

**IN THE  
SUPERIOR COURT OF FULTON COUNTY  
STATE OF GEORGIA**

**CONSORTIUM FOR ADEQUATE  
SCHOOL FUNDING IN GEORGIA,  
INC. (Consortium) on its own behalf  
and on behalf of its members; BEN HILL  
COUNTY SCHOOL DISTRICT; *et al.*,**

**Plaintiffs,**

**v.**

**THE STATE OF GEORGIA, *et al.*,**

**Defendants.**

**CIVIL ACTION FILE  
NO. 2004CV91004**

**DEFENDANTS' MOTIONS TO DISMISS  
PLAINTIFFS' COMPLAINT**

COME NOW the Defendants, to wit: THE STATE OF GEORGIA; THE STATE BOARD OF EDUCATION; KATHY COX, in her official capacity as State School Superintendent; and LINDA M. ZECHMANN, PEGGY STOKES NIELSON, WANDA BARRS, WILLIAM BRADLEY BRYANT, JOY S. BERRY, JAMES E. BOSTIC, JR., JOSE R. PEREZ, DR. MARY SUE MURRAY, PAT BIGGERSTAFF, JAMES A. FRANKLIN, ALBERT M. HODGE, JR., CAROL S. WILLIAMS, and DEAN ALFORD, and make these their Motions to Dismiss Plaintiffs' Complaint, as follows:

**FIRST MOTION TO DISMISS**

Defendants move to dismiss Plaintiffs' action to obtain additional monies from the State Treasury for the support of their respective county school systems on the ground that the very same "adequacy" and "equal protection" claims, issues and arguments which they seek to present to this Honorable Court, have been considered in depth and

definitively decided by the Supreme Court of Georgia adversely to their contentions in *McDaniel v. Thomas*, 248 Ga. 632 (1981). With utmost respect, the Supreme Court of Georgia's decision in *McDaniel* is constitutionally binding on this Honorable Court, *see*, Ga. Const. (1983), Art. VI, Sec. VI, Par. I, and for this reason, as is more fully detailed in Defendants' simultaneously filed Brief in support of their dismissal motions, forecloses this Honorable Court's reconsideration of Plaintiffs' "more money" claims.

### **SECOND MOTION TO DISMISS**

Defendants move, pursuant to CPA Rule 12(b)(1) [*i.e.*, O.C.G.A. § 9-11-12(b)(1)], to dismiss Plaintiffs' action as to each of them, including the State officials named as Defendants *in their official capacities*, for want of subject matter jurisdiction in that the suit has not been, and is not now, consented to by either the Constitution of the State of Georgia, or by any enactment by the General Assembly of the State of Georgia, and is therefore **constitutionally barred** as to all Defendants under Ga. Const. (1983), Art. I, Sec. II, Par. IX. (*i.e.*, "sovereign immunity").

### **THIRD MOTION TO DISMISS**

Defendants move to dismiss Plaintiffs' action pursuant to CPA Rule 12(b)(1) [*i.e.*, O.C.G.A. § 9-11-12(b)(1)], for want of subject matter jurisdiction in that Plaintiffs' attempt to employ **the judicial process** to directly or indirectly compel the General Assembly to appropriate more money from the State Treasury, would manifestly require the Court to act outside the constitutional limitations of its **judicial power**, and unlawfully intrude upon, and in effect seize political control over, the "purse strings" of State government, a usurpation not only contrary to the "separation of powers" provision of our Constitution, but in direct defiance of those constitutional provisions which place

the quintessentially *political* process of *budget formation and appropriation* (*i.e.*, Georgia's "funding system"), **exclusively** in the hands of the **Executive and Legislative** branches of government, specifically, the Governor and General Assembly. As is more fully shown in Defendants' Brief in support of these dismissal motions, Plaintiffs' attempt to have the Court act outside the confines of the judicial power fails to give rise to any claim or issue over which the Court could constitutionally exercise subject matter jurisdiction.

