

DOCKET NUMBER: CV-07-4006100 : SUPERIOR COURT  
JOHN M. PRATT, JR., ET AL : JUDICIAL DISTRICT  
VS. : AT LITCHFIELD  
THE BOARD OF EDUCATION FOR : AUGUST 14, 2006  
REGIONAL SCHOOL DISTRICT #14

### PLAINTIFF'S TRIAL BRIEF

#### BACKGROUND

John Pratt and Susan Scherf<sup>1</sup> are residents, voters and taxpayers of the Town of Bethlehem. The Defendant is the Board of Education for Regional School District #14, comprising Bethlehem and Woodbury.

John Pratt and Susan Scherf (Plaintiffs) respectfully assert that the referenda held in each town in 1968 approving regionalization, by operation of law established the "recommendations" of the Temporary Regional School Study Committee<sup>2</sup> as the initial Education Plan for the region.<sup>3</sup>

C.G.S. 10-47c provides the sole means by which a substantive or fundamental term of an Education Plan is to be amended. To amend a Plan, there must be an

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<sup>1</sup> One Susan Scherf, is a parent of children entering first grade and fourth grade.

<sup>2</sup> **Appendix A** attached hereto.

<sup>3</sup> Part III, Chapter 164 of the Conn. Gen. Stats., 10-45(b) and Atwood v Regional School District #15, 169 Conn. 613, 621 (1975), "Although Public Act No. 698 contains no definition of the term 'plan,' the language of ss 10-43 and 10-45 compels the conclusion that the 'plan' consists of the recommendations found in the final report of the study committee." **Appendix B** attached hereto. That the 5<sup>th</sup> grade in Mitchell Elementary school has for 2 years been **temporarily** moved to Woodbury Middle School is not a violation of the Plan. The "redistricting" of 100 or so Woodbury students to Bethlehem Elementary School is consistent with the Defendant's powers to "designate" schools to be attended. Such designations must, however, be consistent with the Plan. This action is.

majority vote in each member town. In this way, the Legislature's "Statutory Scheme",<sup>4</sup> retaining to the member towns control of this and four other fundamental or 'significant' regional decisions<sup>5</sup>, is effectuated.

The 'Statutory Scheme', articulated in "Part III, Chapter 164" and carried out in CGS 10-47c, mandates that before any regional school district may take actions which are equivalent to or result in the equivalent of an amendment of a substantive or fundamental provision of the Plan, its provisions must be followed.

The Defendant in this case has discontinued its two K-5 elementary schools, renovated the two buildings to "make Bethlehem a K-2 school and Mitchell a 3-5 school."<sup>6</sup> It has expended taxpayer funds doing so. By such actions the Defendant will require all K-2 students go to school in Bethlehem and all 3-5 students go to school in Woodbury.

The Board of Education has failed or refused to follow CGS 10-47c. This is in direct contradiction of the Education Plan of 1968, "that grades K-5 be housed in the elementary school buildings in Bethlehem and Woodbury", in buildings containing grades K-5<sup>7</sup>. This disregard of the law is not an "education issue". This is a voters rights issue.

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<sup>4</sup> "Now we turn to the principal issue, which involves consideration of several sections of part III of chapter 164 of the General Statutes, pertaining to the establishment and operation of regional school districts. A brief preliminary discussion of portions of the statutory scheme set out in part III will aid in understanding the conflicting claims of the parties." Atwood v. Regional Board No. 15, 169 Conn. 613, 617 (1975). (emphasis added)

<sup>5</sup> **Appendix C** attached hereto

<sup>6</sup> Minutes of October 16, 2006 Defendant Board meeting, page 3. **Appendix D** attached hereto.

<sup>7</sup> Numbered page "1", Final Report" May 1968, Temporary Study Committee.

The Defendant has not amended the 1968 Plan pursuant to CGS. Rather, it attempts an end run around the “statutory scheme” of Part III, Chapter 164 of the Conn. Gen. Stats. It will change the Education Plan by physical actions, not by statutory process.

This failure or refusal of the Defendant to follow C.G.S. 10-47c has and continues to deprive John Pratt and Susan Scherf of his and her individual rights as taxpayers and voters, all to their complete and irreparable harm.

