DOCKET NO. X07 HHD-CV-14-5037565-S

S.C. 160124

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., et al. *Plaintiffs*	:	SUPREME COURT
v.	:	
RELL, M. JODI et al. *Defendants*	:	September 19, 2016

Plaintiffs' Opposition to Defendants' Application for Certification to Appeal Pursuant to Conn. Gen. Stat. § 52-265a

Responding to the Chief Justice's invitation, the plaintiffs submit this statement in opposition to the Attorney General's application on behalf of the defendants for certification of an interlocutory appeal of the trial court's non-final judgment by Memorandum of Decision, Doc. 359 ("MOD"), filed on September 7, 2016, or alternatively in support of a full review of the MOD, including the portions setting forth the trial court's findings and conclusions as to adequacy of resources and the plaintiffs' equal protection claim.

I. The Proceedings In The Trial Court Should Be Completed Before This Court Reviews the Partial Judgment

It would not be in the public interest or judicially efficient for the Supreme Court to review the findings and conclusions in the MOD before the remedy proceedings ordered by the trial court are completed and a final judgment entered. In the MOD, the trial court determined that a number of standards and policies underpinning the state's educational system were unconstitutional, while rejecting

Filed 9-19-16
AH/CO
363.00

other arguments and claims the plaintiffs had advanced.[1] With respect to its determinations of unconstitutionality, the trial court ordered the defendants to submit a plan within 180 days to remedy each of the constitutional violations it had identified; it gave the plaintiffs 60 days to respond to the defendants' submission, and stated it would schedule a hearing thereafter. MOD at 90.

This case has been pending since 2005, and has previously been the subject of an interlocutory appeal and 2010 decision addressing the scope of the right to education under Article 8, Section 1 of the Connecticut Constitution.[2] *Connecticut Coalition for Justice in Education Funding v. Rell*, 295 Conn. 240 (2010). As the trial court noted, in this Court's 2010 decision remanding this case for trial, the plurality acknowledged that the standard for assessing whether the constitutional mandate was being met would need to be "refined and developed further" as applied to the evidence developed at trial. *Id.* at 318. After extensive pre-trial discovery, the parties presented evidence that consisted of more than 50

[1] The findings of unconstitutionality pertained to (i) state provision of aid to education, particularly through its general educational grants and construction grants; (2) standards for graduating high school students and advancing elementary students; (3) teacher evaluation and compensation; and (iv) state implementation of special education services.

[2] The grant of interlocutory review in *CCJEF* is no precedent for granting such review here. There, the plaintiffs were facing a trial on the remainder of the case following a dismissal of their core claim under Article 8, Section 1 of the Constitution. Had a full trial then proceeded, and the claim was reinstated (as did happen), the trial would have been conducted a second time. Here, a lengthy trial on liability has been completed, leaving only issues of remedy for determination, as to which the trial court has set a disciplined schedule for accomplishing.

witnesses, 826 exhibits and nearly 2000 fact admissions over 60 trial days, followed by extensive briefing and argument that concluded on August 10. The Court issued the MOD less than a month later.

That timeline leads to three conclusions: (i) this case of enormous importance about a fundamental right has been pending more than a decade, as the conditions in Connecticut's schools continue to impact thousands of students' future; (ii) the voluminous and complex record on which the MOD is based is fresh in the minds of the parties and the trial judge; and (iii) the trial judge has set a disciplined schedule for completing the remedy phase by mid-year 2017. To stay the remedy proceedings while this Court hears and determines the liability aspects of the MOD portends substantial delay in the final resolution of these proceedings, to the clear detriment of students who would be the beneficiaries of whatever rulings and remedies the courts find appropriate.[3] Moreover, if the Supreme Court were to affirm the findings of unconstitutionality in whole or in part, the remedy phase would have to be completed in order to enter a final judgment. In that event, there would be a third review and decision by the

[3] The uniqueness of the legal issues, as well as the breadth and complexity of the matters and evidence addressed by the trial court, indicates that the Supreme Court's review will take substantial time. The prior interlocutory appeal, which dealt solely with whether the pleadings stated a claim under the relevant constitutional provision, required nearly two and a half years from the time the request was granted until the decision was issued. *See* SC Doc. No. 18032, *Connecticut Coalition for Justice in Education Funding v. Rell.*

Supreme Court some number of months or years after the determination of the proposed interlocutory review.

