

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

ROXANNE McEWEN, et al.

Plaintiffs,

v.

BILL LEE, et al.,

Defendants.

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Case No. 20-0242-II

**ORDER**

This case regards a challenge to the Tennessee Education Savings Account Pilot Program, codified at Tenn. Code Ann. §§ 49-6-2601, *et seq.* (“the ESA Act”). The Court has pending before it the following motions:

- Greater Praise Christian Academy Intervenor Defendants’ Motion to Dismiss Pursuant to Tenn.R.Civ.P. 12.02(6), filed March 27, 2020;
- State Defendants’ Motion to Dismiss, filed April 15, 2020;
- Bah, Diallo, Davis and Brumfield Intervenor Defendants’ Motion for Judgment on the Pleadings, filed April 15, 2020;
- State Defendants’ Motion to Consolidate with 20-143-II (“the *Metro Case*”), filed April 15, 2020; and
- Plaintiffs’ Motion for a Temporary Injunction Pursuant to Tenn.R.Civ.P. 65.04, filed April 3, 2020.

The Court heard all of these motions, except for the Motion to Consolidate, on April 29, 2020.<sup>1</sup> The Court addresses each of these motions, the particular relief requested, and a finding or determination regarding a delay in finding, as to each.

*Greater Praise Christian Academy Intervenor Defendants' Motion to Dismiss Pursuant to Tenn.R.Civ.P. 12.02(6)*

In their motion to dismiss, these Intervenor Defendants assert that Plaintiff Russell does not have standing for any of her claims, that all Plaintiffs lack standing to bring the Home Rule Amendment claim (Count I) and the Education claim (Count III) and the Appropriations claim (Count V), and that all five claims should be dismissed as failing to state a claim upon which relief can be granted. The Court is taking this motion under advisement, declining to rule at this time pending further proceedings in the *Metro* case based upon its grant of summary judgment, including declaratory and injunctive relief, on those plaintiffs' Count I regarding the State Defendants' violation of the Home Rule Amendment.

*State Defendants' Motion to Dismiss*

In their motion to dismiss, the State Defendants assert that Plaintiffs do not have standing for any of their claims, that their Equal Protection Claim (Count II) is not ripe for determination and is a non-justiciable political question, and that all five claims should be dismissed as failing to state a claim upon which relief can be granted. The Court is taking this motion under advisement, declining to rule at this time pending further proceedings in the *Metro* case based upon its grant of summary judgment, including declaratory and injunctive relief, on those plaintiffs' Count I regarding the State Defendants' violation of the Home Rule Amendment.

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<sup>1</sup> The Motion to Consolidate, though set for hearing, was reserved for hearing on another date because it is not time sensitive and most appropriate for determination after the resolution of the pending dispositive motions and any related interlocutory appeals.

*Bah, Diallo, Davis and Brumfield Intervenor Defendants' Motion for Judgment on the Pleadings*

In their motion for a judgment on the pleadings, these Intervenor Defendants ask the Court to dismiss Plaintiffs' claims and enter a judgment in their favor because the complaint fails to state a claim upon which relief can be granted. The Court is taking this motion under advisement, declining to rule at this time pending further proceedings in the *Metro* case based upon its grant of summary judgment, including declaratory and injunctive relief, on those plaintiffs' Count I regarding the State Defendants' violation of the Home Rule Amendment.

*Plaintiff's Motion for a Temporary Injunction Pursuant to Tenn.R.Civ.P. 65.04*

In their proposed order for temporary injunctive relief, Plaintiffs ask the Court to make favorable findings and conclusions based upon two of their five claims – Count I regarding the Home Rule Amendment, and Count V regarding the Appropriations for the ESA Act. The irreparable injury they assert to support the request for extraordinary injunctive relief is the need to a determination regarding the constitutionality of the ESA Act before the upcoming school year, and thus before their tax dollars are diverted for the program. As discussed at the April 14, 2020 status conference, a determination regarding constitutionality is time sensitive given the ESA Act program deadlines, and the need for school systems and private schools and parents to make decisions for the upcoming school year. At that conference, the State agreed to postpone notification to parents of acceptance into the ESA program until May 13, 2020, which would allow the April 29, 2020 hearing to occur, and a short time for the Court to decide on the dispositive issues in the parties' motions. In particular, to make an initial determination regarding constitutionality.

In the *Metro* case, the Court has entered a Memorandum and Order finding the ESA Act unconstitutional based upon the Home Rule Amendment, one of the bases for Plaintiffs' injunction

motion in this case. The Court also simultaneously approved an interlocutory appeal of its decision, pursuant to Tennessee Rule of Appellate Procedure 9, so as not to delay a review of its decision. In that Memorandum and Order, the Court has granted the relief the Plaintiffs seek with their motion, albeit in the companion *Metro* case. As set out above, the Court has reserved ruling on the State and Intervenor Defendants' Rule 12 motions. Given all of these circumstances, the Court denies the Plaintiffs' motion at this time, without prejudice of reconsideration of extraordinary relief in the future. The Court has determined this is the most appropriate course given the pending dispositive issues in both cases, and the need for an expedited determination of the constitutionality questions regarding the ESA Act.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that the State Defendants' motion to dismiss and motion to consolidate, and the Intervenor Defendants' Rule 12 motions, are RESERVED for determination at a later date.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Plaintiffs' motion for a temporary injunction is DENIED as MOOT given the Court's ruling in the *Metro* case.

It is so ORDERED.

  
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ANNE C. MARTIN  
CHANCELLOR, PART II

cc: Robert E. Cooper, Jr.  
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