#(2323)83

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

FILED

APR 25 1983

EYVON MENDENHALL, CLERK
U. S. DISTRICT COURT
E. DISTRICT OF MO.

CRATON LIDDELL, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 72-100C(4)
	)	
THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

PLAINTIFF CITY OF ST. LOUIS'
PRE-FAIRNESS HEARING COMPLIANCE

Pursuant to this Court's Order H(2278)83 dated April 8, 1983, Plaintiff City of St. Louis herewith submit the following:

1. Witnesses. The following witnesses will be called by Plaintiff City of St. Louis: Lowell Jackson and John Poelker.

The following witnesses may be called by Plaintiff City of St. Louis: George Otte, Steve Mullen, Ronald Leggett, Paul Berra, William A. Skaggs, Richmond Coburn, Ronald Stodghill, Dr. Sam Lawson, Al Boudreau, Roy Gillyon, John P. Mahoney, Richard Gaines, Michael Sheehan, Mrs. Penelope Alcott, Mr. Nathaniel Johnson, Dr. Joyce M. Thomas, Mr. Raymond Decker, Dr. Lawrence Nicholson, Mr. Daniel Schesch, Mrs. Majorie Smith, Mrs. Dorothy Springer, Anthony Sestric.

Additionally, the City of St. Louis understands that the State of Missouri will subpoena the superintendents and chief fiscal officers of each of the suburban school districts. The City of St. Louis reserves the right to call same as its own witnesses should the State of Missouri fail to call same.

2. Exhibits. Plaintiff City of St. Louis will introduce the following exhibits:

Plaintiff City of St. Louis' Exh. A: Certified copies of the results of the assessment ratio studies conducted by the State Tax Commission of Missouri for the years 1978 through 1982.

Plaintiff City of St. Louis' Exh. B: Comparative chart showing the effective property tax rates of each of the suburban school districts and the City of St. Louis, prepared by the Office of the Assessor, City of St. Louis.

Plaintiff City of St. Louis' Exh. C: Analysis of tax rate increase required to generate additional revenue and tax bill increase data, prepared by the Office of the Assessor, City of St. Louis.

Plaintiff City of St. Louis' Exh. D: 1982 St. Louis County Property Tax Rate Book.

Plaintiff City of St. Louis' Exh. E: List of outstanding delinquent real property taxes in the City of St. Louis as of April 15, 1983, for tax years 1978 through 1982, prepared by the Office of the Collector of Revenue, City of St. Louis.

Plaintiff City of St. Louis' Exh. F: Land Reutilization Authority of the City of St. Louis, Master Inventory List, setting forth the number of parcels of property located in the City of St. Louis which have been acquired by the Land

Reutilization Authority of the City of St. Louis pursuant to §92.830(2), R.S.Mo.

Plaintiff City of St. Louis' Exh. G: St. Louis Public Schools Budget Summary, New Voluntary Desegregation Plan, Projected Five Year Needs, Part A, Revised March 24, 1983, with attached memorandum from Robert H. Heet to Jerome B. Jones, et al.

Plaintiff City of St. Louis' Exh. H: St. Louis Public Schools New Voluntary Desegregation Plan, Projected Five Year Needs, Summarized By Project Code, Part A, Revised March 30, 1983, with attached memorandum from Joseph Schwarzbauer to Glenn Campbell.

Plaintiff City of St. Louis' Exh. I: St. Louis Public Schools Desegregation Programs 1983-1984, New Voluntary Desegregation Plan, Projected Requirements, Revised April 21, 1983.

Plaintiff City of St. Louis' Exh. J: Seleted Social, Economic And Income Characteristics, 1980, For The St. Louis Metropolitan Area, prepared by the East-West Gateway Coordinating Council, dated January, 1983.

Plaintiff City of St. Louis <u>may</u> introduce the following exhibits:

Plaintiff City of St. Louis Exh. K: Certified results from the Board of Election Commissioners of the City of St. Louis of the April 5, 1983 proposal for a 27 cent tax increase for school purposes.

Plaintiff City of St. Louis' Exh. L: Tabulation of enrollment and revenue data for the suburban school districts.

