X09-HHD-CV-05-4019406s (CLD)	**:**	**SUPERIOR COURT**
CCJEF, ET. AL	**:**	**COMPLEX LITIGATION**
VS.	**:**	**AT HARTFORD**
M. JODI RELL, ET AL.	**:**	**APRIL 10, 2006**

PLAINTIFF MEMORANDUM IN OPOSITION TO MOTION TO DISMISS

I. STATEMENT OF FACTS

For the purposes of the motion to dismiss, the parties stipulate to the following facts:

On January 20, 2006, ¶31 of the Plaintiff's complaint stated that "CCJEF's membership includes parents, teachers, education advocacy organizations, community groups, teachers' unions, and parent-teacher organizations." At the time of filing, CCJEF's membership did not include individuals acting in their capacity as parents or teachers, nor did it include parent-teacher organizations.

As of the date of filing this memorandum, CCJEF's membership now includes individuals acting in their capacity of parents. Accordingly, a proper statement of CCJEF's membership is "CCJEF's membership includes parents, education advocacy organizations, community groups, and teachers' unions."

II. ARGUMENT

The defendants assert that the Connecticut Coalition for Justice in Education Funding (CCJEF) lacks standing and should be dismissed from the action. The defendants further assert that the Governor, Treasurer and Comptroller are improper defendants and should similarly be dismissed. The plaintiffs respectfully submit this memorandum in objection to the defendants' motion to dismiss.

CCJEF has standing as an association to bring these claims on a representational basis because it satisfies all three prongs of the test laid out in Connecticut Ass'n of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609 (1986). Although the defendants correctly state the Worrell test and its general purpose (Def.'s Mem. Supp. Mot. Dismiss at 6-7), defendants incorrectly analyze that test and its application in subsequent case law. The Court has subject matter jurisdiction over the claims brought by CCJEF; accordingly, the defendants' motion to dismiss CCJEF as a party should be denied.

Should the State's argument regarding CCJEF's ability to assert associational standing be adopted, minor students would be unjustly barred from asserting their educational rights against the State through an association. The State relies almost entirely on Carrubba v. Moskowitz, 274 Conn. 533 (2005), a case which offers no relevant authority on the question at hand. Moreover, the State overlooks the ample federal authority that suggests that CCJEF could be properly found to have standing, both on behalf of parents acting in their capacity as next friends and on behalf of parents acting to protect their own interests.

CCJEF is comprised, in part, of parents who have standing in their own right, as next friends to their children, and who, because of their legal responsibilities to their children, "are not merely members of the general public who have failed to demonstrate how they have been harmed in some unique way." Gay & Lesbian Law Students Ass'n v. Board of Trustees, 236 Conn. 453, 467-68 (1990). The interests that this lawsuit seeks to advance, all of which concern the quality of the educational opportunities provided by the state, are germane to CCJEF's purpose. Furthermore, neither the claim asserted nor the relief requested requires the participation of individual members of CCJEF.

The Governor, Treasurer, and Comptroller are proper defendants in this action. Connecticut precedent firmly establishes them as such, and the state cites no controlling

authority to the contrary. Each party plays an important role in the administration of Connecticut's education funding system. Therefore, the motion to dismiss the Governor, Treasurer, and Comptroller should also be denied.

A. The Court Has Subject Matter Jurisdiction Over the Claims Brought by CCJEF.

1. A Representative Association Has Standing to Assert the Rights of Its Members

CCJEF has justiciable rights at stake in this litigation. Such rights exist "when a complainant makes a colorable claim of direct injury he has suffered or is likely to suffer, in an individual *or representative capacity*." Maloney v. Pac, 183 Conn. 313, 321 (1981) (emphasis added). The question presented by the defendants' motion to dismiss, therefore, is whether CCJEF has made a colorable claim of injury in its representative capacity. In considering this question, it is relevant that Connecticut has made clear that in matters concerning subject matter jurisdiction—of which standing is a necessary component—"every presumption favoring jurisdiction should be indulged." Connecticut Light & Power Co. v. St. John, 80 Conn. App. 767, 771 (2004).

An organization or association may have standing to assert the rights of its members in a representative capacity, even when the entity does not suffer injury in its own right. This representational standing is conferred upon an association "when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Worrell, 199 Conn. at 616 (quoting Hunt v. Washington State Apple Comm'n, 432 U.S. 333, 343 (1977)).

Representative standing is of inherent value to the Connecticut Supreme Court because it promotes judicial economy and efficiency. See, eg. Worrell, 199 Conn at 616-17. Plaintiff

organizations like CCJEF bring together members of similar interests to share resources and avoid duplication of legal efforts. In doing so, they "provide an efficient and expeditious method of adjudicating disputes" Id. at 617-18. The Supreme Court has also "rejected the notion that aggrievement must be universal among the membership of an association before it may have representative standing . . . [because] one of the purposes of representative standing [is] to provide individuals with a method for cooperatively financing litigation affecting their interests that few could otherwise afford." Timber Trails Corp. v. Planning & Zoning Comm'n, 222 Conn. 380, 395 (1992). Therefore, while only some members of an organization may have standing in their own right, the association as a whole can still have standing "to represent those of its membership who have been aggrieved." Id. at 394-95. See also Connecticut State Med. Soc. v. Connecticut Bd. of Exam'rs in Podiatry, 203 Conn. 295 (1987) (holding that a professional medical society has standing in an action in which only a few of its members would have standing in their own right). Furthermore, in cases in which the complainant organization seeks "a declaration, injunction, or some other form of prospective relief," the Connecticut Supreme Court has acknowledged that "associational standing is *particularly* appropriate." Worrell, 199 Conn. at 616 (emphasis added) (quoting Peick v. Pension Benefit Guaranty Corp., 724 F.2d 1247, 1259 (7th Cir. 1983)).

