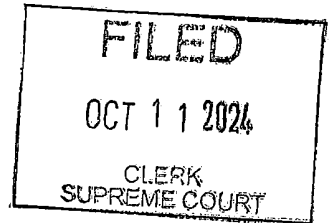


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SUPREME COURT

COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
CASE NO. 2024-SC-0022



COMMONWEALTH OF KENTUCKY, ex
rel. ATTORNEY GENERAL RUSSELL
COLEMAN

APPELLANT

v.

Court of Appeals, Case No. 2024-CA-0051
Franklin Circuit Court, Case No. 23-CI-00020

COUNCIL FOR BETTER EDUCATION,
INC., et al.

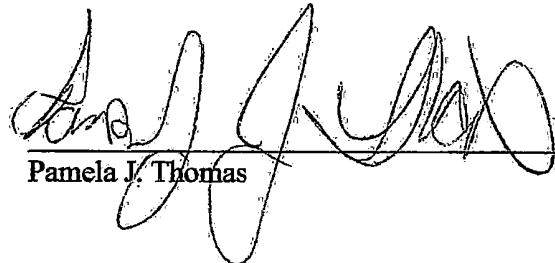
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Pamela J. Thomas

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INTRODUCTION

Section 183 of the Kentucky Constitution requires the General Assembly “by appropriate legislation, to provide for an efficient system of common schools throughout the State.” One of the significant questions raised in this case is whether the diversion of public funds from our already underfunded common schools as provided in 2022 House Bill 9 (“HB 9”) to support a completely separate and unaccountable system of charter schools violates the requirements of this section as interpreted by this court in *Rose v. Council for Better Education*, 790 S.W.2d 186 (Ky. 1989), and other relevant caselaw. As an organization with expertise in state fiscal policy and education finance, the Kentucky Center for Economic Policy offers this brief as a friend of the Court to explain why the answer to this important question is “Yes”.¹

ARGUMENT

I. THE GENERAL ASSEMBLY HAS UNDERFUNDED KENTUCKY’S COMMON SCHOOLS, AND ITS RELIANCE ON LOCAL TAX REVENUES TO MAKE UP THE SHORTFALL HAS RESULTED IN DISPARITIES AMONG SCHOOL DISTRICTS.

In defining what constitutes an efficient system of common schools, under Section 183 of the Kentucky Constitution, this Court identified the following minimal characteristics, relevant to this discussion, among others: That “[t]he establishment, maintenance, and funding of common schools in Kentucky is the sole responsibility of the General Assembly”, and that “[t]he General Assembly shall provide funding which is

¹ We believe that the provisions of House Bill 9 also violate Sections 184 and 186 of the Kentucky Constitution, but these arguments were ably briefed by the Appellees in the circuit court and our purpose in filing this brief is to provide information about other considerations that we believe are relevant.

sufficient to provide each child in Kentucky an adequate education.” *Rose*, 790 S.W.2d at 212.

Our organization has studied and written about Kentucky’s education system, with a particular emphasis on its funding, for many years. We know that this case is not about the adequacy or equity of current funding for common schools in Kentucky; however, because the existing system for funding our common schools is already significantly lacking in state investment, the issue becomes relevant in this case because the provisions of HB 9 layer on top of our already inadequately and inequitably funded system of common schools an entire new and separate system of schools that relies on the same funding sources with no new or additional resources provided. *Rose* requires that in addition to adequate funding, the General Assembly must supervise the schools so that there is “no waste, no duplication, no mismanagement, at any level.” *Id.* at 211.

