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KEITH BRADFORD, *et al.*,

Plaintiffs,
v.

MARYLAND STATE BOARD OF
EDUCATION,

Defendant.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY

Case No.: 24C94340058

2022 APR 25 PM 3:09
CIVIL DIVISION

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**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S
MOTION TO STAY PROCEEDINGS PENDING APPEAL**

Plaintiffs Keith Bradford, *et al.* ("Plaintiffs"), through their undersigned counsel, respectfully oppose the April 6, 2022, motion to stay proceedings pending appeal ("Motion") by Defendant Maryland State Board of Education ("Defendant"). Defendant waited until the eleventh hour – after fact discovery closed, initial expert reports were submitted, and the parties are in the thick of expert depositions and moving towards summary judgment motions and if necessary trial – to once again bring the motion to dismiss that this Court first denied over two years ago. It relies on a cursory request for dismissal of the Consent Decree contained in that motion to now attempt to bring this case to a halt through an interlocutory appeal and this motion to stay. Plaintiffs are imminently moving to dismiss Defendant's improper interlocutory appeal on the grounds that Defendant does not get to bootstrap this Court's determination that it has continuing jurisdiction over this matter into an immediate appeal, and further respectfully request that this Court also deny the motion to stay. As the Maryland Court of Appeals has held previously in this case, "[t]he mere allegation that a clearly interlocutory order is jurisdictionally deficient should not serve to halt proceedings in the trial court while an appellate court considers whether the allegation has merit." *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 385 (2005).

The Motion should be denied because Defendant has not established – or even tried to establish – that a stay is appropriate when considering its adverse effect on Plaintiffs, children in the Baltimore City Public School Systems (“BCPSS”), and public interests. *See Moser v. Heffington*, 465 Md. 381, 398 (2019) (explaining a stay “must weigh the competing interests” and must be established by a “clear case” if it might cause harm to others) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)). There is no rule that an interlocutory appeal, like Defendant’s here, should automatically stay the underlying proceeding. Rather, Defendant must demonstrate that a stay is appropriate given the relative harms and benefits from such a stay. *Id.*

Staying the case proceedings would harm Plaintiffs, BCPSS schoolchildren, and public interests. Defendant’s desired stay would indefinitely halt the progress of this case towards the scheduled trial and the long-awaited resolution of Plaintiffs’ constitutional claims for the provision of funding for the benefit of children in BCPSS. This delay could result in even more school years passing with inadequate funding for Plaintiffs and thousands of BCPSS schoolchildren, contrary to public interests. Such a delay in funding would impose continued serious injury to them – injury that is irreparable by definition because it stems from a constitutional violation.

Although Defendant must establish a “clear case” of hardship or inequity that outweighs this potential irreparable harm to obtain a stay, Defendant instead merely claims that a stay could save it some unquantified costs. Defendant’s vague reference to savings, even if credited, could not outweigh the constitutional harm to Plaintiffs and others. The cost of maintaining the *status quo* while Defendant pursues an appeal is minimal compared to the harm from staying proceedings and delaying resolution indefinitely. This is perhaps why the Motion did not weigh these interests, dooming it as a matter of law. Defendant’s assertion that proceedings should be stayed so they do not affect the appeal of this Court’s denial of Defendant’s motion to dismiss provides no alternative

basis for a stay. It does not come close to meeting Defendant's burden to show that a stay is appropriate here. Rather, Defendant's presumption that continued trial court proceedings "inevitably" disrupt appeals would, if accurate, support a stay following every interlocutory appeal. Nor does Defendant articulate any specific basis on which *this* trial court proceeding would interfere with *this* appeal. To the contrary, Defendant's cited cases make crystal clear that a stay here is not appropriate because continued litigation would not interfere with or preclude the Court of Appeals from acting on Defendant's appeal at the appropriate time. Indeed, this case in particular should proceed given Plaintiffs' imminent motion to dismiss the appeal as legally defective.

Defendant's incomplete and unsupported argument confirms there is no reason for staying all proceedings in this case, and that the Motion is nothing more than another effort by Defendant to delay Plaintiffs from trial and resolution. The Motion should be denied.

BACKGROUND

Plaintiffs have been seeking, through litigation since 1994, adequate funding for children in BCPSS as required by Article VIII of the Maryland Constitution. *See* 1/16/20 Mem. Op. & Order at 1-6, Dkt. 105/8 (summarizing case).

