

**IN THE  
SUPREME COURT OF ARKANSAS**

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**LAKE VIEW SCHOOL DISTRICT  
NO. 25 OF Phillips County, et al.**

**APPELLANTS**

**V.**

**NO. 01-836**

**MIKE HUCKABEE, Governor of the  
State of Arkansas, et al.**

**APPELLEES**

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**On Appeal From The Chancery Court  
Of Pulaski County, Arkansas  
Second Division**

**The Honorable Collins Kilgore  
Chancery Judge**

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**AMICUS CURIAE BRIEF  
OF  
ARKANSAS POLICY FOUNDATION**

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STATEMENT OF INTEREST OF THE ARKANSAS  
POLICY FOUNDATION AS AMICUS

The Arkansas Policy Foundation ("APF") is a nonpartisan, nonprofit economic research organization ("think tank") headquartered in Little Rock, Arkansas. Since its inception in 1995, APF has investigated and analyzed, in detail and following accepted methodologies, the accounting and finance practices of Arkansas' public education system for kindergarten through twelfth grade (K - 12), as reported in the Murphy Commission and other APF-sponsored reports. Two of APF's accounting recommendations were supported by Senate President Pro Tempore Mike Beebe, approved by the Arkansas State Legislature and signed into law by Governor Mike Huckabee in 2001. These were the Foundation's recommendations concerning performance-based budgeting and an activity-based accounting system for Arkansas State government.

**II. STATEMENT OF INTEREST**

APF asked to file an amicus brief in this case because it has, based on its earlier studies, developed information that should be helpful to this Court in making its decision in this somewhat complex litigation.

The U.S. Department of Education, during the Clinton administration of 1996, recommended a model school-level finance data collection system for the nation, an activity based accounting system. Other states in the region, including South Carolina, have established an activity-based accounting system. There are three good reasons for states to create an activity-based accounting system: 1) vital information is produced showing the distribution of expenditures and allocation of resources; 2) funding equity questions can be evaluated when the distribution of resources between districts and among each school within a district is known; and 3) outcomes can be explored more effectively by linking school-level expenditures and

performance. Arkansas does not have a standardized activity-based accounting system for the K - 12 system. Given the lack of a standardized accounting system, the trial Court faced a daunting task in this complicated case. APF's principal concern is the trial Court's order, which appears to dictate to the Legislature certain characteristics or features of Article 14, Section 1 of the Arkansas Constitution. The cure for this problem is a standardized activity-based accounting system, such as those proposed by the Clinton Administration in 1996, the Murphy in 1998, and the Walton Family Foundation.

### III. STATEMENT OF THE CASE

The history of this litigation is set forth in *Lake View School Dist. No. 25 v. Huckabee*, 349 Ark. 481, 484, 10 S.W.3d 892 (2000) (Lake View II); *Tucker v. Lake View School District No. 25*, 323 Ark. 693 - 698, 917 S.W.2d 530 (1996) (Lake View I). The case started out in 1992 as a challenge brought by a number of plaintiffs who claimed that they did not receive their share of the State's education expenditures due them under specific state and federal constitutional mandates. Following the first trial, in 1994, the trial court entered an order ("the 1994 order") holding that while the plaintiffs' federally based claims would not stand (*Tucker* 917 S.W.2d 530 at 532), the State's funding mechanism was inequitable under the Equal Protection clause of the Arkansas Constitution because of certain funding disparities, and inadequate under Article 14, Section 1 of the Arkansas Constitution because it failed to provide a "general, suitable and efficient" public school system. *Huckabee*, 10 S.W.3d 892 at 894. The trial court stayed its order for two years to give the Legislature time to remedy the situation. (*Id.* 1)

### IV. ARGUMENT

In response to the 1994 order, and during the period of the stay, the State of Arkansas made a number of modifications to the public school statutory framework, and voters adopted

Amendment 74 to the State Constitution. However, the State did not enact a standardized activity-based accounting system for the K-12 system. Based upon those changes, in August 1998, the trial court dismissed plaintiffs' case, reasoning that the new statutes and Amendment 74 had made moot plaintiffs' grievances. Plaintiffs appealed. This Court reversed and remanded the case to the Chancery Court, holding that Plaintiffs were entitled to a "compliance trial" to test the curative effects of the 1995 and 1997 Legislative acts. *Lake View II*, 340 Ark. 481 at 493-95. The present appeal arises from the results of that compliance trial.