Plaintiff City of St. Louis' Exh. M: City of St. Louis' 1982 Tax Rate Schedule, prepared by the Office of the Collector of Revenue, City of St. Louis.

Plaintiff City of St. Louis' Exh. N: Salary schedules for City School Board Employees.

Plaintiff City of St. Louis' Exh. O: St. Louis Public Schools Desegregation Programs, 1983-1984, Revised Edition, Intra-City Programs.

Plaintiff City of St. Louis' Exh. P: 1980 Census Tract SMSA Composite Map.

Plaintiff City of St. Louis' Exh. Q: 1980 Population Counts By Census Tract.

Plaintiff City of St. Louis' Exh. R: City of St. Louis Ward Boundary Map.

Plaintiff City of St. Louis' Exh. S: Chapter 5.24 of the Revised Code of the City of St. Louis, 1980, dealing with the City of St. Louis Sales Tax.

Plaintiff City of St. Louis' Exh. T: Chapter 5.22 of the Revised Code of the City of St. Louis, 1980, dealing with the City of St. Louis Earnings Tax.

Plaintiff City of St. Louis' Exh. U: Chapter 5.26 of the Revised Code of the City of St. Louis, 1980, dealing with Property Taxes levied by the City of St. Louis.

The City of St. Louis is in the process of reviewing records of the City School Board and may supplement the above list of exhibits if necessary as soon as practicable.

Copies of the above listed Exhibits are available for inspection and copying at the Office of the City Counselor, Room 314 City Hall, Tucker and Market Streets, St. Louis, Mo. 63103.

3. Factual and Legal Issues. A separate brief of the City of St. Louis is submitted herewith.

Respectfully submitted,

Robert H. Dierker, Jr.
Associate City Counselor

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Associate City Counselor

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St. Louis, Mo. 63103
622-3361

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorney of record of all parties to the above cause by enclosing same in an envelope addressed to such attorneys of record at their respective address as disclosed by the pleadings of record herein, with postage duly prepaid and by depositing same in a U. S. Post Office Mail Box in St. Louis, Missouri on the 25th day of April A. D. 1975

H(2323)83

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

CRATON LIDDELL, et al., Plaintiffs, vs. THE BOARD OF EDUCATION OF THE CITY OF ST. LOUIS, STATE OF MISSOURI, et al., Defendants.	No. 72-100C(4) Exempt from Prefiling Circulation Under H(2278)83

PRE-FAIRNESS HEARING BRIEF OF CITY OF ST. LOUIS

This brief is filed pursuant to the Court's order, H(2278)83, April 8, 1983, in which the Court particularly requested the parties to address the financing provisions of the proposed settlement agreement, H(2217)83, (hereafter for brevity referred to as "the plan").

The City's position in summary is that, to the extent the plan calls for itself to be funded "by such combination of additional State funding . . . and a tax rate increase in the City of St. Louis as shall be ordered by the Court," the plan is not fair or equitable, and cannot lawfully be approved. This is so because:

A. The plan calls for this Court to displace the state constitution and state statutes concerning taxation and school aid and to restructure the operations of state and local governments in that regard, not pursuant to the scope of any proven constitutional violation, but rather pursuant to the agreement of certain parties plaintiff and defendant that others should bear the cost of their compromise;

B. The contemplated tax increase order is not within the jurisdiction of this Court under any circumstances;

C. The contemplated tax increase order would not be fair or equitable to the plaintiff classes or the citizens of the City of St. Louis in general;

D. Certain procedural steps before the fairness hearing were defective; the hearing's setting should be vacated and a new notice ordered.

A. The Plan, the City Board, and State Law

The plan's financing provisions are cursory, and may be fairly summarized as follows:

1. The state would be ordered to pay costs of instruction and certain support services for transfer students, to the students' new or host districts.

2. Host districts would include transfer students in their pupil cost calculations in determining their entitlement to other state aid.

3. Home districts of transfer students would receive half the state aid per student they would have received had the student not transferred.

4. In and after 1984-85, if a district's enrollment declines because of transfers under the plan, the district could opt to receive state aid based on its enrollment in the second preceding year.

