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Supreme Court Orders Lower Court to Hear School Funding Suit

Summary: A decision by the Pennsylvania Supreme Court in *William Penn School District v. Pennsylvania Department of Education* held that claims by petitioners must be heard. The case is being sent back to Commonwealth Court, which in April of 2015 dismissed it, noting that school funding decisions should be left to the General Assembly. This ruling has the potential to create enormous problems for the Legislature and uncertainties for taxpayers.

In a *Policy Brief* last year (*Vol. 16, No. 46*) on the lawsuit it was noted that the Supreme Court could overturn the Commonwealth Court's decision and come up with a K-12 funding scheme, but the decision did not do that. Instead it gives the petitioners—six school districts, parents, and two statewide associations—the chance to make their case about school funding in Pennsylvania. The Commonwealth Court relied on previous cases in dismissing the claims as "nonjusticiable political questions."

The Supreme Court's majority opinion concluded that "It remains for Petitioners to substantiate and elucidate the classification at issue and to establish the nature of the right to education, if any, to determine what standard of review the lower court must employ to evaluate their challenge. But Petitioners are entitled to the opportunity to do so." The main thrust of the petitioners' claim is that the school funding scheme violates clauses on education (Article III, Section 14) and equal protection (Article III, Section 32). "Generally, Petitioners aver that Pennsylvania's school funding system is flawed on its face in its failure to ensure, in tandem with local funding, that each school district has the resources necessary to provide an adequate education" is how the majority opinion summarized the claims.

Both the Supreme Court's majority opinion and one dissenting opinion (there were two) point out that owing to the mixture of state and local revenue in school funding the districts that have greater taxable property values can raise much more money locally and thus spend far more than the state's aid ratio-driven funding. The majority noted "the dependence of local tax revenues on the application of millage rates…upon the aggregate value of the property in the districts confers an insuperable advantage to districts that have a ratio of assessed property wealth per student that is significantly higher than

districts with less aggregate property value." The dissent noted "significant discrepancies in per-pupil spending nonetheless persist due to substantial wealth disparities among school districts and the overall scheme's heavy reliance on local taxation…"

So, while a district like Shenandoah Valley (in Schuylkill County, and one of the six districts in the group of petitioners) levied an equalized millage of 26.8 mills and only raised $4,011 per-pupil, property tax-rich districts like Lower Merion (Montgomery, 14.7 equalized mills) and Tredyffrin/Easttown (Chester), cited in the majority opinion, along with Radnor (Delaware), cited in the 2014 petition to Commonwealth Court, can levy low equalized millage rates and still raise close to $20,000 per-pupil locally, as noted in the majority opinion.

However, the state contribution to the three *wealthy* districts cited in the case averaged $3,444 per pupil, just over half of the average for the state as a whole ($6,078). The six petitioning districts received an average of $7,919 per pupil from the state, about 30 percent above the state average, and well over twice that of the richer districts they cited.

The Supreme Court majority opinion notes "petitioners do not dispute that a constitutional school funding scheme would still enable wealthier districts to provide greater resources to their students than districts that cannot raise as much money through local taxes. But they maintain that the Constitution 'imposes a duty on the Commonwealth to ensure that all students have the same basic level of educational opportunity…'".

The petitioners claim creates an obvious question. What will be argued when the case goes back in front of Commonwealth Court, specifically the "standard of review" as noted by the Supreme Court? If the 2014 case and the summary of allegations in the Supreme Court's majority opinion provide any guidance, one can predict probable lines of questioning and argument, to wit: should the state increase its level of funding to less wealthy districts with low property values so they can have the same total funding or nearly the same total as districts with high property wealth? Or, should local taxation by school districts be ended by law and all funding come from the state on an equalized basis or some other "equitable" formula? Or, should all state funding be driven through the new formula enacted in 2015 that currently applies to only money appropriated after fiscal year 2015-16? Or, finally, should the General Assembly re-adopt the prescription of the 2007 "costing out" study and direct it to raise the revenue to implement it?

