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SUPREME COURT
of the
STATE OF CONNECTICUT

S.C. 20723

STATE OF CONNECTICUT
v.
MATTHEW AVOLETTA, ET AL

BRIEF OF THE DEFENDANT-APPELLANTS
With Attached Appendix

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TABLE OF CONTENTS

CERTIFIED QUESTION

"Did the Appellate Court correctly determine that No. 17-4 of the 2017 Special Acts is an unconstitutional public emolument?"

TABLE OF AUTHORITIES

Connecticut Constitutional Provisions

General Statutes

STATEMENT OF THE PROCEEDINGS

The General Assembly ("the legislature"), overriding a Claims Commissioner denial, adopted Special Act #17-4 ("the Special Act"), allowing certain alleged untimely claims, ("the 2007 school claims") to be remanded to the Claims Commissioner for a hearing on the merits. The legislature also effectively overrode the Claims Commissioner's denial of a separate timely filed claim alleging legislative negligence, ("the 2013 negligence claim"), and remanded it to the Claims Commissioner also for a hearing on the merits. The legislature was not required as a matter of law to adopt a Special Act in order to allow the 2013 claim to be remanded to the Claims Commissioner, as the 2013 claim was timely filed. It was simply required to follow General Statutes §§4-159 and 4-160 in doing so, which it did.

Both claims were properly presented to the Claims Commissioner in 2017, who began proceedings for a hearing on the merits and issued a Scheduling Order to the parties. Before the hearing could take place, the state filed an action in the trial court, citing only the 2007 school claim, alleging that the Special Act was an unconstitutional public emolument. Subsequently, the Claims Commissioner, sua sponte and without explanation, halted the proceedings on both claims, allowing those proceedings to remain in limbo to date.

On October 23, 2017, the Defendants-Appellants, (the "Defendants"), filed a Motion to Dismiss the state's action, which was denied by the trial court, Robaina, J., on April 27, 2018. Thereafter, on May 11, 2018, the state filed a Motion for Summary Judgment. On November 8, 2018, the Defendants filed their Answer to the state's action, and filed their own Counterclaim to that action seeking equitable and declaratory relief, as well as monetary damages. On

December 3, 2018, the state filed a Motion to Dismiss the Defendants' Counterclaim.

On January 14, 2020, the trial court, Shapiro, J., granted the State's Motion for Summary Judgment, and dismissed the Defendants' Counterclaim. On May 10, 2022, the Appellate Court affirmed the trial court's decisions.

STATEMENT OF THE FACTS

The saga began with the Defendants' 2007 Claims Commissioner Complaint. From the beginning, the Complaint alleged that the state's Executive Branch government officials failed to ensure a safe and healthy school setting, not only for the Defendants' children, but also for all children with disabilities in the community, due to moldy conditions and unhealthy air quality at the Torrington School District buildings. After the Claims Commissioner's denial of the Complaint, without a hearing, the defendants sought, and obtained, reversal of the denial, when the General Assembly adopted a Resolution allowing the defendants to initiate a lawsuit against the state. After the Defendants filed the lawsuit, however, the state filed a Motion to Dismiss, arguing that the legislature failed to properly follow statutory law, §4-148(b), in adopting a Resolution allowing untimely claims to proceed instead of a doing so by adopting a Special Act, and that the legislature failed to articulate a public policy purpose for the Resolution. The trial court agreed, and dismissed the claim, and the Appellate Court affirmed the decision on appeal.

As a result of the General Assembly's negligence in failing to follow General Statutes §4-148(b) and in failing to articulate a public policy purpose, the Defendants filed their 2013 claim with the Claims Commissioner, specifically against the Legislative Branch. After the Claims Commissioner denied the 2013 claim, again without a hearing

on the merits, the Defendants, again, sought and received the legislature's approval to override that decision, and to properly allow the claims to be remanded to the Claims Commissioner for a hearing on the merits. In doing so, the General Assembly, this time, provided two forms of relief regarding the two separate claims: (1) it adopted Special Act #17-4, properly following the procedures outlined in General Statutes §4-148(b) in allowing untimely claims to proceed, and clearly articulating a public policy purpose for the Act regarding 2007 schools claim, remanding it to the Claims Commissioner for a hearing on the merits; and (2) it followed §§4-159 and 4-160 in remanding the timely filed 2013 negligence claim to the Claims Commissioner also for a hearing on the merits. The proceedings, on both claims, however, were abruptly halted by the Claims Commissioner after the state filed its action for a declaratory judgement on the 2007 claim.

The State argued that Special Act #17-4 was an unconstitutional exclusive public emolument because the State was not responsible for causing the claims to be untimely filed. The Appellate Court agreed and affirmed the trial court's decision, granting summary judgment for the State.

Following the defendants' petition for certification for review by this Court, on June 14, 2022, this Court issued an Order granting the Defendants' petition for certification to appeal from the Appellate Court, 212 Conn. App. 309 (AC 43851), limited to the following issue:

"Did the Appellate Court correctly determine that No. 17-4 of the 2017 Special Acts is an unconstitutional public emolument?"

The Defendants answer to the question is a definite and resounding, **"No".**

ARGUMENT

The Appellate Court did not correctly determine that Special Act 17-4 is an unconstitutional public emolument.

I. The Standard of Review.

The Connecticut Constitution controls all standards of review.

Pursuant to Article First §1, in particular, addresses public emoluments.

> "All men when they form a social compact, are equal in rights; and no man or set of men are entitled to exclusive public emoluments or privileges from the community."

Several other Articles address the right to education free from discrimination. Pursuant to Article First §20,

> "No person shall be denied the equal protection of the law nor be subjected to segregation or discrimination in the exercise or enjoyment of his or her civil or political rights because of religion, race, color, ancestry, national origin, sex or physical or mental disability.

Pursuant to Article Eighth, §1,

> "There shall always be free public elementary and secondary schools in the state. The general assembly shall implement this principle by appropriate legislation.

Pursuant to Article Eighth, §4,

> "The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall be ascertained in such manner as the general assembly may prescribe, published, and recorded in the comptroller's office; and no law shall ever be made, authorizing such

fund to be diverted to any other use than the encouragement and support of public schools, among the several school societies, as justice and equity shall require.

Other relevant statutes and case law describing the standard of review are presented in the various sections below.

In effect, to determine the public policy purpose and constitutionality of the Special Act, the Appellate Court had three tasks:

(1) to consider whether the State met its burden of proof, beyond a reasonable doubt;

(2) to consider whether the facts in the record and in the legislative history support a public policy purpose; and

(3) to consider, and to apply in its analysis, this Court's binding and controlling precedents.

The Appellate Court failed in all three tasks.

II. The Appellate Court failed to consider whether the State met its burden of proof, beyond a reasonable doubt, that the "sole objective" of the General Assembly was to grant a gain or advantage to the Defendants.

A. The Appellate Court's Decision.

For its decision holding that Special Act #17-4 was an unconstitutional public emolument, the Appellate Court, agreed with the trial court, and with the State, that the "only" public policy purpose that could deem the Special Act constitutional would be if the State caused the defendants' claims to be untimely filed. Finding that the State did not cause such harm so that there was no public policy purpose to the Act, the Appellate Court affirmed that the Special Act was unconstitutional.

Relying on *Kinney v. State,* 285 Conn. 700, 709–11 (2008) and *Kelly v. University of Connecticut Health Center,* 290 Conn. 245, 259–60 (2009), the Appellate Court explained that in *Kinney*, this Court determined that even though a special act stated a public purpose of "not penalizing a person who exhausts his or her administrative and judicial remedies before filing a claim against the state with the . . .commissioner," its "true purpose" was to provide the claimant with an exclusive right not generally available to others similarly situated. The Appellate Court explained, also, that in *Kelly*, this Court struck down another special act that stated it was supported by compelling equitable circumstances and would serve a public purpose, finding that it granted to the claimant, alone, a personal right not generally available to others similarly situated and served no public purpose.

Relying on those cases, and only those cases, the Appellate Court then held that the Special Act in this case was an unconstitutional public emolument because it

> "specifi-cally authorizes the defendants, and the defendants alone, to bring their untimely claim before the commis-sioner. Despite the statutory language that such authori-zation will "encourag[e] accountable state govern-ment," the special act does not permit similarly situated individuals to bring untimely claims against the state for money damages. Indeed, the special act's purported public purpose is belied by the special act's title and plain language, which identifies the defendants by name and individuates their claim against the state. Accord- ingly, the General Assembly has bestowed the defen-dants with an exclusive, personal right, not generally available to the public, to bring suit based on a statutory cause of

action that would otherwise be barred for failure to comply with a time limit specified in the stat-ute."

The Appellate Court then reiterated that "we have consistently held that legislation seeking to remedy a procedural default *for which the state is not responsible* does not serve a public purpose.

In effect, the Appellate Court, looking only to the title and plain language of the Special Act, and to those two cases, without conducting any further appropriate fact finding or analysis, wrongly concluded that because the State was not responsible for causing the untimely filing of the claims, the Special Act does not serve a public policy purpose, benefits the defendants alone, and is unconstitutional. Had the Appellate Court actually conducted a proper analysis of the facts in evidence, the legislative history of the Act, and of this Court's binding precedents, it necessarily would have had to conclude differently. For the reasons stated below, the Appellate Court did not correctly determine that the Special Act was unconstitutional.

B. The Appellate Court failed to consider whether the State met its burden of proof.

This Court has stated it is the State's heavy burden to prove, beyond a reasonable doubt, that the legislature's "sole objective" in adopting a special act is to grant to one individual that which others cannot receive.

"To prevail under article first, § 1, of our constitution, the **state must demonstrate** that 'the **sole objective** of the General Assembly is to **grant personal gain or advantage to an individual.**' *State ex rel. Higgins v. Civil Service Commission,* 139 Conn. 102, 106 (1952).

Whether the State met its burden, in this case, is the first question the Appellate Court should have answered in conducting a proper analysis.

Whether the **State failed to prove**, **beyond a reasonable doubt** was of prime importance in the analysis. As this Court stated in *Kerrigan v. Commissioner of Public Health*, 228 Conn. 135, 300 (2008) (Borden, J., concurring), "It is an extreme act of judicial power to declare a statute unconstitutional" and that "It should be done with great caution and **only when the case for invalidity is established *beyond a reasonable doubt*"**.

Here, the Appellate Court utterly failed to consider, at all, whether the State met its burden of proof. Had it done so, the Court necessarily would have concluded that the State utterly failed to meet that burden of proof, not just beyond a reasonable doubt, but at all.

In the Appellate Court's decision, there was absolutely no mention of what the State did, or did not, prove. There also was no mention of whether any "proof" was "beyond a reasonable doubt". There also was no mention of whether the personal gain or advantage was the General Assembly's "**sole objective**". The Appellate Court focused only on whether the Defendants were the only ones who received personal gain or advantage, and whether the State caused the claims to be untimely filed. That was not the appropriate question, however. The appropriate question was whether whether the State **"proved**" "**beyond a reasonable doubt**" that it was the "**sole objective**" of the General Assembly to grant the Defendants, alone, personal gain or advantage. That question was never asked or answered.

Again, the Appellate Court utterly failed to ask those questions, let alone draw a reasonable conclusion after conducting an appropriate analysis. There is absolutely no mention in the Appellate Court's decision as to **what proof, if any, the State put forth,** or whether that proof demonstrated the "**sole objective"** of the General Assembly was to grant to the Defendants personal gain or advantage. Certainly,

there was no mention by the Appellate Court as to any such proof met the standard of **"beyond a reasonable doubt"**. In fact, Appellate Court did not mention the State's burden at all. The Appellate Court undertook none of that analysis.

In addition, actually looking at the record demonstrates that the State absolutely did not put forth **any** "proof", at all, that the **"sole objective"** of the General Assembly was to grant personal gain or advantage to the Defendants. That's because the there was **no such proof to offer**. Indeed, the facts in the underlying record, and the evidence in the legislative history of the Special Act belie the notion, altogether, that this was the General Assembly's **"sole objective".**

The record, as discussed in further detail below, shows that both the Defendants, and the General Assembly, had the objective of not just providing some gain or advantage to the Defendants, but also, and more importantly, it shows that the General Assembly had several objectives. They had not only the objective of just and equitable compensation for the Defendants, but also they had the objectives of ensuring a safe and healthy school setting for all children; the holding of government officials accountable to compel implementation of that safe and healthy school setting for all children; and full adjudication by way of a hearing on the merits for such claims.

Moreover, the facts and evidence in the underlying record, and the legislative intent, supporting the Defendants' claims before the General Assembly, were **NEVER REFUTED**, in any way, by the State. In fact, the State put forth no facts, no evidence, and no argument that, in any way, would have proven, or that did prove **"beyond a reasonable doubt"**, **or at all**, that the **"sole objective"** of the General Assembly was to provide compensation only for these Defendants.

The State did not present one iota of such evidence to the General Assembly, or to the court. The State never even bothered to show up, at any time, before the General Assembly to present any kind of evidence or argument to the legislators, and certainly did not provide any such evidence to the court. The legislative proceedings were not held in secret. The State certainly was aware that those proceedings were occurring. The State could have shown up or presented written statements as to its position, at any time, but the State failed to do so. The State did nothing.

Thus, the Appellate Court did not, and could not have, correctly determined that the Special Act is an unconstitutional public emolument, when the State failed to meet its heavy burden to prove, beyond a reasonable doubt, that the "sole objective" of the General Assembly was to grant personal gain or advantage to the Defendants. Quite simply, the legislature did not have a "sole objective". The record shows that it had multiple objectives. Indeed, for this reason, alone, the Appellate Court did not correctly determine that the Special Act was unconstitutional, when it failed to analyze, or decide, whether the State met is burden of proof, beyond a reasonable doubt. Therefore, the Appellate Court's decision must be vacated and reversed.

III. The Appellate Court failed to consider whether the unrefuted facts in the record and in the legislative history support a public policy purpose for the Special Act.

