UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 4:72-CV-100 HEA
	)	
BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, MISSOURI, et al.,	)	
	)	
Defendants.	)	

LIDDELL PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT

COMES NOW Plaintiff Deric James Liddell, on behalf of the certified class known as the Liddell Plaintiffs (hereinafter collectively referred to as the "Liddell Plaintiffs"), and hereby moves this Court for enforcement of the settlement agreement, negotiated and entered in this case twenty years ago in 1999, against the State of Missouri, and for a finding of contempt of court against the State for its willful and blatant violations of the Court's March 12, 1999 Settlement Order by diverting over $70 million in intradistrict desegregation and remediation funding away from the remedies the Liddell Plaintiffs negotiated after decades of unconstitutional, state mandated public school segregation. As grounds for this Motion, the Liddell Plaintiffs state as follows:

LITIGATION PROCEDURAL SUMMARY

1. This litigation began on February 18, 1972, when Minnie Liddell filed suit as mother and next friend for her son, Craton Liddell. At the time, Craton Liddell[1] was an African American student attending the St. Louis Public Schools District, which had been segregated by

[1] In 2003, Craton Liddell died at the age of 43. Mrs. Minnie Liddell's grandson, Deric James Liddell, was substituted as lead Plaintiff. Mrs. Liddell died in 2004 and her daughter in law, Mrs. Jean Liddell, was substituted as class representative.

mandate of the State of Missouri for decades until the *Brown v. Board of Education* decision in 1954, but remained a racially segregated school system many years later including when this lawsuit was initiated in 1972. *See* Complaint, attached hereto as **Exhibit A**.

2. Under the Fourteenth Amendment of the United States Constitution, Mrs. Liddell (along with numerous other parents) initiated suit against the City Board, which at the time was governing body of the St. Louis Public Schools District (the "District"),[2] to challenge the unconstitutional and reprehensible racial segregation that took place there. *Id*.

3. The case initiated by Mrs. Liddell was recognized as a proper class action by Order of the Court dated October 3, 1973, and on February 25, 1977, the Court recognized additional parties as plaintiffs to the action (hereinafter the "Caldwell/NAACP Plaintiffs"). *See* Orders, attached hereto as **Exhibits B** and **Exhibit C**.

4. Over time since first filed in 1972, various defendants, third-parties and intervenors were added and/or substituted as reflected in this Court's docket, including in 1977 the addition of the State of Missouri (hereinafter the "State") as a named Defendant.

5. In 1980, the Court concluded that the two named Defendants – the City Board and the State of Missouri – were "liable for the establishment and maintenance of a racially segregated public education system within the City of St. Louis, in violation of plaintiffs' constitutional rights," and in 1983, three years after finding liability, the Court approved a settlement plan intended to accomplish desegregation, and to fund the same, as an appropriate

[2] The governing body of the St. Louis Public Schools District has changed over time pursuant to state statute, and most recently (according to Court records in this case) was the Special Administrative Board of the Transitional School District of the City of St. Louis ("SAB"). Upon information and belief, effective July 1, 2019, the SAB ceded authority back to the elected Board of Education of the City of St. Louis (i.e., the City Board).

remedy for the wrongs committed against the Liddell Plaintiffs and Caldwell/NAACP plaintiffs. *See* Memorandum of Court, July 5, 1983, attached hereto as **Exhibit D.**

6. That initial settlement plan (hereinafter referred to as the "1983 Settlement") governed the case for more than 15 years through on-going Court supervision. Under that 1983 Settlement, the State agreed to increase annual funding to the District to pay for programs aimed at remedying the negative effects of historical segregation within the District, including quality education programming, early childhood education, capital improvements to city school buildings, magnet schools in the city, a voluntary interdistrict transfer plan with county schools, and a vocational education plan. *See id.*

7. In 1996, the State moved this Court to declare that the District was no longer a segregated system and had achieved unitary status; however, unwilling to declare that the effects of segregation had been remedied, the Court declined to do so and instead appointed Dr. William Danforth to lead further settlement discussions in the hopes that all parties could reach a final, negotiated resolution toward desegregation. The Liddell Plaintiffs participated in those additional settlement discussions.

TERMS OF SETTLEMENT AND COURT APPROVAL

8. After three years of protracted negotiations, in February of 1999, the parties finally reached a settlement. The terms of the final settlement were memorialized in a Desegregation Settlement Agreement ("DSA") (attached hereto as **Exhibit E**) and submitted to the Court by the Settlement Coordinator on February 23, 1999.

