

SUPREME COURT OF KENTUCKY
CASE NO. 2008-SC-877

FILED

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SUPREME COURT CLERK

MEMBERS CHOICE CREDIT UNION,
BEACON COMMUNITY CREDIT UNION,
SERVICE ONE CREDIT UNION,
C & O CREDIT UNION, GREATER
KENTUCKY CREDIT UNION, INC. and
KENTUCKY EMPLOYEES CREDIT UNION

APPELLANTS

VS:

Appeal from the Kentucky Court of Appeals
Case No. 2007-CA-002384
and
Franklin Circuit Court
Civil Action No. 06-CI-00737

HOME FEDERAL SAVINGS AND LOAN
ASSOCIATION

APPELLEE

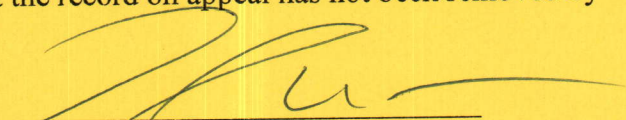
APPELLANT'S REPLY BRIEF

MEMBERS CHOICE CREDIT UNION,
BEACON COMMUNITY CREDIT UNION,
SERVICE ON CREDIT UNION,
C & O CREDIT UNION, GREATER
KENTUCKY CREDIT UNION, INC. and
KENTUCKY EMPLOYEES CREDIT UNION

Submitted by:
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The Undersigned does hereby certify that copies of this brief were served upon the following named individuals by U.S. Mail on June 23, 2009: Hon. Phillip J. Shepherd, Franklin Circuit court, P.O. Box 678, Frankfort, Ky 40602-0678; Jill F. Endicott, Woodward, Hobson & Fulton LLP, 101 South Fifth St., Suite 40202, Louisville, Ky 40202, counsel for Appellee; and to Clerk of the Court of Appeals, 360 Democrat Drive, Frankfort, KY 40601.

The undersigned does hereby certify that the record on appeal has not been removed by counsel for the Appellants.


David T. Wilson II

STATEMENT OF POINTS AND AUTHORITIES

<u>H.S. George v. Alcohol Beverage Control Board</u> , 421 S.W.2d 569 (Ky. 1967)	1
<u>Commonwealth of Kentucky, Central State Hospital v. Gray</u> , 880 S.W. 2d 557, 559 (Ky. 1994)	1
<u>Valla v. Preston Street Road Water Dist. #1</u> , 395 S.W. 2d 772 (Ct.App. 1965)	3
<u>Hamilton v. International Union of Operating Eng.</u> , 262 S.W. 2d 695 (Ct.App. 1953)	3
<u>National Credit Union Admin v. First National Bank & Trust Co.</u> , 118 S.Ct. 927, 931 (1998).....	3
<u>North Carolina Savings & Loan League v. North Carolina Bankers Assoc.</u> , 276 S.E. 2d 404,408 (N.C. 1981)	3

INTRODUCTION

The brief of Home Federal Savings and Loan Association does not address in any meaningful fashion Appellants' central argument. As noted in briefs filed by both the Appellants and Appellee, the Court of Appeals affirmed the Trial Court's decision holding that any form of membership which the legislature considered, but did not explicitly include in the membership statute, was rejected as a criteria for credit union membership. Court of Appeals Opinion, p. 10, 11, 13, 18. Membership based on residency was permitted under the previous membership statute (KRS 290.080) and also contemplated by the Model Act and Senate Bill 255. However, since it was omitted from the enacted statute the Court of Appeals held that such a membership criteria was obviously contemplated and rejected by the 1984 General Assembly.

The inadequacy of this interpretation only becomes apparent when said interpretation is tested by application to the remainder of the membership statute. Application of the lower court's ruling to the membership statute as a whole reveals that membership previously extended to "employee groups", "persons employed within a defined business district, industrial park or shopping center", or "members of the immediate family of such persons" would also be prohibited. Thus, the anomaly created by the lower court's interpretation (if it were correct) is that the modernization of the Credit Union Act was accompanied by the simultaneous eviction of nearly all long-standing membership groups. It is presumed under Kentucky law that the legislature did not intend an absurd or unreasonable result. H.S. George v. Alcohol Beverage Control Board, 421 S.W. 2d 569 (Ky. 1967); Commonwealth of Kentucky, Central State Hospital v. Gray, 880 S.W. 2d 557, 559 (Ky. 1994).