A. The the legislature had multiple valid public policy purposes in adopting the Special Act.

Right from the beginning, the Defendants presented certain facts, testimony, and evidence in their Complaint to the Claims Commissioner, and then to the General Assembly, showing that they

were advocating, not just for themselves, but also for others similarly situated in the community.

Among those facts, testimony, and evidence in the underlying record were letters from and to Attorney General Richard Blumenthal and the Defendants; letters from Attorney General Blumenthal to the State Commissioners of Education and Public Health; and written testimony from the Defendants and their counsel to the legislature's Judiciary Committee. In addition, Defendant Joanne Avoletta and the Defendants' counsel testified, in person, at public hearings before the Judiciary Committee, and answered extensive questions from the Judiciary Committee about their claims. The relevant letters, written testimony, and portions of the transcripts of the Judiciary Committee public hearing and the debate on the floor of the House and Senate also were contained in the underlying record available for review by the Claims Commissioner, the trial court, and the Appellate Court, in support of the Defendants' claims and argument.

After reviewing those exhibits, hearing unrefuted testimony, and questioning witnesses, the Judiciary Committee, as well as the full House and Senate, unanimously approved Special Act 17-4, citing in their decision that it was just and equitable and contained an important public policy purpose.

More specifically, the facts, testimony, and evidence show that from the beginning of the saga, right through to the end, the Defendants sought justice, not just for themselves, but also for other school children similarly situated whose health was affected by being compelled to remain in an unsafe and unhealthy school setting. They sought assistance from the State, which admitted it had the authority and the obligation to compel the local school district to ensure that all schoolchildren were placed in a safe and healthy school setting, and to

ensure that the unhealthy conditions were repaired. In fact, the record shows that immediately upon hearing the concerns of the Defendants about the unhealthy conditions that the school children in the community were experiencing, the State's Attorney General, sharing those concerns, directed the State Commissioners of Education and Public Health Commissioner to hold local officials accountable to correct the situation, to ensure that all school children would be educated in a safe and healthy school setting.

To quote from some of that evidence:

Email letter of Joanne Avoletta to Attorney General Richard Blumenthal, dated February 12, 2004:

> "Recently I read an article in the Danbury News Times indicating support from your office regarding the State Dept. of Public Health and the role it should participate in order **to ensure healthy indoor air quality for our children, especially while in school*****We have similar problems in our Torrington schools…Our problems deal with years of water intrusion, wet building materials, general dampness, mold, under ventilation, mice, and outdated portables that should be condemned.*****Our town officials, school officials and our local health district walked away from its responsibility**. Only after persistent efforts from a **group of parents** and a complaint filed with the office of civil rights, did the town and school officials act minimally***" Pet. App. 54.

Letter from Attorney General Richard Blumenthal to Public Health Commissioner Robert Galvin, dated February 27, 2004:

> "I am told that Torrington Middle School was constructed several years ago by O&G Industries and that the roof has been leaking since the construction was completed. I understand that **students have become ill** as a result of mold conditions caused by defects in the

roof….**I am extremely concerned for the health and safety of the students, who deserve to be educated in a safe and healthy environment**. I would ask that you investigate these concerns and notify me as to your findings***" Pet. App. 56.

Letter from Attorney General Richard Blumenthal to Joanne Avoletta, dated March 10, 2004:

"I appreciated your recent e-mail regarding your concerns with poor indoor air quality in the Torrington schools. You indicate that **many children and teachers have become sick due to mold and other unhealthy conditions existing at the schools. I share your concerns and strongly believe that children have a right to be educated in a healthy environment.** Indeed, in response to these concerns that are **shared by others in your community**, I recently wrote to the Commissioners of the Department of Public Health and Education asking them to investigate the leakproof at the Torrington Middle School - and its purported harmful health consequences***I applaud your commitment to our **shared goal of ensuring children and teachers can learn and work in a healthy environment.**" Pet. App. 57.

Letter from Attorney General Richard Blumenthal to Commissioner of Education Betty Sternberg, dated July 27, 2004.

"I was pleased to learn that the State Department of Education has begun investigating the Torrington public school district to determine whether it violated special education regulations by **failing to provide certain Torrington school students with homebound instruction after they apparently became sick due to poor environmental conditions at the Torrington Middle School.** Indeed, this most recent issue adds to the concerns that **I share with *many parents* of Torrington Middle School students, who**

indicate their children have become ill from mold exposure associated with water incursion from the Torrington Middle School's leaky roof***In light of the fact that local and regional boards of education are **agents of the State in carrying out the educational interests of the State** as set forth in the Connecticut General Statutes, *Town of Cheshire v. McKinney*, 182 Conn. 253 (1980), your statement about the limited scope of the State Department of Education's jurisdictions and expertise concerns me. Connecticut General Statutes §10-220(a) **requires local and regional boards of education to provide 'an appropriate learning environment for its students' that includes, inter alia, 'proper maintenance of facilities, and a safe school setting*****". Conn. Gen. Stat. §10-220(a)***Insofar as the local and regional boards be charged with implementing the State's educational interests, **it is clear that *the State Department of Education*, as the State repository of experience and expertise in matters relating to public primary and secondary education, *is required to ensure that local school districts are carrying out the statutory mandate to education students in a safe setting*****These specific statutory provisions **unequivocally indicate that it is the *responsibility of the State Department of Education to hold local school districts accountable* for creating appropriate indoor air quality programs, for *properly maintaining their school facilities*, and for remedying any situation that potentially compromise the safety of the setting where students are educated.**" Pet.App.58.

Letter from Attorney General Richard Blumenthal to Commissioner of Education Betty Sternberg, dated September 8, 2004:

"I write to emphasize my view - and yours as well, I believe — that **your responsibility includes holding the Torrington Board of Education *accountable* on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting.** The Torrington Board of Education must identify the causes for the indoor air quality problem at the Middle School, **take appropriate and necessary action to remedy the problem,** and continue to monitor the air quality in **all of its schools buildings**."Pet. App.59.

Unfortunately, however, despite all of his written statements admitting that it was the State's responsibility to hold local government officials accountable to provide a safe school setting for all children in the community, in the end, Attorney General Blumenthal did not compel those local government officials to act, and, instead, informed Defendant Joanne Avoletta that he would do nothing more to correct the situation.

Letter from Attorney General Richard Blumenthal to Joanne Avoletta, dated September 15, 2006:

"While I certainly sympathize with the difficulties that your son has endured in dealing with his health problems, **I sincerely regret that there is noting more that I can do to assist you**." Pet. App.60.

It was after this notification from the Attorney General, less than a year later, that the Defendants filed their Claim with the Claims Commissioner, citing these letters as exhibits to their Claim.

The Claims Commissioner, however, failed to hold any hearing on the merits of the Claim, and simply denied it. The Defendants then sought, and gained, reconsideration and reversal from the General Assembly, resulting in the Resolution allowing them to file a lawsuit against the State. The trial court then dismissed the lawsuit, on the grounds that the legislature failed to follow General Statute §4-148(b)

in allowing the purported untimely claims to be filed, and that the legislature failed to articulate any public policy purpose in allowing the claims to proceed. The Appellate Court then affirmed the trial court's decision on appeal, resulting in the Defendants filing their 2013 claim with the Claims Commissioner alleging that the legislature's failures caused the Defendants' lawsuit to be defeated. Thus, both the 2007 and the 2013 claims, and the entire underlying administrative and judicial record, pleadings, and exhibits, were at issue when the Claims Commissioner, once again, without holding any hearing on the merits, denied the Defendants' claim. Once again, the Defendants sought, and gained, review of the underlying record and decisions, along with reversal of the Claims Commissioner's decision by the legislature, resulting in the legislature's correction of its past errors, this time acting in strict compliance with General Statutes §4-148(b), articulating a public policy purpose, and allowing the purported untimely claims to be remanded, finally, for a hearing on the merits before the Claims Commissioner, a hearing which has yet to occur.

B. The legislative history of the Special Act.

During the proceedings before the legislature in seeking, and gaining, review and reversal, once again, the Defendants were steadfast in presenting their argument that they were advocating, not only for themselves, but also for other students in the community who were similarly situated. In addition, the General Assembly had before it for their consideration, in its totality, the underlying administrative and judicial record, pleadings, claims, and exhibits, that were presented, and were contained, in the underlying Claims Commissioner's file.

After the Claims Commissioner presented its file to the General Assembly, the Claims Subcommittee and the Judiciary Committee

reviewed the file, the claims, the evidence, the prior court decisions, the written and oral testimony of the Defendants and their counsel, and held a public hearing on the claims where the Defendants and counsel were questioned about the claims.

During this time, anyone interested in the claims could present facts, evidence, and testimony. Again, the deliberations by the legislature were not held in secret, the State was fully aware of them and could have attended to present any opposing evidence or argument. Curiously, however, the State did not present any facts, evidence, or opinion to the General Assembly. As noted above, the State did not attend any Judiciary Committee public hearing in person, and did not submit any written testimony to the General Assembly regarding the claims. In fact, the State remained silent throughout the legislative proceedings. If the State wished to make a factual presentation to the legislature concerning the proposed Special Act, it could have done so. It did not. Thus, the facts and testimony of the Defendants remain **unrefuted**.

Meanwhile, the legislators did hear those undisputed facts, evidence, and testimony of the Defendants, questioned the Defendants during the Judiciary Committee's public hearing, and deliberated among themselves privately, and in public, during Committee meetings and during debate on the floor of the House and Senate. During those proceedings, the Defendants, again, absolutely advocated not only on their own behalf, but also on behalf of other students in the community similarly situated, as they had done for years since they filed their original claims. It is clear from the record that the legislature also considered the claims in terms of the impact not just on the Defendants, but also on other students in the community, and

the ability of the State to hold local government officials accountable for providing all students with a safe and healthy school setting.

For example, as far back as 2010, counsel for the Defendants submitted written testimony, read in person before the Judiciary Committee at a public hearing, advocating not just for the Defendants, but also for other students in the community.

> Written Testimony of Defendants' Counsel, Deborah G. Stevenson, before legislature's Judiciary Committee public hearing on House Resolution, dated March 3, 2010, pp.1-2.
>
> "The Avolettas **were not the only ones affected by the moldy conditions and poor indoor air quality at the Torrington School District**. **Other children and teachers suffered adverse reactions as well,** including one young student who had to have one of her lungs removed, and a teacher who suffered several permanent ailments***At one point, the Attorney General stepped in. Among other things, he told the State Education Commissioner that **boards of education are 'agents of the State in carrying out the educational interest of the State'**, that Conn. Gen. Statute Section **10-220(a) 'requires' boards of education to provide an appropriate learning environment**, **proper maintenance of facilities, a safe school setting, and the implementation of indoor air quality programs that provide for ongoing maintenance of school buildings**. The Attorney General also told the Commissioner that the State Department of Education is '**required to ensure that local school districts are carrying out the statutory mandate to educate students in a safe setting' and that the statutes 'unequivocally indicate that it is the responsibility of the State Department of Education to hold local school districts**

accountable for creating appropriate indoor air quality programs, for properly maintaining their school facilities, and for remedying any situations that potentially compromise the safety of the setting where students are educated.' The Attorney General told the Commissioner of Education that the Commissioner's '**responsibility includes holding the Torrington Board of Education accountable on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting.'*****Unfortunately, the State Department of Education **failed to hold the Torrington School District accountable for remedying the situation** that potentially compromised the safety of the setting where the Avoletta children were to be educated. The parents seek relief for that failure***The complaint **involves a novel claim and an important issue of public policy about which the General Assembly should provide guidance for the benefit of many other children similarly compelled to attend moldy and unsafe public school buildings throughout this state.** The State, **by its failure to hold the Torrington School District accountable, continues to evade responsibility for its failures, its discrimination, and its violation of the fundamental rights of disabled children under the Connecticut Constitution*****to deny this **vulnerable population** an opportunity to seek relief from the Claims Commissioner, effectively leaves them without any redress for their grievances…**The public policy of this State cannot be to encourage local School Districts to consistently and repeatedly deny to disabled children their fundamental right under the Connecticut Constitution to a free appropriate**

public education in a safe school setting when their physicians indicate that the children could suffer harmful physical effects by continued attendance. A **clear message must be sent to the State that these actions must cease, that those injured must be compensated, and that public school buildings must be properly maintained to safeguard the health and well-being of all physically disabled children."** Pet. App. 62.

The legislature took no vote in 2010, however, so another public hearing was held in 2011. Again, counsel for the Defendants submitted written testimony, read in person to the Judiciary Committee in advocating for the Defendants' claims at that time, that the Defendants were advocating not just for themselves, but also for other students in the community, and that, as the Defendants had informed the Committee in 2010, Pet. App. 64, regarding the then newly released CCJEF case, again told the Committee that in keeping with that case, the State does have the responsibility to hold local government officials accountable to ensure that all students receive an appropriate education in safe and healthy school settings.

> Combined written testimony of Joanne Avoletta and Appellants' Counsel, Deborah G. Stevenson, again read into record at legislature's Judiciary Committee public hearing, March 21, 2011,
>
> "I urge you, once again, to REJECT the recommendation of the Claims Commissioner and to GRANT relief to Joanne, Peter and Matthew Avoletta, most particularly in light of the release of the Connecticut Supreme Court's decision on March 22, 2010 in the matter of ***Connecticut Coalition for Justice in Education Funding, Inc., et al, v. Governor Jodi Rell, et al,*** (SC 18032), http://www.jud.state.ct.us/external/supapp/Cases/AROcr/

CR295/295CR163.pdf***it is extremely relevant to the main issues in the Avoletta case and provides a clear legal basis for recovery in court and for obtaining reversal of the Claim Commissioners decision***In that case, the Connecticut Supreme Court held that article eighth, § 1, of the Connecticut Constitution guarantees students in our state's public schools the right to a particular "minimum quality of education, namely, suitable educational opportunities." In particular, the Court concluded that*** **'we agree with the New York Court of Appeals' explication of the "essential" components req- uisite to this constitutionally adequate education, namely: (1) "minimally adequate *physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn'*** Therefore, as my clients have continued to argue, they absolutely had a fundamental right under the Connecticut Constitution to receive a free appropriate public education, a Constitutionally adequate education, in a safe school setting with adequate physical facilities and classrooms, and the state, through the Torrington Public School District, was required to provide them with an objectively meaningful opportunity to receive the benefits of this Constitutional right." Pet. App. 66.

