STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
DOCKET NO.: 34-1-19 Frcv

HUNTINGTON SCHOOL DISTRICT,
Plaintiff,

v.

VERMONT STATE BOARD OF EDUCATION;
and
VERMONT AGENCY OF EDUCATION;
and
MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT
Defendants.

DEFENDANT MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT'S MOTION FOR RECONSIDERATION OF ORDER GRANTING STAY

NOW COMES the Defendant, Mount Mansfield Modified Union School District (or "Mount Mansfield"), by and through its attorneys, Lynn, Lynn, Blackman & Manitsky, P.C., and pursuant to V.R.C.P. 59, hereby moves for reconsideration of the Court's February 8, 2019 Order granting a stay. Specifically, Mount Mansfield respectfully requests the Court alter the stay and issue a decision on Mount Mansfield's motion to dismiss based on ripeness. In support of this request, Mount Mansfield submits the following Memorandum of Law.

Memorandum of Law

The present procedural posture of this case is inconsistent with the ripeness doctrine. In effect, rather than dismissing the unripe claims, the Court has stayed the case on the chance they may become ripe. Because the unripe claims against Mount Mansfield must be dismissed, the Court should reconsider its Order granting the stay and dismiss Mount Mansfield from the case.

Huntington's claims against Mount Mansfield are not ripe because the State Board of Education did not order Mount Mansfield to merge with Huntington and no merger vote is planned. Presently, it is merely possible that at some point in the future, Mount Mansfield will vote on whether to merge with Huntington.

Instead of addressing the ripeness issue, Huntington and the State agreed to file a joint motion for stay. As their motion notes, Mount Mansfield did not consent to the request for stay because it believes it should be dismissed from the case. *Joint Motion* at 2, n.1. The Court granted the stay on the same day it was filed, prior to the time for Mount Mansfield to file an opposition.

The joint motion effectively concedes the fact that the claims against Mount Mansfield are not ripe: "Mount Mansfield has not scheduled a vote, which is the event that could trigger a merger under the Board's order, and if it does not hold a 'vote on or before July 1, 2019' the Board's Order cannot lead to the merger of Huntington." *Joint Motion* at 2 (quoting SBE Final Report).

Thus, the entire premise of the stay depends on some uncertain future where Mount Mansfield holds a vote to merge with Huntington. Unless and until the vote happens, the case is stayed until July 2, 2019, which essentially means the case is moot after July 1, 2019, the merger deadline in the Final Report. In other words, the joint motion both acknowledges the claim is not ripe and the fact that it may never ripen. *See Am. Trucking Associations, Inc. v. City of Los Angeles, Cal.*, 569 U.S. 641, 654–55, 133 S. Ct. 2096, 2105 (2013) (declining to consider unripe claim that might or might not occur, explaining, "We see no reason to take a guess now about what the Port will do later.").

Under V.R.C.P. 59(e), the Court has broad discretion to alter or amend a judgment. *See Campbell v. Stafford,* 2011 VT 11, ¶ 17, 189 Vt. 567, 571, 15 A.3d 126, 132 (2011); *Wright & Miller*, 11 Fed. Prac. & Proc. Civ. § 2810.1, Grounds for Amendment or Alteration of Judgment

(3d ed.). Among other grounds, a Court may alter or amend an order when "it becomes necessary to remedy a clear error of law or to prevent obvious injustice." *Atl. States Legal Found., Inc. v. Karg Bros.*, 841 F. Supp. 51, 53 (N.D.N.Y. 1993) (citing *Larsen v. Ortega*, 816 F.Supp. 97, 114 (D.Conn.1992)).

Here, the stay turns the ripeness doctrine on its head. "Ripeness requires a two-fold inquiry of assessing the hardship to the parties caused by withholding a judicial ruling, and of evaluating whether the issues are appropriate or fit for judicial determination." *Isaacs v. Bowen*, 865 F.2d 468, 478 (2d Cir. 1989) (citation omitted). "This fitness inquiry is concerned with whether the issues sought to be adjudicated are contingent on future events or may never occur." *Id.* (citation omitted). The wait-and-see approach under the stay is inconsistent the requirements of the ripeness doctrine and the Court's exercise of jurisdiction.