9. The remedies the Liddell Plaintiffs agreed to by way of the DSA included desegregation and remediation programs requiring all-day kindergarten, summer school, college prep and preschool programs, and magnet school programs within the District. Per the express

terms of the DSA, these intradistrict desegregation remedies were to be funded via school foundation formula funding created under Senate Bill 781 ("SB 781") and a sales tax that was to be approved by St. Louis City voters. **Exhibit E,** DSA, at § 11.1.

10. On February 2, 1999, the voters of the City of St. Louis approved a 2/3 of 1-cent sales tax (the "Desegregation Tax"), which was required as part of the settlement terms agreed to by the parties. **Exhibit E, DSA.**

11. The parties acknowledged in the DSA that the Desegregation Tax would be "unconditionally assigned" to the District to remediate the prior unconstitutional segregation within the District. **Exhibit E**, DSA, §§18(a) (stating that "[t]he **revenues from any and all taxes imposed through a ballot measure** submitted by the Transitional District, and any resulting State and federal aid, (excluding any attributable to transfer students) **shall be unconditionally assigned to the City Board** upon receipt by the Transitional District."

12. In addition to the agreement that the Desegregation Tax would be "unconditionally assigned" to the District for its intradistrict desegregation and remediation programs, numerous provisions of the DSA directed that monies raised from the Desegregation Tax would be solely for continuing remediation programs within the District as part of the Plaintiff classes' intradistrict desegregation remedy:

> The parties agree that an express condition to the City Board's decision to accept this Agreement is that **the sales tax** and the resulting State aid **will produce** a minimum of $60 million in **additional funding for the St. Louis City Public Schools** based on current SLPS enrollments and current levels of participation in the interdistrict transfer program.
>
> **Exhibit E**, DSA, at § 11.1 (emphasis added).
>
> Upon such a determination [that the Transitional District is no longer needed], the Transitional District is dissolved and **any and all taxes and other receipts approved for the Transitional District are assigned to the City Board**.
>
> *Id*., at § 18(b) (emphasis added).

13. The "State's obligation" under the DSA included "funding to SLPS under SB 781" and "the payment of obligations incurred pursuant to the provisions of this Agreement." **Exhibit E**, DSA, at §§ 22.A.1. and 22.A.2, which funding and payment obligations included the District's receipt of the Desegregation Tax for intradistrict desegregation and remediation programs specifically benefitting the Liddell Plaintiffs. *Id*., at §§ 22.A.1. and 22.A.2.

14. The State also unconditionally agreed not to interfere with the funding provided to the District for intradistrict desegregation and remediation purposes under the DSA: "…the State will **not seek in any proceeding to limit or diminish the financial relief** provided for under the agreement". *Id*., at § 22B.4 (emphasis added).

15. Aside from the State's contractual obligations under the DSA and the Court's Settlement Order, the State's obligation for future funding for intradistrict desegregation remedies was also established under SB 781 (previously codified at Missouri Revised Statutes Section 163.031 before being repealed), which became effective as a result of the DSA. **Exhibit E**, at p. 2 (stating "This Agreement is intended to provide a complete substitute for and modification of all substantive remedial obligations placed upon the City Board by the above-referenced orders, **subject to financing pursuant to Missouri Senate Bill 781**.") *See also* Senate Bill 781, pp. 1402-1408, relevant excerpts attached hereto as **Exhibit F.**

16. The Liddell Plaintiffs would not have agreed to the DSA without provisions being made for funding the negotiated intradistrict desegregation and remediation programs, including the express agreement that the Desegregation Tax be unconditionally assigned to the District for use to help remediate the unconstitutional segregation of education within that specific school system. **Exhibit E,** DSA at § 11.1.

17. On March 12, 1999, the Court approved the DSA in its Memorandum and Order [ECF No. 266]. *See* **Exhibit G**, Settlement Order.

18. In incorporating the DSA into the Settlement Order, the Court highlighted the importance of the funding commitments from the State (via SB 781) and the City (via passage of the Desegregation Tax) as a pre-requisite for Court approval of the DSA:

> In May 1998, the Missouri **General Assembly passed Senate Bill 781, which provides**, inter alia, **for approximately $40m per year in state funds for St. Louis city schools** on the condition that (1) on or before March 15, 1999, the state attorney general notify the revisor of statutes that a "final judgment" had been entered in this case as to the State and its officials, and (2) the voters of the City of St. Louis pass a sales or property tax which would generate **approximately $20m per year for the public schools**.
>
> **Passage of this law gave great impetus to the settlement process.**

Id., at pp. 2-3 (emphasis added).