#### A. FINAL ORDER

In its final order, the trial court found that Arkansas' public school accounting system is inequitable and inadequate under Article 14, Section 1, and Article 2, Sections 2.3 and 16 of the Arkansas Constitution. **A.47-53**. There is ambiguity in that finding. While it seems certain that the determination is directed expressly and solely to the funding system, and not against the public school system in its entirety, the specific problem with the funding system violates Article 2 and Article 14 independently. *It is not totally clear whether the final order is directed to the distribution of school funding around the state, or more broadly, funding disparities between districts*. This is obviously a very important difference. Increasing total funding would mean a reallocation of State resources from other governmental services or an increase in taxes. Equalization of funding is one issue that could be accomplished with a standardized activity based accounting system for the K - 12 system. Arkansas does not have a standardized activity based accounting system. Increasing total funding for public schools is quite another matter, and would mean a reallocation of State resources from other governmental services. Reference, to the trial court's Conclusions of Law are of great assistance in achieving more clarity of the order.

#### B. CONCLUSIONS OF LAW

The trial court's determination of what would comprise a "general, suitable, and efficient," and therefore "adequate" system of education, as required under Article 14, Section 1, is based primarily upon *Rose v. Counsel for Better Education, Inc.*, 790 S.W.2d 186 (Ky. 1989). There, the Kentucky Supreme Court undertook to define the public school system under Kentucky's state constitution as one that required "substantial uniformity, substantial equality of financial resources[,] and substantial equal education opportunity for all students." 790 S.W.2d at 191 - 192.

The *Rose* court held that such a system would have several elements, one of which would be to provide an "adequate education." The court avoided any separation of powers problems by not attempting to compel the Kentucky Legislature to take any particular act in response to the Court's declaration that the school system, as it existed, was unconstitutional. Instead, it created a "safe harbor" for the express purposes of limiting its judgment in such a manner as to maintain the separation of powers between the judiciary and the legislative branch.

Having adopted the *Rose* definition of "adequate education," the trial court intended to adjudicate not only the issue of disparities in district to district funding, but also the sufficiency of the total school funding formula. In Conclusions of Law Number 1, the trial court held that "Under the Arkansas Constitution at Article 14, Sections 1, and Article 2, Sections 2, 3, and 18, school districts throughout the State must provide substantially equal educational opportunities" district to district. R. 48. Again, as in the Final Order, the two Constitutional provisions are linked.

"Educational opportunity" is defined in Conclusion No. 3a as "per-student expenditure" on education. **A.49.** APF shares the trial court's concern that the state is not presently able to make that determination. The state must take necessary steps to effect a more accurate

accounting of expenditures. The problem identified by the trial Court cannot be solved without a standardized activity-based accounting system for the K - 12 system.

In Conclusion of Law No. 2, the trial court held that the State must also provide equality in public school buildings and equipment, and that disparities created by past inequitable funding must be cured. **A.49.** Providing only progressive equal funding is insufficient. Again, the trial court cites both Article 14, Section I and Article 2, Sections 2, 3 and 18 together, and not independently, as its basis for this holding.

APF notes the trial court's imperative that the funding deficiencies be remedied "as soon as possible," (**A.48**) but that the court fails to define those remedies or the time frame envisioned by "as soon as possible" with any specificity.