This Court's examination of the issues would be enhanced by understanding the remedies proposed, analyzed and ultimately adjudicated by the trial court. Those proceedings could facilitate this Court's review in any number of ways, including by additional identification of the precise ambit of the constitutional flaws identified by the trial court, narrowing of differences among the parties as to those issues, and/or agreement on potential solutions to the causes underlying the identified constitutional violations.[4]

Finally, defendants' argument that this Court should accept review of the MOD now because the trial court exceeded its authority in ordering the remedy phase effectively seeks to re-open the attack on justiciability that was addressed and rejected by this Court's prior decision. The trial court afforded the defendants wide latitude in formulating any plans they might submit, including provision for a phase-in process to account for any steps to be taken once judicial approval was obtained. Whether any particular feature of a plan approved by the court is

[4] The Defendants argue that the remedy phase may be mooted if the Supreme Court were to reverse the findings of unconstitutionality set forth in the MOD. That argument applies to every case—particularly complex cases like this—in which the path to final judgment is sequenced by bifurcating proceedings or otherwise. Given the expectation that this phase will move quickly, that risk is outweighed by the benefits of completing the remedy proceedings and permitting this Court to conduct a full review of the entire case.

beyond the judicial power can only fairly be assessed when the trial court completes its consideration of the plan—an additional reason for this Court to defer its review.

Having invested so much time and effort in the proceedings to date, and with a comparatively short schedule for completing the remedy phase, judicial economy is best served by a comprehensive review based on a full record compiled through final judgment. The defendants' application should therefore be denied.

II. If the Application is Granted, the Supreme Court Should Review All Portions of the MOD

Should the Chief Justice certify the defendants' application for appeal, this Court should also review the trial court's decisions concerning the constitutional standard for determining adequacy of educational resources under Article Eighth, Section 1 of the Connecticut Constitution (and the applicable standard of proof), MOD 9-22; the application of that standard to the evidence of educational resources, *id.* at 23-26; and the trial court's dismissal of the plaintiffs' equal protection claim, *id.* at 27.

There are several reasons supporting this Court taking up these issues as part of any interlocutory review. First, the legal standard for assessing the constitutional right to education which the defendants seek to have reversed derives from the trial court's analysis of this Court's prior decision in this case,

particularly how to interpret the plurality and concurrence opinions. That analysis drives not only the trial court's finding of unconstitutionality of the policies and standards analyzed in the MOD, but also its finding that the state in the aggregate is providing sufficient resources as measured against constitutional requirements. The plaintiffs submit that the trial court's articulation of the legal standard is erroneous in several respects. To review the trial court's conclusions by considering only its discussion of the constitutional test in the context of standards and policies, but not resources, would be artificially constrained and incomplete.

Second, it would be highly inefficient if this Court were to remand the case to complete the remedy proceedings without reviewing the full scope of the trial court's ruling, only to later find that the trial court's adequacy of resources and equal protection analyses were erroneous. By that time, additional years of litigation would have elapsed, leaving parties and the trial court even more removed from the evidence and Connecticut students delayed in having their adequacy claims heard and determined. Plaintiffs' claim of inadequate resources, after all, was the very matter this Court carefully considered in its prior decision and remanded to the trial court for further elaboration of the legal standard and for full development of the record.

Third, the trial court rejected the plaintiffs' claims that the Connecticut educational system violated the right to equal protection of the law as it applied to the provision of resources, in a short discussion at the end of its adequacy of

resources analysis. MOD at 27. The plaintiffs submit that the standard applied by the trial court, as well as its analysis of the evidence, was erroneous. Nevertheless, the trial court included no discussion of the plaintiffs' equal protection claims relating to the policies and standards it found unconstitutional, including the funding of education through state aid and construction grants. Thus, even if the Supreme Court were to agree with the defendants and reverse the findings of unconstitutionality under Article 8, Section 1, it would face the possibility of later concluding that one or more of those policies or standards was unconstitutional under the rubric of equal protection analysis (as well as reversing the equal protection determination as it relates to adequacy of resources).

