

IN THE SUPREME COURT OF ARKANSAS

**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

On Appeal from the Chancery Court
of Pulaski County, Arkansas

Honorable Collins Kilgore
Presiding Judge

***AMICUS CURIAE* BRIEF
OF THE
ARKANSAS PUBLIC POLICY PANEL**

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OUTLINE OF AMICUS CURIAE BRIEF

- I. INTRODUCTION AND THE ISSUES TO BE ADDRESSED BY AMICI.**
- II. THE ARKANSAS SUPREME COURT SHOULD RETAIN JURISDICTION OVER THE LAKEVIEW CASE IN ORDER TO GUARANTEE ALL ARKANSAS CHILDREN EQUAL EDUCATIONAL OPPORTUNITY.**
- III. THE STATE OF ARKANSAS HAS FAILED TO ENACT SUBSTANTIAL REFORM MANDATED BY THE ARKANSAS SUPREME COURT TO ACHIEVE EDUCATIONAL ADEQUACY BY THE COURT'S DEADLINE.**
- IV. THE STATE OF ARKANSAS HAS FAILED TO DEFINE OR ENACT SUBSTANTIAL REFORM MANDATED BY THE ARKANSAS SUPREME COURT TO ACHIEVE EDUCATIONAL EQUITY BY THE COURT'S DEADLINE.**
- V. THE SUPREME COURT SHOULD RETAIN JURISDICTION OVER THE LAKEVIEW FOR TWO PRIMARY PURPOSES:**
 - A.** To take any and all actions necessary to compel the State to enact reforms and funding necessary to provide an adequate and equitable education for all children in Arkansas.
 - B.** To evaluate compliance of any reforms that may be enacted to ensure that they provide an adequate and equitable education for all children in Arkansas, until the requirements of adequacy and equity have been met.

INTEREST OF AMICI CURIAE

The Arkansas Public Policy Panel (APPP) is a private non-profit organization dedicated to improving social and economic justice in Arkansas by increasing the involvement of citizens and grassroots community members in important public policy decisions. Since its creation in 1963, originally as the Arkansas Panel of American Women, the APPP has been actively involved in public education issues. The APPP works with a wide array of community groups and citizens, including taxpayers, parents, students, education professionals, union members, and farmers. These groups believe that education is of paramount importance to the people of Arkansas and that the state's school finance system must be reformed so that every child in the state is offered equal educational opportunity. The APPP supports the trial court's ruling in this case and believes that the court appropriately directed the legislative and executive branches of state government to take steps to reform Arkansas' system for funding public schools.

ARGUMENT

I. INTRODUCTION AND THE ISSUES TO BE ADDRESSED BY AMICI.

The Court in *Lake View v Huckabee* ruling laid out in compelling fashion its jurisdiction and reasoning for finding the Arkansas school system unconstitutionally unsound on the grounds of both adequacy and equity. We applaud the Courts decision and return to request full implementation of the ruling.

The State of Arkansas has failed to address Arkansas court orders to provide a constitutionally sound education system for almost twenty-one years, dating back to *Dupree v Alma School District No.30*, 279 Ark. 340, 651 S.W.2d 90 (1983). The Court stated in the *Lake View* ruling its frustration at the State's inaction for so long. Indeed the school children and community members of Arkansas are frustrated by this inaction as well, and the time has come for the Court to compel the State to act.

The Court established a deadline of December 31, 2003 for the State to enact several remedies addressing inequity and inadequacy in the Arkansas school system in November of 2002. Instead of prompt action, the State again delayed, not addressing the issue in a general legislative assembly in the Spring of 2003 and postponing a special legislative session until December of 2003. This delay nearly guaranteed the State would not have sufficient time to address the courts mandate before the deadline. Indeed at the writing of this brief the Arkansas Legislature seems as far from achieving the task of equity and adequacy as they were 14 months ago. In the interim, another class of Arkansas school children have graduated without equity or adequacy, and another class has entered into a constitutionally unsound system.

The State has defined an adequate education, as mandated by the court, but they have failed to implement a single one of the reforms prescribed by the adequacy study. The State has taken little to no evident action to even define equity in the school system, much less enact any reforms to achieve equity and close the achievement gap between classes of students in Arkansas.

We ask the Court to resume its jurisdiction over the Lake View case for two reasons. First to compel the State, by whatever means the Court deems necessary, to finally enact reforms to achieve adequacy and equity in the Arkansas public school system. Secondly, to evaluate compliance of any future reforms to ensure that they achieve adequacy and equity, until those mandates have been fulfilled. Arkansas can not afford to lose another generation of school children while a new case works its way through the lower court system for years challenging the compliance of new reforms.

II. THE ARKANSAS SUPREME COURT SHOULD RETAIN JURISDICTION OVER THE LAKEVIEW CASE IN ORDER TO GUARANTEE ALL ARKANSAS CHILDREN EQUAL EDUCATIONAL OPPORTUNITY.