Our common schools are already stretched thin trying to make ends meet, with more and more reliance on local tax revenues levied by elected boards of education as state contributions have continued to lag, and they can little afford to transfer their precious resources to independent unaccountable charter schools as HB 9 requires—schools that in some cases can locate within their district without their permission. We published a report in 2023, using data from the Kentucky Department of Education for the 2022 school year, to examine funding equity among Kentucky school districts.² Our

² Jason Bailey, Dustin Pugel, Pam Thomas and Ashley Spalding, “The Funding Gap Between Kentucky’s Wealthy and Poor School Districts Is Now Worse Than Levels Declared Unconstitutional, Kentucky Center for Economic Policy, August 23, 2023, <https://kypolicy.org/kentucky-school-funding-returns-to-pre-keri-levels/>. As part of the Kentucky Education Reform Act, the General Assembly required the Office of Education Accountability (“OEA”) to produce a School Finance Report annually, measuring
(continued...)

report measured the per-pupil state and local funding gap between the school districts with the highest and lowest property assessment values, with each quintile including as closely as possible 20% of the student population. This type of analysis is important because the lack of funding equity between school districts in Kentucky was one of the primary reasons this court found the entire public education system in Kentucky to be unconstitutional in the *Rose* decision. What we found is that the difference in per-pupil funding between the state's poorest and wealthiest districts now exceeds the level deemed unconstitutional by this Court in the *Rose* decision.³ Requiring locally elected school boards to transfer funds to charter schools with no ability to control or predict the number of charter schools, when or where they will open, or what their enrollment will be will make our already inadequately funded and inefficient education system both more inadequate and less efficient.⁴

(...continued)

funding equity among school districts. In 2006 the statute requiring such reports was amended so that the reports were provided only upon the request of the legislature. Since then, there has been only one full and one partial report produced. Because we believed continued monitoring of this information was important, our organization continued the analysis previously conducted by OEA, replicating the same methodology used by OEA to the extent possible.

³ Jason Bailey, Dustin Pugel, Pam Thomas and Ashley Spalding, *supra* note 2.

⁴ It is true that in the smaller school districts, a charter school cannot be established without the permission of the local school board, except in Campbell County, where different rules apply with regard to the independent school districts there, *see* KRS 160.1593(3)(f)(3). However, in Kentucky's 16 largest school districts based on population, authorizers other than the local school board can approve charter schools and agreement of the local board isn't required and there are no limitations on how many charter schools can locate within a district, where students attending the school may live, or the total enrollment of each charter school.

The primary reason that the equity gap has once again grown so large is that the state has failed to adequately invest state resources in our common school system. As a result, local boards that have the capacity to do so have increased local tax revenues to make up for the lack of state investment, while those with lower property tax bases have not been able to do so, even with the same tax effort, resulting in large and widening resource gaps between the wealthiest and poorest districts.

In 1990, in response to the *Rose* decision, the General Assembly passed the Kentucky Education Reform Act (“KERA”) which included the passage of new state taxes to provide over \$1.3 billion in new revenues over the first biennium following passage of the legislation for the General Fund, with the vast majority going to education in the common schools to address the adequacy issues identified by this Court. KERA also established a new core funding formula to address the identified equity issues. The new core funding formula, Support Education Excellence in Kentucky (“SEEK”), guaranteed a minimum amount of funding per student and established a formula that divides the responsibility between local communities acting through their elected boards of education and the state, taking into account district property wealth, or lack thereof.

Under the KERA funding formula, local common school district boards are required to levy, through a combination of property, motor vehicle and permissive taxes, a minimum equivalent rate of 30 cents per 100 dollars of assessed property to provide a portion of funding for the SEEK formula.⁵ SEEK funds are distributed to school districts

⁵ KRS 160.470(9)(a) provides that “the board of education of each school district shall levy a minimum equivalent tax rate of thirty cents (\$0.30) for general school purposes.” Districts are also required to levy 5 cents per 100 dollars of assessed property to participate in the state program that supports facility funding, which is separate from
(continued...)

on a per-pupil basis, as determined by the adjusted average daily attendance, and the amount generated locally is equalized by the state to match the guaranteed SEEK base, which is established by the General Assembly in the biennial budget on a per pupil basis. This formula means local districts with the wealth to generate more revenue receive fewer state dollars, while poorer districts with less capacity to generate revenue receive more from the state.

In addition to the required levies to support base funding, local districts also have the authority to:

- Generate an additional 15% above the adjusted SEEK base, otherwise known as Tier I funding, which the state partially equalizes at 150% of the average statewide property assessment (providing additional resources for school districts with lower property tax bases that make the effort to impose additional local levies). The tax rate that generates Tier I funding, referred to as the “HB 940” rate, is established considering revenues from other permissible taxes levied by the school district. No portion is subject to voter recall. Absent these KERA provisions, school districts would be subject to voter recall on the portion of any levied property tax rate that generates more than 4% real property revenue growth over the prior year.⁶

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SEEK (KRS 157.440(b)). The rate is referred to as an “equivalent rate” because school boards are also permitted to levy other types of taxes, including occupational taxes and utility gross receipts taxes, and revenues from those levies can be included in establishing the necessary property tax rate to generate the required amount of revenue.

⁶ The tax provisions of KERA operate in conjunction with existing broad-based laws establishing requirements and limitations on the levy of property taxes, commonly (continued...)

- Generate up to 30% more than the adjusted SEEK base, plus Tier I, subject to voter approval. Amounts generated through this levy are referred to as “Tier II” revenues and are not equalized by the state. Tier II was established to set an upper limit on local effort, although there are some districts—due to grandfathering and anomalies that occur because of the interaction with other tax provisions—that currently levy a rate exceeding the Tier II upper limit.⁷

These extra local tax levies are of a type contemplated by this Court in the *Rose* decision. In that decision, this Court recognized the General Assembly’s “power to create local school entities and to grant those entities the authority to supplement the state system.” *Rose*, 790 S.W.2d at 212. In this regard, this court provided that:

[I]f the General Assembly decides to establish local school entities, it may also empower them to enact local revenue initiatives **to supplement the uniform, equal educational effort that the General Assembly must provide.** This includes . . . the power to assess local ad valorem taxes on real property and personal property at a rate over and above that set by the General Assembly to fund the statewide system of common schools. **Such local efforts may not be used by the General Assembly as a substitute for providing an adequate, equal and substantially uniform educational system throughout this state.**

(...continued)

referred to as the “HB 44” limitations. HB 44, enacted during a special legislative session in 1979, generally provides that any rate levied by a local taxing jurisdiction that generates revenues from real property that are more than 4% above what was generated the prior year is subject to recall by the voters of the district. The interrelationship of the two sets of requirements adds a level of complexity to the local district rate setting process. Marcia Seiler, Pam Young, Albert Alexander and Jo Ann Ewalt, “Understanding How Tax Provisions Interact With the SEEK Formula,” Legislative Research Commission, Nov. 15, 2007, <https://legislature.ky.gov/LRC/Publications/Research%20Reports/RR354.pdf>.

⁷ Marcia Ford Seiler, Pam Young, Sabrina Olds et al, “2011 School Finance Report,” Office of Education Accountability, June 12, 2012, <https://legislature.ky.gov/LRC/Publications/Research%20Reports/RR389.pdf>.

Id. (emphasis added).

As such, the per pupil funding level established by the General Assembly in each biennial budget, supported by the mandatory local school board levies and state appropriations as described above, must provide sufficient funding to support the uniform, equal educational effort required by the *Rose* decision. It is this funding that must be sufficient to allow school districts to meet the seven capacities identified in the *Rose* decision.⁸ Any levies imposed by local school boards under Tier I and Tier II are in addition to those amounts and those levies are made to supplement what the General Assembly is responsible for providing, not to replace those amounts.

Yet this is exactly what has happened in Kentucky because of lack of state investment—locally elected school boards have stepped in to try to fill the gap created by inadequate state funding, to the point that local tax contributions to support education now exceed contributions by the state when “on behalf of” payments are excluded.⁹ The

⁸ The seven identified capacities are as follows: “(i) sufficient oral and written communication skills to enable students to function in a complex and rapidly changing civilization; (ii) sufficient knowledge of economic, social, and political systems to enable the student to make informed choices; (iii) sufficient understanding of governmental processes to enable the student to understand the issues that affect his or her community, state, and nation; (iv) sufficient self-knowledge and knowledge of his or her mental and physical wellness; (v) sufficient grounding in the arts to enable each student to appreciate his or her cultural and historical heritage; (vi) sufficient training or preparation for advanced training in either academic or vocational fields so as to enable each child to choose and pursue life work intelligently; and (vii) sufficient levels of academic or vocational skills to enable public school students to compete favorably with their counterparts in surrounding states, in academics or in the job market.” *Rose*, 790 S.W.2d at 212.

