

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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| PHILADELPHIA CITY COUNCIL, <i>et al.</i> , | : | CIVIL ACTION |
| Plaintiffs, | : | |
| | : | NO. 02-998 |
| v. | : | |
| | : | |
| HON. MARK SCHWEIKER, <i>et al.</i> , | : | |
| Defendants. | : | |

MEMORANDUM

BUCKWALTER, J.

May 1, 2002

I. BACKGROUND

On March 4, 2002, Plaintiffs filed their first Motion for Preliminary Injunction (Plaintiffs' First Injunction Motion)(Docket No. 6). On March 18, 2002, the School Reform Commission (SRC) filed an omnibus Motion to Dismiss and Response to Plaintiffs' First Injunction Motion (Docket Nos. 11-14).

On March 27, 2002, this court handed down a Memorandum and Order abstaining from the exercise of its jurisdiction and staying the case pending state proceedings that would resolve unsettled questions of state law (Docket No. 22). This decision held, *inter alia*, as follows:

Plaintiffs' attacks on the state law and regulations involved here require at the very outset a complex analysis of a variety of state law questions as set forth in part in this opinion – an analysis which would inextricably overlap with the one that would be made by the Pennsylvania

Supreme Court. Plaintiffs seem to be suggesting that the failure of that court to act except by summary denials with regard to others who have petitioned it makes a remedy “unavailable.” But, there has been no showing that the Pennsylvania Supreme Court has refused to rule on the precise issues raised in their complaint. There is little question that the foundation of plaintiffs’ claim is rights they contend exist under Pennsylvania law and they have a state remedy to address those contentions, both by way of the statutory action before the Pennsylvania Supreme Court or whatever other state action counsel for plaintiffs may deem appropriate.

Educational policy is a very sensitive state interest. It is “a matter of particularly local concern.” Pustell v. Lynn Public Schools, 18 F.3d 50 (1st Cir. 1994). It is doubtful if there is any issue that galvanizes local interest and opinion any more than education. It is certainly true on the other hand that federal interests alleged in plaintiffs’ complaint are important. But ultimately, this very sensitive state interest must be resolved by the state where it can best be adjudicated.

On the same day, the Plaintiffs docketed an appeal of that decision with the United States Court of Appeals for the Third Circuit (Docket No. 23). On April 2, 2002, the Plaintiffs filed a Motion to Reconsider in this Court (Docket No. 25) and a Motion for Voluntary Dismissal in the Court of Appeals. This Court denied the Motion to Reconsider on April 8, 2002, and the Court of Appeals granted the Motion for Voluntary Dismissal on April 11, 2002 (Docket Nos. 28-29).

On April 15, 2002, the Plaintiffs filed another Motion for Preliminary Injunction and Temporary Restraining Order (Plaintiffs’ Second Injunction Motion)(Docket Nos. 30-31). In response to that Motion, on April 18, 2002, the Court ordered the parties to file a brief by April 25, 2002 regarding the issue of whether the Court had any obligation to address the Second Injunction Motion (Docket No. 32). On

April 25, 2002, Plaintiffs docketed a Notice of Appeal to the United States Court of Appeals for the Third Circuit. The Plaintiffs appeal this Court's decisions to (1) abstain from the exercise of its jurisdiction; and (2) deny the Motion to Reconsider (Docket No. 33).

While the Court had before it briefs on whether it was obligated to address the Plaintiffs' Second Injunction Motion, the Plaintiffs filed yet another request for injunctive relief, entitled "Plaintiffs' Emergency Motion and Memorandum Pursuant to Federal Rule of Appellate Procedure 8(a)(1)(C) for an Injunction Pending Appeal" (Plaintiffs' Third Injunction Motion)(Docket No. 37). The Court immediately ordered that the Defendants file their responses, if any, to the Plaintiffs' Third Injunction Motion by the end of business on Monday, April 29, 2002, which Defendants did. That motion (Docket No. 37) is before the Court.

II. DISCUSSION

Plaintiffs have failed to satisfy the ordinary standard for a preliminary injunction. As explained in the March 27, 2002 Opinion of this Court, resolution of Plaintiffs' claims is based in great part upon the determination of state laws whose meanings are substantially uncertain. *See* Opinion, pp. 3, 7, 8. Plaintiffs are unable to show any likelihood of success on the merits, and nothing has changed since that Opinion was written on March 27, 2002.

Moreover, there is an available remedy under state law which can be undertaken by these Plaintiffs. *See* Opinion, p. 8. There is nothing preventing Plaintiffs from seeking redress in the state courts, and apparently they have made no effort to do so.

As this memorandum was being prepared, the Court received a reply by FAX from Plaintiffs wherein they request simply maintaining the status quo as of April 26, 2002, in effect enjoining Defendants from entering into any other contracts. This seems to be the very injunctive relief from which the Court abstained from deciding for reasons already stated.

An order follows.

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ORDER

AND NOW, this 1st day of May, 2002, upon consideration of Plaintiffs' Emergency Motion and Memorandum Pursuant to Federal Rule of Appellate Procedure 8(a)(1)(C) for an Injunction Pending Appeal (Docket No. 37), and the responses filed thereto, it is hereby ORDERED that said Motion is DENIED.

BY THE COURT:

RONALD L. BUCKWALTER, J.