

COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 03-CI- 1152

FILED  
SEP 17 2003  
FRANKLIN COUNTY CLERK  
JERRY W. GIBSON

COUNCIL FOR BETTER EDUCATION,  
INC.

PLAINTIFF

v.

DAVID L. WILLIAMS,  
President of the Kentucky Senate, as  
official representative of the Kentucky  
Senate; and

JODY RICHARDS,  
Speaker of the Kentucky House of  
Representatives, as official representative  
of the Kentucky House of Representatives,

DEFENDANTS

**COMPLAINT**

For its Complaint against Defendants, Plaintiff alleges as follows:

**The Parties**

1. Plaintiff, Council for Better Education, Inc. (the "Council"), is a non-profit corporation formed under the laws of Kentucky. The purpose of the Council is to promote, advance and do all things necessary and proper in the development of public education in Kentucky. The members of the Council are 164 local school districts throughout Kentucky. The Council, acting on behalf of its members, has a judicially cognizable interest in a system of efficient elementary and secondary schools in Kentucky.

2. Defendant, David L. Williams ("Williams"), is the President of the Kentucky Senate. In his capacity as President, Williams is the presiding officer of the Kentucky Senate.

3. Defendant, Jody Richards ("Richards"), is the Speaker of the Kentucky House of Representatives. In his capacity as Speaker, Richards is the presiding officer of the Kentucky House of Representatives.

4. Williams and Richards are named as Defendants in this action as official representatives of the Kentucky General Assembly (the "General Assembly"). Service of a summons and the Complaint in this action on Williams and Richards, named in their respective capacities as President of the Kentucky Senate and Speaker of the Kentucky House of Representatives, is sufficient to acquire jurisdiction over the General Assembly in this action.

**Kentucky Constitution § 183**

5. Section 183 of the Kentucky Constitution ("Section 183") provides as follows:

The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the State.

6. Section 183 was interpreted and applied by the Kentucky Supreme Court (the "Supreme Court") in Rose v. Council for Better Education, Inc., Ky., 790 S.W. 2d 186 (1989) ("Rose"). The decision of the Supreme Court in Rose is binding on each named Defendant and on the General Assembly.

7. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, each and every child in Kentucky has a basic, fundamental constitutional right to an adequate education.

8. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, an adequate education is one which has as its minimum goal to provide each and every child with at least the following seven capacities:

- (i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization;
- (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices;
- (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation;
- (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness;
- (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage;
- (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and
- (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.

9. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, the establishment, maintenance and funding of elementary and secondary schools in Kentucky is the sole responsibility of the General Assembly.

10. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, the General Assembly has a constitutional mandate to provide funding for

elementary and secondary schools which is sufficient to provide an adequate education to each and every child in Kentucky.

11. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, an efficient system of elementary and secondary schools must have adequate instructional resources, including textbooks and education technology, and adequate school physical facilities.

12. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, the financial burden entailed in meeting the constitutional mandate described in paragraph 10 of this Complaint does not lessen the General Assembly's constitutional duty; the General Assembly cannot abrogate its constitutional duty merely because the monetary obligations become unexpectedly large or onerous.

13. Under Section 183, as interpreted and applied by the Supreme Court in the Rose decision, no tax proceeds have a more important position or purpose in Kentucky government than those for education; because education is essential to the prosperity of the state, elementary and secondary schools must not be financed in a de minimis fashion.

#### **The Kentucky Education Reform Act**

14. The Supreme Court declared in the Rose decision that the entire system of elementary and secondary schools in Kentucky was unconstitutional, and that Section 183 placed an absolute duty on the General Assembly to re-create and re-establish a new system of elementary and secondary schools.

15. The General Assembly enacted House Bill 940, Kentucky Acts 1990, Chapter 476, entitled "AN ACT relating to the reform of the Commonwealth's common

schools, raising revenues incidental thereto, and responding to the Supreme Court's mandate in *Rose v. Council for Better Education, Inc.* and declaring an emergency." This legislation is codified in KRS Chapters 156 through 163 and other miscellaneous statutes and is known as the Kentucky Education Reform Act of 1990 ("KERA").

16. KERA is the most comprehensive statewide reform of elementary and secondary education ever enacted by any state legislature in the United States; it required systemic change in finance, governance, curriculum, teacher professionalism, achievement goals, assessment, accountability and supplemental services in elementary and secondary education in Kentucky. KERA is landmark legislation which has served as a national model for education reform legislation in other states.

