

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Donald M. Peters 005929
Wendy L. Kim 023308
MILLER LaSOTA & PETERS, PLC
722 East Osborn Road, Suite 100
Phoenix, AZ 85014
Telephone: (602) 248-2900
Facsimile: (602) 248-2999

Attorneys for Plaintiffs

COPY

AUG 10 2007



MICHAEL J. BEARDE, CLERK
M. SIMPSON
DEPUTY CLERK

IN THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

PAUL S. LEEVAN, PATRICK
FLYNN, JUDITH L. FROST,
H. A. DI GIULIO, PATRICK W.
MCDONALD, ROBERT J. VAIRO,
ALLISON WESLEY, DARON K.
BROTHERTON, and CITIZENS FOR
A UNIFIED SCHOOL DISTRICT,

Plaintiffs,

vs.

SANDRA DOWLING in her capacity
as Superintendent of Schools for
Maricopa County, Arizona,

Defendant,

and

STATE OF ARIZONA, Real Party in
Interest.

No. ~~CV 2007-014403~~

COMPLAINT FOR SPECIAL
ACTION RELIEF

(Unclassified Civil)

PRIORITY CASE: Rule 4, Arizona
Rules of Procedure for Special
Actions; Rule 57, Arizona Rules of
Civil Procedure

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

Plaintiffs allege as follows:

Parties and Jurisdiction

1. Plaintiffs Paul S. Leevan, Patrick Flynn, Judith L. Frost, H. A. DiGiulio, Patrick W. McDonald and Robert J. Vairo reside within the boundaries of the Christopher Verde Unified School District. They all own property within the boundaries of that District and they are all taxpayers. The statute at issue in this case, S.B. 1164, would compel the dissolution of the Christopher Verde Unified School District, as discussed hereafter. The dissolution of that school district and forced annexation into another district would increase these plaintiffs' taxes and dilute their voting power in school-district matters.

2. Plaintiffs Allison Wesley and Daron K. Brotherton are parents and taxpayers who reside within the boundaries of the Christopher Verde Unified School District in Maricopa County, Arizona. They own property within the boundaries of that District and they are taxpayers. These plaintiffs have children who attend the Scottsdale Unified School District. The statute at issue in this case, S.B. 1164, would deprive them of the right they enjoyed under prior law to have their children continue to attend school in the Scottsdale Unified School District. The proposed dissolution of Christopher Verde Unified School District and forced

1 annexation into another district would increase their taxes and dilute their voting
2 power in school-district matters.

3 3. Plaintiff Citizens for a Unified School District is an association of
4 citizens who reside within the boundaries of the Christopher Verde Unified School
5 District. Citizens for a Unified School District supports Christopher Verde
6 Unified School District and opposes the proposed dissolution of that district.
7

8 4. Defendant Sandra Dowling is the Superintendent of Schools for
9 Maricopa County, Arizona. She is sued in her official capacity only. The statute
10 that is at issue in this case directs Dowling to dissolve the Christopher Verde
11 Unified School District.
12

13 5. This action concerns the constitutionality of a recently enacted
14 statute. The real party in interest is the State of Arizona

15 6. Plaintiffs have no equally plain, speedy or adequate remedy available
16 by appeal. As alleged more fully hereafter, Defendant Sandra Dowling has
17 proceeded in excess of legal authority or is threatening to do so. This action
18 therefore raises issues that are cognizable in a special action.
19
20

21 *The Creation of the Christopher Verde Unified School District*
22

23
24 7. Until 2006, the area that is now within the boundaries of the
25 Christopher Verde Unified School District was not a part of any school district.
26
27

1 The area was in what Arizona law sometimes refers to as an "unorganized
2 territory."

3 8. In November 2005, an election was held to determine whether a
4 portion of unorganized territory known as the Troon area would be annexed into
5 the Paradise Valley Unified School District. Over 95 percent of the votes cast by
6 residents of the unorganized territory were opposed to the proposed annexation.
7 The proposal was defeated.

9 9. Also in 2005, the Arizona Legislature passed S.B. 1199. That law
10 provided that in areas where an unorganized territory was sending 150 students or
11 more to adjacent school districts, the county school superintendent had to establish
12 boundaries for a proposed new school district in the area. Residents of the
13 proposed new school district would then be required to decide by election whether
14 to join an adjacent district or to form the proposed new school district. The
15 unorganized territory that is now within the boundaries of the Christopher Verde
16 Unified School District was the only area in Arizona that was subject to the new
17 law.
18
19

20 10. Pursuant to S.B. 1199, defendant Dowling called for an election to
21 determine whether the residents of the area in question preferred to join the Cave
22 Creek Unified School District or to create a new school district. In November
23 2006, the voters chose by a significant majority to form their own school district.
24
25
26
27