⁹ “On behalf of” payments include amounts paid by the state for teacher retirement, health, and life insurance payments as well as technology and debt service costs. A significant portion of these contributions currently are employer pension contributions that do not go to schools or teachers but go to pay back retirement system pension liabilities created primarily by decisions made by past General Assemblies’ decisions not
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tax increases passed as a part of KERA significantly increased state revenues devoted to education funding; but since that time, due to tax cuts, the Great Recession and other revenue shortfalls, the General Assembly has enacted many austere budgets that reduced state education funding through direct cuts and freezes.¹⁰ The state's share of base SEEK funding has been cut particularly deep—when adjusting for inflation, the state portion of the contributions that were meant to ensure an adequately funded system of common schools is 27% less than it was in 2008, during the Great Recession.¹¹

And although local communities, through their common school boards, have tried to make up for the loss of funding, their ability to do so is directly related to many factors that are not within their control including the size of the property tax base and declining enrollments, especially in rural districts.¹² Other factors that are impacting school funding currently are higher absenteeism rates following COVID (because funding is

(...continued)

to make the full actuarially determined contributions to this system. See Jason Bailey, Dustin Pugel, Pam Thomas and Ashley Spalding, *supra* note 2.

In Jefferson County, excluding state-paid benefits, local revenues provide 82.3% of new general fund revenues, with state revenue comprising 17.4% of the revenue. Jefferson County Public Schools 2023-24 Working Budget Report September 2023, p. 37, <https://drive.google.com/file/d/1Wrcz1qc7lLNG5l-wjZecAvmNSWngg1LU/view>. Further, state SEEK contributions to Jefferson County have steadily declined as reflected in the graph on p. 45.

¹⁰ See Michael Leachman, Kathleen Masterson, and Eric Figueroa, *A Punishing Decade for School Funding*, Center for Budget and Policy Priorities, November 29, 2017, <https://www.cbpp.org/research/a-punishing-decade-for-school-funding>.

¹¹ Jason Bailey, Dustin Pugel, Pam Thomas and Ashley Spalding, *supra* note 2.

¹² Liz Schlemmer, *Who Pays For Kentucky Public Schools? More and More, It's Local Taxpayers*, Louisville Public Media, October 31, 2019, <https://www.lpm.org/news/2019-10-31/who-pays-for-kentucky-public-schools-more-and-more-its-local-taxpayers>.

based on average daily attendance) and the loss of federal pandemic funds that have supported school districts over the past few years, including helping to fund existing and new positions to assist students who fell behind as a result of COVID. Absent additional funding, many school districts will have to eliminate these positions.¹³ There is much more that could be said about the impacts of insufficient funding for our common schools, but we believe we have described the situation in enough detail so that the significance is apparent when examining the funding stream for charter schools, which relies on the same, already insufficient resources.

II. THE FUNDING PROVISIONS OF HB 9 REQUIRE PUBLIC SCHOOL DISTRICTS TO SPLIT VIRTUALLY ALL REVENUES WITH CHARTER SCHOOLS ON A PER-PUPIL BASIS.

HB 9 is codified as KRS 160.1590 to 160.1599, and KRS 160.1596 establishes the funding mechanism for charter schools. These provisions require local school boards to transfer to each charter school that happens to be located within geographic boundaries of the district the proportional amount of funding related to the charter school's enrollment or average daily attendance ("ADA") (depending on the method used in the funding source's calculation) in comparison to the overall district qualifying numbers for the following categories under the SEEK formula:

- Base SEEK funding;
- Extra amounts provided for at risk students, as measured by those who qualify for free school lunch;

¹³ Jason Bailey, "State Report Describes Growing Educator Shortage, and Lack of Funding Plays a Key Role", Kentucky Center for Economic Policy, November 3, 2023, <https://kypolicy.org/state-report-on-kentucky-teacher-shortage/>.