The Defendant seeks to emasculate the “statutory scheme”. John Pratt and Susan Scherf seek the positive intervention of this Court to prevent such “side-stepping” of the law. To prevent further harm, Pratt and Scherf seek temporary injunctive relief. They independently seek a declaratory judgment.

The equities compel that this Court enter a temporary injunction.

## ARGUMENT

### I. QUESTIONS OF LAW

HAS THE ACTION OF THE DEFENDANT DEPRIVED THE PLAINTIFFS OF THEIR RIGHTS AS VOTERS?

ARE THE SUBJECT EXPENDITURES OF TAX FUNDS BY THE DEFENDANT UNAUTHORIZED AND IMPROPER?

This case presents this Court with Questions of Law. The Plaintiffs do not

impugn or question the “education” decisions of the Defendant. Education decisions are NOT the subject of this action.

VOTERS RIGHTS ISSUE:

The Defendant has constructively closed two K-5 elementary schools and intends to open one K-2 school in Bethlehem and one 3-5 school in Woodbury. The Plaintiffs allege that in so doing, the Defendant has taken away their statutory right to vote on this change to the initial education Plan of Region 14.

The Supreme Court in Atwood v Regional School District No 15, 169 Conn. 613, (1975) had before it the following issue:

“The plaintiffs have appealed, raising the issue of whether the referendum required a majority vote of the regional school district as a whole, pursuant to [General Statutes s 10-56](#), or a majority of each town, pursuant to [General Statutes s 10-47c](#). (Atwood @ 614)

The Supreme Court conclusion:

“We conclude that [s 10-47c](#) applies only to fundamental amendments of the terms of the plan, and does not apply to the issuance of bonds for the construction of new facilities.” (Atwood @ 623)

In reaching its conclusion, the Supreme Court declared:

“That the extraordinary requirement of approval by a plurality in each town is a prerequisite to such fundamental changes [to the terms of the plan] is not surprising, since such changes directly affect the voting rights of each individual elector.” (Atwood, @ 623) (emphasis added)

‘STATUTORY SCHEME’<sup>8</sup>:

Prior to the 1950’s, education in Connecticut was a local matter. Towns had boards of education within the Municipal framework. By July of 1951, however, the Statutes were amended: PART IIIa was inserted, to become the “statutory scheme” of Regional Districts. A planning committee was to study the advisability establishing a regional district, estimate costs and “... make recommendations to their respective towns”. CGS 298b. C.G.S. 303b required that each Town “by referendum vote at a general or special town election” act on the question whether the towns should join in establishing a regional school district.

Such a vote was held in May of 1968. Voters of both Towns, Bethlehem and Woodbury, voted in the majority favor of the question.

Subsequently, in 1969, Part IIIa was substantially amended.<sup>9</sup> The earlier term “recommendations”, contained in CGS 298b (above) was clarified. Upon an affirmative vote

In 1969, by Public Act 69-698, the legislature substantially clarified the regional school district legislation. The original PART IIIa was eliminated, and in its place was substituted “PART III, Chapter 164” of the Connecticut General Statutes.

(Appendix F.)

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<sup>8</sup> “Now we turn to the principal issue, which involves consideration of several sections of part III of chapter 164 of the General Statutes, pertaining to the establishment and operation of regional school districts. A brief preliminary discussion of portions of the statutory scheme set out in part III will aid in understanding the conflicting claims of the parties.” *Atwood v. Regional Board No. 15*, 169 Conn. 613, 617 (1975). (emphasis added) **Appendix C** attached hereto

<sup>9</sup> PA 69-698. **Appendix F** attached hereto.

### LOCAL CONTROL – A LEVEL PLAYING FIELD:

This revised ‘Statutory Scheme’ is noteworthy for the following: Local town control of five (5) significant regional issues was carved out and preserved such that the voters of any town (of a region) could, by failure to pass the measure by majority vote, assert its voters wishes. In other words, in return for giving up local control on ‘educational issues’ through regionalization, each town was guaranteed a “level playing field”. A larger town could not force upon a smaller town any of the five ‘significant issues’ unless that smaller town also passed on it by majority vote.

For example, there are 2,765 registered voters in Bethlehem and 6,348 in Woodbury. For any of the five ‘significant issues’, the ‘Statutory Scheme’ prevents Woodbury from forcing a decision upon Bethlehem. Regardless of how many voters in Woodbury vote for a ‘significant issue’, unless Bethlehem voters also pass on it by a majority vote, the issue must fail.

