HHD-X07-CV89-4026240-S

MILO SHEFF, et al.	:	
	:	SUPERIOR COURT –
Plaintiffs	:	COMPLEX LITIGATION
	:	DOCKET AT HARTFORD – X07
v.	:	
	:	
WILLIAM A. O'NEILL, et al.	:	
	:	
Defendants	:	JULY 5, 2007

MOTION FOR ORDER ENFORCING JUDGMENT AND TO OBTAIN A COURT-ORDERED REMEDY

Plaintiffs hereby move for further proceedings to enforce the judgment in *Sheff v. O'Neill*, 238 Conn. 1 (1996), and to obtain a court-ordered remedy to the unconstitutional system of public education in the Hartford region. In support of this Motion, Plaintiffs state:

1. Plaintiffs filed this lawsuit in 1989 to challenge racial isolation in, and educational disparities between, public schools in Hartford and the surrounding communities.

2. In July 1996, the Connecticut Supreme Court found that Defendants' maintenance of racially isolated schools in the Hartford region violated state constitutional prohibitions on segregation and discrimination, and contravened the affirmative constitutional obligation to provide all schoolchildren with substantially equal educational opportunities. *Sheff*, 238 Conn. at 24-34. The Supreme Court further ordered the legislative and executive branches to take immediate, urgent remedial action to address these unconstitutional conditions. *Id.* at 45-46 (directing the legislature and the executive branch to "put the search for appropriate remedial measures at the top of their respective agendas").

3. Two years later, in March 1998, Plaintiffs filed a motion for an order directing that effective remedial measures be undertaken. *See* Pls.' Mot. for Order (Mar. 6, 1998) [Entry No. 259 on the Superior Court docket]. The trial court held a hearing in September 1998, and issued a ruling in March 1999 declining to enter a remedial order on the ground that Plaintiffs had returned to court too soon. *Sheff v. O'Neill*, 45 Conn. Sup. 630, 657 (1999) ("[T]he court finds that the plaintiffs failed to wait a reasonable time and that their return to court was premature."); *see also id.* at 667 ("The legislative and executive branches should have a realistic opportunity to implement their remedial programs before further court intervention.").

4. In December 2000, Plaintiffs filed an order to show cause why Defendants' efforts to comply with the Supreme Court's 1996 decision should not be held to be inadequate. *See* Pls.' Mot. for Order Regarding Implementation (Dec. 28, 2000) [Entry No. 259]. The trial court held a three-week hearing in 2002, which was followed by several months of settlement negotiations between the parties. Plaintiffs and Defendants ultimately agreed to a settlement, which was entered as an Order of the Court in March 2003 ("the 2003 Order") [Entry No. 306]. The 2003 Order created a four-year plan through which Defendants were to achieve stated interim goals toward reducing the racial isolation of Hartford's minority schoolchildren.

5. In August 2004, when it became clear that Defendants were in substantial noncompliance with the 2003 Order, Plaintiffs filed a motion to declare Defendants in breach. *See* Pls.' Mot. for Order Declaring Defs. in Material Breach (Aug. 3, 2004) [Entry No. 307]. This motion was not judicially resolved, and the parties focused on cooperative efforts to improve the state's performance toward the requirements of the 2003 Order. (In light of

the expiration of the 2003 Order on June 30, 2007, Plaintiffs' 2004 motion is moot.)

6. In August 2006, the City of Hartford moved to intervene in this action. Intervention was granted by order of this Court on January 4, 2007.

7. Throughout 2006 and 2007, the Plaintiffs and Defendants engaged in extensive and frequent negotiations aimed at reaching a remedial settlement to be implemented upon expiration of the 2003 Order. These settlement discussions included the City of Hartford after the City's intervention was granted in January 2007. The Plaintiffs and Defendants reached agreement on a proposed remedial settlement; the City indicated that it would not sign the proposed settlement but did not oppose the settlement.

8. The Attorney General submitted the proposed settlement to the General Assembly for approval, as required by C.G.S. § 3-125a. The General Assembly did not approve the proposed *Sheff* settlement before the end of the 2007 legislative session.