Defendant has responded by repeatedly arguing that Plaintiffs' action should be dismissed or stayed. In recent years,¹

¹ Defendant began seeking stays as far back as 2004, after this Court rejected Defendant's motion for a declaration that future spending increases in legislation would satisfy the constitutional standard for adequacy. *See* 7/16/04 Motion for Declaratory Judgment at 4-7, Dkt. 38/0. This Court denied Defendant's motion for a stay pending appeal in 2004. *See* 8/20/04 Order, Dkt. 50. Defendant then moved the appellate court for a stay, *see* 10/4/04 Motion to Stay, Case No. 1565 (Md. Ct. App.), and that stay motion was denied as well.

Defendant moved for dismissal of Plaintiffs' Petition for Further Relief in 2019 because purported legislative "enhancements" could provide more funding. 6/19/19 Mem. Motion to Dismiss at 30-31, 48-49, Dkt. 105. After this Court denied the motion, Defendant tried to stay the case with a motion to "defer the establishment of a litigation schedule." 2/14/20 Motion to Defer Litig. Schedule, Dkt. 112. This Court denied that effort to stay and ordered the parties to propose a schedule for the case to proceed. *See* 3/9/20 Am. Order, Dkt. 112/5.

Defendant recycled the same motion to dismiss argument in 2021, in seeking dismissal for a second time by claiming that legislation could increase funding for BCPSS which, supposedly, could render Plaintiffs' claims as moot and eliminate this Court's jurisdiction. *See, e.g.*, 11/10/21 Mem. Motion to Dismiss at 1-3, Dkt. 184. This Court denied the second motion to dismiss on March 7, 2022. *See* Order, Dkt. 189/5.

The same day, this Court entered Case Management Order No. 6, *see* 3/7/22 Order, Dkt. 194/1, which set the Parties' agreed-upon schedule for readying the case for trial, *see* 3/4/22 Joint Motion to Amend CMO 5, Dkt. 194. CMO 6 thus sets deadlines for completing expert discovery in May 2022, motions for summary judgment in August 2022, and trial submissions following summary judgment. *See id.* at 1-2.

Within weeks of urging the Court to enter CMO 6's schedule, Defendant submitted their purported interlocutory appeal, and moved this Court for the instant stay – demanding a stop of all proceedings because of an appeal of this Court's March 7 Order denying Defendant's second motion to dismiss. *See* Motion at 2-3.

Plaintiffs moved to dismiss Defendant's appeal on April 25, 2022, because it is legally defective. This Court's March 7 Order is a nonappealable interlocutory order. *See* Exhibit A, Plaintiffs' Motion to Dismiss Appeal at 10-11. And Defendant cannot convert it to an appealable

order simply by characterizing its second motion to dismiss as a request for an injunction that might be appealable. *See id.* at 12-15. Defendant’s appeal also is contrary to the law of this case, including the Court of Appeal’s prior holding that this Court’s subject matter jurisdiction ruling is not an appealable order because it is not a final judgment. *See id.* at 15-17 (reviewing *Bradford*, 387 Md. at 385-86).

Even if Defendant’s defective appeal is not dismissed, the Motion still should be denied because Defendant has not established that a stay of proceedings pending the appeal is appropriate.

ARGUMENT

The decision to stay proceedings, the Court of Appeals explained, “calls for the exercise of judgment, which must weigh the competing interests and maintain an even balance.” *Moser*, 465 Md. at 398 (quoting *Landis*, 299 U.S. at 254). Moreover, Defendant “must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay . . . will work damage to someone else.” *Id.* A denial of Defendant’s requested stay is “ordinarily not appealable,” *County Comm’rs v. Schrodel*, 320 Md. 202, 212 (1990) (collecting cases), and a denial could be disturbed only for an abuse of discretion, *see Bechamps v. 1190 Augustine Herman, LC*, 202 Md. App. 455, 460 (2010).

As explained below, the required weighing of interests balances strongly against a stay of proceedings in this case – which, presumably, is why the Motion failed to mention Defendant’s burden in establishing a stay and, more remarkably, did not even attempt to weigh the heavy interests of Plaintiffs and others that must be considered.²

² In choosing to submit a motion without citation to applicable law, and without applying the law, Defendant waived argument necessary to establish a stay. *See State v. Jones*, 138 Md. App. 178, 230 (2001) (explaining arguments not articulated in opening briefs are deemed waived and are not properly raised in reply briefs). Plaintiffs reserve their objection to Defendant raising waived argument in any reply brief or oral argument, as well as to the appellate court.