- Extra amounts received for exceptional children, with additional funding levels based on the degree of exceptionality;
- Extra amounts received for students who receive home or hospital instruction; and
- If the school district does not provide transportation services to students attending a charter school, and the charter school does provide such services, transportation funds on a proportionate per pupil transported basis.

Although common school districts receive these funds based in part on adjusted average daily attendance, or pupils transported for transportation funding, there is no requirement that the funds be spent by the districts within the categories that generated the funding, making these funds along with state equalization provided for Tier I levies the most flexible state revenues that common school districts receive. These funding streams provide the resources necessary to recruit and retain teachers, custodians, lunchroom workers, bus drivers and other crucial public school employees. And Kentucky's common schools are struggling mightily in these areas currently, with chronic and deepening staffing shortages, in large part due to low wages, working conditions, and job-related stress, as described in a recent report published by the Legislative Research Commission's Office of Education Accountability.¹⁴

¹⁴ Sabrina J. Cummins, et. al., *Kentucky Public School Staffing Shortages*, Legislative Research Commission, Office of Education Accountability, November 2023, <https://legislature.ky.gov/LRC/Publications/Research%20Reports/RR486.pdf>. For additional information about teacher salaries over time, see Dustin Pugel, *Kentucky Average Teacher Pay Fails to Keep Up with Inflation in Most Districts, Remains Far Behind 2008 Levels*, Kentucky Center for Economic Policy, December 15, 2023, <https://kypolicy.org/kentucky-average-teacher-pay-fails-to-keep-up-with-inflation/>.

Requiring boards of common school districts to transfer these flexible funds on a per-pupil basis when they are in no way required to spend the funds in that manner will further hamper current and ongoing efforts to address staffing shortages and other critical school needs that can only be addressed with flexible funds, making the actual impact of losing these funds much larger than simply the dollars transferred.

In addition to the transfers described above, KRS 160.1596(6)(b) requires distribution of the following funds on a “proportionate per pupil basis” which is derived by “multiplying an amount of funds by a fraction, with the numerator being the average daily attendance of the public charter school, and the denominator being the average daily attendance of the school district of location.” (KRS 160.1590(12)):

- Extra amounts received by the school district under Tier I;
- Extra amounts received by the school district under Tier II;
- Amounts the district receives “pursuant to any applicable federal statute;” and
- All local common school taxes and payments in lieu of local taxes, transferred to the district or levied and collected by the locally elected district board.

There are numerous legal and financial issues with the transfer of these various funds to charter schools on a per-pupil basis, including that the school districts do not receive these funds on a per pupil basis, nor do they spend the funds on a per pupil basis. And unlike the 30 cents per \$100 in property value levy that is *required* for local school districts to participate in SEEK base funding, Tier I and Tier II levies are completely voluntary and are meant to allow local school boards to supplement what should be adequate funding under the base SEEK formula.

This Court made the nature of these types of levies very clear in the *Rose* opinion:

Having declared the system of common schools to be constitutionally deficient, we have directed the General Assembly to recreate and redesign a new system that will comply with the standards we have set out. Such system will guarantee to all children the opportunity for an adequate education, through a *state* system. To allow local citizens and taxpayers to make a supplementary effort in no way reduces or negates the minimum quality of education required in the statewide system.

Rose, 790 S.W.2d at 212.

There is no question that these revenues are local revenues resulting from voluntary levies imposed by local school boards above and beyond what is required of them to support the common schools under the base SEEK formula.¹⁵ As such, the redirection of these funds to charter schools violates Section 180 of the Kentucky Constitution, which provides that: “Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.”

A school board is a local legislative body with the authority to levy taxes. Voluntary taxes supported by local communities for their common schools above and beyond those required by KRS 160.470(9)(a) are outside the funding obligation of the General Assembly and cannot be considered a part of those resources, and as such, the

¹⁵ It is true that Tier I revenues are equalized at 150% of the statewide property average, as part of SEEK. This means that wealthier districts such as Jefferson, Fayette, Boone, and Campbell Counties do not receive any of these state funds, and other property wealthy districts receive proportionately small amounts of state funding. Tier II revenues, which in most cases must be approved by the voters in a district, is entirely local tax money generated by levies specifically approved for the purpose of supporting the common schools of that school district.