> At the hearing, the Attorney General accepted blame on behalf of the State for past segregation in its public schools and apologized for this inequity. **He noted that the continued funding provided for by the state legislature in SB 718 (sic) was evidence that this was not an empty apology**…. The overwhelming consensus was that while the settlement did not provide a perfect remedy, it is fair, reasonable and adequate **because it guarantees long-term funding for continuing the key aspects of the 1983 plan, including remedial programs in the city schools, the magnet schools, the voluntary transfer programs and an area-wide vocational education plan**.

Id., at p. 6 (emphasis added).

19. Based upon these terms, the Court stated that it "concludes that **the settlement is adequately funded** as to ensure that **City Board's obligations** under the agreement can be fulfilled. **Funding is grounded in SB 781, which provides that funding will be derived from the local sales tax approved by the voters and the amendments in SB 781 to the State's statutory scheme of school funding**…. **The State agrees to provide the funds as set forth in SB 781** and **all signatories have agreed to the financial terms**." *Id*., at pp. 11-12 (emphasis added).

IMPLEMENTATION OF THE SETTLEMENT TERMS

20. Upon information and belief, starting in 1999 upon approval of the DSA by the Court, the State paid to the District state aid pursuant to the funding formula of SB 781, and additionally starting in 1999, the District received all of the Desegregation Tax collected pursuant to the 1999 vote. Specifically, as stated by the Chief Financial Officer and Treasurer of the District in prior filings with this Court of which the Liddell Plaintiffs are aware:

DECLARATION OF ANGELA BANKS

I, Angela Banks, do hereby declare and state as follows:

***

4. Pursuant to Section 163.031.1, R.S.Mo., the District receives a sizable portion of its public school funding from the State of Missouri through DESE under school funding formulas established by the State.

5. Beginning in 1999, the District received State public school funding pursuant to the funding formula of Senate Bill 781 and also received revenue in the form of certain sales tax proceeds.

6. These sales tax proceeds were paid incident to the settlement of the *Liddell* class action case, hereinafter referred to as the "Desegregation Tax". The Desegregation Tax proceeds were collected at the State level and remitted by the State to the District.

***

I, Angela Banks, do hereby declare under penalty of perjury that the foregoing is true and correct.

ANGELA BANKS

See Declaration of Angela Banks, dated April 11, 2016, previously filed with the Court as ECF No. 381-7 and attached hereto as **Exhibit H.**

21. Between 1999 – the year that the DSA was signed and approved and SB 781 became effective – and 2006, all of the Desegregation Tax revenue was paid to the District, unconditionally, unencumbered, and without reallocation to any other entity, as had been agreed and ordered by the Court, for the exclusive benefit of students like the Liddell Plaintiffs

attending the District where the segregation had taken place and where intradistrict remediation was ordered. *Id*. During this 1999 through 2006 timeframe, the State properly treated the Desegregation Tax as monies to be used only by the District for District students including the Liddell Plaintiffs.

22. During this same time period, from 1999 to 2006, charter schools came into existence in the State of Missouri and, as provided by SB 781, were funded with a portion of state aid funding that would have otherwise gone to the District. As declared by the District's CFO in prior filings, "In other words, for every student eligible to attend a District school but who chose to attend a charter school, the charter school would receive the per-pupil portion of state aid received by the District from the State under the funding formula." **Exhibit H**, at ¶ 7.

23. While certain amounts normally paid to the District on a per-pupil basis as permitted by SB 781 (not related to the Desegregation Tax) were diverted from 1999 to 2006 under SB 287, "the District and the State did ***not*** include monies raised from the Desegregation Tax in any aid to any St. Louis City charter school" per the terms of SB 781 during the same time period, *see id.* (emphasis added), and rightfully so because it was agreed in the DSA and ordered by the Court in its 1999 Settlement Order that the Desegregation Tax – as detailed above – was unconditionally assigned to the District to help remediate decades of unconstitutional segregation.

24. Thus, from 1999 to 2006, even though some state aid was moving to charter schools, the Liddell Plaintiffs received the bargained for intradistrict desegregation and remediation funding by way of the full Desegregation Tax as expressly required by the DSA and the Settlement Order.