In 2017, the Judiciary Committee held another public hearing on the claims, resulting in Special Act #17-4. Again, the Defendants's counsel and Defendant Joanne Avoletta, read, in person, written testimony into the record, and answered questions from Committee members. Again, the Defendants advocated not just for themselves, but also for other students in the community who are similarly situated.

Transcript excerpt of counsel for the Defendants Deborah Stevenson testifying before the Judiciary Committee, February 24, 2017, p. 28:

"We're here because we **don't want other children to suffer this way as well**. We want the **state to know and the local boards to know** that when they have a disabled child, they **cannot discriminate** against that child. **They do have to provide an appropriate safe school setting for them*****" Pet. App. 68.

During that hearing, the members of the Committee also posed questions to Defendants' counsel and to Defendant Joanne Avoletta. Among them were:

"Deborah Stevenson***there were a **number of school children who were affected*****it **does affect all the disabled children** who should not be discriminated against simply because their health is affected where some other student's health is not affected***we do believe **this would send a strong message for accountability of school districts** who are reluctant to either spend the time and money in correcting and maintaining their facilities or when they discover a problem in providing the appropriate education by placing them elsewhere until the facilities are corrected." Pet. App. 68, p. 30.

"Representative Morris (140th): Thank you for your testimony, and for continuing to come back to us because **I do know** that **this is an issue — maybe *not just in that district and others where we do have kids at our moldy buildings* or whatever, and *districts do not act soon enough* — and *something needs to be done to remedy that.*** " Testimony before the Judiciary Committee, February 24, 2017. Pet. App. 68, p.44.

Clearly, the members of the Judiciary Committee were well aware that the Defendants were advocating, not just for themselves, but also for other students similarly situated, and the members of the Committee actively discussed and contemplated the underlying public

policy purposes of allowing the claims to proceed, at least to a hearing on the merits before the Claims Commissioner. Defendant Joanne Avoletta told the Committee at that same public hearing of her concerns, not just for her children, but also for other children similarly situated.

> "Joanne Avoletta: ***I'm back unfortunately asking you to adopt this bill so I could ask the claims commissioner to help serve justice and equity for compensating my family for the state of Connecticut's department of failure in providing free appropriate public education in a safe school setting or my children. **You have an important job before you,** one hopefully to adopt the bill and that would give you **an opportunity to do something right by setting an example for those school districts who fail the state children by discriminating against those children that have disabilities. I'm hoping other families won't have to go through what I've gone through in the last 10 years just to keep my children safe*****I'm asking you guys to do the right thing. **Let us go before the claims commissioner, and that would also send the message** that would hold —-allowing us to get just compensation and send **a message to the state Department of Education holding them accountable, not only the state Department of Education but the state period and its failure — holding the accountable for their failures.** I think that's it in a nutshell." Pet. App.70, pp. 103-104.

Following the hearing, at an April 7, 2017 Judiciary Committee meeting, the Committee unanimously approved the Special Act after Representative Storms explained the Act in detail, alluding to its purpose of holding State actors and agencies accountable for the full

adjudication of such cases for students in the community to receive appropriate education in a safe school setting.

> "REP. STORMS: Thank you, Mr. Chairman.
>
> Today the Claims Subcommittee presents the claims of Peter, Matthew and Joanne Avoletta of Torrington, Connecticut. **These claims arise from an alleged denial of a free appropriate public education in a safe school setting**. Due to a variety of procedural difficulties **these claims have never been properly adjudicated on the merits** despite a unanimous previous approval of the Senate and the House **allowing the claims to be prosecuted**. The **Claims Subcommittee *has reviewed this matter,*** recommends that the Avolettas be authorized to **present their respective claims to the Claims Commissioner.** We believe that **there is a *substantial public purpose* in encouraging accountable State government *through full adjudication of cases involving persons who claim to have been injured by the conduct of State actors and agencies***. We also believe that this authorization is **just and equitable** and supported by **compelling equitable circumstances of these claims** and we are asking that this be **remanded to the Claims Commissioner for hearing on the merits**." Transcript excerpt of Judiciary Committee meeting, April 7, 2017, p. 2-3. Pet. App.83.

The public policy purpose also was noted when the Claims Subcommittee Chairman, Representative Conley, introduced the Special Act for a vote on the floor of the House on May 31, 2017.

> "REP. CONLEY (40TH):
>
> Thank you, Mr. Speaker. This is a claim about a child who was ill in the school which had some mold which caused some lung damage. This claim did go up, was approved by the House and Senate, went

up to Appellate and is back here again. We are just remanding it back for a hearing on the merits. There's a public purpose, so that education -- children in the education system are in good health." Pet. App.92

Also on the floor of the House on May 31, 2017, Representative Storms again referred to the Act having a public policy purpose. "REP. STORMS (60th): Thank you, Mr. Speaker. I rise to support this bill. It does serve the ***public purpose*** and I believe it should be supported and passed by the members of the House." Pet. App. 92. The relevant portion of the Special Act states:

"The General Assembly finds that **there is a public purpose served by encouraging accountable state government through the full adjudication of cases involving persons who claim to have been injured by the conduct of state actors.** The General Assembly further finds it just and equitable that the time limitations provided for in subsection (a) of section 4-148 of the general statutes be tolled in a case such as this, involving claimants who initially filed notice of their claims against the state with the Claims Commissioner on May 2, 2007, for injuries that are alleged to have accrued on September 15, 2006, which allegations, if viewed in a light most favorable to the claimants, provide notice to the state of their claims within the statute of limitations for injuries to their person. The General Assembly deems such authorization to be just and equitable and finds that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such claims shall be presented to the Claims Commissioner not later than one year after the effective date of this section." Pet. App. 52.

Clearly, the record and legislative history, as well as the plain language of the act, show that the legislature intended and articulated More than one valid public purpose, not just of encouraging

accountable state government by compelling government officials to undertake their lawful duties, but also by ensuring those government officials provide a safe and healthy school setting for the Defendants and all children in the community, and by doing so through the full adjudication of cases, thereby recognizing that these claims of harm to the Defendants and other students, after all these years, still never received a hearing on the merits. The legislature also recognized that full adjudication of cases "involving person who claim to have been injured by the conduct of state actors" is an important public policy. The legislature knew full well what the harm by "state actors" was in this case, and it primarily was the harm caused by "state actors" failing to ensure that children received an education in a safe and healthy school setting as required by law.

And so, after reviewing the record, after hearing all of the **unrefuted** evidence and testimony, and after making its decision based on the multiple public policy purposes advocated by the Defendants and legislators alike, the General Assembly unanimously gave its full approval to the Special Act, and remanded the claims to the Claims Commissioner so that, finally, the Claims Commissioner could hold a full hearing on the merits of those claims.

Alas, however, that was not to be had. The Claims Commissioner halted the proceedings after the State filed its action in the trial court arguing that the Special Act was an unconstitutional public emolument because the **"only"** public policy purpose that exists for allowing an untimely claim to proceed is if the State, itself, affirmatively prevented the claimants from filing their claims in a timely manner. That was the State's only argument in a nutshell.

IV. The Appellate Court failed to consider, and to apply in its analysis, this Court's binding and controlling precedents.

A. The Appellate Court's analysis was fatally flawed when it wrongly relied on only two cases to find the Special Act unconstitutional.

The Appellate Court's reliance solely on *Kinney* and *Kelly* was misplaced, and those cases were distinguishable. Neither included the factual basis and evidence that was presented to the Claims Commissioner and to the General Assembly in this case showing that the Defendants were seeking relief, not just for themselves, but also for other schoolchildren in the community, and also were seeking accountability for government officials to compel them to ensure the imposition of a safe healthy school setting for all students, as well as full adjudication of their cases through a hearing on the merits.

Here, the record and the legislative history show that the legislature received documentation, questioned witnesses, and understood exactly what the Defendants were seeking - relief for themselves and also relief for all children in the community to have a safe and healthy school setting, for the State to hold local officials accountable for providing that safe and healthy school setting, and to have full adjudication of cases through a hearing on the merits. Given all of this Court's precedents, the Appellate Court should have considered whether the Special Act remedies any of those injustices, as **there is more than only one public policy reason for any court to uphold the constitutionality of a Special Act**.

For example, this Court has stated that there are "strong equitable grounds for legislative interference" when a "government official has caused a procedural default that adversely affects the substantive

rights of the party seeking legislative intervention." *Chotkowski v. State,*, 240 Conn. 246 (1997). While that "ordinarily" may true, this Court, however, did **not** specifically limit the applicability of equitable grounds "**only"** to cases where a government official caused a procedural default in the filing of an untimely claim.

Indeed, this Court has used language in its cases indicating that equitable grounds can be applied to other cases in which a special act is "based upon the **state's recognition** of "**some role"** played by a **government official** in causing, or "**contributing to"**, the default", or where a State actor was "**involved in disrupting** a **course of the action**"("the challenged special act seeks to remedy an inequity that the **legislature rationally concluded** had resulted from the plaintiffs reasonable reliance on the misleading conduct of a state official"). Id. at 262.

Here, certainly, at the very least, there are equitable grounds for finding the constitutionality of the Special Act, when the legislature **rationally concluded**, based on the record, evidence, and testimony before it, and as the the Attorney General **recognized and admitted** in that evidence, that the **State was responsible for providing a safe and healthy school setting,** that they obviously were not doing so in the Torrington School District, causing **many children in the community harm**, for which the **State was responsible to hold local government officials accountable** to ensure the children were being educated in a safe and healthy school setting. It cannot be minimized or forgotten that in the record in his letters to the State Commissioners, the State Attorney General, Richard Blumenthal, **admitted that this was the State's responsibility**, that the State should hold local officials accountable, and that children in that community, as well as other communities, were not receiving an

education in a safe and healthy school setting. The legislature concurred, as one legislator articulated on the record, **"something must be done to remedy that"**. Unfortunately, in the end, Attorney General Blumenthal failed to follow through on what he knew was the State's responsibility.

This is why *Kinney* and *Kelly* are distinguishable. There was no similar evidence or testimony on the record in those cases that State actors played **some role** in contributing to the harm. There were no similar equitable circumstances in those cases. Those cases, therefore, are inapplicable. They also are inapplicable because other cases are applicable and controlling.

There is more than enough evidence in the record, that if the Appellate Court had looked at it, and analyzed it properly, it necessarily would have found that the legislature rationally concluded that the State was responsible for providing all children with a safe and healthy school setting and for ensuring that local government officials were accountable for ensuring that happened. In other words, there is more than enough supporting evidence in the record for the legislature to have rationally concluded, as it rightfully stated in the plain language of the Special Act, that there is a public policy purpose in adopting the Special Act, in allowing the claims to have a hearing before the Claims Commissioner, and in holding government officials accountable to provide a safe and healthy school setting for all children, even if relief is also specially provided to the Defendants.

Because the Appellate Court failed to review the record, and failed to analyze, at all, whether the facts in the record supported the legislature's rational conclusion that there was a public policy purpose to the Act, the Appellate Court did not properly conclude that the

Special Act was unconstitutional and its decision must be reversed and vacated.

B. The Appellate Court failed to consider, and to apply, many of this Court's highly relevant and controlling precedents.

The list of precedents the Appellate Court failed to analyze or apply is myriad. Among them, the Appellate Court never applied:

Commissioner of Public Works v. Middletown, 53 Conn.App. 438, 450, cert. denied, 250 Conn. 923 (1999), ("Our Supreme Court has taken a ***broad view of the legislative goals that may constitute a public purpose*** . . . [A]n act **serves a public purpose** under article first, §1, **when it promote[s] the welfare of the state** . . . or when the principal reason for the appropriation is to benefit the public."

Serrano v. Aetna Ins. Co., 233 Conn. 437, 458-59 (1995), "**If, however, an enactment serves a legitimate public purpose, then it will withstand a challenge under article first, § 1**";

Beccia v. Waterbury, 192 Conn. 127, 133 (1984), "[L]egislative enactments carry with them a ***strong presumption of constitutionality***, and that a **party challenging the constitutionality** of a validly enacted statute **bears the *heavy burden of proving the statute unconstitutional beyond a reasonable doubt***."

Kerrigan v. Commissioner of Public Health, 228 Conn. 135, 300 (2008), (Borden, J., concurring), ("It is an extreme act of judicial power to declare a statute unconstitutional" and that "It **should be done with great caution** and **only when the case for invalidity is established *beyond a reasonable doubt***");

Snyder v. Newtown, 147 Conn. 374, 390 (1960), ("In case of **real doubt a law must be sustained"**);

State v. Ross, 230 Conn. 183, 236 (1994), (A court **must "indulge in *every presumption in favor of a statute's constitutionality***, in searching for an effective and constitutional construction that **reasonably accords with the *legislature's underlying intent)***";

State v. Floyd, 217 Conn. 73, 79 (1991), ("when called upon to interpret a statute, we will **search for an effective and constitutional construction** that **reasonably accords with the *legislature's underlying intent***."

