

Summary of SC89010, *Committee for Educational Equality, et al., Coalition to Fund Excellent Schools, et al. v. State of Missouri, et al., W. Bevis Schock, Rex Sinuefield, and Menlo Smith*

Appeal from the Cole County circuit court, Judge Richard G. Callahan

Attorneys: The Committee for Educational Equality, et al., was represented by Alex Bartlett of Husch Blackwell Sanders LLP in Jefferson City, (573) 635-9118. The Coalition to Fund Excellent Schools, et al., was represented by James C. Owen of McCarthy, Leonard & Kaemmerer L.C. in Chesterfield, (636) 392-5200, and Audrey Hanson McIntosh of Audrey Hanson McIntosh PC in Jefferson City, (573) 635-7838. the Special Administrative Board of the City of St. Louis was represented by Richard B. Walsh Jr. and Evan Z. Reid of Lewis, Rice & Fingersh LC in St. Louis, (314) 444-7600.

The state defendants were represented by State Solicitor James R. Layton of the attorney general's office in Jefferson City, (573) 751-3321, and Christopher J. Quinn and Maureen Beekley of the attorney general's office in St. Louis, (314) 340-7861; and John R. Munich of Stinson Morrison Hecker LLP in St. Louis, (314) 259-4555. Schock, Sinuefield and Smith were represented by Joshua M. Schindler of The Schindler Law Firm in St. Louis, (314) 862-1411.

Citizens for Missouri's Children and the Missouri Child Care Resource and Referral Network – which filed a brief as friends of the Court – were represented by Ellen M. Boylan of the Education Law Center in Newark, N.J., (973) 624-1815; and Rodney D. Gray of Hendren Andrae LLC in Jefferson City, (573) 636-8135. The Missouri School Boards' Association, Education Justice at Education Law Center, the National School Boards Association, and the Rural School and Community Trust – which also filed a brief as friends of the Court – were represented by Molly A. Hunter of the Education Law Center in Newark, N.J., (973) 624-1815; and Melissa K. Randol of the Missouri School Boards' Association in Columbia, (573) 445-9920.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: In reviewing a challenge to the state's school funding formula, as revised in 2005, a trial court determined the legislative bill setting forth the formula is constitutional. In a decision written by Judge Mary R. Russell, the Supreme Court of Missouri affirms the trial court's decision.

All seven judges agree that the formula does not violate article IX of the Missouri Constitution, which requires the state to establish free public schools and to fund such schools using no less than 25 percent of state revenue but which makes no requirement that state funding exceed this threshold. The formula does not violate equal protection.

There is no fundamental right to equitable per-pupil expenditures among school districts, and it is not irrational for the legislature to fund the schools by providing more state money to those schools with fewer local funds. The formula does not violate the state constitution's Hancock Amendment, which permits as a remedy only the release of a local government from a state obligation, not increased state funding.

Six judges agree the formula does not violate taxing provisions of article X of the Missouri Constitution. To the extent the plaintiffs believe the state tax commission has not equalized property assessments properly, they have not challenged the commission's actions, and it was not irrational for the legislature to rely on the commission's 2004 assessment valuation data in setting the school funding formula. Similarly, there is no basis to declare irrational either the legislature's decision to phase in the new funding formula over seven years or to freeze in the 2004 data.

In an opinion concurring in part and dissenting in part, Judge Michael A. Wolff would hold the school funding formula unconstitutional because it is based on a property tax assessment system that he would hold violates the tax provisions of article X, sections 3 and 14 of the Missouri Constitution. The assessments in some counties properly are based on "true," or market, value, while those in other counties improperly are based on appraisal value. He believes the state tax commission has failed to equalize these assessments as it is required to do by law, thereby failing to ensure uniform taxes. Because the 2004 tax assessment data reflect these disproportionate assessment values, he concludes it is constitutionally impermissible for the state to rely on these values in allocating state funding for public schools.

