TABLE OF CONTENTS

TABLE OF AUTHORITIES

Missouri Constitution

Missouri Statutes

Other Authorities

JURISDICTIONAL STATEMENT

This appeal is brought before the Court in the first instance by Appellant pursuant to Article V, sec. 3, of the Missouri Constitution because Appellant in its brief alleges lack of validity of Mo. Rev. Stat.§162.666, titled the "St. Louis Student Bill of Rights".

PRIOR PROCEEDINGS

For many years the Education Board had been under the jurisdiction of the Federal Court arising out of its segregation practices. In 1998 settlement discussions were held which led to the passage of legislation in the Missouri legislature which created the Transitional School District (TSD). Included in the legislation was the St. Louis Student Bill Of Rights (student bill of rights). In due course of time an agreement involving a consent judgment was presented to the Federal Court. After a fairness hearing the Court approved the consent judgment.

The TSD was charged with two major responsibilities: one involving the submission of a tax proposal and the other to publish an opinion on the constitutionality of the student bill of rights and to certify the same to the Election Board for submission to the voters of the City of St. Louis. The TSD refused to perform any of its responsibilities as they related to the student bill of rights.

Bauer, a resident and voter of the City of St. Louis filed his original petition in Mandamus on November 30, 1998, in the equity division of the Circuit Court in the City

of St. Louis. Bauer requested a writ of mandamus directed to the (TSD) to compel them to certify to the St. Louis City Board of Election Commissioners (Election Board) the student bill or rights. If the TSD was required to certify the proposition to the Election Board the Election Board would have been required to place the issue for a public vote to determine if its provisions should be implemented.

On December 9, 1998, Bauer filed a motion to add the Election Board and service was obtained on December 10, 1998. Memorandums were filed and on January 22, 1999, the Judge issued an order stating that it was first necessary to determine whether the statute was consistent with the Missouri and United States Constitutions (Ap. 30)[1]. Bauer then filed a motion for leave to file a First Amended Petition which included the count for mandamus and another count for a declaratory judgment.

On July 1, 1999, the State Board of Education dissolved the TSD. On October 4, 1999, Bauer was granted leave to file a Second Amended Petition which repeated the request for a writ of mandamus and a declaratory judgment, however, Bauer added the St. Louis City Board of Education as an additional defendant. A few days later on October 14, 1999, the Education Board filed a Notice of Removal to the Federal Courts.

On November 4, 1999, Bauer filed a motion to remand which the Federal Judge

---

[1] (Ap __) refers to Appellant's appendix

(LF) refers to Appellant's Legal File

(SLF) refers to Relator's Supplement to the Legal File

denied on January 10, 2000. The case was set for trial in the Federal Court in late September 2000, however, on September 15, 2000, the Federal Judge remanded the case to the Missouri Courts (SLF 139). The Education Board filed an appeal to the Eighth Circuit contending among other things that the student bill of rights will conflict with the settlement agreement reached in Liddell and this conflict was sufficient to justify the Federal Court to take jurisdiction (SLF 141). On July 2, 2001, the Eighth Circuit dismissed the appeal for lack of jurisdiction. In its opinion the Eighth Circuit noted that the settlement agreement in the Liddell case was essentially a contract between private parties. In a footnote to their decision the Eighth Circuit stated that it was not clear whether a conflict existed between the student bill of rights and the settlement agreement (SLF 142).

On October 11, 2001, this case was tried before the Honorable Judge Dierker. On July 1, 2002, he issued an order granting the writ of mandamus. The Education Board filed this appeal to the Supreme Court of Missouri (LF 117).

STATEMENT OF FACTS

The State of Missouri by statute mandated separate schools for blacks and whites. The Supreme Court of the United States in the case of Brown v. Board of Education, 347 U.S. 483 (1954) held that separate schools were unconstitutional. In 1972 a group of St. Louis parents filed a class action on behalf of all black students attending the St. Louis Public Schools (tr. 83) in Federal Court seeking school desegregation within the St. Louis

Public Schools. This suit was settled by an agreement between the parties and approved by the Court after a fairness hearing (LF 29).

Plaintiff Thomas Bauer is presently the alderman from the 24th ward of the City of St. Louis (tr. 6) and prior to that was the State Representative from the 65th District (tr. 6-7). The biggest issues during his second session as a state representative were those surrounding the ending of the desegregation case. As a result of those concerns he sponsored House Bill 976 which contained the student bill of rights which is the subject of this litigation (tr.8-9). There were hearings on the bill before the Education Committee of the House. Among those persons who testified in favor of the bill in addition to Bauer were Bob Osborn the representative of the City of St. Louis and Gary Wiegert, the representative of the St. Louis Police Officers Association. No one testified in opposition. The registered lobbyist for the St. Louis Board of Education was present at the hearing, but did not testify (tr. 10-12).

The bill was voted out of committee with a vote in favor of 22 to nothing (tr. 11). On the floor of the Missouri House, the vote was 154 in favor, none opposed (tr. 11).

The bill then went to the Senate Education Committee chaired by Sen. Ted House. Representatives of the City of St. Louis testified in favor and no one testified in opposition. The bill passed the Senate Education Committee with no amendment (tr. 13). At this time the Senate was working on Senate Bill 971 which was the desegregation funding bill and Bauer offered the student bill of rights as an amendment to Senate Bill 971. All members

of the City delegation supported the bill and in the conference committee the student bill of rights had the support of Steve Stoll, House Education Committee Chairman, Ted House, Senate Education Committee Chairman, Senator Lacy Clay, and Representative Quincy Troupe among others. Thereafter the Student Bill of Rights was passed by the legislature and signed by the governor (tr. 13).

Senate Bill 781 created the TSD which had two major duties.