2. CCJEF Has Members Who Have a Cognizable Interest in this Litigation and Therefore Have Standing to Sue as Individuals.

a) Because most of the students in this case are minors, their rights can only be asserted in court through adults acting as next friends.

Minor students are unable to bring a suit on their own behalf and must, accordingly, rely on individuals acting as next friends or as guardians *ad litem* to advance their interests in civil suits. Orsi v. Senatore, 230 Conn. 459, 466-67 (1994) ("It is well established that a child may bring a civil action only by a guardian or next friend, whose responsibility it is to ensure that the interests of the ward are well represented." (internal quotation marks omitted)). See also Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 61 (2d Cir. 1990) (reiterating that under state law minors "cannot determine their own legal actions"). When the individual seeking to assert his rights is a minor, "as the plaintiff's next friends, the plaintiff's parents [have] an interest, in a representative capacity, to invoke the jurisdiction of this court." Lowe v. Shelton, 83 Conn. App. 750, 755 (Conn. App. Ct. 2004).

If minor students are ever to benefit from the option of asserting their interests associationally, they must do so through an association that either contains adults acting as next friends on their behalf or contains other adult members who have cognizable interests of their own. The State, by arguing that associational standing can never be granted to an organization that derives its standing from the interests of members acting as next friends, would institute a *de facto* bar on the ability of minors to assert their interests associationally. The fundamental fairness of such a proposition is a proper consideration for the court. See, e.g., Machadio v. Apfel, 276 F.3d 103, 107 (2d Cir. 2002) (refusing to adopt a standard that, based upon the technicalities of next-friend status, would "unfairly penalize the children").

b) Students' Rights May Be Asserted by Associations Litigating on Their Behalf

The first prong of the Worrell test does not foreclose the standing of an association based upon individuals acting as next friends,1 but requires only that those members have standing, in any form, to sue independently of the organization. The State conflates the Worrell language requiring that some members of the association "have standing to sue in their own right" with a limitation on the *form* of cognizable interest their underlying members must possess. Pursuant to Lowe v. Shelton, "one cannot rightfully invoke the jurisdiction of the court unless [one] has, in an individual or *representative capacity*, some real interest in the cause of action." 83 Conn. App. 750, 755 (2004) (citing Hall v. Kasper Assocs., Inc., 81 Conn. App. 808, 811 (2004)). The proper focus when determining whether an interest is cognizable, for purposes of jurisdiction, is the nature of the interest, not whether it is asserted in an individual or representational capacity.

[1] Much of the case law on associational standing has developed in the context of environmental protection, often with associations asserting the individual interest of their members to use or observe nature as the cognizable interest for the purposes of standing. However, over the course of litigation spanning the late 1970's and early 1980's, the District of Hawaii and the 9th Circuit recognized the standing of associational plaintiffs to assert the claims as next friends for the Hawaiian Palila bird. Palila v. Hawaii Dep't of Land & Natural Res., 471 F. Supp. 985, 987 (D. Haw. 1979); Palila v. Hawaii Dep't of Land & Natural Res., 639 F.2d 495, 496 (9th Cir. 1981); Palila v. Hawaii Dep't of Land & Natural Res., 649 F. Supp. 1070 (D. Haw. 1986); Palila v. Hawaii Dep't of Land & Natural Res., 852 F.3d 1106, 1107 (9th Cir. 1988). See also, Cetacean Cmty v. Bush, 386 F.3d 1169, 1173-74, 1176 (9th Cir., 2004) (discussing Palila and analogizing the legal status of animals and their rights to, among other things, those cases brought on behalf of "juridically incompetent persons such as infants, juveniles, and mental incompetents.") In those cases, the ability of associations to bring suit where its members were acting as next-friend, was accepted as proper. CCJEF, whose members are acting as next friend on behalf of their students, also is a proper associational plaintiff.

Other jurisdictions2 that, like Connecticut, have adopted the Hunt test have explicitly recognized the standing of associational plaintiffs by virtue of their parent members in school funding cases that assert state constitutional claims. For example, in Campaign for Fiscal Equity v. State, 187 Misc. 2d 1 (N.Y. Sup. 2001), a New York trial judge held that because "children must appear in court via their parent," the parents themselves had suffered an injury-in-fact that was redressable by the court. Id. at 18. The court went on to reject an argument synonymous with that put forward by the defendants this case, instead concluding that Campaign for Fiscal Equity had representational standing precisely because it had parent members. Id. See also Consortium for Adequate Sch. Funding in Georgia v. State, (Insert CITE at 6) (dismissing defendant's motion to dismiss plaintiff organization on representational standing grounds).

