IN THE COURT OF APPEALS OF TENNESSEE

AT NASHVILLE

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, et al., Plaintiffs/Appellees, vs. TENNESSEE DEPARTMENT OF EDUCATION, et al., Defendants/Appellants. and NATU BAH, et al., Intervenor-Defendants/Appellants.	No. M2020-00682-COA-R9-CV No. M2020-00683-COA-R9-CV Davidson County Chancery Court No. 20-0143-II

BRIEF OF *AMICI CURIAE* McEWEN PLAINTIFFS IN OPPOSITION TO DEFENDANTS' APPLICATIONS FOR PERMISSION TO APPEAL AND MOTIONS FOR REVIEW OF STAY ORDER

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I. Interest of *Amici*

Roxanne McEwen, David P. Bichell, Terry Jo Bichell, Lisa Mingrone, Claudia Russell, Inez Williams, Sheron Davenport, Heather Kenney, Elise McIntosh, Tracy O'Connor, and Apryle Young (hereinafter the "McEwen Plaintiffs"), as parents and community members in Shelby and Davidson Counties, are directly affected by the Tennessee Education Savings Account Pilot Program ("Voucher Law"), T.C.A. §49-6-2601, *et seq.*, and can provide the Court with a distinct perspective on the effects of this unconstitutional law. The Voucher Law applies only to Davidson and Shelby Counties, and the ESA voucher program is funded with taxpayer dollars intended for Metro Nashville Public Schools and Shelby County Schools. The McEwen Plaintiffs are all residents and taxpayers in Davidson and Shelby Counties. Ten of the McEwen Plaintiffs are parents of public school students in Metro Nashville Public Schools or Shelby County Schools. The eleventh plaintiff, Dr. Claudia Russell, spent her entire career as an educator and administrator in Metro Nashville Public Schools. The McEwen Plaintiffs actively advocate for adequate and equitable educational opportunities in Metro Nashville Public Schools and Shelby County Schools. They also represent a diverse cross-section of Davidson and Shelby Counties' residents and public school families. Further, the McEwen Plaintiffs have a strong legal interest in the instant case, *Metropolitan Gov't of Nashville and Davidson Counties v. Tenn. Dep't of Educ.*, because they are plaintiffs in a lawsuit with overlapping legal questions. Although the cases have not been formally consolidated, the McEwen Plaintiffs have also been involved in all proceedings in the *Metro Gov't* case.

The McEwen Plaintiffs, as taxpayers and public school parents, have a stake in the outcome of this case that is distinct from that of the plaintiffs-appellees in *Metro Gov't* (the "Metro Plaintiffs"). Moreover, as the Chancery Court indicated, the outcome of their own case, *McEwen v. Lee*, is inextricably intertwined with the outcome of the appeal in this case. The McEwen Plaintiffs can provide this Court with information and analysis about irreparable harm resulting from implementation of the Voucher Law from the perspective of directly affected groups who are not currently represented in the *Metro Gov't* case. They will therefore assist the Court in arriving at a more comprehensive understanding of the matters at issue in this case.

II. Introduction

The Court should deny Defendants' applications for interlocutory appeal, as well as their motions for review of the Chancellor's order denying their motions to stay the Chancery Court's injunction.

Defendants have not come close to establishing that ***any*** of the Tenn. R. App. 9(a) factors warrant interlocutory appeal. First, Defendants have utterly failed to present any evidence of irreparable harm. Because the Voucher Law, by its own terms, is not required to be implemented until the 2021-2022 school year, interlocutory review is unnecessary to a timely resolution of an appeal. Moreover, the Intervenor-Defendants' affidavits are profoundly inadequate to demonstrate irreparable harm because, while they may establish that Intervenor-Defendants are dissatisfied with their current schools, they have made no attempt ***whatsoever*** to demonstrate that the Voucher Law will remedy the challenges they describe. Second, interlocutory review is

not necessary to prevent protracted litigation. Rather, because the Chancery Court's order granting summary judgment is dispositive of the Metro Plaintiffs' claims, there is no reason that the Chancery Court cannot promptly enter a final judgment from which Defendants can take a traditional appeal. Third, for these same reasons, the Order is reviewable after a final judgment, and the need to develop a uniform body of law will be unimpaired by denial of interlocutory review.

Nor have Defendants met their heavy burden to demonstrate that the Chancery Court abused its discretion by denying their motions to stay enforcement of its injunction, a decision made after comprehensive briefing and oral argument. While Defendants may disagree with the result, this provides no basis for overturning the denial of the stay; that is within the sound discretion of the trial court.