Honulik v. Town of Greenwich, 293 Conn. 641(2009), (a court has a "***duty* to construe statutes, whenever possible, to *avoid constitutional infirmities***");

State v. Indrisano, 228 Conn. 795, 805 (1994), (a court **must "read the Act narrowly in order to *save its constitutionality*, rather than broadly in order to destroy it**");

Adams v. Rubinow, 157 Conn. 150, 153 (1968), ("where a statute reasonably admits of two constructions, one valid and the other invalid on the ground of unconstitutionality, **courts should adopt the construction which will *uphold the statute* even though that construction may not be the most obvious one**");

Roan v. Connecticut Industrial Building Commission, 150 Conn. 333, 345 (1963). "[W]e are ***not to assess*** [the constitutionality of an act] ***in the light of what we think of the wisdom and discernment of the lawmaking body* in the particular instance**. Rather, **we are *bound to approach the question from the standpoint of upholding the legislation as a valid enactment unless there is no reasonable ground upon which it can be sustained***."

Roan v. Connecticut Industrial Building Commission, 150 Conn. 333, 340 (1963), ("a l**egislative enactment "is *not unconstitutional by reason of the fact that the purpose is not spelled out with clarion specificity***."

Lyman v. Adorno, 133 Conn. 511, 517 (1947), "Thus, '**if there be the *least possibility*** that making the gift will be ***promotive in any degree*** of the public welfare, it becomes a question of policy and not of natural justice; and **the *determination of the legislature is conclusive***.'…"

Chotkowski v. State, 240 Conn. 246 (1997), and *Merly v. State,* 211 Conn. 199, 205 (1989), "In other words, **if we can discern *'any conceivable justification*** for [the] challenged legislation f**rom the public viewpoint'…'we are *bound to uphold it against a constitutional challenge*…'"

Most importantly,

Barnes v. New Haven, 140 Conn. 8, 15 (1953), ("[W]hat constitutes a public purpose is **primarily a question for the legislature,** and its determination ***should not be reversed* by the court *unless* it is *manifestly and palpably incorrect").***

As these cases indicate, this Court traditionally has conducted a full analysis with these precedents in mind, and looked to the record and legislative history, including the testimony presented to the legislature and evidence presented to the trial court, to assess whether a special act served a public purpose. In this case, the Appellate Court did none of that.

Here, the Appellate Court stopped short in its analysis, after finding only two cases applicable, for is conclusion that there was no public policy purpose to the Special Act because the State bore no responsibility in causing the Defendants to file an untimely claim, and

because "only" the Defendants received gain or advantage. The Appellate Court was wrong, in both its analysis, and its conclusion.

First, it should be pointed out that, ignoring this Court's binding precedents, at the outset of its analysis, the Appellate Court did not indulge in any presumption in favor of the constitutionality of the Special Act. That is patently obvious. In fact, the Court did not presume any constitutionality, whatsoever, in its analysis. It actually did the opposite of what it was supposed to do. It did not read the Act narrowly to save its constitutionality. It read the Act only broadly to find its **unconstitutionality**. The Appellate Court never even attempted to read the Act narrowly or to consider whether its constitutionality could be saved. Actually, the Appellate Court never applied, at all, in its analysis this Court's directives about presumption of constitutionality. The Appellate Court simply failed to apply any of this Court's applicable precedents, and, thus, arrived at an improper conclusion.

Ignoring binding precedents again, the Appellate Court made no mention that if there is the least possibility that the Act would be promotive in any degree of the public welfare, or if it can discern any conceivable justification for the Act, the Court is bound to uphold its constitutionality. Nor did the Appellate Court apply any facts to those principles of law.

The Appellate Court simply ignored those precedents to find that the State did not cause the untimely filing, the Defendants, alone, gained, and, therefore, there was no public policy purpose for the Act. This Court's precedents simply, and totally, were ignored.

The Appellate Court also did ***not*** undertake its review approaching the question from the standpoint of ***upholding*** the legislation as a valid enactment unless there was no reasonable ground upon which it

could be sustained. Instead, it approached the question from the standpoint of "**ordinarily" finding the courts "can discern no public purpose"** in allowing a person to bring suit if the state is not responsible for the untimely filing of a claim. In fact, there was no analysis, at all, of upholding the act as valid, and no analysis of whether there was any reasonable ground upon which it could be sustained.

There also was no recognition by the Appellate Court that what constitutes a public purpose is primarily a question for the legislature, and its determination should not be reversed unless it is manifestly and palpably incorrect.

There also was no consideration of whether there was the least possibility the act would be promotive in any degree of the public welfare, and no consideration of whether there was any conceivable justification for the act in order to discern whether the court was bound to uphold it. The Appellate Court simply flagrantly avoided applying the facts to any of those precedents. It did not mention those precedents, at all.

Indeed, the Appellate Court's analysis was deeply and fatally flawed. Its review was troublingly narrow in scope. To reiterate, the Appellate Court considered only one thing: whether the State was responsible for an untimely filing. The Appellate Court, at the behest of the State, viewed the facts through that singular lens, as if that were the only reason possible for an act of the legislature to be constitutional, for it to have a public policy purpose. That view is incorrect. There are **many valid public policy purposes** for an act of the legislature. This Court has **not limited it to just one.** There is more than one way that a public policy purpose can be articulated appropriately. Not all special acts, to be constitutional, have to have a

declaration that the State bore responsibility for a procedural default. That is not the only way that a special act may be constitutionally sound. This Court's prior decisions indicate that a correct analysis of an act's constitutionality does not stop after looking at a single relevant legal principle of whether the State caused a procedural error resulting in the untimely filing of a claim. A correct analysis includes further review of all relevant law, and application of the facts to the law, to determine if there was any conceivable public policy purpose for upholding the act as constitutional. The Appellate Court clearly failed in conducting any such analysis in this case. Instead, the Appellate Court looked no farther than that just one public policy purpose. For that reason, alone, the Appellate Court did not correctly determine that the Special Act is unconstitutional.

Even as to its consideration of the "one" public policy question, the Appellate Court failed in its analysis. It did not consider whether the State met is burden of proof, beyond a reasonable doubt, that the "sole objective" of the General Assembly was to grant a special gain or advantage to the Defendants. Indeed, it is clear from the Appellate Court's meager analysis, quite simply, that the Appellate Court made absolutely no mention of the State's burden of proof, or whether the State met that burden, at all, let alone beyond a reasonable doubt. Again, if the Appellate Court actually had applied this Court's binding precedents, it would have been apparent that not only did the State not prove, beyond a reasonable doubt or otherwise, that the General Assembly's "sole objective" was to provide a gain or advantage to the Defendants, but also that the State could not have proved that, at all. The facts and evidence in the underlying record and legislative history bear that out. Again, for this reason, alone, the Appellate court did not correctly determine that the Special Act is unconstitutional.

Furthermore, the Appellate Court also did not apply this Court's binding precedents regarding the discernment of the General Assembly's legislative intent and public policy purpose in enacting the Special Act.

As this Court has stated, it is not the court's function to question the wisdom of the legislature's action. It is, however, the court's duty to review the record and the legislative history of the Act in order to determine whether the legislative intent was promotive of the public welfare and not just for the benefit of the defendants alone. It also is the court's duty to construe the Act narrowly, and to search for an effective and constitutional construction that **reasonably accords with the legislature's underlying intent.**

The Appellate Court, like the trial court, could not find a public purpose in the Special Act, because it failed to actually look for one. The Appellate Court did not look at any other conceivable public policy purposes, at all, yet, the facts and evidence were right there for all to see. The Appellate Court made no mention of the facts in evidence in the underlying record as to the Defendants' claims for themselves and for other children in the community, and made no mention of the legislature's intent, at all.

Instead of reviewing the record and legislative intent to discover a correct interpretation of the act, the Appellate Court simply viewed the act narrowly, questioning the wisdom of the legislature's action, which was not within its authority to do, and relied only on that one thing: whether or not the State caused the Defendants to untimely file their claim. Finding that the State did not cause that harm, the Appellate Court concluded there was no public purpose in adopting the Special Act. Essentially, the Appellate Court wrongfully took it upon itself to

override the legislature's intention and its clearly articulated statutory authority.

Again, if the Appellate Court had undertaken a correct review, it would have seen that the legislature found there were compelling just and equitable circumstances, and more than one important public policy, for the adoption of the Special Act, and that the undisputed facts and reasonable inferences to be drawn therefrom support the express legislative findings and conclusions underlying the Act. In fact, the legislature rationally concluded there were important public policy purposes for it, and sufficiently articulated the public policy purposes.

In this case, the passage of the Special Act was based upon the General Assembly's recognition of some role played by government officials in causing the injustice of failing to provide a safe and healthy school setting for the Defendants, for other children in the community with similar disabilities or whose health may be negatively affected without corrective action by local government officials, and the injustice of such claims not having had a hearing on the merits. the underlying facts, evidence, testimony in the record, and legislative history of the Act ,support this conclusion. The record and history show that the General Assembly clearly recognized at least "some role" played by one or more government officials in causing, or contributing to, the default, a default in this case which caused the failure of the claims to be heard on their merits. The record reflects that the legislature was aware of the failure of the State Attorney General and the State Commissioners of Education and Public Health to follow through in holding local officials accountable for providing a safe and healthy school setting, and aware that the legislature, itself, failed to include a public policy purpose in its previous effort to allow the claims to proceed to a hearing on the merits. After having had all of this

evidence of public policy purposes presented to them, the General Assembly apparently agreed, unanimously, that it was an important public policy that all children should be educated in a safe and healthy school setting, that government officials need to be held accountable to ensure that a safe and healthy school setting is provided to them, and that claims need to be fully adjudicated on the merits.

Furthermore, the Act does not even grant monetary relief, or any other form of relief to the Defendants that is not provided to all other members of the public. The Defendants gained no special advantage. The Defendants gained only one thing: the right for their claims to have a hearing on the merits before the Claims Commissioner in an administrative proceeding. In other words, they gained the right to have their claims, finally, fully adjudicated. It cannot be said, then, that the "sole objective" of the General Assembly in adopting the Act is to provide the Defendants with a gain or advantage that applies to no other member of the public. The relief granted in the Act is a manifestation of the intent of the legislature to demonstrate that the public policy purposes of the act is "just and equitable", to see that in "such cases" as these the claims are "fully adjudicated", and that government officials are "held accountable". Importantly, the legislature left it up to the Claims Commissioner to determine whether the claims have any merit.

As this Court has said, the legislature's articulation of a valid public policy purpose for an act does not have to have been articulated with clarion specificity. It does not have to be "crystal clear". Here, however, the valid public purpose is "crystal clear" from the facts in the record and the legislative history. This Court's existing precedents indicate, without doubt, that it is not the court's function to question the wisdom of the legislature's action. It is the court's function to

examine the facts and the evidence to see if the court "can discern any conceivable justification for [the] challenged legislation from the public viewpoint". If it can, then the court is **bound to uphold** the act against a constitutional challenge. Such is the case here. Clearly, as shown in the record, evidence, and legislative history, there is more than conceivable justification for this Special Act from the public viewpoint. Therefore the Appellate Court was bound to uphold it against the constitutional challenge. Unfortunately, the Appellate Court did not conduct sufficient inquiry, and did not follow any of these applicable precedents, and consequently, the Appellate Court did not correctly determine that the Special Act was unconstitutional.

In essence, the Appellate Court failed in all three of its tasks in determining the constitutionality of the Special Act, by failing
(1) to consider whether State met its burden of proof, beyond a reasonable doubt;
(2) to consider whether the facts in the record and legislative history support a public policy purpose; and
(3) to consider, and to apply in its analysis, this Court's binding and controlling precedents.

Regardless of the conclusions the Appellate Court would have made after conducting a proper analysis, the point is that the Appellate Court did not correctly conduct that analysis, and did not correctly apply this Court's precedents. This is wrong, and lower courts should not be allowed to disregard their duty. The lower courts cannot simply ignore precedents. They are part and parcel of an effective and appropriate analysis. At the very least, a strong message must be sent to the lower courts that this Court's precedents must be followed. Otherwise, this Court's hard work, application of the facts to the relevant law, and correct analysis in those cases, would be for naught.

This Court's precedents also must be upheld so that the public can have faith in the integrity of the judicial system, and have them accurately applied in each and every case.

In short, to answer the question before this Court, the Appellate Court did not correctly determine that the Special Act was unconstitutional.

V. Conclusion.

Wherefore, because the State did not meet its burden of proving that the "sole objective" of the General Assembly was to provide gain or advantage to the Defendants; because there is more than just one public policy policy purpose that can be found to be valid; because the Appellate Court failed to review the underlying record and legislative history of the Special Act, failed to follow this Court's precedents, failed to apply or indulge in every presumption of the Act's constitutionality, failed to search for an effective and constitutional construction that reasonably accords with the legislature's underling intent, failed to construe the Act to avoid constitutional infirmities, failed to approach the question from the standpoint of upholding the Act as valid unless there was no reasonable ground upon which it could be sustained; failed to consider if there was the least possibility the Act would be promotive in any degree of the public welfare; and because the record and legislative intent support the validity of the Act; it cannot be said that the legislature's decision in finding a public policy purpose in the Act is manifestly and palpably incorrect.

Therefore, for all of the above reasons, the Appellate Court did not correctly determine that the Special Act is unconstitutional, its decision must be reversed and vacated, and the claims must be remanded to the Claims Commissioner for a hearing on the merits.

VI. Request for Relief.

The Defendants respectfully request this Court to issue an Order:

1. Reversing and vacating the Appellate Court's decision affirming the trial court's granting of Summary Judgment to the State;
2. Granting Summary Judgment to the Defendants;
3. Declaring Special Act #17-4 to be constitutional; and
4. Remanding the Defendants' claims to the Claims Commissioner for a hearing on the merits.

By: */s/ Deborah G. Stevenson*
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Certification of Electronic Filing of Brief

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure §§62-7, 66-3, 67-2, 84-9, 84-11, and 84-12, that a copy of the brief and party appendix was sent electronically to: each counsel of record exempt from electronic filing pursuant to §60-8, to whom a paper copy of the brief and party appendix was to be sent, and was sent electronically to: Michael K. Skold, Assistant Attorney General, Juris No. 434128, 55 Elm Street, P.O. Box 120, Hartford, CT 06141, Tel. (860) 808-5020, Fax (860) 808-5347, Email: michael.skold@ct.gov; and to the defendants Joanne Avoletta, Matthew Avoletta, and Peter Avoletta at 13 School Street, Torrington, CT, Tel. (860) 618-0598, email: mimijta@gmail.com.

