

IN THE SUPREME COURT OF THE STATE OF NEVADA

AIMEE HAIRR; AURORA ESPINOZA;
ELIZABETH ROBBINS; LARA ALLEN;
JEFFREY SMITH; and TRINA SMITH,
Petitioners,

vs.

THE FIRST JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA and THE
HONORABLE JAMES E. WILSON, JR.

Respondents.

And

HELLEN QUAN LOPEZ, individually and
on behalf of her minor child, C.Q;
MICHELLE GORELOW, individually and
on behalf of her minor children, A.G. and
H.G.; ELECTRA SKRYZDLEWSKI,
individually and on behalf of her minor child,
L.M.; JENNIFER CARR, individually and
on behalf of her minor children, W.C., A.C.,
and E.C.; LINDA JOHNSON, individually
and on behalf of her minor child, K.J.;
SARAH and BRIAN SOLOMON,
individually and on behalf of their minor
children, D.S. and K.S., DAN SCHWARTZ,
NEVADA STATE TREASURER, in his
official capacity,

Real Parties in Interest.

Supreme Court No. 69580

Case No. 15-OC-00207-1B
Dept. No. II
Electronically Filed
Jan 22 2016 03:45 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

TREASURER DAN SCHWARTZ'S NOTICE OF NON-OPPOSITION

I. Background

This Petition for Writ of Mandamus arises from a lawsuit raising a constitutional challenge to Nevada's new Education Savings Account ("ESA") Program, enacted by SB 302. The ESA Program provides a means for Nevada parents with children enrolled in a public or charter school to choose a different option to meet their children's educational needs. These options are diverse, from different curriculum to smaller classes to superior accommodation of a disability.

A parent who wishes to choose something other than a public school can apply for an ESA and the child will receive funds deposited into an account that can be used for education related expenses at approved participating entities. The ESA Program's premise is that parents know what is best for their children.

On September 9, 2015, the Plaintiffs below filed suit against Dan Schwartz, in his official capacity as Treasurer of the State of Nevada, alleging that Nevada's ESA Program is unconstitutional because it violates Sections 2, 3, and 6 of Article XI of Nevada's Constitution. Eight days later, on September 17, 2015, the six Petitioner-Parents, who have all applied to participate in the ESA Program on behalf of one or more of their minor children, moved to intervene in this matter to defend the Program. The District Court denied the motion to intervene explaining that (1) the Petitioner-Parents "do not demonstrate that their interest in upholding the constitutionality of S.B. 302 will not be adequately represented by Defendant State Treasurer and his counsel, the Attorney General,"¹ and (2) "the Court is concerned with the potential for delay and increased costs that additional parties may cause."²

II. Response

The Treasurer does not oppose the Petition for Writ of Mandamus. Rather, he supports it as he believes the Petitioner-Parents' participation in this case would be helpful, particularly in assisting the Court to balance the equities to the public interest. Enjoining the ESA program will clearly and directly harm the expectations and interests of thousands of Nevada families. The Petitioner-Parents represent those families. They are the families and students for whom the Legislature created the ESA Program and the only individuals who will be *directly* affected by the outcome of this lawsuit. It is inequitable to allow individuals who

¹ PETR000463.

² PETR000465.

oppose ESAs—and who are affected by the ESA Program, if at all, only very *indirectly* and hypothetically—to participate in this suit while denying participation to those families who are directly affected by the Program. Indeed, in *Duncan v. Nevada*,³ another lawsuit challenging the constitutionality of the ESA program, Petitioner-Parents were allowed to intervene. Their participation in that case has provided an independent helpful perspective on how the law and litigation surrounding it will affect those who are counting on this important program.

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³ No. A-15-723703-C (Nev. 8th Dist. filed Aug. 27, 2015).

III. Conclusion

For the foregoing reasons, the Treasurer respectfully requests that this Court allow the Petitioner-Parents to intervene in this lawsuit.

Dated: January 22, 2016.

Respectfully submitted,
ADAM PAUL LAXALT
Attorney General

By: /s/ Lawrence VanDyke
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*Motion for admission *pro hac vice*
pending

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **TREASURER DAN SCHWARTZ'S NOTICE OF NON-OPPOSITION** with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on January 22, 2016.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participants:

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