For the reasons stated herein, Defendants' applications for permission to appeal, and motions to stay the Chancery Court's injunction, should be denied.

III. Statement of Relevant Facts and Procedural History

In May 2019, Tennessee's General Assembly passed the Voucher Law, codified at T.C.A. §49-6-2601, *et seq.*, which creates a private school voucher program in Davidson and Shelby Counties. McEwen Pls' App., Ex. 1 at APP016. Under the eligibility criteria in the statute, the only two counties that can ever be subject to the Voucher Law are Shelby and Davidson Counties. McEwen Pls.' App., Ex. 1 at APP017-18; McEwen Pls.' App., Ex. 2, at APP053-54. The voucher program established by the Voucher Law is funded through the Basic Education Program ("BEP"), which is Tennessee's statutory formula for calculating the amount of

funding each public school district must spend to provide an adequate education to its students. T.C.A. §49-3-101, *et seq.*; McEwen Pls.' App., Ex. 1 at APP013-14, APP019. The BEP amount consists of a share the State must contribute from state funds and a share the county must contribute from local tax dollars. T.C.A. §49-3-356; McEwen Pls.' App., Ex. 1 at APP014. The Voucher Law mandates that, for each student who uses a voucher, an amount representing the required state and local shares of a school district's per-pupil BEP allocation must be subtracted "from the State BEP funds otherwise payable to" Metro Nashville Public Schools and Shelby County Schools. T.C.A. §§49-6-2605(a)-(b)(1); McEwen Pls.' App., Ex. 1 at APP020. Although the Voucher Law does not require the voucher program to begin until the 2021-2022 school year, T.C.A. §49-6-2604(b), the State has rushed to make vouchers available for the 2020-2021 school year, in spite of pending legal challenges. McEwen Pls.' App., Ex. 2 at APP050-53.

In February and March 2020, respectively, the Metro Plaintiffs and the McEwen Plaintiffs each filed a lawsuit in Davidson County Chancery Court challenging the constitutionality of the Voucher Law. Like the Metro Plaintiffs, the McEwen Plaintiffs allege that the Voucher Law violates the Tennessee Constitution's Home Rule provision because it affects only Davidson and Shelby Counties but did not require or receive local approval from those counties. McEwen Pls.' App., Ex. 1 at APP030; McEwen Pls.' App., Ex. 2 at APP065-72. The McEwen Plaintiffs are residents and taxpayers in Shelby and Davidson Counties, pay state and local taxes to support their districts' public schools, and ten of the McEwen plaintiffs are parents of public school students in Metro

Nashville Public Schools or Shelby County Schools. McEwen Pls.' App., Ex. 1 at APP006-09; McEwen Pls.' App., Ex. 2 at APP048; McEwen Pls.' App., Ex. 3 at APP092-137. The State and Intervenor Defendants in *Metro Gov't* and *McEwen* are nearly identical.

The Metro Plaintiffs filed a motion for summary judgment on their Home Rule claim. Parent Intervenor-Defs./Appellants' Amended App. Supp. Joint Emergency Mot. Review Stay Order ("Intervenors' App."), Ex. 3. The McEwen Plaintiffs filed a Motion for Temporary Injunction Pursuant to Tenn. R. Civ. P. 65.04, which detailed the irreparable harm they would suffer if the voucher program were to be implemented in the 2020-2021 school year. McEwen Pls.' App., Ex. 2. Motions to dismiss were filed in both cases. On April 29, 2020, the Chancery Court heard extensive oral argument on all the motions in both cases at the same hearing. On May 4, 2020, the Chancery Court issued a Memorandum and Order (the "Summary Judgment Order") granting the Metro Plaintiffs' motion for summary judgment and enjoining the Defendants from implementing and enforcing the Voucher Law. Intervenors' App., Ex. 5. At the same time, the Court issued a separate Order finding the McEwen Plaintiffs' Motion for a Temporary Injunction moot in light of the Summary Judgment Order, Intervenors' App., Ex. 6, and stating that "the Court has granted the relief the [McEwen] Plaintiffs [sought] with their motion." *Id.* at APP114. The Chancery Court took under advisement decisions on all other motions in the instant case and in *McEwen*. Intervenors' App., Ex. 5 at APP109; Intervenors' App., Ex. 6 at APP114.

