

The Effect of the RI Legislature's 2003 Amendment on the Separation of Powers on Education Funding in the State

Susan Escherich and Mary Chace

The Rhode Island courts have found that the Separation of Powers amendment enacted in 2003 allows judicial review of actions by the Legislature. This may allow the courts to require the Legislature to provide adequate and equitable funding to school districts across the state to supplement local tax revenue for schools.

The League of Women Voters of the US Principles (LWVUS) state that “every person should have access to free public education that provides equal opportunity for all”. Further, LWVUS Principles state that “efficient and economical government requires...adequate financing, and coordination among the different agencies and levels of government” and that “government should maintain an equitable and flexible system of taxation.” This LWVRI study seeks to find ways to achieve these goals within the RI Constitution and especially the Separation of Powers amendment contained in Resolutions 292 and 293 of the General Assembly in 2003.

Article XII, Section I of the Rhode Island Constitution states:

It shall be the duty of the general assembly to promote public schools and public libraries, and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education and public library services.

The inequality of existing school funding in Rhode Island has been well documented. (See 1995 Brief on Behalf of Appellees, City of Pawtucket et al., pp. 65-66)

Formulas have been developed that would remedy the situation if the Legislature were to use current demographic statistics based on average daily school attendance. However, the legislature has chosen to use outdated statistics which do not reflect current reality. In addition, it has enacted tax caps that do not allow localities to fund school programs and policies the legislature itself has mandated.

Samuel Zurier, ESQ. argues that the Separation of Powers amendment offers a way to force the legislature to remove the current inequities of education finance by opening legislative acts to judicial review. He proposes that under the Separation of Powers Amendment R292 enacted 06/30/03 actions of the legislature are no longer to be considered plenary, that is, executive in nature and immune from judicial review. This was confirmed in 2004 by the court in reviewing the power of the Legislature vis a vis CMRC (CMRC, 961 A. 2d at 935) Furthermore, the General Assembly's authority to legislate in the area of education “is subject to judicial review within the constraints of the rest of the Constitution's text, history and structure.”¹

In 1995, the Rhode Island general assembly passed the Caruolo Act , (RI Gen Laws §16-2-21.4) which authorized a school district to bring a lawsuit against its local government if the budget was not sufficient to fund mandated programs. However, in 2006, the Assembly passed the Paiva-Weed law (2006 S-3050) which limits the percentage increase allowed for local school levies.² This, according to Zurier, effectively amounts to a partial repeal of the Caruolo act, undermining a school district's (ability to fund) an academic program that meets the minimum requirements mandated by law.”³

In 1997, in response to pressure from the U.S. Congress to measure education by results rather than inputs, the Rhode Island General Assembly directed the Rhode Island Department of Education, in Article 31 of the budget,

¹ Samuel D. Zurier, ESQ., “Separation of Powers and Rhode Island's Constitutional Right to a Public Education”, Rhode Island Bar Journal, May/June 2009. This analysis relies heavily on Mr. Zurier's arguments in this article.

² Ibid p. 13

³ Ibid. p. 40

to develop minimum content standards for the core subjects of public education as well as standardized tests to measure the ability of schools to educate students to the standard. Under No Child Left Behind (NCLB), enacted by the US Congress in 2001, all states must develop official state plans to incorporate challenging academic standards into each child's education. (20 U.S.C. §§ 6301-7941) The NCLB also required states to develop assessments to measure the achievement and progress of students, and report those results both on an absolute scale and in terms of the gap between advantaged and disadvantaged students.⁴ Currently more than 60% of Rhode Island's 11th grade students fail to achieve a passing or "proficient" grade on the State's eleventh grade standardized mathematics test.⁵

In 1988 the General Assembly announced a goal of providing State Funding for 60% of the cost of public education and reducing the local share to 40%, and pursuant to that goal enacted the Education Equity and Property Tax Relief Act, setting up a joint legislative committee to develop a statewide school funding formula. They hired a consultant, and in 2007 published his report and formed a technical advisory group to implement the consultant's recommendations. The group concluded that significant state funds directed primarily towards high-poverty urban districts are necessary.⁶

Despite this, the General Assembly froze state aid to education at the 2006-7 level for the two years that followed. Currently, Rhode Island's cities and towns pay 60.9% of the cost of public education, the second highest such figure in the country. Further, in addition to the Paiva-Weed amendment capping increases in local taxes, the legislature enacted other laws to thwart local governments' efforts to raise adequate funds for their schools.

In 2010, the General Assembly of Rhode Island adopted a new funding formula to take effect in 2012.⁷ Developed with the aid of consultants from Brown University, the formula seeks to provide a base level of funding for all RI students, with supplemental funds for students with special needs calculated on the number of students in each district receiving Free or Reduced Price Lunch. It also takes into account the districts' revenue generating capacity, based on their assessed real estate values and a median income value.⁸ A Uniform Chart of Accounts was also put into effect in 2010 which will ensure uniform accounting across all the state's schools so that accurate comparisons can be achieved.

⁴ Ibid. p. 12

⁵ Ibid. p 13. According to Mr. Zurier, "Information Works!" for 2006-07 showed 90% of students in Central Falls did not receive passing or proficient grades on this test.

⁶ Ibid p 13. See Final Report of the Foundation Aid Technical Advisory Group to the Joint Committee to Establish a Permanent Foundation Aid Formula for Rhode Island (2007) Charts 1 and 2.

⁷ RIGL 16-7.2

⁸ "A Funding Formula for Rhode Island", power point presentation by Carolyn Dias, Chief Financial Officer, RI Department of Education, November 10, 2010