

community schools, parents of children attending community schools, and White Hat Management, L.L.C.

Plaintiffs have requested declaratory and injunctive relief and writs of mandamus. Plaintiffs have raised constitutional challenges to various aspects of the Community Schools program. Plaintiffs have sought declaratory judgments that the State has failed to enforce statutes regulating community schools. Plaintiffs have sought writs of mandamus to compel enforcement of sponsorship contracts for community schools. Plaintiffs have also sought declaratory judgments and writs of mandamus based on allegations that certain sponsorship contracts are in violation of statutes and that certain community schools are not operating in compliance with statutes.

I. **PROCEDURAL HISTORY**

A. **Background**

This action was filed on May 14, 2001.

On June 29, 2001, Plaintiffs filed a First Amended Complaint, adding the Ohio Department of Education (“ODE”), the Electronic Classroom of Tomorrow (“eCOT”), and its Board of Directors as defendants. Plaintiffs voluntarily dismissed without prejudice their claims against Lucas County Educational Service Center.

On July 20, 2001, White Hat Management, LLC (“White Hat”) moved to intervene as a defendant. That same day, Plaintiffs filed a Second Amended Complaint. The Court granted White Hat’s motion to intervene on August 23, 2001.

On December 10, 2001, a group of community schools and parents of children attending community schools (the “Community School Defendants”) moved to intervene. The Community School Defendants’ motion was granted on January 29, 2002.

Plaintiffs filed a motion for leave to file a Third Amended Complaint on March 7, 2002, adding as defendants the University of Toledo Charter School Council, the Alternative Education Academy and its Board of Directors, and WHDL, LLC. The Court granted Plaintiffs leave to file the Third Amended Complaint, which was filed on April 24, 2002.

B. **Procedure for Addressing Plaintiffs' Claims**

On November 9, 2001, the Court conducted a status conference in this matter. Because of the large number of claims and parties and the likelihood of voluminous, time-consuming discovery, there was a discussion of the order in which the issues raised by the Third Amended Complaint would be addressed by the Court. As agreed by counsel, the Court indicated that it would address legal issues first, including the facial constitutional challenges to R.C. Chapter 3314. In the second stage of the proceedings, the Court would address claims of the Third Amended Complaint that involve factual issues, including the implementation of R.C. Chapter 3314, compliance with statutes, and compliance with sponsorship contracts. Addressing the issues in this order reduces the burden on the litigants by deferring discovery until after the Court's decision on issues of law, potentially narrowing the issues to be litigated.

In accordance with this schedule, the Court directed the parties to file any motions addressing the legal issues prior to discovery. On May 20, 2002, Plaintiffs filed Motions for Partial Summary Judgment on Counts Four, Five, Seven, Eight, Nine and Ten. On the same date, the State of Ohio, Board of Education, Ohio Department of Education and Susan Tave Zellman (the "State Defendants") filed a Motion to Dismiss the Third Amended Complaint and/or for Summary Judgment. On the same date, the Community

School Defendants filed a Motion for Judgment on the Pleadings on Counts Three, Four, Five, Six, Seven, and Eight. On May 28, 2002, White Hat filed a Motion for Judgment on the Pleadings. On June 19, 2002, Defendant University of Toledo Charter School Council filed a Motion for Judgment on the Pleadings. On July 22, 2002, Additional Community School Defendants filed a Motion to Join Community School Defendants' Motion for Judgment on the Pleadings on Counts Three, Four, Five, Six, Seven, and Eight. On November 29, 2002, the Community School Defendants filed a Motion for Judgment on the Pleadings, or, alternatively, for Dismissal under Civil Rule 21.

C. **Scope of this Decision**

In accordance with the schedule discussed above, this Court's decision will address only the legal issues that can be resolved based on the pleadings, prior to discovery. The Court has identified Counts Four, Five, Six, and Seven as claims that can be resolved in this manner based on the pleadings and motions filed by the parties.

Count Four is a facial challenge to R.C. Chapter 3314 based on Article VI, Section 3 and Article XII, Section 5 of the Ohio Constitution. Counts Five and Six allege that the community schools program is in violation of the requirement in Article VI, Section 2 of the Ohio Constitution of a "thorough and efficient system of common schools" as construed in *DeRolph v. State of Ohio* (2002), 97 Ohio St. 3d 434. Count Seven is a facial constitutional challenge to R.C. 3314.08(J), 3318.50, and 3318.52 based on Article VIII, Sections 4 and 5 of the Ohio Constitution.