We note that defendants do not appear to oppose a full review of the MOD if interlocutory review is granted. Section 3 of their request specifically states that the questions for which review is sought include "[o]ther issues central to this broad and important litigation as may be identified by the parties and this Court as necessary to full and fair consideration of the appeal." Application for Certification to Appeal Pursuant to Conn. Gen. Stat. § 52-265(a)" at 2. (To the extent procedurally necessary to consider the issues and questions identified herein if the Chief Justice grants interlocutory review, the plaintiffs invoke Conn. Gen. Stat. § 52-265(a) to request that this Court determine the issues identified below for the reasons discussed above).

Thus, if the Chief Justice certifies the defendants' application for appeal, this Court should also review the following issues:

1) Whether the trial court erred in determining the applicable constitutional standard for adequacy of educational resources.

2) Whether the trial court erred in its application of the constitutional standard for adequacy of educational resources to the record before it.

3) Whether the trial court erred in its determination that the plaintiffs had failed to prove their claim that they were denied equal protection of the law in how the state provides resources to schools and districts throughout Connecticut.

4).Whether the standards and policies analyzed by the trial court failed to satisfy the constitutional requirement that the plaintiffs be afforded equal protection of the law.

5) Whether the trial court erred in evaluating the plaintiffs' claims under a test of proof beyond a reasonable doubt.

Accordingly, the plaintiffs request (i) that the Chief Justice deny the defendants' application for certification to appeal at this time, and that the request for a stay be denied; or alternatively (ii) in the event the Chief Justice decides to certify the defendants' application, that this Court include in its review the trial court's rulings identified above.

THE PLAINTIFFS

By: /s/ Cara Moore
Joseph P. Moodhe
Helen V. Cantwell
Megan K. Bannigan
Gregory P. Copeland
David B. Noland
Dustin N. Nofziger
Sean Heikkila
Susan Reagan Gittes
Johanna Skrzypczyk
Emily A. Johnson
Olivia Cheng
Lindsay C. Cornacchia
Alexandra S. Thompson
Christel Y. Tham
Edward Bradley
Cara A. Moore
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022
(212) 909-6000
(212) 909-6836 Fax
Juris No.: 428027
camoore@debevoise.com

David N. Rosen
David Rosen & Associates, P.C.
400 Orange Street
New Haven CT 06511
(203) 787-3513
(203) 789-1605 Fax
Juris No.: 51235
drosen@davidrosenlaw.com

CERTIFICATION

I hereby certify that on September 19, 2016, a true and accurate copy of the foregoing Plaintiffs' Opposition to Defendants' Application for Certification to Appeal Pursuant to Conn. Gen. Stat. § 52-265a was sent via first class mail, postage paid only

Clerk
Superior Court, Judicial District of Hartford
95 Washington Street, Hartford, CT 06106
Phone: (860) 548-2700 Fax: (860) 548-2711

via electronic mail only

Honorable Thomas Moukawsher
Superior Court, Judicial District of Hartford
95 Washington Street, Hartford, CT 06106
Phone: (860) 548-2700 Fax: (860) 548-2711
adam.harvey@jud.ct.gov

and to the following counsel of record:

Joseph Rubin, Esq., Joseph.Rubin@ct.gov
Beth Z. Margulies. Esq., Beth.Margulies@ct.gov
Eleanor May Mullen, Esq., Eleanor.Mullen@ct.gov
Darren P. Cunningham, Esq., Darren.Cunningham@ct.gov
John DiManno, Esq., John.DiManno@ct.gov
Cynthia Courtney, Esq., Cynthia.courtney@ct.gov
State of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120
State of Connecticut
Office of the Attorney General
55 Elm Street
Hartford, CT 06141-0120

David N. Rosen, Esq., drosen@davidrosenlaw.com
David Rosen & Associates, PC
400 Orange Street.
New Haven, CT 06511

Amicus Curiae: Connecticut Commission on Human Rights and Opportunities
450 Columbus Boulevard, Suite 2, Hartford, CT 06103
David Kent, Esq., David.Kent@ct.gov

/s/ Cara Moore
Cara Moore
Juris No.: 428027