

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-029436

04/15/2013

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
C. Danos
Deputy

D JEFFREY CRAVEN, et al.

ANDRE H MERRETT

v.

JOHN HUPPENTHAL, et al.

KIM S ANDERSON

DONALD M PETERS

UNDER ADVISEMENT RULING

The Court has had under advisement (i) Plaintiffs' Second Motion for Partial Summary Judgment; (ii) Defendants' Motion for Summary Judgment; (iii) Intervenors' Motion for Summary Judgment; and (iv) Plaintiffs' Motion to Strike Defendants' Affidavit of Counsel. Having read and considered the briefing and having heard oral argument, the Court issues the following rulings.

Plaintiffs are parents of students attending charter schools in Arizona. They argue that Arizona's public school finance system violates the equal protection¹ and general and uniform² clauses of the Arizona Constitution because charter schools receive less funding per student than district schools.³ Defendants argue to the contrary.⁴

¹ "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." Ariz. Const. Art. 2 § 13.

² "The legislature shall enact such laws as shall provide for the establishment and maintenance of a general and uniform public school system...." Ariz. Const. Art. 11, § 1(A).

³ In the context of these Motions, the Court assumes a per student funding difference.

⁴ Unless the context otherwise requires, "Defendants" collectively references State Defendants and Intervenors.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-029436

04/15/2013

Equal Protection Claim.

A challenge to a school financing system is subject to a rational basis scrutiny. *Shofstall v. Hollins*, 110 Ariz. 88, 90-91 (1973).⁵ Thus, the question is whether the disparate per student funding between charter and district schools serves a legitimate state interest and whether the disparity rationally furthers that interest. *See Lerma v. Keck*, 186 Ariz. 228, 233 (App. 1996). In making this determination, the Court may consider the Legislature's actual purpose or any hypothetical basis on which it could have acted. *See id.*

Arizona's public school financing system funds charter and district schools differently because they are different. *Cf. Shelby Sch. v. Ariz. State Bd. of Educ.*, 192 Ariz. 156, 169 (App. 1998). Charter schools are largely exempt from the multitude of statutes and regulations that govern district schools. *See* A.R.S. § 15-183(E)(5); *see also J.D. ex rel. Scipio-Derrick v. Davy*, 2 A.3d 387, 397 (N.J. Super. 2010). The capital needs of charter and district schools are different. *See Sugar Creek Charter Sch., Inc. v. State*, 712 S.E.2d 730, 739 (N.C. App. 2011); *J.D., id.* at 399. Plaintiffs acknowledge as much,⁶ but instead contend these differences are irrelevant because their claim belongs to public school *students*, not public schools. (Resp. to State Defs.' Mot. for Summ. J. at 9; Resp. to Intervenors' Mot. for Summ. J. at 11.) This contention misses the point. Students do not receive funding for education. To the extent this contention morphs into a claim that disparate funding equates to unequal education, such a claim was rejected in *Shofstall*.

Plaintiffs parse the "unless otherwise discriminatory or capricious" language in *Shofstall*, contending that rationally-based disparate funding cannot be constitutional if it is discriminatory.⁷ The Court agrees with Defendants that read in context this language means discriminatory on some basis *other than* that alleged, Plaintiffs' counsel admitting such an interpretation would be circuitous.

Based on the foregoing, the Court finds a rational basis for the Legislature's decision to fund charter and district schools differently. *See generally Shofstall, supra.*

⁵ *See generally* Oct. 31, 2011 and Apr. 1, 2010 Minute Entries, incorporated herein by this reference.

⁶ "Public charter schools are exempt from State laws except those specifically listed in A.R.S. Title 15, Article 8. Public charter schools have flexibility regarding curriculum, governance structure, physical facilities, budgeting, and personnel, and are not subject to collective bargaining." Compl. at ¶ 26.

⁷ "A school financing system which has a rational and reasonable basis and which meets the educational mandate of our constitution should, *unless otherwise discriminatory or capricious*, be upheld." *Shofstall*, 110 Ariz. at 91 (emphasis added).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2009-029436

04/15/2013

General and Uniform Claim.

Plaintiffs contend that Arizona's public school financing system violates the general and uniform clause because the system itself creates substantial disparities in funding between charter and district schools. *See Roosevelt Elementary Sch. Dist. No. 66 v. Bishop*, 179 Ariz. 233, 241-42 (1994) ("*Roosevelt I*"). The Court disagrees. First, disparate funding must be reviewed in the context of adequacy of education. *Id.*; *see also Hull v. Albrecht*, 190 Ariz. 520, 524 (1997); *Roosevelt Elementary Sch. Dist. No. 66 v. State*, 205 Ariz. 584, 592 (App. 2003). Plaintiffs do not dispute that Arizona's charter schools provide an adequate education. Second, *Roosevelt I* and its progeny address disparities in funding among the same type of public schools (district schools), not between different types of public schools (charter and district schools). Because charter and district schools are different, the Legislature may fund them differently without running afoul of the general and uniform clause. *See Sugar Creek*, 712 S.E.2d at 741-42.

Conclusion.

Accordingly,

IT IS ORDERED granting State Defendants' and Intervenors' Motions for Summary Judgment.

IT IS FURTHER ORDERED denying Plaintiffs' Second Motion for Partial Summary Judgment.

IT IS FURTHER ORDERED denying Plaintiffs' Motion to Strike Defendants' Affidavit of Counsel as moot.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.