The remaining counts of the Third Amended Complaint are not addressed at this time because they raise factual issues that can be the subject of discovery. Counts One and Two seek declaratory judgments that the State Defendants have allowed certain

community schools to exist in violation of statutory requirements. Count Three seeks a writ of mandamus to compel enforcement and/or termination of certain sponsorship contracts that Plaintiffs allege were breached. Counts Eight and Ten allege that the sponsorship contracts for, and operation of, eCOT, and the Alternative Education Academy, respectively, violate statutes and that the sponsorship contracts have been breached. Count Nine alleges that certain community schools have failed to employ teachers and other personnel in compliance with statutes.

The discussion below is therefore limited to matters pertinent to Counts Four through Seven of the Third Amended Complaint.

II. OVERVIEW OF R.C. CHAPTER 3314 AND OHIO'S COMMUNITY SCHOOLS PROGRAM

In 1997, the Ohio General Assembly enacted the Community School Law, R.C. Chapter 3314. The General Assembly noted that “the establishment of independent community schools throughout the state has potential desirable effects, including providing parents a choice of academic environments for their children and providing the education community with the opportunity to establish limited educational programs in a deregulated setting.” (History, R.C. 3314.01).

Pursuant to R.C. 3314.01(B), a community school is “a public school, independent of any school district, and is part of the state’s program of education.” Community schools are state funded, R.C. 3314.08(D), and run by private individuals. R.C. 3314.02(B). Each community school must be established as a nonprofit corporation, R.C. 3314.03(A)(1), cannot charge tuition, and is nonsectarian. R.C. 3314.03(A)(11)(c).

Community schools are exempt from certain state laws and regulations. R.C. 3314.04. Each community school is governed by a contract between its sponsor and the

governing authority of the school. R.C. 3314.03. Sponsors must be public entities such as a local board of education, the state board of education, an educational service center, a board of trustees of a state university, etc. R.C. 3314.02(C)(1). The sponsorship contract must set forth the community school's educational program, academic goals and method of measurement (including the statewide achievement tests), performance standards, admission standards, requirements and procedures for financial audits, facilities to be used, qualifications of teachers, etc. R.C. 3314.03(A).

Under newly enacted R.C. 3314.015, the Department of Education is responsible for the oversight of sponsors of community schools, and the superintendent of public instruction is required to issue an annual report card for each community school reflecting the academic and financial performance of the school.

The contracts between the sponsors and governing authorities of community schools may have a term of up to five years. R.C. 3314.03(A)(13). Parents are free to withdraw their students if they choose. If a school has not made progress in achieving the objectives in its sponsorship contract, the contract may not be renewed, or, if the school fails to fulfill the basic requirements of the contract during its term, the sponsor may terminate the contract. R.C. 3314.07.

III. **FINDINGS AND CONCLUSIONS**

The parties have filed motions to dismiss and for judgment on the pleadings on Counts Four through Seven of the Third Amended Complaint.

To grant a motion for judgment on the pleadings, it must appear beyond doubt that Plaintiffs can prove no set of facts warranting the relief they seek, after construing all

material factual allegations in the Complaint and all reasonable inferences therefrom in their favor. *State ex. rel. Brantley v. Ghee* (1988), 83 Ohio St. 3d 521, 522-523.

A. **Count Four of the Third Amended Complaint**

Count Four is a facial challenge to the constitutionality of R.C. Chapter 3314 based on Article VI, Section 3 and Article XII, Section 5 of the Ohio Constitution.

1. **Challenge Based on Article VI, Section 3 – Powers of Local School Boards**

Article VI, Section 3 of the Ohio Constitution provides as follows:

Provision shall be made by law for the organization, administration, and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

The Third Amended Complaint alleges that through Article VI, Section 3 of the Ohio Constitution, Ohio’s citizens reserved to themselves the power to exercise local authority over public education conducted within each local school district by the election of school boards to own and operate local public schools. (Third Amended Complaint, ¶ 89). Count Four alleges that in violation of these constitutional provisions, R.C. Chapter 3314 “has usurped this constitutional right of local educational self-determination by allowing the creation of privately owned ‘community schools’ not authorized or governed by locally elected school boards to either locate in or solicit public school students from school districts throughout the state.” (*Id.*, ¶90).

R.C. 3314.01(B) provides that a community school is “a public school, independent of any school district, and is part of the state’s program of education.” Plaintiffs argue that

this is a constitutionally impermissible infringement on the power of local school districts.