17. The Kentucky Board of Education (the "Board") is a public body corporate and politic and an agency and instrumentality of the Commonwealth of Kentucky. The Board is responsible for the management and control of the elementary and secondary schools in Kentucky. The primary function of the Board is to develop and adopt policies and administrative regulations by which the Kentucky Department of Education (the "Department") is governed in planning, coordinating, administering, supervising, operating and evaluating the educational programs, services and activities within the Department which are within the jurisdiction of the Board.

18. As part of the enactment of KERA, the General Assembly directed the Board to adopt administrative regulations to implement KERA. The Board has adopted such administrative regulations (the "KERA Regulations"). The KERA Regulations are

published in various sections of Titles 700 through 707 of the Kentucky Administrative Regulations.

19. KERA and the KERA Regulations are constitutional and valid.

20. As part of the enactment of KERA, the General Assembly established the Fund to Support Education Excellence in Kentucky (the "SEEK Fund") by enactment of KRS 157.330. The SEEK Fund consists of funds appropriated by the General Assembly out of the General Fund for allotment and distribution to local school districts as provided by the applicable statutes and the applicable KERA Regulations. The SEEK Fund is the principal source of state funds for the support of elementary and secondary education in Kentucky.

21. Gene Wilhoit (the "Commissioner") is the duly appointed Commissioner of Education of Kentucky. The Commissioner is the executive and administrative officer of the Board in its administration of all educational matters and functions that are placed under the management and control of the Board by the General Assembly. The Commissioner is the chief state school officer and the chief executive of the Department. His duties include, but are not limited to, executing under the direction of the Board the educational policies, orders, directives and administrative functions of the Board, and directing the work of all persons employed in the Department

22. The Commissioner, under the direction of the Board, is responsible for the allotment and distribution of the SEEK Fund to local school districts in accordance with the applicable statutes and the applicable KERA Regulations.

23. As part of the enactment of KERA, the General Assembly directed the Board to create and implement a statewide assessment and accountability program to be known as the Commonwealth Accountability Testing System ("CATS"), to ensure school accountability for student achievement of the goals set forth in KERA, including the acquisition by all students of the seven capacities which were identified by the Supreme Court in the Rose decision and which are listed in paragraph 8 of this Complaint.

24. The Board, by the adoption of certain of the KERA Regulations, has created and implemented CATS as directed by the General Assembly. CATS includes a state student testing system which is designed to measure student achievement of the goals set forth in KERA, including the acquisition by all students of the seven capacities which were identified by the Supreme Court in the Rose decision and which are listed in paragraph 8 of this Complaint.

25. As part of the enactment of KERA, the General Assembly created the School Facilities Construction Commission (the "Commission") by enactment of KRS 157.617. The purpose of the Commission is to assist local school districts with school facility construction and technology funding. The Commission is responsible for distribution of available state funds to eligible local school districts certified by the Board.

26. KRS 157.622 provides that the Commission, upon receipt of certified statements from the Board as required by KRS 157.620, shall compute the unmet school facilities needs of all eligible local school districts, and shall provide funding for an

equivalent percentage of each eligible local school district's unmet needs based upon the ratio of the available state funding to total unmet need statewide.

27. The enactment of KERA, including the establishment of the SEEK Fund, the creation and implementation of CATS and the creation of the Commission, has partially fulfilled the General Assembly's constitutional duties under Section 183, as interpreted and applied by the Supreme Court in the Rose decision. The enactment of KERA re-created and re-established a system of elementary and secondary schools which possesses the necessary means of finance, governance, curriculum, teacher professionalism, achievement goals, assessment, accountability and supplemental services to provide an adequate education to each and every child in Kentucky -- but only if the General Assembly appropriates sufficient funds out of the General Fund for the SEEK Fund.

## COUNT I

### Declaration of Rights

1. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 27 of this Complaint as if set forth in full in this paragraph.