5. The cost of administering the plan, busing, teacher exchanges, recruitment, magnet school construction and "modification" costs, "one-time extraordinary costs", e.g.

reopening a closed school, "community involvement centers", part-time programs, costs of improvements in its operations by the City Board, and miscellaneous costs would be funded by a combination of additional state money and proceeds of a tax-rate increase in the City, as ordered by the Court. H(2217)83, X-1-3.

The parties to the plan did not estimate the cost of the plan in any manner prior to its filing with the Court. The City has reviewed the plan and the State's comments on the cost of full implementation. The State's estimate of $100,000,000 yearly is probably low. Documents made available to the City through incomplete and informal discovery indicate that the aggregate cost of the plan will approach one billion dollars. It is not surprising that the parties to the settlement agreement chose to remain discreetly silent concerning cost.

The School District of the City of St. Louis is a body corporate, existing pursuant to §162.461, R.S.Mo. 1978. It is a creature of the State of Missouri, whose constitution and statutes reflect a scrupulous policy of entrusting control of local school taxes to the school districts.

Art. III, §40, Mo.Const. 1945 provides in part:

> "The general assembly shall not pass any local or special law . . .
>
> (20) creating new townships or changing the boundaries of townships or school districts;
>
> (21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts; . . .
>
> (24) regulating the management of public schools, the building or repairing of schoolhouses, and the raising of money for such purposes . . ."

Art. IX of the Constitution pertains to education. §1 mandates the general assembly to establish and maintain free public schools.[1]

Art. X of the Constitution concerns taxation. Under §1, "The taxing power may be exercised by the general assembly for state purposes, and by counties and other political subdivisions under powers granted to them by the general assembly for county, municipal and other corporate purposes."

§2 is of significance: "The power to tax shall not be surrendered, suspended, or contracted away, except as authorized by this constitution."

The basic, authorized tax rate for the City school district is $1.25 per $100, Art. X, §11(b), Mo.Const. The rate may be raised to $3.75 by majority vote, and above that rate by a two-thirds vote, §11(c).

Control of school districts' bonded debt is also entrusted to local voters by the constitution. Under Art. VI, §26(b), by two-thirds vote districts may incur debt beyond current revenues and prior years' unencumbered balances, up to 10% of the value of taxable tangible property within their boundaries. (Other political subdivisions are limited to 5%.)

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[1]This mandate is observed in Ch. 162, R.S.Mo., providing for the existence of school districts with boards of varying numbers in counties and cities of various populations or classifications; prescribing the powers and duties of school boards, and providing for changes of boundaries and reorganizations of districts. The school districts, of course, are assisted by the state financially. See Art. IX, §3; §3(b) requires 25% of state revenue (net of interest and sinking fund) to be applied for school aid. Ch. 163, R.S.Mo. allocates state aid to districts. Districts also receive other funds directly under a variety of statutes, e.g., §140.280, R.S.Mo.

By §162.621, R.S.Mo., the City Board is granted the powers generally afforded school boards. It is specifically authorized to: "(4) Levy taxes authorized by law for school purposes." (Emphasis supplied.)

There is no authorization in the State constitution, or statutes, for the City Board to yield its authority to "levy taxes authorized by law" to this Court. In agreeing to do so, the City Board has violated the express language of the State constitution: "The powers to tax shall not be surrendered . . . or contracted away . . ."

The City Board's abregation of its tax authority in the plan contrasts with the strict standards Missouri's courts have set for officials entrusted with taxing powers. In Noll v. Morgan, 82 Mo.App. 112 (1899) the court stated:

> "Laws for the assessment and collection of the revenue should be construed with reasonable strictness. . . . In Railway v. Apperson, 97 Mo. 300, it is declared that, whenever, by legislative enactment, power is confided to a particular person or tribunal to perform specified acts, especially acts relating to the exercise of the important power of taxation, such legislative enactment is mandatory in its nature and must be strictly observed; and such power, in order to its validity, must be exercised and exercised only by the person or tribunal upon whom or on which it is in terms confided. This doctrine is recognized everywhere, and disputed nowhere. The power to tax is a high governmental power and when the legislature grants that high power to another tribunal, it can only be exercised in strict conformity to the terms in which the power is granted and a departure in any material part will be fatal to the attempt to exercise it."