One was to present a tax referendum to the City of St. Louis as part of the settlement of the desegregation litigation and the other was to review the student bill of rights as to its constitutionality, then publish a legal analysis and thereafter submit the referendum legislation to the Election Board to the extent that it was in compliance with the U.S. and Missouri Constitutions (tr. 14-15). Lisl King Williams, was the Chairperson of the Transitional School District (TSD) (SLF 7). She had possession of the records of the TSD (SLF 8). The TSD had two meetings, one was at the Whittemore House on September 29, 1999 (SLF 16, 70) where she was elected as chairperson (SLF 16, 70). The only official action taken at the Whittemore meeting was a vote on the sales tax (SLF 21). The second meeting was held at the offices of the Urban League on November 24, 1999 (SLF 73-74) . The TSD did not vote at either of its two public meetings on the student bill of rights (SLF 26). The student bill or rights was never listed as an agenda item at any of the meetings of the TSD. No one at any time told Williams that she could say yes or no to placing the student bill of rights on the ballot (SLF 32). Lisl Williams stated she was advised by their

attorney that the student bill of rights, "..was unconstitutional under the state and federal constitutions (SLF 59). Bufford stated "..there is a legal opinion" (SLF 117) & that counsel "conducted a legal analysis" (SLF 121) and, "The opinion was reviewed by counsel and Lisl King Williams (SLF 124). Counsel for the TSD, in its memorandum filed on January 19, 1999 stated that no opinion had been completed (SLF 133-135). Williams and Bufford testified as to the events that occurred in September and November 1998 as follows: The TSD did not publish a legal analysis and did not make one available to the public (SLF 46-47). The TSD never met and voted on the student bill of rights and it was never submitted to the Election Board (SLF 57). Williams testified that the TSD never took a vote not to send the student bill or rights to the Board of Election Commissioners (SLF 58). The TSD did not conduct a legal analysis of the student bill of rights, but its lawyers reported they did (Bufford Depo. 35). Buford did not read any legal opinion on the constitutionality of the student bill of rights, he did not know if it had been published, he had no recollection of voting on the student bill of rights (SH 125-126).

Relator, at the meeting of the TSD at the Urban League on November 24th, 1998, noted that the issue of the student bill of rights had not been placed on the agenda and he told Lisl King Williams that if they didn't act on the student bill of rights that he would have to mandamus them. Ms. Williams told plaintiff, "Do what you have to do" (tr. 18). In order for the student bill or rights to be placed on the ballot it had to be submitted to the Election Board the tenth Tuesday before the Election (Mo. Rev. Stat. § 115.125) or on or about

December 22, 1998. Relator filed his application for issuance of writ of mandamus some six or seven days after the meeting of November 24, 1998 (tr. 20). On December 9, 1998, Bauer joined the St. Louis Board of Election Commissioners and they were served on December 10, 1998. On January 22, 1999, the St. Louis Circuit Court issued an order to the effect that the mandamus action was premature because it was first necessary to determine whether the student bill of rights was constitutional (Ap. 30) On January 29, 1999, the Court allowed Bauer to file an amended petition which included a count for a declaratory judgment to determine the state and federal constitutional questions.

While relator's petition for mandamus was pending in the Circuit Court of the City of St. Louis the twenty-seven years of desegregation litigation moved toward settlement. The parties to that litigation entered into a settlement agreement which was approved by the court on March 12, 1999. (LF 29). Under the terms of the settlement agreement the Board was to improve the attendance rate (tr. 58), improve the drop out rate (tr. 59), improve student achievement (tr. 59), had an obligation to maintain desegregated schools to the extent possible (tr. 60), increase test scores and build a vocational school (tr. 89). Supt. Hammonds admitted that the School Board had not met the requirements of the agreement nor had they met all the requirements of the State (tr. 60).

In his testimony in opposition to the student bill of rights Hammonds stated that the cost of converting from a middle school program to a K-8 program would be $182,900,000 dollars (tr. 64). He testified that 144 million dollars of that cost would be

replacement of lost classroom space, that the big cost would be replacing lost capacity (tr. 66). Mr. Hammonds identified defendant's exhibits D-3 and D-4 which listed a number of schools in South St. Louis. The exhibits for the identified schools reflect their capacity, projected enrollment and the projected racial balance based on current data. He testified that at Wilkinson School there would be no need to replace lost capacity when converting to a K-8 program (tr. 117-118).

Hammonds testified that the ratio of black and whites for the entire school district was 80.5 black and about 16% white (tr. 90) and that the racial balance had been the same for the past 6 years and that an effort had been made to increase white attendance for the magnet school program (tr. 92). City students are selected for the magnet school by lottery and the lottery pool is 80.5% black and 16% white (tr. 92-93). White students from St. Louis County are not in the lottery pool and a white student from the county has a better chance to go to the magnet school program than a white student from the city (tr. 94-95). In regard to the magnet program he stated there were about 15,000 students in the program and 40-45% of them are white (tr. 94-95), that about 1200 white students came from the county. Hammonds stated that he had no difficulty with equalization of funding to the extent possible if "possible is defined as supporting the magnet school themes" (tr.97-98)..

Hammonds testified that the Education Board is making an effort to provide neighborhood schools except for special and magnet schools and that the Board was working, in so far as possible, under the Liddell settlement to permit children to attend

schools in their neighborhood (tr. 124, 125).

In computing the cost of a K-8 program he did not factor in transportation and acknowledge that there may be empty class rooms in many of the schools and that they were involved in speculation (tr. 108). Hammonds stated he was aware that Catholic schools have a K-8 program and that many city residents had opted out of the city public schools to attend private and Catholic schools (tr. 99-100). James Buford, a member of the TSD, stated his children attended University City public schools in K-8 program for the youngest child and a K-12 program for his oldest child and that his youngest child was enrolled in a Catholic high school (Buford Depo. SLF 95).

Kay Mayer who worked for the Board of Education for 30 years testified as to her experience in a K-8 program. She felt the K-8 program offered many benefits; participation by parents (tr. 38), after school activities (tr. 38, 39), discipline problems handled promptly (tr. 40, 41), older children accepted responsibility to assist the younger children (tr. 39, 40), the 8th grade graduation (tr. 43-44), strong participation by parents in the PTA (tr. 37). With the change to a K-5 program and the bussing of children the school lost these benefits.

POINTS RELIED ON

I. The Circuit Court's Order And Judgment In This Mandamus Action Should Be Upheld On Appeal Because The Standard Of Review Which Would Permit The Court To Overturn The Circuit Court Is One Of Abuse Of Discretion,

Which Standard Is Not Triggered By Judge Dierker's Scholarly, Well Reasoned Opinion.

Sampson v. Cherry, 143 S.W.2d 307 (Mo. Sup. Ct., Div. 2 1940)

Casey's Gen. Stores v. City of West Plains. 9 S.W.2d 712 (Mo.App. S.D. 1999)

Bergman v. Mills, 988 S.W.2d 84 (Mo. App. W.D. 1999)

II. Missouri Courts Will Not Conduct A Pre-Election Review Of The Legality Of Referendum Proposals Unless The Referendum Is Unconstitutional On Its Face.

State ex rel. Trotter v. Cirtin, 941 S.W.2d 498 (Mo. banc 1984

State es rel. Dahl v. Lange, 661 S.W.2d 7 (Mo. banc 1983)

Missourians to Protect the Initiative Process v. Blunt, 799 S.W.3d 824

(Mo. banc 1990)

III. The Student Bill Of Rights Is Not Unconstitutional On Its Face Because Of Mootness Because The Date Of March 15, 1999, Was Not A Deadline Since No Penalties Were Assessed For Failure To Place The Student Bill Of Rights On The Ballot Before March 15, 1999.

Bank of Washington v. McAuliffe, 676 S.W.2d 483 (Mo. banc 1984)

Rundquist v. Director of Revenue, 62 S.W.3d 643 (Mo. App. E.D. 2001)

Kersting v. Director of Revenue, 792 S.W.2d 651 (Mo. App. E.D. 1990)

IV. The Student Bill Of Rights Is Not Unconstitutional On Is Face Because

It Is Not A Special Law In Violation Of The Missouri Constitution.

Mo. Constitution Art. III, § 40

Mo. Constitution Art. VI § 31

Zimmerman v. State TaxCommission, 916 S.W.2d 208 (Mo. banc 1996)

Boyd-Richardson v. Leachman, 615 S.W.2d 46 (Mo. banc 1981)

V. The Student Bill Of Rights Is Not Unconstitutional On Its Face For Alleged Violations Of The Due Process Clauses Of The United States And Missouri Constitutions.

Hollis v. Blevins, 926 S.W.2d 683 (Mo. banc 1966)

Callier v. Director of Revenue, 780 S.W.2d 639 (Mo. banc 1989)

Northern Trust Co. v. City of Independence, 526 S.W.2d 825 (Mo. banc 1975)

VI. The Student Bill of Rights Is Not Unconstitutional On Its Face Since It Does Not Commit The Sin Of Doubleness Because It Does Not Contain Two Separate And Distinct Propositions

City of Raytown v. Kemp, 349 S.W.2d 363 (Mo. banc 1961)

State ex rel. Phelps v. Holman, 461 S.W.2d 689 (Mo. banc 1971)

City of Maryville v. Cushman, 249 S.W.2d 347 (Mo. banc 1952)

VIII. The Trial Court Did Not Commit Error When It Ordered The Transitional School District, And The Board Of Education To Certify The Student Bill Of Rights For Placement On The Ballot, And In Ordering The Board

Of Elections Commissioners To Place The Student Bill Of Rights On The Ballot, Because:

Mo. Rev. Stat. § 507.100

Rule of Civil Procedure, 52.13 (e)

Lynch v. Webb City School District No. 92, 373 S.W.2d 193 (Mo. App. S.D. 1963)

McClure v. Princeton Re-Organized Sch., 307 S.W. 2d 76 (Mo. App. W.D. 1957)

State ex rel. Benson v. Union Electric Co., 220 S.W2d 1 (Mo. banc 1949)

ARGUMENT

I. The Circuit Court's Order And Judgment In This Mandamus Action Should Be Upheld On Appeal Because The Standard Of Review Which Would Permit The Court To Overturn The Circuit Court Is One Of Abuse Of Discretion, Which Standard Is Not Triggered By Judge Dierker's Scholarly, Well Reasoned Opinion.

The order and judgment which are before this Court for review was issued in an action in mandamus. Judge Dierker, in his July 31, 2002 ruling, ordered respondents to take various actions to place the student bill of rights on the November, general election ballot in the City of St. Louis.

"The rule on appeal from a judgment in a mandamus proceeding is thus stated in 38 C.J. 949, sec. 752: "The discretion of the Court below in granting or refusing the writ will

not be reviewed where it appears to have been lawfully exercised and no abuse is shown" Sampson v. Cherry, 143 S.W.2d 307 (Mo.Sup.Ct.,Div.2,1940). The discretion of Judge Dierker appears on its face to have been lawfully exercised and no abuse is shown or alleged. A more recent case recites the same standard of appellate review. The rule articulated in Casey's Gen. Stores v. City of West Plains, 9 S.W.3rd 712, 715 (Mo.App.S.D.1999). "The standard for our review is under an abuse of discretion standard pursuant to which we will reverse the trial court's ruling only when it is "so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration." Judge Dierker's July 31, 2002, twenty five page ruling is well reasoned and scholarly.

The rule of review in an appellate case of a trial court's issuance of a writ of mandamus is also articulated in Bergman v. Mills, 988 S.W.2d 84, 89 (Mo.App. W.D. 1999). "If reasonable people could differ about the propriety of the trial court's ruling, there is no abuse of discretion."

The Circuit Court's order in the instant mandamus action should be upheld because the settled law of this state only permits overturning of such a ruling upon finding of an abuse of discretion.

II. Missouri Courts Will Not Conduct A Pre-Election Review Of The Legality Of Referendum Proposals Unless The Referendum Is Unconstitutional On Its Face.

Missouri courts recognize and follow a general rule against pre-election judicial review concerning the substantive legality of ballot measures. The rationale for the rule is

that because the election might result in the proposed measure being voted down there is no justiciable controversy ripe for adjudication unless and until the measure is approved by the voters and becomes law. See State ex rel Trotter v. Cirtin, 941 S.W.2d 498, 500 (Mo. banc 1997); Craighead v. City of Jefferson, 898 S.W.2d 543, 546-47 (Mo. banc 1994); Missourians to Protect the Initiative Process v. Blunt, 799 S.W.2d 824 (Mo. banc 1990); State of Missouri v. Gateway Green Alliance, 23 S.W.3d 861, 863 (Mo. App. E.D. 2000). While the court's discretion to reach the substantive issue of constitutionality generally should not be exercised, nevertheless such pre-election judicial review may be appropriate when the proposed measure is **"unconstitutional on its face". (**emphasis added) State ex rel. Dahl v. Lange, 661 S.W.2d 7, 8 (Mo. banc 1983). Plaintiff has presented facts and case law which supports his position that the student bill of rights is not unconstitutional on its face. Therefore a pre-election review should be denied.

III. The Student Bill Of Rights Is Not Unconstitutional On Its Face Because Of Mootness Because The Date Of March 15, 1999, Was Not A Deadline Since No Penalties Were Assessed For Failure To Place The Student Bill Of Rights On The Ballot Before March 15, 1999.

A cause of action is moot when the question presented for decision seeks a judgment upon some matter which, if the judgment was rendered would not have any practical effect upon any then existing controversy." Bank of Washington v. McAuliffe, 676 S.W.2d, 483, 487 (Mo. banc 1984). In this case the judgment would and will have a decisive effect upon

the controversy if this appeal is denied. The Board of Education argues that the controversy was rendered moot when the members of the TSD used false statements and deception to prevent the student bill of rights from being presented to the voters. The statute provides that the student bill of rights "shall" be placed before the voters no later than March 15, 1999. Education Board states the term "shall" is mandatory in this instance (Ap. 31).

In one case where an individual was convicted of manslaughter the statute stated the convicting court "shall" notify the Director of Revenue of the conviction within ten days. The court held that the term "shall" was directory because no result was prescribed if the Court failed to comply with the ten day requirement. ". . the general rule is that when a statute provides that results will follow a failure to comply with its terms, it is mandatory and must be obeyed; however, if it merely requires certain things to be done and nowhere prescribes results that follow, such a statute is merely directory", Kersting v. Director of Revenue, 792 S.W.2d 651, 653 (Mo.App. E.D. 1990). See also Rundquist v. Director of Revenue, 62 S.W.3d 643, 647 (Mo.App. E.D. 2001)

In this case no results were prescribed if the TSD failed to place the student bill of rights on the ballot "no later than March 15, 1999". Under the cases cited the term "shall" as used in Senate Bill 781 was merely directory.

Comment is required on the contention of the Board of Education that Bauer was dilatory. The facts reflect that Bauer went to the TSD Board meeting on November 24, 1998, and asked about the student bill or rights when it was not on the agenda. He told the

chairperson that if they did not act on the student bill of rights he would file a mandamus action (Tr. 18). Ms. Williams told him "Do what you have to do" (Tr. 18). On November 30, 1998, Bauer filed his application for a writ of mandamus (LF 84). After various proceedings including the addition of the Election Board the Court dismissed the petition on January 22, 1999, because he had not asked for a declaratory judgment in addition to the writ of mandamus (Ap. 30). By January 22, 1999, the time had passed for the matter to be submitted to the Election Board because the statute required it to be transmitted to the Election Board no later that the tenth Tuesday before the election which was on December 22, 1999. The TSD by its delay and obstruction caused the problem not Bauer.

IV. The Student Bill Of Rights Is Not Unconstitutional On Is Face Because It Is Not A Special Law In Violation Of The Missouri Constitution.

Arguments that attack the student bill of rights as a special law are misguided and disingenuous. The Missouri Supreme Court has resolved this issue in Zimmerman v. State Tax Commission, 916 S.W.2d 208, at 209 (Mo. banc 1996). In Zimmerman at 209 the court reviews the unique status of the City of St. Louis under the Missouri Constitution.

> Section 138.060.1 also applies to "a city not within a county," that is, St. Louis City. "St. Louis [City] is given specific recognition in Art. VI, sec. 31, of the Constitution of Missouri, as being sui generis, a unique entity in a unique class. Legislation enacted to address the class of which St. Louis [City] is the only member is therefore not special legislation within the meaning of Art. III, sec.

40.", citing Boyd-Richardson Co. v. Leachman, 615 S.W.2d 46, 52-53 (Mo. banc 1981).

The Board of Education of the City of St. Louis exists by virtue of §162.571 Mo. Rev. Stat. as amended in S.B. No. 781 in 1998. It is a unique entity. Among schools boards it is the only one of its kind. It is described in § 162.571 Mo. Rev. Stat. as follows:

> "Every city in this state, not within a county, together with the territory now within its limits, or which may in the future be included by any change thereof, constitutes a single metropolitan school district, and is a body corporate."

Since the student bill of rights is "legislation enacted to address the class of which St. Louis [City] is the only member is therefore not special legislation within the meaning of Art. III, sec. 40" (Zimmerman, supra at 209).

The student bill of rights was part of Senate Bill 781 which dealt in large part with resolving the issues surrounding settlement of the desegregation law suit in the City of St. Louis, i.e. arguably special legislation. Defendant, Board of Education of the City of St. Louis, did not consider legislation establishing the TSD as special legislation in the settlement of the Liddell case, and the student bill or rights stands in the same shoes.

The title of the student bill of rights contains the clause “St. Louis Student Bill of Rights”, however, the next eight sections refer to the “district” which is defined as a metropolitan school district as provided in § 160.011 Mo. Rev. Stat. If § 10 of the student bill of rights used the term approval by a majority of the voters of the district instead of “City of

St. Louis" the argument that this is a special law would be muted.

The law is clear that the "metropolitan district" involved herein constitutes an acceptable class for the purpose of general legislation. It is also recognized by the courts that only the City of St. Louis is in the class of metropolitan districts as described in § 260.011(5) Mo. Rev. Stat. The intent of the legislature was to use the description of the class described in the statute. The primary rule of statutory construction is to ascertain the intent of the legislation from the language used, to give effect to that intent if possible. Wolff Shoe Co. v. Dir. Revenue, 762 S.W.2d 29, 31 (Mo. banc 1988). The student bill of rights is not special legislation and the trial court did not err when it so held.

V. The Student Bill Of Rights Is Not Unconstitutional On Its Face For Alleged Violations Of The Due Process Clauses Of The United States And Missouri Constitutions.

A. The Board of Education In Its Answer To Plaintiff's Second Amended Petition Failed To Adequately Raise Their Contention That The Student Bill of Rights Violated Due Process Clauses Of The Missouri and Federal Constitutions.

In its answer to plaintiff's First Amended Petition the Board of Education stated as follows:

"Defendants further answer that the Student Bill of Rights violates the

Missouri and the United States Constitutions."

The Education Board did not refer to any specific portion or clause of the constitutions

and did not mention the due process clause. An attack on the constitutionality of a statute is of such importance that a record concerning the issue should be fully developed at trial, Hollis v. Blevins, 926 S.W.2d 683, 684 (Mo. banc 1966). To properly raise a constitutional issue, a party must: (1) raise the issue at the first available opportunity; (2) designate specifically the constitutional provision claimed to have been violated; (3) state the facts showing the violation: and (4) preserve the constitutional question throughout the appellate review, Ford Motor Credit Co. v. Housing Auth., 849 S.W.2d 588, 592 (Mo. app. W.D. 1993). In Callier v. Director of Revenue, 780 S.W.2d 639, (Mo. banc 1989) the court stated at 642, "An allegation in a petition that purports to challenge a legislative enactment because it 'violated the Constitutions of the United States and the State of Missouri,' is not sufficient to raise a constitutional question.

The Education Board waived its present contention that the student bill of rights violated due process when it failed to meet the standards established by the Supreme Court of Missouri.

B. In Addition The Ballot Language Is Not Misleading And Deceptive And The Trial Court Properly Ruled That There Was No Violation Of The Due Process Clauses of the Missouri and Federal Constitutions.

The Education Board cites State ex rel. El Dorado Springs v. Holman, 363 S.W.2d 552 (Mo. banc 1962) and Northern Trust Co. v. City of Independence, 526 S.W.2d 825 (Mo. banc 1975) in support of their contention that the ballot was misleading and deceptive. Both

of these case involved bond issues and in both cases the court approved the ballot that was used. In Holman, supra the court said, "In the very nature of things it is not contemplated that a ballot title to a constitutional amendment shall descend into particularities". It pointed out that brevity and directness are the norm. As long as the issues relate to each other the ballots are normally approved.

The thrust of the student bill of rights relates to one issue, education of the students attending school in the Metropolitan School District. Each section of the student bill of rights can logically be viewed as parts of a single plan. They are dependent on each other. The court correctly held ". . . the voters are told exactly what they are voting on, and all of the provisions of the 'student bill of rights' are interdependent and directed toward one end: giving students the abilityto attend a K-8 elementary school closest to their homes" (Ap. 21). **VI. The Student Bill of Rights Is Not Unconstitutional On Its Face Since It Does Not Commit The Sin Of Doubleness Because It Does Not Contain Two Separate And Distinct Propositions**

The Education Board contends that the student bill of rights is void because of doubleness. They correctly cite the general rule against doubleness and then misapply that rule to the present situation. In State ex rel. Phelps County v. Holman, 461 S.W.2d 689, (Mo. banc 1971) the court approved a bond issue which submitted bonds for hospital expansion and a separate nursing home. The court also approved a proposition which submitted the issuance of general obligation bonds for certain improvement and provided that the cost of the

improvements would be paid by levies assessed against the property benefitted by the improvements. City of Raytown v. Kemp, 349 S.W.2d 363 (Mo. banc 1961). A proposition submitting water works and an electric light plant was approved in State ex rel City of Chillicothe v. Wilder, 98 S.W. 465 and a proposition which included a water system and a sewer system was approved in City of Maryville v. Cushman, 249 S.W.2d 347, 358 (Mo. banc 1952) . The Education Board cited Phelps and Raytown, supra in support of their argument, however, each of those cases rejected the argument of doubleness.

VII. The Student Bill Of Rights Is Not Unconstitutional On Its Face In Violation Of The Supremacy Clause Of The United States Constitution.

The Legislature created the Transitional School Board and passed the student bill of rights in order to facilitate the pending settlement of the desegregation litigation that had been pending in the federal courts for over twenty years. The validity of the student bill of rights should be tested against the actual realities that existed at the time. The Education Board has not cited any case where a statute was declared unconstitutional at the time it was passed even though it was constitutional when it was attacked. In addition this constitutional issue was not raised in the pleadings, no evidence was presented as to the intent of the legislature on this particular point. The Education Board has waived this point, see Ford Motor Credit Co. v. Housing Auth., 849 S.W.2d 588, 592 (Mo. app. W.D. 1993). In Callier v. Director of Revenue, 780 S.W.2d 639, (Mo. banc 1989).

A. The Student Bill of Rights is not in conflict with the terms of the

settlement agreement in the Liddell case.

1. The St. Louis Students' Bill of Rights (SLSBR), codified at sec. 162.666, RSMo. (1998 Cum. Supp.) was enacted into law by the State of Missouri as part of S.B. 781 (S.B. 781, Laws of Missouri, 1998).

> Section 1. St. Louis Students' Bill of Rights. –
>
> 1. The provisions of this section shall be known and may be cited as the "St. Louis Students' Bill of Rights:
>
> 2. For the purposes of this section, "district" means a metropolitan school district, as defined in section 160.011, RSMo.
>
> 3. Each district shall reinstitute the basic kindergarten through eight system of grade schools within the district.
>
> 4. Every child within the district of the appropriate age and appropriate aptitude for discipline and openness to instruction shall have the right to attend a basic kindergarten through eighth grade school.
>
> 5. Every child within the district shall have the right to attend such school closest to such child's home.
>
> 6. Every child within the district shall have the right to transfer to any other such school within the district.
>
> 7. The district shall have the right to transport children to relieve overcrowding Transportation to relieve overcrowding shall be

performed in such a manner as to fill in school seats in buildings that have surplus seats, but shall not be permitted to displace any child who has elected to attend the school located closest to such child's home.

8. The per pupil expenditure of funds for the cost of education shall be equalized to the greatest extent possible, with appropriate variation allowable in order to accommodate the special remedial needs of children who test below grade level and the needs of gifted children.

9. Schools for gifted children with accelerated academic programs shall be established and evenly distributed across the district. The district shall have the right to transport children to and from schools for the gifted. Children who attend schools for the gifted shall have the right to attend such school which is located closest to such child's home and shall have the right to transfer to or attend any other school for the gifted within the district.

10. The provisions of the "St. Louis Students' Bill of Rights" shall only become effective upon approval by a majority of the voters of the City of St. Louis voting thereon. The governing Board of the transitional school district established pursuant to section 162.1100 of this act may conduct a legal analysis and make the analysis available to the public and shall proposes, to the extent that the program is consistent with the Missouri and United States Constitutions, place before the voters of the City of St. Louis no later than

March 15, 1999, a proposal to implement the program. If approved by a majority of such voters, the program shall be implemented consistent with the Missouri and United States Constitution.

11. The proposal shall be submitted substantially as follows:

Shall the St. Louis School District reinstitute the basic kindergarten through eighth grade neighborhood school system within the district and be required to permit students to attend the school closest to their home?

[ ] YES [ ] NO

The Board contends that the student bill of rights is unconstitutional on its face because they allege it would cause them to violate provisions of the Settlement Agreement in Liddell v. The Board of Education, U. S. District Court (E.D. Mo. Case No. 72-0100SNL) (App. Brf. 53). Liddell was a class action on behalf of the black students attending the City schools. The parties negotiated a settlement and then they asked the court to approve the class settlement. The federal court held a fairness hearing and then entered its order approving the settlement.

The Eighth Circuit Court of Appeals in its order denying the City Board's Appeal from a remand order noted that, ". . . Bauer's state court suit does not directly attack the Liddell settlement and noted:

Indeed, whether or not any such conflict exists at all remains unclear at the present, and will ultimately have to be resolved by the state court looking at

the merits of Bauer's claim and whatever defenses the appropriate defendant may raise. . . ."

The evidence reveals that there is no direct conflict between the SLSBR and the Settlement Agreement.

Paragraph one provides how the act will be cited. No conflict with the Settlement is involved.

Paragraph two defines the word "district", again no conflict with the Settlement is involved.

Paragraph three provides for K-8 program in grade schools. Dr. Hammonds gave his opinion that this provision would conflict with the Board's ability to provide effective and efficient education for the St. Louis urban system. The evidence established that other schools in urban settings provided quality education with K-8 programs, i.e., the City Catholic Schools and University City. (tr. 99-100 SLF 94-95) Hammonds testified about the problems of students attending middle schools, and admitted that there is trouble in River City in the middle schools, see (TR. 105-106). Hammonds stated the cost would be prohibitive and placed the cost at about 183 million dollars with replacement of lost class room space costing 144 million dollars (tr. 63-64). He did not factor in the savings from transportation and admitted that there may be empty class rooms in many of the schools and that they were involved in speculation (tr. 107-111).

Kay Mayer, a retired teacher who had taught for thirty years in the City Schools, had

experience in both K-8 and K-5. She extolled the benefits and superior aspects of the K-8 program (tr. 37-40).

It is clear that there is a difference of opinion between those who support a K-8 program and those who support a K-5 program. This difference of opinion does not make this paragraph of the student bill of rights unconstitutional. Actually the Settlement Agreement permits the Board in its discretion to determine additional programs and polices during the transition period (LF 61-62) which supports the position of plaintiff that there is no direct conflict between the Settlement Agreement and the student bill of rights.

Paragraphs 4 and 5 of the student bill of rights provide for neighborhood schools. It gives each child the right to attend the school closest to his/her home. Hammonds stated that the present policy of the Board was, in so far as possible, to permit children to attend schools in their neighborhood. He stated this policy applied to all schools except special and magnet schools (tr. 120-124). The Board's present policy of promoting neighborhood schools supports plaintiff's position that the student bill of rights does not directly conflict with the Settlement Agreement.

Paragraphs 6 & 7 permit children the right to transfer to other schools with certain restrictions and also authorizes the Board to transfer children to relieve overcrowding. The Settlement Agreement does provide for transfer of children and is silent on the right of children to request a transfer. Paragraphs 6 & 7 do not directly conflict with the Settlement Agreement.

Paragraph 8 provides for the equalization of expenditures per student to the extent possible. Hammonds testified that under prior orders of the Court there was a three tier method of allocating student funds. The magnet schools got the most, the segregated schools were next and the integrated schools got the least (Tr.96-97). The student bill of rights among other things was designed to correct this situation. Hammonds testified that the Board has already moved to equalize the per pupil expenditures (tr. 97). Paragraph 8 does not conflict with the Settlement Agreement.

Paragraph 9 provides for gifted and special schools and gives the Board the right to transport children and the children the right to transfer to any gifted school. The Agreement permits the Board ". . . in its discretion, to determine additional programs that are needed for such transition" (LF 61-62). If the Board in its discretion decides to have a gifted program it would not conflict with the Agreement. Obviously if the voters decided a gifted program is needed it would not conflict with the Settlement Agreement.

Paragraph 10 deals with the procedures of placing this matter before the voters of the City of St. Louis and does not conflict with any provisions of the Settlement Agreement.

The Board argues that student bill of rights would mean the end of the Magnet School Program and the program for Vocational Schools. The student bill of rights does not mention Magnet Schools or Vocational Schools. A reasonable interpretation of the student bill of rights would not eliminate these schools. The magnet schools and the vocational school would remain and students would have the right to attend the magnet school or the vocational school

closest to their home. Since there is only one vocational school in the City District this would present no problem.

The First Circuit Court of Appeals sitting in Boston issued an opinion on November 19, 1998 which reviews the current state of constitutional law in the area of race preference, Wessmann v. Gittens, Chairperson of the Boston School Committee, et al., 160 F.3d 790 (1st Cir. 1998). It cites Wygant v. Jackson Board of Education, 476 U.S. 267, 273 (1986) for the proposition that racial distinctions of "any sort" invite "the most exacting judicial examination." Such a policy must be both justified by a compelling governmental interest and narrowly tailored to serve that interest. It cites Regents of University of California v. Bakke, 438 U.S. 265, 289 (1978) for the proposition that any program which induces schools to grant preferences based on race and ethnicity is constitutionally suspect.

C. Student Bill Of Rights does Not Violate Any Federal Constitutional Rights And

Does Not Violate The Missouri Constitution

The Settlement Agreement in Liddell was an agreement between private parties. The Eighth Circuit Court of Appeals noted that since the Liddell was an agreement between private parties that an alleged violation of the Settlement Agreement did not raise a Federal Constitutional issue which would give jurisdiction to the federal courts (SLF 141-143).

The Settlement Agreement was approved by the Federal Court in February, 1999, and the student bill of rights was passed in 1998. The student bill of rights therefor predated the Settlement Agreement. Art. I § 13 of the Missouri constitution prohibits legislation from

invalidating existing contracts, however, this constitutional provision has no application in a situation where the law is enacted before the contract is entered into. Lincoln County v. Peach, 636 S.W.2d 31 (Mo. banc 1982). See also State v. Lauridsen, 312 S.W.2d 140, transferred to 318 S.W.2d 522, transferred to 320 S.W.2d 80. In order to violate the Missouri Constitution the law must act retroactively and affect a past transaction to substantial prejudice of the parties, M & P Enterprises, Inc. v. Transamerica Financial Services, 944 S.W.2d 154 (Mo. banc 1997).

Relator does not agree that the student bill of rights violates a judicial action, but if the Board argues that the student bill of rights violates the orders in Liddell the cases hold that the provision of the Constitution prohibiting impairment of obligation does not relate to judicial action. Scheble v. Missouri Clean Water Com'n, 734 S.W.2d 541 (Mo. App. E.D. 1987).

D. Neighborhood Schools Provided By The Student Bill Of Rights Are Not Unconstitutional

The current total public school population is approximately 80.5% African American and 16% white. African American, school age children live in virtually all neighborhoods within the City. The proposal would initially result in integrated schools in all neighborhoods with racially mixed populations. Assuming arguendo that the white school age population will increase as a result of the exercise of the right to go to the school closest to home, there would be a growing white school population, and thus there would be an increased likelihood

of integration of the school system. Integration and diversity could be promoted by the Board transporting children to relieve overcrowding or children exercising their right under the proposal to transfer to any school within the district.

That the provisions of this bill are constitutional can be assumed from the factual and legal context of the end of the desegregation cases in other cities. In Kansas City and other cities the N.A.A.C.P. is consenting to settlements that involve the return to neighborhood schools. Cleveland, Denver, and Oklahoma City have scaled back bussing in favor of neighborhood schools. Kansas City will save $30 million which is annually spent on bussing. This money will now be available for improvement of academic programs. (The Star, 09/01/98, Old ways new again at schools Kansas City district returns to the tradition of neighborhood sites, by Phillip O'Connor; Lynn Horsley, Education Writers).

The current state of the law is clear. Neighborhood schools are constitutional. As matter of general principle assigning school children to a school in their neighborhood does not offend the Constitution. Milliken v. Bradley, 418 U.S. 717, at 737-41 (1974) To the extent that respondents assert that the student bill of rights is a neighborhood school proposal, it does not offend the constitution.

A "neighborhood school" plan is not unconstitutional per se, and is permissible, if impartially maintained and administered, even though the result is racial imbalance. Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 at 28. By its express provisions the student bill of rights is impartial because children have the right to attend the school closest

to home and the right to transfer to any other such school within the district. "Where resegregation is a product not of state action but of private choices, it does not have constitutional implications. It is beyond the authority and beyond the practical ability of the federal courts to try to counteract these kinds of continuous and massive demographic shifts. To attempt such results would require ongoing and never-ending supervision by the courts of school districts simply because they were once de jure segregated. Residential housing choices, and their attendant effects on the racial composition of schools, present an ever-changing pattern, one difficult to address through judicial remedies." Freeman v. Pitts, 503 U.S. 467, 495 (1992). If it is argued that some resegregation may occur as a result of the passage of the student bill of rights this, even if believed or proven, is legally irrelevant because any resegregation that occurs will not be the "product of state action." It will be the result of "private choice" on where parents decide to send their children to school.

Washington, et al. v. Seattle School District No. 1, et al., 458 U.S. 457 (1982) discusses a ballot proposition which differs significantly from the facts in the instant case. The State of Washington legislature placed initiative 350 on a state wide ballot. The law had practical application only on the Seattle School District. It prohibited the school board from requiring any student to attend a school other than one nearest or next nearest to his home but it set out a number of exceptions that allowed assignment away from their neighborhood for virtually all of the nonintegrative purposes required by their educational policies. The court found the law constitutionally defective "because it permits bussing for non-racial reasons but

forbids it for racial reasons." It left the district maximum flexibility in the assignment of students except in the assignment of children for racially-balancing purposes. The only flexibility lost by the district was that related to busing for desegregative purposes. It was further found to be defective because it burdened future attempts to integrate by lodging decision making authority at the level of state government rather than at the local level. The fact that the state-wide electorate rescinded a pupil transfer policy which had been voluntarily enacted by a locally elected school board was also problematical. The court found that there was purposeful discrimination because it found a racial classification in the law. What is most significant about the case though is the holding the court: "In reaching this conclusion, [did not] undervalue the magnitude of the States's interest in its system of education. Washington could have reserved to state officials the right to make all decisions in the areas of education and student assignment." Washington, supra at 487. Justice Powell, in the dissent, summarizes the holding of the majority. "Accordingly, the Court does not hold that the adoption of a neighborhood school policy by local districts would be unconstitutional. Rather, it holds that the adoption of such a policy at the state level-rather than at the local level-violates the Equal Protection Clause of the Fourteenth Amendment." Washington, supra at 488-89.

The issues before this court in the instant case are distinguishable from the holding in Washington. This is a local ballot issue, not state wide domination, so the reservation to make "decisions in the areas of education and student assignment" is being made at the local level. In Washington the initiative sought to change a policy of the local authority. In the instant case

there is no local authority policy in place because the district is operating under a federal court desegregation order. Unlike the fact pattern in Washington though, the student bill of rights in paragraph 7 grants the right to bus to relieve overcrowding, thus arguendo, the governing board's future attempts to integrate are not burdened. As a practical matter though there will be considerable busing to relieve overcrowding which will result in an integrative effect.

VIII The Trial Court Did Not Commit Error When It Ordered The Transitional School District, And The Board Of Education To Certify The Student Bill Of Rights For Placement On The Ballot, And In Ordering The Board Of Elections Commissioners To Place The Student Bill Of Rights On The Ballot, Because:

A. The Trial Court sitting in equity had the authority to order corrective actions to be taken by a party over which it had jurisdiction.

The (TSD) was a body corporate, and a transitional school district which was charged, among other things, with the duty to place the student bill of rights, to the extent that the program is consistent with the Missouri and United States Constitution, before the voters of the City of St. Louis. When the TSD failed to perform its responsibilities, Bauer filed his original action in mandamus against the TSD. Its individual members were named as defendants and filed an answer. Under these circumstances TSD and its members were before the Court. The court found that TSD had obtained an opinion that the student bill of rights was unconstitutional and contrary to the statutory direction, did not publish the opinion and concealed the opinion from Bauer and the Court (LF 90) (SLF 46-47 & 116). In fact counsel

for TSD made false representations about the absence of a legal opinion (LF 90) (SLF 133-135) The Court further found that TSD had intentionally delayed disclosure of its analysis to ensure that the student bill of rights would not appear on the election ballot before March 15, 1999 (Ap. 8, LF 90-91). Based on these findings and its determination that the student bill of rights was constitutional the Court had authority to order the TSD to certify the proposition to the Election Board. Defendant-Appellant argues that TSD by ceasing to exist has successfully abrogated their statutory responsibilities by its false and deceptive actions. While the members of TSD were dropped from the case no order was issued dismissing TSD. The fact that TSD had ceased to exist by the time the order was issued did not mean the Court did not retain its original authority over TSD and then order its successor to perform the statutory duties (Rule 52.13(e). Where one school district was merged with another the successor was responsible for the liabilities of the original school district Lynch v. Webb City School District No. 92, 373 S.W.2d 193 (Mo.App. S.D. 1963).

B. The Board of Education was the appropriate successor to the Transitional School District after it was dissolved.

The Court noted that the Education Board was the only entity as to which the student bill of rights would operate, that Senate Bill 781 provided that TSD would be a transitional district. It was created as a vehicle to settle the desegregation litigation which had been pending for 27 years. The purpose was to settle the federal litigation and return control of the St. Louis Schools to the Education Board (LF 96).

When the Education Board was named as an additional defendant in 1999 the Education Board removed the case to the Federal Courts were it languished for over a year until the Eight Circuit dismissed same for lack of jurisdiction and remanded the case back to the Missouri Court. On remand the individual members of the TSD remained in the case until the Court dropped them from the proceedings on December 20, 2000 (LF 17). The Court in that order directed the State Board of Education to show cause why it should not be appointed as the successor to the TSD (LF 17). At that time Bauer voluntarily dismissed his claim against the Board of Education. The Board of Education then requested permission to intervene which was granted by the Court. The Court then appointed the Board of Education as the successor to TSD (LF 28).