It is certified that the brief contains 11,421 words.

It is also certified that the brief and party appendix filed with the appellate clerk are true copies of the brief and party appendix filed electronically and that no deviations from the rules were requested.

It is also certified that this document has been redacted, or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law. It is also certified that this document complies with all applicable rules of appellate procedure.

/s/ Deborah G. Stevenson
Attorney Deborah G. Stevenson

PARTY APPENDIX

Party Appendix Table of Contents

Index of Names of Witnesses Whose Testimony is Cited Within

1. Defendant Joanne Avoletta
2. Defendants' Counsel Deborah G. Stevenson
3. State Representative Morris
4. State Representative Storms
5. State Representative Conley

Senate Bill No. 817

Special Act No. 17-4

AN ACT CONCERNING THE CLAIMS AGAINST THE STATE OF JOANNE AVOLETTA, PETER AVOLETTA AND MATTHEW AVOLETTA.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (*Effective from passage*) (a) Notwithstanding the failure to file a proper notice of a claim against the state with the clerk of the Office of the Claims Commissioner, within the time limitations specified by subsection (a) of section 4-148 of the general statutes, Joanne Avoletta, Peter Avoletta and Matthew Avoletta are authorized pursuant to the provisions of subsection (b) of section 4-148 of the general statutes to present their respective claims against the state to the Claims Commissioner. The General Assembly finds that there is a public purpose served by encouraging accountable state government through the full adjudication of cases involving persons who claim to have been injured by the conduct of state actors. The General Assembly further finds it just and equitable that the time limitations provided for in subsection (a) of section 4-148 of the general statutes be tolled in a case such as this, involving claimants who initially filed notice of their claims against the state with the Claims Commissioner on May 2, 2007, for injuries that are alleged to have accrued on September 15, 2006, which allegations, if viewed in a light most favorable to the claimants, provide notice to the state of their claims

within the statute of limitations for injuries to their person. The General Assembly deems such authorization to be just and equitable and finds that such authorization is supported by compelling equitable circumstances and would serve a public purpose. Such claims shall be presented to the Claims Commissioner not later than one year after the effective date of this section.

(b) The state shall be barred from setting up the failure to comply with the provisions of sections 4-147 and 4-148 of the general statutes, from denying that notice of the claims was properly and timely given pursuant to sections 4-147 and 4-148 of the general statutes and from setting up the fact that the claims had previously been considered by the Claims Commissioner, by the General Assembly or in a judicial proceeding as defenses to such claims.

Approved June 13, 2017

joanne avoletta

From: "joanne avoletta" <petitfleur@optonline.net>
To: <attorney.general@po.state.ct.us>; <anthony.jannotta@po.state.ct.us>
Sent: Thursday, February 12, 2004 9:52 AM
Subject: Torrington schools/TAHD

Dear Attorney General Blumenthal,

Recently I read an article in the Danbury News-Times indicating support from your office regarding the State Dept. of Public Health and the role it should participate in order to ensure healthy indoor air quality for our children especially while in school. This piece pertained to Brookfield schools and asbestos.

A passive approach must be contagious among DPH's officials. We have similar problems in our Torrington schools, with the exception of asbestos issues, at least that which I am unaware of. Our problems deal with years of water intrusion, wet building materials, general dampness, mold, under ventilation, mice, and outdated portables that should be condemned. Our situation varies from that in Brookfield in another capacity as well. Our town offiicals, school officials and our local health district walked away from its responsibility. Only after persistent efforts from a group of parents and a complaint filed with the office of civil rights, did the town and school officials act minimally.

If you have extra time, I would suggest you visit our schools nurses office and ask questions. I doubt however you would receive straight answers out of fear of retaliation in loosing their jobs. You should observe the quantity of children on Advair, Flovent, and Albuterol dispersed like pez candy. The medical field has become a lucrative business for our area physicians, especially pediatricians. With the rising health insurance crisis, I'm surprised no one is paying attention to this epidemic of deteriorating school buildings. One caring professional and specialist, outside the local area, and involved in the large volume of sick students and teachers, has referred to these officials as behaving in a criminal like manner, simply by their silence.

You could select three schools in Torrington that my children have attended and you will find problems. Start with Torringford Elementary, in which the portables should have been demolished years ago. TAHD has a copy of a consultation report from OSHA and has failed to perform their recommendations. According to my conversation with an official from OSHA, he reported how unusual a district would order this friendly visit then fail to follow the valuable advice. My last conversation with the Director of TAHD, I was told not to worry because we are approved for a new school soon which actually will not be complete until 2006 at the earliest date. In the interim, it obviously is ok to suffocate the children and teachers while waiting. A few mice(rodents) running here and there is not enough to alarm the health officials to take followup action. To give a small example about the air quality at this school, my son needed 4 daily meds while attending this school. It consisted of Advair, Zyrtec, Rhinocort and Singulair. If this was not enough to control the asthma and sinusitis especially during the winter months when the building was closed up, we kept the pharmacy in business by filling numerous prescriptions for antibiotics, steroids and xoponex for the nebulizer breathing machine. Since June 2003, my son is out of this school and only takes Rhinocort. No more infections or emergency room visits. The radical improvement is only as a result of leaving the area schools. The next step would have been Torrington Middle school. Based on the enviromental reports and my son's medical issues which started from the onset of attending elementary school, two physicians stated attending this building would be detrimental to his health. My son is not alone. Numerous children and teachers continue to suffer. The middle schools situation is different from Torringford elementary pending renovations and an expansion at the present time. Torringford is an old building however the middle school is only 9yrs old and has mold issues from a leaky roof. How ironic the same construction company for TMS, O & G Industries, wins the renovation job for the new elementary school, Torringford.

Since this letter is lengthy, I will not elaborate on the Torrington High School condition. Basically, monies were allocated for renovations 5-6 yrs ago; however, our responsible decision makers forgot to factor in much needed roof repairs at that time. Therefore they decided to delay the roof repairs and only renovate the cosmetics of the building. Again, I believe due to the effort of parents, roof repairs finally took place this past year for the High School. The last I heard, this roof still leaks and the air handlers were not working.

.'s bad enough not to have enough money to perform necessary repairs for our schools, but worse to waste good

money.

Yes, I agree, the health department needs to commit itself to pursue rigorous enforcement of state laws however who will enforce them? I am still waiting to hear a reply from the TAHD director regarding my concerns.

Thank you for your growing interest in this matter.

Sincerely,

Joanne Avoletta
13 School Street
Torrington, CT 06790

2/15/2004

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Hartford

February 27, 2004

Post-it® Fax Note	7671	Date 3/8/04	# of pages ▶
To Jim Rokos		From Marian Haytian	
Co./Dept. TAHD		Co. DPH/BEOH	
Phone #		Phone # 860-509-7744	
Fax # 860-496-8243		Fax #	

The Honorable J. Robert Galvin, Commissioner
Department of Public Health
410 Capitol Avenue
P.O. Box 340308
Hartford, CT 06134-0308

Dear Commissioner Galvin:

I recently received a number of e-mails from concerned citizens in Torrington regarding the leaky roof at the Torrington Middle School.

I am told that Torrington Middle School was constructed several years ago by O&G Industries and that the roof has been leaking since the construction was completed. I understand that students have become ill as a result of mold conditions caused by defects in the roof. Equally troubling, the problem persists despite hundreds of thousands of taxpayer dollars spent on the initial construction as well as repairs to roof, courtyard, and window leaks.

I am extremely concerned for the health and safety of the students, who deserve to be educated in a safe and healthy environment. I would ask that you investigate these concerns and notify me as to your findings. I have also written to Commissioner Betty J. Sternberg of the State Department of Education asking her to review these concerns and to determine whether construction was completed in compliance with all state requirements.

Please do not hesitate to contact me should you require additional information of if my office can be of any assistance.

Sincerely,

RICHARD BLUMENTHAL

B/AJ/pas

MAR 2 2004

RD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

March 10, 2004

Joanne Avoletta
13 School Street
Torrington, CT 06790

Dear Ms. Avoletta:

I appreciated your recent e-mail regarding your concerns with poor indoor air quality in the Torrington schools. You indicate that many children and teachers have become sick due to mold and other unhealthy conditions existing at the schools.

I share your concerns and strongly believe that children have a right to be educated in a healthy environment. Indeed, in response to these concerns that are shared by others in your community, I recently wrote to the Commissioners of the Department of Public Health and Education asking them to investigate the leaky roof at the Torrington Middle School -- and its purported harmful health consequences. I am also told it has cost taxpayers hundreds of thousands of dollars in attempted repairs.

I applaud your commitment to our shared goal of ensuring children and teachers can learn and work in a healthy environment. Please do not hesitate to contact me should you require additional information or assistance.

Very truly yours,

Richard Blumenthal

RB/AJ/sm

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

1-860-489-4615
Joyce Peck
Republican-American

File
Correction
Town File

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Hartford

July 27, 2004

860 713 6543
State Dept Ed

Dr. Betty J. Sternberg
Commissioner of Education
State Board of Education
Box 2219
Hartford, CT 06145

Dear Commissioner Sternberg:

I am writing to inquire about the status of the investigation that I requested you and Commissioner J. Robert Galvin of the State Department of Public Health to conduct to determine whether the original construction and subsequent repair of the defective roof at the Torrington Middle School was completed in compliance with the requirements of state law.

I was pleased to learn that the State Department of Education has begun investigating the Torrington public school district to determine whether it violated special education regulations by failing to provide certain Torrington school students with homebound instruction after they apparently became sick due poor environmental conditions at the Torrington Middle School. Indeed, this most recent issue adds to the concerns that I share with many parents of Torrington Middle School students, who indicate their children have become ill from mold exposure associated with water incursion from the Torrington Middle School's leaky roof.

Although you acknowledged receipt of my request to initiate an investigation, you stated that such an investigation "would be beyond the scope and ability of [the State Department of Education] staff." In light of the fact that local and regional boards of education are agents of the State in carrying out the educational interests of the State as set forth in the Connecticut General Statutes, *Town of Cheshire v. McKenney*, 182 Conn. 253 (1980), your statement about the limited scope of the State Department of Education's jurisdiction and expertise concerns me.

Connecticut General Statutes § 10-220 (a) requires local and regional boards of education to provide "an appropriate learning environment for its students" that includes, *inter alia*, "proper maintenance of facilities, and a safe school setting..." Conn. Gen. Stat. § 10-220 (a). Hence, in passing An Act Concerning Indoor Air Quality in Schools, Public Act No. 03-220, that became effective as of July 1, 2003 ("Indoor Air Quality Act"), our State legislature amended Conn. Gen. Stat. § 10-220 (a) to explicitly require local and regional boards of education to adopt and implement

STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION

indoor air quality programs providing for ongoing maintenance and facility reviews of its school buildings. Conn. Gen. Stat. § 10-220 (a).

Insofar as the local and regional boards be charged with implementing the State's educational interests, it is clear that the State Department of Education, as the state repository of experience and expertise in matters relating to public primary and secondary education, is required to ensure that local school districts are carrying out the statutory mandate to educate students in a safe setting. Indeed, the Indoor Air Quality Act explicitly requires local and regional school boards to *"report to the Commissioner of Education on the condition of its facilities and action taken to implement its long-term school building program and indoor air quality program, which report the Commissioner of Education shall use to prepare an annual report that said commissioner shall submit in accordance with section 11-4a to the joint standing committee of the General Assembly."* (Emphasis added) Conn. Gen. Stat. § 10-220 (a). These specific statutory provisions unequivocally indicate that is the responsibility of the State Department of Education to hold local school districts accountable for creating appropriate indoor air quality programs, for properly maintaining their school facilities, and for remedying any situations that potentially compromise the safety of the setting where students are educated.

Since I continue to be concerned that Torrington students be educated in a safe learning environment, I am very interested in learning of the status of your review of this matter. Although it certainly is important for members of your staff to proceed with an inquiry to determine whether the Torrington school district has complied with special education laws regarding homebound instruction, I feel that it is equally and absolutely critical for the State Department of Education to investigate the sources and reasons for the moldy conditions that apparently have caused Torrington Middle School students to become ill.

I look forward to learning of the results of your investigation. Now that school is out of session for the summer, I am hopeful that any problems with indoor air quality at the Torrington Middle School can be immediately addressed to ensure a healthy and safe learning environment for the students when they return to their studies this fall. Please do not hesitate to contact me if my office can be helpful in any way.

Very truly yours,

RICHARD BLUMENTHAL

RB/AJ/kat

STATE OF CONNECTICUT

DEPARTMENT OF EDUCATION

State of Connecticut

RICHARD BLUMENTHAL
ATTORNEY GENERAL

Hartford

September 8, 2004

Dr. Betty J. Sternberg
Commissioner of Education
State Board of Education
Box 2219
Hartford, CT 06145

Dear Commissioner Sternberg:

Thank you for updating me about the status of your review of the issues related to moldy conditions and indoor air quality problems at the Torrington Middle School.

I am pleased that you have directed your staff at the State Department of Education ("SDE") to enlist the assistance of the Connecticut Department of Public Health ("DPH") to review this situation. According to your letter, SDE and DPH staff visited Torrington to meet with town and school officials and discuss and evaluate the actions taken by the school district to remediate the indoor air quality problems caused by defects in the school's roof. I reviewed the *August 2004 Torrington Middle School Facilities Summary Report* compiled by David Bascetta, Director of Facilities for the Torrington School District, which you enclosed. I am encouraged by the documented expert opinion contained in this *Summary Report* indicating that the indoor air quality at the Middle School currently does not pose a health risk to Torrington students and school personnel.

