IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

COMMITTEE FOR EDUCATIONAL EQUALITY, et al.,	)	
Plaintiffs,	)	
COALITION TO FUND EXCELLENT SCHOOLS, et al.,	)	
Plaintiff Intervenors,	)	
BOARD OF EDUCATION OF CITY OF ST. LOUIS, et al.,	)	
Plaintiff Intervenors,	)	
v.	)	Case No. 04CV 323022
	)	Division II
STATE OF MISSOURI, et al.,	)	
Defendants,	)	
SCHOCK, SINQUEFIELD & SMITH,	)	
Defendant Intervenors.	)	

ORDER

This case involves a constitutional challenge to Missouri's system of funding public schools. The basic question presented is whether the current system and level of funding public education in Missouri conforms to the mandates of our state constitution.

The plaintiffs are the Committee for Educational Equality, et al. ("CEE") and plaintiff-intervenors, the Committee for Excellent Schools, et

al. ("CFES"), and the School Board for the City of St. Louis, et al. ("STLBE") (collectively referred to as "plaintiffs"). More specifically, the plaintiffs consist of two not-for-profit organizations, CEE and CFES, Missouri public school districts, the STLBE, individual members of the STLBE, public school students and parents, and individual and corporate taxpayers.

These various plaintiffs allege that Missouri's system of education funding violates: (1) a State constitutional requirement for adequacy in education funding; (2) the equal protection and due process guarantees of the federal and state constitutions; (3) Article X of the Missouri Constitution ("Hancock Amendment") by failing to provide the state's required share of the costs for state-mandated programs;[1] and (4) a constitutional requirement for equal assessment practices. [2]

The defendants in this case are the State of Missouri, the Treasurer, the State Board of Education, the Missouri Department of Elementary and Secondary Education ("DESE"), its Commissioner, the Commissioner of Administration, and the Attorney General ("state defendants") and

[1]This claim is only asserted by the CEE and CFES plaintiffs.

[2]This claim is only asserted by plaintiff CFES.

defendant-intervenors, W. Bevis Schock, Rex Sinquefield, and Menlo F. Smith ("defendant-intervenors").

The defendants contend that a "threshold issue" which should result in the dismissal of the case is that how public education is funded is a political issue that should be left to the discretion of the legislative and executive branches of government. However, plaintiffs have not asked this Court to decide whether a particular financing scheme is "better" as a matter of policy than another but rather whether the current level of state appropriations for public schools satisfies the constitutional requirements of providing for free public schools as set forth in Article IX of the Missouri Constitution. Judicial review of legislative enactments is central to our system of checks and balances and this Court declines defendants' invitation to avoid deciding the issues presented.

Adequacy Claims Pursuant to Art. IX, § 1(a)

The constitutional underpinnings of Missouri's educational funding system are found in Article IX of the Missouri Constitution. As to elementary and secondary education there is as follows:

Section 1(a), which states,

> A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools in this state within ages not excess of twenty-one years as prescribed by law.

Section 5, which establishes a dedicated public school fund and provides certain funds:

> shall be paid into the state treasury ... and sacredly preserved as a *public school fund* the annual income of which shall be faithfully appropriated for *establishing and maintaining* free public schools, and for no other uses or purposes whatsoever.

and

Section 3(b), which states:

> In event the public school fund provided and set apart by law for the support of free public schools, shall be insufficient to sustain free schools at least eight months in every year in each school district of the state, the general assembly may provide for such deficiency; but in no case shall there be set apart less than twenty-five percent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools.

In support of their arguments that these provisions establish an obligatory constitutional measure of funding beyond the minimum twenty-five percent requirement in section 3(b), plaintiffs rely on dicta in an 1877 Missouri Supreme Court decision, a 1985 Texas Law Review article, a 1993 decision from this circuit, and a recitation of constitutional provisions and debates leading up to and including the 1945 constitutional convention. After careful consideration of their arguments, this court is not persuaded.

The 1877 case on which plaintiffs rely is *State ex rel. Sharp v. Miller*, 65 Mo. 50, 1877 WL 9120 (Mo. 1877). Sharp was a tax payer who filed his lawsuit challenging the authority of the legislature to enact a tax increase to

support public school education. Sharp's complaint was that the tax increase was larger than it needed to be. At issue was Article IX, Section 8 of the 1865 Constitution which provided:

> In case the public-school fund shall be insufficient to sustain a free public school at least four months in every year in each school district in this State, the general assembly may provide, by law, for the raising of such deficiency, by levying a tax on all the property in each county, township, or school district, as they may deem proper.