It is clear that the Court had jurisdiction of the subject matter and the parties. The Education Board argues that since there was no specific provision for a successor that the Court is powerless to act. Where one corporation goes out of existence by being merged into another, if no arrangements are made respecting the property and liabilities the subsisting corporation will be entitled to all the property and answerable for all the liabilities, Thompson v. Abbott, (61 Mo. 176). The courts have applied this rule to school districts, McClure v. Princeton Re-Organized Sch. 307 S.W.2d 726, (Mo.App. W.D. 1957), Abler v. School District of St. Joseph, 124 S.W. 564, 566, Mo. Rev. Stat. 507.100.

The Board of Education's argument is that the Court had no authority to name it as the successor to the TSD and order it to perform the duties of the TSD is not supported by case

law.

United Air Lines v. State Tax Commission, 377 S.W.2d 444 (Mo. banc 1964), cited by the Board of Education, dealt with tax laws which require strict construction. It was the clear intent of the legislature that the student bill of rights be submitted to the voters of the City of St. Louis, and one of the rules of construction announced in United Air Lines is that statutes should be applied with regard to apparent intent as expressed and with view to promoting apparent objects of legislative enactment. Another case also cited by the Board of Education involved a tax levy which requires strict construction. The Supreme Court noted:

> If from a reasonable construction of the patchwork of all the tax statutes relating to the subjects of library districts and taxes on distributable property authority for the tax can be found, force and meaning must be given the legislative enactments, State ex rel. Benson v. Union Electric Co, 220 S.W.2d 1, 3 (Mo. banc 1949)

Laughlin v. Forgrave, 432 S.W.2d 308 (Mo. banc 1968) cited by the Board of Education involved a malpractice suit and the date when the statute of limitations begins, whereas our case does not involve a limitation issue.

The St. Louis Board of Education was the appropriate agency to appoint as successor to the TSD. The membership of the TSD consisted of one member appointed by the Mayor who can also appoint members to the Education Board when a vacancy occurs (Mo. Rev. Stat. §162.611). One member of TSD was appointed by Board of Education and the third

member was appointed by the president of the Board of Aldermen of the City of St. Louis (LF 87). The Education Board asked to be a party to the litigation and was the agency that would be affected by any decision relating to the student bill of rights and received the benefits of the tax sponsored by the TSD.

The Court ordered the Education Board to submit the issue to the Election Board. Defendant Board argues in its memorandum that they do not "possess the statutory authority to take the action ordered by the court", i.e., transmit the student bill of rights proposition

to the Election Board (Ap. Brf. 21). The Board has often exercised its authority to submit propositions to the Election Board for vote by the voters of the district. It has broad powers under the law (Mo. Rev. Stat. §162.571) and its argument that it has no authority to submit propositions to the Election Board when ordered by the Equity Court is flawed and untenable.

C. The Court did not commit error when it ordered the Board of Election Commissioners to place the student bill of rights proposition on the ballot.

The Court had jurisdiction of the subject matter and the Election Board was named as a party. The Election Board has taken the position that they did not have a dog in this fight and have stood mutely on the sidelines. The Education Board takes the position that the Election Board did not have the authority to obey the orders of the Court since the statute had given that authority to the TSD. The Education Board argues that the Election Board was only an

administrative agency and had no power to perform the court order. The law requires the Election Board to conduct all public elections within its jurisdiction, (Mo. Rev. Stat. §115.023; § 115.125). The Court order directed the Election Board to perform the administrative duty of placing the student bill of rights on a ballot for the November general election. If the TSD had certified the student bill of rights to the Election Board it would have had the administrative duty to place the issue on the ballot.

COMMENT

The Education Board has already adopted many of the requirements of the Student Bill of Rights. They have equalized expenditures, they have adopted a policy of neighborhood schools, arrangements have been made for gifted children. Their main objection to the student bill of rights is the K-8 program. They have alleged the cost to be in the neighborhood of one Hundred Eighty-three Million Dollars, the Court indicted that Forty Million might be more realistic. In any event the issue for the voters is clear, they can either vote for or against the K-8 program. The Education Board is free to argue that it is too expensive. Proponents are free to argue that the K-8 program is needed for the failing school system and that the cost of improvement is necessary. The Education Board does not want a vote - proponents of the student bill of rights want the right to vote on the issue.

The state legislature when it passed the student bill of rights did not contemplate that the members of the TSD would refuse to perform their statutory duties. The TSD aided and

abated by the legal delays instigated by the Education Board should not deprive the citizens of St. Louis of the right to vote on issues affecting the education of their children.

CONCLUSION

A review of the testimony, exhibits, and the law establishes that the student bill of rights is not unconstitutional on its face. It is not special legislation, the ballot is not void for the sin of doubleness, and it does not violate the terms of the settlement contract, and the Education Board waived its unfounded constitutional claim of denial of due process.

The trial court's order of mandamus will be reviewed for abuse of discretion, and the Education Board has made no such claim.

The student bill of rights should have been presented to the voters of the district on March 2, 1999, over four years ago. The next election in the district is scheduled for August 2004. Further delay is not warranted. The Court should affirm the orders and judgment of the trial court and remand this case to the trial court with instructions to order a special election, costs to be paid by the Board of Education of the City of St. Louis.

Respectfully submitted,

_____

Charles R. Oldham, Mo. Bar # 13616
5227 Westminster Place
St. Louis, Mo 63108
(314) 367-0711 (Telephone)
(314) 367-0926 (Facsimile)

RULE 84.06(c) CERTIFICATION

I hereby certify in accordance with Rule 84.06(c) that this brief includes the information required by Rule 55.03, complies with the limitations contained in Rule 84.06(b) and includes 11,153 in its entirety.

_____

Charles R. Oldham

CERTIFICATE OF A VIRUS FREE DISK

I hereby certify that the disk filed with this Brief Required by Rule 84.06(g) has been screened for viruses and it is virus free.

_____

Charles R. Oldham

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed this 17th day of March 2003, by prepaid U.S. mail to: Kenneth C. Brostron & Dirk DeYong, attorneys for Board of Education of the City of St. Louis and individually named Board Members, 714 Locust St., St. Louis, MO 63101 and Rufus J. Tate, Jr. 7751 Carondelet Ave., Suite 803, Clayton, MO 63105, attorney for Board of Election Commissioners.

_____

Charles R. Oldham