On May 5, the State and Intervenor-Defendants filed a Joint Motion for Stay of Injunction During Pendency of Appeal. On May 6, 2020, the State and the Beacon Center/Institute for Justice Intervenors separately filed applications for permission to appeal to this Court under Tenn. R. App. P. 9. On May 7, 2020, the Chancery Court held a hearing on the joint motion for a stay pending appeal, which included oral arguments and briefing from the Metro and McEwen Plaintiffs, as well as the State and Intervenor Defendants. Intervenors' App., Ex. 10; *see also* App. to State Defs.' Mot. Review Order Denying Stay Inj. ("State's App."), Exs. 4-5. The Chancery Court issued a bench ruling denying a stay pending appeal, Intervenors' App., Ex. 10 at APP256-57, and issued an order confirming the ruling on May 13, 2020. Intervenors' App., Ex. 11.

IV. Interlocutory Appeal Is Unwarranted

"An interlocutory appeal is an exception to the general rule that requires a final judgment before a party may appeal as of right." *State v. Gilley*, 173 S.W.3d 1, 5 (Tenn. 2005). "As a result, interlocutory appeals to review pretrial orders or rulings, *i.e.*, those entered before a final judgment, are 'disfavored.'" *Id.* (quoting *United States v. MacDonald,* 435 U.S. 850, 853 (1978)). In determining whether to grant interlocutory review, courts must consider:

> (1) the need to prevent irreparable injury, giving consideration to the severity of the potential injury, the probability of its occurrence, and the probability that review upon entry of final judgment will be ineffective; (2) the need to prevent needless, expensive, and protracted litigation, giving consideration to whether the challenged order would be a basis for reversal upon entry of a final judgment, the

> probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed; and (3) the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of final judgment.

Tenn. R. App. P. 9(a). Here, none of these three factors supports interlocutory review.

A. Defendants Have Failed to Establish Any Irreparable Injury

Interlocutory appeal should be denied because Defendants have utterly failed to show any irreparable injury that would be prevented by granting an extraordinary appeal. This alone is fatal to their application. *See State v. Gawlas*, 614 S.W.2d 74, 75 (Tenn. Crim. App. 1980) (noting that "the Advisory Commission Comment to Rule 9 indicates that the procedures outlined in that rule 'are essentially those followed in federal practice . . . under 28 U.S.C. §1292(b)'" and that "federal courts allow appeals from interlocutory orders only 'when they have a final and irreparable effect on the rights of the parties'"). In contrast, ***granting*** Defendants' application ***would indisputably cause irreparable harm*** to the McEwen Plaintiffs, including the loss of their constitutional right to approve local legislation pursuant to the Home Rule Amendment and the continued expenditure of tax dollars on the unlawful voucher program.

First, the State asserts that, absent interlocutory appeal, it will be irreparably harmed because it will have been "wrongly enjoined from enforcing one of its duly enacted laws." Defendants' Application for

Permission to Appeal at 10. The voucher program, however, was not mandated by the General Assembly to be available until the fall of 2021. T.C.A. §49-6-2604(b). While the State may prefer to implement the program earlier than required, denial of interlocutory appeal will not prevent the program's timely implementation in the unlikely event that the Voucher Law is upheld on appeal. *See* McEwen Pls. App., Ex. 4 at APP457-58. Furthermore, the State's suggestion that being enjoined "from effectuating statutes enacted by representatives of its people" constitutes irreparable harm (Defendants' Application for Permission to Appeal at n.6 (quoting *Maryland v. King*, 567 U.S. 1301 (2012))) is unpersuasive given the Chancery Court's ruling that the ***State itself*** had frustrated the will of the people in enacting the Voucher Law without their constitutionally required consent. Intervenors' App., Ex. 5 at APP106.

Second, Intervenor-Defendants contend that, absent interlocutory review, parents and children will be foreclosed from obtaining a voucher and forced to return to "underperforming schools" where their children may face adverse circumstances. However, no Defendant has put forth any evidence ***whatsoever*** that, even if their child receives a voucher, they will be accepted at a specific private school or that the private school they wish to attend will offer a superior education or remedy their current concerns. *See* McEwen Pls. App., Ex. 4 at APP458-59. Nor has any Defendant put forth any evidence of attempts to resolve these issues using the mechanisms and alternatives provided within the public school system, such as the robust school choice programs available in each school district. In other words, Defendants put forth no evidence ***at all***

of "the severity of the potential injury, [or] the probability of its occurrence." Tenn. R. App. P. 9(a). There simply is no evidence that Defendants would suffer irreparable harm absent the voucher program, nor that allowing the State to continue expending funds and resources on this unconstitutional law would remedy Defendants' concerns.

