

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

Deborah S. Hunt
Clerk

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Filed: October 28, 2022

Ms. Courtney E. Albini
Mr. John J. Bursch
Mr. Steven James Griffin
Mr. Clark Lassiter Hildabrand
Mr. Charles W Scarborough
Mr. Jack Starcher

Re: Case No. 22-5807, *State of Tennessee, et al v. Department of Education, et al*
Originating Case No. : 3:21-cv-00308

Dear Counsel,

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Ryan E. Orme
Case Manager
Direct Dial No. 513-564-7079

Enclosure

No. 22-5807

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DEBORAH S. HUNT, Clerk

STATE OF TENNESSEE, et al.,)
)
Plaintiffs-Appellees,)
)
ASSOCIATION OF CHRISTIAN SCHOOLS)
INTERNATIONAL, et al.,)
)
Intervenors-Appellees,)
v.)
)
DEPARTMENT OF EDUCATION, et al.,)
)
Defendants-Appellants.)

ORDER

Before: GUY, SUHRHEINRICH, and STRANCH, Circuit Judges.

Twenty states filed suit against the Department of Education and its Secretary, the Equal Employment Opportunity Commission and its Chair, the Department of Justice and the Attorney General, and an Assistant Attorney General (“Defendants”) broadly alleging that guidance documents issued by Defendants interpreting sex discrimination to include gender identity and sexual orientation discrimination violated the Administrative Procedure Act, other federal statutes, and the Constitution. Defendants appeal a preliminary injunction prohibiting them from implementing the guidance documents against the States. The States move for reconsideration of a Clerk order granting Defendants a thirty-day extension of time to file their principal brief. Defendants respond, and the States reply.

No. 22-5807

-2-

The States suggest that the Clerk should not have granted an extension without waiting for their response, challenge Defendants' failure to detail the States' reasons for opposing an extension, assert that other federal agencies continue to rely on the guidance documents while their appeal is pending, assert that Defendants are merely seeking to delay resolution of this case, contend that Defendants should have assigned counsel on appeal with less demanding schedules who could meet the briefing deadline, find Defendants' delay in seeking an extension unduly long, and challenge Defendants' failure to include a certificate of compliance in their motion for extension.

The Clerk may rule on procedural motions without awaiting a response. *See* 6 Cir. R. 45(a); Fed. R. App. P. 27(b). The rules do not require a party to seek concurrence from opposing counsel or state whether a motion is opposed; thus, Defendants were not obligated to detail why the States opposed the motion. The States did not seek to enjoin the guidance documents except as to Defendants, and the district court expressly declined to do so. Defendants timely met every applicable deadline in the district court and requested a single extension, which was granted in part, before that court. Defendants' counsel set out their competing professional responsibilities at length in the motion for an extension before this court, filed their motion weeks before their deadline, and this was their first request for an extension. The States acknowledge that litigation challenging these guidance documents is proceeding in different stages nationwide. We see no reason not to give Defendants further time to fully plead their arguments, particularly given that they have new counsel on appeal. Nor do we find that Defendants delayed the proceedings by using the full amount allotted them to file their appeal or plead their case. *See Jones v. Skipper*, No. 19-2413, 2020 WL 7212383, at *2 (6th Cir. July 17, 2020) (order); *Socop-Gonzalez v. I.N.S.*, 272 F.3d 1176, 1196 (9th Cir. 2001) (en banc). Finally, although a motion should include a certificate that it "complies with the type-volume limitation," Fed. R. App. P. 32(g)(1), we find

No. 22-5807

-3-

no reason to enforce this requirement at this juncture, where Defendants' motion clearly fell within those requirements.

More compelling is the States' correct assertion that we disfavor extensions of time and expedite appeals arising from orders involving preliminary injunctions. *See* 6th Cir. R. 26(a)(1), 31(c)(2); 6th Cir. I.O.P. 26(a), 28(c). The Clerk followed these procedures, and neither our rules nor our internal operating procedures prohibit the grant of an extension of time in appeals from the grant or denial of preliminary injunctions provided that the moving party demonstrates good cause. Fed. R. App. P. 26(b). For the reasons discussed above, Defendants have demonstrated good cause.

The motion for reconsideration is **DENIED**. No further extensions will be granted Defendants in the absence of clearly demonstrated new and extraordinary circumstances.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written in a cursive style.

Deborah S. Hunt, Clerk