While the United States Supreme Court has not specifically addressed this issue, it and several United States Courts of Appeals have recognized, in analogous cases, that private schools have standing to assert the rights of the students in their institutions and of the parents of those students. For example, in Runyon v. McCrary, 427 U.S. 160, 175 n.13 (1976), the Supreme Court, when considering whether a private school had standing to argue the associational, privacy, and educational rights of its parents and students, concluded that "it is clear that the schools have standing to assert these arguments on behalf of their patrons." See also Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1487 (9th Cir. 1995) (holding that a private school had

[2] See Soc'y of Plastics Indus. v. County of Suffolk, 77 N.Y. 2d 761 (1991) (adopting the Hunt test for New York); Aldridge v. Georgia Hospitality Ass'n., 251 Ga. 234 (1983) (adopting the Hunt test for Georgia).

standing to challenge state's refusal to guarantee certain loans to students); Pierce v. Soc'y of Sisters, 268 U.S. 510, 535-36, (1925) (holding that a private school could assert rights of potential pupils and their parents). These schools, in asserting the individual interests of students and parents, acted as *de facto* associational plaintiffs. Here, CCJEF seeks to assert the educational rights of its member families—parents and students—who, unlike the defendants in Runyon, do not have the option of utilizing their school as *de facto* associational representatives in this matter because they attend *public* schools, which, as creatures of the state, cannot sue on behalf of the parents and students.3

Finally, in 1996, the Sixth Circuit found that an association made up entirely of charter schools had standing to assert claims on behalf of the families that attended those member schools. Ohio Ass'n of Indep. Sch. v. Goff, 92 F.3d 419, 422 (6th Cir. 1996) ("The OAIS member schools also have standing to assert the constitutional right of parents to direct their children's education."). If associational standing is proper where the individual members of the associations are, as schools, actually smaller associations of parents and students, then CCJEF, which has parents as individual members and thus a more direct claim, should also have standing to bring suit.4

---

[3] Moreover, even if public schools could file suit, it would be incongruous to force parents and students to rest their rights on the schools' decision to sue the state.

[4] The Seventh Circuit also has embraced a more expansive analysis of standing than the State would have this court utilize. There, the Seventh Circuit found a third party to have standing in an education lawsuit based upon a permissive reading of the interests implicated and the relationship between the third party and the students:

> "This general prohibition against litigants asserting the rights of others is not a rigid constitutional maxim but a 'prudential rule,' -- a 'salutary rule of self-restraint' designed to minimize unwarranted intervention into controversies where the applicable constitutional questions are ill-defined and speculative.

c) Parents Have a Cognizable Interest in this Litigation, Independent of Their Next-Friend Role.

The United States Supreme Court has a long-established principle that parents have independent, innate rights to direct the education of their children. "The values of parental direction of the . . . education of their children in their early and formative years have a high place in our society." Wisconsin v. Yoder, 406 U.S. 205, 213-14 (1972). See also Runyon v. McCrary, 427 U.S. 160, 175, 178 (1976) (recognizing "a parent's right to direct the education of his children" and characterizing "a parent's decision concerning the manner in which his child is to be educated . . . as exercises of familial rights and responsibilities") (rev'd in part on other grounds); Meyer v. Nebraska, 262 U.S. 390, 400 (1923) ("Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life"). This parental right has been recognized as sounding both from a parent's liberty right and from a parent's privacy right. See Roe v. Wade, 410 U.S. 113, 153 (1973) (describing the parental right regarding education of their children as a privacy right); Pierce v. Soc'y of Sisters, 268 U.S. at 534-35 (describing the parental rights as being a right and a "high duty" that sounds "as part of

---

In determining when a litigant may, despite the general prohibition, assert the rights of a third party, federal courts consider the practicality of the third party asserting his own rights and 'the relationship of the litigant to the right he seeks to assert. If the enjoyment of the right is inextricably bound up with the activity the litigant wishes to pursue, the court can at least be sure that its construction of the right is not unnecessary in the sense that the right's enjoyment will be unaffected by the outcome of the suit.' Consequently, when the interests of the litigant and the third party are closely related, the courts have viewed quite charitably assertions of third-party standing." Rothner v. Chicago, 929 F.2d 297, 301 (7th Cir. 1991) (internal citations omitted).

their liberty"). However the parental right to direct the education of their offspring is conceptualized, the parent members of CCJEF have a cognizable interest in the education of their children, independent of their role as next friend.

This interest is only deepened by the Connecticut statutory and fiscal responsibilities that parents bear with regard to their children's education. Pursuant to Conn. Gen. Stat. §10-184,

> All parents and those who have the care of children shall bring them up in some lawful and honest employment and instruct them or cause them to be instructed in reading, writing, spelling, English grammar, geography, arithmetic and United States history and in citizenship, including a study of the town, state and federal governments.

The statute goes on to enumerate the parent's responsibilities regarding the logistics of registration in school each year. In addition, Conn. Gen. Stat. §10-198a lays out specific duties that parents must fulfill if their children are truant and includes a penalty should parents fail to take part in the administrative process for truant students. Finally, in Conn. Gen. Stat. § 10-221(f) the State requires that the local and regional boards of education craft and implement policies regarding parent involvement in education, including elements such as parent-teacher meetings, homework help, and opportunities for parents to drop in or otherwise observe and participate in the educative process.5 Because the parent members of CCJEF have a substantial and independent interest in this case, both their standing and the standing of CCJEF to bring this suit is proper.