General Assembly does not have the authority to redirect those revenues to support charter schools over which the school boards levying the taxes have no operational control.

Finally, KRS 160.1596(13), a sweeping, catchall provision, provides that: “A public charter school shall receive a proportionate per pupil share of any state moneys not otherwise identified in this section that is received by the school district of location. The public charter school shall also receive, according to federal law, moneys generated under federal categorical aid programs for students that are eligible for the aid and attending the public charter school.”

In short, with the exception of capital outlay funds, and amounts levied to support participation in the Facilities Support Program of Kentucky (“FSPK”) and debt service on obligations, **and before any other funds are budgeted for district use**, school boards are required to transfer to each charter school within the district a proportionate share on a per pupil basis of virtually all other revenues the district receives regardless of source or purpose.

III. HB 9 DISPROPRIONATELY STRIPS PUBLIC SCHOOL DISTRICTS OF THEIR FUNDING AND TRANSFERS IT TO CHARTER SCHOOLS.

To understand the significance of HB 9’s funding provisions and how they require the transfer of disproportionate resources to charter schools at the expense of common schools, in violation of Section 183 of the constitution, it is important to look at some of the categories of funding for schools provided in the 2024-2026 enacted budget of the Commonwealth outside of the SEEK formula that, pursuant to these provisions, would have to be transferred by common school district boards to charter schools within the district **regardless of whether the charter school offers comparable services or**

programs.¹⁶ Most of these appropriations are earmarked for specific purposes or programs and common school districts are required to spend these funds for those purposes, unlike the funds received under the SEEK formula or Tier I:

- Employer contributions for health insurance, life insurance, and HSAs for school district employees.¹⁷
- Funding to support:
 - Family Resource and Youth Services Centers;
 - Extended School Services (after school) programs;
 - life insurance for employees of local school districts;
 - preschool programs in common schools; and¹⁸;
 - funding salaries for school resource officers.¹⁹

¹⁶ 2024-2026 Budget of the Commonwealth, Office of State Budget Director, <https://osbd.ky.gov/Publications/Documents/Budget%20Documents/2024-2026%20Budget%20of%20the%20Commonwealth/2024-2026%20Budget%20of%20the%20Commonwealth%20-%20Volume%20I.pdf>.

¹⁷ *Id* at page 96. There are no exceptions in KRS 160.1596(6)(13) regarding what funds must be transferred by common school boards to charter schools within their geographic boundaries based on the purpose of the funds received. Therefore, these funds received by the district specifically to provide benefits to employees also must be transferred to the charter schools on a per-pupil basis, even though these funds are received based on the number of employees and not the number of students. It should also be noted that KRS 161.141 requires charter school employees to participate in the Teachers Retirement System (“KTRS”) or the County Employee Retirement System (“CERS”), and the state health insurance program. The state is also required to make on behalf of payments to charter schools comparable to those made for local employees or school district employees.

¹⁸ These funds would have to be transferred to any charter school within the geographic boundaries of the common school district despite the fact that KRS 160.1592(16) limits charter schools to serving grades kindergarten through 12.

¹⁹ 2024-2026 Budget of the Commonwealth, *supra* note 16, page 92.

These are but a few examples of appropriations to public schools that the law would require be transferred to all charter schools within the geographic boundaries of a school district proportionately based on ADA. How can a school district continue to pay health insurance costs for its employees if it is required to transfer a proportionate share of the money it receives for this purpose to a charter school?