It should be noted at the outset that all legislative enactments enjoy a strong presumption of constitutionality. *Austintown Township Board of Trustees v. Tracy* (1996), 76 Ohio St. 3d 353. A court must apply all presumptions and rules of construction so as to uphold a statute as constitutional, and any doubts must be resolved in favor of the statute. *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142. “[A] court has nothing to do with the policy or wisdom of a statute. That is the exclusive concern of the legislative branch of the government.” *Brady v. Safety-Kleen Corp.* (1991), 61 Ohio St. 3d 624, 632.

Ohio courts have held that the General Assembly has broad authority to organize the State’s public school system as it believes necessary. In *State ex rel. Core v. Green* (1953), 160 Ohio St. 175, the Ohio Supreme Court noted that “The General Assembly has the power to provide for the creation of school districts, for changes and modifications thereof and for the methods by which changes and modifications may be accomplished....” *Id.*, syl. 2. Similarly, in *State ex. rel. Bishop v. Bd. of Educ. Of Mt. Orab Village School Dist.* (1942), 139 Ohio St. 427, 441, the Court stated that “Clearly, the General Assembly possesses the power to prescribe the system of education which shall prevail throughout the state ... and in pursuance of such authority [the General Assembly] may direct those agencies created by it, *viz*, the various boards of education”, as it sees fit.

In *Spivey v. State of Ohio* (N.D. Ohio 1998), 999 F. Supp. 987, 991, an Ohio federal court rejected a constitutional challenge to a statute vesting significant powers in

the mayor to control the local Cleveland City School District Board of Education and creating a new classification of school district known as a “municipal school district.” The court recognized the General Assembly’s authority to provide for the creation of and modification of local school districts. *Id.* at 997. The court rejected the notion that local voters were required to “preapprove any changes in the school board.” *Id.* at 997-998.

A local board of education “is a mere instrumentality of the state to accomplish its purpose in carrying forward a system of common schools throughout the state.” *Shaw v. Bd. of Educ. of City Sch. Dist. of Columbus*, 17 Ohio L. Abs. 588, at pg. 5 (Franklin Co. App 1934), citing *Bd. of Educ. of Cincinnati v. Volk* (1905), 72 Ohio St. 469, 485. “Boards of education have only such powers as are conferred by statute,” *Bd. of Educ. of Marion Local Sch. Dist. v. Board of Educ. of Marion County* (1958), 167 Ohio St. 543, 545; *see also Lopez v. Williams* (S.D. Ohio 1973), 372 F. Supp. 1279, 1293 (“It is well-recognized in Ohio that boards of education are purely creatures of statute whose powers and duties are limited by the Legislature.”).

The above authority plainly establishes the General Assembly’s power to create and modify school districts as it believes necessary, without the approval of local school districts. Courts have repeatedly held that local school districts have only such powers as prescribed by the General Assembly.

Article VI, Section 3 of the Ohio Constitution does not specify powers of local school districts that could have been “usurped”, as Plaintiffs allege, by R.C. Chapter 3314, or derogate the plenary authority of the Legislature. Rather, the narrow language of Article VI, Section 3 merely gives the residents of local school districts the power to

decide “by referendum vote ... the number of members and the organization of the district board of education....”

For these reasons, Plaintiffs’ challenge to the constitutionality of R.C. Chapter 3314 based on Article VI, Section 3 of the Ohio Constitution is unavailing.

2. **Challenge Based on Article XII, Section 5 – Application of Local Taxes**

Article XII, Section 5 of the Ohio Constitution provides as follows:

No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

The Third Amended Complaint alleges that “The methods of funding community schools approved by the General Assembly has the effect of diverting funds raised by local tax levies and the sale of state bonds for purposes not stated in the levies or constitutional amendments approved by voters, in violation of Article XII, Section 5 of the Ohio Constitution.” (Third Amended Complaint, ¶91). Plaintiffs further allege that “By allowing the diversion of locally levied tax funds to community schools in city school districts without the consent of the city school board, Chapter 3314 violates Article VI, Section 3 of the Ohio Constitution.” (*Id.*, ¶92).

The purpose of Article XII, Section 5 is to prevent taxes that have been levied for a particular purpose from being used for purposes not intended by the voters. *In re Petition of Transfer of Funds by Perry Township* (1988), 52 Ohio App. 3d 1 (holding that proceeds from a special tax levy for fire protection could not be transferred to the township’s general revenue fund).

