NO. 08-2161

IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

FRIENDS OF LAKE VIEW

APPELLANTS

V.

MIKE HUCKABEE in his official capacity, as Governor of the State of Arkansas

APPELLEES

REPLY BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES **PAGE**

UNITED STATES SUPREME COURT CASES

EIGHTH CIRCUIT COURT OF APPEALS CASES

ARKANSAS SUPREME COURT CASES

ARKANSAS DISTRICT COURT CASES

TABLE OF AUTHORITIES

CASES **PAGE**

STATUES, RULES AND REGULATIONS

ARGUMENT

I. STANDARD OF REVIEW

A district court decision to grant a Rule 12 (b)(6) Motion to Dismiss is reviewed *de novo*. The well-plead allegations in a complaint are taken as true; the court views the complaint and all reasonable inferences arising from said complaint in the light most favorable to the plaintiff. Any set of facts would entitle the plaintiff to relief prevents granting of a Motion to Dismiss, *Weaver v. Clarke*, 45 F.3d 1253 (8th Cir. 1995). This court has also found that only if it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations should a Motion to Dismiss be upheld, *Frey v. City of Herculaneum*, 44 F.3d 67 (8th Cir. 1995).

II. THAT THE TRIAL COURT ADOPTION OF THE FINDING IN THE CAUSE OF *FRIENDS OF EUDORA V. STATE OF ARKANSAS, ET AL* WAS AN ERROR; GRANTING OF A MOTION TO DISMISS WAS AN ERROR.

The Appellees have written for the court's consideration, a 30 page brief in response the Appellants' appeal and briefing of Appellants' issues. This court should note that nowhere within the pages of the Appellees' brief can be found the cite of the most prevalent and overriding legal issues before the court via *stare decisis* which is *Parents Involved in the Community Schools v. Seattle School District, et al,* 127 S. Ct. 227, 138 (2007).

In the cause before the court the question is simply whether the district court erred in granting a Motion to Dismiss pursuant to Rule 12 (b)(6). The relevant facts in this case are undisputed: (1) that Lake View School District was consolidated pursuant to the authority of the State of Arkansas under Act 60 of the Second Extraordinary Session of the Arkansas State Assembly in 2003. In accordance with the chronology of the Appellees in the case, the Arkansas Supreme Court issued its Final Mandate in the Lake View Funding Case on May 31, 2007, *Lake View School District V. Huckabee,* 370 Ark. 139 (Ark. 2007). It was not until June 28, 2007 that the United States Supreme Court issued its decision in the case of *Parents Involved in the Community Schools v. Seattle School District, et al,* supra. Approximately 28 days after the Arkansas Supreme Court had released jurisdiction and issued mandate in the Lake View Funding Case , interceding and insurmountable findings of the court in *Seattle* was rendered on the present issues. *Seattle* could not have been utilized by the Arkansas Supreme Court in its consideration of any issues in the Lake View Funding Case because it had released jurisdiction when *Seattle* was decided by the U.S. Supreme Court. Nor are the issues in Lake View Funding Case inside of the perimeters of *Seattle, inextricably intertwined* with the Lake View Funding Case because the issues were not raised and could not have been

raised before a final determination of the court on the merit of the Lake View Funding Case in the ordinary course of appeal which was rendered in the cause of *Lake View School District v. Huckabee*, 358 Ark. 137 (Ark. 2004). No subsequent decision for the Arkansas Supreme Court allowed for any issues to intervene other than those which were argued and presented to the court in the 2004 decision, supra.

The Act 60 which is now codified as A.C.A. 6-13-1602 (a) was not in existence at the time of the 2004 ruling in Lake View Funding Case, which is the authoritative decision on school funding. A claim does not undermine any state court judgment if it merely challenges the constitutionality of a legislative act by the rule-making body. A party is only prevented from the assistance of the federal judiciary if that party's interest in having a statute or regulation set-aside is inseparable from his interest in upsetting a particular state court judgment based on that rule, *Lemonds v. St. Louis County*, 222 F.3d 488 (8th Cir. 2000).

The Lake View Funding Case involves whether or not students were receiving *equity* and *adequacy* of education under the state funding system and that was the only issue before the state court. Nowhere in the Lake View Funding Case was the issue of consolidation or annexation promulgated by the state on the basis of an unconstitutional racial

implementation was challenged (this was admitted previously by the State's attorneys). Act. 60 is the instrumentality under which the State Defendants implemented the unconstitutional conduct challenged by the present plaintiffs.

The Appellants in this case were aware of a pending action before the federal judiciary of Arkansas that invoked the authority of *Seattle* when it asked for an Extension of Time in Which to Reply. The Appellants were very interested as this court should be in a determination of the application of *Seattle* by an Arkansas District Court.