I welcome and appreciate your action to ensure that the Torrington Board of Education adopts and implements an indoor air quality program, and provides for maintenance and review of its school facilities. Within available resources, the Department will provide valuable technical assistance to the Torrington school district in meeting the requirements to provide a safe learning environment.

I write to emphasize my view -- and yours as well, I believe -- that your responsibility includes holding the Torrington Board of Education *accountable* on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting. The Torrington Board of Education must identify the causes for the indoor air quality problem at the Middle School, take appropriate and necessary action to remedy the problem, and continue to monitor the air quality in all of its schools buildings.

Thank you again for your prompt response and continued interest and review. I am pleased that you have directed your department to take appropriate steps to ensure that students are educated in a safe and healthy environment.

If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

RICHARD BLUMENTHAL

RB/KT/pas

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

September 15, 2006

Mark, please check w/ Tarri to see if the status of this has changed and coordinate a response to the AG. Thanks, Kevin

George A. Coleman
Interim Commissioner of Education
State of Connecticut
Department of Education
Post Office Box 2219
Hartford, CT 06145

Dear Commissioner Coleman:

I am writing to you in connection with the indoor air quality issues in the Torrington School District. I previously wrote to both Commissioner Sternberg and Department of Public Health Commissioner Dr. J. Robert Galvin asking them to evaluate the actions taken by the Torrington School District to remediate the indoor air quality problems in the Torrington Middle School.

My office has been contacted on numerous occasions by Joanne Avoletta on behalf of her son, Peter, who has health problems that are apparently related to the indoor air quality. Ms. Avoletta has continuing concerns that the Torrington School District has not provided an appropriate educational accommodation for her son and other students at Torrington Middle School and Torrington High School who have experienced health problems believed to be connected to the unsatisfactory indoor air quality in these schools.

I have enclosed a copy of a report issued by Attorney Theresa C. DeFrancis, Bureau Consultant for the State Department of Education, after she concluded her investigation as to whether the Torrington School District had provided a suitable educational program for students unable to attend the Torrington Middle School because of the compromised indoor air quality in the school buildings. Attorney DeFrancis concluded in her report that equity demands that the school district take a proactive stance on making school accommodations available for students who cannot attend the Torrington Middle School due to indoor air quality concerns.

RECEIVED
SEP 25 2006
OFFICE OF LEGAL & GOVT'L AFFAIRS
CT STATE DEPT OF EDUCATION

RECEIVED
SEP 22 2006
OFFICE OF THE COMMISSIONER
CT STATE DEPT OF EDUCATION

I would appreciate it if you would review Ms. Avoletta's concerns that the Torrington School District has failed to implement the required actions and recommendations set forth Attorney DeFrancis's report. Specifically, I would request that the State Department of Education monitor the actions of the Torrington School District and ensure that the District has taken the appropriate required and recommended corrective action with respect to providing a suitable environment for students who have health problems that may be exacerbated by unsatisfactory indoor environmental conditions in the school buildings.

Thank you for your consideration in this matter. Please do not hesitate to contact me if I can be of help in any way

Very truly yours,

RICHARD BLUMENTHAL

RB:KAT

Enclosure
c: Joanne Avoletta

RICHARD BLUMENTHAL
ATTORNEY GENERAL

55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

4

Office of The Attorney General
State of Connecticut

September 15, 2006

Joanne Avoletta
13 School Street
Torrington, CT 06790

Dear Ms. Avoletta:

Thank you for your most recent letter regarding your frustration in obtaining a satisfactory educational accommodation for your son, Peter, who has health problems you indicate are related to the indoor air quality in the Torrington School District buildings.

I want to thank you again for notifying me of your concerns with the indoor air quality at the Torrington Middle School. As you know, I previously wrote directly to both the Commissioners of the State Department of Public Health and the State Department of Education to investigate our shared concerns.

In April 2004, Dr. Betty J. Sternberg, then Commissioner of Education, and Dr. J. Robert Galvin, Commissioner of the Department of Public Health, both reported that staff from their respective state agencies had met with Torrington municipal officials, and that they had evaluated the actions taken by the Torrington School District to remediate the indoor air quality problems in the Torrington Middle School. In August 2004, Commissioner Sternberg forwarded the results of a study by David Bascetta, Director of Facilities for the Torrington District, that the air quality at the Torrington Middle School no longer posed a health risk to Torrington Middle School students and school personnel. Commissioner Sternberg also assured me at that time that the State Department of Education would mandate that the Torrington Board of Education adopt and implement a program providing for ongoing maintenance and facility review necessary for the maintenance and improvement of the indoor air quality of its facilities, as required by Connecticut law. Still, I appreciate your continued concerns and have written directly to the Commissioner of Education for an additional review.

I know that you also provided documentary materials to our Office relating to your son's continued health issues and your dissatisfaction with a decision by the Torrington Board of Education, apparently denying an appropriate accommodation for your son under Section 504 of the Rehabilitation Act of 1973. My office has no legal or supervisory authority over decisions made by a local school board regarding accommodations made pursuant to the Act. If you

(5)

Thank you + the
I did + the
+ STCDE, too.

disagree with the Board's decision, you may wish to contact a private attorney to determine your legal remedies.

Again, thank you for your letters. While I certainly sympathize with the difficulties that your son has endured in dealing with his health problems, I sincerely regret that there is nothing more that I can do to assist you. Please do not hesitate to contact me again.

Very truly yours,

RICHARD BLUMENTHAL

RB:KAT

TESTIMONY OF ATTORNEY DEBORAH G. STEVENSON BEFORE THE JUDICIARY COMMITTEE 3/3/10

I represent the Avoletta family. I urge you to **vote "No" to H.J. NO. 6,** a resolution of the Claims Commissioner to dismiss the claims of Joanne, Peter and Matthew Avoletta, and instead, order the relief requested.

Peter and Matthew Avoletta have physical disabilities caused and exacerbated by exposure to bacteria, mold, and generally unsafe conditions in the Torrington Public School District caused by continued water intrusion. Peter suffered irreversible lung damage. Matthew suffered asthma, among other things. Their pediatrician and their allergist both recommended that the children not attend the Torrington School District because continued exposure to the unsafe conditions there would have caused the children further illness.

The Avolettas informed the school district of the doctors' recommendations and asked for help in resolving the issue, including placement of the children at another safe public school or private school. The Torrington School District, however, refused to acknowledge the doctors' recommendations that continued placement at the Torrington schools was medically contraindicated. Instead, the District threatened the parents with truancy if the children failed to attend. The parents had no choice but to place the children in a safe school setting in a private school in Waterbury.

The parents continued their requests to the Torrington School District, and to the State Department of Education for relief, to no avail. Each year since that time, the parents have had to make additional unilateral placements for the children in private school in order to keep them safe and healthy.

The Avolettas were not the only ones affected by the moldy conditions and poor indoor air quality at the Torrington School District. Other children and teachers suffered adverse reactions as well, including one young student who had to have one of her lungs removed, and a teacher who suffered several permanent ailments.

At one point, the Attorney General stepped in. Among other things, he told the State Education Commissioner that **boards of education are "agents of the State in carrying out the educational interest of the State"**, that Conn. Gen. Statute Section **10-220(a) "requires" boards of education to provide an appropriate learning environment, proper maintenance of facilities, a safe school setting, and the implementation of indoor air quality programs that provide for ongoing maintenance of school buildings**. The Attorney General also told the Commissioner that the State Department of Education is "**required to ensure that local school districts are carrying out the statutory mandate to educate students in a safe setting" and that the statutes "unequivocally indicate that it is the responsibility of the State Department of Education to hold local school districts accountable for creating appropriate indoor air quality programs, for properly maintaining their school facilities, and for remedying any situations that potentially compromise the safety of the setting where students are educated**." The Attorney General told the Commissioner of Education that the Commissioner's **"responsibility includes holding the Torrington Board of Education accountable on an ongoing basis for fulfilling the statutory mandate to provide a safe school setting."**

Unfortunately, the State Department of Education failed to hold the Torrington School District accountable for remedying the situation that potentially compromised the safety of the setting where the Avoletta children were to be educated. The parents seek relief for that failure.

In addition, the State violated the Avoletta's right under the Connecticut Constitution, article first, sections 8 and 20, and article eighth, section 1. Under those provisions the State has an affirmative obligation to provide Peter and Matthew Avoletta with a free appropriate public education in a safe school setting without discrimination due to their physical disabilities.

The Avolettas seek just and equitable compensation for all the wrongs committed by the state against their children, including those that continue at this time.

The Avolettas urge you to reject the Claims Commissioner's improper dismissal of their complaint as untimely filed for a number of reasons. The Claims Commissioner failed to take into consideration the fact that the Avoletta's were entitled under federal and state statutes to make a new formal request for a free appropriate public education in a safe school setting without discrimination due to their disability each year, and did so. Each time the State failed to hold the Torrington School District accountable for remedying the situation that potentially compromised their safety, the Avolettas should be able to apply for compensation. At the very least, when they applied for compensation on May 2, 2007, they should have been able to claim relief for wrongs occurring from May 2, 2006 to the present time. Their claim should not have been summarily dismissed.

In addition, the Claims Commissioner should not have dismissed the claim when the complaint involves a violation of the Connecticut Constitution for which the time limitation does not, and/or should not, apply. **The complaint involves a novel claim and an important issue of public policy about which the General Assembly should provide guidance for the benefit of many other children similarly compelled to attend moldy and unsafe public school buildings throughout this state. The State, by its failure to hold the Torrington School District accountable, continues to evade responsibility for its failures, its discrimination, and its violation of the fundamental rights of disabled children under the Connecticut Constitution.**

Neither the respondent, nor the Claims Commissioner, can point to any legal authority that would buttress any argument that children who are discriminated against, year after year, by the State, in violation of their fundamental State Constitutional rights, are precluded from seeking compensation by way of a complaint filed with the Claims Commissioner due to any time limitation.

Even assuming arguendo that there exists such legal authority, the General Assembly should review the complaint to establish public policy concerning what time limitations should apply when continuing violations occur. This is especially true for this vulnerable population who are compelled by statute to attend public school or who are faced with a Hobson's choice of the threat of truancy when they abide by the recommendations of board certified doctors not to attend school because to do so would cause them greater physical harm. Faced with this decision, to deny this vulnerable population an opportunity to seek relief from the Claims Commissioner, effectively leaves them without any redress for their grievances.

In the alternative, the Avolettas seek a decision vacating the decision of the Claims Commissioner and granting the relief requested due to compelling equitable circumstances that would serve an important public purpose. The public policy of this State cannot be to encourage local School Districts to consistently and repeatedly deny to disabled children their fundamental right under the Connecticut Constitution to a free appropriate public education in a safe school setting when their physicians indicate that the children could suffer harmful physical effects by continued attendance. A clear message must be sent to the State that these actions must cease, that those injured must be compensated, and that public school buildings must be properly maintained to safeguard the health and well-being of all physically disabled children. Under these circumstances, it is incumbent upon the General Assembly to make an express finding that these compelling circumstances necessitate the granting of the relief requested.

Attorney Deborah G. Stevenson
Education, Appellate, and Constitutional Law
226 E. Flag Swamp Road
Southbury, CT 06488

DEBORAH G. STEVENSON

ATTORNEY-AT-LAW
226 East Flag Swamp Road
Southbury, CT 06488
Tel: (860) 354-3590
Fax: (860) 354-9360

Education Law ***Appellate Law***

3/22/10

State Senator Andrew McDonald, Co-Chair
State Representative Michael Lawlor, Co-Chair
Members of the Committee
Judiciary Committee of the General Assembly
Legislative Office Building
Hartford, CT 06106

Re: H.J. No. 6, Resolution of the Claims Commissioner to Dismiss the Claims of Joanne, Peter and Matthew Avoletta,

Dear Senator McDonald, Representative Lawlor, and Members of the Committee:

I urge you, once again, to **REJECT** the recommendation of the Claims Commissioner and to **GRANT** relief to Joanne, Peter and Matthew Avoletta, most particularly in light of the release of the **Connecticut Supreme Court's decision today** in the matter of **Connecticut Coalition for Justice in Education Funding, Inc., et al, v. Governor Jodi Rell, et al.** (SC 18032), http://www.jud.state.ct.us/external/supapp/Cases/AROcr/CR295/295CR163.pdf. While the case is not directly on point with all of the issues in the Avoletta matter, it is extremely relevant to the main issues in the Avoletta case.

In that case, the Connecticut Supreme Court held that article eighth, § 1, of the Connecticut Constitution guarantees students in our state's public schools the right to a particular "**minimum quality of education, namely, suitable educational opportunities.**" In particular, the Court concluded that

> "article eighth, § 1, of the Connecticut constitution guarantees Connecticut's public school students educational stan-dards and resources suitable to participate in demo-cratic institutions, and to prepare them to attain productive employment and otherwise to contribute to the state's economy, or to progress on to higher education."

More importantly, and particularly relevant to this case, the Court further explained,

"To satisfy this standard, the state, through the local school districts, must provide students with an objectively "meaningful opportunity" to receive the benefits of this constitutional right. Neeley v. West Orange-Cove Consolidated Independent School District, supra, 176 S.W.3d 787 ("[t]he public education system need not operate perfectly; it is adequate if dis- tricts are reasonably able to provide their students the access and opportunity the district court described" [emphasis in original]); see also Sheff v. O'Neill, supra, 238 Conn. 143 (Borden, J., dissenting) (constitutional adequacy determined not by "what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system"). **Moreover, we agree with the New York Court of Appeals' explication of the "essential" components req- uisite to this constitutionally adequate education, namely: (1) "minimally adequate *physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn"***...Campaign I, supra, 86 N.Y.2d 317; see also, e.g., Abbe- ville County School District v. State, supra, 335 S.C. 68 (**state constitution requires provision to students of "adequate and safe facilities** ...Pauley v. Kelly, 162 W. Va. 672, 706, 255 S.E.2d 859 (1979) **(provision of constitutionally adequate education "*implicit[ly]" requires "good physical facili-ties...*"**

Therefore, as my clients have continued to argue, they absolutely had a fundamental right under the Connecticut Constitution to receive a free appropriate public education, a Constitutionally adequate education, in a safe school setting with adequate physical facilities and classrooms, and the state, through the Torrington Public School District, was required to provide them with an objectively meaningful opportunity to receive the benefits of this Constitutional right. Therefore, the Claims Commissioner improperly dismissed the Avoletta's claim, such that relief must be granted.