THE STATE'S BREACH OF THE DSA AND VIOLATION OF THE SETTLEMENT ORDER

25. In 2006, the General Assembly for the State of Missouri revised the basic aid funding formula for public schools with the passage of Senate Bill 287 ("SB 287"). *See generally* Mo. Rev. Stat. § 163.031; SB 287, at pp. 1340-1348, excerpts of SB 287 attached hereto as **Exhibit I.**

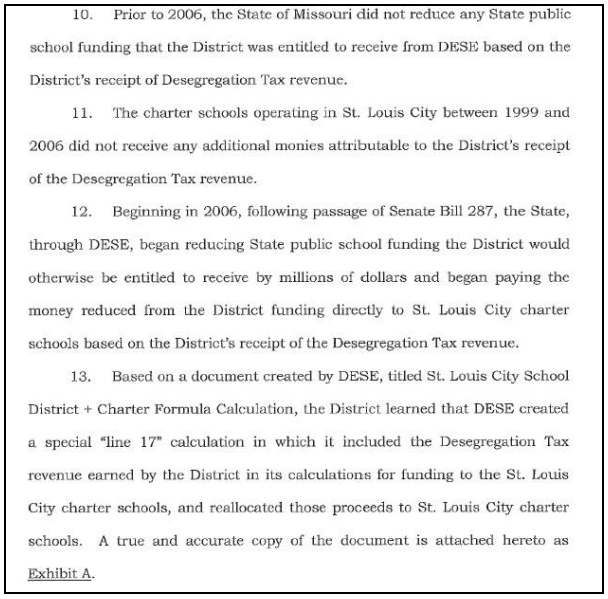
26. With the passage of SB 287, the General Assembly changed SB 781 by adding language (Mo.Rev.Stat. § 160.415) suggesting that "local tax revenues" would be reallocated from the District to charter schools on a per-pupil basis in a similar manner to per-pupil diversion of the state aid monies from 1999 to 2006. The language did not reference the Desegregation Tax, however.

27. In applying the revised SB 287 funding formula, the State unilaterally and without notice to the Liddell Plaintiffs (or the District upon information and belief) determined that the Desegregation Tax monies should be included in calculating the "local tax revenues" component.

28. Based on this interpretation of the change in the statute, and contrary to the proper, agreed and ordered "unconditional" assignment of all of the Desegregation Tax to the District where the unconstitutional segregation had taken place, in 2006 the State began reallocating a portion of the Desegregation Tax funds away from the District by reducing, on a per pupil basis, the amount of basic aid that would otherwise be payable to the District in proportion to a per-pupil allocation of the Desegregation Tax. *See* Declaration of Richard Sullivan, dated April 11, 2016, at ¶ 3, previously filed with the Court as ECF No. 381-9 and attached hereto as **Exhibit J.**

29. Not only was this interpretation and diversion of funds contrary to the DSA and Settlement Order requirements that the Desegregation Tax be available solely for the

desegregation and remediation programs within the District, it was contrary to seven years of practice and procedure. Indeed, the District's CFO has declared under oath:



10. Prior to 2006, the State of Missouri did not reduce any State public school funding that the District was entitled to receive from DESE based on the District's receipt of Desegregation Tax revenue.

11. The charter schools operating in St. Louis City between 1999 and 2006 did not receive any additional monies attributable to the District's receipt of the Desegregation Tax revenue.

12. Beginning in 2006, following passage of Senate Bill 287, the State, through DESE, began reducing State public school funding the District would otherwise be entitled to receive by millions of dollars and began paying the money reduced from the District funding directly to St. Louis City charter schools based on the District's receipt of the Desegregation Tax revenue.

13. Based on a document created by DESE, titled St. Louis City School District + Charter Formula Calculation, the District learned that DESE created a special "line 17" calculation in which it included the Desegregation Tax revenue earned by the District in its calculations for funding to the St. Louis City charter schools, and reallocated those proceeds to St. Louis City charter schools. A true and accurate copy of the document is attached hereto as Exhibit A.

See **Exhibit H.**

30. This interpretation of SB 287 by the State – unbeknownst to the Liddell Plaintiffs – thereby deprived the Liddell Class of key funding that was essential to their bargained for intradistrict desegregation and remediation remedies.

