

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI

THE SCHOOL DISTRICT OF KANSAS CITY,)	
MISSOURI, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 06AC-CC00639
)	
STATE OF MISSOURI, <i>et al.</i> ,)	
)	
Defendants,)	
)	
and)	
)	
MISSOURI CHARTER PUBLIC SCHOOL)	
ASSOCIATION,)	
)	
Intervenor.)	

JUDGMENT

Now on this 29th day of June, 2009, the Court takes up this matter for the purpose of entering its judgment.

This case involves three constitutional challenges to Missouri’s system of funding charter public schools. It raises the challenges only as regards charter schools in the Kansas City, Missouri School District. Two of the challenges are based upon provisions in the Hancock Amendment, specifically Article X Sections 16 and 21. The third challenge is based upon Article X, Section 11(g) of the Missouri Constitution.

A. Parties and Standing

The plaintiffs are the Kansas City, Missouri School District (“KCMSD”) and three taxpayers of the district.¹ As a preliminary matter, the State Defendants filed a Motion to Dismiss KCMSD from the Hancock claims based upon lack of standing based upon Missouri Constitution Article X, Section 23. This Court took the Motion with the case. Section 23 limits

¹ The parties stipulated that the three individual plaintiffs are taxpayers of the district.

the class of persons who can bring actions to enforce the Hancock Amendment to taxpayers. As was the case in *Fort Zumwalt School District v. State*, 896 S.W.2d 918, 921 (Mo. banc 1995), KCMSD does not, because it cannot, claim status as a taxpayer. As such, this Court determines that KCMSD is without standing to bring an action to enforce Article X, Sections 16 and 21. The taxpayer plaintiffs do have standing, however, so the Hancock claims are resolved by this Judgment. There is no defense raised as to the standing of KCMSD as regards the 11(g) constitutional claim.

The Defendants are the State of Missouri, the Missouri State Board of Education, the Department of Elementary and Secondary Education and D. Kent King, Commissioner of Education (sued in his official capacity). Defendant-Intervenor is the Missouri Charter Public School Association.

B. Presumption of Constitutionality of Statutes

Statutes have a strong presumption of constitutionality. *State v. Kinder*, 89 S.W.3d 454, 458-59 (Mo. banc 2002). A court should not invalidate a statute “unless it clearly and undoubtedly contravenes the constitution and plainly and palpably affronts fundamental law embodied in the constitution.” *Id.* at 459 (quoting *Smith v. Coffey*, 37 S.W.3d 797, 800 (Mo. banc 2001)). Courts must resolve all doubt in favor of the validity of the statute. *Westin Crown Plaza Hotel Co. v. King*, 664 S.W.2d 2, 5 (Mo. banc 1984).

C. Charter Schools

The Charter Schools Act, §§160.400-.420, RSMo, was enacted in 1998. The Act authorized charter schools in metropolitan or urban school districts, which by statutory definition includes the Kansas City, Missouri School District (“KCMSD”). § 160.400.2, RSMo Supp. 2007. Charter schools are independent, publicly supported schools. §160.400.1, RSMo Supp.

2007. Charter schools must have sponsors, which can be either the school district in which they are located, a public four-year college with its primary campus in the school district (or a county adjacent to the county of the district) and which has an accredited teacher education program, or a community college located in the district. § 160.400.2, RSMo Supp. 2007. Under some circumstances, even the state board of education can be the sponsor of a charter school. § 160.405.2, RSMo Supp. 2007. A newly-forming charter school that is not sponsored by the school district must file a copy of the proposed charter with the school district. § 160.405.1, RSMo Supp. 2007. The school board can file objections with the proposed sponsor. § 160.405.1, RSMo Supp. 2007. If a sponsor grants the charter, the charter must be submitted to the state board of education. § 160.405.3, RSMo Supp. 2007. The school district can file objections with the state board of education. § 160.405.1, RSMo Supp. 2007. The state board of education can disapprove the granting of a charter. § 160.405.3, RSMo Supp. 2007. Charter schools must be nonsectarian in programs, policies, employment practices and all other operations. § 160.405.5, RSMo Supp. 2007. They must comply with health, safety and minimum education standards. *Id.* Charter schools must be financially accountable and audited annually. *Id.*

Charter public schools must provide a public education to residents of the school district in which they operate. § 160.410, RSMo Supp. 2007. They cannot charge tuition. § 160.415.8, RSMo 2000; § 160.415.10, RSMo Supp. 2007. They are required by statute to be organized as nonprofit corporations under chapter 355, RSMo. § 160.400.5, RSMo Supp. 2007. Meetings of the governing board of charter schools are subject to the provisions of Missouri's Sunshine Law, §§ 610.010 through 610.030, RSMo. § 160.400.6, RSMo Supp. 2007.

D. Public Funding of Charter Schools

As originally enacted, charter schools received their funding through the school district in which they operated and the school district administration acted as a disbursal agent. § 160.415, RSMo 2000. Pupils enrolled in charter schools in a district were reported to the administration of the school district and included in the district's attendance reports to the state. Payments to charter schools were calculated as follows:

A school district having one or more resident pupils attending a charter school shall pay to the charter school an annual amount equal to the product of the equalized, adjusted operating levy for school purposes for the pupils' district of residence for the current year times the guaranteed tax base per eligible pupil, as defined in section 163.011, RSMo, times the number of the district's resident pupils attending the charter school plus all other state aid attributable to such pupils, including summer school, if applicable, and all aid provided pursuant to section 163.031, RSMo.

§ 160.415.2(1), RSMo 2000. Additionally, "The district of residence of a pupil attending a charter school shall also pay to the charter school any other federal or state aid that the district receives on account of such child." § 160.415.2(2), RSMo 2000. This previous version of the charter school funding is not challenged by the plaintiffs in this case. It is the current funding mechanism that is challenged.

The state funding formula has been amended at various times. *See* § 163.011, RSMo. Most pertinent to the claims in this lawsuit, it was amended via Senate Bill 287 during the 2005 Legislative Session. In that legislation, charter schools were granted the option of becoming a Local Educational Agency ("LEA"). Because SB 287 changed the overall state funding formula, Section 160.415 was also amended to reflect the new formula. Section 160.415, RSMo Supp. 2007, provides for funding to charter schools under two scenarios: (1) where a charter school is an LEA and (2) where a charter school is not an LEA. For the latter, the district remains a disbursal agent. However, the testimony at trial was clear that all of the charter schools in the Kansas City, Missouri School District are LEAs. Accordingly, the constitutional challenges to

the second scenario do not present a justiciable controversy. *Lane v. Lensmeyer*, 158 S.W.3d 218, 222 (Mo. banc 2005). This Court will only address the constitutional challenges to the methodology applicable when charter schools are LEAs.

Section 160.415.4, RSMo Supp. 2007, funds charter schools in the Kansas City, Missouri School District as follows:

A charter school that has declared itself as a local educational agency shall receive from the department of elementary and secondary education an annual amount equal to the product of the charter school's weighted average daily attendance and the state adequacy target, multiplied by the dollar value modifier for the district, plus local tax revenues per weighted average daily attendance from the incidental and teachers funds in excess of the performance levy as defined in section 163.011, RSMo, plus all other state aid attributable to such pupils. If a charter school declares itself as a local education agency, the department of elementary and secondary education shall, upon notice of the declaration, reduce the payment made to the school district by the amount specified in this subsection and pay directly to the charter school the annual amount reduced from the school district's payment.

Essentially, then, the state applies a formula to determine what amount should be paid to a charter school based upon the formula and then the state makes that payment directly to the charter school. The state then reduces the state's payment to the district for district-controlled schools in amounts equal to the local effort component of the formula. The Plaintiffs admit that KCMSD does not make any payments to the charter schools under this funding mechanism. Plaintiffs' complaint is to the reduction of KCMSD's state aid payments in amounts equal to the local effort for Kansas City charter school pupils. This basic fact is common to all claims, and the claims are essentially three efforts to urge this Court to declare the state's reduction in state aid payment to KCMSD to be unconstitutional based upon three legal theories.

E. Plaintiffs' Claims

Plaintiffs raise three claims in their Petition, essentially as follows:

- (1) That section 160.415, RSMo Supp. 2007, violates Article X, Section 11(g) of the Missouri Constitution (“Section 11(g) Claim”)²;
- (2) That the Charter Schools Act, as amended in 2005, created a new program of independent charter school local educational agencies that the State did not fund, and that this is a violation of Article X, Sections 16 and 21 of the Missouri Constitution (“New Mandate Claim”);³ and
- (3) That the Charter Schools Act, as amended in 2005, results in a reduction of the amount of state support of the School District’s existing programs and has reduced the ratio of state aid paid to the School District to maintain its existing programs, in violation of Article X, Section 21 of the Missouri Constitution (“Pre-existing Mandate Claim”).

1. Section 11(g) Claim

Adopted on April 7, 1998, Section 11(g) of the Missouri Constitution states:

The school board of any school district whose operating levy for school purposes for the 1995 tax year was established pursuant to a federal court order may establish the operating levy for school purposes for the district at a rate that is lower than the court-ordered rate for the 1995 tax year. The rate so established may be changed from year to year by the school board of the district. Approval by a majority of the voters of the district voting thereon shall be required for any operating levy for school purposes equal to or greater than the rate established by court order for the 1995 tax year. The authority granted in this section shall apply to any successor school district or successor school districts of such school district.

(Emphasis added).

² This claim is raised by all four Plaintiffs.

³ As previously determined, only the taxpayer Plaintiffs have standing to raise the Hancock claims.

KCMSD⁴ claims the emphasized language in Section 11(g) prohibits the transfer of local revenue generated pursuant to this section from going to charter schools because charter schools are not “schools of the district” for various reasons. As a preliminary matter, although KCMSD’s Petition seems to suggest that all local revenue is derived under the authority of Section 11(g) of Article X, KCMSD conceded during argument in the trial that some of the revenue is generated pursuant to Article X Section 11(b) and the amount above that, the difference that takes the district up to the \$4.95 levy, is what cannot be used for charter schools.

KCMSD admits that it currently transfers no 11(g) moneys to the charter schools. This is true as a matter of law by virtue of the fact that all of the charter schools in the district are LEAs and receive their funding directly from the State. The language of § 160.415.4 at issue is, “If a charter school declares itself as a local education agency, the department of elementary and secondary education shall, upon notice of the declaration, reduce the payment made to the school district by the amount specified in this subsection and pay directly to the charter school the annual amount reduced from the school district's payment.” KCMSD urges that the reduction in state aid in an amount equal to the local effort for Kansas City charter school pupils is the same as forcing the district to spend the 11(g) revenues on charter schools.

The language in the subsection does not identify a local pot of money from which the required payment is to be made. It simply uses the “local effort” as an element in the formula for calculating payment. What is transferred to charter schools by DESE is all state revenue. KCMSD does not transfer local revenues to the state or to charter schools. Because KCMSD gets to keep all of its local revenue, the State pays KCMSD less state money – in an amount equal to the local effort element. But the State is not deducting anything but state revenue.

⁴ For the purposes of some brevity in the discussion of the 11(g) Claim, “KCMSD” will be used to refer to all of the Plaintiffs – KCMSD and the three taxpayers.

KCMSD keeps all of its local revenue, including that generated by the Section 11(g) levy. For this reason alone, KCMSD's and taxpayers' claim that § 160.415.4, RSMo Supp. 2007, violates Article X, Section 11(g) of the Missouri Constitution fails.

Although KCMSD retains every penny of the Section 11(g) revenues for the education of the students in the schools it administratively controls, Plaintiffs argued that the funding formula applied by the State in calculating a per pupil⁵ amount effectively transfers 11(g) money to the charter schools, because "local effort" is part of the formula used to calculate state aid for all public school students in the District. KCMSD argues that actually following the money elevates form over substance. Even on its face, Section 11(g) does not prohibit an "effective transfer", it simply authorizes a greater levy amount than what is in Section 11(b). To the extent it is a restriction on the use of that money, it is only local money that it requires be used for school purposes. Section 11(g) does not even purport to affect how the state may set up its funding formula or how it divides state money among school districts, including the Kansas City, Missouri School District. KCMSD's and taxpayers' Section 11(g) Claim fails for this reason as well.

Even if there was a requirement in § 160.415.4, RSMo Supp. 2007, that requires KCMSD to transfer money generated under Section 11(g) to the charter schools, the claim fails because of the principles of constitutional construction. The key to Plaintiffs' Section 11(g) Claim is the meaning of the emphasized language "for school purposes for the district." "In general, constitutional provisions are subject to the same rules of construction as other laws, except that constitutional provisions are given a broader construction due to their more permanent character.

⁵ Per pupil is used simply for convenience. "Weighted Average Daily Attendance" or "WADA" is the precise term now used in calculating state aid. *E.g.*, § 160.415.4, RSMo Supp. 2007; § 163.011, RSMo Supp. 2007.

This Court is required to give due regard to the primary objectives of the constitutional provision under scrutiny, as viewed in harmony with all related provisions.” *Neske v. City of St. Louis*, 218 S.W.3d 417 (Mo. banc 2007)(citations omitted).

The meaning of “for school purposes” as set forth in Article X Section 11(c) has been addressed by the Missouri Supreme Court in *Rathjen v. Reorganized School District R-II of Shelby County*, 284 S.W.2d 516 (Mo. 1955)(en banc):

The words 'school purposes' are general words and the meaning of the term must be construed broadly and in accordance with their plain and ordinary meaning, unless some good reason, consistent with the purpose of the constitutional provision, otherwise appears.

A principle of construction that should be kept in mind is that while the construction of constitutional provisions should be neither liberal nor strict, it is quite generally held that in arriving at the intent and purpose the construction should be broad and liberal rather than technical, and the constitutional provision should receive a broader and more liberal construction than statutes. [citations omitted]. The reason is, a constitution is expected to be effective over a longer period of time, and its method of revision or amendment is more cumbersome than the legislative process.

The unfettered term, 'school purposes,' connotes an all-inclusive meaning

Id. at 524.

KCMSD argues to this Court that “for school purposes for the district” limits the use of the 11(g) tax levy revenues to schools that are under the control of the KCMSD School Board or schools under the administrative control of KCMSD, the entity. KCMSD essentially argues that when the provision was enacted, there was only the School District of Kansas City, Missouri and the public schools operating under its administrative control, that is the only situation contemplated by the section and is also therefore limiting language. Accordingly, taking the KCMSD’s argument to its logical conclusion, it would greatly limit the legislature in making any modifications to the system of public education within the geographical area that was, at the time

Section 11(g) was approved by the people, KCMSD. This is contrary to the principles of constitutional construction as already noted.

Additionally:

The General Assembly, unless restrained by the constitution, is vested, in its representative capacity, with all the primary power of the people. *Ludlow-Saylor Wire Co. v. Wollbrinck*, 275 Mo. 339, 205 S.W. 196, 197. . . . In considering contemporaneous legislative construction, this court, in the case of *State ex rel. O'Connor v. Riedel, supra*, held, 46 S.W.2d loc. cit. 134: “Though not conclusive, such interpretation is entitled to great weight and should not be departed from unless manifestly erroneous.”

Rathjen, 284 S.W.2d at 526. Article X, Section 11(g) was adopted on April 7, 1998. The Charter Schools Act was initially enacted during the 1998 legislative session. This should be considered as a contemporaneous construction in that the previous calculation of payments to the charter schools also included a local effort component. § 160.415, RSMo 2000. And KCMSD made the payments to the charter schools since their inception, and did so for several years before ever raising any constitutional challenge to it based upon Section 11(g).

The School District of Kansas City, Missouri is a creature of statute and exists by virtue of the legislative authority for its creation and operation. Ch. 162, RSMo. What the legislature gives, it can change or even take away. Accordingly, the rules of constitutional construction require that the provision be applied in such a way that allows the tax levy revenues to be spent on free public education of residents of the district in the manner established by the legislature. There is no support in limiting the use of the funds to public schools under the administrative control of an entity that is subject to change by the legislature, essentially tying the legislature’s hands in establishing the system of free public schools in the district.

KCMSD’s and taxpayers’ claim that § 160.415, RSMo Supp. 2007, violates Article X, Section 11(g) of the Missouri Constitution fails.

2. Hancock Claims

Article X, Section 16 states in relevant part, “The state is prohibited from requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions.” Article X, Section 21 states:

The state is hereby prohibited from reducing the state financed proportion of the costs of any existing activity or service required of counties and other political subdivisions. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the general assembly or any state agency of counties or other political subdivisions, unless a state appropriation is made and disbursed to pay the county or other political subdivision for any increased costs.

Section 21 can be divided into a pre-existing mandate provision and a new mandate provision. Section 16 is similar to Section 21’s new mandate provision. Those claims will be analyzed together.

a. New Mandate Claim

“This portion of the Hancock Amendment is violated if both (1) the State requires a new or increased activity or service of a political subdivision and (2) the political subdivision experiences increased costs in performing that activity or service without funding from the State.” *Neske v. City of St. Louis*, 218 S.W.3d 417, 422 (Mo. banc 2007)(citing *Miller v. Dir. of Revenue*, 719 S.W.2d 787, 788-89 (Mo. banc 1986))(emphasis added). *Neske* held there was no violation of the Hancock Amendment’s new or increased activity funding mandate where the activity required of the City was unchanged and the only thing that happened was it was more expensive for the City to carry out the same activity. *Id.* at 422. The *Neske* court stated:

There is no new or increased activity. The Hancock Amendment is aimed at limiting taxes by controlling and limiting governmental revenue and expenditure increases. *See Boone County Court v. State of Mo.*, 631 S.W.2d 321, 325 (Mo. banc 1982). The amendment's official ballot title stated that it prohibited “state expansion of local responsibility without state funding.” *Id.* The increased cost

of funding the PRS and the FRS is not an expansion of the City's long-existing responsibility. . . . The change in the [cost] is not the measure of whether Hancock is violated. The question is whether the City has been mandated to bear new responsibilities in relation to this activity. It has not.

Id.

Compare *Neske* to *Rolla 31 Sch. Dist. v. State of Missouri*, 837 S.W.2d 1 (Mo. banc 1992), where the state statutes were changed from no requirement that school districts provide special education services to district residents aged 3 and 4 years of age to a mandate of the provision of special education services for that age group. School districts were therefore required to provide educational services to a new population of district residents – disabled preschoolers. *Id.* *Rolla 31* is an example of a new activity required of school districts.

As required by *Neske*, taxpayer Plaintiffs were required to provide “specific proof of new or increased duties” that Section 160.415, RSMo, as amended, placed upon KCMSD. This Court finds that taxpayer Plaintiffs failed to meet this requirement. Taxpayers argued that the Charter Schools Act, as amended to allow charter schools to be LEAs, was a new program. Taxpayers put on no evidence whatsoever of new or increased duties or activities by KCMSD as a result. Instead, they argued that the cost of its unchanged activity of educating residents of the district cost more per pupil, allegedly due to the new program of charter schools being allowed to be LEAs. The evidence showed that the amendments to the Charter Schools Act, along with the fact that every charter school in the district is an LEA, actually reduced the duties of the KCMSD by no longer requiring it to act as a disbursal agent to the charter schools.

The situation complained of by taxpayers is like that in *Neske* and therefore fails. Educating residents of the district is not a new program or activity required by the state. This failure to prove new or increased duties is sufficient to find that taxpayers’ New Mandate Claim fails. But there are additional reasons why the claim fails.

In addition to the above failure of proof, this claim fails the second prong of the new mandate test requiring that the increased costs must be as a result of the new or increased activity. In addition to needing to prove a new activity imposed upon KCMSD, the taxpayers also are required to provide “specific proof of the increased expenses due to the new or increased duties.” *Brooks v. State*, 128 S.W.3d 844, 849 (Mo. banc 2004). “[T]hese elements cannot be established by mere ‘common sense,’ or ‘speculation and conjecture’.” *Id.* (citing *Miller v. Director of Revenue*, 719 S.W.2d 787, 789 (Mo. banc 1986)). A court cannot “presume increased costs resulting from increased mandated activity.” *Id.* (citing *City of Jefferson v. Mo. Dept. of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993) (*City of Jefferson I*)).

The taxpayers failed to provide credible evidence that tied the increased costs per pupil to the charter schools, the amendment to the charter schools allowing them to become LEAs, or to § 160.415.4, RSMo Supp. 2007. In fact, the evidence showed that the increased spending per pupil by KCMSD was as a result of KCMSD’s own choices and the fact that its property tax levy rate was not in any way tied to the number of pupils and was never reduced, regardless of how much revenue it generated. The Defendant-Intervenor’s expert testified to this very credibly. The credible evidence tended to show that the increased expenditure per pupil at KCMSD schools is because of how KCMSD operates (including its readily increasing amount of revenue generated by the \$4.95 levy) and due to decreased enrollment. The fewer pupils the district educates, the more it spends per pupil, as a matter of math. The taxpayers failed to show that any of the 2005 changes to the Charter Schools Act, including the opportunity for charter schools to become LEAs or the modified public funding mechanism, required KCMSD to spend more per pupil than it would have had to spend without the amendments.

Taxpayer Plaintiffs' claim that § 160.415, RSMo Supp. 2007, violates the New Mandate provisions of the Hancock Amendment, Article X, Sections 16 and 21 fails.

b. Pre-Existing Mandate Claim

Section 21 of the Hancock Amendment also prohibits a reduction in the state financed proportion of the costs of an activity mandated by the state when the Hancock Amendment was adopted. On a pre-existing mandate claim, *Fort Zumwalt Sch. Dist. v. State of Missouri*, 896 S.W.2d 918 (Mo. banc 1995) is the key case, clearly setting forth the standards for such a claim:

To support their factual averment that the state has violated Section 21, the taxpayers 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. The taxpayers must then establish 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. Unless the school district's budgets allocated personnel costs and operating expenditures in a highly segmented manner, clearly distinguishing resources directly committed to the state mandates for special education from those not so dedicated, it may be impossible to prove the correct proportions.

[One would be mistaken to believe] that establishment of the Section 21 proportions requires no more than comparing 1980-81 and subsequent year costs with the state's contribution to special education in those years. In establishing the state's required contribution, the taxpayers may not include any discretionary expenditures a district undertook that went beyond the state mandate. For example, to the extent that district finances permitted greater-than-required salary increases for . . . instructors, aides, and other personnel, the taxpayers may not include these in the school district portion of the ratio. The taxpayers also must exclude any new or expanded activity required of the local district after 1980-81 for which the state bears full responsibility.

Id. at 922-23 (citing *Rolla 31*, 837 S.W.2d at 5-7). Plaintiff taxpayers have not satisfied the *Fort Zumwalt* standard.

Taxpayer Plaintiffs' claim here is essentially that for the programs mandated by the state in 1980-1981, the state has decreased its proportion of funding in violation of the Hancock Amendment. Taxpayers are not pointing to any single program, but attempt to identify every program that was mandated in 1980-1981, identify the amount of state funding for these

programs in 1980-1981 and then for a few select years since then, specifically the years after the enactment of the Charter Schools Act (1999-2000 and 2000-2001) and after the amendment to the Charter Schools Act via SB 287 in 2005 (2005-2006 and 2006-2007). The taxpayers then attempt to identify the proportion that must be maintained for the mandated programs in subsequent years. The taxpayers' expert witness testified as to two possible formulas for determining the applicable proportion in 1980-1981 and thereafter:

Formula 1:

$$\frac{\text{State Revenues for State-Mandated Programs}}{\text{Total Local Revenues}}$$

Formula 2:

$$\frac{\text{State Revenues for State-Mandated Programs}}{\text{State plus Local Expenditures on State-Mandated Programs}}$$

Neither of these formulas is the correct method for determining the proportion to be used in a pre-existing mandate claim. Formula 1 is wrong because the denominator is all local revenue, not costs. It makes no attempt to identify the amount of local revenues actually expended on the state mandated activities, much less the mandated costs. The plain language of the constitutional provision and the holdings in *Ft. Zumwalt* make it clear this is not the proportion to be applied.

Formula 2 is also the wrong formula. The Defendant-Intervenor's expert witness credibly testified that although the numerator used by the taxpayers' expert was correct, the denominator was incorrect in both formulas. The testimony as to Formula 1 was as already noted – the formula must identify costs, not revenues. As to Formula 2, Defendant-Intervenor's expert witness credibly testified that the denominator in Formula 2 failed to take into account discretionary levels of expenditures by the locals on mandated programs. Although the

taxpayers made a great effort to exclude from the denominator some amounts that were not for mandated programs, it failed to address whether the level of spending was due to the mandate or whether the District deducted “discretionary expenditures a district undertook that went beyond the state mandate.” *Ft. Zumwalt* 896 S.W.2d at 922.

The correct formula⁶ is as testified to by Defendant-Intervenor’s expert witness:

Formula 3:

$$\frac{\text{State Revenues for State-Mandated Programs}}{\text{Local Cost of State-Mandated Programs}}$$

“Cost” in this formula is limited to the state-mandated activities within a program, not discretionary levels of activities by the locals. Accordingly, this denominator takes into account the discretionary level of expenditures by locals within a mandated program, the importance of which is made clear in *Ft. Zumwalt*. Defendant-Intervenor’s expert raised, as examples of where taxpayers failed to even attempt to reduce the denominator to account for discretionary levels of expenditures within mandated programs, salaries of teachers, transportation costs and facility costs. Accordingly, the taxpayer Plaintiffs failed to correctly identify the state financed proportion of the cost of mandated activities in 1980-1981.

Because of these critical failures of proof, this Court need not decide whether the taxpayers correctly identified the programs mandated in 1980-1981, properly excluded all newly mandated programs since 1980-1981 and the state funding for such new programs, whether the taxpayers correctly categorized revenue or expenditures as state or local, or other aspects of a pre-existing mandate claim.

⁶ The parties did not dispute whether the numerator was correct.

Finally, it merits noting that the Charter Schools Act, which is the basis of Plaintiffs' Hancock claims, was not in existence in 1980-1981. Although pled in the Petition as the basis for the decrease in the state-financed proportion of the mandated activities in 1980-1981, the taxpayers failed to show a plausible connection between the two. And the relief sought was to declare § 160.415.4 to be violative of the Hancock Amendment. This is simply nonsensical in the context of a pre-existing mandate claim. The relief sought could not have been granted even if taxpayers have demonstrated a decrease in the state financed proportion of mandated activities as compared to 1980-1981. The Charter Schools Act, enacted in 1998, is wholly irrelevant to a pre-existing mandate claim.

To the extent the taxpayers tried to tie the two together, they failed. Taxpayers' expert witness made no effort whatsoever to identify any other basis for the purported changes in the proportion of funding. She failed to exclude other factors which may account for the alleged decrease in proportion of funding – including changes in the state foundation formula. The taxpayers' effort to tie the alleged change in proportion of funding to the charter school program was based upon faulty evidence and was not credible.

Taxpayer Plaintiffs' claim that § 160.415, RSMo Supp. 2007, violates the Pre-Existing Mandate provision of the Hancock Amendment, Article X, Section 21, fails. Taxpayer Plaintiffs' claim that the State has otherwise violated the Pre-Existing Mandate provision of the Hancock Amendment, Article X, Section 21, fails.

F. Judgment and Order

For the foregoing reasons, the Court enters judgment in favor of Defendants and Defendant-Intervenor and against Plaintiffs on all claims as follows:

- (a) The Kansas City, Missouri School District does not have standing to bring the Hancock Amendment claims;
- (b) The Court declares that Section 160.415, RSMo Supp. 2007, does not violate Article X, Section 11(g) of the Missouri Constitution;
- (c) The Court declares that Section 160.415, RSMo Supp. 2007, does not violate Article X, Sections 16 or 21 of the Missouri Constitution as to the New Mandate Claim;
- (d) The Court declares that Section 160.415, RSMo Supp. 2007, does not violate Article X, Section 21 of the Missouri Constitution as to the Pre-Existing Mandate Claim; and
- (e) The Court declares that the State has not otherwise violated Article X, Section 21 of the Missouri Constitution as to a Pre-Existing Mandate Claim.

Richard G. Callahan
Circuit Court Judge, Division II