2. During the period since the Supreme Court issued the Rose decision and the General Assembly enacted KERA, substantial progress as measured by CATS has been made in elementary and secondary education in Kentucky. Nevertheless, during that period, the General Assembly has not provided sufficient funding to elementary and secondary schools to comply with the mandate of the Supreme Court in the Rose decision to provide an adequate education to each and every child in Kentucky. The evidence that



the General Assembly has not fulfilled its constitutional duty, despite the substantial progress that has been made, includes but is not limited to the following facts:

- From Fiscal Year ("FY") 1994 to FY 2003, the amount of state funds spent on elementary and secondary education as a percentage of the General Fund has declined from 48.0% to 41.2%.
- The SEEK formula by which basic funding is allocated to local school districts has barely kept pace with inflation since 1990.
- Mandated salary increases have caused districts to use most if not all (and in some cases more than was provided) of their additional state revenue on salaries. Even with mandated salary increases, Kentucky has not been able to maintain the increase in educational ranking among the states that it realized in the mid-1990's.
- All-day kindergarten is not state-funded but is viewed by educators as a critical component for student success.
- The preschool program, shown by research to make a valuable difference in the learning of targeted students, has never been fully funded by state revenue.
- Most categorical programs have seen reductions in state revenue, while the need for services by students and/or costs have continued to increase.
- Maintenance of the Kentucky Education Technology System (KETS) has not been funded at the recommended level, creating inequities in student access to education technology.
- Preschool and all-day kindergarten have created a need for additional and/or upgraded facilities. The Commission has been underfunded for years. The total of the unmet school facilities needs certified by the Board to the Commission as of June 30, 2001 was \$2.342 billion.
- Health insurance costs for district/school employees continue to increase at double-digit levels.
- To meet Kentucky's high educational standards, additional instructional days and additional time for professional development are needed.

- Kentucky's population of Limited English Proficient students is the fifth fastest growing in the nation, and these students require additional services for which funds are not provided by the state.
- Three studies on the adequacy of Kentucky's elementary and secondary schools by nationally recognized education funding experts were published in 2003. Each study concluded that there is a substantial gap between the amount of funding that is required for Kentucky's elementary and secondary schools to provide an adequate education to each and every child in Kentucky and the amount of funding that is currently provided to elementary and secondary schools by the General Assembly.

3. The General Assembly, in order to comply with the mandate of the Supreme Court in the Rose decision to provide an adequate education to each and every child in Kentucky, must appropriate sufficient funds to elementary and secondary schools to enable each and every child in Kentucky to acquire the seven capacities which were identified by the Supreme Court in the Rose decision and which are listed in paragraph 8 of this Complaint.

4. The accountability index adopted by the Board at the direction of the General Assembly as part of the creation and implementation of CATS requires that each elementary and secondary school in Kentucky must perform at or above the proficiency level by 2014. At the time of the filing of this Complaint, as measured by CATS, each elementary and secondary school in Kentucky has not reached the proficiency level. Substantial improvement in student achievement will be required to meet the accountability index goal by 2014. Substantial improvement in student achievement by 2014 will require the General Assembly to provide adequate funding for elementary and secondary schools.

5. Plaintiff has commissioned a study by an independent consultant, Versteegen & Associates, to determine the funding levels necessary for local school districts to provide to each child in Kentucky an adequate education, as defined by the Supreme Court in the Rose decision, as enacted by the General Assembly in KERA, and as implemented by the Board at the direction of the General Assembly in the KERA Regulations, including CATS. The study was conducted in July through December 2002 and the consultant's report of the study (the "Versteegen Report") was published in February 2003.

6. The study took into account the specific educational resources, including class size, school term, school library media centers and the like, that would be required in order for students to be provided with an adequate education. The study further took into account the output measures, including the learner goals, performance assessments and accountability index contained in KERA and the KERA Regulations, including CATS. The specific educational resources, and the output measures contained in KERA and the KERA Regulations, including CATS, served as the basis for specifying the components of an adequate education, creating model budgets for different sizes of school districts, and estimating the total costs of the specific educational resources that would be required to provide an adequate education to each and every child in Kentucky. The specific educational resources, and the costs of providing each of them, are identified in detail in the Versteegen Report.

7. The Versteegen Report concluded that, overall, a total of about \$4.994 billion per year would be needed in 2001-2002 to meet the cost of providing an adequate education to each child in the elementary and secondary schools in Kentucky. In 2001-

2002, about \$4,102 billion was available to pay for current operating expenditures from federal, state and local revenue. Therefore, the funding gap between 2001-2002 revenue and the revenue needed to provide an adequate education in 2001-2002 was \$892 million per year.