I. The Stay Would Harm Plaintiffs and Baltimore Schoolchildren and be Contrary to Public Interests

Defendant's desired stay of all proceedings would halt this case at the eleventh hour as it advances towards the scheduled trial and the long-awaited resolution of Plaintiff's constitutional claims for the provision of funding for the benefit of children in BCPSS. The Parties already completed fact discovery and disclosed experts with opinions at the heart of Plaintiffs' claims, such as whether Defendant is providing adequate funding. Defendant's expert disclosures, unfortunately, are unexplained in many respects. A stay could stop discovery of these subjects, even though the work is nearing completion with a May deadline. Stopping short expert-related work would also delay Plaintiffs' summary judgment. And delaying summary judgment would, in turn, delay Plaintiffs' trial indefinitely, because pre-trial filings follow summary judgment under CMO 6's schedule.

Defendant's proposed delay of the proceedings and eventual trial would seriously harm Plaintiffs and Baltimore schoolchildren. The unlawfully inadequate funding for BCPSS alleged by Plaintiffs has resulted in past, present, and continuing educational experiences that fall woefully short of Maryland's constitutional standards, with BCPSS having less staff and the least experienced staff in Maryland, the highest ratio of students to staff in Maryland, graduation rates lower than any district in Maryland, and extreme and increasing dropout rates. *See* 3/7/19 Petition at ¶ 13, Dkt. 98. Defendant also has failed to meet its constitutional duty to provide funding sufficient to ensure BCPSS students attend classes in buildings that are safe, functional, and capable of supporting an adequate educational program. *See id.* at ¶ 14. With Defendant stubbornly denying this and relying on as-of-yet unfulfilled funding projections, *see, e.g.*, 11/10/21 Mem. Motion to Dismiss at 2, Dkt. 184 (arguing Maryland has committed to provide funding for

a thorough and efficient public education system), there is no reason to conclude that it will correct the situation without Plaintiffs continuing to press their case and the pressure of imminent trial.

This means the overall delay, including an indefinite delay of trial, sought by Defendant could result in additional – if not many – more school years with inadequate funding for Plaintiffs and BCPSS schoolchildren. Such a delay will result in continued injury to them, injury that is irreparable by definition because it stems from a constitutional violation. *See Elrod v. Burns*, 427 U.S. 347, 373 (1973) (explaining constitutional violations, “for even minimal periods of time, unquestionably constitutes irreparable injury”); *Ehrlich v. Perez*, 394 Md. 691 (2006) (explaining irreparable harm would result while constitutional violation by state continues).

The prolonging of constitutional violations by Defendant also is contrary to the public interests. An important, if not the most important, public interest is the interests in Plaintiffs and the residents of Baltimore City – and indeed, the citizens of Maryland statewide – in educating students to be productive members of society. *E.g., Hornbeck v. Somerset Co. Bd. of Educ.*, 295 Md. 597 (1983) (“The central role of education in our society is, of course, universally accepted”). Defendant’s failure to discharge this utmost important duty is contrary to public interests, and a stay that could allow the persistence of this failure obviously would be contrary to public interests.

This is presumably why this Court and the Court of Appeals have refused in the past to stay proceedings in this case for interlocutory appeals. As the Court of Appeals explained in dismissing most aspects of a prior attempt at an interlocutory appeal here, “[t]he mere allegation that a clearly interlocutory order is jurisdictionally deficient should not serve to halt proceedings in the trial court while an appellate court considers whether the allegation has merit.” *Bradford*, 387 Md. at 385.

II. Defendant Failed to Establish Hardship that Outweighs Harm, and Defendant’s Flawed Arguments Cannot Show that a Stay is Appropriate

When there is the “possibility that the stay . . . will work damage to someone else,” Defendant must establish “a clear case of hardship or inequity” to show a stay is appropriate. *Moser*, 465 Md. at 398 (quoting *Landis*, 299 U.S. at 254). The possibility of damage to Plaintiffs and the public as a consequence of the requested stay is obvious as summarized above. But Defendant did not establish a clear case of hardship that might make a stay appropriate on balance.

As the only “hardship,” Defendant asserted that a stay could avoid unidentified expenses of unquantified amounts. *See* Motion at ¶ 6. If bare assertions of vague cost savings could suffice, stays in the trial court would be granted during every appeal. That is not the law, however, because “a trial court may continue ordinarily to entertain proceedings during the pendency of an appeal.” *Brethren Mut’l Ins. Co. v. Suchoza*, 212 Md. App. 43, 64 (2013) (explaining trial courts retain jurisdiction over proceedings during appeals) (quoting *Kent Island, LLC v. DiNapoli*, 430 Md. 348, 360 (2013)); *see also Pulley v. State*, 287 Md. 406 (1980) (explaining appeals, if always followed by stays, would play havoc on courts).