The state Supreme Court in Siemens v. Shreeve, 296 S.W. 415, 417 (1927) described the taxing power as "all important and

jealously guarded," and described as "salutory and generally recognized" the "policy of the law that any delegation of the taxing power must be in clear and unambiguous terms jealously guarded and strictly construed. . . ." See also, State ex rel. Field v. Smith, 49 S.W.2d 74, 77-78 (Mo. 1932).

The courts of the United States have been most unwilling to supplant the authority of local governments to arrange for school financing. See pp. 8 to 12, infra. This case is unusual in that a local government unit is blithely offering up its authority to the court, state law to the contrary notwithstanding. The court ought not accept. A settlement authorizing "continuation of clearly illegal conduct cannot be approved", Robertson v. National Basketball Association, 556 F.2d 682, 686 (2d Cir. 1977). In approving a settlement, the court acts as a fiduciary who must serve as guardian of the rights of absent class members, Grunin v. International House of Pancakes, 513 F.2d 114, 114 (8th Cir. 1975). (It will doubtless be made clear at the hearing, that many class members do not agree to an act of the City Board, which was voted into office to govern the District under state law, which violates that law.)

Further, the plan wholly ignores the inherent limitations on the remedial powers of the federal courts. Those powers are not plenary, and do not provide this Court with a roving commission to restructure the operations of state and local governments. See, e.g., Hills v. Gautreaux, 425 U.S. 284 (1976). It is elementary that those powers cannot be exercised absent a constitutional violation, and any remedy ordered must be

tailored to the nature and scope of the violation. E.g., Milliken v. Bradley (I), 418 U.S. 717 (1974); Dayton Bd. of Ed. v. Brinkman (I), 433 U.S. 406 (1977). The plan is in sum and substance a settlement of interdistrict claims of the plaintiff class against the school districts located in St. Louis county, some of whom are not even named defendants, owing to certain stays and other orders entered by this Court. Where is the constitutional violation which authorizes this Court to order funding?

The parties to the plan evidently believe that the authority for this Court to levy taxes and restructure state aid and appropriations programs is found in the intradistrict violations established to date. This is preposterous. Nothing in previous opinions of the Court of Appeals invests this Court with power to compel the taxpayers or the State of Missouri (assuming the two are not identical in this instance) to fund a massive interdistrict plan designed to resolve interdistrict claims. Both the state defendants and the City Board are already funding two plans designed to remedy intradistrict violations. The comments of the Court of Appeals in Liddell v. Bd. of Education, 677 F.2d 626, 641-42 (8th Cir.), cert. denied, ___ U.S. ___ (1982), aside from being the purest dicta, do not authorize a billion-dollar, "separate but better" public school system to be created for the City of St. Louis in the guise of "actions which will help eradicate the remaining vestiges of the government-imposed school segregation in the city schools . . . ." Id. In any event, the opinion clearly does not contemplate the imposition of court-ordered taxation.

The plan proposed by some of the interdistrict parties in this case is not a plan tailored to the nature and scope of the intradistrict constitutional violation in this case. To repeat, it is a proposed settlement of interdistrict claims. It is an understatement to say that there is no authority to support the proposed funding mechanism of the settlement; to allow a group of plaintiffs and defendants to settle a case at the expense of the plaintiffs themselves (as taxpayers) and third parties flies in the face of fundamental limitations on the remedial powers of the federal courts. Even assuming that this Court has jurisdiction to levy taxes, the procedure contemplated by the plan makes a mockery of the judicial process. Far from being a true compromise of disputed claims, the proposed plan is little more than a bold attempt by alleged wrongdoers to make the apparent victims of their wrongdoing bear the burden of the wrong. Neither the law of this case or any other case empowers this Court to approve such a sham settlement.

B. The Proposed Order Is Not Within The Court's Jurisdiction

The plan is a proposal to settle the liability of the suburban districts to the plaintiff classes for alleged acts and omissions which have contributed to cause constitutional violations of the rights of the classes to desegregated schooling. The plan, then, by requesting a court-ordered tax increase in the City, requests an increase of the taxes of the plaintiffs. They, of course, have not been and cannot be found liable for violating their own rights.

