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| X07 HHD CV 14-5037565S | : | SUPERIOR COURT |
| CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., ET AL. | : | JUDICIAL DISTRICT OF HARTFORD |
| V. | : | COMPLEX LITIGATION DOCKET |
| M. JODI RELL, ET AL. | : | SEPTEMBER 7, 2016 |

**Memorandum of Decision**

**APPENDIX TWO:**
**SUBORDINATE RULINGS**

**1. The individual plaintiffs have standing.**

The state says the parents and students named as plaintiffs have no right to bring this lawsuit —no standing— because they did not all testify and because they did not prove harm.

The state objects to the plaintiffs relying on factual admissions to establish these plaintiffs' school districts and similar facts related to standing. It says the admissions are invalid because they were the court's idea and essentially shifted the standing burden to the state. Requiring the parties to propose admissions may have been the court's idea, but—if it matters— the plaintiffs did the asking, not the court. The state could have asked for the right to depose any of the plaintiffs but decided not to. If it had any serious concerns it could have challenged the truthfulness of where they lived,

etc. in a number of ways, including deposing them or subpoenaing them to court. This suggests the reason it didn't is because it doesn't really dispute these factual underpinnings.

The state claims none of the plaintiffs proved harm to them personally and without harm they have no standing. As the Supreme Court held in 2014 in *Kortner v. Martise* "[o]ne cannot rightfully invoke the jurisdiction of the court unless he [or she] has, in an individual or representative capacity, some real interest in the cause of action ...." [1] It explained that this means standing requires "a colorable claim of direct injury he has suffered or is likely to suffer, in an individual or representative capacity."[2] The state agrees that the individual plaintiffs are parents and students in the impoverished school districts that are the focus of this lawsuit. They allege that these children are being deprived of a constitutionally adequate education. This certainly gives them a colorable claim to an interest in the lawsuit. The policies challenged in this case affect every school child in the state, but the harms alleged focus particularly on the plaintiffs' school districts and the inadequacies they face. What more can they be asked? It would be impossible to prove that a specific failure caused them personally not to learn something. That is why they only have to have a "colorable claim." They have one. Therefore, they have standing.

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[1] 312 Conn. 1, 10.
[2] Id.

## 2. CCJEF has standing.

The state also claims the lead plaintiff Connecticut Coalition for Justice in Education Funding, Inc. has no standing. They have lost this claim before. The court agrees with Judge Dubay's earlier ruling. It adds that the evidence at trial, including facts contained in written admissions, make it incontestable that while CCJEF members include organizations whose members include municipalities, school boards, superintendents, and teachers it also includes several students and parents currently in Connecticut public schools. Even the state does not challenge on this ground plaintiffs Mary Gallucci, Pascal Phillips-Gallucci, and Ellis Phillips-Gallucci.

Instead, the state wants the court to hold they are not members of CCJEF because they cannot vote on how to spend the group's money or craft the litigation strategy associated with it. It points to the 1986 Supreme Court decision in *Connecticut Assn. of Health Care Facilities, Inc.* v. *Worrell.*[3] Judge Dubay discussed it thoroughly in his earlier opinion on standing. Its first prong required that "its members would otherwise have standing to sue in their own right."[4] The state says the Galluccis and the others aren't members for this prong of *Worrell* because they can't vote, and this kills CCJEF's claim to standing.

The trouble is that the state has its facts wrong. Article II, Section 2 of the CCJEF bylaws says parents are members. Section 1 of the same article says all

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[3] 199 Conn. 609.
[4] *Id.* at 616.

members are "Corporate Members" and "The Corporate Members' powers include, but are not limited to, the power to initiate and pursue litigation, to hire experts and other staff, and to make spending decisions." The state points to Article II Section 5. That section cuts parents out of its definition of "Voting Members" and reserves certain decisions to them:

> Only a Voting Member may participate in: (i) the election or removal of Members of the Steering Committee, as set forth below; (ii) any proposed amendments to the Corporation's Certificate of Incorporation or these Bylaws which would deprive the Members of their right to vote in the election or removal of Members of the Corporation; and (iii) any proposed amendment to the Corporation's Certificate of Incorporation or these Bylaws pertaining to dues, assessments, fines, or penalties to be levied or imposed upon Members.

This means parents can vote on some very important things—including money and lawsuits— but not everything. There is no reason to believe parent members aren't real members of CCJEF, and since they are, CCJEF meets the *Worrell* prong the state says it does not. For this reason, and those expressed by Judge Dubay, CCJEF has standing to sue.

### 3. The state is not protected from this lawsuit by sovereign immunity.

The Supreme Court rejected a sovereign immunity claim in a constitutional challenge to state school funding in 1977 in *Horton v. Meskill.*[5] It noted that "[a] holding to the contrary would foreclose proper judicial determination of a significant and substantial constitutional question the determination of which is manifestly in the

[5] 172 Conn. 615.

public interest."[6] This decision avoided a disastrous policy. If no one could force the state to comply with the highest law of the land, democracy would be badly undercut. And despite the state's suggestion, this isn't a suit for damages. It would be if the students were suing for damages resulting from educational malpractice, but they aren't. The only thing they are trying to do is vindicate rights promised to them under the highest law of the land by way of a declaration and prospective relief. In that respect, the case is the same as *Horton*, so a sovereign immunity claim here must meet the same death it did there.

**4. The case is neither moot nor unripe.**

The state repeats claims it lost before. The court agrees with Judge Dubay's prior rulings. It adds that the trial showed the case to be overripe if anything in the sense that the defects the court has found have been easy to see but unaddressed for decades. The evidence does nothing to suggest the case is moot. Neither the 2012 reforms nor anything else the state has done hold any credible promise to fix the systemic problems the court has found. The state's standards will not morph by themselves into something reasonable, and despite plenty of time the state has not fixed them. The case is neither moot nor ripe.

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[6] *Id.* at 628.

**5. Evidentiary objections.**

The state presses its claim that the court should bar from evidence the testimony and report of Robert Palaich. The Palaich evidence concerns his study of how much money would be needed to operate an education system conforming to the plaintiff's views.

Section 7-2 of the Connecticut Code of Evidence says that experts may testify "if the testimony will assist the trier of the fact in understanding the evidence or in determining a fact in issue." Without deciding any other challenges to it, Palaich's testimony will not assist the court because it has determined that it is powerless to set overall education spending, and that is what the Palaich and his evidence address. While the court holds that a rational formula must be followed, it isn't the court's job to design one. Therefore, the Palaich evidence will not assist the court at this stage of the litigation. His report and testimony are stricken, and the court will not rely on other evidence related to them.

The state also objected to the testimony of Dr. Henry Levin of Columbia University. The court relied on his testimony only to support its conclusion about spending priorities and empty graduation standards. He was helpful on these points, and the court didn't rely on anything he said that the state objected to about monetizing the value of high school graduation. Therefore, the state's objection is overruled.