#### **FOURTH MOTION TO DISMISS**

Defendants move to dismiss Plaintiffs' Complaint pursuant to CPA Rule 12(b)(1) [*i.e.*, O.C.G.A. § 9-11-12(b)(1)] based upon the want of **constitutional** (*i.e.*, "case or controversy") subject matter jurisdiction in that Plaintiffs are for multiple reasons without jurisdictional "standing" to maintain the action they present against the parties they name as Defendants.

#### **FIFTH MOTION TO DISMISS**

Defendants move to dismiss Plaintiffs' Complaint pursuant to CPA Rule 12(b)(1) [*i.e.*, O.C.G.A. § 9-11-12(b)(1)], in that the want of "substantiality" of the issues Plaintiffs' seek to present to the Court, both (1) facially, and (2) because they are foreclosed by the Supreme Court of Georgia's decision in *McDaniel v. Thomas*, 248 Ga. 632 (1981), also precludes the existence of that actual "**case or controversy**" which is *sine qua non* to the existence of constitutional subject matter jurisdiction over their action.

### **SIXTH DEFENSE**

Defendants move to dismiss Plaintiffs' Complaint pursuant to CPA Rule 12(b)(1) [*i.e.*, O.C.G.A. § 9-11-12(b)(1)], in that the County Plaintiffs are political subdivisions of the State of Georgia, and therefore without "standing" to assert their claim of a right or entitlement to more money from the State Treasury in opposition to the will of their creator, the State of Georgia. This same want of "standing" equally applies to each and every individual Plaintiff, in that any rights these school patron Plaintiffs may have in the matter would of necessity be a derivative right (appertaining to the right of the counties) as opposed to an independent right of his, her or their own.

### **SEVENTH MOTION TO DISMISS**

Defendants move to dismiss Plaintiffs' Complaint pursuant to CPA Rule 12(b)(6) [*i.e.*, O.C.G.A. § 9-11-12(b)(6)], because of its failure for multiple reasons, which are more fully detailed in Defendants' Brief in support of these dismissal motions, to state a claim against any of the named Defendants upon which relief can be granted.

WHEREFORE, Defendants respectfully pray that their within and foregoing motions to dismiss be inquired into and sustained, that Plaintiffs' suit, to the extent that it is sought to be maintained against them, be dismissed for the reasons stated in their motions as well as in their more fully detailed statement of the facts, set forth with pertinent legal background and authority, in the simultaneously filed Brief of the Defendants in support of their within and foregoing motions to dismiss. Defendants further pray that all prayers for relief sought be denied, that judgment be entered in their

favor, that all costs taxed to Plaintiffs, and that the Defendants and each of them have such other and further relief as to the Court may appear just and proper.

Respectfully submitted,

THURBERT E. BAKER 033887  
Attorney General

DENNIS R. DUNN 234098  
Deputy Attorney General

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STEFAN RITTER 606950  
Senior Assistant Attorney General

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ALFRED L. EVANS, JR. 251400  
Senior Assistant Attorney General

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DE BRAE C. KENNEDY 414335  
Assistant Attorney General

**PLEASE ADDRESS ALL  
COMMUNICATION TO:**

ALFRED L. EVANS, JR.  
Senior Assistant Attorney General  
40 Capitol Square, S. W.  
Atlanta, Georgia 30334-1300  
(404) 656-3389  
(404) 657-9932 (FAX)

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the foregoing **Motions to Dismiss Plaintiffs' Complaint** upon Plaintiffs, prior to filing the same, by depositing copies thereof, postage prepaid, in the United States Mail, properly addressed to Plaintiffs' Counsel of Record, to wit:

AMY TOTENBERG, ESQ.

THOMAS A. COX, ESQ.  
Suite 300, One Decatur Town Center  
150 Ponce de Leon Avenue  
Decatur, Georgia 30030

This \_\_\_ day of November, 2004.

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ALFRED L. EVANS, JR.  
Senior Assistant Attorney General