In rejecting Sharp's claim that this provision prevented the General Assembly from authorizing "a larger tax…than was necessary to make up what the school fund might lack to maintain a free school at least four months in every year", the Court characterized this provision as a "mandate" to the legislature to provide the means for sustaining a free-school in each district for the period of at least four months, and upheld the right of the General Assembly to raise more than the minimum amount. *Sharp*, 1877 WL 9120 *3.[3] While the dicta in Sharp offers strained support for plaintiffs, the holding also supports the power and discretion of the general assembly to determine for itself the level of public school funding; *Sharp* has been cited only three times in the last one hundred thirty years and never for the proposition argued by Plaintiffs. Standing alone, this case does not

[3] This may be the first "educational adequacy" case in Missouri, although unlike the plaintiffs in this case, Sharp was claiming the level of funding was unconstitutional because it was too adequate !

establish sufficient precedent for the proposition that the General Assembly is obligated rather than permitted to fund more than the minimal amount constitutionally required by section 3(b) of the 1945 Constitution.

The 1985 Texas Law Review Article, Gershon M. Ratner, *A New Legal Duty for Urban Public Schools,* 63 Tex.L.Rev. 777, at 816, analyses and divides state constitutional provisions on education into four groups, placing Missouri's constitutional provisions in the group mandating the "strongest commitment to education", along with Washington, Georgia, Illinois, Maine, Michigan, and New Hampshire. However, a closer review of those other state constitutions shows a clear absence of any corresponding section 3(b) provision establishing a minimum and then seemingly discretionary level of spending. The apparent uniqueness of Missouri's section 3(b) distinguishes Missouri's constitutional "mandate" from other mentioned states.

The 1993 decision from this circuit did indeed hold that section 1(a) of Article IX established a constitutional right of adequacy beyond the twenty-five percent requirement of section 3(b), and that decision is entitled to certain deference; however, that decision was never "tested" as the appeal from that holding was dismissed as being moot because the decision never became a final judgment and because the legislature then changed the

funding formula, *Comm. for Educational Equality v. State of Missouri,* 878 S.W.2d 446 (Mo. Banc 1994). Nevertheless, two judges in a concurring opinion joining in the dismissal of the appeal noted:

> [T]he trial court's judgment assumes that section 1(a) creates a substantive funding obligation in the General Assembly that exists independent of the twenty-five percent requirement of article IX, section 3(b). I believe the trial court's judgment misreads the constitution .... In my view, section 3(b) establishes a constitutional presumption that twenty-five percent of state revenues is adequate for purposes of funding the free public schools. To the extent that the General Assembly wishes to appropriate more than twenty-five percent of state revenues for that purpose, it reflects a discretionary policy choice in the legislative body to apply state resources in that manner and for that purpose.

Comm. for Educational Equality, 878 S.W.2d at 458 (Robertson and Limbaugh, JJ, concurring). The opinion of two Supreme Court judges rejecting the notion that Art. IX, section 1(a), creates a substantive funding standard at a very minimum undermines whatever precedent this 1993 decision might otherwise have.

Lastly, plaintiffs' post-trial briefs provide an excellent recount of the relationship between the Jeffersonian concept of education and Missouri's constitutional history. Since its inception, Missouri has embraced the rationale that education is the primary means by which the promises of democracy and liberty are secured for all citizens. During the 1945 Constitutional Debates, delegates defeated an attempt to eliminate the

Jeffersonian language from Art IX, section 1(a) – but not because it created a substantive funding standard.

> Mr. Nacy: My idea is that this Constitution or no law could diffuse intelligence. I realize it's in the Constitution of 1875, but I do not believe that we can instill intelligence in anybody. I think it is desirable, yes, but for the purpose of brevity I think that those two and one-half lines add nothing to this section. By striking them out, it will take nothing out of the section. I mean, it will leave the meat of the section, and it would eliminate some words out of what otherwise might be a long constitution. I don't know what good those words do in this section, so, therefore, I am asking that they be stricken out....
>
> Mr. Phillips (of Jackson): Mr. President, I am very much surprised at my good friend, Nacy, trying to eliminate from our fundamental document the immortal words of Thomas Jefferson.... I personally would be very much chagrined if, in the interest of brevity, we left those immortal words out of our Constitution. The Committee considered it well; thought they were eloquent and left them in there....
>
> Mr. Nacy: Mr. Phillips, if this amendment is carried ... [w]hat could the Legislature or the people of Missouri do under Section 1 of this proposal now that they could not do if this amendment is carried?
>
> Mr. Phillips (of Jackson): Not a thing....
>
> Mrs. Hargis: Mr. President, I very much object to those words being left out of the Constitution, this declaration of rights. This represents seven thousand years of upward trends of our nation, and when our forefathers embodied this in the first Constitution, when William Pitt, then the Prime Minister of England, read the declaration of rights in the first Constitution, he said, "this Constitution will be the wonder and admiration of our future generations and the model of our future Constitutions." When I was just a young girl studying history, I