In Conclusion No. 4, the court holds that teachers' salaries are disparate within the State, and that this disparity violates Article 2, Sections 2, 3 and 18, the Equal Protection clauses of the State Constitution. Here, the trial court did not link the disparity to Article 14, the public school provision of the Constitution.

Is the trial court purporting to provide equal protection to public school teachers who are not parties to the litigation? Is a finding that teachers' salaries in Arkansas may differ from district to district, per se, an indication of disparate or inequitable expenditure on educational opportunity for our children.

In Conclusion No. 6, the trial court found that teachers' salaries in Arkansas are unacceptably low compared to those in Memphis, Tennessee and Texarkana, Texas, and concludes broadly that teachers' salaries in this state are wholly inadequate in violation of Article 14, Section 1. **A.42.** This is the first separation of the equal protection constitutional provisions and the public school provisions of Article 14. It is also the first clear indication that the trial



court intends its Final Order to mean that school funding is unacceptably insufficient as well as inequitably distributed. The clear implication of this Conclusion is that the Legislature must raise teachers' pay in order to hire quality personnel to meet the education needs of the schools. APF is concerned these statements could be construed as a directive from the trial Court to the Legislature to provide all Arkansas teachers a pay raise.

Conclusion No. 7 is troubling for a similar reason. Here, the trial court seems to command the State to promptly start providing pre-school programs which will allow those children to compete academically with their peers. **A.52.** There are three distinct problems with that mandate. First, Article 14, Section 1 provides that the Legislature *may* (emphasis ours) use public school funds for persons less than six years of age; the trial court would change that "may" to "must," a judicial change made to the Constitution. Second, the statement is internally inconsistent. If the change decreed by the trial court would allow preschool children to compete with their peers, there must be, implicitly, those who can now compete, and those who cannot. There are no guidelines for telling the difference. Finally, as with the earlier compulsive language, there remains the question of whether the trial court has the jurisdiction to make an order compelling preschool programs.

In Conclusion No. 8, the trial Court states that an uneducated person may lead a harsh life, and that the 'inadequate' funding system existing at the time of *Dupree v. Alma School Dist. No. 30*, 279 Ark. 340, 651 S.W.2d 90 (1983) has not changed. **A.53.** But *Dupree* dealt only with the problem of disparities in district-to-district school funding resulting from disparate property tax revenues, holding that such disparity violated the equal protection guarantees of the State Constitution. APF does not interpret the *Dupree* decision as making any broader conclusions about the general inadequacy of the public education system.

It may well be that the post *Dupree* Arkansas school funding system has in fact not cured the wealth-based disparities noted in *Dupree*. Indeed, at Finding of Fact No. 23, the trial court found that ". . . wealthy school districts are able to provide more educational resources than poor districts . . ." **A.15**. Unfortunately, so long as local property tax revenue is a component of public school funding, inequitable disparities in per-student educational opportunities may continue to exist. See *Carrollton-Farmer Branch Independent School District v. Edgewood Independent School District & Alvarado Independent School District*, 826 S.W.2d 489 (35 Tex. Sup. J. 374 1992).

As long as our public school system consists of variations on the same themes, "... the problems inherent in the system cannot be expected to suddenly vanish." *Carrollton, supra*, 826 S.W.2d 489) 524. Suppose it could be determined, given a standardized activity-based accounting system, that Arkansas provided exactly equal per-student current expenditure *including amortization of capital goods* across all schools in all districts in the state. *Dupree* would ask whether the educational results would be necessarily "adequate" according to the trial Court, or whether something more was needed, for example test results more satisfactory than those recited by the trial Court in Finding of Fact No. 57.

It appears that the trial court is uncertain about what might be an understandable and adequate system of funding given the absence in Arkansas of a standardized activity-based accounting system. In Conclusion No. 8, at the end, the trial Court states: ". . . the Court concludes an adequacy study is necessary and must be conducted forthwith." **A.53**. The trial court has made a conclusion that the current system is inadequate, while ordering that an adequacy study should be conducted.

