

2012

True Equality in Illinois Education: Will This Be the Year?

Cynthia Y. Herrera

Follow this and additional works at: <http://lawcommons.luc.edu/pilr>

 Part of the [Education Law Commons](#)

Recommended Citation

Cynthia Y. Herrera, *True Equality in Illinois Education: Will This Be the Year?*, 17 Pub. Interest L. Rptr. 124 (2012).
Available at: <http://lawcommons.luc.edu/pilr/vol17/iss2/8>

This Feature is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

Loyola Public Interest Law Reporter

FEATURE ARTICLE

**TRUE EQUALITY IN ILLINOIS
EDUCATION: WILL THIS
BE THE YEAR?**

by CYNTHIA Y. HERRERA

Later this year, the Illinois Supreme Court will hear a new lawsuit challenging the constitutionality of Illinois's school funding system.¹ This lawsuit is based on a novel legal theory, one never before heard by Illinois courts.² "This is a taxpayer lawsuit," says Hoy McConnell³ of the Business and Professional People for the Public Interest (BPI), who filed this suit along with the law firm Sidley Austin.⁴

THE STATUS QUO

As a point of reference, Illinois is ranked 49th out of 50 states in the percentage of state revenue allocated to support public schools.⁵ Schools in Illinois, therefore, must rely heavily on local property taxes for funding.⁶ As a result, disparities in per-pupil expenditures among school districts in Illinois rank among the largest in the nation.⁷ These facts are disconcerting considering the backdrop of acutely concentrated poverty and segregation of racial minorities in Illinois, resulting from a history of discriminatory housing practices.⁸

Parties seeking to challenge the constitutionality of school funding schemes have generally used two types of legal theories. The first type seeks equity in funding,⁹ while the second asserts an implied right to an adequate education.¹⁰ Such claims have found success in other states,¹¹ but courts in Illinois have not embraced them.¹²

The Illinois Constitution reads, "The State shall provide for an efficient system of high quality public educational."¹³ Nevertheless, the Supreme Court of Illinois has held this language does not obligate the General Assembly to guarantee a high quality of education,¹⁴ or even an "adequate" one.¹⁵ The Court reasoned that this language was intended to express a general goal, not to impose a specific obligation.¹⁶

CARR V. KOCH: A CHALLENGE TO THE SYSTEM

The case challenging Illinois's school funding system this year is being brought by two taxpayers that argue the system discriminates against them based on where they live.¹⁷ Plaintiffs Paul Carr of Chicago Heights and Ron Newell of Cairo claim their properties are taxed at a higher rate than properties in Chicago's suburbs with similar values.¹⁸ As defendants, the suit names State Superintendent of Education Christopher Koch, the Illinois State Board of Education ("Board of Education") and Gov. Patrick J. Quinn.¹⁹

Each fiscal year, the General Assembly sets the minimum level of per-pupil financial support that state and local entities should provide for the basic education of each pupil.²⁰ This standard is based on recommendations presented by the Education Funding Advisory Board and specifies the amount of fund-

ing to be allocated to each school district as well.²¹ But, as the Board of Education notes, the General Assembly always sets the Foundation Level – the level at which it funds each student – “artificially low” due to current financial straits.²² The reality is that, even at this lowered rate, the State is unable to cover its mandated obligation.²³

The plaintiffs claim the current school financing system violates the Illinois Constitution,²⁴ because “some property owners are forced to pay higher school property tax rates than similarly situated taxpayers, in order to reach the state-designated Foundation Level.”²⁵ They likewise point out that districts with mostly high-valued properties are able to tax themselves less and still generate more than required by the state.²⁶ Despite this, the State still rewards those wealthier districts with an extra \$218 per pupil.²⁷ Residents of low-property-wealth districts pay higher tax rates yet have lower per-pupil spending.²⁸

In their ongoing litigation, the plaintiffs argue that this unequal treatment is not rationally related to any legitimate legislative purpose.²⁹ In the past, courts have declined to rule against laws allowing uneven education funding, reasoning that maintaining local control of education constituted a legitimate legislative interest.³⁰ However, the plaintiffs in this case argue that core education functions in Illinois public schools are no longer locally controlled, with the imposition of federal and statewide mandates.³¹

For its part, the Board of Education has acknowledged that the federal No Child Left Behind Act has imposed several new requirements, namely proficiency tests and standards by grade.³² But it also argues that these changes are not enough to find that there is now universal, statewide control over schools.³³ The Board of Education also maintains that the only significant difference is that there is now a more objective and accurate means for the State to assess school performance.³⁴

While the State is able to impose sanctions based on these assessments, it had already reserved – and exercised – this right prior to the enactment of No Child Left Behind.³⁵ Therefore, the Board of Education anticipates that the Court will reject this new case, just like past equity claims.³⁶

Nevertheless, Alex Polikoff of BPI argues that these new standards “essentially demand [a designated] curriculum,” because their specificity simply does not

allow much room for variation, and because they are imposed under the threat of sanction.³⁷

THE REMEDY

In the end, Polikoff and the plaintiffs are asking the Illinois Supreme Court to declare the current school funding system unconstitutional.³⁸ The Board of Education criticizes this and other suits, stating that “none of these lawsuits really proposes a remedy.”³⁹ But BPI is hoping that a verdict in its favor will result in the Court directing Gov. Quinn and the Legislature to come up with a new system.⁴⁰