Huntington and the State have not identified any hardship caused to them by withholding a judicial ruling in this case – just the opposite. By requesting a stay, they confirm that the case is neither ripe, nor does it fall under any exception to the ripeness doctrine supporting the immediate attention of the Court. The stay further indicates that the claims based on the hypothetical Mount Mansfield vote are not fit for review as they are based on future events that may never occur.

Nor can Huntington or the State show any prejudice if the Court dismisses the unripe claims against Mount Mansfield instead of staying the case. A dismissal on ripeness grounds is a dismissal without prejudice. *See, e.g., Brown v. City of Royal Oak, Mich.*, 202 F. App'x 62, 64 (6th Cir. 2006). Moreover, Mount Mansfield agreed to dismissal without prejudice instead of the stay. If Mount Mansfield warns a vote on the merger, Huntington could refile. However, it is not entitled to an open-ended stay rather than dismissal of the unripe claims.

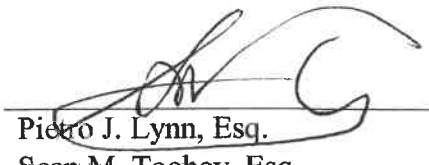
In contrast to the lack of prejudice to the other parties, the stay is unduly prejudicial to Mount Mansfield. The decision by Huntington to file an unnecessary and premature lawsuit against Mount Mansfield has created conflict and tension between Huntington and Mount Mansfield, who must work together as members of the same supervisory union. It has created an adversarial relationship when the real legal issue on merger is between Huntington and the State. The seemingly gratuitous decision to sue Mount Mansfield can only negatively impact the effectiveness of the supervisory union and Mount Mansfield in their efforts to support student learning. The stay unnecessarily prolongs this conflict. As such, the prejudice to Mount Mansfield from the stay outweighs any prejudice to Huntington from the dismissal without prejudice of the unripe claims.

Conclusion

For all the foregoing reasons, Mount Mansfield respectfully requests that the Court reconsider its order granting the stay and grant its motion to dismiss Mount Mansfield from this case.

DATED at Burlington, Vermont this 12th day of February, 2019.

MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT

By: 

Pietro J. Lynn, Esq.
Sean M. Toohey, Esq.
Lynn, Lynn, Blackman & Manitsky, P.C.
Attorneys for Defendant
76 St. Paul Street, Suite 400
Burlington, VT 05401
plynn@lynnlawvt.com

STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CIVIL DIVISION
DOCKET NO.: 34-1-19 Frcv

HUNTINGTON SCHOOL DISTRICT,
Plaintiff,

v.

VERMONT STATE BOARD OF EDUCATION;
and
VERMONT AGENCY OF EDUCATION;
and
MOUNT MANSFIELD MODIFIED UNION SCHOOL DISTRICT
Defendants.

CERTIFICATE OF SERVICE

I certify that I have today delivered the attached *Defendant Mount Mansfield Modified Union School District's Motion for Reconsideration of Order Granting Stay* to all other parties to this case as follows:

X By first class mail by depositing it in the U.S. mail;

By personal delivery to _____ or his/her counsel;

X Other. Explain: e-mail

The names and addresses of the parties/lawyers to whom the mail was addressed or personal delivery was made are as follows:

Stephen F. Coteus, Esq.
Nicholas Low, Esq.
Tarrant, Gilles & Richardson, LLP
44 E. State Street
Montpelier, VT 05601-1440

David A. Boyd, Esq.
Jon T. Alexander, Esq.
Eleanor Spottswood, Esq.
VT Attorney General's Office
109 State Street
Montpelier, VT 05609-1001

DATED in Burlington, Vermont this 19th day of February, 2019.

By: _____

Pietro J. Lynn, Esq.
Lynn, Lynn, Blackman & Manitsky, P.C.
Attorneys for Defendants
76 St. Paul Street, Suite 400
Burlington, VT 05401
plynn@lynnlawvt.com