All of these options have shortcomings. Indeed, the General Assembly would likely oppose an order from the court instructing it to increase state funding or end local funding and would almost certainly appeal. Who knows how long the court proceedings would take.

School districts, whether with high property values or low property values, have thus far resisted attempts to shift away from local property taxation to statewide sources for school funding and would likely continue to do so in the name of local control. And how long would it take to get districts up to the revenue level of high property value districts if

the latter are forced to give up further increases in property or other local school tax revenue—or even forced to reduce their current level?

It is important to note here as a reminder that the large number of districts that had state basic funding protected by the "hold harmless" provision in the 2015 formula (funding was not reduced for schools that have experienced declines in enrollment in the past) prevented the implementation of the new formula to all K-12 dollars and limited it to only future appropriations that will consider declines in enrollment.

Consider too that 125 districts received $9,000 per pupil or more from the state in the 2015-16 school year. These include in the Pittsburgh area, Duquesne ($18,035), Wilkinsburg ($13,031), Pittsburgh Public Schools ($9,691) as well as Farrell (Mercer, $14,568), Johnsonburg (Elk, $12,990), Northwest (Luzerne, $10,416), Blue Ridge (Susquehanna, $9,814) and Harrisburg ($9,520) along with many more. Note that several of the named districts have poor to very poor academic achievement levels despite massive state financial support. What is to be done about those districts? Even more state dollars? Where and when does concern for the benefit taxpayers receive from funding schools begin to play a role in the discussions about funding?

Clearly, there has been too little attention to the reality that spending levels do not correlate well with performance as evidenced by the many districts that spend below the state average yet perform quite well academically and the many districts with very high spending that perform poorly. The Commonwealth Court's decision in fact cited a previous case that noted "…expenditures are not the exclusive yardstick of education quality, or even constitutional quantity."

The "costing out" study mentioned in the Supreme Court ruling and adopted by then Governor as a blueprint for funding (see *Policy Brief Vol. 7, No, 62 and Vol. 8, No. 34*) prescribed $5 billion in new spending in order to get all students to meet academic standards of proficiency.

However, that methodologically crippled study, in reviewing two geographically close districts that had over 90 percent proficiency, made the obviously absurd recommendation that one district would have to spend $3,000 more per student while another would have to spend only $200 per student to boost proficiency to 100 percent. Moreover, districts that were spending far more than the "costing out" methodology recommended were almost certainly not going to make spending reductions. A case in point is Pittsburgh, which in 2007 spent $15,078 per-pupil (*and is now spending well over $20,000*). The study calculated Pittsburgh would need only $12,560 per pupil to achieve proficiency for all, even though several schools in the district languished at 25 percent of students—or lower—scoring at the proficient level.

The two Allegheny Institute *Policy Briefs* cited above point out seriously erroneous analytics as well as biased procedural techniques in the "costing out" report that should have set off alarm bells in the Education Department and the Legislature. The Legislature should disavow any credence it ever gave to that report.

As we have pointed out previously, and as the point was made in both the majority and dissenting opinions in the Supreme Court ruling, so long as local revenue is part of the mix of school funding there is always going to be the possibility and likelihood of vastly unequal levels of per-pupil revenues among school districts. The petitioners even seem to acknowledge this while insisting that all students should have the same level of basic educational opportunity. And therein lies the problem: in Pennsylvania's two funding source system and substantial local control, who will decide, and on what basis, how to ensure equal level of educational opportunity if the main criterion is money spent per student? It cannot be done without politically unfeasible law changes regarding local funding.

Previous court cases say that the constitutional duty with respect to education is placed on the legislative branch and there is no mandate for a specific quality of education for students.

But the Supreme Court ruling to send the case back to the Commonwealth Court sets in motion a process that could possibly force the Legislature to change Pennsylvania's system of funding K-12. This will be a messy, drawn-out and expensive process.

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