31. The District made demands that the State cease and desist diverting the Desegregation Tax, which demands were ignored. *See* **Exhibit J, at ¶ 4 (and December 8, 2008 letter from R. Sullivan to the Missouri Department of Elementary and Secondary Education ("DESE") attached thereto).** In January 2016, the Liddell Plaintiffs (along with the Caldwell/NAACP Plaintiffs and the SAB), demanded that the State cease and desist from violating the Court's Settlement Order and breaching the DSA and pay back any Desegregation Tax revenue to the District as was agreed in the 1999 DSA for use in the District where the segregation had taken place and its intradistrict desegregation and remediation efforts. *See* January 28, 2016 Letter, attached hereto as **Exhibit K**.

32. On March 4, 2016, the State forwarded a response to the January 28, 2016 demand by refusing to comply with the Settlement Order and its contractual obligations without proffering any precise reasons why its sudden interpretation of SB 287 to divert the Desegregation Tax away from the District where the segregation had occurred could possibly be proper. *See* March 4, 2016 Letter, attached hereto as **Exhibit L**.

33. On April 11, 2016, the Liddell Plaintiffs, along with the Caldwell/NAACP Plaintiffs and the SAB (the then-governing body of the District), filed a Joint Motion to Enforce Order Approving the Settlement Agreement, to Enforce Settlement Agreement and Hold the State in Contempt (ECF No. 381) based upon the above-detailed diversion of Desegregation Tax funds.

34. On March 26, 2019, the Court entered an Order sustaining the State's Motion to Strike the Joint Motion to Enforce based upon jurisdictional grounds due to the SAB's inclusion as a party seeking relief, but did so "without prejudice to Plaintiffs refiling the motion on behalf of themselves only." *See* ECF No. 466.

RELIEF SOUGHT BY THE LIDDELL PLAINTIFFS

35. Previously, in a filing made on September 26, 2018, the District calculated the diverted amounts (not accounting for prejudgment interest or attorney's fees) to total $67,661,803. **Exhibit M**, Declaration of A. Banks, dated September 24, 2018, at ¶ 6, previously filed as ECF No. 444.

36. Upon information and belief of the Liddell Plaintiffs, the State has continued to divert additional amounts for the 2018-2019 school year not yet calculated by the District or the State to the Liddell Plaintiffs information and belief, and is diverting amounts from the current 2019-2020 school year in amounts presently unknown to the Liddell Plaintiffs. *Id*., at ¶ 15.

37. Consequently, in light of the State's past and continuing violations of the Settlement Order and breach of the DSA, which reduced funding for the intradistrict desegregation remedies that the Liddell Plaintiffs bargained for (and for which the State agreed to fund) and loss of promised revenue to be used for desegregation and remediation purposes within the District, the Liddell Plaintiffs have no recourse other than to file this Motion requesting that the Court:

(1) enforce its Settlement Order and the DSA to require the State to immediately stop diverting Desegregation Tax monies and to unconditionally assign all to-be-collected Desegregation Tax monies to the District for use in support of the District's continuing intradistrict desegregation and remediation programs that the Liddell Plaintiffs fought for and negotiated;

(2) order specific performance of the DSA by requiring the State repay to the District, to be used for the required intradistrict desegregation and remediation programs, any and all amounts of the Desegregation Tax that were not available to the District since the State began interpreting SB 287 to allow diversion of the tax proceeds other than to the District's intradistrict desegregation and remediation programs that were fought for and negotiated by the Liddell Plaintiffs;

(3) hold the State in contempt and all proper relief related thereto as a sanction; and

(4) award prejudgment interest in accordance with applicable law.

38. Additionally, Section 22.A.2 of the DSA provides that in the event of a breach by the State, this Court can award "the cost of obtaining compliance including an award of reasonable attorney fees and costs." Thus, because of the State's breach of the DSA, the Liddell Plaintiffs are entitled to recover attorneys' fees incurred in pursuing the requested relief.

39. The Liddell Plaintiffs respectfully request that the Court grant them a hearing and oral argument on this Motion, and grant the Liddell Plaintiffs an opportunity to establish any additional amounts that have been improperly reallocated through information that is presently

solely within the knowledge of the District and/or the State, and not accessible to the Liddell Plaintiffs at this time.

40. The Liddell Plaintiffs file simultaneously herewith and incorporate by reference herein their Memorandum in Support.

WHEREFORE, the Liddell Plaintiffs pray for an Order from this Court enforcing the Desegregation Settlement Agreement and this Court's 1999 Settlement Order against the State of Missouri as stated herein, for a finding of contempt, for prejudgment interest and attorneys' fees, and for such other and further relief as the Court deems just and proper under the circumstances.

Dated: October 15, 2019

Respectfully submitted,

By: */s/ William A. Douthit*

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