As you can see from the supporting documents in the Avoletta's case file, the Avoletta children had severe disabilities caused, and exasperated by, the unsafe moldy conditions and poor indoor air quality at the Torrington Public Schools. The children's two physicians informed the school district that it was medically contraindicated for the children to remain in attendance at those poorly maintained physical facilities. The state, through the Torrington Public School District, however, refused to provide an alternative free appropriate education to the children in adequate and safe facilities, thereby necessitating legal action by the Avolettas to enforce the fundamental right of the children under Connecticut's Constitution and applicable state statutes.

Today, the Connecticut Supreme Court has affirmed that all children fundamental right under Connecticut's Constitution to a minimal quality of education to be provided by the state through its local public school districts in adequate and safe physical facilities. The Avoletta children were denied this right by the state and the Torrington Public School District. Therefore, their claim before the Claims Commissioner should have been granted. Please consider carefully the Avoletta's claim and today's ruling of the Connecticut Supreme Court and **REJECT** the Claims Commissioner's decision and **GRANT** to the Avoletta's the relief they requested.

Testimony of Joanne Avoletta and Attorney Deborah G. Stevenson
Judiciary Committee Public Hearing - March 21, 2011
In Opposition to Resolution H.J. No. 36- Avoletta vs. ST of CT. Department of Education

My name is Joanne Avoletta from Torrington, CT. I'm here today to oppose the Claims Commissioners decision on file # 21101, 21102 & 21103 to dismiss my claims on behalf of my children against the State of CT. Dept. of Education. My children were harmed by damp and moldy building conditions at the Torrington Public Schools such that their doctors said it was medically contraindicated for them to attend there. The Torrington Public School District did nothing to accommodate them and I was forced to place them into private school. The Public School District failed to provide them with a free appropriate public education in a safe school setting, discriminating against them due to their disabilities.

I'm here to ask you to overturn the Claims Commissioner's decision. Among the many reasons why you should do so is because of a new State Supreme Court ruling that came out after the Claims Commissioner's decision. That new court case makes all the difference.

I'm represented by Attorney Deborah Stevenson as my children's education attorney however she was not able to attend today because she had to be in court and the date could not be changed. At this time, I would like to read her letter because it explains the importance of that court case.

DEBORAH G. STEVENSON
ATTORNEY-AT-LAW
226 East Flag Swamp Road
Southbury, CT 06488
Tel: (860) 354-3590
Fax: (860) 354-9360

Education Law ***Appellate Law***

3/11/11

State Senator Eric Coleman, Co-Chair
State Representative Gerald Fox, Co-Chair
Members of the Committee
Judiciary Committee of the General Assembly
Legislative Office Building
Hartford, CT 06106

Re: H.J. No. 36, Resolution of the Claims Commissioner to Dismiss the Claims of Joanne, Peter and Matthew Avoletta.

Dear Senator Coleman, Representative Fox, and Members of the Committee:

I urge you, once again, to REJECT the recommendation of the Claims Commissioner and to GRANT relief to Joanne, Peter and Matthew Avoletta, most particularly in light of the release of the Connecticut Supreme Court's decision on March 22, 2010 in the matter of Connecticut Coalition for Justice in Education Funding, Inc., et al. v. Governor Jodi Rell, et al. (SC 18032), http://www.jud.state.ct.us/external/supapp/Cases/AROcr/CR295/295CR163.pdf. While the case is not directly on point with all of the issues in the Avoletta matter, it is extremely relevant to the main issues in the Avoletta case and provides a clear legal basis for recovery in court and for obtaining reversal of the Claim Commissioners decision. Unfortunately, the case was decided after the Claims Commissioner made his decision.

In that case, the Connecticut Supreme Court held that article eighth, § 1, of the Connecticut Constitution guarantees students in our state's public schools the right to a particular "minimum quality of education, namely, suitable educational opportunities." In particular, the Court concluded that

> **"article eighth, § 1, of the Connecticut constitution guarantees Connecticut's public school students educational stan-dards and resources suitable to participate in demo-cratic institutions, and to prepare them to attain productive employment and otherwise to contribute to the state's economy, or to progress on to higher education."**

More importantly, and particularly relevant to this case, the Court further explained,

"To satisfy this standard, the state, through the local school districts, must provide students with an objectively "meaningful opportunity" to receive the benefits of this constitutional right. Neeley v. West Orange-Cove Consolidated Independent School Dis- trict, supra, 176 S.W.3d 787 ("[t]he public education system need not operate perfectly; it is adequate if dis- tricts are reasonably able to provide their students the access and opportunity the district court described" [emphasis in original]); see also Sheff v. O'Neill, supra, 238 Conn. 143 (Borden, J., dissenting) (constitutional adequacy determined not by "what level of achievement students reach, but on what the state reasonably attempts to make available to them, taking into account any special needs of a particular local school system"). Moreover, we agree with the New York Court of Appeals' explication of the "essential" components req- uisite to this constitutionally adequate education, namely: (1) "minimally adequate *physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn"*...Campaign I, supra, 86 N.Y.2d 317; see also, e.g., Abbe- ville County School District v. State, supra, 335 S.C. 68 (state constitution requires provision to students of "adequate and safe facilities ...Pauley v. Kelly, 162 W. Va. 672, 706, 255 S.E.2d 859 (1979) (provision of constitutionally adequate education *"implicit[ly]" requires "good physical facili-ties..."*

Therefore, as my clients have continued to argue, they absolutely had a fundamental right under the Connecticut Constitution to receive a free appropriate public education, a Constitutionally adequate education, in a safe school setting with adequate physical facilities and classrooms, and the state, through the Torrington Public School District, was required to provide them with an objectively meaningful opportunity to receive the benefits of this Constitutional right. Therefore, the Claims Commissioner improperly dismissed the Avoletta's claim, such that relief must be granted.

As you can see from the supporting documents in the Avoletta's case file, the Avoletta children had severe disabilities caused, and exasperated by, the unsafe conditions and poor Indoor Air Quality at the Torrington Public Schools. The children's two physicians informed the school district that it was medically contraindicated for the children to remain in attendance at those poorly maintained physical facilities. The state, through the Torrington Public School District, however, refused to provide an alternative free appropriate education to the children in adequate and safe facilities, thereby necessitating legal action by the Avolettas to enforce the fundamental right of the children under Connecticut's Constitution and applicable state statutes.

On March 22, 2010, the Connecticut Supreme Court has affirmed that all children fundamental right under Connecticut's Constitution to a minimal quality of education to be provided by the state through its local public school districts in adequate and safe physical facilities. The Avoletta children were denied this right by the state and the Torrington Public School District. Therefore, their claim before the Claims Commissioner should have been granted. Please consider carefully the Avoletta's claim and today's ruling of the Connecticut Supreme Court and REJECT the Claims Commissioner's decision and GRANT to the Avoletta's the relief they requested.

Yours truly,
/s/Deborah G. Stevenson

Let me leave you with one thing: As previously stated last week in my letter that I sent by email to every member on this Judiciary Committee, you have been given a second chance and an extraordinary gift. The opportunity to do the right thing for my children and family, for a fair resolution, and for law and justice. Really, all I ever wanted was for the boys to receive their basic minimal right to an education that every child in the State of CT receives. I appreciate your time.

COUNTY OF HARTFORD)
) ss. Hartford September 27, 2017
STATE OF CONNECTICUT)

I hereby certify that the documents

Connecticut General Assembly Senate Proceedings, 2017 Volume 60 Part 3, pages 958 and 1075-1079;

Connecticut General Assembly Joint Standing Committee on Judiciary, 2017 Public Hearings Part 2, pages 1037-1062, 1113-1116, and 1188;

to which this certificate is attached is a true copy of a record turned over to me and on deposit in the State Library in accordance with the provisions of Section 11-4c of the General Statutes, Revision of 1958, Revised to January 1, 2017.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the State Library at Hartford this 27th day of September, 2017.

Kendall Wiggin
State Librarian

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PART 2
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2017

got our attention, so -- we may not be here when your attorney comes to speak. So, it's helpful to give us as much information as you can while you can. So, she slipped and she fell, why do you think the state is somehow liable for her slipping and falling?

LOUISE GAGNE: See, because there was no warning, there's no protection there, and that she's also not the only incident that has happened there for -- injury wise, according to -- yes, she maybe the only one that has died, but should that matter? There -- there's -- it's just unsafe, and it's considered a main path walkway for hikers and people that go there. It's just unsafe.

REP. MORRIS (140TH): So, would you happen to know how many other people have been injured along that path by slipping?

LOUISE GAGNE: I don't know the exact the number, but my attorney, again, will have that information.

REP. MORRIS (140TH): Okay.

REP. TONG (147TH): Further questions? Thank you for being here today.

LOUISE GAGNE: Thank you.

REP. TONG (147TH): We appreciate you, your time. Next is Deborah Stevenson.

DEBORAH STEVENSON: Good morning Senator Kissel, Senator Doyle, Representative Tong and members of the Judiciary Committee. I am here representing Joanne Avoletta and testifying in support of raised bill 817. We've been here before on this issue. This issue involves some children who were severely

harmed by a severely moldy school building in Torrington Public School District.

They were harmed to such an extent that they had irreversible lung damage, and they were not the only children harmed in that school district at the time. This is going back some years. At the time, however, the public school district did not provide a free appropriate education elsewhere to these children in a safe school setting. Consequently, my clients had to go through an enormous amount of work trying to get through the administrative process, through the judicial process to try to get them placed elsewhere in a safe school setting.

One of the things they did was contact the Attorney General's office in particular at the time Attorney General Blumenthal who did direct the State Commissioner of Education, quite poignantly, and by the way I do have written testimony here that you can follow these quotes, but the attorney general had indicated to the commissioner of education that it is in fact a state duty to provide a free appropriate public education acts as agents of the state, and they -- at the time the attorney general arrested the commissioner to make sure that the children who were disabled by this moldy school condition were provided a free appropriate education elsewhere in a safe school setting.

Unfortunately, the state did not follow through on that directive, did not compel the school district to do so, and despite our best efforts we have not been able to provide them with that public education through the public school system, and my clients had to undergo expense of trying to educate them privately to keep them healthy and follow the

doctor's advice, because the doctor was concerned, particularly with the second child that the second child would not survive if the second child attended that school district.

So, we're here again. We had gone through the process with the claims commissioner. The claims commissioner originally denied the claim. This legislature a few years back did override that decision, and we appreciate that, however -- then when we were able to sue the state of Connecticut, the attorney general's office came and said well you -- it has to be dismissed because the legislature didn't write the right -- correct words in why it -- this was not a public emolument, and it affected other children.

We're here because we don't want other children to suffer this way as well. We want the state to know and the local boards to know that when they have a disabled child, they cannot discriminate against that child. They do have to provide an appropriate safe school setting for them, and this bill would correct the issue and allow us to go back before the claims commissioner, and we do hope you support the bill.

SENATOR DOYLE (9TH): Thank you very much. Any questions from the committee? Senator McLachlan.

SENATOR MCLACHLAN (24TH): Thank you Mr. Chairman. Thank you, Attorney Stevenson. I didn't hear, what was the originating school that this occurred in?

DEBORAH STEVENSON: Torrington Public School District. This was an incident where they did have a lot of mold and did have to correct that in

several of the buildings at that school district, the elementary and high school level.

SENATOR MCLACHLAN (24TH): Thank you. Thank you, Mr. Chairman.

SENATOR DOYLE (9TH): Chairman Kissel please.

SENATOR KISSEL (7TH): Thank you Chairman Doyle. So, exactly from your perspective, what additional legal terms of -- or how would you characterize this such that it would not be interpreted as a private emolument just for this specific case?

DEBORAH STEVENSON: Well, originally when we came here with this bill it was just after the CCJEF case had been decided originally where it indicated that all children need to have appropriate school facilities, among the other things CCJEF case said. The legislator also has approved statutes that say the HVAC system that, you know, the air quality in the schools have to be appropriate, etc. In this case, there were a number of school children who were affected, it's just that my clients were the most severely affected by this school district, and for some reason they did dig in their heels and did not follow the directive of the attorney general who said that all school children need a safe school setting, and this bill would at least allow us to go before the claims commissioner and argue our case that it is not just an exclusive public emolument, it does affect all the disabled children who should not be discriminated against simply because their health is affected where some other student's health is not affected.

They do suffer distinctly from the mold whereas perhaps some other children do not, and under the

state constitution there is a provision, of course, that -- where we can't discriminate against the disabled, and so between the IDEA and special ed. law, that says you have to provide a free appropriate public education without discrimination against the disabled and the constitutional provision, we do believe this would send a strong message for accountability of school districts who are reluctant to either spend the time and money in correcting and maintaining their facilities, or when they discover a problem in providing the appropriate education by placing them elsewhere until the facilities are corrected.

SENATOR KISSEL (7TH): Thank you very much, and so I think what you just put on the public record will help us craft something that hopefully can withstand the emolument analysis, but if our craft staff needs any other information, would you be willing to have us contact you or have our staff contact you?

DEBORAH STEVENSON: Absolutely, any time.

SENATOR KISSEL (7TH): Okay, thank you, thank you Mr. Chairman.

SENATOR DOYLE (9TH): Thank you. Mr. Vice Chairman.