As noted above, even in school desegregation cases, a finding of liability is a prerequisite to the imposition of a remedy. While the City Board was found liable in the intra-district phase of this case, that finding does not support relief against it in this phase. The intra-district plan has been approved by the Court of Appeals. The City Board's liability and the remedial actions it was compelled to take, are history.

Even if that were not so, relief of that kind proposed has never been imposed by a United States court.

The taxing power of the states (and their subdivisions) is primarily vested in the legislatures, deriving their authority from the people. Green v. Frazier, 253 U.S. 233, 239 (1920). Since the power to tax involves the power to destroy, McCulloch v. Maryland, 17 U.S. 316 (1819) the judiciary has intruded on that power with the utmost caution and only in the most compelling circumstances.

The cases to date furnish no precedent for this Court to order a tax rate increase to a figure selected by the Court, to fund the cost of exchanges between one school district and nearby districts which allegedly contributed to segregation in the district whose rate is increased.

United States v. Missouri, 515 F.2d 1365 (8th Cir.), cert. denied sub nom. Ferguson Reorganized Sch. Dist. v. United State, 423 U.S. 951 (1975) involved consolidation of three districts into one. The State and County Boards of Education had suggested that the new district's board be empowered to levy a uniform rate up to the highest rate of the three districts. The

District Court set the rate at a higher figure. The Court of Appeals, ruled very cautiously that maximum deference should be given to the views of the state and county officials that the proposed rate would be adequate. It also restored to the new local board the power to set the rate: "the maximum tax . . . shall be no higher than that of the annexing district . . ." 515 F.2d at 1373 (emphases supplied).

United States v. Missouri is not this case. It involved creation of a new district. That is not here proposed. (Missouri law requires uniform rates within a district, as the Court of Appeals noted, 515 F.2d at 1373, n. 8.) It authorized setting of a maximum rate by the local district. That is not here proposed. The maximum was that of the old district that would initially provide 76% of the enrollment of the new district. (515 F.2d at 1373.) Here the new, proposed rate, whatever it may be, will obviously have nothing to do with a voter-approved rate in the City district.

The Court of Appeals thus carefully walked between lines drawn by such cases as North Carolina State Board v. Swann, 402 U.S. 43 (1971) and Griffin v. County School Board, 377 U.S. 256 (1964), on one hand, and by San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) and such cases as Plaquemines Parish School Board v. United States, 415 F.2d 817 (5th Cir. 1969) on the other.

Swann indicates that a state policy (against pupil assignments for racial balance) will fall if it inhibits or obstructs operation of a unitary system or dismantling of a dual

one. In Griffin, the Court approved "if necessary", orders to require a school board "to exercise the power that is theirs to levy taxes" to support a school system the board had closed down as part of a scheme to create spurious "private" schools and evade desegregation altogether. Together, these cases indicate at most that policies deliberately adopted to preclude desegregation could be overridden, despite superficial conformance with state procedural law.

Rodriguez, on the other hand, recognized that, when asked to condemn, on equal protection grounds, Texas' system of school financing, "We are asked to condemn the State's judgment in conferring on political subdivisions the power to tax local property to supply revenues for local interests. In so doing, appellees would have the Court intrude in an area in which it has traditionally deferred to state legislatures." 411 U.S. at 40. "Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising and disposition of public revenues." 411 U.S. at 41.

In Plaquemines Parish, 415 F.2d at 833, the District Court had ordered the School Board to apply "whenever necessary" for Federal assistance of various kinds. The Court of Appeals found this unauthorized - "The Prince Edward County schools were closed and the court directed that they be reopened and that taxes be levied and collected to operate them. The subjects of levy, tax rates, and collection methods were left to the commands

of state law under state standards. Here the provision quoted in the footnote (27) goes beyond Prince Edward as to source, manner and controls accompanying the funds. Further, the necessity for funds is to be measured against the quality of instruction, equipment, books and transportation. We conclude that approval of the provisions as now broadly written is not justified." 415 F.2d at 833.

Thus, the Court of Appeals in United States v. Missouri, paid implicit heed to the observations of Plaquemines Parish as well, by deferring to the local actual rate, and the procedure for levying taxes.