---

[5] In June of 1998, the Connecticut State Department of Education, Connecticut Association of Boards of Education, Parent-Teacher Association of Connecticut, and the Special Education Resource Center published the Policy Action Packet for School-Family-Community Partnerships in order "to more effectively enlist parents. . . in improving the educational results of Connecticut's children." Available at http://www.state.ct.us/sde/deps/Family/SFCP/pap.pdf (last reviewed on March 27, 2006).

d) Parents, Although Acting in a Next Friend Capacity, Have a Cognizable Interest in the Resolution of Their Children's Claims

Even if the Court determines that the parents' interest is not substantial enough to confer standing independently, the interests of the parents are so intertwined with those of their children as to give rise to a cognizable interest. That interest legitimates the standing of the parent members and, through them, the association. In this case, the parent members of CCJEF have statutory responsibilities for and a financial stake in their children's education.

The sole case the State cites to argue that parents have no cognizable claim is inapposite to this case. In Carrubba v. Moskowitz, 274 Conn. 533, 550 (2005), the court determined that a parent did not have standing to bring a legal malpractice claim *pro se*, "because the [parent's] interests were adverse to those of [the minor child], he lacked standing to bring the action on behalf of [the minor child] as his next friend." Moreover, the facts of the case presented a situation where the parent sought to use his next-friend status "to relitigate" an issue he had previously lost when brought on his own right. Carrubba v. Moskowitz, 81 Conn. App. 382, 405 (2004).

Here, the State does not argue that the parents' interests are adverse to those of their children. Nor are the parent members of CCJEF attempting to circumvent a prior ruling of the court by virtue of their next friend status. Carrubba is an idiosyncratic case brought by a disgruntled parent acting *pro se* in a legal malpractice claim. It is difficult to argue that the holding in Carrubba sheds any light on the standing issues in this case. Other than Carruba, the State provides no authority to support its position concerning parents' standing on behalf of their children.

CCJEF parent members have a relationship with the state and a role in the educational process that is analogous to that of the parent in Machadio v. Apfel, 276 F.3d 103 (2nd Cir.

2002). In Machadio, a parent sought to appeal a determination that her minor child was ineligible for social security benefits. In determining that the parent had standing to bring the appeal and to act as a pro se plaintiff on behalf of the child, the court looked at the relationship which the agency had with the parent, noting that under the agency's own guidelines the parent was intimately involved in the process and that the parent had responsibilities implicated in that relationship. In particular, the Court noted that the parent is the preferred choice for communications with the agency and continued "it is useful to note that non-attorney parents may represent their children in administrative proceedings before the [agency]." Id. at 106-07. As discussed above, the State of Connecticut, through both statute and Department of Education policy, imposes responsibilities on the parent, actively works to further include parents in the educational experience of their children, and relies on parental involvement in key meetings concerning matters such as a student's expulsion, truancy, or special education services. See, e.g., Conn. Gen. Stat. §10-233d(3)(expulsion); Conn. Gen. Stat. §10-198a (truancy); Conn. Gen. Stat. §10-76h (special education).

Moreover, the Machadio court also considered the fact that the parent had a financial stake in the outcome since the parent would have to use family resources if the government resources were denied. As the court explained,

> If [the minor] qualifies for disability benefits, then the federal government will assume some of the costs associated with [the minor's] condition, freeing the plaintiff's limited resources for other living expenses. Therefore, while it is [the underlying legal question regarding the minor] that determines whether the government will pay benefits, this also is a case where the plaintiff's interest is squarely at stake.

276 F.3d at 106-07. Here, some parent members of CCJEF are in a position where they must divert family resources to compensate for the inadequacies of the education currently available to their children. Just as in Machadio, should the case be resolved on behalf of the minors, the

State will assume the costs associated with providing an adequate education, thus freeing the parents' limited resources for other living expenses. Not only are the interests of the parents harmonious with those of the children, but also the rights of the children are inextricably intertwined with the parents' own rights and responsibilities. Accordingly, CCJEF's members have a cognizable interest in the outcome of this suit and are proper plaintiffs in the case.

3. The Interests That CCJEF Seeks to Protect Are Germane to CCJEF's Purpose

The interests in educational adequacy and equality furthered by this litigation are precisely aligned with the purposes and mission of CCJEF, which is "committed to ensuring that public school children in Connecticut receive suitable and substantially equal educational opportunities." (Am. Compl. ¶ 29). The Connecticut Supreme Court has adopted a relaxed standard for determining germaneness under the Worrell test. See, e.g., Connecticut Ass'n of Not-For-Profit Providers for the Aging v. Dep't of Soc. Servcs., 244 Conn. 378, 387 (1998) (holding that a lawsuit is germane to an organization's purpose so long as the challenged practice "affects" its members). CCJEF's member parents and teachers, in particular, would be significantly "affected" by a favorable disposition in this action.

4. Neither the Claim nor the Relief Sought Requires the Individual Participation of CCJEF's Members

The participation of the parent members of CCJEF is not necessary to adjudicate the state constitutional claims in this lawsuit or to obtain the relief sought. "If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." Hunt v. Washington State

Apple Comm'n, 432 U.S. 333, 343 (1977) (quoting Warth v. Seldin, 422 U.S. 490, 515 (1975)). Because the plaintiffs in this case seek, inter alia, declaratory and injunctive relief, this action does not present complicated issues of *individual damages* that would require direct participation of the CCJEF's parent members.