This is opposite to the statutory scheme for money matters. A regional school budget is passed by a plurality of all town votes. CGS 10-51. Bonding for substantial fund generation is controlled by CGS 10-56: “... the question shall be determined by the majority ... voting in the regional school district as a whole.”

Woodbury voters can force Bethlehem to accept a budget or bond vote.

SIGNIFICANT ISSUES RETAINED FOR LOCAL CONTROL

The five ‘significant issues’ preserved for local control are:

- a. To join other towns in regionalization (CGS 10-43 & 10-45(b));
- b. To add or withdraw grades (CGS 10-47b);
- c. **To amend a term of a plan approved through referenda** (CGS 10-47c); (emphasis added)
- d. To withdraw from or dissolve a region (CGS 10-63a & 10-63c);
- e. To reapportion representation on a regional school board (CGS 10-63n); (Connecticut General Statutes)

This Court is concerned with “c.”. However, it is the overall scheme which is fundamental to understanding John Pratt and Susan Scherfs’ position. As voters of Bethlehem, they each have a significantly greater vote on regional issues to which the standard is “... the majority of the votes in each of the participating towns is affirmative.” CGS 10-45(b). On the five ‘significant issues’ described herein, Pratt and Scherf are voting with or against only Bethlehem voters.

Due to the wisdom of the Legislature, on Plan amendment questions, Bethlehem cannot be dictated to by Woodbury. Denial of this protection is significant, irreparable and unconscionable.

The Question of Law presented is did the Defendant deny Pratt and Scherf their right to vote by refusing or failing to amend the Education Plan pursuant to CGS 10-47c? CGS 10-47c requires that each town pass the question by a majority of its voters.

The Defendant asked, “how can two Bethlehem voters/taxpayers be irreparably harmed by closing two K-5 elementary schools and making instead one K-2 primary school and one intermediate 3-5 school? The kids get educated either way! So what difference does it make whether we amend our Plan or not?

Apparently the Defendant would have this Court believe its circular logic:

If John Pratt and Susan Scherf are each deprived of their right to vote the Court can order a referenda.

If the court does so, John Pratt and Susan Scherf will get their vote.

Therefore, they are not irreparably harmed!

This is nonsense!

Indeed, Plaintiffs note that in so arguing, the Defendant is admitting irreparable harm exists. If the harm were not irreparable, the Defendant would not suggest that the Court could remedy the harm: the Court may only act to prevent irreparable harm.

The Defendant has side-stepped the law. It argues that this Court sanction such action. It must not. Instead, Pratt and Scherf argue that it must intervene to preserve the ‘Statutory Scheme’. It is not an education issue: it is a voting rights issue.

It is also not a ‘status quo’ issue. The Defendant would have the Court accept the argument that it has already completed the changes to the elementary education portion of the Plan. Thus, this Court should maintain that ‘status quo’. For the Court to do so it must agree that completion of an illegal action renders it legal. No such principle exists.

The Defendant is amending two (2) of the eight fundamental terms of Region 14's Education Plan by action rather than by a statutory referenda in each town.

Specifically, it has changed to a K-2 school in Bethlehem and 3-5 in Woodbury. This constitutes an amendment of the Plan which defines "elementary school building" as a building with "grades K-5" and requires that "... grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury" Numbered page "1", "The Temporary Regional Study Recommendations of (See Appendix A)

Why do Pratt and Scherf maintain that the Plan is being amended?

#### REGIONAL EDUCATION PLAN

CGS 298b was substantially revised by Section 7 of PA 69-698 and became CGS 10-45. 10-45(b), as amended in 1969, became: "(b) The vote on the question [to regionalize] shall be taken ... ballot label shall be "For establishing a regional school district in accordance with the **plan** approved by the state board of education."<sup>10</sup> (emphasis added)

CGS 10-43, as amended by PA 69-169<sup>11</sup>, added the word "plan" in part (a), clearly referring to the recommendations of the study committee. "...its [committee] report shall contain ... (4) detailed education and budget plans ..."

