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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
CLEVELAND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DORIS SIMMONS-HARRIS, et al.,)
)
Plaintiffs)
)
v.)
)
DR. SUSAN TAVE ZELMAN,)
SUPERINTENDENT OF PUBLIC)
INSTRUCTION, STATE OF OHIO,)
)
Defendant)

Case No.: 1:99 CV 1740
JUDGE SOLOMON OLIVER, JR.

SUE GATTON, et al.,)
)
Plaintiffs)
)
v.)
)
DR. SUSAN TAVE ZELMAN,)
SUPERINTENDENT OF PUBLIC)
INSTRUCTION, STATE OF OHIO,)
et al.,)
)
Defendants)

Case No.: 1:99 CV 1818

ORDER

Currently pending before the court, pursuant to Fed. R. Civ. P. 62(c), is the State Defendants' Motion to Stay the court's August 24, 1999, order granting Plaintiff's Motion for Preliminary Injunction. Both sets of Plaintiffs have filed a Joint Brief in Opposition to the Motion to Stay. For

the reasons set forth below, the State Defendants' Motion to Stay (Doc. No. 49 in Case No. 1:99CV1740; Doc. No. 25 in Case No. 1:99CV1818) is granted in part and denied in part.

On June 29, 1999, Ohio Amended Substitute House Bill No. 282 ("Education Budget Bill") was passed by the Ohio State Legislature, instructing the Ohio State Superintendent of Public Instruction to establish the Pilot Project Scholarship Program ("Program"). Twenty-one days later, on July 20, 1999, a group of plaintiffs filed Case No.: 1:99 CV 1740, challenging the constitutionality of the Program. On July 29, 1999, a separate set of plaintiffs filed a second action, Case No.: 1:99 CV 1818, challenging the constitutionality of the Program. These cases have been consolidated. On August 2, 1999, the court scheduled a preliminary injunction hearing for August 13, 1999, and an August 4, 1999, telephonic conference with counsel was scheduled for the purpose of setting the format and procedure of the preliminary injunction hearing. As a result of the August 4, telephonic conference, counsel for all parties agreed to shorten the normal period for filing responsive briefs. On August 13, 1999, a preliminary injunction hearing was conducted in which the court entertained oral argument from counsel representing the parties in both cases as well as two sets of proposed interveners. After considering all submissions on behalf of all the parties and the arguments of counsel, this court issued its twenty-eight page order on August 24, 1999, granting Plaintiffs' Motion for a Preliminary Injunction.

In the court's preliminary injunction order, it concluded that Plaintiffs were likely to succeed on the merits in this case because the Cleveland Pilot Scholarship Program was sufficiently similar to the New York Program in *Committee for Public Education and Liberty v. Nyquist*, 413 U.S. 756 (1973), that the Supreme Court found to be in violation of the Establishment Clause of the First Amendment to the U.S. Constitution. Specifically, this court concluded "that Plaintiffs have a very substantial chance of succeeding on the merits. The Cleveland Program does not make aid available

without regard to the nature of the schools to be benefitted. The participating schools are overwhelmingly sectarian. This means that parents cannot make an educational choice without regard to whether the school is parochial or not. Therefore, the Cleveland Program has the primary effect of advancing religion." The court further found, after consideration and balancing of all the pertinent factors, that the strength of Plaintiffs' case caused the balance to tip in favor of granting the injunction. The court reiterates that ruling, in all aspects, herein.

However, the court has decided to grant a limited stay in this action because of the timing of the events leading up to the issuance of the court's order on August 24, 1999. It should not be surprising that Plaintiffs' challenge came near the end of July or that the court's ruling came on August 24, 1999. A ruling close to the beginning of school or after school started was inevitable in light of the late date on which the bill authorizing the 1999 Pilot Program was passed. This timing caused disruption to the children previously enrolled in the Program beyond that normally associated with a student's transferring from one school to another. To make as little incursion as is possible on the existing preliminary injunction, the court will expedite the process for the hearing on the permanent injunction in this matter. The court finds that it is also in the interest of the parties and the children in the Program to have a speedy, final resolution of the matters rather than a piecemeal resolution involving several possible stages at which the children's education might be disrupted. Therefore, the court grants the State Defendants' Motion to Stay with the following modifications:

(1) The stay is applicable to only those students who were enrolled in the Pilot Program under the 1995 Act during the last academic year; it is not applicable to students who are new enrollees;

(2) The stay shall extend only for one semester or until the court renders a final decision on permanent injunctive relief, whichever is sooner; and

(3) Therefore, the court sets the following schedule for trial of this action:


(a) Counsel shall confer and work out a discovery schedule regarding any pertinent issues, including those which specifically bear on whether or not the Program involved has a primary effect of advancing religion and whether it avoids excessive entanglements under applicable Supreme Court precedents, by September 6, 1999. The proposed schedule shall ensure completion of all discovery by October 29, 1999;

(b) The court will hold a telephonic conference with counsel on September 7, 1999, at 1:00 p.m., to discuss the discovery schedule;

(c) Any dispositive motions must be filed by November 15, 1999; responses are due by November 29, 1999. Replies are due by December 8, 1999; and

(d) Trial of this action shall commence on December 13, 1999, at 9:00 a.m.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE