IN THE
SUPREME COURT OF MISSOURI

SC92125

JORDAN DANIELLE KING-WILLMANN, et al.,

Plaintiffs/Respondents,

v.

WEBSTER GROVES SCHOOL DISTRICT,

Defendant/Appellant.

Appeal from the Circuit Court of the County of St. Louis
The Honorable Barbara W. Wallace, Circuit Judge

AMICUS BRIEF OF THE STATE OF MISSOURI

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Introduction

In *Turner v. School District of Clayton*, 318 S.W.3d 660, 669 (Mo. banc 2010), this Court held that the

> "plain and ordinary meaning of the language in § 167.131.2 that 'each pupil shall be free to attend the public school of his or her choice" gives a student the choice of an accredited school to attend, so long as that school is in another district in the same or an adjoining county, and requires the chosen school to accept the pupil. … Therefore, § 167.131.2 does not give an accredited school chosen by a student discretion to deny admission to that student.

At the time she sought admission in Webster Groves, Jordan King-Willmann was a pupil living in an unaccredited district (St. Louis Public Schools); Webster Groves is a "district in … an adjoining county."

This case is, of course, only about Jordan King-Willmann. It is not about whether all students in the St. Louis Public Schools can immediately enroll in Webster Groves. The mandate that Webster Groves attacks is really just the mandate to admit Jordan. And any cost that Webster Groves must bear pursuant to that mandate would be the cost of enrolling Jordan.

"[T]his court will not presume increased costs resulting from increased mandated activity." *City of Jefferson v. Mo. Dept. of Natural Resources*, 863 S.W.2d 844, 848 (Mo. banc 1993). Nonetheless, for purposes of this brief we will assume that there is such a cost, *i.e.*, that there is a measurable cost to Webster Groves in enrolling Jordan King-Willmann. We suspect that the cost is minimal. After all, § 167.131 does not promise Jordan a particular teacher, course, or classroom. There is no reason to believe that admitting one more ninth grade student will require Webster Groves to hire another employee, nor to invest more time or money in maintaining a building.

There is certainly no reason to believe that the amount that Webster Groves is entitled to collect in tuition under § 167.131 is remotely close to the minimal costs of an additional student. Indeed, in the *Turner* case, on remand, the Clayton School District has calculated its allowable high school tuition under § 167.131 as $21,160.58. Webster Groves' figure may be lower, but it is not based on the marginal cost of one or even a few additional students.

Working from the assumption that there is a measurable cost to Webster Groves to enroll one additional ninth grade student, and that a post-1980 state law for the first time requires Webster Groves to enroll that student, four issues merit attention: (1) Given that standing to sue on the Hancock Amendment is limited to taxpayers, whether a political subdivision

such as a school district can assert the Hancock Amendment as a defense to the assertion of an established statutory right by an individual plaintiff; (2) If Webster Groves can assert the Hancock Amendment as a defense, whether a state mandate that is accompanied by full funding from a third-party implicates the Hancock Amendment; (3) If third-party funding in the form of tuition payment by another district is permitted, whether the paying school district is a necessary party in a civil action when the statute specifically instructs that questions of tuition payments must be resolved in the first instance by the State Board of Education; and (4) If third-party funding is not permitted under the Hancock Amendment, what kind of State appropriation the Amendment requires.

I. Because standing under the Hancock Amendment is limited to taxpayers, a school district cannot assert the Hancock Amendment as an affirmative defense to an individual's claim.

The purpose of the Hancock Amendment is to protect taxpayers. *See, e.g., Thompson v. Hunter*, 119 S.W.3d 95, 98 (Mo. banc 2003). That is manifest, in part, by the provision in the Hancock Amendment for enforcement by suits by taxpayers. Art. X, § 23 ("any taxpayer of the state, county, or other political subdivision shall have standing to bring suit in a circuit court of proper venue and additionally, when the state is involved, in the Missouri supreme court, to enforce the provisions of sections 16 through

22, inclusive, of this article"). This Court has thus repeatedly declared that political subdivisions, including school districts, may not bring suits to enforce the Amendment. *E.g.*, *School Dist. of Kansas City v. State*, 317 S.W.3d 599, 610 (Mo. banc 2010). Thus it is apparent that the Webster Groves School District could not bring suit to enforce the Hancock Amendment and thereby be relieved of its statutory responsibility under § 167.131.