The new system, BPI proposes, should be “[o]ne that is fair to taxpayers and addresses the inequities of the current system.”⁴¹ However, the fact that two taxpayers – and no students or parents – are plaintiffs in the case may mean that any relief resulting from the case could go solely to the taxpayers in property-poor districts, and not to students.⁴²

If their bet pays off, this education finance claim could be a more far-reaching claim than those previously argued, says Adam Schwartz of the American Civil Liberties Union of Illinois.⁴³

This new taxpayer element to the case, Schwartz claims, has the potential to provide a more equitable distribution of funds across school districts, perhaps resulting in much more than a minimally adequate educational standard.⁴⁴

BEYOND THE COURTS

While it is impossible to predict whether this new legal strategy will prevail, the persistent filing of new suits challenging Illinois’s system of school funding is a testament to the need for change. Illinois’s Board of Education argues that even the uniform need for a more equitable system would not justify overturning current laws.⁴⁵ The “way the money is dispersed is set out by the Legislature.”⁴⁶ This suggests that the war for equal education opportunity will likely only be won if fought beyond the limited confines of the courts.

NOTES

1 Josh Weinhold, *High court accepts case challenging education funding*, CHI. DAILY LAW BULLETIN, Jan. 25, 2012, available at <http://www.chicagolawbulletin.com/News-Extra/ACCEPT-jw-1-25-2012.aspx>.

2 *Id.*

3 *School Funding* (video), CHI. TONIGHT (Mar. 24, 2010), <http://chicagotonight.wttw.com/2010/03/24/school-funding>.

4 Hoy McConnel, Taxpayers Sue State Over School Funding System (Mar. 24, 2010), available at <http://www.bpichicago.org/documents/SCHOOLFUNDINGNEWSRELEASE.FINAL.3.10.pdf>.

5 Douglas Moeller, Fractionalization and Tax Effort to Fund Illinois Public Schools: An Equity Analysis 1 (2011) (unpublished Ph.D. dissertation, University of Illinois at Urbana-Champaign), https://www.ideals.illinois.edu/bitstream/handle/2142/29709/Moeller_Douglas.pdf?sequence=1.

6 *Id.* at 38.

7 *Id.* at 3.

8 Margery Austin Turner, *Limits on Housing and Neighborhood Choice: Discrimination and Segregation in U.S. Housing Markets*, 41 IND. L. REV. 797, 809-811 (2008).

9 *See, e.g.*, Comm. for Educ. Rights v. Edgar, 174 Ill.2d 1 (1996).

10 *See, e.g.*, Lewis E. v. Spagnolo, 186 Ill.2d 198 (1999).

11 *See, e.g.*, Tenn. Small Sch. Systems v. McWherter, 851 S.W.2d 139 (Tenn. 1993); Brigham v. State of Vermont, 692 A.2d 384 (Vt. 1997); Pauley v. Kelley, 255 S.E.2d 859 (W. Va. 1979).

12 *Edgar*, 174 Ill.2d at 40; *Spagnolo*, 186 Ill.2d at 235.

13 ILL. CONST. art. X, § 1.

14 *Blase v. State*, 55 Ill.2d 94, 100 (1973).

15 *Spagnolo*, 186 Ill.2d at 227.

16 *Blase*, 55 Ill.2d at 100 (turning to legislative history, the Court found that the conversations discussing the amendment indicated that the purpose of including the statement was to "put the Convention on record with [the] feeling widely held by the delegates to this Convention that the state, indeed, has the primary responsibility for financing the public school system," but that "[i]t is not a legally obligatory command to the state legislature.").

17 McConnel, *supra* note 4.

18 Weinhold, *supra* note 1.

19 *Id.*

20 Education Funding Advisory Board, Illinois Education Funding Recommendations (Jan. 2011), available at http://www.isbe.state.il.us/efab/pdf/final_report_1-11.pdf.

21 *Id.*

22 Interview with Darren Reisberg, Deputy Superintendent & General Counsel, Illinois State Board of Education, and Irma Snopek, Assistant General Counsel, Illinois State Board of Education (Apr. 2, 2012).

23 *Id.*

24 ILL. CONST. art. I, § 2 ("No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.").

25 McConnel, *supra* note 4.

26 Business and Professional People for the Public Interest, *Frequently Asked Questions Regarding the BPI/Sidley School Funding Lawsuit* (Mar. 24, 2010) [hereinafter *Frequently Asked Questions*].

tions], <http://www.bpichicago.org/documents/FREQUENTLYASKEDQUESTIONS.3.24TOUSE.pdf>.

27 *Id.*

28 *Id.*

29 Carr v. Koch, 2011 Ill. App (4th) 110117.

30 *Id.*

31 *Id.*

32 Reisberg & Snopek, *supra* note 22.

33 *Id.*

34 *Id.*

35 *Id.*

36 *Id.*; See generally Edgar, *supra* note 9.

37 Interview with Alex Polikoff, Director of Public Housing Program, Business and Professional People for the Public Interest (Apr. 10, 2012).

38 *Frequently Asked Questions*, *supra* note 26.

39 Reisberg & Snopek, *supra* note 22.

40 *Frequently Asked Questions*, *supra* note 26.

41 *Id.*

42 Illinois Litigation, National Education Access Network (Apr. 2010), http://www.schoolfunding.info/states/il/lit_il.php3.

43 Interview with Adam Schwartz, Senior Staff Counsel, American Civil Liberties Union of Ill. (Mar. 14, 2012).

44 *Id.*

45 Reisberg & Snopek, *supra* note 22.

46 *Id.*