

COMMONWEALTH OF MASSACHUSETTS

Appeals Court

SUFFOLK COUNTY

A.C.-03-P-1532

Roberta Beck,)
David L. Higgs and)
Rodney W. Young,)
Plaintiffs-Appellants,)
v.)
)
Massachusetts Department of Education [DOE], and)
¹ South Shore Charter School [SSCS], and)
David P. Driscoll, Commissioner of Education, and)
Scott W. Hamilton, (former) DOE Associate Commissioner of Education, and)
Edward Kirby, (former) Acting DOE Associate Commissioner of Education, and)
Timothy Anderson, (former) SSCS Chief Executive Officer, and)
Diane Ellis Miles, (former) SSCS Headmaster, and)
Gregory L. Thornton, (former) Chairman, SSCS Board of Trustees,)
Defendants-Appellees.)

Motion to Exceed Page Limit in the Brief

1. Plaintiffs-appellants in the above named action respectfully request that the Court extend, on their behalf, its usual limitation on the maximum number of pages for an appeals brief per Rule of Appellate Procedure 16(h), from 50 to 108 pages, because of the following considerations.
2. There are 3 plaintiffs and six defendants each of whom are named, variously, in two or more of ten counts. Beck v. DOE is the equivalent of at least three civil actions [arguably four or five] in one.
3. Each count is compounded in its consideration by one or both of two overriding issues: the public-figure status shared by the plaintiffs, as alleged by the defendants, and a civil conspiracy among the defendants, as alleged by the plaintiffs. Over 100 exhibits will included in the records appendix.

¹ All claims against South Shore Charter School, an original defendant in the above named action, were dismissed on February 12, 2001, per Plymouth Superior Court's MEMORANDUM OF DECISION AND ORDER ON MOTION OF DEFENDANTS GREGORY L. THORNTON AND SOUTH SHORE CHARTER SCHOOL FOR JUDGMENT ON THE PLEADINGS. However, the Court denied a subsequent MOTION FOR ENTRY OF SEPARATE AND FINAL JUDGMENT ON DISMISSAL OF CLAIMS AGAINST DEFENDANT SOUTH SHORE CHARTER SCHOOL, PURSUANT TO RULE OF CIVIL PROCEDURE 54(b).

4. Plaintiffs will argue in their brief a total of 36 judicial errors relating variously to 9 of the 10 counts [omitting Count Eight] as well as to the public-figure and civil-conspiracy issues, every error to be argued in a separately numbered section. Included are 13 falsifications of the record, demanding demonstration both of error and of deliberate alteration.

Plaintiffs calculate that on average they will require three pages to argue and document each anomaly and its materiality:

<u>Count</u>		<u>Page count</u>
I.	Six judicial errors alleged, including three falsifications of the record	18
II.	Five errors, including three falsifications	15
III.	Four errors, including two falsifications	12
IV.	Eleven errors, including five falsifications	33
V.	[included in IV]	--
VI.	[included in IV]	--
VII.	Two errors	6
VIII.	[no error alleged]	0
IX.	Three errors	9
X.	One error	3
Civil Conspiracy	[included in Count I]	--
Public Figure Status	Four errors	<u>12</u>
Total pages requested:		108

5. Plaintiffs already have produced exhaustive arguments for each of the 36 judicial errors found in a draft brief containing the equivalent of 179 pages formatted per Rules of Appellate Procedure.² Plaintiffs are at pains to scale back their rhetoric by 40%, to 108 pages, and still meet head-on the challenge of a decision and order replete, they say, with 90 and 180-degree twists and turns of the record.³

² See plaintiffs' informal *Super Brief* at <http://BeckVsDOE.Wellrock.net/> ["Table of Court Errors," pp. vi to vii].

³ See "Application of Plaintiffs-Appellants to the Massachusetts Supreme Judicial Court for direct appellate review" [copy filed on 11/25/03 at the Appeals Court] for three examples out of thirteen instances of misquoting and/or paraphrasing the record evident in the Superior Court's February 25, 2002 decision and order of summary judgment. These falsifications along with twenty-three other blatant judicial errors resulted in a decision and order skewed in the defendants' favor. One of the most spectacular examples of the Court's misrepresentation involves a report obtained through plaintiffs' freedom-of-information request from the FBI in January 2000...

Court's decision and order: **"A copy of Higgs' FBI report states that *the* "[i]nvestigation determined *that* access to *the* system was obtained via default Windows 95 settings allowing file sharing *from a remote access.*"** [italics supplied]

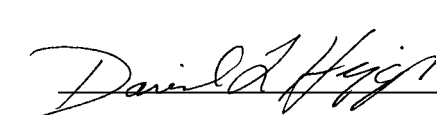
The above passage constitutes a substantial misquote and reversal of an official notice of the FBI's Boston Field Office – on record before the Court – regarding 'case closure,' to wit,

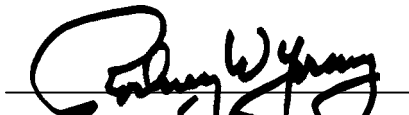
FBI's investigative report: **"CASE CLOSURES ... Investigation determined access to system was obtained via default Windows 95 settings allowing file sharing and remote access. US Attorney's Office declined prosecution. Request case be closed."**

There can be no justification for the Court's renaming in its decision and order the Bureau's notification of "CASE CLOSURES" as "Higgs' FBI report" or, especially, for misquoting the phrase "file sharing *and* remote access" as "file sharing *from a remote access,*" creating a clear implication of illegal computer access by Plaintiff Higgs. Moreover, the important final two sentences regarding denial of prosecution and case closure are omitted from the Court's reference.

WHEREFORE, to make their case on appeal the plaintiffs-appellants request that this Court allow the exception to the Rules of Appellate Procedure they seek, but say they will endeavor mightily to make do with such consideration as the Court in its wisdom does grant them.

Respectfully submitted,


David L. Higgs


Rodney W. Young

Date: December 24, 2003

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorneys of record, Mark P. Sutliff, Esq., Mark W. Batten, Esq., and Betsy Ehrenberg, Esq., representing, respectively, each other party by mail on December 24, 2003.

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