No case since United States v. Missouri has gone further. See Evans v. Buchanan, 582 F.2d 750 (3d Cir. 1978), cert. denied sub nom. Del. State Bd. of Ed. v. Evans, 100 S.Ct. 1862 (1980) (three justices dissenting); see also, Wyatt v. Aderhalt, 503 F.2d 1305 (5th Cir. 1974).

The federal courts do not enjoy plenary remedial powers even in the case of a proven constitutional violation. The City submits that there is another, inherent limitation on those powers: the judicial power of the United States simply does not extent to the laying and collecting of taxes, for any reason. To hold otherwise would be to undo fundamental principles of American constitutional law, and betray the American Revolution. The federal courts are not the successors to the High Court of Parliament, either by virtue of Article III or the Fourteenth Amendment. The latter placed limitations upon the states; it did not fundamentally alter separation of powers.

Hence, the funding provisions of the plan must be deemed beyond the power of this Court to effect.

C. The Proposed Tax Rate Income Is Not Fair Or Equitable[2]

1. An increase for the City, in any case, is not equitable. First and foremost, the fact is that the Liddell and Caldwell classes were the victims, not the perpetrators of the discrimination alleged. The proposal that has been submitted ignores this fact. By proposing that the victims bear part of the cost of the remedy, the City Board and the Liddell and Caldwell plaintiffs have breached their fiduciary duties to the class members.

In United States v. Bd. of School Commissioners, 677 F.2d 1185, 1188 (7th Cir. 1982) the Court had this to say about the State of Indiana's objections to an order that it alone fund a mandatory inter-district plan:

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[2]The City believes a related question, call it workability, should be kept in mind. As the Court is doubtless aware, the Missouri Constitution now requires vote approval of new or increased local taxes or fees. Art. X, §22, Mo.Const. State taxes may be increased only in proportion to growth in Missourians' personal incomes. Art. X, §18, Mo.Const. As the Court is also aware, the St. Louis City vote plays a major part in determining the outcome of state-wide elections. If the Court orders City property taxes increased, City voters' reluctance to vote for other tax increases may be expected to rise. If the State proposes a tax increase requiring voter approval, to help fund its plan obligations (and/or to meet other State needs), the chances of passage will be thus diminished. The other side of the coin is, if a state tax increase does occur to help fund the plan, the City's residents will be paying for the plan twice - once on their property tax bills, again in increased payments to the State. On the other hand, if the plan were entirely State-funded, the City's taxpayers would, of course, be funding it in part; and their resistance to voting for a state tax increase would remain more or less at its present level. These observations, though elementary and incapable of documentation, suggest that there is a real world outside the schools that may not have been adequately reflected about by the drafters of the financing provisions.

"The issue here is who shall pay for the desegregation plan ordered by the district court for interdistrict violations. Only the State of Indiana was found liable for these violations . . . IPS and the other school districts in Marion County were found not liable for them . . . Given these findings, we do not see how the district court could have ruled any other way on the issue of financial liability. It is a basic equitable principle that the wrongdoer is liable for the cost of rectifying his wrongful conduct." (Footnotes and citations omitted, latter emphasis supplied.)

2. An increase for the City, as opposed to the suburban districts, is not equitable and is unfair.

The impact of a Court ordered tax increase in the City of St. Louis of course depends upon the amount of additional revenue which the City School Board will have to generate from the property tax. As that amount increases, the disparate impact upon owners of property in the City of St. Louis as compared with owners of property in St. Louis County likewise increases.

In this connection, it is inappropriate to merely compare the nominal tax rate for school purposes levied in the City of St. Louis with those of the suburban districts. [The City will show that the 1982 tax rate for school purposes in the City of St. Louis was $3.65 per $100 assessed value while the average of the suburban school district tax rates was $4.91. Adding thereto the Special School District Tax Rate, the average tax rate for school purposes in St. Louis County is $5.46.] Doing so would lead the uninformed to conclude that City of St. Louis taxpayers are miserly in their support of the City's school system. This is not the case.

