

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

BOARD OF EDUCATION OF THE)	
HIGHLAND LOCAL SCHOOL DISTRICT,)	
)	
PLAINTIFF,)	
)	
VS.)	CASE NO. 2:16-cv-524
)	
U.S. DEPARTMENT OF EDUCATION,)	
ET AL.,)	
)	
DEFENDANT.)	
_____)	

TRANSCRIPT OF TELEPHONE CONFERENCE
BEFORE THE HONORABLE ALGENON L. MARBLEY, JUDGE
TUESDAY, JULY 19, 2016; 3:30 P.M.
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFF:

Alliance Defending Freedom
By: JAMES A. CAMPBELL, ESQ.
KENNETH J. CONNELLY, ESQ.
JEANA HALLOCK, ESQ.
15100 North 90th Street
Scottsdale, AZ 85260

Renwick, Welsh & Burton, LLC
By: ANDREW J. BURTON, ESQ.
9 North Mulberry Street
Mansfield, OH 44902

(APPEARANCES CONTINUED ON THE NEXT PAGE....)

APPEARANCES CONTINUED:

FOR THE DEFENDANT:

U.S. Department of Justice
By: BENJAMIN L. BERWICK, ESQ.
 MEGAN A. CROWLEY, ESQ.
 SHEILA LIEBER, ESQ.
1 Courthouse Way, Suite 9200
Boston, MA 02210

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Proceedings recorded by mechanical stenography, transcript
produced by computer.

DENISE N. ERRETT, RPR, FCRR
FEDERAL OFFICIAL COURT REPORTER
85 MARCONI BOULEVARD, ROOM 121
COLUMBUS, OHIO 43215
614-719-3029

1 Tuesday Afternoon Session

2 July 19, 2016

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4 THE COURT: Hello.

5 MS. LIEBER: Yes.

6 THE COURT: Good afternoon. This is Judge Marbley,
7 and with me are my law clerks and my court reporter. So we're
8 going to begin with having counsel for the plaintiff identify
9 themselves for the record.

10 MR. CAMPBELL: Yes, Your Honor. Good afternoon. This
11 is Jim Campbell for the plaintiffs. With me on the line I have
12 Ken Connelly and Jeana Hallock. And also with me on the line
13 is Andrew Burton.

14 THE COURT: Okay. So, Mr. Campbell is with the
15 Alliance, ADF?

16 MR. CAMPBELL: Correct.

17 THE COURT: Mr. Burden is with Renwick, Welsh and
18 Burton?

19 MR. CAMPBELL: That's correct, Your Honor.

20 THE COURT: And, Mr. Burden, are you local counsel?

21 MR. BURDEN: Yes, I am, Your Honor.

22 THE COURT: All right.

23 And counsel for the defense?

24 MS. LIEBER: Yes, Your Honor. This is Sheila Lieber

25 --

1 THE COURT: Okay.

2 MS. LIEBER: -- at the Department of Justice. And I
3 am here with Benjamin Berwick and Megan Crowley, also at the
4 Department of Justice, and we represent the defendants.

5 THE COURT: All right.

6 There was a request filed for a preliminary injunction.
7 And the purpose of this status conference is to set some type
8 of timeline and to see, you know, how much time you'll need for
9 the discovery that will be essential to the presentation of the
10 evidence for the preliminary injunction hearing, and so you
11 want to tell me about how much time you think you'll need for
12 you to conduct the discovery for the PRI hearing?

13 MR. CAMPBELL: Well, Your Honor -- this is
14 Mr. Campbell -- my sense on that is, I think that the hearing,
15 itself, could be a hearing that's just based on oral argument.
16 I don't think that we need evidence. That's my sense. I'm not
17 sure if the defendants agree with that, but that would be our
18 perspective.

19 THE COURT: Okay.

20 Ms. Lieber?

21 MS. LIEBER: That would be the defendants'
22 perspective, as well, that these are legal issues and they can
23 be dealt with in oral argument.

24 THE COURT: All right. So, just a second.

25 All right. So, Ms. Lieber, how much time do you think

1 that you will need to respond to the plaintiff's motion for
2 preliminary injunction? I mean, under our local rules, you
3 would have 21 days, but we can do it on a more expedited basis
4 that will probably redound to everyone's benefit. So what I'd
5 like to do is, two weeks to respond, and then give the
6 plaintiffs a week for reply, or week or less for reply.