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<sup>10</sup> Section 7 of the Public Act 69-698

<sup>11</sup> Section 5

Finally, our Supreme Court, in the Atwood case, ended any confusion as to: a) whether the recommendations of the study committee became the initial education ‘plan’, and b) whether PA 69-698 was to be applied retroactively. Answering question “a”, the Atwood court declared:

“... the fact that the December 18, 1968 referenda did not mention a ‘plan’ does not, despite the defendant's argument to the contrary, automatically exempt Regional School District No. 15 from the \*621 provisions of that section. Although Public Act No. 698 contains no definition of the term ‘plan,’ the language of [ss 10-43](#) and [10-45](#) compels the conclusion that the ‘plan’ consists of the recommendations found in the final report of the study committee. The recommendations of the study committee for Regional School District No. 15, including those concerning the use of then existent high school facilities, constitute ‘terms of the plan’ for the district as that phrase is used in [s 10-47c.](#)” Atwood @ 620-621.

Therefore, the Plan for Region 14 consists of the May 1968 recommendations in the Final Report of the study committee. (See numbered page “1” of the Final Report.) Atwood could not be clearer.

“The recommendations of the study committee for Regional School District No. 15, including those concerning the use of then existent high school facilities, constitute ‘terms of the plan’ for the district as that phrase is used in [s 10-47c.](#)” Atwood @ 620-621.

Two (2) of the terms of Region 14’s Plan define “elementary school buildings” as containing grades K-5 and require “grades K through 5 be housed in the elementary school buildings in Bethlehem and Woodbury”.

This ‘skeletal’ concept of the 1968 Education Plan, a basic set of parameters, is

but a basic framework within which the Defendant must operate. Day to day ‘education’ decisions are the purview of the Defendant.

This Plan, a set of broad recommendations, is what the Statutes require. It is also perfectly consistent with page 16 of the Final Report which states, “The Regional Board of Education is bound only by the broad provisions outlined in the referendum proposed on page 1.” That statement and Atwood say precisely the same thing

Answering question “b”, the Atwood court declared:

“The defendant also argues that the provisions of Public Act No. 698 should not be applied retroactively to previously existing districts, but in so arguing it has apparently overlooked [s 10-63h](#)<sup>12</sup> which specifically applies Public Act No. 698 to existing districts.” Atwood @ 621. (emphasis added)

To reiterate, Pratt and Scherf contend that the most important concept in this ‘Statutory Scheme’ is the balancing of the individual town rights to have a say in the ‘significant’ educational questions involving their schools against the needs of the regional boards to conduct the day to day activities of education. Prior to 1951, virtually every town in Connecticut had a local school board which was a part of the municipality, and therefore, under the control of the town. Regionalization removes the local element, and creates a separate body politic, the regional school district. Take away the five ‘significant issues’ preserved to local vote, local control, and the

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<sup>12</sup> “(a)Notwithstanding the provisions of any general or special act or compact adopted by referenda to establish a regional school district, the provisions of this part shall apply to the regional school districts in existence on June 24, 1969, except as provided below.”

statutes are eviscerated. Allow the Defendant to accomplish by actions what by statute it must do by referenda in each town does the very same thing.

Whether or not to regionalize, what grades to include or to exclude from the regional school system, whether a town may withdraw from a regional district, whether or not to reapportion representation on the school board requires referenda with affirmative votes in each member town. Most important to this case, C.G.S. 10-47c, also requires that the vote be by affirmative referenda in each member town to amend a fundamental or significant term of a plan. Taking away K-5 elementary schools in each town, recommendations 2 and 3 of the Plan of 1968, is such a significant change to these two fundamental terms of the Plan as to require, as declared in Atwood, a referenda in accordance with CGS 10-47c.

“That the extraordinary requirement of approval by a plurality in each town is a prerequisite to such fundamental changes is not surprising, since such changes directly affect the voting rights of each individual elector. Other matters of fundamental importance, such as the formation or dissolution of a regional district; [ss 10-45, 10-63a](#); the expansion of a district; [ss 10-47b\(b\)](#); or the admission of a new town into the district; [ss 10-39, 10-45](#); similarly require a plurality approval by each town involved. We conclude that [s 10-47c](#) applies only to fundamental amendments of the terms of the plan, and does not apply to the issuance of bonds for the construction of new facilities. Atwood @ 623.

## PLAINTIFFS

By:

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Charles W. Bauer

**CERTIFICATION**

This is to certify that a copy of the foregoing has been e-mailed to and sent, postage prepaid, this 14<sup>th</sup> day of August, 2007, to the following:

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