A property owner's tax bill is the product of two factors: first, an assessment, i.e., a percentage of the property's actual value; and second, the application of a tax rate to the assessed value. The product of these two factors results in the amount of tax liability. While, as is the case between the City of St. Louis and the average St. Louis County nominal tax rates for school purposes, different jurisdictions may levy different nominal tax rates, the difference in assessment ratios between those jurisdictions may result in an equal effective tax rate. As an example, two houses in different taxing jurisdictions are both worth $50,000. House A is located in a county with a nominal tax rate of $10.00 per $100 assessed value and an assessment ratio of 10% of actual value. The owner of house A pays $500 per year in taxes. $\left[\frac{50{,}000}{10\%} \times \frac{\$10}{\$100} = \$500\right]$. House B is located in a county with a nominal tax rate of $5.00 per $100 assessed value and an assessment ratio of 20% of actual value. The owner of house B also pays $500 per year in taxes. $\left[\frac{50{,}000}{20\%} \times \frac{\$5}{\$100} = \$500\right]$.

Looking beyond the superficial difference in tax rates between the City School District and the County school districts and examining the actual relative tax burdens borne by the taxpayers of the respective districts, reveals that the property taxpayer in the City of St. Louis supports his or her school system on a par with the average county taxpayer. At the fairness hearing, the City of St. Louis intends to demonstrate that City residents pay taxes for school purposes at the rate of

$.91 for each $100 of actual value of their taxable property. County residents pay taxes for local school purposes, on the average, at the rate of $.84 per $100 of actual value of their taxable property. When the average suburban school district rate is combined with the Special Schol District tax rate, county taxpayers pay at the rate of $.93 per $100 of actual value of their taxable property. Viewed differently, if the average assessment ratio in St. Louis County was increased to 24.9%, the ratio in the City of St. Louis, the average county school district rate could be correspondingly reduced to a nominal rate of $3.37 per $100 assessed value [or $3.73 per $100 assessed value when the County Special School District rate is added] to yield the same property tax revenue as is currently generated.

The parity of tax burdens as they presently exist is in jeopardy if the financing provisions of the settlement agreement are implemented. Again, depending upon the magnitude of the tax increase required in the City of St. Louis, the tax burden imposed upon City residents could exceed 2-1/2 times that of their counterparts in St. Louis County. The City of St. Louis intends to show the impact of various degrees of tax rate increase on the effective tax rate which will have to be borne by City residents. If the City School Board is required to generate an additional $25,000,000, the effective school tax rate in the City of St. Louis will rise to $1.27 per $100 of actual value; if $50,000,000 is needed, the effective tax rate is $1.63; $75,000,000, $1.99; $100,000,000, $2.35. At the same time, the average rate in St. Louis County will remain at $.84. [$.93 including the Special School District levy.]

The City of St. Louis also intends to demonstrate, in actual dollars, the cost of these various levels of tax increases to the individual property taxpayer in the City, as well as the ability (or inability) of the average City resident to shoulder this increased tax burden. The median income of households in the City of St. Louis according to the 1980 census is $11,511. The median income of comparable households in St. Louis County is $22,128. Of the 125,000 parcels of property in the City of St. Louis which are (were) subject to taxation, approximately 7,000 are owned by the Land Reutilization Authority of the City of St. Louis (LRA). The LRA is a statutory trust created pursuant to §92.700, R.S.Mo., et seq. which is deemed to have bid the full amount of delinquent taxes at the tax sale where no bid is received which equals that amount. §92.830(2), R.S.Mo. Of course, the inventory of LRA properties includes only those not purchased by other bidders, so that the total number of properties which have been sold for back taxes (not more than five or less than two years delinquent) is far in excess of 7,000. In addition to those properties which have already been sold for non-payment of taxes, the records of the Collector of Revenue of the City of St. Louis show that as of April 15, 1983, there are 12,234 parcels of property on which 1982 taxes have yet to be paid, totaling over 4.3 million dollars in delinquent taxes. For 1981, over 6,000 parcels remain delinquent in the amount of nearly 2 million dollars in back taxes; for 1980, over 3300 parcels amounting to nearly 1.2 million dollars; 1979, approximately 1700 parcels representing $720,000 in taxes. As

taxes increase, it can be expected that these numbers will also increase.

Additionally, the impact of tax increases upon businesses in the City, which in turn employ many of the individuals who will bear this increase, cannot be overlooked.