Plaintiffs cannot demonstrate a violation of Article XII, Section 5 because tax dollars financing community schools come entirely from the state; no local tax moneys are used to

fund community schools. R.C. 3314.08(D) provides that the state Department of Education “shall annually pay to a community school” amounts to fund the school.

To understand the funding of community schools, a basic understanding of the State’s funding formula is necessary. The State’s funding formula guarantees that every child attending a public school will be funded at a basic minimum level, commonly known as the base “formula amount.” R.C. 3317.02. Of the total base cost funding, a school district must contribute a local share paid by local tax dollars based upon property values. R.C. 3317.022. Once the local share has been determined, it is subtracted from the district’s total base cost funding, and the State is responsible for paying the remainder.

From the State’s payment to a local school district, several deductions may be made, including deductions for open enrollment, R.C. 3313.981, and community schools. For each student that opts to attend a community school, the state deducts the base formula amount *from the state tax dollars* awarded to the district. *See* R.C. 3314.08(C) (“From the payments made to a city, exempted village, or local school district under Chapter 3317 ..., the department of education shall annually subtract all of the following ...”). Those deducted *state tax dollars* are in turn awarded to the appropriate community school.

The tax dollars financing community schools come directly from the State, not local tax levies. R.C. 3314.08(D) confirms that payments to community schools come directly from the Department of Education.

Plaintiffs’ Third Amended Complaint states: “For each student attending a community school sponsored by the State Board, *the amount appropriated by the state to the student’s local school district is reduced* on average by about \$5,000 per child.” (emphasis added; Third Amended Complaint, ¶37). Plaintiffs argue that as a result of the

deduction from state tax dollars, “the district must rely to a greater extent on local property taxes than it would without the community school deduction.” (Plaintiffs’ Motion for Partial Summary Judgment, pg. 19). This does not show diversion of local property taxes.

As set forth above, Plaintiffs cannot show a diversion of local tax levies to community schools in violation of Article XII, Section 5.

For the foregoing reasons, Defendants are entitled to judgment in their favor as a matter of law on Count Four of the Third Amended Complaint.

B. Counts Five and Six of the Third Amended Complaint

Counts Five and Six of the Third Amended Complaint allege that the community schools program is in violation of Article VI, Section 2 of the Ohio Constitution.

Article VI, Section 2 provides as follows:

The general assembly shall make such provisions, by taxation or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state

Count Five of the Third Amended Complaint alleges: “The constitutional requirement of a ‘thorough and efficient system of common schools guarantees to Ohio’s taxpayers, parents, and students a system of schools with common standards and sufficient resources to assure that all students are provided adequate educational opportunities.’ *DeRolph v. State of Ohio* (2000), 89 Ohio St. 3d 1, 10.” (Third Amended Complaint, ¶97). Plaintiffs further allege: “Article VI, Section 2 of the Ohio Constitution has been interpreted to require that ‘strict, statewide academic guidelines must be developed and rigorously followed throughout all of Ohio’s public school districts.’ *DeRolph v. State of Ohio* (2000), 89 Ohio St. 3d 1, 37.” (Third Amended Complaint, ¶99). Plaintiffs allege that community schools are not part of a “thorough and efficient system of common schools” in accordance

with *DeRolph*, *supra*, because they have been allowed to operate with different and diminished standards. Plaintiffs allege that the establishment and funding of community schools through R.C Chapter 3314 violate Article VI, Section 2.

Count Six of the Third Amended Complaint alleges: “The funding method utilized by the State Defendants-Respondents to support community schools deprives certain city school districts of the funds required to operate a thorough and efficient system of public schools.” (Third Amended Complaint, ¶105). Plaintiffs allege: “On its face and as implemented by the State Defendants-Respondents, Chapter 3314 violates Article VI, Section 2 of the Ohio Constitution.” (*Id.*, ¶106).

Counts Five and Six base their allegations of violations of Article VI, Section 2 of the Ohio Constitution on the decisions of the Ohio Supreme Court in the *DeRolph* litigation.

In the *DeRolph* decisions, the Ohio Supreme Court examined whether the State’s entire public school system is constitutionally “thorough and efficient” in accordance with Article VI, Section 2. Community schools are one part of the State’s public school system reviewed in detail by the Supreme Court. Pursuant to R.C. 3314.01(B), community schools are public schools and are part of the state’s program of education. The *DeRolph* plaintiffs specifically argued that “[c]harter schools make the problems worse” by taking money from local school districts” and that this “unproven and essentially unregulated experiment” weakened large city school districts.” (Plaintiffs’ June 18, 2001 brief in *DeRolph*, p. 23).