> liked to read that. It thrilled my heart, and I would like to have it repeated in history and government and teachings. I certainly wish it be retained in our report.
>
> Mr. Shepley: Mr. President, I arise to support Mr. Nacy's amendment. Could anyone, for one moment, question the purpose of this sentence: "The General Assembly shall establish and maintain free public schools for the gratuitous instruction of all person in this state." etc. Why is it necessary to try to explain a thing like that which is so very obvious? I don't believe the Constitution is the place to put the reasons why you adopt this provision....

1945 Constitutional Debates, Vol. VIII at 2336-38 (April 28, 1944). However, the delegates never argued that the language in Art. IX, § 1(a), contained anything more than an explanation of why Missouri would choose to establish free public schools. The debate concerned whether such an explanation belonged in the Constitution. How the Constitution's requirement to "establish and maintain" the free public schools was to be implemented was left to the remainder of Article IX.

Plaintiffs' claim that Missouri's funding system violates a constitutional requirement for adequacy depends on Plaintiffs' attempt to read a separate funding requirement into section 1(a) that would require the General Assembly to provide "adequate" educational funding in excess of the twenty-five percent requirement contained in section 3(b). Plaintiffs' interpretation of Art. IX, section 1(a) simply ignores the existence and plain language of section 3(b).

Considering these constitutional sections together, the Court finds that section 1(a) describes what the General Assembly is to do ("establish and maintain free public schools for ... all persons in this state within ages not in excess of twenty-one years as prescribed by law") and why (because "[a] general diffusion of knowledge and intelligence [is] essential to the preservation of the rights and liberties of the people"). Section 5 provides how the General Assembly is to "establish and maintain" free public schools (through a "public school fund"). And, § 3(b) provides what the General Assembly "must" or "may" do when the public school fund is insufficient beyond the twenty-five percent requirement.

Accordingly, if public school funds are insufficient, as plaintiffs allege[4] here, the General Assembly "*may* provide for such deficiency...." beyond the twenty-five percent requirement, Art. IX, section 3(b), (emphasis added). Plaintiffs would have the Court read into the Constitution a "must" when the drafters used the term "may". This, the Court cannot and will not do.[5]

[4] Plaintiffs' claim of inadequacy under Article IX, section 1(a) will only be measured in terms of a 3(b) claim and Plaintiffs' pleadings will be so construed.

[5] The posture of this lawsuit is akin to a class action lawsuit for additional monies to be added to the formula. This Court need not decide whether the State could utilize a section 3(b) defense against a group of students from one district suing the State and their school district under a section 1(a) adequacy claim.

Before turning to the remaining legal issues in the case, this Court would be remiss if it did not acknowledge the wisdom and dedication of the many school superintendents and administrators who testified. They described a public school system confronted with a myriad of environmental factors that schools must overcome to deliver an adequate education. Their success or failure will shape our democratic form of government for future generations. These concerns and challenges, however, are generally a subject for the legislative branch of government under the framework of Article IX of the Missouri Constitution.

Adequacy and Equity Claims pursuant to Equal Protection And Due Process Clauses

The Court now turns to plaintiffs' claims that Missouri's school funding system violates the equal protection and due process provisions of the Federal and State Constitutions.

With respect to the United States Constitution, the Supreme Court has seemingly resolved this issue by holding that education is not a fundamental right guaranteed by the Federal Constitution. In *San Antonio Independent School Dist. v. Rodriguez*, 411 U.S. 1 (1973), the United Supreme Court rejected the claim that a state educational funding system's reliance on local property taxes favored the more affluent and thus violated federal equal protection requirements. Much the same as plaintiffs here, the *Rodriguez*

plaintiffs argued that children in school districts having relatively low assessable property values were receiving a poorer quality of education than that available to children in districts having more assessable wealth. *Id.* at 23.

Rejecting the plaintiffs' claim, the United States Supreme Court held that property tax based school finance systems do not offend the federal Equal Protection Clause because wealth-based distinctions alone do not create a suspect class under the equal protection provisions of the United States Constitution. *Rodriguez*, 411 U.S. at 29. The high court stated quite succinctly:

> [A] sufficient answer to appellees' argument is that, at least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages.

