

DOCKET NO. HHD-CV05-4050526-S (X07)

CONNECTICUT COALITION FOR JUSTICE IN EDUCATION FUNDING, INC., et al. <i>Plaintiffs</i>	:	SUPERIOR COURT COMPLEX LITIGATION DOCKET
v.	:	AT HARTFORD
RELL, M. JODI et al. <i>Defendants</i>	:	SEPTEMBER 13, 2013

DEFENDANTS' REPLY BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVIT AND OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AFFIFAVIT

I. PLAINTIFFS HAVE FAILED TO DEMONSTRATE PREJUDICE.

To the extent plaintiffs claim the supplemental affidavit of Brian Mahoney (Doc. #198.00) to be improper “at this late date” and further claim prejudice in the “delay” on the part of defendants in presenting the supplemental affidavit, the 2013 legislative enactments set forth in this supplemental affidavit are a matter of public record, available to the plaintiffs at the time of their enactment. Indeed, the court is allowed to take judicial notice of these legislative enactments. (See p. 1, Opposition To Defendants’ Motion For Leave To File Supplemental Affidavit, Doc. # 199, hereinafter “Plaintiffs’ Opposition”). See Connecticut Coal. for Justice in Educ. Funding, Inc. v. Rell, 295 Conn. 240, 312, 990 A.2d 206, 251 (2010) citing Moore v. Moore, 173 Conn. 120, 122, 376 A.2d 1085 (1977) (Noting “distinction between ‘legislative facts,’ those which help determine the content of law and policy, and ‘adjudicative facts,’ facts concerning the parties and events of a particular case. The former may be judicially noticed without affording the parties an opportunity to be heard, but the latter, at least if central to the case, may not.”). Furthermore, the length of time between the passage of the legislation and defendants’ motion is irrelevant for determining prejudice. Defendants filed their motion on

August 23, 2013, more than three weeks before oral argument. Plaintiffs fail to show how they are unfairly prejudiced by such a timeline. See Weeks v. New York, 273 F.3d 76, 88 (2d Cir.2001) (In deciding whether to permit supplementation, a court first should decide “whether the supplemental facts connect [the supplemental pleading] to the original pleading.”); Bornholdt v. Brady, 869 F.2d 57, 68 (2d Cir.1989) (If there is a relationship between the two pleadings, the court should permit the requested supplementation if it “will promote the economic and speedy disposition of the controversy between the parties, will not cause undue delay or trial inconvenience, and will not prejudice the rights of any other party.”).

To the extent defendants have a duty to update the court on further changes to the educational model, Mr. Mahoney’s affidavit is in furtherance of that duty. Plaintiffs’ opposition to defendants’ attempt to provide the court with current information in the form of the supplemental affidavit is simply another attempt by the plaintiffs to persuade the court that it should not rule on the subject matter jurisdiction challenges presented in the defendants’ motion to dismiss without trying the merits of the case. In furtherance of this goal, plaintiffs again claim, while citing no authority, that “in order to create a question of jurisdictional fact, Defendants would need to submit evidence that action has been taken which was great enough to cure the constitutional deficiencies alleged in the Third Amended Complaint.” (See p. 2, Plaintiffs’ Opposition). This claim is a red herring. The issue is whether the court will be able to properly evaluate the constitutionality of the reformed educational model before the reforms have had a reasonable opportunity to be implemented, at least three years.

II. JAMES J. FINLEY JR.’S AFFIDAVIT IS IMPROPER.

Plaintiffs further their attempts to convert the court’s consideration of the subject matter jurisdiction challenges raised in defendants’ motion to dismiss into a trial on the merits by

offering the affidavit of James J. Finley, Jr. Mr. Finley is a member of the Executive Committee of the plaintiff CCJEF. (See ¶3, Affidavit of James J. Finley, Jr., hereinafter “Finley Aff.”).¹ All the municipal members of the plaintiff CCJEF’s Steering Committee are members of the Connecticut Conference of Municipalities thereby de facto making CCM, for which Mr. Finley serves as Executive Director and CEO, a member of the plaintiff CCJEF’s Steering Committee as well. See <http://ccjef.org/ccjef-steering-committee> (last visited September 12, 2013) c/f <http://ccjef.org/ccjef-steering-committee> <http://ccm-ct.org/Plugs/ccm-members.aspx> (last visited September 12, 2013); see also, Finley Aff. ¶3.

The municipal members of CCM, none of whom can sue the defendants over education funding, are using this lawsuit in an attempt to convince the courts to relieve them of their statutory responsibilities for funding public education.² Mr. Finley’s affidavit offers his opinions and legal conclusions about the educational reforms enacted by the General Assembly in 2013. “This affidavit addresses the merits of Public Act 13-247...” (Finley Aff. ¶4); “Public Act 13-247 does not fix the fundamental flaws in the ECS formula...” (Finley Aff. ¶ 6); “The increased ECS appropriations under Public Act 13-247 are too small to significantly affect adequacy or equity in Connecticut.” (Finley Aff. ¶15); “Increased funding for charter, magnet, and Commissioner’s network schools benefits only a minority-and often an unrepresentative minority-of Connecticut’s public school students.” (Finley Aff. ¶ 28). Mr. Finlay’s opinions and legal conclusions are irrelevant to defendants’ motion to dismiss, and improper for inclusion in any affidavit filed in response to Mr. Mahoney’s supplemental affidavit which only recites

¹ Note Mr. Finley is listed as an Ex-Officio member of CCJEF’s Steering Committee on CCJEF’s website. See <http://ccjef.org/ccjef-steering-committee> (last visited September 12, 2013).

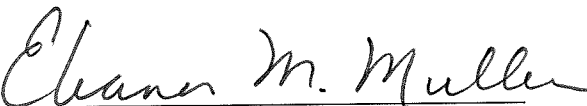
² A 2012 CCM report advocating against over reliance on the property tax is consistent with CCJEF’s position on the same. See <http://advocacy.ccm-ct.org/Plugs/CCM-public-policy-advocacy-reports.aspx> (last visited September 12, 2013) c/f <http://ccjef.org/key-goals-objectives> (last visited September 12, 2013).

factual information. Moreover, it is ironic that plaintiff CCJEF complains about the filing of Mr. Mahoney's factual supplemental affidavit given that CCJEF has asked this court to consider Mr. Finley's conclusory affidavit on the eve of oral argument. Thus, even if CCJEF's affidavit was proper – which it is not – it has been foisted upon the defendants and the court far too late.

Accordingly, for all the reasons stated above, defendants respectfully request that the court grant its request for leave to file Mr. Mahoney's supplemental affidavit and deny the plaintiffs' request for leave to file Mr. Finley's affidavit.

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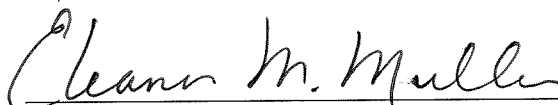
CERTIFICATION

This will certify that a copy of the foregoing has been mailed this 13th day of September 2013, to the following:

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