The defendants' contention that parental involvement is required because of the "individualized nature of each students' educational needs" (Def.'s Mem. Supp. Mot. Dismiss at 9) is meritless and premature. The nature of the state constitutional claims at issue—and the evidence necessary to support them—will require an assessment of the State's administration of its education system as a whole. The unique situation of any particular student, while certainly emblematic and relevant to that assessment, is not necessary to assert that the State is not fulfilling its constitutional duty to provide a suitable and substantially equal educational opportunity.

The plaintiffs, including CCJEF, bring this lawsuit as a class action on behalf of all similarly situated students in sixteen school districts. (Am. Compl. ¶ 37.) To certify this class, plaintiffs will show that "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class." Practice Book § 9-7. If and when the class is certified in this litigation, then the individualized participation of

any single parent – other than those of the named plaintiffs – is, by definition, unnecessary.6 In effect, defendants ask this court to render a decision on class certification that is inappropriate at this stage of the litigation. As the court in McGinty v. McGinty, 66 Conn. App. 35, 38 (Conn. App. Ct. 2001) held, "**standing** focuses on the party seeking to be heard and not on the issues that party wants to have heard . . . The question of **standing** does not involve an inquiry into the merits of the case."

B. The Governor, Treasurer and Comptroller are Proper Defendants in a Challenge to the State Education Financing System

Connecticut courts have consistently maintained that the Governor, Treasurer and Comptroller are proper defendants in cases challenging the constitutionality of the State's education funding system. See Sheff v. O'Neill, 238 Conn. 1 (1996); Horton v. Meskill, 195 Conn. 24 (1985) [hereinafter Horton II]; Horton v. Meskill, 172 Conn. 615 (1977) [hereinafter Horton I]. In Sheff, Horton I, and Horton II, the Governor was the lead defendant along with the Treasurer, Comptroller, Board of Education, and Commissioner of Education. In Horton I, the trial court explicitly rejected a similar challenge to these parties, maintaining all of them as defendants. See Horton v. Meskill, 31 Conn. Supp. 377, 389 (Conn. Super. Ct. 1974) (rejecting a sovereign immunity defense). Both Horton II and Sheff were decided without a challenge to the Governor, Treasurer or Comptroller as proper parties.

The defendant's motion fails to acknowledge the Horton and Sheff line of precedent despite the fact that the present action presents a similar challenge to Connecticut's education funding system and relies on the same Constitutional provisions (Conn. Const. art. I §§ 1, 20, art. XIII § 1). Instead, the defendants rely on a handful of out-of-state cases in an attempt to cast

[6] Even if a class is not certified, the individualized participation of the parent members of CCJEF would not be necessary.

doubt on the level of connection between these officers and the challenged education statutes. While the Governor, Treasurer and Comptroller in Connecticut each have sufficient administrative or enforcement authority to rebut this challenge, the court need not reach the merits of defense's out-of state arguments. This motion can be decided on the strength of Connecticut precedent alone.

1. The Governor is a Proper Defendant in a Constitutional Challenge to the State's Education Funding System

a) Connecticut Courts Have Repeatedly Affirmed that the Governor Was a Proper Defendant in Cases Challenging State Programs

In addition to Horton I, Horton II, and Sheff, Connecticut courts have affirmed that the Governor is a proper defendant in cases challenging the constitutionality of state programs. In a case challenging Connecticut's funding of indigent defense, the court held that the Governor's general duty to enforce the law was sufficient to make him a proper defendant. See Riviera v. Rowland, 1996 Conn. Super. LEXIS 2800 (Conn. Sup. 1996) (unpublished opinion, copy attached). The Riviera court noted that "[a]s a practical matter, litigation of this kind, in Connecticut and other states, as well as in a federal forum, frequently involves named defendants who are public officials at the local, state or federal level." Id. at *9. Other Connecticut courts, including the Connecticut Supreme Court, have decided cases on the merits that included the Governor as a defendant. See Motor Vehicle Mfrs. Assoc. v. O'Neill, 212 Conn. 83 (1989) (finding the State's lemon law unconstitutional); Scatena v. Rowland, 2000 Conn. Super. LEXIS 24 (2000) (denying prisoner's writ for injunctive relief for access to religious items) (unpublished opinion, copy attached).

b) The Governor's Substantial Statutory Authority over the State Education System Makes Her a Proper Defendant

The Governor's many connections to the education funding system in Connecticut make her an appropriate defendant in this case. See Ex Parte Young, 209 U.S. 123, 157 (1908) (requiring an officer of the state to have "some connection" to the allegedly unconstitutional statutory scheme).7 The defendant's assertion that "the Governor plays no administrative or other role" (Motion to Dismiss, 12) in the operation of this system is baseless. The Governor's duty to "take care that the laws be faithfully executed," Conn. Const. art. IV, § 12, and her power to "investigate into, and take any proper action concerning, any matter involving the enforcement of the laws of the state and the protection of its citizens," Conn. Gen. Stat. § 3-1, provide ample basis for exercising jurisdiction over her in this action.8 This is particularly true in the education context because of the State's "*affirmative* constitutional obligation to provide schoolchildren throughout the state with a substantially equal educational opportunity." Sheff v. O'Neill, 238 Conn. at 17. As the chief executive officer of the State, the Governor cannot simply foist the responsibility back onto subordinates. Ultimately, she is responsible for executing the State's education funding system in a constitutional manner. To hold otherwise would vitiate the affirmative nature of the duty.

