry of this order. The appellants shall file their briefs within twenty (20) days after the record is filed. The appellees shall file their briefs within twenty (20) days after the last appellants' brief is filed. Any reply brief shall be filed within ten (10) days after the appellees' briefs are filed. Oral argument shall be heard on August 5, 2020, at 1:00 P.M. via live streaming video conference, unless Covid-19 pandemic restrictions are lifted so as to allow in-person argument.

It is further ordered that the "Defendants' Motion for Review of Order Denying Stay of Injunction," the "Parent Intervenor-Defendants/Appellants' Amended Joint Emergency Motion for Review of Stay Order," and the "Intervenor-Defendants/Appellants Greater Praise Christian Academy; Sensational Enlightenment Academy Independent School; Ciera Calhoun; Alexandria Medlin; and David Wilson, Sr.'s Motion for Review of Order Denying Stay of Injunction Pending Appeal, Pursuant to T.R.A.P. 7" are denied.

PER CURIAM