The initial Hancock Amendment question here, then, is whether Webster Groves may, in the form of a defense to a claim brought by someone with a clear statutory right to relief, do what it cannot do as a plaintiff. This Court has encountered that question twice.

The first time was in *State ex rel. Board of Health Center Trustees of Clay County v. County Commission of Clay County*, 896 S.W.2d 627 (Mo. banc 1995) ("*Health Center Trustees*"). There the County Commission, the defendant in a mandamus action, asserted that it was excused from authenticating a tax levy because the Board of Health Center Trustees had not complied with the Hancock Amendment. This Court refused to permit the County Commission to assert that defense, applying the rule that only taxpayers can seek enforcement of the Hancock Amendment, and citing the key precedent on that point, *Fort Zumwalt*:

> We do not reach a decision on whether the Hancock provisions were violated because the Commission has no standing to bring such a challenge. The Commission's role for independent taxing authorities such as the Board is the ministerial duty of accumulating the levies assessed by such political subdivisions and certifying them to the collector for inclusion on the tax bills. Its role is not to act as a judge of the constitutionality of the tax. Moreover, the class of persons who can bring suit to enforce the Hancock Amendment is limited to taxpayers. Art. X, § 23; § 137.073.8; *Fort Zumwalt School District v. State*, 896 S.W.2d 918, 921 (Mo. banc 1995). The Commission has no standing in such a matter.

Health Center Trustees, 896 S.W.2d at 631. Webster Groves, like the County Commission, invokes the Hancock Amendment as defends to a writ petition.

The Court of Appeals, Eastern District relied on the *Health Center Trustees* holding in two cases decided simultaneously, *Neske v. City of St. Louis*, 2006 WL 2403900 (Mo. App. E.D. 2006), and *Firemen's Retirement System v. City of St. Louis*, 2006 WL 2403955 (Mo. App. E.D. 2006). But when those cases reached this Court, the issue disappeared; the Court

decided that there had been no Hancock Amendment violation without ever addressing whether the City of St. Louis could use that constitutional provision as a shield. *Neske v. City of St. Louis*, 218 S.W.3d 417 (Mo. banc 2007).

The Court's action in *Neske* casts some doubt on the continued validity of the holding in *Health Center Trustees*. But *Health Center Trustees* states the only rule that can be entirely consistent with this Court's adamant position that when the people enacted the Hancock Amendment granting themselves as taxpayers the right to assert Hancock Amendment claims, they did not give political subdivisions the authority to act in what those subdivisions deem to be the taxpayers' best interest.

Here, the Court can and should reaffirm its holding in *Health Center Trustees*, and decline Webster Groves' implicit invitation that the Court bypass that holding as it did in *Neske*. If taxpayers wish to sue to challenge § 167.131, they may do so – and, indeed, in the remand of *Turner v. Clayton School District*, taxpayers have done so. The Hancock Amendment was simply not intended to become a shield that political subdivisions, independent of their taxpayers, can wield to fend off unwanted requirements. That the Hancock Amendment is used as a shield rather than as a sword should not matter; in either instance, the political subdivision is impermissibly using the court to enforce a tool handed only to taxpayers.

II. The Hancock Amendment is not violated by a state mandate that includes the requirement that the costs of compliance be paid by someone other than the State.

In addition to the question of its ability to assert a Hancock Amendment claim as a defense, Webster Groves presents this Court with two other very significant, closely-related Hancock Amendment questions. They arise from the "unfunded mandate" portion of the Hancock Amendment, Art. X, § 21, that is the basis of the Webster Groves' defense:

> 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.

Webster Groves does not dispute that since long before the Hancock Amendment was adopted in 1980, it had the responsibility to educate

children who reside within the district's boundaries, and that it could educate non-resident students, if someone paid tuition. The "new activity or service" that Webster complains about is the obligation to also educate a nonresident from a nearby unaccredited district.

Webster Groves' argument presents two questions; we address the first one here and the second on in part IV below. The first question is whether the "increased costs" referenced in § 21 are absolute costs or net costs. In other words, must the State itself pay the cost to the political subdivision to perform the new activity, or may the State instead provide for those costs to be paid by a third party? This Court's precedents do not provide a clear, logical, practical answer to that question.

To answer that question, we begin with the purpose of the Hancock Amendment itself: to protect taxpayers. *Thompson v. Hunter*, 119 S.W.3d 95, 98 (Mo. banc 2003). Consistent with that goal, standing to assert a claim that the Hancock Amendment has been violated is limited to taxpayers, as noted above; political subdivisions, including school districts, may not bring suit to enforce the Amendment. *School Dist. of Kansas City v. State*, 317 S.W.3d 599, 610 (Mo. banc 2010).