Id. at 25. The *Rodriguez* court also rejected the plaintiffs' position that education is a fundamental right, explaining that the right to education is not explicitly or implicitly guaranteed by the terms of the United States Constitution. 411 U.S. at 35. Thus, the Court concluded that rational basis scrutiny was the appropriate standard to test the constitutionally of a state's school finance system, and that Texas' reliance on local and state contributions for school funding rationally furthered the legitimate state interest of encouraging local control. *Id*. at 49. As discussed below,

Missouri's educational funding system, created by the 1945 Constitution, has similar a goal and philosophy of local control and funding supplemented with state aid. For the same reasons in *Rodriguez*, there is no federal violation.

The Court next considers plaintiffs' claim that equity of education expenditures are mandated by Missouri's constitutional guarantee of equal protection.

For purposes of equal protection analysis the Court must first determine whether education is a fundamental right versus a qualified right under the Missouri Constitution. The distinction is important. If something is found to be a fundamental right, then any equal protection analysis of laws affecting that right will utilize a strict scrutiny analysis. See *Weinschenk v. State*, 203 S.W.3d 201 at 210, (Mo. Banc 2006), dealing with the right to vote. On the other hand, if something is not found to be a fundamental right, then any equal protection analysis will only utilize a rational basis review and greater deference is accorded the legislative scheme.

The Missouri Supreme Court has adopted the federal test for determining whether a right is "fundamental", Mahoney v. *Doerhoff Surgical Services*, 807 S.W.2d 503, 512 (Mo. Banc 1991). Fundamental rights are those rights "explicitly or implicitly guaranteed by the

Constitution". Id. In *Albright v. Oliver*, 510 U.S. 266, 273 (1994), the United States Supreme Court held that where a particular Amendment 'provides an explicit textual source of constitutional protection' against a particular source of government behavior 'that Amendment, not the more generalized notion of 'substantive due process,' must be the guide for analyzing these claims.'") (citation omitted). *See also Doe v. Phillips*, 194 S.W.3d 833, 843 (Mo. banc 2006) (hereinafter "*Phillips*") (recognizing that "if a particular constitutional amendment provides specific protection for the right asserted ... the alleged violation will be analyzed under that amendment ...."). Consequently, whether educational opportunity is a fundamental right versus a qualified right will turn on Article IX of the Constitution.

The history of Article IX does not support Plaintiffs' argument that there was intended to be a guarantee of absolute of equity, equality or adequacy in dollars spent or facilities from district to district. While some states have elected to include an equitable expenditure component in their state constitution, the only equality standard contained in Missouri's Constitution was removed over a hundred years ago. The Constitution of 1865 required the General Assembly to incorporate, "as far as it can be done without infringing upon vested rights," all local school funds into the state public school fund and, when making annual distributions of the public

school fund, to "take into consideration the amount of any county or city funds appropriated for common school purposes, and make such distributions as will equalize the amount appropriated for common schools throughout the State." *See* Article IX, Section 9, Constitution of 1865. Neither this language nor any equivalent language was retained in the 1875 or subsequent Constitutions. Rather, the 1875 Constitution expressly recognized "the county school funds" and provided that the income therefrom "shall be faithfully appropriated for establishing and maintaining free public schools in the several counties of this State." Article IX, Section 8, Constitution of 1865.

The removal of the 1865 Constitution's equalization language and the express recognition in the 1875 Constitution of the county school funds demonstrate an intention that funds from various revenue sources need not be equalized among the state's school districts and a commitment by Missourians to finance public schools only partially with state funds. The commitment to finance public schools with both state and local funds remains in our Constitution today. *See, e.g.,* Article IX, §§ 1(a), 3(b) and 5 (public school fund) and Article IX, §7 (county school funds). Moreover, the continued absence in the 1945 Constitution of the equalization language found in the 1865 Constitution demonstrates an ongoing intention that funds

from various revenue sources need not produce equalized educational expenditures. Article X of the Constitution specifically authorizes different tax rates for school rates and varying tax levies for local school districts, all subject to a vote of the people. By adopting the 1945 Constitution with these provisions, the citizens adopted an educational funding system that guaranteed that per pupil expenditures across the many different districts would be different. The funding system adopted the legislature comports with the constitutional scheme and is a reasonable attempt to meet its obligations under section 1(a). Plaintiffs seek to have the Court inscribe into the Missouri Constitution an equalization requirement that was removed over one hundred years ago. As with plaintiffs' adequacy argument, the Court will not imply a requirement into the Constitution that is not there.