8. The funding gap described in paragraph 7 of Count I of this Complaint increased in 2002-2003, and will increase in 2003-2004 and future years, because of increases in the cost of goods and services due to price inflation.

9. On information and belief, the General Assembly will not appropriate funds out of the General Fund for the SEEK Fund in amounts that are sufficient to close, or substantially narrow, the funding gap described in paragraph 7 of Count I of this Complaint, unless the General Assembly is ordered to do so by this Court.

10. An actual and justiciable controversy exists between Plaintiff and Defendants with respect to the constitutional duty of the General Assembly to comply with the mandate of the Supreme Court in the Rose decision. Plaintiff is entitled by law to apply for and secure from this Court a declaration of the rights of Plaintiff and the duties of the named Defendants and the General Assembly.

## **COUNT II**

### **Injunction**

1. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 27 and in Count I of this Complaint as if set forth in full in this paragraph.

2. Unless and until the General Assembly complies with the mandate of the Supreme Court in the Rose decision, Plaintiff and each and every elementary and secondary school student in Kentucky will suffer immediate and irreparable injury.

3. Plaintiff is entitled by law to apply for and secure from this Court a permanent injunction which mandates each named Defendant and the General Assembly to comply with the Rose decision.

### COUNT III

#### Senate Bill 219 (2003)

1. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 27 and in Counts I and II of this Complaint as if set forth in full in this paragraph.

2. The General Assembly enacted Senate Bill 219, Kentucky Acts 2003, Chapter 152, entitled "AN ACT relating to legislative involvement in litigation." Senate Bill 219 was filed without signature of the Governor and is codified in KRS 418.075 (4) as follows:

Pursuant to Sections 43 and 231 of the Constitution of Kentucky, members of the General Assembly, organizations within the legislative branch of state government, or officers or employees of the legislative branch shall not be made parties to any action challenging the constitutionality or validity of any statute or regulation, without the consent of the member, organization, or officer or employee.

3. This action does not challenge the constitutionality or validity of KERA or the KERA Regulations. Plaintiff has pleaded in this action that KERA and the KERA Regulations are constitutional and valid.

4. This action does not challenge the constitutionality or validity of any budget bill enacted by the General Assembly since the Supreme Court issued the Rose decision. Plaintiff contends that such budget bills were, to the extent of the funds actually appropriated by the General Assembly therein, constitutional and valid. Plaintiff does contend that the funds appropriated for elementary and secondary education in some of such budget bills were inadequate to comply with the mandate of the Supreme Court in the Rose decision, but Plaintiff does not seek in this action to recover damages or obtain other relief for the inadequacy of any past budget bill. Instead, Plaintiff seeks in this action a declaration by this Court that the General Assembly must comply with the mandate of the Supreme Court in the Rose decision in enacting all future budget bills.

5. KRS 418.075(4) does not require Plaintiff to obtain the consent of Williams or Richards or any other person to name Williams and Richards as Defendants in this action, as official representatives of the General Assembly.

WHEREFORE, Plaintiff respectfully requests the following relief:

1. That this Court enter judgment declaring that the General Assembly has a constitutional duty to provide sufficient funding to elementary and secondary schools to comply with the mandate of the Supreme Court in the Rose decision to provide an adequate education to each and every child in Kentucky.

2. That this Court enter judgment declaring that the General Assembly, in order to comply with the mandate of the Supreme Court in the Rose decision, must appropriate sufficient funds to elementary and secondary schools to enable each and every child in Kentucky to acquire the seven capacities which were identified by the

Supreme Court in the Rose decision and which are listed in paragraph 8 of this Complaint.

3. That this Court enter judgment declaring and determining the amount of additional funding which the General Assembly must appropriate to elementary and secondary schools for the fiscal year beginning July 1, 2004 and ending June 30, 2005, and for subsequent fiscal years, to comply with the mandate of the Supreme Court in the Rose decision.

4. That this Court enter a permanent injunction which orders and directs each named Defendant and the General Assembly to comply with the mandate of the Supreme Court in the Rose decision and the orders and judgments of this Court.

5. That this Court retain jurisdiction of this action for purposes of monitoring the compliance of each named Defendant and the General Assembly with the mandate of the Supreme Court in the Rose decision and the orders and judgments of this Court, and enforcing its orders and judgments.

6. That this Court grant to Plaintiff such other and further relief as this Court may deem Plaintiff to be entitled.

Respectfully submitted,



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