

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

CHRISTINA COLLINS, et al.,

Plaintiffs,

vs.

MIKE DEWINE., et al.,

Defendants.

) CASE NO. 23CV006611

)

) JUDGE KAREN HELD PHIPPS

) MAGISTRATE JENNIFER HUNT

)

) **EMERGENCY MOTION TO CLARIFY**

) **TEMPORARY RESTRAINING ORDER**

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Plaintiffs Christna Collins, Michelle Newman, the Board of Education of the Toledo City School District, and Stephanie Eichenberg hereby move on an emergency basis for clarification of the Temporary Restraining Order issued on September 21, 2023 (the “Order”).

Earlier today, the Court held a hearing on Plaintiffs’ motion for a preliminary injunction. As the hearing was ending, Defendant Mike DeWine, Governor of Ohio, announced a press conference to discuss this lawsuit. Less than an hour after the hearing concluded, at 5:15 pm, he announced that he intended to send the Department of Education and Workforce into operation at midnight tonight.¹ According to Defendant DeWine, “the new department will exist tonight at midnight,” and will begin at least some operations immediately.²

This is in direct violation of the Order, which “enjoined [Defendants] from enforcing, implementing, complying with, or acting pursuant to R.C. 3301.13, R.C. 3301.111, R.C. 3301.12

¹ See <https://www.bing.com/videos/riverview/relatedvideo?q=governor+mike+dewine+press+conference+october+2%2c+2023&mid=5305593C6D2F811D520C5305593C6D2F811D520C>.

² *Id.*

and R.C. 3301.07 in any way or manner, including by, without limitation: (1) creating the Department of Education and Workforce”

While the basis for Defendant DeWine’s action is unclear, it appears to be based on a reading of the Order under which Defendants are prohibited from implementing the *pre-H.B. 33* versions of R.C. §§ 130.106, 3301.07, 3301.13, and 3301.111, and not merely the *post-H.B. 33* versions. Accordingly, Defendant DeWine seems to argue, there will no longer be a Department of Education as of midnight, justifying extraordinary action: the direct violation of this Court’s binding order.

This is not a good-faith reading of the Order. An injunction of provisions of a bill amending a statute does not remove the pre-amendment version of the statute from the books. And even if that were a common way to interpret an order such as this, the context of this case would have made it inconceivable. It was clear that both Plaintiffs and the Court were attempting to preserve the status quo before the enactment of H.B. 33, which included these pre-amendment provisions.

Defendant DeWine also seems to be asserting that the Department of Education and Workforce immediately springs into existence “by operation of law,”³ as part of an argument that he is not “creating” the Department, which is specifically prohibited by the Order. Even if that were a correct understanding of the law and the Order (and it is not), he would still be expressly stating that he and the State of Ohio will “act pursuant to” and “implement” the enjoined provisions—again, a direct violation of the Order.

Moreover, Defendants had ample opportunity to seek clarification from this Court, to request modification of the Order, or to contact Plaintiffs to reach an interim resolution that would avoid any chaos they believed would result. They did none of these things. Instead, they waited to

³ *Id.*

see whether Magistrate Hunt would dissolve the Order during today’s hearing—without intimating in any way that Defendants would immediately violate the Order if Magistrate Hunt did not do so, or even informing Magistrate Hunt that the Department believed that the Department of Education was hours away from blinking out of existence. This appears to be a political stunt in violation of the Court’s Order—or, worse, an intentional gambit to scramble some eggs and make it harder to unwind Defendants’ actions.⁴

Accordingly, Plaintiffs respectfully request that the Court immediately clarify the Temporary Restraining Order by adding the following paragraph:

For the avoidance of doubt, this Order does not prevent Defendants from implementing R.C. 3301.13, R.C. 3301.111, R.C. 3301.12 and R.C. 3301.07 as they existed prior to the passage of H.B. 33. If any budgetary or other consequences arise from H.B. 33 that Defendants believe affect the continued operation of the State Board of Education, the Superintendent of Public Instruction, and/or the Ohio Department of Education as they existed prior to the passage of H.B. 33, Defendants are instructed to interpret the term “Ohio Department of Education and Workforce” in H.B. 33 as referring to the State Board of Education, the Superintendent of Public Instruction, and/or the Ohio Department of Education—whichever had the corresponding duty or responsibility prior to the passage of H.B. 33.

This will allow the existing Ohio Department of Education, State Board of Education, and Superintendent of Public Instruction to continue carrying out their preexisting duties—such as paying employees—without any even arguable confusion about the Court’s Order.

To be clear, Plaintiffs do not believe that this language is *necessary* to avert the chaos that Defendants claim to be trying to preempt. If Defendants proceed with their announced plan, they will be in contempt of court whether or not the Court grants this motion. Indeed, they may have already committed contemptuous acts, as they appear to have been working to “implement” the

⁴ Moreover, they appear to be capitalizing on confusion of their own creation: much if not all of this “chaos” would have been avoided had Defendants not argued at the TRO hearing, based on misstatements about the content and consequences of certain provisions, that the originally requested injunction (which included provisions of H.B. 33 that make *conforming changes* to other parts of the Ohio Revised Code) was overbroad.

enjoined provisions all along. And Plaintiffs reserve their right to seek an order to show cause why Defendants should not be held in contempt.

But in the interest of avoiding harm to students, teachers, parents, school boards, state employees, and citizens across Ohio, Plaintiffs respectfully request that the Court intervene before Defendants put the executive branch of Ohio into direct conflict with the judicial branch.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 2, 2023 a copy of the foregoing was filed with the Court, and served on the following individuals and entities via email:

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