In contrast, were the Voucher Law allowed to proceed, the McEwen Plaintiffs would ***indisputably*** suffer irreparable harm. *See* McEwen Pls. App., Ex. 2 at APP076-78. First, "[t]he loss of a constitutional right, even for a minimal period[] of time, unquestionably constitutes irreparable injury." *Tanco v. Haslam*, 7 F. Supp. 3d 759, 769-70 (M.D. Tenn. 2014), *rev'd sub nom. DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014), *rev'd sub nom. Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) (internal quotations omitted). Here, the Chancery Court ruled that the State violated the Home Rule provision when it enacted the Voucher Law. Intervenors' App., Ex. 5 at APP106. If implementation of the Voucher Law is allowed to proceed, the McEwen Plaintiffs will continue to suffer irreparable harm from the loss of their constitutional right to local approval under the Home Rule provision.

Second, if implementation of the Voucher Law is allowed to proceed, the McEwen Plaintiffs will continue to suffer irreparable harm from the spending of taxpayer dollars to implement this unconstitutional law. *See Pope v. Dykes*, 93 S.W. 85, 88 (Tenn. 1905) (crediting plaintiff's contention that the misappropriation of public funds "will result in irreparable injury to the county and taxpayers"). Here, the Voucher Law has already unlawfully diverted over $1 million in public funds to a private vendor. McEwen Pls.' App., Ex. 1 at APP017. If the program continues, the State

plans to expend significant staff resources to implement the Voucher Law. State's App., Ex. 4. Specifically, if allowed to proceed, the State plans to hire 20 new employees to implement the voucher program by July 1, 2020. *Id.* Spending additional taxpayer funds to implement this unconstitutional law unquestionably causes the Plaintiffs to suffer irreparable harm.

Importantly, neither the State nor Intervenor-Defendants have ***ever disputed*** – in the Chancery Court or their motions before this Court – that these two injuries are sufficient to demonstrate irreparable harm to the McEwen Plaintiffs. McEwen Pls.' App., Ex. 4 at APP456.

Because Defendants have failed to show any irreparable injury whatsoever that would be prevented by an interlocutory appeal, and because the McEwen Plaintiffs would indisputably be harmed, interlocutory appeal should be denied.

B. Interlocutory Review Is Not Necessary to Prevent Protracted Litigation

Interlocutory review of the Chancery Court's Summary Judgment Order is not necessary to prevent "needless, expensive, and protracted litigation," Tenn. R. App. P. 9(a), and will only delay the entry of final judgment. *See Gilley*, 173 S.W.3d at 6. Under Rule 9(a), in determining whether interlocutory review is necessary to prevent needless litigation, courts should consider "whether the challenged order would be a basis for reversal upon entry of a final judgment, the probability of reversal, and whether an interlocutory appeal will result in a net reduction in the duration and expense of the litigation if the challenged order is reversed." Tenn. R. App. P. 9(a). These factors weigh against interlocutory review.

Here, it is interlocutory review itself that will needlessly protract this litigation by delaying entry of a final judgment, from which Defendants could take a direct appeal. *See generally Winter v. Smith*, 914 S.W.2d 527, 535 (Tenn. Ct. App. 1995) (discussing appeal as of right of summary judgments and partial summary judgments that are certified by courts as final orders); *cf. Gilley*, 173 S.W.3d at 6 (concluding that "interlocutory appeal was not likely to prevent needless, expensive and protracted litigation" in part because lower court's ruling can be challenged on direct appeal). If interlocutory review is denied, a final judgment will doubtlessly be obtained in short order.