While Defendant choose not to quantify them, surely the costs of continuing the case would be minimal compared to the harm from staying the proceedings and delaying resolution indefinitely. As noted above, a stay that delays the litigation and resolution of Plaintiffs’ constitutional rights would extend and increase harm to them that is irreparable. And such delay would harm public interests too.

In any event, Defendant’s claimed need for a stay is not credible. Defendant provides no reason for abandoning the CMO 6 schedule it recently asked the Court to enter, especially when it is now evident that Defendant during the same time was planning to manufacture an interlocutory appeal from its second motion to dismiss. Further, Defendant’s new-found concern about costs rings hollow, when compared against its duplicative motions to dismiss and other unnecessary

filings it pursued at increased costs. *E.g.*, 6/1/21 Motion to Strike Notice of Substitution of Representatives, Dkt. 162 (denied, Dkt. 162/2); 2/14/20 Motion to Defer Litig. Schedule, Dkt. 112 (denied, Dkt. 112/5).

Defendant's alternative argument that a stay is necessary to ensure continued litigation will not affect the appeal is flawed and unsupported. *See* Motion at p. 1, ¶ 4. Defendant's main case, *Brethren Mutual*, 212 Md. App. at 66-67, did *not* consider a stay at all, and instead explained the unremarkable proposition that a trial court should not re-write an order while an appeal of that order is pending. Continuing this case, of course, will not result in re-writing the Court's correct denial of Defendant's motion to dismiss. Defendant's citation to *Moser* is even more off target. There, the Court of Appeals ruled that the trial court correctly *denied* a stay of proceedings, considering, like Plaintiffs do here, the parties' interests in continuing to litigate towards a timely case resolution. *See* 212 Md. App. at 404-05.

Defendant also erroneously presumes that any further litigation "inevitably" implicates the subject matter of its appeal. Motion at ¶ 5. But *Brethren Mutual* explains at length that trial courts, which retain fundamental jurisdiction over cases during appeals, should refrain from taking only those limited actions that "preclude[] or hamper[] the appellate court from acting on the matter before it." 212 Md. at 66 (explaining "trial court may not act to frustrate the actions of an appellate court") (citation omitted). Contrary to Defendant's presumption, the continued routine preparation of this case for trial on its existing schedule would not "inevitably" preclude the Court of Appeals from acting on the appeal. This is confirmed by Defendant's inability to specify any litigation activity in this Court that would prevent the Court of Appeals from considering the appeal.

In this case, both this Court and the appellate courts have previously recognized that an attempt to pursue an interlocutory appeal does not justify stopping all trial proceedings, when they

specify any litigation activity in this Court that would prevent the Court of Appeals from considering the appeal.

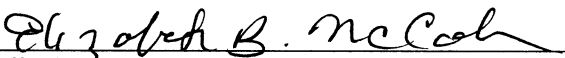
In this case, both this Court and the appellate courts have previously recognized that an attempt to pursue an interlocutory appeal does not justify stopping all trial proceedings, when they have uniformly denied previous requests for stays pending attempts to pursue and interlocutory appeal. *See supra* at 5. Defendant's current motion contains no reason for this Court now to depart from that practice.

The possible, if not likely, dismissal of Defendant's appeal further supports denial of the Motion. As Plaintiffs' motion to dismiss to be filed shortly in the Court of Special Appeals will show, Defendant's appeal is legally defective because, among other ways, it seeks to appeal a nonappealable order, it inappropriately attempts to generate an appealable order by recasting its motion to dismiss as a request for an injunction, and the appeal is contrary to the law of this case. If there were any doubt about continuing the case pending appeal, it should proceed given the weak appeal and potential for dismissal.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court exercise its discretion and deny the Motion because Defendant has not clearly established any actual hardship if the case were to proceed pending appeal while, in contrast, a stay would cause further serious harm to Plaintiffs and Baltimore schoolchildren and would be contrary to public interests.

Dated: April 25, 2022


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CERTIFICATE OF SERVICE

I, Danyll W. Foix, certify that I have this day caused to be served a copy of this PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT'S MOTION TO STAY PROCEEDINGS PENDING APPEAL on the following counsel and parties by electronic mail and by U.S. mail with postage prepaid on April 25, 2022:

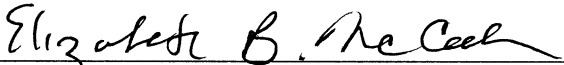
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