REP. STAFSTROM (129TH): Thank you Mr. Chairman. I know I asked this question last year, and I can't remember what the answer to it was, so I guess I'll ask it again. The -- if I understand your testimony correctly it's that the Torrington Public Schools didn't follow the advice and the direction of the attorney general, why would liability, if there is liability, why would it fall with the state as opposed to the town of Torrington?

DEBORAH STEVENSON: Because -- particularly because in this instance the attorney general did direct and advise the local public school district that they are acting as agents of the state in providing a free appropriate public education in a safe school setting to the districts, and there are court cases that back that up, that they act as agents of the state, and so while we first attempted to go to the public school district, and when they were recalcitrant to do anything to help these children, even after the doctors advised the school district that they could be more severely harmed, that's when we sought the assistance of the state attorney general and the state department of education in compelling the local school district to act in accordance with the law, and they did not, and despite the fact that the attorney general wrote a letter to that affect, and despite the fact that we went and asked to followup on that, there was no action that was taken to compel the local board to actually comply with the law.

REP. STAFSTROM (129TH): Thank you.

SENATOR DOYLE (9TH): Senator Gomes.

SENATOR GOMES (23RD): I understand as far as you went, but I read down at the bottom here, it says the attorney general argued that despite the permission, the permission is what he gave you and what he cited to the board of education that they are responsible, and then he says here the latters should be dismissed for failure of the legislator to articulate the public purpose in allowing them to sue. Did he explain that?

DEBORAH STEVENSON: Perhaps that's in-artfully crafted, that paragraph, but happened was the

attorney general wrote the letter to the commissioner, directed the commissioner to take action to provide, you know, other education and safe school setting. Nothing happened after that.

We then went to the claims commissioner, filed our complaint, and the claims commissioner, despite the letter, we informed the claims commissioner of the directive of the attorney general, but the claims commissioner denied our claim. At that point, we went to the legislator and explained this, and the legislator, this committee, agreed that the claims commissioner's decision should be overturned, and we had the right to sue.

When -- we did file suit after that, but after getting permission to sue the attorney general's office, representing the state, came in as the party to that lawsuit, and argued to the judge in that lawsuit that the whole lawsuit should be dismissed because the legislator had not articulated the public purpose in granting us the right to sue.

SENATOR GOMES (23RD): So, now you're saying pending that last decision that he made that the oneness is on the public -- the legislator in order to remedy this situation with a new bill?

DEBORAH STEVENSON: Yes, and articulating -- apparently it was the habit of the legislator for years to articulate the public purpose in granting these right to sue, but for some reason that fell by the wayside. Apparently, it's my understanding at least, and to renew that to make sure that for all cases the -- that go before the claims commissioner or you grant the right to sue, it's important to have articulated the public purpose so that the suit won't fail on that ground, because that was the only

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happened was the letter went to them, and there was no followup, and that's why then we go to this other procedure, 504, due process, and try to get it through that avenue, but again it -- that -- the state recognized its responsibility but then didn't -- failed to follow through. Not just for these children, but for the other children. It was simply mostly recommendations. There were one or two requirements like fix the building, but other than that not -- no real requirements for out placing the children in the meantime in a safe school setting.

REP. MORRIS (140TH): Thank you for your testimony, and for continuing to come back to us because I do know that this is an issue -- maybe not just in that district and others where we do have kids at our moldy buildings or whatever, and districts do not act soon enough --

DEBORAH STEVENSON: Correct.

REP. MORRIS (140TH): -- and something needs to be done to remedy that. So, thank you.

DEBORAH STEVENSON: And I might add the district in this case and in other cases across the state, when the parent follows the doctor's recommendations that say don't send the child to that moldy school building, the school district oftentimes files a complaint with DCF saying the parent is neglectful for failing to bring the child to school.

REP. MORRIS (140TH): I agree with you. Thank you.

SENATOR DOYLE (9TH): Thank you. I just have a few quick questions. I'd like to ask more kind of global questions, but with your testimony and your written testimony that I've reviewed, it seems like the real premise here is the conduct of the town of

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court and being a party to the case on the side of the parents, saying, you know, yes, we agree these children should be out placed. I mean there were other things that the attorney general could have done, but did not do and just let it go and let the parents, you know, fend for themselves.

SENATOR DOYLE (9TH): Okay, thank you. Any further questions from the committee? Representative O'Neill.

REP. O'NEILL (69TH): Just so that I can put this rather long saga in our current in the context, you got the authorization from the legislator a few years ago to bring this suit by way of permission to sue, that case got litigated, the attorney general raised the emoluments defense, that was successful, the judge agreed, that was appealed, if I recollect, the appeals court agreed with the lower court, and so that case has been disposed of.

If this legislation is passed, are you basically going back to square one with the claims commissioner, and you're going to have to present the claim and then either they grant something or they deny it, and then you end up coming -- assume that if they deny it you'd probably come back here looking for permission to sue again, is that kind of like where we are?

DEBORAH STEVENSON: That is the procedure under the current bill as it's worded, yes, that's what we would have to do.

REP. O'NEILL (69TH): Okay.

DEBORAH STEVENSON: The merits of the case were not adjudicated before.

COUNTY OF HARTFORD)
) ss. Hartford September 27, 2017
STATE OF CONNECTICUT)

I hereby certify that the documents

Connecticut General Assembly Senate Proceedings, 2017 Volume 60 Part 3, pages 958 and 1075-1079;

Connecticut General Assembly Joint Standing Committee on Judiciary, 2017 Public Hearings Part 2, pages 1037-1062, 1113-1116, and 1188;

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IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of the State Library at Hartford this 27th day of September, 2017.

Kendall Wiggin
State Librarian

per Lindsay Young

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Connecticut State Library

SENATOR DOYLE (9TH): Take a breath, take a breath and --

SENATOR KISSEL (7TH): It's only the five of us.

JOANNE AVOLETTA: I know, thank God, yeah but it's live, it's on camera and it's knowing that [laughter]. No, oh okay, good. All right, well anyways. Good afternoon and my name is Joanne Avoletta. Thank you for raising S.B. No. 817. Once again, I'm back unfortunately asking you to adopt this bill so I could ask the claims commissioner to help serve justice and equity for compensating my family for the state of Connecticut's department of failure in providing free appropriate public education in a safe school setting for my children.

You have an important job before you, one hopefully to adopt the bill and that would give you an opportunity to do something right by setting an example for those school districts who fail the state children by discriminating against those children that have disabilities.

I'm hoping other families won't have to go through what I've gone through in the last 10 years just to keep my children safe. It initially started many years ago. As a mom, I was just trying to keep them safe, following the doctor's orders, not one doctor but three different doctors all said by keeping the boys in these schools would cause even further harm. They were already damaged enough. So, I was just fighting for their basic right to the minimum education.

As a mom, I jumped through all the hoops of following, you know, all the city -- I went to the local school district, asking them to keep the boys

safe, they refused. I went to the state Department of Education to keep them safe, they refused. I went to the attorney general, he agreed, sent the letter to the Commissioner of Education Betty Steinberg, I think her names was many commissioners ago, she did nothing, he did nothing. He dropped the ball.

So, basically in summary I'm asking you guys to do the right thing. Let us go before the claims commissioner, and that would also send the message that would hold -- allowing us to get just compensation and send a message to the state Department of Education holding them accountable, not only the state Department of Education but the state period and its failure -- holding them accountable for their failures. I think that's it in a nutshell.

SENATOR DOYLE (9TH): Yes, thank you, and as you remember, your attorney had quite a few questions, so --

JOANNE AVOLETTA: Yes, I know.

SENATOR DOYLE (9TH): -- I don't have any questions. Do you have any questions for Ms. Avoletta? See none. Thank you, but reassured your attorney had quite a few questions, so.

JOANNE AVOLETTA: Right, and you had a lot of questions for her too I think, so --

SENATOR DOYLE (9TH): We all did, yeah we all did, so -- we asked her questions, we took it easy on you, so that's a good thing.

JOANNE AVOLETTA: Oh, I know. I was happy about that.

STATE OF CONNECTICUT

JUDICIARY COMMITTEE

- -

JF DEADLINE MEETING - APRIL 7, 2017

BILL No. SB-817

AN ACT CONCERNING THE CLAIMS AGAINST THE STATE OF JOANNE AVOLETTA, PETER AVOLETTA and MATHEW AVOLETTA

- -

(Transcription from Electronic Sound Recording.)

CASSIAN REPORTING
55 Oak Street - Suite 6
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CHAIRMAN TONG: Moving on to item number 4.

Item number 4, Senate Bill No. 817, an act concerning the claims against the State of Joanne Avoletta, Peter Avoletta and Matthew Avoletta.

Do I hear a motion?

REPRESENTATIVE: So moved.

REPRESENTATIVE: Second.

CHAIRMAN TONG: So moved and seconded. Rep. Storms.

REP. STORMS: Thank you, Mr. Chairman. Today the Claims Subcommittee presents the claims of Peter, Matthew and Joanne Avoletta of Torrington, Connecticut. These claims arise from an alleged denial of a free appropriate public education in a safe school setting.

Due to a variety of procedural difficulties these claims have never been properly adjudicated on the merits despite a unanimous previous approval of the Senate and the House allowing the claims to be prosecuted. The Claims Subcommittee has reviewed this matter, recommends that the Avolettas be authorized to present their respective claims to the Claims Commissioner.

We believe that there is a substantial public purpose in encouraging accountable State government through full adjudication of cases involving persons who claim to have been injured by the conduct of State actors and agencies. We also believe that this authorization is just and equitable and supported by compelling equitable circumstances of these claims and we are asking that this be remanded to the Claims Commissioner for hearing on the merits.

CHAIRMAN TONG: Thank you, Representative. And thank you again and Rep. Conley for your excellent leadership of the Claims Subcommittee.

Any questions or comments about this bill?

If not, Madam Administrator, please call the roll.

MADAM ADMINISTRATOR: And that was Bill No. 817, and that was a JF.

MADAM ADMINISTRATOR: Doyle.

SEN. DOYLE: Yes.

MADAM ADMINISTRATOR: Kissel.

SEN. KISSEL: Yes.

MADAM ADMINISTRATOR: Tong.

CERTIFICATE

I hereby certify that the foregoing 7 pages are a complete and accurate transcription to the best of my ability on Bill No. 817, An Act Concerning the Claims Against the State of Joanne Avoletta, Peter Avoletta and Matthew Avoletta, held before the State of Connecticut Judiciary Committee, JF Deadline Meeting, on April 7, 2017.

_____

Suzanne Benoit, Transcriber Date: 9/23/17

THE CONNECTICUT GENERAL ASSEMBLY

THE HOUSE OF REPRESENTATIVES

Wednesday, May 31, 2017

(The House of Representatives was called to order at 11:50 o'clock a.m., Speaker Joe Aresimowicz of the 30th District in the Chair.)

SPEAKER ARESIMOWICZ (30TH):

(Gavel) Will the House please come to order? Will members, staff and guests please rise and direct your attention to the dais, where Father Terry Kristofak will lead us in prayer.

GUEST CHAPLAIN FATHER TERRY KRISTOFAK:

Let us pray. All loving and eternal God, guide the members of this governing body, for you have revealed your goodness to all nations. May there be less violence and more peace. May we be attentive to the needs of our people, no matter the creed or race or origin. For we need work for the unemployed, food for the hungry and appropriate health care for those who are sick.

Those voting Nay 74

Those absent and not Voting 2

SPEAKER ARESIMOWICZ (30TH):

The bill is passed in concurrence. (Gavel)

The Chamber will stand at ease.

CLERK:

The House of Representatives will reconvene in five minutes. Members to the Chamber. The House of Representatives will reconvene in five minutes. Members to the Chamber. The House of Representatives will reconvene immediately. Members to the Chamber. The House of Representatives will reconvene immediately. Members to the Chamber.

DEPUTY SPEAKER BERGER (73RD):

The House will reconvene. Is there any business on the Clerk's desk?

CLERK:

Yes, Mr. Speaker. Favorable report Senate Bills to be tabled for the Calendar.

DEPUTY SPEAKER BERGER (73RD):

Representative Ritter.

REP. RITTER (1ST):

Thank you, Mr. Speaker. I move that we waive the reading of the Senate favorable reports and the bills be tabled for the Calendar.

DEPUTY SPEAKER BERGER (73RD):

So ordered. (Gavel) Will the Clerk please call Calendar 528?

CLERK:

On page 33, Calendar 528, Senate Bill No. 817 - AN ACT CONCERNING THE CLAIMS AGAINST THE STATE OF JOANNE AVOLETTA, PETER AVOLETTA AND MATTHEW AVOLETTA; favorable report of the Joint Standing Committee on Judiciary.

DEPUTY SPEAKER BERGER (73RD):

Representative Conley of the 40th.

REP. CONLEY (40TH):

Thank you, Mr. Speaker. I move acceptance of the Joint Committee's favorable in concurrence with the Senate.

DEPUTY SPEAKER BERGER (73RD):

The question before the Chamber is on acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the

Senate. Representative Conley, you have the floor. Please proceed.

REP. CONLEY (40TH):

Thank you, Mr. Speaker. This is a claim about a child who was ill in the school which had some mold which caused some lung damage. This claim did go up, was approved by the House and Senate, went up to Appellate and is back here again. We are just remanding it back for a hearing on the merits. There's a public purpose, so that education -- children in the education system are in good health.

DEPUTY SPEAKER BERGER (73RD):

Thank you. Thank you, Representative. Will you comment further? Representative Storms of the 60th.

REP. STORMS (60th):

Thank you, Mr. Speaker. I rise to support this bill. It does serve the public purpose and I believe it should be supported and passed by the members of the House. Thank you.

DEPUTY SPEAKER BERGER (73RD):

Thank you, sir. Will you comment further on

CERTIFICATE

I hereby certify that the foregoing 252 pages is a complete and accurate transcription of a digital sound recording of the House Proceedings on Wednesday, May 31, 2017.

I further certify that the digital sound recording was transcribed by the word processing department employees of Alphatranscription, under my direction.

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