OBSERVATION REGARDING SPECIFIC ARGUMENTS

III. The Statutory History of KRS 286.6-107(2) Establishes Legislative Intent to Exclude Geographic Fields of Membership. (Appellee's Brief, p.21)

IV. The Legislative History of KRS 286.6-107(2) Establishes Legislative Intent to Exclude Geographic Fields of Membership. (Appellee's Brief, p. 24)

The Appellants submit that the soundness of the argument as to geographic fields of membership is equally sound when applied to membership predicated upon the identity of one's employer, persons within a defined business district, and members of the immediate family of such persons.

V. The Purpose of KRS 286.6-107 Is Not Rendered Meaningless by Exclusion of Geographic Fields of Membership. (Appellee's Brief, p. 26)

As with Appellee's third and fourth argument discussed above, the argument set forth in Section V is correct in so far as it goes. The exclusion of membership predicated upon geography does not render KRS 286.6-107(2) meaningless. Furthermore, it should be noted that Appellants make no such assertion. What Appellants do assert is that the application of the lower court's logic to the membership statute does, in fact, result in the exclusion of credit union membership based upon the identity of one's employer. A cursory review of exhibits 6 through 9 of the Appellants' Brief will quickly reveal that the vast majority of memberships in state chartered credit unions are predicated upon a common employer. Therefore, if the lower court's reasoning is sound, the same intent ascribed to the General Assembly as to membership predicated upon geography is also applicable to membership predicated upon a common employer. This leads to an absurd result - the modernization of the Act while simultaneously excluding the core membership. Kentucky law does not favor an absurd result. Valla v. Preston Street Road

Water Dist., #1, 395 S.W. 2d 772 (Ky.App.1965); Hamilton v. International Union of Operating Eng., 262 S.W. 2d 695 (Ky.App.1953).

Appellee sites in this portion of its Brief the case of National Credit Union Administration Admin. V. First National Bank & Trust Co., 118 S.Ct. 927 (1998) and North Carolina Savings & Loan League v. North Carolina Bankers Assoc., 276 S.E. 2d 404 (N.C. 1981). Appellants note that neither case is particularly instructive as to the issue at hand. In the case before the U.S. Supreme Court, the issue was whether or not the Federal Credit Union Act permitted Federal Credit Unions to be composed of multiple unrelated employer groups, each having its own common bond of occupation as opposed to the same common bond of occupation. National Credit Union Admin. V. First National Bank & Trust Co., 118 S.Ct. 927, 931 (1998). In the case before North Carolina's high court, at issue was whether or not county, municipal and state employees shared a "common bond of similar occupation". North Carolina Savings & Loan League v. North Carolina Bankers Assoc., 276 S.E. 2d 404, 408 (N.C. 1981).

VI. The Effect of the Lower Courts' Decisions on the Parties is Fair and Reasonable. (Appellee's Brief, p.27)

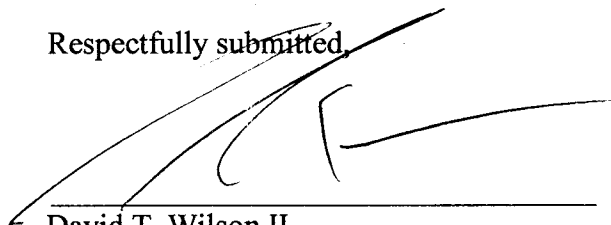
The crux of Appellee's argument in Section V seems to be that even if the lower court is wrong, the Appellants have suffered little. Appellants would agree that the lower court's decision to apply its ruling prospectively is fair and reasonable, but that does not make its interpretation of KRS 286.6-107(2) correct. Secondly, it should be noted that Beacon Community Credit Union constructed a new branch in Bullitt County, Kentucky predicated upon authority to serve residents of Bullitt County. Were it necessary to close the branch, suffice to say Beacon Community Credit Union will suffer economically.

CONCLUSION

The lower court's logic relative to credit union membership appears at first glance to be sound when applied to membership predicated upon geographic residence.

However, if the same logic is applied to the credit union membership statute in its entirety, an absurd result is reached. Kentucky jurisprudence does not favor such an absurd result.

Respectfully submitted,



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