

STATE OF WEST VIRGINIA

At the Supreme Court of Appeals continued and held at Charleston, Kanawha County, on December 7, 2010, the following order was made and entered in vacation:

State of West Virginia ex rel. The West Virginia Secondary School Activity Commission, et al., Petitioners

vs.) No. 10-4001

Honorable Carrie Webster, Judge of the Circuit Court of Kanawha County, Tyler Harris, Lora Stephens, Pierria Henry, Maria Reese Terrell, Trevond Reese and Emerson Gagnon, Respondents

Brooke County Board of Education, Intervenor

On a former day, to-wit, December 2, 2010, came the petitioners, The West Virginia Secondary School Activity Commission (“WVSSAC”) and its Board of Directors, by William R. Wooton, The Wooton Law Firm, their attorney, and presented to the Court their petition praying for a writ of prohibition to be directed against the respondent, Honorable Carrie Webster, Judge of the Circuit Court of Kanawha County, as therein set forth.

Thereafter, pursuant to this Court’s Scheduling Order, on December 3, 2010, came the respondents, Tyler Harris, et al., by C. Benjamin Salango, Preston & Salango, P.L.L.C., their attorneys, and presented to the Court their written response thereto.

On the same day, came the Brooke County Board of Education, by David F. Cross; Michael G. Simon and S. David Wilharm, Frankovitch, Anetakis, Colantonio & Simon; and Michael E. Nogay, Sellitti, Nogay & McCune, its attorneys, and presented to the

Court its motion for leave to intervene, or, in the alternative, for leave to participate as amicus curiae, together with a response to the petition.

Thereafter, on December 6, 2010, came Patrick J. O'Reilly, pro se, and presented to the Court his motion for leave to file an amicus curiae brief. On the same day came the respondents, Tyler Harris, et al., by C. Benjamin Salango, Preston & Salango, and presented to the Court a response in opposition to the brief of the Brooke County Board of Education.

Upon consideration whereof, the Court is of the opinion that the motion to intervene filed by the Brooke County Board of Education should be, and it hereby is, granted. Upon further consideration whereof, the Court does hereby grant the motion of Patrick O'Reilly to file an amicus curiae brief.

Upon further consideration whereof, the Court is of opinion that a rule to show cause is issued, and it is hereby ORDERED that this matter is ripe for a forthwith decision upon the papers previously submitted without further argument, pursuant to Revised Rule 16(j). The Court hereby finds that oral argument in this matter is not necessary under Revised Rule 18.

The Court has thoroughly reviewed the written arguments and exhibits filed in this matter. Upon consideration thereof, the Court is of the opinion that the writ prayed for by the petitioners should be, and hereby is GRANTED.

It is hereby ordered that a writ of prohibition shall issue against the respondent, Honorable Carrie Webster, Judge of the Circuit Court of Kanawha County, preventing the

enforcement of the temporary restraining order entered by the respondent judge on November 23, 2010, and the preliminary injunction entered by the respondent judge on November 30, 2010, in consolidated civil action number 10-C-2133, which declared Tyler Harris, Pierria Henry, Trevond Reese, and Emerson Gagnon, eligible to participate in interscholastic athletics until further order of the Circuit Court of Kanawha County. Upon review, this Court finds that the lower court exceeded its authority in issuing the preliminary injunction. While properly promulgated legislative rules may come under challenge on grounds that they exceed constitutional or statutory authority or for being arbitrary or capricious, the judiciary has no authority to review whether the rules governing the WVSSAC were properly applied. That is a determination reserved for the WVSSAC. This Court has long recognized that the Legislature intended the WVSSAC to promulgate rules to carry out its control, supervision, and regulation of interscholastic athletic events and that courts should not interfere with the internal affairs of school activities commissions. And, in keeping with this Court's clear recognition of the WVSSAC's authority for the regulation of interscholastic sports, we observe, as we did in *Mayo v. Secondary Schools Activities Commission*, 223 W.Va. 88, 672 S.E.2d 224 (2005), that it would be "unwise to proceed down the path suggested by the trial court" by "inviting courts to review an official's judgment." Given the need for timely consideration and resolution of issues attendant to the underlying matter, we issue our decision through this order with an opinion to follow in due course.

With regard to the issuance of a temporary restraining order by the Honorable Arthur M. Recht, Judge of the Circuit Court of Brooke County, on November 30, 2010, on behalf of the intervenor, which held in abeyance the scheduling of the state championship football game for the AAA division of the State of West Virginia “until such time as the disciplinary action against South Charleston High School by the WVSSAC be considered final and that all legal action concerning this matter be legally concluded, including the conclusion of all court actions and proceedings associated therewith,” we hereby determine that with the issuance of this order this matter is final. Any determination as to whether a forfeiture is required in connection with the participation of the South Charleston High School football players subject to this matter in the playoff game held on November 27, 2010, must be resolved solely by the governing body, the WVSSAC, and is clearly outside the jurisdiction of this Court and any other court, including the Brooke County Circuit Court.

The Clerk of the Court is hereby directed to issue the mandate forthwith.

Service of a copy of this order upon the respondents aforesaid shall have the same effect as the service of a formal writ.

A True Copy

Attest: /s/ Rory L. Perry II, Clerk of Court

