IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

RON AND KATHY TEAGUE, et al. PLAINTIFFS

v. CASE NO. 6:10-CV-6098

ARKANSAS BOARD OF EDUCATION, et al DEFENDANTS

APPELLANTS' RESPONSE TO INTERVENORS' MOTION FOR LIMITED STAY AND MAGNET COVE DEFENDANTS' PETITION TO ADOPT SAME

Appellants Ron and Kathy Teague and Rhonda Richardson, for their Response to Intervenors' Motion for Limited Stay and the Petition of the Magnet Cove Defendants to Adopt the Intervenors' Motion for Limited Stay, state:

1. Intervenors state that they have no intention of appealing the Court's Judgment and Memorandum Opinion and Order.

2. The Magnet Cove Defendants apparently adopt the Intervenors' statement and have no intention of appealing the Court's Judgment and Memorandum Opinion and Order.

3. The remedy of seeking a stay pending appeal may be sought only by parties who appeal the judgment. The four factors set forth in *Brady*

v. NFL, 640 F.3d 785, 789 (8th Cir. 2011), all require that the "applicant" for the stay demonstrate irreparable injury and likelihood of success on the merits. "The most important factor is the appellant's likelihood of success on the merits." *Id.* (citation omitted).

4. Intervenors and the Magnet Cove Defendants are not appellants and cannot show either likelihood of success on the merits or irreparable injury. They therefore cannot show the elements required for a stay.

5. Intervenors and Magnet Cove Defendants have no standing to request a stay of any kind.

6. Intervenors and Magnet Cove Defendants' request for a stay of this Court's injunction against the entire Act suggests that they did not believe or intend that the Court would go as far as it did in granting the Intervenors' argument to invalidate the entire Arkansas Public School Choice Act of 1989 or the Magnet Cove Defendants' "joinder" in that argument.

7. Intervenors' and Magnet Cove Defendants' current request for a stay of this Court's injunction against the entire Act is inconsistent with the relief they argued for and received from this Court.

8. The two preceding points are additional reasons why Appellants are likely to prevail on the merits of their appeal.

9. The Intervenors and the Magnet Cove Defendants do not and cannot point to any complaint or other legal process by which any party to this case sued the State of Arkansas for an injunction barring the State from applying the Arkansas Public School Choice Act of 1989.

10. The Intervenors and the Magnet Cove Defendants concede that the State took no position on severability before this Court. Document 121 at pp. 7-8.

11. The fact that the Intervenors and the Magnet Cove Defendants now request a stay of the injunction that they argued for and received from this Court demonstrates that they have no real stake in that issue, which goes to their standing to raise severability, and that the Court's injunction against the entire Act was moot, which goes to the point that the severability issue was never properly raised. If these parties had a real stake in the matter, they would not flip-flop.

12. The points in the preceding paragraph are additional reasons why Appellants are likely to prevail on the merits of their appeal.

13. Intervenors and the Magnet Cove Defendants concede that Plaintiff-Appellants have demonstrated irreparable harm if the stay they have requested is not granted. Document 121 at pp. 13-14 ("The Plaintiffs are correct in one limited respect: to the extent to which they [Appellants]

wish to attend a school in a district other than the one in which they reside, this Court's order forecloses such a choice transfer pursuant to the terms of the 1989 Act.").

14. Intervenors and the Magnet Cove Defendants appear to concede that this Court's injunction against the entire Act casts uncertainty and irreparable harm on thousands of Arkansas schoolchildren and families and countless public school districts. Document 121 at p. 15. They argue only that "blame" for this rests on Appellants. *Id.* While Appellants disagree with Intervenors on who is to blame, the question on a stay application is the existence of irreparable injury, not "blame" for it.

15. Intervenors allude to an email conversation in advance of the filing of Appellants' appeal and motion for stay in which Intervenors requested "suspending any appeals" until the General Assembly can repair the damage inflicted by the injunction against the entire Act. Appeals must be filed within 30 days of judgment, Fed. R. App. P. 4, and there is no basis for delaying appeals on the basis represented by Intervenors. Appellants, who have personal, concrete stakes in this case and were awarded an injunction against the race provision of the Act, had already decided to appeal the broader injunction and had stated that decision publicly and in response to Intervenors' email.

16. Now that Intervenors and the Magnet Cove Defendants have requested a stay even though they have no standing to do so, all parties in this case recognize that this Court should stay the effect of the injunction against the entire Act in some manner. Appellants will explain in response to the State's motion for stay why the State's requested stay is inappropriate in this Equal Protection action and why the Court should grant the stay requested by Appellants.

WHEREFORE, Appellants respectfully request that this Court deny the Motion and Petition of Intervenors and the Magnet Cove Defendants and grant Appellants all other just and proper relief.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of June, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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