This Court has encountered the third-party-payment question just once before, in *Brooks v. State*, 128 S.W.3d 844 (Mo. banc 2004). There, the Court considered a "new service" that the State required county sheriffs to provide:

"to fingerprint and conduct criminal background checks on all applicants [for 'concealed carry' permits] and otherwise determine whether [the applicants] meet the statutory qualifications. [The sheriffs] are then to issue permits accordingly, and, under certain circumstances, to suspend or revoke the permits." *Id.* at 846. The law allowed the sheriffs to impose a charge to cover the costs of background checks and other tasks involved in issuing and policing permits: "Although the Concealed–Carry Act does not provide for 'state financing' to fund new activities and costs, section 571.094.10 instructs sheriffs in each county to 'charge [applicants] a nonrefundable fee not to exceed one hundred dollars,' ostensibly to accomplish that same purpose." *Id.* at 848.

In *Brooks*, then, the Court considered a new, state-imposed mandate on county sheriffs, but where there was no net additional cost to county taxpayers because the State provided a non-tax method of covering the costs through payment by a third party – there, the applicant for the "concealed-carry" permit. The Court majority did not find a Hancock Amendment problem: "If the fee can properly be used to fund the new activities and costs, which is the state's position, there is no unfunded mandate." *Id.*

That statement suggests that the majority read "increased costs" in Art. X, § 21, to mean net costs, *i.e.*, that if the political subdivision is given enough revenue from a third party so that there is no need for additional tax

revenue, the "costs" are not of the sort that must come from State coffers. That is a logical conclusion, given that the persons being protected by the Hancock Amendment are the taxpayers of the entity obligated to provide the new or increased service.

In *Brooks,* the plaintiffs were taxpayers of particular counties. The Court held that where the fee to be charged – *i.e.*, the amount paid by a third party – could not cover the costs of the new service (there, because they were statutorily dedicated to other purposes), there was a Hancock Amendment violation because taxes paid by county taxpayers would have to cover the cost of providing the permitting service. 128 S.W. 3d at 849-851.

The Court majority did not find that third-party payment was impermissible. In fact, it expressly reserved the question that Webster Groves' argument poses, saying that it was not raised: "Plaintiffs do not challenge, and therefore this Court does not address, the issue raised by the dissent, that is, whether a fee can satisfy or obviate the requirement of article X, sections 16 and 21, that state mandates be funded by 'full state financing.' *See* art. X, secs. 16 and 21." 128 S.W.3d at 848. In other words, the majority in *Brooks* disavowed the holding that seemed implicit in its declaration that there was no "unfunded mandate" and thus no Hancock Amendment problem, when the local government that provides the mandated service is

reimbursed for the cost of that service by a third party rather than by a state appropriation.

And that is the situation here: Webster Groves will incur some (perhaps minimal) costs by enrolling and educating a non-resident pupil. Those costs will not be borne by the taxpayers of the Webster Groves School District.[1] Allowing the district to avoid its statutory obligation to educate the non-resident student does not fulfill the objective of the "unfunded mandate" portion of the Hancock Amendment. To use the language of the *Brooks* majority, there is no "unfunded mandate" here – no State-imposed requirement that will lead to higher rates for taxpayers in the Webster Groves district.

The *Brooks* dissent, of course, would urge a different conclusion. Chief Justice White found that "Brooks [had] repetitively raise[d] the comprehensive allegation that the State has failed to fully fund the mandate

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[1] Whether the taxpayers of the St. Louis Public Schools or the Transitional School District for the City of St. Louis would bear increased costs is not a question that Webster Groves raises nor could raise in this case. And we do not know and do not address what portion of any St. Louis Public School payment would or could come from State funds being paid to the St. Louis district.

from any source of state revenue in violation of Hancock." *Id.* at 853. He then would have held that "[i]t is irrelevant whether the fee authorized is constitutional or even if it can be applied to cover part of the newly created costs. The argument, clearly presented by Brooks, is that the State's mandate is not fully funded by the State as Hancock requires." *Id.* But even Chief Justice White could not resist looking to the burden on taxpayers, even in the midst of demanding strict compliance with a "state appropriation only" requirement:

> Hancock requires the State, and only the State, to fully fund this mandate. The individual counties and political subdivisions do not have legal authority to saddle their taxpayers with the unfunded mandate by drawing funds from other sources of county revenue. Any money diverted and expended by a county or political subdivision to finance the implementation of the Conceal and Carry Act, that is not provided directly from state revenue by a state appropriation, is money directly taken from the county taxpayers, each of whom has independent standing for injunctive relief.