The Governor's role in the education funding system, however, goes well beyond this general authority to enforce the laws. First, several statutes provide the Governor with appointment power in the education field. See Conn. Gen. Stat. § 10-1 (members of the State

---

[7] Defendant's reference to Serrano v. Priest, 557 P.2d 929 (Cal. 1976) does not alter this holding. In Serrano, the court did not find that the Governor was an inappropriate defendant. Indeed, the court left open the possibility that the Governor was a proper party in the action. See Id. at 942. Rather, the court took into account practical considerations in its determination that *joinder* of the Governor and Legislature was not necessary for resolution of the instant case.

[8] Indeed, this authority alone is sufficient. See Subsection B.1.d, infra.

Board of Education); Conn. Gen. Stat. § 10-2 (Commissioner of Education); Conn. Gen. Stat. § 10-4n (members of the Committee on Educational Equity and Excellence); Conn. Gen. Stat. § 10-76i (members of the Advisory Council for Special Education); Conn. Gen. Stat. § 10-95h (members of the Advisory Committee on Regional Vocational-Technical Schools); Conn. Gen. Stat. § 10-144d (members of the Advisory Council for Teacher Professional Standards); Conn. Gen. Stat. § 10-144e (members of the Advisory Council for School Administrator Professional Standards); Conn. Gen. Stat. § 10-293 (members of the Board of Education and Services for the Blind); Conn. Gen. Stat. § 10-294 (director of the Board of Education and Services for the Blind).

Second, the numerous statutes requiring lower-level education officials to report directly to the Governor place her in a unique position to oversee the operation of the education funding system. See Conn. Gen. Stat. § 10-4 (State Board of Education to report on "the condition of the public schools and of the amount and quality of instruction therein and such other information as will assess the true condition, progress and needs of public education" as well as a five-year "comprehensive plan for elementary and secondary, vocational, career and adult education" and annual progress thereon); Conn. Gen. Stat. § 10-4b (State Board of Education to report when the State is responsible for a local or regional school district's failure to provide mandated educational opportunities); Conn. Gen. Stat. § 10-4n (Committee on Educational Equity and Excellence to make appropriate recommendations); Conn. Gen. Stat. § 10-4p (State Board of Education to report on five-year plan to achieve resource equity and equality of opportunity as well as assessment of and progress towards such equity); Conn. Gen. Stat. § 10-144d (Advisory Council on Teacher Professional Standards to advise and report on teacher recruitment, certification, training, and assessment); Conn. Gen. Stat. § 10-144e (Advisory Council on School Administrator Professional Standards to advise and report on administrator certification, training,

and assessment); Conn. Gen. Stat. § 10-226h (Commissioner of Education to report on programs to reduce racial, ethnic, and economic isolation); Conn. Gen. Stat. § 10-283 (Commissioner of Education to report all eligible school building projects). Unless the General Assembly fashioned these reporting requirements to be purely perfunctory, the Governor is deeply involved in overseeing the State's education funding system.

Finally, the Governor's substantial budgetary powers grant her even greater authority over the education funding system. The Connecticut Supreme Court described the Governor's involvement in the budgetary process in Pelligrino v. O'Neill:

> . . . budgeted state agencies, [are] required to submit annually to designated officials of the executive and legislative branches detailed estimates of anticipated expenditures and revenues for the next fiscal year. These estimates are transmitted in the form of a tentative budget by the secretary of the office of policy and management to the Governor. After a series of hearings upon the tentative budget, the figures submitted by the agencies may be revised by the Governor and incorporated into his proposed budget which is transmitted to the General Assembly. Legislative committees hold hearings on various aspects of the Governor's budget proposal, which is published and distributed as a public document.

193 Conn. 670, 674-75 (1984) (internal citations omitted). Additionally, the Governor is required to provide the General Assembly with her "program for meeting all the expenditure needs of the government," Conn. Gen. Stat. § 4-72, and

> a description of [each] program, including a statement of need, eligibility requirements and any intergovernmental participation in the program; [and] a statement of performance measures by which the accomplishments toward the program objectives can be assessed, which shall include, but not be limited to, an analysis of the workload, quality or level of service and effectiveness of the program.

Conn. Gen. Stat. § 4-73. The Governor is also a member of the committee that may authorize hardship grants and loans to towns or regional school districts. See Conn. Gen. Stat. § 10-288.

The Governor is a proper defendant in this action because of her general authority to enforce the laws, particularly in the context of Connecticut's affirmative duty to educate; her

authority over appointments; her position as overseer of the entire education system; and her duties to report to the General Assembly on the performance and needs of that system.

c) Other States Have Deemed the Governor a Proper Defendant in Suits Challenging Education Funding Systems

