

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

NOS. 31785 and 31786

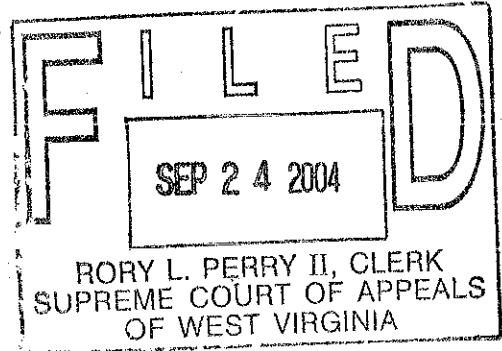
DANIEL JONES and CHRISTIE JONES,

Plaintiffs/Appellants,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION; STATE SUPERINTENDENT
DAVID STEWART; MARION COUNTY
BOARD OF EDUCATION; MARION COUNTY
SUPERINTENDENT THOMAS LONG; and
WEST VIRGINIA SECONDARY SCHOOL
ACTIVITIES COMMISSION,

Defendants/Appellants.



**BRIEF OF AMICUS CURIAE, WEST VIRGINIA FEDERATION
OF TEACHERS, AFL-CIO, IN SUPPORT OF REVERSAL**

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I. INTRODUCTION

Presently pending before the Court is the appeal filed by the West Virginia Secondary Schools Activities Commission ("WVSSAC") and others from the September 23, 2003, decision of the Circuit Court of Kanawha County allowing a home-schooled student, to circumvent the agency's rules restricting participation in interscholastic athletic activities to students enrolled in a WVSSAC school on a full-time basis.

Although not a party to the proceedings below, the West Virginia Federation of Teachers, AFL-CIO ("WVFT") has several concerns with the potential impact of the ruling below. Foremost, the WVFT has a watchdog interest concerning the maintenance and adequate funding of the constitutionally mandated free educational system. Similarly, the WVFT is concerned with the preservation of uniform, quality based academic standards for measuring a student's academic performance. Because these points of concern have not been addressed by the present parties from the Union's perspective, movant, WVFT, files its *Amicus Curiae* brief.

II. STATEMENT OF FACTS

Amicus concurs with and adopts Appellants' statement of the case and facts for purposes of this brief.

III. ARGUMENT

1. THE DECISION OF THE TRIAL COURT BELOW UNDERMINES THE CONSTITUTIONALLY MANDATED SYSTEM OF FREE SCHOOLS FOR THE STATE.

The West Virginia Constitution guarantees a free education for children of the State and mandates that the Legislature establish, maintain and support a free school system. WV Const., Art. XII, §§1, 2, 5. As a practical matter, however, the funding of public schools is based upon enrollment numbers. By allowing a student to withdraw from school under the guise of home schooling; but, at the same time, participate in non-academic extracurricular activities, the enrollment figures are artificially diluted. More succinctly, the lower the

enrollment, the less funds available for academic programs; yet, the school will still be expected to maintain non-academic extracurricular activities. The ruling below encourages the proliferation of a home-schooling system at the expense of academics. In addition, as will be discussed below, the ruling undermines attempts by educators to employ and administer a system of uniform academic standards and quality controls.

Amicus's, WVFT's, point is straightforward. In failing to assess the impact of the decision below upon the quality of education in the school system, the trial court erred. See, Hancock County BOE v. Hawkins, 546 S.E.2d 258 (W.Va. 1999). (In all cases dealing with public schools, the courts first concern must be the impact its decision will have on the education that state's children will receive)

2. THE RULING BELOW COMPROMISES ACADEMIC STANDARDS.

Presently schools require a "C" average for students who wish to participate in non-academic extracurricular activities. This requirement provides incentive for marginal students who wish to become involved in athletic activities to strive to come up to the standards of their peers. This Court has approved this regulation as a "legitimate exercise of the State Board of Education's power of 'general supervision' over the State's educational system under Article XII, §2 of the West Virginia Constitution in furtherance of the fundamental goal of "academic excellence". See, Bailey v Truby, Syl. pt.1, 321 S.E.2d 302 (W.Va. 1984). The regulation at issue in the matter *sub judice*, is a similar regulation which should also be upheld.

The present ruling, however, will allow a failing or "below par" student to circumvent academic standards merely by becoming a home-schooled student whose academic

achievement is measured by sources outside the school system. Thus, the goal of “academic excellence” is jeopardized because the teachers and administrators are deprived of the ability to maintain or evaluate students on a uniform basis.

3. THE RULING BELOW NOT ONLY ALLOWS PARENTS AND STUDENTS TO “SHOP AROUND” FOR AN ATHLETIC PROGRAM OF THEIR CHOOSING; BUT, ALLOWS A COACH TO POTENTIALLY “CHERRY PICK” A WINNING TEAM AT THE EXPENSE OF ACADEMIC STANDARDS.

It is well established that the promulgation of rules, regulations or the setting of standards for a student to participate in non-academic extracurricular activities is consistent with, if not mandated by, Article XII, §2 of the West Virginia Constitution requiring administration of the free school system by the State Superintendent. See, Bailey v. Truby, supra. at 304.

The order below, by negating the WVSSAC rule, opens the door for parents or students to pick and choose an athletic program with which they wish to associate and circumvent residency requirements by choosing home schooling. In addition, the order below also potentially allows a coach to “shop around” for home-schooled athletes outside their respective residential districts. This, exaltation of extracurricular activities over academic concerns is inconsistent with the constitutional mandate that the promotion of academic excellence be the fundamental purpose of educational standards and regulations.

CONCLUSION

For these additional reasons, the West Virginia Federation of Teachers, AFL-CIO, submits this *Amicus Curiae* brief and urges the reversal of the trial court's ruling below.

Respectfully submitted,

West Virginia Federation of
Teachers, AFL-CIO,
By Counsel



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CERTIFICATE OF SERVICE

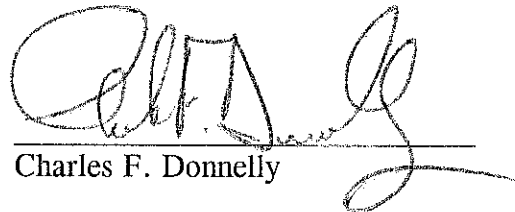
I, Charles F. Donnelly, do hereby certify that I have served a copy of the foregoing
MOTION OF WEST VIRGINIA FEDERATION OF TEACHERS, AFL-CIO, FOR LEAVE
TO FILE BRIEF AS AN *AMICUS CURIAE* and, BRIEF OF *AMICUS CURIAE* IN SUPPORT
OF REVERSAL, by placing a true copy, postage prepaid, in the United States mail, on this
23rd day of September, 2004, upon the following:

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