

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

JUN 27 2011

JAMES W. MCCORMACK, CLERK
By:  DEP. CLERK

**LITTLE ROCK SCHOOL DISTRICT,
et al.**

PLAINTIFFS

v. CASE NO. 4;82CV00866 BSM

**PULASKI COUNTY SPECIAL
SCHOOL DISTRICT, et al.**

DEFENDANTS

**MOTION FOR PERMISSION TO FILE
SUPPLEMENTAL AMICUS CURIAE BRIEF**

Come Mark Perry, Reedie Ray and Ben Rice and for their motion for permission to file a supplemental *amicus curiae* brief and state:

1. An *amicus curiae* brief was filed herein by movants on December 22, 2009. In said brief, the court was asked to either create or establish the process for the creation of a separate and independent school district for the Jacksonville/North Pulaski school attendance areas in the northeastern portion of Pulaski County and an adjoining area in Lonoke County, Arkansas. This area comprises part of the existing Pulaski County Special School District(PCSSD).

2. On December 29, 2009, a motion was filed (docket entry 4290) by attorney Sam Jones on behalf of PCSSD which asked for additional time to respond to the *amicus curiae* brief. On January 4, 2010, the court ruled (docket entry 4295) that PCSSD could respond to the *amicus curiae* brief within thirty (30) days of a ruling herein. On May 19, 2011, the court released its "Findings of Fact and Conclusions of Law". More than 30 days have elapsed since this ruling by the court and PCSSD has not filed a response to the *amicus curiae* brief.

3. PCSSD's failure to file a response brief amounts to a concession by PCSSD to the brief points of Perry, Ray and Rice. This concession corresponds with the previous admissions by

PCSSD in paragraph 9 of its brief that the PCSSD board of directors has previously approved the creation of a separate and independent school district for Jacksonville, subject to approval by this court.

4. Also, there have been additional developments since the *amicus curiae* brief was filed herein on December 22, 2009 which should be brought to the attention of the Court. Most importantly, PCSSD has been declared to be in fiscal distress and the Arkansas Department of Education (ADE) Commissioner has terminated the PCSSD Board of Directors and its superintendant and the PCSSD is now under the management of ADE Commissioner Dr. Tom Kimbrell and his appointee, interim superintendent Bobby Lester, a former PCSSD superintendent. This action was taken after the Arkansas Legislature Joint Audit Committee found PCSSD had failed to respond appropriately to Audit Committee findings of financial mismanagement and lack of oversight. The Audit Committee recommended that the ADE Commissioner do the takeover and reconstitute the district.

5. Superintendent Lester has taken the position that he favors the reorganization of PCSSD to form a separate school district for the Jacksonville/North Pulaski area. ADE Commissioner Kimbrell has stated :

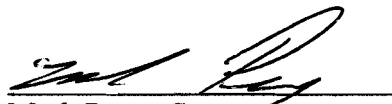
“Until the court makes PCSSD unitary and releases them from court, it remains our position that ADE does not have authority to make Jacksonville its own district.”


Dividing the PCSSD would make it easier for the PCSSD to achieve unitary status.

6. The 8th Circuit Court of Appeals has previously stated that the Arkansas General Assembly and “the parties” have the authority (under state law) under proper circumstances to consolidate school districts. “What the parties might choose to do of their own volition is, in general, their own business”. See *Little Rock School District v. Pulaski County School District No.1*, 921F2d1371 (8th Cir.1990) at page 1377, footnote 2.

7. PCSSD attorney Sam Jones, NLRSD attorney Stephen Jones and LRSD attorney Chris Heller have verbally stated that they have no objections to the filing of a supplemental *amicus curie* brief but reserve the right to respond. Joshua and Knight Intervenor attorney John W. Walker has not responded to our request for the filing of a supplemental *amicus curiae* brief relating to the separation of the Jacksonville/North Pulaski from the PCSSD. However, there is an indication that he would object to anyone from Jacksonville making such a filing.

Wherefore, movants ask for permission to file a supplemental *amicus curiae* brief herein and for all other proper relief. The sole issue would be whether the ADE or its commissioner has or should have permission or authority to separate Jacksonville from PCSSD.


Mark Perry, State
Representative

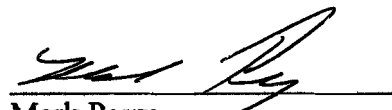

Reedie Ray, past PCSSD
President and current Jack-
sonville Alderman



Ben E. Rice, Retired Attorney

The brief in support of this motion remains the same authority as cited in support of the original *amicus curiae* brief, namely: *Ladue v. Goodhead*, 181 Misc. 807, 44 NY S 2d 783, 787, which held that a person who has no right to appear in a suit but is allowed to introduce argument, authority and evidence to protect his interests.

Certificate of Service

Come movants and hereby certify that a copy of their foregoing motion for permission to file a supplemental brief herein has been sent on June 27,2011 through the US Mail to the attorneys for all parties herein, to-wit: See Exhibit "A", incorporated herein by reference.


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