Moreover, an interlocutory review that results in reversal of the Chancery Court's order would not result in a "net reduction in the duration [or] expense of the litigation." Tenn. R. App. P. 9(a). First, if the Chancery Court's order is reversed, the two remaining counts alleged by the Metro Plaintiffs in their Complaint – that the Voucher Law violates the Tennessee Constitution's Equal Protection and Education Clauses – still must be resolved in Chancery Court.[1] Therefore, an interlocutory review that results in reversal of the Summary Judgment Order would result in lengthier, not shorter, litigation. Second, Intervenor-Defendants cannot predict with any confidence that "[s]ince the Home Rule claim was resolved on the merits at summary judgment, no additional evidence will be permitted or required as to that claim on remand." Intervenors' App., Ex. 8, at APP156. If the Chancery Court's

[1] If the Chancery Court's determination that the Voucher Law violates the Home Rule Amendment is upheld on interlocutory appeal, then the Metro Plaintiffs' remaining claims would likely become moot.

partial summary judgment is reversed on interlocutory appeal, the claim may be remanded for further proceedings. Thus, interlocutory review would not be dispositive of all claims between the parties and would likely result in further litigation on the Home Rule Amendment if the Chancery Court's decision is reversed.

Interlocutory review is not necessary to avoid protracted litigation and instead may needlessly serve to extend it.

C. The Order Is Reviewable After Final Judgment

The final consideration under Rule 9(a) is "the need to develop a uniform body of law, giving consideration to the existence of inconsistent orders of other courts and whether the question presented by the challenged order will not otherwise be reviewable upon entry of the final judgment." Tenn. R. App. P. 9(a). Here, the Chancery Court's grant of summary judgment on the Home Rule claim could be appealed as a matter of right upon entry of a final judgment. *See* Tenn. R. App. P. 3(a); Tenn. R. Civ. P. 54.02. Thus, the need to develop a uniform body of law is not served by interlocutory appeal as the Chancery Court's rulings on the Home Rule Amendment and standing will be reviewable upon the entry of final judgment.

V. Defendants Have Not Come Close to Meeting the Heavy Burden Necessary to Justify a Stay

Subsequent to the Chancery Court's Memorandum and Order granting summary judgment and enjoining the State Defendants from implementing the Voucher Law, Defendants jointly moved, pursuant to Tenn. R. Civ. P. 62.03, for a stay of the injunction pending appeal. Rule 62.03 provides that "the court in its discretion may suspend relief or

grant whatever additional or modified relief is deemed appropriate during the pendency of the appeal." An appellate court's review of such a decision is limited to whether or not the trial court abused its discretion. *Open Lake Sporting Club v. Lauderdale Haywood Angling Club*, 511 S.W.3d 494, 505 (Tenn. Ct. App. 2015) ("A trial court's decision concerning a request to stay enforcement of an order is subject to an abuse of discretion standard of review."). The Chancery Court did not abuse its discretion in denying the stay of its order.[2] Therefore, Defendants' motions for review of this decision should be denied.

A. An Appellate Court Reviews the Denial of a Stay Using an Abuse of Discretion Standard of Review

Under Tennessee law, "[t]he determination of whether, and on what terms, to stay an injunction or the denial of an injunction is left to the discretion of the judge." *Gallatin Hous. Auth. v. Pelt*, 532 S.W.3d 760, 769 (Tenn. Ct. App. 2017). An appellate court cannot interfere with the trial court's decision to deny a stay unless that decision constitutes an abuse of discretion. *Open Lake Sporting Club*, 511 S.W.3d at 505. The abuse of discretion standard presents a high bar. *See, e.g.*, *Seven-Up Co. v. O–So Grape Co.*, 179 F. Supp. 167, 172 (N.D. Ill. 1959) ("And judicial precedent is legion which suggests that the likelihood of successfully urging an abuse of discretion in an appellate court is comparable to the chance which an ice cube would have of retaining its obese proportions while floating in a pot of boiling water."). Under the abuse of discretion

[2] Although the State Defendants also claim the Chancery Court expanded its injunction order, the court was simply clarifying its existing order due to the State's disregard of that order in the days immediately following its issuance. Intervenors' App., Ex. 10 at 255-57.

standard, an appellate court will not disturb a trial court's decision "so long as reasonable minds can disagree as to propriety of the decision made." *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (2001) (internal quotations omitted). When reviewing for abuse of discretion, an appellate court cannot substitute its judgment for that of the trial court. *Id.*

In moving for review of the trial court's order denying a stay, Defendants and Intervenor-Defendants completely ignore the abuse of discretion standard and ask this Court to engage in improper *de novo* review of the trial court's decision. The Court should reject this argument outright as it is contrary to Tennessee precedent.

B. The Chancery Court Did Not Abuse Its Discretion in Denying a Stay

It is clear that the trial court considered all the relevant facts and law in arriving at its decision denying the stay. In addition to hearing oral argument from all parties in *Metro Gov't* and *McEwen*, the Chancellor "read everything that was submitted . . . including the case law." Intervenors' App, Ex. 10 at APP254. Moreover, as discussed below, there is a reasonable – and compelling – factual and legal basis supporting the Chancery Court's ruling.