### **C. THE REMEDY**

The remedy section of the order does not provide affirmative relief for the plaintiffs. APF acknowledges that in *Rose*, supra, upon which the trial court relied, there was no remedy stated. The Kentucky Supreme Court evidently believed that the simple declaration that the entire system was unconstitutional would suffice. Upon closer look, however, the trial Court has gone much farther than the *Rose* court went. The trial court implies a threat to the Legislature: "We should resort to the courts in forming a remedy . . . *only when all else has failed*," (A.54) and, "these issues are *for now*, left to the Legislature." A.55. (Emphasis ours).

Arkansas law, and not Kentucky law, should control interpretation of the Arkansas Constitution. Words should be given their plain, common meaning. There is also the rule that we give language its plain and ordinary meaning. *Gritts v. State*, 315 Ark. 1, 864 S.W.2d 859 (1993); *Mountain Home School District No. 9 v. T M. J Builders, Inc.*, 313 Ark. 661, 858 S.W.2d 74 (1993); *Omega Tube & Conduit Corp. v. Maples*, 312 Ark. 489, 850 S.W.2d 317 (1993). Thus, the plain and common meaning of words may be found in the dictionary. Consulting *The American Heritage Dictionary of the English Language*, we find the following plain meanings:

- "General" - applicable to the whole, to every member of a group";
- "Suitable" - adapted to a purpose.
- "Efficient" - productive of the desired without waste.

Again that purpose means legislative action to oversee and make sure the action leads to the desired (intended) results at the least cost.

That the Legislature can and should enact legislation to satisfy these definitions of the Constitutional mandate is clear. It is also clear that, provided the Legislature acts in good faith to conform its actions to and within the commonly understood meaning of these words, judicial intervention is inappropriate.

The trial court conducted a broad inquiry into the various deficiencies and problems of the Arkansas public school system, ranging from school funding disparities between particular districts, to comparisons of Arkansas' teachers' salaries with those in other states; from the disparities between particular districts in the numbers of books, calculators, chalkboards, basketball uniforms, free lunches, operable busses, computers, band programs, even restrooms and restroom stalls, to the performance rating of Arkansas students nationally. APF suggests there is no roadmap presented in the trial court's order from which one could rationally link these findings to the final determination. Inequity cannot be determined without a standardized activity-based accounting system. These are not facts upon which one could base a determination that the funding system is unconstitutional. There is no rational basis for the conclusion that the performance of the Arkansas public school system is inadequate because it is insufficiently funded.

Consider Finding of Fact Number 23, in which the trial court points out that Lake View is an example of a poor district with a relatively low student-teacher ratio. **A 15.** One would expect that the poorer district would have a higher student-teacher ratio, and that the lower ratio would provide a better opportunity for the Lake View students. Compare this with Finding Number 34, in which the trial court points out that Ft. Smith, a richer district than Lake View, has a higher student-teacher ration than Lake View. See also Finding of Fact number 42, which states that Rogers is a wealthy district, but that there is no " . . . correlation between a district being above average in wealth and being above average in expenditures per student. For example, Lake View spends more money per student than Rogers even though Rogers is considered wealthy and Lake View is considered poor." **A 19.**

The trial court also made a pronouncement with which APF readily agrees: "Large scale education is an extremely complex process with many components." Finding of Fact No. 44. **A 20.** And poor public school educational results cannot generally be cured simply by spending more money on public school education.

## V. CONCLUSION

Justice Thomas Glaze remarked in his dissent in *Lake View II*, 110 S.W.3d at 9041, "this case has taken on a life its own ..." APF's concern is that the trial court's Final Order goes too far in dictating the parameters and characteristics of the public school system, and that it encroaches on the Legislature's domain. If the 1995 and 1997 legislative acts, coupled with Amendment 74 did not cure the funding disparities first noted in the 1994 order, then the Legislature has failed in its duty, and the Legislature will act.

Respectfully submitted,



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