Brooks, 128 S.W.3d at 854. His reference to "county taxpayers" may not be a reference to taxpayers who would pay the user fee, but instead to taxpayers who could claim that because of restrictions on the use of the fee funds, sheriffs would have to find other revenue in county budgets with which to pay for the services for which the fees were paid. It is, frankly, unclear whether Chief Justice White was insisting on the "every penny must come from the State" approach that some of his language seems to endorse.

Webster Groves' insistence that something can be an "unfunded mandate" even though it is fully funded (here, and then some), albeit by a third party, does find support in a decision cited by Chief Justice White, *Rolla 31 School District v. State*, 837 S.W.2d 1 (Mo. banc 1992). There the Court addressed a new state mandate for early childhood special education, which the State proposed to pay for by in part by redirecting "unrestricted funds" that had previously been paid by the state to the school district and that had been available for the prior, voluntary early childhood special education program. *Id.*

Key to understanding *Rolla 31* is one aspect of funding for the early childhood special education program: pursuant to a rule promulgated by the State Board of Education, "at least ten percent of the program costs must come from local school district monies." *Id.* at 6. The school districts' contention was that "this rule violates the … Hancock Amendment." *Id.*

That made it impossible for the State to argue, as it did in *Brooks*, that because the entire cost to the county sheriff of the new activity was being paid by a third party, there was no need for State funds to protect county taxpayers. But the State can and does make that argument here, where the amount of tuition that Webster Groves can charge is more than enough to cover the marginal cost of education Jordan King-Willmann.

This Court should follow the *Brooks* example, but this time declare that what the Hancock Amendment bars is a state mandate that requires those whose taxes support a political subdivision to increase that support to fund a new state mandate – and that the Hancock Amendment is not implicated when a state requirement costs the taxpayers of the political subdivision nothing. To read the Hancock Amendment to bar third-party payment is to extend a taxpayer protection provision beyond its reasonable bounds. And it would raise the specter of not just a renewed challenge to concealed-carry statutes with its third-party payment approach challenged in *Brooks*, but to any other instance in which the General Assembly followed that model.

III. Disputes regarding when and how much tuition one district should pay to another must be presented in the first instance to the State Board of Education.

As discussed above, requiring Webster Groves to enroll Jordan King-Willmann does not violate the Hancock Amendment because the cost of her

education is paid not by Webster Groves taxpayers, but by a third party: § 167.131 requires the unaccredited school district – for Jordan King-Willmann, when living with her father, the St. Louis Public Schools or the Transitional School District – to pay tuition to Webster Groves:

> The board of education of each district in this state that does not maintain an accredited school pursuant to the authority of the state board of education to classify schools as established in section 161.092 shall pay the tuition of and provide transportation consistent with the provisions of section 167.241 for each pupil resident therein who attends an accredited school in another district of the same or an adjoining county.

§ 167.131.1. Much of the Webster Groves brief is dedicated, then, to the proposition that the plaintiffs were required to prove that the St. Louis District would pay the Webster Groves tuition – and that payment would be made before she enrolled. But nothing in the statute says that. And more important, Webster Groves is required by the statute to take any payment dispute with the St. Louis Public Schools first to the State Board of Education.

Subsection 1 of § 167.131 does not say when tuition is to be paid; it merely says that the resident, unaccredited school district will pay. Subsection 2 addresses the payment:

> 2. The rate of tuition to be charged by the district attended and paid by the sending district is the per pupil cost of maintaining the district's grade level grouping which includes the school attended. The cost of maintaining a grade level grouping shall be determined by the board of education of the district but in no case shall it exceed all amounts spent for teachers' wages, incidental purposes, debt service, maintenance and replacements. The term "debt service", as used in this section, means expenditures for the retirement of bonded indebtedness and expenditures for interest on bonded indebtedness. Per pupil cost of the grade level grouping shall be determined by dividing the cost of maintaining the grade level grouping by the average daily pupil attendance. If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its

> decision in the matter shall be final. Subject to the limitations of this section, each pupil shall be free to attend the public school of his or her choice.

