

KEITH A. BRADFORD, et al.,

Plaintiffs,

v.

MARYLAND STATE BOARD OF
EDUCATION

Defendant.

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IN THE

CIRCUIT COURT

FOR

BALTIMORE CITY, PART 23

Case No.: 24-C-94-340058

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MEMORANDUM OPINION

This matter comes before the Court on the Maryland State Board of Education’s (“Defendant”) Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105000), filed June 19, 2019, Keith Bradford, et al.’s (“Plaintiffs”) Opposition to Motion to Dismiss (docket # 00105001), filed August 23, 2019, the Baltimore City Board of School Commissioners’ (“City Board”) Response/Opposition to the Motion to Dismiss (docket # 00105004), filed September 17, 2019, Defendant’s Reply in Support of Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105005), filed October 18, 2019, Plaintiffs’ Sur-reply in Opposition to Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105006), filed November 18, 2019, and the City Board’s Sur-Reply in Opposition to Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105007), filed November 18, 2019.

I. Facts & Procedural History

On December 7, 1994, Plaintiffs filed suit against Defendant alleging that students in the Baltimore City Public Schools System (“BCPSS”) were not receiving an adequate education, as required under Article VIII of the Maryland Constitution, due to Defendant’s failure to provide adequate funding. The parties entered into a consent decree on November 26, 1996 (“Consent Decree”).

The Consent Decree in relevant parts states:

47. The State shall provide to the Baltimore City Public Schools the following additional funds, subject to appropriation by the General Assembly.

FY 1998 \$30 million

FY 1999 \$50 million

FY 2000 \$50 million

FY 2001 \$50 million

FY 2002 \$50 million

Consent Decree at 15, ¶ 47.

53. For Fiscal Years 2001 and 2002, the Board may also request funds in amounts greater than those described in paragraph 47, after the completion of the interim evaluation described in paragraphs 38 and 39. If the Board requests such funds, the *Bradford* plaintiffs and *Vaughn G.* Plaintiffs will be offered an opportunity to present to the Board and to the State in writing their views on the request for such funds. The State and the Board may negotiate from April 30, 2000 through June 1, 2000 regarding such requests, and the State and the Board shall consider the views of the independent consultant and the Plaintiffs in the *Bradford* and *Vaughn G.* cases. If the State and the Board do not reach an agreement, the Board, on or after June 1, 2000, may seek relief from the Circuit Court for Baltimore City for funding amounts greater than those described in paragraph 47...

Id. at 16-17, ¶ 53.

68. This Decree shall be in effect through June 30, 2002, unless the Court extends the term upon timely motion of one of the parties and upon a showing of good cause to extend the Decree.

69. The Court retains continuing jurisdiction during the term of this Decree to monitor and to enforce compliance with the terms of this Decree. Except as expressly provided otherwise, any party to this Decree may seek to enforce the terms of this Decree. Notwithstanding termination of this Decree, the Court shall retain jurisdiction to resolve any disputes that may have arisen during the term of this Decree.

Id. at 22-23, ¶ 68-69.

The City Board filed a petition for further relief requesting an additional \$49.7 million for fiscal year 2001 on June 9, 2000. Mem. Op. at 4, June 30, 2000. The Circuit Court determined that the changes brought about by the Consent Decree resulted in improvements to the

management and instructional programs of Baltimore City schools, but that the education provided remained inadequate due to insufficient funding. *Id.* at 25. Therefore, the Circuit Court concluded that additional funding was required to enable the schools to provide an adequate education. *Id.* at 26. The State appealed the decision; however, the appeal was dismissed upon the parties reaching an agreement. Mem. Op. at 10, Aug. 20, 2004.

In response to the 2000 Circuit Court Memorandum Opinion, the State Legislature enacted the Bridge to Excellence in Education Act (“S.B. 856”), in May 2002. Mem. Op. at 3, 12, Aug. 20, 2004. S.B. 856 adopted many recommendations made by the Commission on Education Finance, Equity, and Excellence, referred to as the “Thornton Commission.” *Id.* at 3.

