

IN THE SUPREME COURT OF OHIO

STATE EX REL. CITIZENS FOR)
COMMUNITY VALUES, INC., *et al.*,) : ORIGINAL ACTION IN MANDAMUS
)
Relators,) : CASE NO. 2020-0175
)
-v-) :
)
OHIO DEPARTMENT OF EDUCATION,)
et al.,) :
)
Respondents.) :
)

MOTION FOR ORAL ARGUMENT AND EXPEDITED CALENDAR
FOR RESOLUTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... i

MOTION FOR ORAL ARGUMENT AND EXPEDITED CALENDAR FOR RESOLUTION 1

I. Senate Bill 120 Is Flawed. 1

II. As Relators, Ohio Schools And Families Ask The Supreme Court Of Ohio
To Intervene. 2

III. A Second Wave Of Families Want To Join This Case As Relators. 3

IV. Oral Argument And Expedited Resolution Are Warranted Under These Circumstances.. 5

CERTIFICATE OF SERVICE..... 6

TABLE OF AUTHORITIES

Page(s)

Cases

Bielat v. Bielat,
87 Ohio St.3d 350, 721 N.E.2d 28 (2000)1

Statutes

RC 3310.032

Other Authorities

S.Ct.Prac.R. 12.04(A)(2).....4

S.Ct.Prac.R. 12.04(B)5

S.Ct.Prac.R. 12.04(B)(2).....5

S.Ct.Prac.R. 17.02.....5

Senate Bill 892

Senate Bill 120.....1, 2

**MOTION FOR ORAL ARGUMENT AND EXPEDITED CALENDAR
FOR RESOLUTION**

Given the statewide economic and constitutional impact of the issues involved in this case, Relators ask this Court to order oral argument and provide an expedited calendar for resolution. As Subsection (A) of S.Ct.Prac.R. 17.02 provides, “In an original action, or in an appeal that is not scheduled for oral argument pursuant to S.Ct. Prac.R. 17.01, the Supreme Court may order oral argument on the merits either *sua sponte* or in response to a request by any party.” For, minimally, the reasons set forth below, Relators request this Motion be granted.

I. Senate Bill 120 Is Flawed.

On January 31, 2020, Governor DeWine signed Senate Bill 120 (“SB120”) into law, which immediately postponed the vested scholarship awarding process for tens of thousands of Ohio students under Ohio’s Educational Choice Scholarship (“EdChoice”) Program. In relevant part, SB120 states: “up to \$10,000,000 in fiscal year 2021 shall be used to pay scholarships” and the Ohio Department of Education (“ODE”) “shall (delay the time to) accept, process, and award...scholarships (until) April 1, 2020...” The day after SB120 was enacted, February 1, 2020, ODE slammed shut the portal for newly-eligible families and re-enrollees to be awarded EdChoice Scholarships, a portal that remains closed to this day.

SB120 is a fundamentally flawed piece of legislation, defective in both its manner of passage and principle aim. The legislation purports to declare a 60 day moratorium for processing scholarships. Yet – because it was passed on a non-emergency basis – the bill lacks constitutional force and effect of law for a period of 90 days. The legislation is also defective inasmuch as it aims to postpone, reduce, or categorically revoke EdChoice Scholarships for tens of thousands of Ohio’s children. Yet – because it “affect acts or facts occurring, or rights accruing” – the bill offends Ohio’s Constitution. *Bielat v. Bielat*, 87 Ohio St.3d 350, 353, 721

N.E.2d 28 (2000).

ODE began violating Ohio's Constitution on February 1st by refusing to receive, process, and award EdChoice Scholarships. And ODE, an Ohio executive branch agency, continues to operate outside the color of Ohio law each day the EdChoice Scholarships portal remains closed to newly-eligible families.

II. As Relators, Ohio Schools And Families Ask The Supreme Court Of Ohio To Intervene.

After ODE slammed shut the EdChoice Scholarship portal, Relators filed their Original Petition for Writ Of Mandamus on Monday, February 3rd. Respondents, in turn, filed their Motion to Dismiss some 21 days after being served with the summons, on February 27th. By the Supreme Court's rules, Relators have ten days to respond with their memorandum in opposition.

Relators did not file this action to nitpick legal technicalities. To the contrary, Relators filed to challenge the legislation, both its wrongheaded policy aims and manner of enactment, because of the profound consequences it has upon ordinary Ohioans.

This much is clear – the irreconcilable defects of SB120 have already disrupted Ohio's educational ecosystem, radically, and they threaten to irreperably harm families for the immediate, foreseeable future. Dozens, if not hundreds, of Ohio's public and private schools have taken steps (including important decisions with regard to staffing, budgets, and facilities) since November 1, 2019, to operate consistent with Ohio law when the pool of EdChoice Scholarship eligible students was objectively identified. Requiring those families and schools to now “sit tight” while the General Assembly undertakes steps to revoke those scholarships (*i.e.*, Section 3310.03 of Amended Substitute Senate Bill 89; attached hereto as Exhibit A) is unjustifiable under existing law and an overwhelming burden that threatens to irreparably harm schools and families.

