

10/16/2002

CLERK OF THE COURT  
FORM V000A

HON. EDWARD O. BURKE

M. MINKOW  
Deputy

CV 1999-019062  
CV 2002-011568

FILED: \_\_\_\_\_

ROOSEVELT ELEMENTARY SCHOOL  
DISTRICT #6, et al.

TIMOTHY M HOGAN

v.

JANE D HULL, et al.

DAVID M LUJAN

DECISION AND ORDER

The Court, having had Plaintiffs' MOTION FOR PRELIMINARY AND PERMANENT INJUNCTION under advisement and having heard the evidence presented by the parties, enters the following DECISION AND ORDER.

FACTS

Plaintiffs are six school districts whose capital needs are funded through Students FIRST, A.R.S. Sec. 15-2001, et seq. On May 7, 2002, this Court entered a DECISION AND ORDER in this case granting Plaintiffs' MOTION FOR SUMMARY JUDGMENT in part declaring that the State's failure to fully fund the Building Renewal Fund according to the formula for fiscal years 1999-2000 and 2001-2002 was a violation of both the State Constitution and A.R.S. Sec. 15-2001, et seq. The Court's ruling is currently on appeal.

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On May 23, 2002, the Legislature enacted HB-2710, which cut the Building Renewal Fund's allocation for fiscal year 2002-2003 by \$90,000,000.00. Plaintiffs sued to challenge that funding reduction as violative of Article 11, Sec. 1 of the Arizona Constitution and Students FIRST, A.R.S. Sec. 15-2001, et seq.

Plaintiffs argue that the Legislature's under-funding of Students FIRST will result in school districts being unable to provide the equipment and facilities necessary to enable their students to meet the State's academic standards. Plaintiffs produced sufficient evidence at the hearing to support this contention.

Plaintiffs request that the Court order the State to comply with the funding requirements of Students FIRST by restoring the \$90,000,000.00 taken from the Building Renewal Fund by HB-2710 by June 30, 2003.

The Students FIRST Act of 1998 was enacted to reform the method of funding of the State's public schools after the Supreme Court declared the property tax based school financing system unconstitutional and two previous acts were found to have failed the constitutional test. Roosevelt v. Bishop, 179 Ariz. 233, 877 P.2d 806 (1994), Hull v. Albrecht, 190 Ariz. 520, 960 P.2d 1141 (1997) "Albrecht I" and Hull v. Albrecht, 192 Ariz. 37, 960 P.2d 634 (1998) "Albrecht II".

The Arizona Constitution requires a "general and uniform" public school system. Albrecht I and II require the State to create minimum adequacy standards for capital facilities and insure through State funding that districts comply with them. Albrecht I, 190 Ariz. 520, 524, 950 P.2d 1141 (1997) and Albrecht II, 192 Ariz. 34, 37, 960 P.2d 634 (1998).

The State argues that a preliminary injunction proceeding is simply designed to maintain the status quo and that Plaintiffs are asking the Court to upset the status quo. That

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issue was rendered moot by the Court's grant of Plaintiffs' Rule 65(a)(2) motion to advance the trial of this action on the merits and consolidate it with Plaintiffs' MOTION FOR PRELIMINARY INJUNCTION.

The State further contends that the Legislature did not violate either the Constitution or Students FIRST for fiscal year 2002-03 because it only "suspended" the statutory funding formula for the Building Renewal Fund. This is a distinction without a difference. A "suspension" of funding still results in unconstitutional under-funding condemned by Roosevelt, Albrecht I and Albrecht II. If this were not so, the State could simply violate its obligations under Students FIRST by suspending the funding every year to the detriment of Arizona's public school students.

The evidence produced by Plaintiffs and Defendant clearly establishes that the \$90,000,000.00 cut in a 2002-2003 Building Renewal Fund does not meet the requirements of Article 11 of the Arizona Constitution and the Supreme Court's opinion Albrecht I and Albrecht II because the Legislature has failed to fund the Building Renewal Fund fully as the Arizona Supreme Court requires.

Accordingly, Plaintiffs' MOTION FOR A PRELIMINARY AND PERMANENT INJUNCTION ordering the State Legislature to restore the \$90,000,000.00 by which it reduced the Building Renewal Fund for the 2002-2003 school year is GRANTED. The State of Arizona is hereby ordered to comply with the Article 11 Section One of the Arizona Constitution and the statutory provisions of Students FIRST, A.R.S. Sec. 15-2001, et. seq. by restoring the \$90,000,000.00 to the Building Renewal Fund for 2002-2003 school year by June 30, 2003.

/S/ Edward O. Burke

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Edward O. Burke  
Civil Presiding Judge