The same can be said for every item listed above. The General Assembly appropriated these funds for specific purposes within our common schools, and the schools provide these services using the designated funding. The provisions of KRS 160.1596 requiring these transfers completely ignore and undermine the purposes for which these funds were appropriated by requiring school boards to transfer these very same funds to all charter schools within the geographic boundaries of the district based on pupil attendance. And once these funds are transferred, the charter school can use the funds for whatever purposes it deems necessary.²⁰

Regarding the expenditure of transferred funds by charter schools, KRS 160.1596(7)(b) provides that: “If funds designated for providing additional services to specific students are transferred under this section, then the public charter school receiving those funds shall provide those services in the same manner as the district of location.” At first glance, this provision appears to place some restrictions on charter schools in the expenditure of transferred funds, but upon further examination, it is

²⁰ The purpose of and funding for many of the programs listed here are described in greater detail in this document prepared by the Kentucky Department of Education in response to a directive from the Kentucky General assembly <https://apps.legislature.ky.gov/AgencyReports/Interim%20Joint%20Committees/Appropriations%20and%20Revenue/Education%20and%20Labor%20Cabinet/Department%20of%20Education/Learning%20and%20Results%20Services%20Programs/2023%2008%20Comprehensive%20Report%20of%20LARS%20Programs.pdf.html>.

apparent that the language is meaningless. As described above, although the SEEK, SEEK add-ons and transportation funding streams are allocated to school districts based in part on ADA and children that qualify within the specific categories, those funds are not in any way “designated for providing additional services to specific students” and districts can spend the money flexibly. None of the other funding sources from the state are restricted to expenditures related to specific students either even though, as noted above, they are restricted as to use/purpose. HB 9 therefore establishes a funding mechanism for charter schools without any statutory or budgetary restrictions on how the funds can be spent once transferred. Funds that common schools are required to spend on after school programs and preschool and to support Family Resource and Youth Services Centers can be spent by a charter school on anything once transferred including assets that become the property of private individuals or for-profit entities, all while leaving public schools short of funding for important programs that support students and local communities.

Finally, when students leave public schools to attend charter schools, public school districts will not be able to reduce costs proportionately to offset the loss of revenues that will be transferred to charter schools. School districts have fixed overhead costs that are unrelated to the number of students being served, including maintenance of buildings and infrastructure and the operation of transportation networks. Districts also have classroom-level expenses that cannot be reduced—this is especially true in larger districts with multiple schools where the loss of students will be spread among many schools, and student loss at an individual school will be insufficient to reduce staffing needs, and smaller schools that may offer only one class in each grade.

CONCLUSION

HB 9 establishes a framework for the approval of independently operated charter schools that will not be a part of the common school system. These charter schools will have new and separate administrative structures and physical plants that must be financially supported, among other added expenses. Yet HB 9 provides no new funding to support these schools, instead relying on already insufficient existing revenues, including supplemental funds above and beyond those required to support the state education funding program approved by local communities to support their common schools. The funding structure established in HB 9 for charter schools fails to recognize how our common schools are funded, and how locally elected school boards spend those funds and distribute them among schools to ensure that schools are run efficiently and effectively. None of these expenditures are made on a per pupil basis but are instead made based on the needs of specific schools, the programs they offer, and the support they need.

In failing to sufficiently provide funding for charter schools, by creating a completely new system of schools in addition to the system that already exists, and by completely ignoring how common schools receive and expend funds, the General Assembly has, in the enactment of HB 9, violated Section 183 of the Kentucky Constitution as interpreted by this Court in *Rose*. Further, by directing the transfer of revenues levied by local school boards and supported by local communities to provide funding above and beyond that required as part of the state system, the General Assembly has violated Section 180 of the Kentucky Constitution.

For these reasons, we urge the court to uphold the finding of the Circuit Court and find HB 9 unconstitutional.

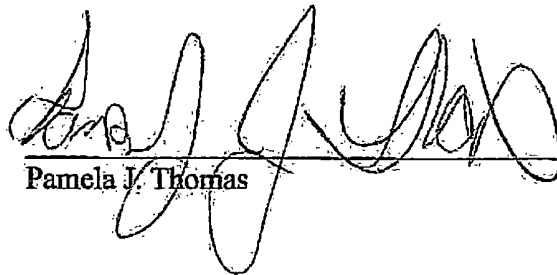


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WORD-COUNT CERTIFICATE

This document complies with the word limit of Rule of Appellate Procedure 34(B)(4) because, excluding the parts of the document exempted by Rules of Appellate Procedure 15(D), this document contains 5,139 words.



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