In line with the Connecticut Supreme Court, other courts across the nation have maintained the Governor as an appropriate defendant in cases challenging the constitutionality of state education funding systems. In fact, the Governor has been a defendant in twenty education finance suits in nineteen states. See Robinson v. State, 295 F.3d 1183 (10th Cir. 2002) (Kansas); Powell v. Ridge, 247 F.3d 520 (3d Cir. 2001) (Pennsylvania); Harper v. Hunt, 624 So. 2d 107 (Ala. 1993); Matanuska-Susitna Borough Sch. Dist v. State, 931 P.2d 391 (Alaska 1997); Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472 (Ark. 2002); Coalition for Adequacy and Fairness in Sch. Funding v. Chiles, 680 So. 2d 400 (Fla. 1996); Comm. for Educ. Rights v. Edgar, 672 N.E.2d 1178 (Ill. 1996); Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky. 1989); Charlet v. State, 713 So.2d 1199 (La. Ct. App. 1998); Comm. for Educ. Equal. v. State, 878 S.W.2d 446 (Mo. 1994); Bismarck Pub. Sch. Dist. No. 1 v. State, 511 N.W.2d 247 (N.D. 1994); Gould v. Orr, 506 N.W.2d 349 (Neb. 1993); Campaign for Fiscal Equity v. State, 801 N.E.2d 326 (N.Y. 2003); Claremont Sch. Dist. v. Governor, 635 A.2d 1375 (N.H. 1993); Robinson v. Cahill, 69 N.J. 133 (1973); Fair Sch. Fin. Council v. State, 746 P.2d 1135 (Okla. 1987); Abbeville County Sch. Dist. v. State, 515 S.E.2d 535 (S.C. 1999); Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988); Tenn. Small Sch. Sys. v. McWherter, 91 S.W.3d 232 (Tenn. 2002); Washakie County Sch. Dist. v. Herschler, 606 P.2d 310 (Wyo. 1980). But see McDuffy v. Secretary, 615 N.E. 2d 516 (Mass. 1993); Campbell County Sch. Dist. v. State, 907 P. 2d 1238 (Wyo. 1995); Roosevelt Elem. Sch. Dist. No. 66 v. State, 205 Ariz. 584 (Ariz. Ct. App. 2003).

d) The Governor's General Authority To Enforce The Laws, Standing Alone, Makes Her a Proper Defendant

Even without this large body of supporting case law, the strong Connecticut precedents, and the Governor's myriad statutory responsibilities, the Governor is a proper defendant because she has general authority to enforce the law. This authority provides a sufficient basis to exercise jurisdiction over her. See Riviera v. Rowland, 1996 Conn. Super. LEXIS 2800 (1996) (unpublished decision, copy attached).

The defendants offer a handful of out-of-state cases in an attempt to attack this rule, but most of these cases do not stand for the proposition that a Governor's general authority to enforce the laws is insufficient to confer jurisdiction. Two of the cases the defendants cite do not even consider whether a Governor is a proper defendant. Johnson Bonding Co. v. Kentucky, 420 F. Supp. 331 (E.D.K.Y. 1976), questions whether the Governor is a proper defendant, but dismisses the action for lack of a "substantial federal question" under 28 U.S.C. § 2281.[9] See Id. at 333-35. Sobel v. Higgins, 573 N.Y.S.2d 1000 (N.Y. Sup. 1991), does not even include a Governor as a party.[10] In City of Pittsburgh v. Commonwealth, 535 A.2d 680 (Pa. Comm. App. 1987) the Governor was dismissed where a limitation on a city's taxing authority was challenged because the program was not a statewide program.

The defendants' argument for rejecting the clear Connecticut rule, then, appears to rest on two federal district court cases that are outside of the Second Circuit: Harris v. Bush, 106 F.

---

[9] Kentucky's highest court has recognized the state's Governor as an appropriate defendant in the education financing context. *See* Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky.1989).

[10] However, in a more recent case, the highest New York court recognized the Governor as an appropriate defendant in a case challenging the state's education financing system. *See* Campaign for Fiscal Equity v. State, 801 N.E.2d 326 (N.Y. 2003).

Supp. 2d 1272 (N.D. Fla. 2000),11 and Williams v. Virginia State Bd. of Elections, 288 F. Supp. 622 (E.D. Va. 1968). However, as the court notes in Harris v. Bush, federal courts have split on the question of whether a Governor's general authority to enforce the laws alone confers jurisdiction. 106 F. Supp. 2d at 1277. Some federal courts have held that this general authority is sufficient. See, e.g., Allied Artists Picture Corp. v. Rhodes, 679 F.2d 656, 665 n.5 (6th Cir. 1982). The Southern District of New York, in eliminating the Governor as a defendant, limited its ruling to cases challenging the constitutionality of statutes concerning private civil actions and catalogued the numerous instances in which a Governor's general authority *was* sufficient because the case implicated the relationship between individuals and the state. Gras v. Stevens, 415 F. Supp. 1148, 1152 (S.D.N.Y. 1976).

The court should not depart from the Connecticut rule discussed above in favor of two non-controlling district court opinions in Florida and Virginia. Furthermore, the court need not consider this issue at all in light of the strong controlling precedent, the Governor's substantial statutory authority over the Connecticut education funding system, and the supporting practice in numerous other states. Accordingly, the court should maintain the Governor as a defendant in this action.

2. The Treasurer and Comptroller are Proper Defendants in a Constitutional Challenge to the State's Education Funding System.

Connecticut courts have consistently deemed the Treasurer and Comptroller proper defendants in suits challenging the constitutionality of the State's education funding system. See, e.g., Sheff; Horton II; Horton I. Indeed, in Horton II, the trial court determined that the

[11] The Florida Supreme court has held that the Governor is an "an appropriate party" in a suit challenging the State's education financing system. Coalition for Adequacy and Fairness in Sch. Funding v. Chiles, 680 So.2d 400 (Fla. 1996).