9. The 2003 Order expired on June 30, 2007. *See* 2003 Order § II.1. The 2003 Order was an interim, not a final, remedial settlement. *See id.* § V.3 ("The parties acknowledge that full attainment of the goals of this Stipulation may not obviate the need for further efforts at reducing student isolation."); § V.6 ("Nothing in this agreement shall prevent the plaintiffs from seeking further enforcement of the Sheff v. O'Neill 1996 decision following the expiration of this Stipulation and Order on June 30, 2007.").

10. Accordingly, the 2003 Order having expired, and there being no subsequent remedial agreement, Plaintiffs seek a court-ordered remedy to the persistent racial isolation of public schools in the Hartford region, which continues to violate Article Eighth, § 1 and Article First, §§ 1 and 20 of the Connecticut Constitution. In support of the need for a court-ordered remedy, Plaintiffs state:

a. The Supreme Court directed this Court to retain jurisdiction to ensure that an effective remedy would be implemented, and expressly held that a judicially-mandated remedy would be appropriate if the state was unable to eliminate the unconstitutional racial isolation of the Hartford schools. *Sheff*, 238 Conn. at 46-47 ("[A] denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.") (quoting *Reynolds v. Sims*, 377 U.S. 533, 566 (1964)).

b. In 1991, the earliest date discussed by the Supreme Court, the Hartford public schools had a student enrollment that was 92.4% minority. *Sheff*, 238 Conn. at 8. Ten years after the Supreme Court held this level of racial isolation to be unconstitutional, Hartford-resident minority students suffer from even greater racial and ethnic isolation: For the 2006-07 school year, the Hartford public schools were nearly 95% minority. The state's efforts to comply with the Supreme Court's ruling have been wholly unsuccessful. *Cf. Sheff*, 45 Conn. Sup. at 657 ("Certainly one method of assessing the efficacy of the state's efforts to reduce racial and ethnic isolation in the Hartford schools is to wait a reasonable amount of time to see how many students in Hartford are still attending schools in which they are racially or ethnically isolated.").

c. The 2003 Order established a goal of enrolling 30% of Hartford-resident minority students in a reduced-isolation educational setting by June 2007, and provided that "defendants' inability to make significant progress towards this goal may be considered by the Court, as one factor, in determining what future plans or orders may be necessary." *See* 2003 Order § II.3. The 2003 Order defines reduced-

isolation setting as any school in which the percentage of minority students does not exceed the *Sheff* region minority percentage enrollment plus thirty percent. *Id.* § I.2.

d. The state has fallen woefully short of the 30% goal: the current rate of "legal" compliance with the 2003 Order is 16.7%, barely more than half of the target. Moreover, because the rate of legal compliance includes several categories of constructive performance (including a performance increase for state spending on interdistrict cooperative grants, and an exemption for new magnet schools from the reduced-isolation standard for their first three years of operation, *see* 2003 Order §§ I.2, II.2, III.C), the actual number of Hartford students attending reduced-isolation schools is a mere 8.8%.

For the foregoing reasons, Plaintiffs move for further proceedings to enforce the judgment of the Supreme Court and to obtain a court-ordered remedy to the unconstitutional system of public education in the Hartford region.

Respectfully submitted,

By: _____

Wesley W. Horton
Horton, Shields & Knox, P.C.
90 Gillett Street
Hartford, CT 06105

Martha Stone
Center for Children's Advocacy
University of Connecticut School of Law
65 Elizabeth Street
Hartford, CT 06105

Renee Redman
ACLU of Connecticut
32 Grand Street
Hartford, CT 06106

Dennis D. Parker
Elora Mukherjee
American Civil Liberties Union
125 Broad Street
New York, NY 10004

Matthew Colangelo
NAACP Legal Defense & Educational Fund, Inc.
99 Hudson Street, 16th Floor
New York, NY 10013

John Foster Maer
Ghita Schwarz
Puerto Rican Legal Defense & Education Fund
99 Hudson Street, 14th Floor
New York, NY 10013