Hancock Amendment Claims

Plaintiffs also allege that the State of Missouri has violated the Hancock Amendment by reducing funding for state-mandated programs and mandating new programs without providing corresponding funding. The Court finds that the individual and corporate taxpayer plaintiffs, the only parties with standing to assert such claims, have failed as a matter of law to present evidence to establish a violation of the Hancock Amendment. Furthermore, the Court finds that because the relief plaintiffs seek is

unavailable under the Hancock Amendment, plaintiffs Hancock claims fail as a matter of law.

On November 4, 1980 the people of the State of Missouri amended the Missouri Constitution to include Article X, §§ 16-24 (the Hancock Amendment). The Hancock Amendment created "a comprehensive, constitutionally-rooted shield erected to protect taxpayers from government's ability to increase the tax burden above that borne by the taxpayers" on the date of its passage. *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 921.

Section 21 of the amendment contains two distinct prohibitions: First, if at the time of the amendment's passage, the state provided funding for an activity required of local governments ("Pre-existing Mandate"), the amendment prohibits the State "from reducing the state financed proportion of the costs" of the activity. *Id.* (quoting Art. X, §21). Second, the amendment prohibits the State from requiring local governments to perform a new activity or increase performance of an existing required activity ("New Mandate") without appropriating funds to cover the increased costs. *Id*.

In *Fort Zumwalt Sch. Dist.*, our Supreme Court held that in order to establish a Hancock violation premised on a Pre-existing Mandate, plaintiffs "must present evidence to establish the program mandated by the state in

1980-81 and the ratio of state to local spending for the mandated program in that year," and further prove "the costs of the mandated program in each subsequent year and the ratio of state to local spending for the mandated program in each subsequent year." *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 922. The calculation of a mandated program's costs may not include "any discretionary expenditures a district undertook that went beyond the state mandate" and requires that plaintiffs clearly distinguish "resources directly committed to the state mandates... from those not so dedicated." *Id.* The Court noted that "[p]roviding these factors for 1980-81 and each subsequent year will require sophisticated budgetary evidence and economic expertise." *Id.* at 923.

In the present case, plaintiffs' evidence was insufficient to establish a violation of the Hancock Amendment premised on a Pre-existing Mandate. For example, even if plaintiffs' evidence of changes in the rate of state reimbursement for district transportation costs consisted of the detailed budgetary analysis required (which it did not), plaintiffs presented no evidence of any school district's transportation costs in 1980-81 and whether the ratio of state to local funding for the program, excluding discretionary spending, had changed since that time.

Plaintiffs also failed to prove defendants' violation of the Hancock Amendment premised on any New Mandate. In order to prove such a claim, plaintiffs must identify a new or expanded activity required by state law, establish with "specific proof" that the new mandated activity increases the school district's costs, and prove that the State does not provide funding for the program. *See Brooks v. State of Missouri*, 128 S.W.3d 844, 848-49 (Mo. banc 2004) (*quoting Miller v. Director of Revenue*, 719 S.W.2d 787, 789 (Mo. banc 1986)) ("these elements cannot be established by mere 'common sense,' or 'speculation and conjecture'"); *Division of Employment Security v. Taney County District R-III*, 922 S.W.2d 391, 395 (Mo. banc 1996) (plaintiffs must make a "specific factual showing" of increased costs associated with a new or expanded activity); *City of Jefferson v. Missouri Department of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993) (*City of Jefferson I*) (courts will not presume increased costs based solely on evidence of a requirement of an expanded activity).

Plaintiffs' obligation to prove that the alleged new or increased activity is in fact "required" by the State is not trivial. *Miller*, 719 S.W.2d at 788; *Citizens for Rural Preservation, Inc. v. Robinett*, 648 S.W.2d 117, 131 (Mo.App. W.D. 1982) (county was not "required" to maintain surfaced roads without full state funding because the county could choose whether to

grant a permit to surface a road and, if it did, whether to assume the responsibility to maintain the road or require a developer to do so. "Having so chosen, the county cannot be said to have been *required* to undertake 'new or expanded activities.'") (emphasis original). The bulk of the "mandates" plaintiffs' witnesses described at trial are not state requirements within the scope of the Hancock Amendment.[6]

Even if plaintiffs had met their burden with respect to their Hancock Amendment claims, the Court would reject their claims because Hancock does not provide them the relief they seek. In *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 923, taxpayer plaintiffs sought a monetary award for the State's alleged reduction in funding for mandated special education programs. The Missouri Supreme Court held that such monetary relief was not available, in part, because the purpose of the Hancock Amendment, "to limit expenditures by state and local government," would be "thwart[ed]" by "a judgment requiring the state to spend more money. . . ." *Id.* at 923.[7]

[6] This court does not however accept the State's argument that any Hancock issue is avoided because SB 287 simply allows a school district to exempt itself from MSIP requirements by foregoing state aid.