§ 167.131.2. Nowhere in subsection 2 is there a requirement that the tuition be paid in advance of enrollment. And it is highly improbable that the legislature intended advance payment, for at least two reasons.

First, as a practical matter, no one knows, before the school year even begins, whether the pupil will actually attend in the non-resident district, much less that the pupil will attend through the entire school year. Why would the General Assembly make the unaccredited district (or, to put the question in the context of what § 167.131 covered before 1993, the district without a high school) pay up front when the pupil might move, drop out, or transfer during the school year?

Second, state funding has a one-year lag, *i.e.*, the funding that school districts receive in one year is based on attendance during the prior year. If Jordan King-Willmann were a resident of the City of St. Louis attending Webster Groves High School today pursuant to § 167.131, the St. Louis School District would not receive state funding for her attendance today until next school year. So what Webster Groves claims is that the legislature intended to make the unaccredited district pay before one school year when

the State would not pay the unaccredited school district until the next school year. Again, why would the General Assembly do that?

But the most important aspect of subsection 2 of § 167.131 is the penultimate sentence: "If there is disagreement as to the amount of tuition to be paid, the facts shall be submitted to the state board of education, and its decision in the matter shall be final." If the Webster Groves District has a dispute with the St. Louis district regarding tuition payments, it must first take that question to the State Board of Education – not to a circuit court. The goal of the assignment seems apparent: school districts are to work together to ensure the education of all pupils; disputes over payment should not stand in the way of giving students the education they need; and the State Board, which in at least an administrative sense holds the State's purse strings, is empowered to bring districts together, at least in the first instance, to make the tuition system work. That system should be transparent to students; a disagreement between school districts regarding the amount or timing of tuition payments should not stand in the way of students' educational rights.

Until Webster Groves takes its question about tuition payments to the State Board of Education and gets a decision, this Court should not permit Webster Groves to posit hypothetical disputes as a basis for refusing to

comply with what this Court has held is the unequivocal language of § 167.131.

IV. If the Hancock Amendment does not permit third-party payment for new activities, the Court should overrule *Rolla 31* to extent it holds that the General Assembly must enact a specific line item for each new activity, and effectively bars the State from ever reducing amounts made available for use in programs and activities that the State may wish to encourage but does not require.

If the court holds that the Hancock Amendment does not permit third-party payments of the sort at issue in *Brooks* and here, then it must consider what kind of State payment is sufficient. The Court addressed that question in *Rolla 31*. But the Court's decision in that case went well beyond the language and intent of the Hancock Amendment to create both an entirely new statutory drafting requirement for appropriations bills and to create a perverse disincentive for the State to ever providing funding for anything that although permitted is not mandated by state law.

One of the statements in *Rolla 31* on which Webster Groves relies is "that the mandate of the preschool special education program violates the Hancock Amendment because the legislature failed to provide *a specific appropriation* to cover the full cost of the program." *Id*. at 7 (emphasis

added). Later in *Rolla 31*, the court reiterated that Art. X, § 21 "means what it says; it requires that the legislature make a specific appropriation which specifies that the purpose of the appropriation is the mandated program." *Id.* So according to *Rolla 31*, unless the appropriations bill itself identifies the newly mandated program and provides for sufficient funds – presumably in a specific line item – the political subdivision subject to the mandate is excused from compliance. That is true, apparently, no matter how much additional money the State pays the political subdivision that can be used for that program.

But nothing in the Hancock Amendment says anything about how appropriations bills must be drafted. Yes, assuming that third-party payment is not an option, the State must provide "a state appropriation." But if in a particular year the General Assembly imposes a dozen new mandates on school districts, each of which costs $1,000, nothing in the Hancock Amendment even hints at the proposition that the General Assembly that year and in every succeeding year must have 12 new lines, each for $1,000, rather than either a single new line or, to be consistent with the way appropriations bills have been written for decades, simply adding $12,000 to a general line item for payments to school districts.

The Hancock Amendment is more practical than that. Art. X, § 21 is concerned not with the niceties of appropriations accounting, but with impact

on taxpayers. Wrapping funds for a new mandate into a general appropriation cannot possibly result in additional taxes being imposed by any political subdivision. The Court should disavow the language of *Rolla 31* and say that the rule (if, again, there is a rule to be applied here) is simply that when the General Assembly imposes a new mandate it must appropriate the funds to pay for it, nothing more.

