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 MOTION FOR STAY FROM STATE OF ARKANSAS

Appellants, Ron and Kathy Teague and Rhonda Richardson, for their Response to the State's Motion to Stay, state:

1. Appellants agree with the State and all other parties that the Court's injunction against the entire Arkansas Public School Choice Act of 1989 should be stayed pending appeal, but not in the manner requested by the State.

The State's Stay Request Would Violate Equal Rights

2. The State seeks to distinguish between those who were granted transfers under the Act while it contained the unconstitutional racial limitation, and those who were not granted transfers under that Act. This distinction is impermissible under the Equal Protection Clause.

3. The Equal Protection Clause demands that the State treat every student equally and not discriminate on the basis of race. As this Court has determined, the Act on its face and as applied by the State discriminated against people based on race, and Appellants were denied transfers under the Act for the school year 2010-11 solely because of their race.

4. Appellants properly applied for transfer under the Act well before this Court ruled on June 8, 2012, and this Court determined that the racial limitation that caused denial of their transfers was prohibited by the Equal Protection Clause of the Fourteenth Amendment.

5. But for the unconstitutional racial limitation, Appellants would have transferred under the Act before June 8, 2012.

6. The State's requested stay singles out Appellants as the only people known to the parties who would *not* have the benefit of the stay.

7. The Equal Protection Clause does not permit the State to treat citizens differently because of their race, yet the State's requested stay in effect does just this; Appellants' inability to enjoy the transfers they sought two years ago under the stay as requested by the State would be traceable only to their race.

8. The Supreme Court applied this Equal Protection principle in *Griffin v. County School Board of Prince Edward County*, 377 U.S. 218

(1964), where Prince Edward County shut down the public schools rather than permit desegregation. That case stands for the proposition that the Equal Protection Clause demands that, if anyone enjoys a public education benefit, all people should have equal access to that benefit regardless of race.

9. Here, the Court treated all students equally by depriving everyone of the benefit of the Act. The State's request to open that benefit up to some but not to all, including Appellants' children, does not square with the principle of equality.

10. If anyone is permitted to enjoy a transfer under the Act after June 8, 2012, that transfer cannot be denied to others based on race. The State's proposed stay would conflict with this principle. Appellant's proposed stay honors it.

The State's Request for "Clarification" Pending Appeal Is Improper

11. The State has filed a notice of appeal. So have Appellants. No party has filed a post-judgment motion to alter or amend the judgment or for other relief under Fed. R. Civ. P. 59 or 60.

12. While the State claims that it seeks "clarification" of this Court's injunction against application of the entire Act, the "clarification" can come about only if the Court alters or amends its Judgment or Memorandum Opinion and Order. Specifically, asking this Court to declare

that its broad injunction is to be applied only prospectively, and not as to all children who had already sought transfers, including Appellants' children, would require a change to the Judgment or Memorandum Opinion and Order.

13. The State filed a notice of appeal at the same time as it filed its request for clarification. The notices of appeal filed by the State and by Appellants divested this Court of jurisdiction over the Judgment and Opinion being appealed. *United States v. Christy*, 3 F.3d 765 (4th Cir. 1993); *compare Malcolm v. Honeoye Falls-Lima Cent. School Dist.,* 757 F. Supp. 2d 256 (W.D.N.Y. 2010).

14. Even though the State and Appellants have filed notices of appeal, a party with proper standing could still file a motion to alter or amend the Judgment under Fed. R. Civ. P. 59 or 60. *Malcolm v. Honeoye Falls-Lima Cent. School Dist.,* 757 F. Supp. 2d 256 (W.D.N.Y. 2010). This would require the State or the Intervenors or Magnet Cove Defendants to request that this Court amend the Judgment to set aside the injunction against the entire Act.

15. Appellants would welcome a request from other parties that this Court amend the Judgment to set aside the injunction against the entire Act. So far in this case, Appellants have been the only parties opposing an

injunction against the entire Act. The State refused to take a position on severability, and Intervenors, apparently joined by Magnet Cove Defendants, sought to strike down the entire Arkansas Public School Choice Act of 1989 based on severability.

WHEREFORE, Appellants respectfully request that this Court deny the State's motion for stay, grant Appellants' requested stay, and grant all other just and proper relief.

Andi Davis #2008056
ANDI DAVIS LAW FIRM, P.A.
534 Ouachita Avenue, Suite 2
Hot Springs, AR 71901
(501) 622-6767 - phone
(501) 622-3117 - fax

And

WILLIAMS & ANDERSON PLC
111 Center Street, 22nd Floor
Little Rock, AR 72201
Telephone: (501) 372-0800
Facsimile: (501) 372-6453

By: /s/ Jess Askew III
Jess Askew III, Ark. Bar No. 86005
jaskew@williamsanderson.com

Attorneys for Appellants

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:

- **William C. Brazil**
  bamo@conwaycorp.net,lanaymoney@gmail.com
- **Andrea L. Davis**
  andidavis32@gmail.com,kimbabb10@gmail.com
- **Whitney Foster**
  wfoster@fc-lawyers.com,tsims@fc-lawyers.com
- **David M. Fuqua**
  dfuqua@fc-lawyers.com,bgaines@fc-lawyers.com
- **Scott P. Richardson**
  scott.richardson@arkansasag.gov,agcivil@arkansasag.gov, danielle.williams@arkansasag.gov
- **Allen P. Roberts**
  allen@aprobertslaw.com,ashley@aprobertslaw.com

/s/ Jess Askew III