On December 11, 2002, the Ohio Supreme Court issued its decision in *DeRolph v. State of Ohio* (2002), 97 Ohio St. 3d 434 (“*DeRolph IV*”), again finding that Ohio’s

public school system violates the mandate in Article VI, Section 2 of a “thorough and efficient system of common schools.” The Court stated as follows:

To date, the principal legislative response to *DeRolph I* and *DeRolph II* has been to increase funding, which has benefited many schoolchildren. However, the General Assembly has not focused on the core constitutional directive of *DeRolph I*: ‘a complete systematic overhaul’ of the school-funding system. Today we reiterate that that is what is needed, not further nibbling at the edges. *Accordingly, we direct the General Assembly to enact a school-funding scheme that is thorough and efficient*, as explained in *DeRolph I*, *DeRolph II*, and the accompanying concurrences.

(emphasis added) 97 Ohio St. 3d at 435.

Under the doctrine of *res judicata*, “parties are precluded from relitigating an issue of law or fact which was necessarily decided in a previous final judgment.” *City of Canton, Ohio v. Maynard* (6th Cir. 1985), 766 F.2d 236, 238; *See also National Amusements, Inc. v. Springdale* (1990), 53 Ohio St. 3d 60, 62.

While Ohio law typically requires mutuality of parties for collateral estoppel to apply, the Ohio Supreme Court has created an exception to this requirement in matters of general and public interest. In *Stromberg v. Board of Education* (1980), 64 Ohio St. 2d 98, the Court upheld the dismissal of a private taxpayer’s challenge to the dissolution of the Bratenahl school district. In the trial court, the State and Cleveland Boards of Education had filed motions to dismiss based upon an earlier decision of the Ohio Supreme Court holding that the Bratenahl district had, in fact, been dissolved in 1970. *Id.* at 99. Finding that the previous action had resolved the matter, the Supreme Court held that the issue could not be relitigated and upheld the granting of defendants’ motions to dismiss. *Id.* at 100-101. The Court stated:

[A] judgment for or against a governmental body ... is binding and conclusive as *res judicata* on all residents, citizens and taxpayers with respect to matters adjudicated which are of general and public interest.

Id. at 101.

In Counts Five and Six of the Third Amended Complaint, Plaintiffs complain about whether one facet of the State’s system of public education, community schools, is in violation of the “thorough and efficient” clause. *DeRolph IV* resolves whether the entire public school system, of which community schools are one part, is constitutionally thorough and efficient.

In *DeRolph IV*, the Ohio Supreme Court determined the remedy after finding that the public school system violates Article VI, Section 2. The Court stated: “we direct the General Assembly to enact a school-funding scheme that is thorough and efficient, as explained in *DeRolph I*, *DeRolph II*, and the accompanying concurrences.” 97 Ohio St. 3d at 435. Given that the Supreme Court has already determined the remedy for the violation of Article VI, Section 2, this Court’s role is not to supply further direction to the General Assembly or somehow supplement the order of the Ohio Supreme Court.

For the foregoing reasons, Counts Five and Six of the Third Amended Complaint must be dismissed.

C. **Count Seven of the Third Amended Complaint**

Count Seven of the Third Amended Complaint alleges that the statutory allowance of borrowing by community schools, R.C. 3314.08(J) and the extension of loan guarantees to community schools, R.C. 3318.50 and 3318.52, violate Article VIII, Sections 4 and 5 of the Ohio Constitution.

Article VIII, Section 4 of the Ohio Constitution provides as follows:

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the

state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.

Article VIII, Section 5 of the Ohio Constitution provides as follows:

The state shall never assume the debts of any county, city, town or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the state in war.

R.C. 3314.08(J) allows community schools to borrow money in anticipation of receipt of revenue from the state.

R.C. 3318.50 and 3318.52 establish a loan guarantee fund to be administered by the Ohio School Facilities Commission, to be available to community schools for buildings and other facilities.

In Count Seven, Plaintiffs allege that community schools are “individual associations or corporations” under Article VIII, Section 4. (Third Amended Complaint, ¶109). Plaintiffs allege that the guarantee of loans and funding to community schools constitute an unconstitutional “giving and/or loaning of the state’s credit, or the provision of such credit in aid of an individual association or corporation.” (*Id.*, ¶114). Plaintiffs further allege that the funding and loan guarantees make the state “*de facto*, a joint owner in the private corporate entities established to operate and/or manage community schools sponsored by the State Board.” (*Id.*, ¶115).