Rather than identify any possible abuse of discretion by the trial court, Defendants merely rehash the arguments they raised in their briefs and oral arguments on the various motions considered by the Chancery Court in *Metro Gov't* and *McEwen*, including the motion for a stay. It is clear that the basis for their stay motions before this Court is their disagreement with the Chancery Court's decision on the Home Rule claim. As the Chancellor indicated in ruling on that claim, she was

careful to "cover the issue thoroughly, be clear in my reasoning, and cite the authorities to support my decision." *Id.* at APP254-55. Disagreement with a trial court's ruling may be the basis for an appeal; however, it is not the basis for overturning a decision, such as denial of a stay, that is within the sound discretion of the trial court. The only basis for overturning the trial court's decision denying the stay is if it "reache[d] a decision which is against logic or reasoning." *Eldridge*, 42 S.W.3d at 85. Nowhere do Defendants suggest that the Chancery Court's decision is against logic or reasoning.

Even if this Court were to engage in *de novo* review of the Chancery Court's decision, Defendant's motions should still be denied. Defendants fail to establish any of the factors considered when evaluating a stay, namely the likelihood of success on appeal, irreparable harm, injury that outweighs the harm to others, or a public interest justifying the stay.[3]

As discussed in the McEwen Plaintiffs' Consolidated Opposition to Defendants' and Intervenor-Defendant's Motions to Dismiss, the Voucher Law clearly violates the Home Rule provision. McEwen Pls.' App., Ex. 5 at APP493-500. The Voucher Law affects Davidson and Shelby Counties in their well-established role in funding public education; and, given this effect on the counties – the relevant inquiry under the Home Rule amendment – it is immaterial that the Voucher Law refers to local

[3] Defendants cite two Tennessee cases that do not support their request for this Court to overturn the Chancery Court's order denying a stay. In *Dabora, Inc. v. Kline*, 884 S.W.2d 475 (Tenn. Ct. App. 1994), there is no indication of a request for a stay in the trial court. In *Combined Communs., Inc. v. Solid Waste Region Bd.*, No. 01A01-9310-CH00441, 1993 WL 476668 (Tenn. Ct. App. Nov. 17, 1993), both the trial court ***and*** the appellate court denied a stay pending appeal.

education agencies rather than specifically to counties. *Id.* at 19-24. Additionally, it is undisputed that the Voucher Law did not require or receive local approval. Thus the Chancery Court's decision is consistent with the plain language and intent of the Home Rule provision and is supported by established Tennessee precedent.

Furthermore, as set forth in §IV.A., *supra*, and in the McEwen Plaintiffs' briefing on the Motion for Stay in the Chancery Court, State's App., Ex. 5, Defendants fail to establish irreparable harm or any harm that could outweigh the inarguable harm to others. Additionally, there is no public interest that justifies action by this Court outside the normal course of appellate proceedings. To the contrary, there is a strong public interest in preventing the implementation of an unconstitutional statute and the expenditure of taxpayer funds thereon. McEwen Pls' App., Ex. 2 at 35. It is also in the public interest to maintain the *status quo* during the pendency of an appeal to avoid disruption to the education of students eligible for vouchers, as well as students enrolled in Shelby County Schools and Metro Nashville Public Schools. *Id.* at APP081-82.

Therefore, the motions for review of the Chancery Court's decision regarding a stay pending appeal must be denied.

VI. Conclusion

For the reasons stated, Defendants' applications for permission to appeal, and motions to stay the Chancery Court's injunction, should be denied.

DATED: May 18, 2020

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CERTIFICATE OF COMPLIANCE

I, Christopher M. Wood, hereby certify that BRIEF OF AMICI CURIAE McEWEN PLAINTIFFS IN OPPOSITION TO DEFENDANTS' APPLICATIONS FOR PERMISSION TO APPEAL AND MOTIONS FOR REVIEW OF STAY ORDER complies with the requirements of Tennessee Supreme Court Rule 46, Section 3, Rule 3.02(a)(1). According to Microsoft Word, exclusive of the Title/Cover page, Table of Contents, Table of Authorities, and Certificate of Compliance, the brief contains 4,341 words.

Dated: May 18, 2020

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been forwarded via electronic filing service and electronic mail to the following on this 18th day of May, 2020:

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