[7] Plaintiffs' attempt to employ the Hancock Amendment to force an increase in state spending is barred by the doctrine of sovereign immunity. *Fort Zumwalt Sch. Dist.*, 896 S.W.2d at 923 (the Hancock Amendment does not constitute a waiver of the State's sovereign immunity from claims for monetary damages). Defendants are, thus, protected by sovereign immunity from the remedy plaintiffs seek.

Accordingly, the Court ruled that the remedy available for a violation of Hancock's prohibition against unfunded mandates is a "declaratory judgment relieving a local government of the duty to perform an inadequately funded required service or activity. . . ." *Id.* *See also, City of Jefferson v. Missouri Department of Natural Resources*, 916 S.W.2d 794, 796, 797 (Mo. banc 1996) (*City of Jefferson II*); *Brooks*, 128 S.W.3d at 850.

Plaintiffs' pleadings do not contain a request that the Court issue an order suspending any specific State mandate. Instead, plaintiffs request orders requiring changes in the amount and manner of school funding. Because the Hancock Amendment is intended to limit government expenditures, the appropriate remedy for an unfunded mandate is not an order to fund the mandate but a suspension of the offending mandate. Plaintiffs' attempt to employ Hancock to force an increase in state education funding is wholly inconsistent with the amendment's purpose and must fail.[8]

[8]The Court will not grant plaintiffs relief under the Hancock Amendment in excess of that requested in their pleadings. The relief awarded in a judgment is limited to that sought by the pleadings. *Norman v. Wright*, 100 S.W.3d 783, 786 (Mo. banc 2003); *see also City of Kansas City v. New York Bldg. Associates, L.P.*, 96 S.W.3d 846 (Mo. App. W.D. 2002) (city not entitled to forced sale of building where it failed to request forced sale); Rule 55.05 (pleading shall contain "a demand for judgment for the relief to which the pleader claims to be entitled.").

Because plaintiffs' have failed to prove a Hancock Amendment violation and seek relief that is, in any event, not available under the Hancock Amendment, the Court denies these claims.

Assessment Claims

Finally, as to the tax assessment portion of this lawsuit, CFES Plaintiffs make two distinct claims. First they ask for a declaratory judgment that tax assessments across the state are arbitrary and capricious because many counties are "under assessed" and seek a permanent injunction requiring the State of Missouri to design and establish a new system for equalizing assessment practices across the state. Second, they seek a declaration that the funding formula of SB 270 is unconstitutional because the legislature relies on inaccurate and unequal 2004 assessment levels in computing the local effort component of the funding formula. The Court will deal with these two claims separately.

As to plaintiffs' first claim, the Court must take up the defendants' objection that the plaintiffs lack standing to litigate this issue. Plaintiffs rely on *State ex rel. Sch. Dist. of the City of Independence v. Jones*, 653 S.W.2d 178 (Mo. banc 1983) for their claim of standing. In *Jones*, the Supreme Court of Missouri recognized a school district's standing to bring an action against the State Tax Commission and DESE challenging the Commission's

procedure for calculating the equalized assessed value of property within the plaintiff's district under Missouri's school funding statutes. However, *Jones* did not change the general rule that school districts lack standing to challenge property tax assessments. In fact the Court acknowledged that rule and distinguished the *Jones* plaintiffs because they were not challenging the assessment levels or taxing practices in any county or disputing the interpretation of any tax statute." *Id.* at 188. Instead, the plaintiffs in *Jones* sought only a determination of the future obligations of the Commission and DESE under two school funding statutes.

Unlike the *Jones* plaintiffs, the CFES plaintiffs here seek a declaration that the assessments in certain counties are understated and request an injunction ordering the State to reassess properties. The CFES plaintiffs have not provided the Court with any statutory authorization that would permit them to seek judicial review of this claim. In the absence of express statutory authorization, plaintiffs lack standing to challenge property tax assessments. *O'Flaherty v. State Tax Commission of Missouri,* 680 S.W.2d 153 (Mo. banc 1984); *State ex rel. St. Francois County Sch. Dist. R-III v. Lalumondier*, 518 S.W.2d 638, 641 (Mo. 1975); *City of Richmond Heights v. Bd. of Equalization of St. Louis County,* 586 S.W.2d 338, 343 (Mo. banc 1979).