Rolla 31 contains another problematic conclusion, albeit one that is not so clearly stated as the "specific appropriation" requirement: that if the State imposes a new obligation on a political subdivision, there must always be a net increase in State funding. Again, the Hancock Amendment does not include such a requirement.

Section 21 has two parts. First, it "prohibit[s the State] from reducing the state financed proportion of the costs of any existing activity or service *required* of counties and other political subdivisions." (Emphasis added.) In other words, if the State was paying some portion of the cost of a *required* activity or service as of 1980 (presumably even if the State was paying that portion with "unrestricted funds," contrary to the implication of the *Rolla 31* demand for specificity), the General Assembly can't both continue the mandate and reduce the proportion of funding. The General Assembly can eliminate or reduce the requirement and make a corresponding decrease in the funding. Or it can maintain the mandate and the funding. Nothing in

the language of § 21 suggests that the State is obligated to continue funding, at any level, for activities or services that the State no longer requires – or never required – a political subdivision to perform, no matter how laudable that activity or service may be, and no matter how long the State has provided such funding. Unless the State transforms a voluntary activity into a mandatory one, the State is free, under the Hancock Amendment, to reduce or eliminate funding for that activity at any time.

This case does not, of course, address reduced funding for any ongoing mandate. Instead it implicates only the second requirement in § 21, that the State provide funding when it requires a "new activity or service or an increase in the level of any activity or service beyond that required by existing law." That sentence says nothing about funding that is not tied to State requirements. For the State to encourage adoption or improvement of a voluntary program by promising or providing additional funding has no Hancock Amendment implication.

Rolla 31 can be easily read to suggest otherwise. There, the Court addressed "unrestricted funds" that the State had been providing to the school district. The Court did not make any attempt to ascertain whether all or part of those "unrestricted funds" were paying for required, as opposed to voluntary activities or programs. Yet the Court leapt to the conclusion that the State could not redirect any previously "unrestricted funds to finance the

mandated program would actually defeat one of the primary purposes of the Hancock Amendment." 837 S.W.2d at 7. The Court broadly stated, "The Hancock Amendment is designed to place in taxpayers the decisions of both determining increases in government service and raising taxes to pay for those increased services." *Id.* But whether State funds previously provided were "unrestricted" does not fit easily into that "design."

Where the State previously provided funds beyond those required to maintain the State's share of pre-1980 mandate costs and to pay for prior post-1980 mandate costs, there is simply no Hancock Amendment bar to withdrawing the funding that was not required but was used for a voluntary program and using that same funding to cover the costs of a mandatory program. It may be true that "[i]f the local entity is required to use its unrestricted funds to pay for a mandated program, it will then be forced to raise additional tax money to pay for the program previously supported by the unrestricted funds." *Id.* at 6-7. But if the "program previously supported by the unrestricted funds" is not a state-mandated program, then, again, nothing in the Hancock Amendment promises continued State funding. If the State decides today not to pay for a voluntary program for which it paid yesterday, taxpayers have the choice whether to increase their local taxes to pay for that program or to abandon it, which is all that the Hancock Amendment promises.

To read the Hancock Amendment to the contrary – *i.e.*, to read it to compel the State, once it begins funding a voluntary program to continue funding it forever – would create a truly perverse disincentive. Any rational person would then have to advise the General Assembly to never offer funding for anything it did not require, for to do so would bind the State in perpetuity. There is, quite simply, no way to read the Hancock Amendment generally nor in § 21 specifically to point the State in that direction.

If the Court decides, then, that a school district unable to make its own Hancock Amendment case can assert such a claim as a defense, that a State law that because of a third-party payment imposes no additional financial obligation on the taxpayers of that school district nonetheless implicates Art. X § 21, it should reverse or clarify the *Rolla 31* holding so as to preserve the State's incentive to financially assist political subdivisions without binding itself to perpetual payment.

CONCLUSION

For the reasons stated above, the Court should decline to vacate the writ issued by the circuit court.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I hereby certify that on January 24, 2012, a true and correct copy of the foregoing was filed electronically via Missouri CaseNet, and that two true and correct copies of the foregoing brief, and one disk containing the foregoing brief, were mailed, postage prepaid, to:

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I further certify that the foregoing brief complies with the limitations contained in Rule No. 84.06(b) and that the brief contains 5,713 words.

I further certify that the labeled disk, simultaneously filed with the hard copies of the brief, has been scanned for viruses and is virus-free.

/s/ *James R. Layton*
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Solicitor General