1 The Christopher Verde Unified School District was created as a result of that
2 election.

3 11. S.B. 1199 explicitly recognized that a new school district would not
4 be able to provide a complete academic program at once. The law provided that if
5 that was the case, the new district could transport its students to an adjacent school
6 district. The Christopher Verde Unified School District was not to begin receiving
7 funding until fiscal year 2007-2008. Students in the new district therefore
8 continued to attend school in adjacent school districts.
9

10
11 *The Nullification of the Election*
12

13
14 12. In 2007, the Legislature enacted the measure that is at issue in this
15 case, S.B. 1164. A copy of S.B. 1164 is attached to this Complaint as Exhibit A
16 and incorporated by reference.
17

18 13. The Legislature evidently disapproved of how the residents of the
19 new Christopher Verde Unified School District had voted the preceding fall. The
20 Legislature decided to nullify the results of the election. S.B. 1164 overrode the
21 expressed will of the voters, required that Christopher Verde Unified School
22 District be dissolved and compelled the area's taxpayers and residents to accept the
23 very alternative that they had rejected at the polls, i.e., joinder with another school
24 district.
25
26
27

1 14. The portion of S.B. 1164 at issue in this case reads as follows:

2 If a school district does not offer a full-time instructional program as
3 defined in § 15-901 in any grade level to the pupils who reside in that
4 school district, transports all of the pupils who reside in that school district
5 to an adjacent school district or school districts for instruction and
6 transports more than three hundred fifty pupils annually to an adjacent
7 school district or school districts, the county school superintendent shall
8 dissolve the transporting school district and annex the geographic
9 boundaries of the transporting school district to the adjacent school district
10 that provides instruction to the majority of the pupils who reside in the
11 transporting school district.

12 Plaintiffs do not challenge the constitutionality of any part of S.B. 1164 other than
13 this quoted language. Plaintiffs' view is that the unconstitutional portion of the
14 measure is severable from the remainder.

15 15. Christopher Verde Unified School District is the only school district
16 in the State that meets the criteria for dissolution and forced annexation set forth in
17 S.B. 1164. The portion of S.B. 1164 at issue was designed and intended to apply
18 only to Christopher Verde Unified School District.

19 16. Plaintiffs allege, upon information and belief, that unless defendant
20 Dowling is restrained from doing so, she will dissolve the Christopher Verde
21 Unified School District and annex the area it serves into an adjacent school
22 district, pursuant to S.B. 1164.
23
24
25
26
27

S.B. 1164 Is Unconstitutional

1
2
3 17. Article 4, part 2, section 19 of the Arizona Constitution provides in
4 pertinent part: "No local or special laws shall be enacted...when a general law can
5 be made applicable."
6

7 18. According to the most recent data compiled by the Superintendent of
8 Public Instruction, as of 2005-06 there were nine other school districts in Arizona
9 that offered no full-time instruction and transported all their pupils to other
10 districts for instruction: Champie Elementary School District, Chevelon Butte
11 School District, Empire Elementary School District, Forrest Elementary School
12 District, Klondyke Elementary School District, Redington Elementary School
13 District, Rucker Elementary School District, Walnut Grove Elementary School
14 District and Williamson Valley Elementary School District.
15

16 (<http://www.ade.az.gov/schoolfinance/Reports/Default.asp#SFRtop>) None of
17 those school districts transports as many as fifty pupils per year.
18

19 19. Plaintiffs allege, upon information and belief, that none of the school
20 districts identified in paragraph 18 is likely to reach the point where it is
21 transporting 350 students per year to other districts at any time in the foreseeable
22 future.
23

1 20. The portion of S.B. 1164 at issue therefore creates an inelastic class
2 that includes only the Christopher Verde Unified School District. That class is
3 unlikely to include any other members on the foreseeable future.

4 21. The portion of S.B. 1164 at issue is a local or special law that
5 violates Article 4, part 2, Section 19, of the Arizona Constitution.
6

7 22. The portion of S.B. 1164 at issue also violates the Equal Protection
8 Clause of the United States Constitution and Article 2, Section 13, of the Arizona
9 Constitution.

10 23. Because the portion of S.B. 1164 at issue deprives Plaintiffs of a
11 right to Equal Protection guaranteed by the United States Constitution, Plaintiffs
12 are entitled to an injunction pursuant to 42 U.S.C. § 1983 restraining Defendant
13 from making any further attempt to implement the law.
14

15 24. Because the portion of S.B. 1164 at issue violates the Arizona
16 Constitution, Plaintiffs are entitled to special action relief that prevents defendant
17 Dowling from taking any steps to dissolve Christopher Verde Unified School
18 District, or to annex it to another school district, and nullifies any steps that have
19 already been taken.
20

21 25. Plaintiffs request an award of attorneys' fees and costs against the
22 State of Arizona pursuant to A.R.S. § 12-348, the private attorney general doctrine
23 and 42 U.S.C. §§ 19731 and 1988.
24
25
26
27