7 Will 14 days be sufficient for you, Ms. Lieber?

8 MS. LIEBER: The only reason I would say that it's not
9 is because we have hearings and briefs in a number of these
10 cases going on, you know, that were filed several months ago,
11 that are going to be going on at the same time. In addition,
12 we have some pre-scheduled vacations. And so I guess if we
13 could at least have our three weeks, that would -- you know, I
14 think we could do it. That will be a stretch, but we can do
15 it.

16 THE COURT: Mr. Campbell, you were seeking to get this
17 done sooner, rather than later, because of the impending
18 beginning of school year; is that right?

19 MR. CAMPBELL: Well, Your Honor, the beginning of the
20 school year is certainly one consideration. But the biggest
21 consideration is the impending enforcement action. And that
22 can come any time after July 28th, according to the documents
23 that we've received from the defendants. However, you know, if
24 the defendants feel that they need the three weeks to do an
25 adequate job on their response, we don't have an objection to

1 that. Our sense is that if they were to implement an
2 enforcement action in the meantime, that we, hopefully, would
3 get an injunction from the Court in time to stop that
4 enforcement action right at its outset and, you know, maybe
5 even before the defendants took that additional step. So --

6 THE COURT: Ms. Lieber, hold -- let me interrupt you
7 there. Ms. Lieber, do you have any sense as to when an
8 enforcement action is planned to be instituted, if at all?

9 MS. LIEBER: Your Honor, all I'll say is, they did
10 receive a letter on -- plaintiffs received a letter on June 28.
11 And in it, you know, the Department of Education outlined its
12 policies, procedures, and what action it would take. And it
13 said, also, that if OCR -- OCR is continually willing to
14 negotiate compliance, but that if an agreement is not reached
15 within 30 calendar days, OCR will issue a letter of impending
16 enforcement action. But, to clarify, so, it may be within 30
17 days that they will get that letter. But, to clarify, once
18 that letter issues and if an enforcement action is initiated,
19 nothing happens. There is no effort to take away any funds
20 during the pendency of the enforcement action. And, the whole
21 time, the goal is to try to achieve compliance. There is no
22 penalty for prior noncompliance. So there really is no
23 imminent injury that is facing the school district.

24 You know, in fact, the longer the enforcement, if they
25 choose to avail themselves of the administrative exhaustion

1 procedures, the longer the enforcement process takes, the
2 longer they can forestall any threat that they will lose money
3 or have money -- you know, have a termination of any funds
4 during the course of this.

5 So, there really is nothing imminent that -- I mean,
6 they may well get a letter in 30 days because I don't think
7 that Education will just say we're going to postpone our
8 enforcement proceedings indefinitely, but the practical effect
9 of the letter in terms of the school district's financial
10 situation is nothing.

11 THE COURT: All right. All right.

12 Here is what I'm thinking, then: Since no rights seem
13 to be immediately in jeopardy, three weeks from July 15th, when
14 the motion was filed, will put us at August 5th. So, the
15 government's response will be due on or before August 5th. I
16 will give the plaintiffs until August 12th for any reply and,
17 then, maybe the week -- sometime during the week of August 22nd
18 for an argument on the -- for the actual preliminary injunction
19 hearing. And I'm thinking maybe August 24th, that Wednesday?

20 MS. LIEBER: That would be fine, Your Honor.

21 THE COURT: Mr. Campbell, does that work for the
22 plaintiff?

23 MR. CAMPBELL: Yes, Your Honor.

24 THE COURT: So let's say ten o'clock on August 24th,
25 we'll have the preliminary injunction hearing?

1 MR. CAMPBELL: Okay.

2 THE COURT: And I will get out a scheduling order to
3 that effect.

4 MR. CAMPBELL: Okay. Thank you, Your Honor.

5 THE COURT: Are there any other matters that we need
6 to take up from the plaintiff, Mr. Campbell?

7 MR. CAMPBELL: No, there are not.

8 THE COURT: Anything further from the defense,
9 Ms. Lieber?

10 MS. LIEBER: No, Your Honor. Thank you.

11 THE COURT: All right. Thank you very much, everyone.
12 Have a good rest of your day.

13 (Proceedings were concluded at 3:45 p.m.)

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I do hereby certify that the foregoing is a true and correct transcript of the telephone conference held before the Honorable Algenon L. Marbley, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in stenotypy and transcribed by me or under my supervision.

s/Denise Errett, RPR-FCRR
Denise Errett, RPR-FCRR
Official Federal Court Reporter

DATE: October 6, 2016