III. A Second Wave Of Families Want To Join This Case As Relators.

Since this case was filed, the following seventy-three (73) individuals, from the four corners of the state, have expressed interest in joining in the Petition and being recognized as additional relators:

1. Lane Berlin (Columbus);
2. Sarah Berlin (Columbus);
3. Scott Broski (North Royalton);
4. Stacey Broski (North Royalton);
5. Christina Brunson (Akron);
6. Christine Cales (Middletown);
7. Louis Cales (Middletown);
8. Brandy Cario (Parma);
9. Vincenzo Cario (Parma);
10. Michael Mueller (Medina);
11. Traci Caso Mueller (Medina);
12. Matthew Cole (Brunswick);
13. Elizabeth Cors (Wooster);
14. Julian Dooley (Cleveland Heights);
15. Maura Dooley (Cleveland Heights);
16. Jamie Eaton (Hamilton);
17. Scott Elias (Parma);
18. Julianna Emery (Concord Township);
19. Luis Feliciano (Lorain);
20. Carla Florio (Seven Hills);
21. Tara Foote (Brunswick);
22. Toby Foote (Brunswick);
23. Lisa Greenhill (Parma Heights);
24. Steve Greenhill (Parma Heights);
25. Brad Hackney (Euclid);
26. Michele Hanzak (Concord Township);
27. Cory Hardnett (Parma);
28. Jennifer Hardnett (Parma);
29. Alexandra Harvey (North Royalton);
30. Jennifer Herter (Cuyahoga Falls);
31. Brian Holbrook (Seven Hills);
32. Kristen Holbrook (Seven Hills);
33. Krista Horn (Cuyahoga Falls);
34. Jennifer Hulec (Parma);
35. Thomas Hulec (Parma);
36. Katherine Jacobsen (Cuyahoga Falls);
37. Michael Jamison (Brunswick);
38. Justin Kazmierczak (Cleveland);
39. Jennifer Kitchen (Fairborn);

40. Megan Kunker (Brunswick);
41. John Lubisnki (Silver Lake);
42. Giovanni Mansi (Parma Heights);
43. Kimberly Mansi (Parma Heights);
44. Marissa Marcum (Cleveland Heights);
45. Samuel Marcum (Cleveland Heights);
46. Jeff Misconish (Parma Heights);
47. Misty Misconish (Parma Heights);
48. Nicole Pelto (Parma);
49. Shelly Penrod (Coventry Twp);
50. Danette Pevec (Wickliffe);
51. Robert Pevec (Wickliffe);
52. Amanda Pippin (Cincinnati);
53. Michael Pippin (Cincinnati);
54. Patricia Raba (Parma Heights);
55. Colleen Reilly (Seven Hills);
56. Sean Reilly (Seven Hills);
57. Andrew Rivera (Parma);
58. Christina Hardy (Parma);
59. Ted Rusinoff (Stow);
60. Edgar Silva (Bradview Heights);
61. Teresa Silva (Broadview Heights);
62. Kimberly Thomas (Columbus);
63. Kim Tomblin (Parma);
64. Vernon Tomblin (Parma);
65. Daniel Turner (Cuyahoga Falls);
66. Julie Unger (Stow);
67. Rhonda Whitelock (Parma Heights);
68. Misty Whitelock (Parma Heights);
69. Ann Wilhoite (Galloway);
70. Loice Wilhoite (Galloway);
71. Joy Wilhoite (Galloway);
72. Brian Zuercher (Hilliard); and
73. Meghan Zuercher (Hilliard).

Unfortunately, if leave was sought to amend the Petition to include them as additional relators, Respondents would have an additional 21 days to respond under S.Ct.Prac.R. 12.04(A)(2). As explained above, each day the EdChoice Scholarships portal remains closed is another day of constitutional aggravation for all Ohioans.

The litigation path for the second wave of families notwithstanding, their desire to also file, their number, and their statewide footprint demonstrate the gravity of these issues.

IV. Oral Argument And Expedited Resolution Are Warranted Under These Circumstances.

In light of the reasons set forth above, Relators move this Court, pursuant to S.Ct.Prac.R. 17.02, to order that oral argument is warranted given the gravity of the issues involved in this case, the statewide impact of the challenged legislation, and ODE's ongoing violation of Ohio's Constitution. Simply put, Relators should "have their day in court." The profound disruption to Ohio's educational ecosystem occasioned by SB120's flaws and ODE's ongoing illegality as aforesaid require expedited resolution.

Relators were just served with the Respondents' Motion to Dismiss on Thursday afternoon. Pursuant to S.Ct.Prac.R. 12.04(B)(2), Relators have ten days to file their memorandum in opposition. Accordingly, Relators move the Court to exercise its discretion to calendar oral argument as soon as practicable following Respondents' filing of their S.Ct.Prac.R. 12.04(B) response.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed and a true and accurate copy was served on March 2, 2020, by regular and electronic mail upon the following:

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