The Thornton Commission, and S.B. 856, recognized the substantial adequacy gap in Baltimore City, with S.B. 856 declaring a gap of \$3,380 per pupil. *Id.* at 12. In efforts to close the gap, S.B. 856 noted increases in State aid in Baltimore City by approximately \$18.7 million in FY 2003, \$28.1 in FY 2004, \$68.9 million in FY 2005, \$125.5 million in FY 2006, \$187.6 million in FY 2007, and \$258.6 million in FY 2008. *Id.* at 13. Additionally, S.B. 856 mandated a further adequacy analysis to be conducted at the end of the phase in of funding, in 2012. *Id.* at 14.

On May 24, 2002, in anticipation of the termination of judicial supervision pursuant to the Consent Decree on June 30, 2002, the City Board and Plaintiffs filed a Joint Motion for Extension of Judicial Supervision until such time as the constitutional adequacy of the education provided by the BCPSS has been remedied. *See* Mem. Op. at 3, June 25, 2002. Following a hearing, the Circuit Court concluded that pursuant to paragraph 68 of the Consent Decree, the

Court should retain jurisdiction and continue supervision of the matter until such time as the State has complied with the Court's 2000 Order. *Id.* at 5.

Plaintiffs filed a Motion for Declaration Ensuring Continued Progress Toward Compliance with Court Orders in July 2004. Mem. Op. at 4, Aug. 20, 2004. The 2004 Circuit Court issued an opinion rendering sixteen declarations. *Id.* at 67-70. The first five (5) declarations address the continuing inadequacy of Baltimore City schools and failure of the State to properly fund the schools. *Id.* at 67-68. Declaration six (6) states:

The Court will continue to retain jurisdiction to ensure compliance with its orders and constitutional mandates, and to continue monitoring funding and management issues. When the full funding outlined herein is received, the Court will revisit the issue of continuing jurisdiction, and determine whether the Consent Decree should then be additionally extended for good cause.

Id. at 68. The opinion of the Circuit Court continued, discussing the steps that had been taken, admonishing the BCPSS to not reduce opportunities, and declaring that parties with revenue raising capacity should increase available funding. *Id.* at 68-69. Declarations ten (10), eleven (11), and thirteen (13) discuss Senate Bill 894, 2004 Md. Laws ch. 148, § 4 ("S.B. 894") and the Memorandum of Understanding ("MOU") between BCPSS and Baltimore City, both of which required payment of the \$58 million deficit within two years.

10. To ensure that the necessary operational funding is available for BCPSS to provide the basic educational programs that have been reduced, the Court declares that S.B. 894's provision that the BCPSS' deficit must be eliminated by the end of fiscal year 2006 is unconstitutional as applied to the BCPSS.

11. To ensure that necessary operational funding is available for BCPSS to provide the basic educational programs that have been reduced, the Court declares that the MOU's provision that the BCPSS' deficit must be eliminated by the end of fiscal year 2006 is null and void as against public policy.

13. Absent additional funding from the State of Maryland, BCPSS shall not retire the deficit before fiscal year 2008 and BCPSS shall not dedicate more than \$5 million per year toward the creation of a \$20 million cash reserve.

Id. at 69. The remaining declarations address Baltimore City's role in monitoring the BCPSS's expenditures and the duty of the parties to report to the Circuit Court for Baltimore City as to the status of additional funding in the future. *Id.* at 69-70.

Defendant appealed the 2004 Circuit Court Order and the Court of Appeals of Maryland granted certiorari prior to proceedings in the Court of Special Appeals. *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353, 382 (2005). The Court of Appeals addressed only four of the sixteen declarations in the 2004 Memorandum Opinion, of which the Court then narrowed the declarations into two appealable issues: Paragraph 12 and intertwined Paragraphs 10, 11, and 13. *Id.* at 386-87. It noted that although appealable, Paragraph 12, which ordered that the City be repaid the \$8 million balance of its loan as scheduled, was not objected to by the State and would therefore not be considered by the Court of Appeals. *Id.* at 386. Paragraphs 10, 11, and 13 were determined to be intertwined because Paragraphs 10 and 11 were the underpinnings for the directive in Paragraph 13. *Id.* at 387. Paragraph 10 declared S.B. 894's provision that the deficit be eliminated by the end of fiscal year 2006 to be unconstitutional, Paragraph 11 stated that the contractual obligation under the MOU of the BCPSS to eliminate the deficit by FY 2006 is null and void as against public policy, and Paragraph 13 gave the directive that absent additional funding the deficit will not be retired before FY 2008 and the BCPSS shall not dedicate more than \$5 million per year to creating the reserve. *Id.* at 386-87; Mem. Op. at 69, Aug. 20, 2004. The Court of Appeals determined that the challenged directive, Paragraph 13, as well as its underpinnings in Paragraphs 10 and 11, were invalid and void. *Bradford*, 387 Md. at 387. It

declared that no other aspects of the of the August 2004 order, or any other orders, were properly before them at that time. *Id.* at 388.

Plaintiffs' filed the Petition for Further Relief on March 7, 2019. In the Petition, Plaintiffs allege that State's violations of Article VIII have been continuous since litigation commenced in 1994. They aver that the State has halted full funding as required under the Thornton Commission, resulting in the growth of the adequacy gap.

Defendant filed their Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105000) on June 19, 2019. On August 23, 2019, Plaintiffs filed their Opposition to Motion to Dismiss (docket # 00105001). The City Board filed their Response/Opposition to the Motion to Dismiss (docket # 00105004) on September 17, 2019. Defendant's Reply in Support of Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105005) was filed on October 18, 2019. Plaintiffs filed their Sur-reply in Opposition to Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105006) on November 18, 2019 and the City Board filed their Sur-Reply in Opposition to Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105007) on November 18, 2019. This Court held a hearing on Defendant's Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105000) on December 10, 2019.

II. Analysis

A. Plaintiff's Petition is not barred by statute of limitations or laches.

In the Motion to Dismiss Plaintiffs' Petition for Further Relief, Defendant claims that relief is barred by applicable statute of limitations and laches.

Defendant alleges that the Petition is barred by the twelve (12) year statute of limitations on judgments, or, if inapplicable, by the general three (3) year statute of limitations. Def. Mot. to

Dismiss at 33-34. Md. Courts & Judicial Proceedings Art., § 5-102(a)(3) provides that “[a]n action on one of the following specialties shall be filed within 12 years after the cause of action accrues, or within 12 years from the date of the death of the last to die of the principal debtor or creditor, whichever is sooner . . . Judgment.” However, Plaintiffs Petition requests three types of relief: a declaratory ruling that the State is violating Article VIII by failing to provide an adequate education, an injunction ordering the State to comply with the previous orders of the Court by closing the annual funding gap, and ordering Defendant to develop a plan for compliance with Article VIII and previous Court orders. Pls. Opp. at 26-27. These requests for equitable relief are not subject to statutes of limitations.

Additionally, Defendant claimed that the Petition was barred by laches based upon the delay. Def. Mot. to Dismiss at 34-38. Laches is a defense in equity against stale claims. *Ross v. State Bd. of Elections*, 387 Md. 649, 668 (2005). As such, laches applies only in cases where there is an unreasonable delay and the delay results in prejudice to the opposing party. *Frederick Road Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 117 (2000). Here, the requested relief is of an equitable nature, yet laches is inapplicable. Where a party seeks primary relief of a simple declaration, there will be no time bar to that cause of action. *Murray v. Midland Funding, LLC*, 233 Md. App. 254, 261 (2017).

Even if laches does apply to the relief requested, the defense would not bar the Petition. First, Defendant must show that there was an unreasonable or impermissible delay in asserting the claim. Courts look to “the motivations of the parties” and consequences of permitting or precluding the suit in determining whether the delay was unjustifiable and inexcusable. *State Cir., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 608 (2014). Here, Plaintiffs have

continued to raise the issue of inadequate funding through numerous methods over the years. *See* Pl. Opp. at 35-39. Therefore, Plaintiffs were not sitting idly as time passed allowing for a defense of laches.

Additionally, the delay that did occur in filing did not prejudice the Defendant. The second prong of laches requires a showing of prejudice to the opposing party because of the unreasonable delay. *Frederick Road Ltd. P'ship*, 360 Md. at 117. Mere passage of time is not enough to constitute prejudice. *Jones v. State*, 445 Md. 324, 339-40 (2015). Defendant is required to show in what specific way their case has actually been damaged by the delay of Plaintiffs. *Id.* Defendant alleges that its case was prejudiced by a delay in filing because of faded memories, specifically those of former Superintendent Nancy Grasmick. Def. Mot. to Dismiss at 37-38. However, “memory problems alone do not establish . . . that he has been prejudiced.” *State v. Christian*, 463 Md. 647, 654 (2019). Therefore, memory loss of a witness to previous inadequacies of state funding of BCPSS would not be sufficient prejudice to bar the Petition.

As Defendant cannot meet the burden, Plaintiffs’ Petition is not barred by statute of limitations or laches.

B. Plaintiff’s Petition is authorized by the Consent Decree entered November 26, 1996.

Defendant alleges in their Motion to Dismiss Plaintiffs’ Petition for Further Relief that the Petition is not authorized by the 1996 Consent Decree. As a final judgement, the Defendant alleges that the Consent Decree controls the proper disposition of the case, cannot be modified, and as written does not allow for this remedy. Def. Mot. to Dismiss at 38-42.

The Consent Decree is a binding contract and judgment; however, there is no need to modify the terms to find authorization within the Consent Decree. The Consent Decree specifically derives certain authorizations.

[T]he Board may also request funds in amounts greater than those described in paragraph 47...

Consent Decree at 16, ¶ 53.

If the State and the Board do not reach an agreement, the Board, on or after June 1, 2000, may seek relief from the Circuit Court for Baltimore City for funding amounts greater than those described in paragraph 47...

Consent Decree at 17, ¶ 53.

This Decree shall be in effect through June 30, 2002, unless the Court extends the term upon timely motion of one of the parties and upon a showing of good cause to extend the Decree.

Consent Decree at 22-23, ¶ 68.

This Court retains continuing jurisdiction during the term of this Decree to monitor and to enforce compliance with the terms of this Decree. Except as expressly provided otherwise, any party to this Decree may seek to enforce the terms of this Decree. Notwithstanding termination of this Decree, the Court shall retain jurisdiction to resolve any disputes that may have arisen during the term of this Decree.

Consent Decree at 23, ¶ 69.

Defendant avers that the Consent Decree terminated in 2002. However, the terms of the Consent Decree includes references to “amounts greater than” and “on or after.” *See* Consent Decree at 16-17, ¶ 53. Additionally, the 2002 Memorandum Opinion and Order issued by Judge Joseph H.H. Kaplan, lengthens the timeframe of judicial supervision until such time as compliance with the 2000 Order. Mem. Op. at 5, June 30, 2002. This Court retains jurisdiction under the terms of the Consent Decree. In fact, Defendant’s position was rejected by Judge

Kaplan in this case. *See generally* Mem. Op. June 30, 2000; Mem. Op. June 25, 2002; Mem. Op. Aug. 20, 2004. This Court retains jurisdiction under the terms of the Consent Decree.

C. The issues presented in Plaintiff's Petition are not non-justiciable issues.

Defendant alleged in their Motion to Dismiss Plaintiffs' Petition for Further Relief that the issues raised in the Petition are non-justiciable issues because funding for public schools is authority left to the political branches of government. Def. Mot. to Dismiss at 51. Determining whether an issue is a non-justiciable political question requires answering two questions: "whether the claim presented and the relief sought are of the type which admit of judicial resolution" and second, whether the structure of government "renders the issue a political question—that is, a question which is not justiciable in federal [or State] court because of the separation of powers provided by the Constitution." *Estate of Burris v. State*, 360 Md. 721, 744-45 (2000) (citing *Powell v. McCormack*, 395 U.S. 486, 516-17 (1969)). The political question doctrine is applied narrowly, constraining review by the courts only where actions "are not within the express purview of the textually demonstrable constitutional commitment." *Jones v. Anne Arundel Cty.*, 432 Md. 386, 400-01 (2013). Defendant claims that the issue of school funding fails under the second element as a political question because it is a violation of the separation of powers. Def. Mot. to Dismiss at 52.

Judicial review of constitutional violations, such as violations of Article VIII of the Maryland Constitution's right to an adequate education, are not prohibited by separation of powers. Defendant alleges that Plaintiffs are asking the judiciary to partake in matters that are under the sole authority of the legislative and executive branches. Def. Mot. to Dismiss at 54. However, the Maryland courts maintain an inherent authority to review constitutional adequacy.

Indeed, “executive and legislative budget authority is subject to constitutional limitations.”

Ehrlich v. Perez, 394 Md. 691, 736 (2006) (citing *Judy v. Schaefer*, 331 Md. 239, 266 (1993)).

Therefore, review of adequacy of funding of public education in Maryland is within the purview of the Maryland Judiciary, though the actual appropriation of funds is the duty of other branches of government.

Defendant previously alleged here that the issues of adequacy of funding were non-justiciable political questions. Authority of the judiciary to weigh in on the issue of sufficiency of funding for education was previously argued before both the Circuit Court for Baltimore City and the Court of Appeals of Maryland. *See generally* Mem. Op. June 30, 2000; Mem. Op. June 25, 2002; Mem. Op. Aug. 20, 2004; *Maryland State Bd. of Educ. v. Bradford*, 387 Md. 353 (2005). Defendant’s position is deficient in light of the history of this matter.

D. Plaintiff’s Petition is not precluded by sovereign immunity.

Finally, Defendant claims that the Plaintiffs’ Petition for Further Relief is barred by sovereign immunity. The doctrine of sovereign immunity shields the State, absent direct waiver of the General Assembly, from actions for monetary damages. *Rodriguez v. Cooper*, 458 Md. 4425, 451 (2018). The protection provided by sovereign immunity extends only to actions seeking monetary damages. Here, as discussed *supra* Section II, A, the primary relief requested by Plaintiffs is of equitable nature. The requested relief referenced by Defendant in alleging the bar of sovereign immunity is merely a declaration that Defendant *may* be subject to monetary sanctions if they fail to comply with the orders of this Court. Plaintiffs’ Petition is not barred by the doctrine of sovereign immunity.

III. Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss Plaintiffs' Petition for Further Relief (docket # 00105000), filed June 19, 2019, be, and the same is, hereby **DENIED**; and it is further

ORDERED that parties shall confer and provide a proposed scheduling order to this Court within thirty (30) days from the date of this Order.

IT IS SO ORDERED, this 16th day of January, 2020.

AUDREY J.S. CARRION
Part 23
Judge's Signature appears on the original document

Judge Audrey J.S. Carrión
Case No.: 24-C-94-340058

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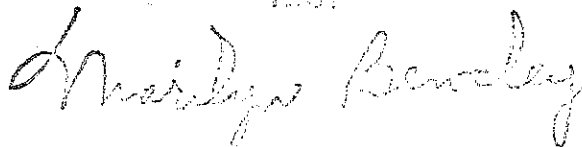
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IN THE

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FOR

BALTIMORE CITY, PART 23

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* * * * *

ORDER

Upon consideration of the Maryland State Board of Education’s (“Defendant”) Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105000), filed June 19, 2019, Keith Bradford, et al.’s (“Plaintiffs”) Opposition to Motion to Dismiss (docket # 00105001), filed August 23, 2019, the Baltimore City Board of School Commissioners’ (“City Board”) Response/Opposition to the Motion to Dismiss (docket # 00105004), filed September 17, 2019, Defendant’s Reply in Support of Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105005), filed October 18, 2019, Plaintiffs’ Sur-reply in Opposition to Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105006), filed November 18, 2019, City Board’s Sur-Reply in Opposition to Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105007), filed November 18, 2019, the arguments presented at the hearing held before the undersigned on December 10, 2019, wherein Plaintiffs, Defendant, and the City Board were represented by counsel, the record herein, and in accordance with the reasoning contained in the Memorandum Opinion issued on even date, it is this 16th day of January, 2020, by the Circuit Court for Baltimore City, Part 23, hereby

ORDERED that Defendant’s Motion to Dismiss Plaintiffs’ Petition for Further Relief (docket # 00105000), filed June 19, 2019, be, and the same is, hereby **DENIED**; and it is further

ORDERED that parties shall confer and provide a proposed scheduling order to this Court within thirty (30) days from the date of this Order.

AUDREY J.S. CARRION
Part 23

Judge's Signature appears on the original document

Judge Audrey J.S. Carrión
Case No.: 24-C-94-340058

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