Treasurer and Comptroller "had implementing responsibility" for certain unconstitutional education statutes and, as part of its remedy, explicitly "enjoined the defendants comptroller and treasurer from distributing minimum aid funds." Horton II, at 33. As this decision indicates, the Treasurer and Comptroller's enforcement authority over the disbursement of education funds in Connecticut provides a sufficient connection to the statutory scheme at issue to retain them as defendants.

a) The Treasurer and Comptroller's Additional Statutory Authority over the State Education System Make Them Proper Defendants

In addition to her enforcement authority, the Treasurer has statutory authority over many aspects of the State's education system. For example, the Treasurer is the custodian of all federal and private funds, Conn. Gen. Stat. § 10-11, and other miscellaneous education funds, see, e.g., Conn. Gen. Stat. §§ 10-9, 10-307. She is responsible for the "the care and management" of the School Fund, Conn. Gen. Stat. § 3-40; may "vote upon the stock of any state bank or trust company which belongs to the School Fund or to the state," Conn. Gen. Stat. § 3-37; is a member of the committee to study the withdrawal of towns from regional school districts or the dissolution of districts, Conn. Gen. Stat. § 10-63(b); and has discretion to manage investments in the Teacher Retirement System, Conn. Gen. Stat. § 10-183(m).

Courts from across the country agree: in nineteen cases in seventeen states challenging the constitutionality of state education funding systems, the Treasurer was listed as a defendant. Powell v. Ridge, 247 F.3d 520 (3d Cir. 2001) (Pennsylvania); Lake View Sch. Dist. v. Huckabee, 91 S.W.3d 472 (Ark. 2002); Shofstall v. Hollins, 110 Ariz. 88 (Ariz. 1973); Serrano v. Priest, 557 P.2d 929 (Cal. 1976); Thompson v. Engelking, 537 P.2d 635 (Idaho 1975); Rose v. Council for Better Educ., 790 S.W.2d 186 (Ky.1989); McDuffy v. Secretary, 615 N.E.2d 516 (Mass. 1993); Governor v. State Treasurer, 203 N.W.2d 457 (Mich. 1972); Milliken v. Green,

212 N.W.2d 711 (Mich. 1973); Committee for Educ. Equal. v. State, 878 S.W.2d 446 (Mo. 1994); Bismarck Pub. Sch. Dist. No. 1 v. State, 511 N.W.2d 247 (N.D. 1994); Gould v. Orr, 506 N.W.2d 349 (Neb. 1993); Abbott v. Burke, 798 A.2d 602 (N.J. 2002); Robinson v. Cahill, 69 N.J. 133 (N.J. 1973); Fair Sch. Fin. Council v. State, 746 P.2d 1135 (Okla. 1987); Northshore Sch. Dist. v. Kinnear, 530 P.2d 178 (Wash. 1974); Kukor v. Grover, 436 N.W.2d 568 (Wis. 1989); Vincent v. Voight, 614 N.W.2d 388 (Wis. 2000); Washakie County Sch. Dist. v. Herschler, 606 P.2d 310 (Wyo. 1980).

The Comptroller also exercises statutory authority over the education funding system. She is responsible for investigating all district bond defaults and withholding subsequent state aid from delinquent districts, Conn. Gen. Stat. § 10-58a; Conn. Gen. Stat. § 10-289g; has authority to sue on behalf of the state for recovery of misappropriated school funds, Conn. Gen. Stat. § 10-256; and sits on the committee to determine the allocation of hardship grants to towns and districts, Conn. Gen. Stat. § 10-288.

b) There Is No Ministerial Exception in Connecticut

The defendants' argument for removing the Treasurer and Comptroller is premised on a doctrine of "ministerial" duties, but there is no ministerial exception in Connecticut. The defendants cite only one case from an intermediate appellate court in Minnesota to support this ministerial duties exception. (Motion to Dismiss, 12). In that case, the court did not find that government agencies with only ministerial duties were *improper* parties, only that they were not necessary for the court to exercise jurisdiction. See Conseco Loan Fin. Co. v. Boswell, 687 N.W.2d 646, 652 (Minn. Ct. App. 2004). Furthermore, the New York case cited to support the proposition that the Comptroller is not a proper defendant when he simply cuts checks is neither analogous, nor controlling, to the present case. See Marthen v. Evans, 104 Misc. 2d 553, 555

(N.Y. Sup. 1980) (concerning a claim for money damages where jurisdiction was decided on narrow state statutory grounds).

In light of the Treasurer and Comptroller's enforcement authority, their additional statutory obligations, and the strong controlling precedent in Connecticut, these officers should be maintained as proper defendants in this action.

III. CONCLUSION

For all the foregoing reasons, and such further reasons as may appear at argument on the matter, the plaintiffs respectfully urge the Court to deny the defendants' motion to dismiss CCJEF as a plaintiff and deny the defendants' motion to dismiss the Governor, the Comprtoller and the Treasurer.

THE PLAINTIFFS

By:_____

Robert A. Solomon
Jerome N. Frank Legal Services Org.
P.O. Box 209090
New Haven, CT 06520-9090
Juris No. 100356
E-mail robert.solomon@yale.edu

ON THE MEMORANDUM:

Brian Deese
Addisu Demissie
Joshua Glasgow
Katherine Kimpel
Robyn Sturm

Law Student Interns
Yale Law School

CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing was mailed, first class postage prepaid, this 10th day of April, 2006 to:

Ralph E. Urban
Assistant Attorney General
Juris No. 085178
55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

_____
Robert A. Solomon