A second reason the plaintiffs lack standing is that they are not complaining about their own property assessments but rather the property assessments of others. There is no authority for the proposition that taxpayers have standing to assert that other taxpayers are under taxed. Missouri courts have consistently limited standing to challenge property tax assessments to property owners aggrieved by overvaluation of their own property by local assessors. *See, e.g., Lalumondier*, 518 S.W.2d at 642-43 (noting cases from other jurisdictions which hold that a property owner may not litigate in an attempt to obtain higher assessments on property owned by others); *W.R. Grace & Company*, 729 S.W.2d at 206-07 (taxpayer lacked standing to raise constitutional challenges to statutes affording tax exemptions to other classes of taxpayers where such statutes merely excused the tax obligations of others); *Hertz Corp. v. State Tax Commission*, 528 S.W.2d 952, 954 (Mo. banc 1975) (city was not an "aggrieved party" entitled to petition for review of taxes assessed against its tenants, rather than against the city itself).

Finally, in addition to the above jurisdictional deficiencies, the Court finds that it lacks jurisdiction because the CFES plaintiffs failed to join a necessary and indispensable party — the State Tax Commission. The Commission is the legal authority empowered to equalize assessments as

between counties. Mo. Const. Art. X, section 14; sections 138.380 *et seq.* CFES acknowledges this in ¶ 15 of its Petition. CFES complains that the Commission has failed to ensure that assessments are "just, uniform, fair and based upon that property's 'true value.'" CFES Petition, ¶ 12. The subject of CFES' complaint—equalization—is the core duty of the Commission. As such, it is a necessary party under Rule 52.04(a), because in its absence complete relief cannot be accorded among those already parties. Thus, the first portion of the CFES plaintiffs' assessment lawsuit is dismissed for lack of standing and jurisdiction.

Understanding the second claim of the assessment portion of the lawsuit requires an explanation of the mechanics of calculating how much a school district receives under the new formula under SB 287. In simplest terms, the calculation of how much money a district is to receive is made by taking a district's weighted average daily student attendance multiplied by the state adequacy target ($6,117 for fiscal years 2007 and 2008) minus the amount of money raised by the local tax effort.[9] A school district's local effort is calculated by taking the assessed value of property in a school district for the calendar year 2004 multiplied by a performance levy of $3.73

[9] While not relevant here, the amount of state funding is further modified by a cost of living component if applicable as well as a seven-year phase-in of the new formula.

per hundred. The $3.73 figure was chosen by the legislature as a reasonable level for the school districts to make. If a school district's tax levy is less than the $3.73 per hundred, the district is still "charged" at the $3.73 level for determining its local effort; if a district's tax levy is greater, the district is allowed to keep the surplus without being "charged" for it in the formula. Thus the formula produces an amount of money that is due each district irrespective of what amount is due another district.

The CFES plaintiffs argue that the new school formula is unconstitutional because it utilizes the Tax Commission's assessment values for 2004 and those values are not accurate because some counties are assessed at less than true value. Plaintiffs' under-assessment theory reasons that those districts whose value is assessed at less than true value generate a lower local effort number in the formula and thus with a smaller deduction for local effort get more money from the State than they otherwise should. The CFES plaintiffs then postulate that if amount of state funding to these "under-assessed districts" were reduced, the CFES plaintiffs would have received more money because the legislature would have kept the amount of education funding constant and the legislature would have found a way to distribute the newly created surplus moneys to school districts, perhaps by

reducing the performance levy. However, the CFES plaintiffs' evidence does not and cannot support this assertion.

The school funding formula enacted by the General Assembly produces an amount of money that is due each district. CFES plaintiffs have not shown that if some districts were due less money there would be additional funds to distribute to other school districts, or that there would be a mechanism to distribute such funds. The notion that the legislature would have increased funding to the CFES plaintiffs has no support in the evidence and CFES plaintiffs' claim in this regard is based entirely on speculation. CFES has not demonstrated an imminent unlawful deprivation of funds.

The formula is designed so that the amount of state aid to be distributed to public schools is the sum of the amounts due to the 524 separate school districts. The only mechanism for prorating the formula is found in § 163.011(18), which defines the state adequacy target, and provides that it may be adjusted to accommodate available appropriations. However, § 163.031.4(7) (a) provides that the state adequacy target cannot be adjusted downward to accommodate available appropriations until after the 2012-13 school year. The speculative possibility of losing a measure of state funding in the 2013-14 school year due to property assessment levels

utilized by the formula does not qualify as an imminent unlawful deprivation of state funds.

CFES plaintiffs' lack of injury or protectable interest is fatal to their claim even in a declaratory judgment action. "In order to have standing in a declaratory judgment action, the plaintiff must have a legally protectable interest at stake." *Blue Cross & Blue Shield of Mo. v. Nixon,* 81 S.W.3d 546, 551 (Mo.App. 2002). "A legally protectable interest means a pecuniary or personal interest directly in issue or jeopardy which is subject to some consequential relief either immediate or prospective." *Id.* at 552 (quotations omitted). Neither the school district plaintiffs nor the taxpayer plaintiffs have alleged or demonstrated any such interest.