At a time when the City of St. Louis is striving to induce businesses to locate or remain in the City, a massive increase in the property tax rate can only have a negative effect. Under the recently adopted amendment of Article X, Section 6 of the Missouri Constitution, the inventory of merchants and manufacturers will no longer be subject to ad valorem taxes after reassessment. The loss of this revenue is to be made up by an increase in the property tax rate for commercial and industrial real property. Id. Since, as the City of St. Louis will show, the assessed value of merchants' and manufacturers' inventory is approximately 1/2 that of the assessed value of commercial and industrial real property, the tax rate to be applied to commercial and industrial real property will increase by 50%. The result will be that owners of businesses in the City of St. Louis will pay a tax rate of 1-1/2 times the present overall tax rate [$6.25 per $100 assessed value] plus an additional tax of 1-1/2 times whatever increase in the City school tax rate might be ordered. To the extent that property tax rates influence business judgments, particularly the decision to locate or remain in the City of St. Louis, the effect of this part of the Settlement Agreement is obvious. The City of St. Louis, like the City Board, is a political subdivision of the

State. It is to an extent dependent on the State for authority to obtain funds with which to perform its corporate functions. It is subject to the State constitution's requirement, Art. X, §22, of voter approval for new taxes or fees.

The imposition, by the Court, of a substantial property tax increase in the City, aside from imposing upon the City increased administrative costs in collecting this increased tax, will have several foreseeable effects on the City's ability to operate in future years. First, collection of any property taxes from some taxpayers will probably become more difficult. Second, the City's ability to obtain voter approval of new taxes or fees may be impaired. This cannot be predicted with certainty. But if the taxpayers are deprived of the chance to determine for themselves their priorities among various governmental services by a school-tax increase ordered by this Court, it is possible they will be, at least for a time, unwilling to fund other services. The City needs new revenues to fund health care, to pay its police and firemen, to operate its jail facilities at constitutional standards, to repair its streets and viaducts, and to perform other municipal services. Moreover, if taxpayers, and businesses in particular, find the property-tax levels in the City unacceptable, the property, earnings and sales taxes the City receives could decline from their present levels. The financing provisions of the plan, coupled with its proposed cost, could do incalcuable harm to the economy of the metropolitan area.

D. The Notice of Proposed Settlement Was Misleading

The notice published to the class members appears to have been calculated to mislead them on the financing provisions of the plan.

According to the notice: "The plan provides for funding from sources available to the State of Missouri and the Board of Education of the City of St. Louis." In fact, of course, the plan provides for funding of the plan "by such combination of additional State funding . . . and a tax increase in the City of St. Louis as shall be ordered by the court." H(2217)83, X-2.

The notice did not advise the classes that the plan provides for Court orders to the State to pay new money for some or all of the plan's costs. The notice did not advise the classes that the plan contemplates a possible Court order raising tax rates in the City of St. Louis. The notice suggests no new funding sources are mentioned in the plan. In fact, there has never been an order in this case for a tax increase. Such an order would provide a new funding source. So would an order requiring "additional State funding."

The notice states that funds "from sources available" will fund the plan. That suggests that money already designated or intended for such a use will be used. That is not so. Since the plan proposed that state constitutional and statutory provisions, including the Hancock Amendment, concerning taxation and school district funding be circumvented, fundamental fairness considerations suggest that straightforward notice of that fact ought to have been given.

"The function of the notice is to describe the settlement." 3B Moore's Federal Practice, 2d Ed., ¶23.80[3], p. 23-513. Misrepresentation of the financing provisions did not "describe" them.

The notice also did not allow adequate time for preparation including discovery.

CONCLUSION

Basic principles of fairness and equity, together with the inherent limitations on the powers of this Court, compel rejection of the proposed settlement agreement, insofar as it would depend upon funds obtained from sources not already available to the parties to the agreement. The call for Court ordered taxation is particularly repugnant to fundamental principles of law, and seems to entail a cruel injustice on the members of the plaintiff classes. The plan must be disapproved by the Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing same in an envelope addressed to such attorneys of record at their last known address as disclosed by the pleadings of record herein, with postage duly prepaid and by depositing same in a U. S. Post Office Mail Box in St. Louis, Missouri on the

22nd day of August A. D. 1973

Edward J. Hanlon