In the cause of *Hardy, et al v. Malvern School District*, Case#6:08-CV-6094, in the United States District Court, Western District of Arkansas, Hot Springs Division, the U.S. Magistrate Judge, the Honorable Barry Bryant entered an Report and Recommendation on December 1, 2008. Unfortunately, because of the time limitations of filing the instant Reply, Appellants are unable to cite for the court any adoption of the Report of the Honorable U.S. Magistrate Judge Bryant by the U.S. District Court Judge, the Honorable Robert T. Dawson. However, the court will find in the Report of the Magistrate the following reference to *Seattle*:

> In their post-hearing briefing, Plaintiffs rely very heavily upon the broad language regarding standing in *Parents Involved in Community Schools v. Seattle School Dist. No*. 1, 127 S. Ct. 2738 (2007). However, in that case, at least one of the individuals in the group

> "*Parents Involved in Community Schools*" and the one individual who brought suit against Jefferson County had actually been denied admission to the school of their choice based upon a racial classification. See id. at 2748-2750. In the present action, as noted above, Plaintiffs have not presented any evidence establishing that at least one of them has been denied a transfer because of race.

The Report illustrates that race is a "triggering" factor in the application of *Seattle* ruling. In Lake View Funding Cases, race was never an issue before the court; issues of race were never considered by the court in determining equity or adequacy of school funding; race was *not* considered by the original Circuit Court ruling in the Lake View Funding Case; nor was race mentioned in any form in the final decision of the Arkansas Supreme Court regarding the Lake View Funding Case in its decision of 2007, supra.

In the case now before the court, race is the central issue and the application of *Seattle* is "triggered," but, the State has not refutted the assertion in its responsive brief that the Lake View School District and other African-American School Districts did not suffer a disparaging impact under Act. 60 which is constitutionally prohibited.

An examination of the map of Phillips County, AR shows that there are no school districts at all in the predominately African-American section of said county. Highway 49 divides Phillips County, AR, and both Lake View School District and Elaine High School, have been closed. Elaine is referenced in the State's Brief citation as *James, et al v. Williams, et al*, 372

Ark. 82 (2008). In the *Williams* case, the Plaintiff Williams claims' in accordance with the Arkansas Supreme Court evolves as follows:

> "We first address the issue of subjectmatter jurisdiction raised by Dr. James and the Board of Education. They contend, as already stated, that circuit court had no jurisdiction to hear this case because subject-matter jurisdiction rested solely with this court due to the recall of the Lake View mandate. They assert that Williams's claims allege the denial of the adequate and substantially equal education required by The Arkansas Constitution, the same issue that was raised in Lake View. Because Williams and his co-plaintiffs were all members of class certified as part of the Lake View litigation, see *Lake View Sch. Dist. No. 25 of Phillips County* v. Huckabee, 340 Ark. 481, 486, 10 S.W.3d 892, 895 (2000), Dr. James and the Board of Education urge that subjectmatter jurisdiction over these issues rested solely with this court until the Lake View mandate was reissued on May 31, 2007.

As this tribunal will note, the *Williams* claims was grounded in allegations that there had been a denial of *adequate* and *substantially equal protection* as required by the Arkansas Constitution. The *Williams'* claims were not based upon racial considerations that are evident by the complaint in the instant cause. This complaint under the standard of review must be considered as true.

The court will also note that in the *Williams* decision, there is no mention of the *Seattle* ruling by the Arkansas Supreme Court. Appellants contend that Williams decision does not support the contentions of the Appellee but do support the contentions of the Appellants that the issues

before the court are "controverted" and "ripe" for trial and is not barred by the *Rooker-Feldman* Doctrine.

CONCLUSION

The complaint of the Appellants and the Argument of the Appellants has not been refutted by the Appellees in their Responsive Brief. The Appellees have simply created their own argument or their legal "strawman" and then attacked its own creation (not successfully it may be added). The court was not address at all by the Appellees. The issues presented by the Appellants' complaint and the dismissal by the district court were not addressed at all.

The procedure that was irregular and inapplicable to the rendering of a Motion to Dismiss by the Honorable Judge Wilson in his adoption of findings the honorable District Judge Wright, in *Friends of Eudora v. State*, was not challenged or argued at all by the State Defendants. Appellants' contend that this court cannot apply either, *res judicata or Rooker-Feldman* rule in a VACUUM and that is what the State Appellees is asking the court to do. The rulings of the U.S. Supreme Court is the Supreme Law of the United States of North America and the State Appellees have no creditable argument against the application of *Seattle* as the law of the land or against

the application of *Seattle* to the present facts and they have completely avoided the subject-matter of *Seattle* in their Responsive Brief.

Hopefully, this court will not. The State Defendants having no reasonable, creditable, intelligent, and honest response to the arguments of the Appellants in this cause; have simply sought to make the *Seattle* case invisible and thus the Appellants invisible. A noted African-American author, Ralph Ellison once wrote of the invisibility of the American Negro. Are we still there?

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, J.L. Wilson, do hereby certify that on December 9, 2008, I mailed the document by United States Postal Service to the following:

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Respectfully yours,

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CERTIFICATE OF COMPLIANCE

In accordance with the rules of this court, counsel for *Friends of Lake View,* verifies that the instant brief is in the amount of 2, 118 words;

Appellant counsel further certifies that a enclosed scanned CDR of the brief finds an absence of virus in accordance of requirement of this court.

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