Plaintiffs also allege that by relying on the Tax Commission 2004 assessments and using them in the funding formula, the formula itself is arbitrary and capricious and is therefore unconstitutional. However, the Court finds that the General Assembly acted rationally in basing the SB 287 local effort calculation on the available information it had about property tax assessment levels in the State at that time. That information consisted of the December 31, 2004, assessed valuation for each county, certified by the Commission in January 2005, and the December 31, 2004 equivalent sales ratio for each county, certified by the Commission in March 2005. Those

two sets of figures represent the most timely and accurate information at the General Assembly's disposal to determine the amount and distribution of school aid under the new formula.

"Local effort" was defined in § 163.011(10) of the SB 287 formula as "the equalized assessed valuation of the property of a school district in calendar year 2004 divided by one hundred and multiplied by the performance levy," less certain expenses and plus certain other receipts. Two older statutes governed the equalized assessed valuation of a school district.[10] Section 138.395 provides that the Commission was to annually certify an "equivalent sales ratio" for each county to the department of elementary and secondary education and that:

> On and after January 1, 1997, in certifying such ratios to the department of elementary and secondary education, the commission shall certify all ratios higher than thirty-one and two-thirds percent at thirty-three and one-third percent.

If the Commission found that a county's equivalent sales ratio was less than thirty-one and two-thirds percent, it was to "recomput[e] such computation to ensure accuracy," in other words, to perform its ratio study again. *Id.*

[10]CFES plaintiffs have not brought suit challenging these or any other statutes by which real property is appraised in the State of Missouri. Rather, they use this case as a vehicle to collaterally attack Missouri's mechanism for real property appraisals merely because the Legislature utilized results of that mechanism in SB 287. The CFES plaintiffs have provided the Court with no authority that such a collateral attack is permissible. In the absence of such authority, the presumption of constitutionality prevails.

The "equalized assessed valuation of the property of a school district" was determined according to section 163.011(8), RSMo 2000, by:

> multiplying the assessed valuation of the real property subclasses specified in section 137.115, RSMo, times the percent of true value as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent and dividing by either the percent of true value as determined by the state tax commission on or before March fifteenth preceding the fiscal year in which the valuation will be effective as adjusted by the department of elementary and secondary education to an equivalent sales ratio of thirty-three and one-third percent of the average percent of true value for the highest three of the last four years as determined and certified by the state tax commission, whichever is greater.

In short, local effort was based on a school district's 2004 equalized assessed valuation. If its ratio of assessed value to true value was at least 95% (thirty-one and one-third percent), the General Assembly said it was to be reported as 100%. If it fell below that level, the Commission was to "recompute" the ratio, or do another study. If it still fell below that level, the General Assembly said the true value for the highest three of the last four years should be considered. While the Court finds the testimony of Steven Gardner and his report to be credible as the residential property values for the 27 counties he studied, residential property is but one component of a county's assessed valuation. Property assessment is not an exact science, and the formula adopted in SB 287 is structured to give counties the benefit

of the doubt. The General Assembly's utilization of assessed valuations certified by the Tax Commission was not arbitrary and capricious and does not result in an unconstitutional funding formula.

Section 3(b) Requirement of Twenty-five Percent

The last issue to be addressed is whether the State has satisfied its educational adequacy obligation to elementary and secondary education by devoting twenty-five percent of state revenue to that end. While some evidence and briefs on this issue have already been received, the Court requests additional briefs and argument: 1) regarding the funding of the dedicated public school fund established by section 5 of Article IX, and 2) the issue of what state revenues and spending should be included and excluded in calculating the twenty-five percent of state revenue required by section 3 of Article IX, specifically with respect to so-called statutory special funds not mandated by the Constitution. On this latter issue, the parties' attention is directed to *State ex rel. Fath v. Henderson*, 60 S.W. 1093 (Mo. 1901) as well as the State's trial brief in *Kansas City Symphony v. State of Missouri,* Cole County Case # 06AC-CC01155. Because of the narrow and determinative nature of this remaining issue, the parties are given leave to present additional evidence on the twenty-five percent

requirement. Briefs are to be submitted by September 17, 2007. Hearing and argument are set September 20, 2007, at 10 a.m.

SO ORDERED, this 29th day of August, 2007.

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Richard G. Callahan
Circuit Court Judge, Division II