The Arkansas Supreme Court, in Lake View XXX, has declared that the ultimate responsibility for maintaining an adequate, equitable and efficient school system falls upon the state. In fact, the Court in Lake View said, "It is safe to say that no program of state government takes precedence over it (education)." Regardless of whether the State acts directly or delegates the roll to local government, the end product must be what the constitution commands. Arkansas Constitution, Article 14, Section 1, states: "Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the state

shall ever maintain a general, suitable, and efficient system of free public schools and shall adopt all suitable means to secure the people the advantages and opportunities of education..." If the local government fails, then the state government should compel it to act. Because education is too important a right or privilege, for any authority in State government to ignore, we must employ legal means and the judiciary is compelled to act. In the Lake View decision the Supreme Court said, "The people of this state unquestionably wanted all departments of state government to be responsible for providing a general, suitable and efficient system of public education to the children of this state." The responsibility for the education system lies with the Executive and Legislative branches, but in the case of their failure to act, the right of the Judiciary to assert jurisdiction is clear.

III. THE STATE OF ARKANSAS HAS FAILED TO ENACT SUBSTANTIAL REFORM MANDATED BY THE ARKANSAS SUPREME COURT TO ACHIEVE EDUCATIONAL ADEQUACY BY THE COURT'S DEADLINE.

The Court set a deadline of December 31, 2003 for the State of Arkansas to complete an adequacy study and enact all necessary reforms to achieve an adequate education for every child in the state. The State completed the adequacy study, but failed to enact a single of the provisions it recommends.

The Arkansas Joint Legislative Committee on Educational Adequacy met from April through August of 2003 to define an adequate education and prescribe reforms to achieve it. Among the reforms recommended by the Committee are:

- i. Lowering class sizes to a student teacher ratio of 1 to 15 for grades K-3, and 1 to 25 for all other grades.

- ii. Hiring additional teachers to provide enrichment programs and increased planning time.
- iii. Instructional facilitators at each school to improve teacher's instruction
- iv. Providing additional staff to schools with high concentrations of poverty, or other special needs students.
- v. Provide additional funding for professional development, technology, instructional materials and supervisory aides.
- vi. Raise teacher salaries by ten percent
- vii. Provide five percent salary bonuses to attract teachers to hard to staff areas or subjects.
- viii. Extend the work year for teachers by 5 days
- ix. A performance bonus pay system for teachers
- x. Early childhood education for all children from families with income below 200% of poverty
- xi. and a revised funding formula.

Not a single of the above-prescribed reforms has been enacted to date. In fact, the total cost of complying with the adequacy study recommendations is estimated to be \$847.3, yet at the Arkansas legislature the highest amount introduced in a school funding formula has been \$450 million, only half. The Court in Lake View repeatedly pointed to poor facilities as evidence of an inadequate system, yet the State has drug its feet on facilities even further behind the rest of the adequacy debate, with a report not due until the Fall of 2004 on what adequate facilities will mean and cost. The State has failed to act on adequacy by the Court's clear deadline. There is little

reason to have faith the State will comply with the Court's order on adequacy in any sort of timely manner.

VI. IV. THE STATE OF ARKANSAS HAS FAILED TO DEFINE OR ENACT SUBSTANTIAL REFORM MANDATED BY THE ARKANSAS SUPREME COURT TO ACHIEVE EDUCATIONAL EQUITY BY THE COURT'S DEADLINE.

While the state has failed to act on the adequacy issue, they have failed to even address the equity issue in any substantive manner. We have been monitoring the legislative attempts to address education reforms and have heard several legislative leaders in testimony say that achieving adequacy will achieve equity mandates as well. We could not disagree more. In fact in Dupree the court said, "we believe the right to equal educational opportunity is basic to our society." In fact the Court went further, to say, "For some districts to supply the barest necessities and others to have programs generously endowed does not meet the requirements of the constitution. Bare an minimal sufficiency does not translate into equal educational opportunity.... It is the General Assembly's constitutional duty, not that of the school districts, to provide equal educational opportunity to every child in this state."

The State has completely failed to address this issue. The State has failed to address what would be necessary to achieve equity in terms of funding, programs, administration and personnel, or facilities. The Court found in Lake View that "the State, with its school-funding formula, has fostered this discrimination based on wealth." Yet the State has not passed a new funding formula, and all proposed funding formulas pending at the Arkansas legislature

have almost no critical analysis of their impact on equity. The Court in Lake View defined equity as "Equality of educational opportunity must include as basic components substantially equal curricula, substantially equal facilities, and substantially equal equipment for obtaining an adequate education." Controlling the bare floor of opportunity is insufficient and the State should ensure equality beyond the bottom of a safety net.

We believe it will take extra investments above and beyond adequacy for some classes of students to overcome poverty and years of past under-funding in high-poverty school districts to achieve equity. The legislature proposed an achievement gap commission to study the problem of closing achievement gaps between classes of students in Arkansas, but we believe the Court gave the State a mandate 14 months ago to study this and implement a remedy by December 31, 2003. The State failed to address equity, and there is little reason to believe that they will in any sort of timely fashion. Equity needs to be better defined, measures for achieving it need to be identified, and then they need to be enacted.

VII. THE SUPREME COURT SHOULD RETAIN JURISDICTION OVER THE LAKEVIEW FOR TWO PRIMARY PURPOSES:

- A.** To take any and all actions necessary to compel the State to enact reforms and funding necessary to provide an adequate and equitable education for all children in Arkansas.
- B.** To evaluate compliance of any reforms that may be enacted to ensure that they provide an adequate and equitable education for all children in Arkansas, until the requirements of adequacy and equity have been met.

CONCLUSION

For the foregoing reasons, the trial court's decision should be affirmed.

Respectfully submitted,

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