The Ohio Supreme Court has held that Article VIII, Section 4 “does not prohibit the giving or loaning of the state’s credit to or in aid of a public organization created for a public purpose.” *State ex rel. Speeth v. Carney* (1955), 163 Ohio St. 159, 175.

Pursuant to R.C. 3314.01(B), community schools are public schools and are part of the state's program of education. Plainly, educating Ohio's children is a public purpose.

Plaintiffs argue that the state's credit nevertheless cannot be extended to community schools because they are run by private individuals and established as nonprofit corporations. However, the Ohio Supreme Court has held that Article VIII, Section 4 also does not prohibit appropriation of public funds to a private entity for a public purpose. In *State ex rel. Dickman v. Defenbacher* (1955), 164 Ohio St. 142, 151, the Court stated that "the appropriation of public money to a private corporation to be expended for a public purpose is a valid act of the legislative body." In that case, the Court upheld appropriations to private veterans organizations for the public purpose of aiding veterans and promoting patriotism. *See also State ex. rel. Tomino v. Brown* (1989), 47 Ohio St. 3d 119, 122 ("Historically, Sections 4 and 6 of Article VIII have not been applied to programs undertaken for public welfare.")

Plaintiffs further allege that the statutory funding and loan guarantees make the state "*de facto*, a joint owner in the private corporate entities established to operate and/or manage community schools." (*Id.*, ¶115).

R.C. 3314.01(B) provides that a community school may "contract for any services necessary for the operation of the school." As nonprofit corporations, the schools may make "payment of reasonable compensation for services rendered" to private companies, including management companies. R.C. 1702.01(C).

State funding for community schools goes directly to the community schools. R.C. 3314.08(D). While Plaintiffs allege that community schools pay private companies for

management or other services, public entities routinely use public funds to purchase services from private companies. This practice is so widespread that only a few examples will suffice. *See, e.g.*, R.C. 9.06 (contracts for private operation of correctional facilities); *Northwestern Ohio Building & Construction Trades Council v. Conrad* (2001), 92 Ohio St. 3d 282 (private managed care organizations contract to provide medical services for the Ohio Bureau of Workers Compensation).

In *Perkins v. Stockert* (1975), 45 Ohio App. 2d 211, the court rejected a constitutional challenge to a statute creating and funding “community authorities” for development of local communities with the assistance of private efforts. The court stated: “The determination of what constitutes a public purpose is primarily a legislative function. ... The fact that private individuals may, and probably will, derive an income or profit is not significant in the determination of what constitutes a public purpose.” *Id.* at 218.

For these reasons, Defendants are entitled to judgment in their favor as a matter of law on Count Seven of the Third Amended Complaint.

IV. **CONCLUSION**

For the foregoing reasons, the Court concludes that, as to Counts Four, Five, Six and Seven of the Third Amended Complaint, it appears beyond doubt that Plaintiffs can prove no set of facts warranting the relief they seek, after construing all material factual allegations in the Complaint and all reasonable inferences therefrom in their favor, and Defendants are entitled to judgment as a matter of law.

In accordance with this Decision, the following motions are granted, in part, to the extent that they relate to Counts Four, Five, Six, and Seven of the Third Amended Complaint: the State Defendants’ Motion to Dismiss and/or for Summary Judgment filed

on May 20, 2002; the Community School Defendants' Motion for Judgment on the Pleadings on Counts Three, Four, Five, Six, Seven, and Eight filed on May 20, 2002; White Hat's Motion for Judgment on the Pleadings filed on May 28, 2002; University of Toledo Charter School Council's Motion for Judgment on the Pleadings filed on June 19, 2002; Additional Community School Defendants' Motion for Judgment on the Pleadings filed on July 22, 2002; and Community School Defendants' Motion for Judgment on the Pleadings filed on November 29, 2002.

As set forth above, the remaining counts of the Third Amended Complaint raise factual issues that can be the subject of discovery. Accordingly, Defendants' motions for judgment on the pleadings referenced above are denied to the extent that they relate to the remaining counts of the Third Amended Complaint.

To the extent that they relate to Counts Four, Five, Six, and Seven of the Third Amended Complaint, Plaintiffs' Motions for Partial Summary Judgment filed on May 20, 2002, are denied.

The Court will establish a new deadline for the filing of any motions for summary judgment relating to the remaining counts of the Third Amended Complaint after the completion of discovery.

Pursuant to Local Rule 25.01, counsel shall prepare and submit a journal entry reflecting this Decision.

PATRICK M. McGRATH, JUDGE

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