Facts: The plaintiffs in this case include two not-for-profit education advocacy groups, each of which represent member school districts; more than half the state's school districts; students; parents and taxpayers (collectively, the plaintiffs). In 1993, the legislature passed a new school funding formula in Senate Bill No. 380. In 2004, the plaintiffs sued the state and its treasurer, board of education, department of elementary and secondary education, commissioner of education, commissioner of administration and attorney general (collectively, the state), alleging the school funding formula resulted in inadequate and inequitable funding to Missouri's public schools, thereby violating article IX, section 1(a) of the Missouri Constitution, which directs the state to provide a free public education for persons younger than 21 years. In 2005, while the case was pending, the legislature amended the school funding formula in Senate Bill No. 287, now codified in chapter 163, RSMo Supp. 2008. Designed to be phased in over seven years, the revised formula provides less state financial assistance to schools with greater contributions from local efforts, which involve assessed valuation (locked in using the state tax commission's 2004 property tax assessments), collector and assessor fees, and incidental and teachers' funds. Following trial, the circuit court ruled in the state's favor, upholding the constitutional validity of the school funding formula. The trial court held that, although the legislature is permitted to provide additional monies, the state is not

required to fund public schools beyond 25 percent of the state's revenue, as directed by article IX, section 3(b). It also held the plaintiffs failed to prove that SB287 violated the Hancock Amendment (article X, sections 16 through 24 of the Missouri Constitution) or that the amendment even would provide the remedy the plaintiffs sought. The trial court dismissed, on standing and jurisdictional grounds, the plaintiffs' challenges involving assessment calculations. It further rejected the plaintiffs' claims that the legislature wrongly relied on the state tax commission's 2004 assessment data. The plaintiffs appeal.

AFFIRMED.

Court en banc holds: (1) At least one plaintiff has standing as to each claim. Standing requires that a party seeking relief has some legally protectable interest in the litigation so as to be affected directly and adversely by its outcome. To permit consideration of a claim, only one plaintiff must have standing.

(a) The plaintiff school districts and their representative advocacy organizations have shown they have such an interest as to their challenges to the school funding formula under article IX, section 1(a) and to the assessments under article X of the Missouri Constitution, which governs taxation. They lack standing to raise challenges under the equal protection clause or the Hancock Amendment because they do not fit the class of those given standing to raise such challenges.

(b) The individual taxpayer plaintiffs have standing to raise their assessment challenges to the extent they allege the state improperly is spending tax revenue under articles IX and X of the Missouri Constitution, which govern expenditures related to free public schools and tax revenue. They do not have standing to bring equal protection claims on behalf of public school students generally, however, because third parties generally cannot raise equal protection claims.

(c) The individual student plaintiffs also have standing. Although some no longer are enrolled in school, they all present claims that are capable of repetition that otherwise may evade review, so their claims are not moot.

(2) Although the trial court abused its discretion in granting permissive intervention to three taxpayers – W. Bevis Schock, Rex Siquefield and Menlo Smith – to join the state's defense of the school funding formula, this error does not require reversal. Under Rule 52.12(b), permissive intervention may be granted when allowed by statute, when an applicant's claim or defense has a question of law or fact in common with the main action, or when the state seeks intervention in a case raising constitutional or statutory challenges. None of these circumstances applies here. The intervenors asserted no claim, defense or interest unique to themselves, nor did they show the state could not or did not defend its interests adequately. Further, they do not have standing as taxpayers because they are not plaintiffs and did not challenge the state's expenditures or seek to restrain the

state in any manner. They instead could have sought leave to express their views through a brief filed as friends of the court. Because there is no evidence of specific harm or litigation costs to the plaintiffs caused by the intervenors' presence in the case and the intervenors have abandoned their previous request to collect costs from the plaintiffs, there is no material harm to the plaintiffs, and reversal is not required.

(3) The school funding formula does not violate article IX, and the plaintiffs' arguments to the contrary are without merit. Section 1(a) of this article provides that, a "general diffusion of knowledge and intelligence being essential ... the general assembly shall establish and maintain free public schools" in the state for students not older than 21 years. Section 3(b) of this article provides that the state "shall" set apart no less than 25 percent of state revenue each year to support the state's free public schools and that the state "may" provide for deficiencies in funding free schools. While section 1(a) outlines the purpose and subject of Missouri's public education system, it provides no specific directive or standard for how the state must accomplish a "diffusion of knowledge," nor does it require the legislature to provide "adequate" education funding in excess of the 25-percent obligation of section 3(b). Reading such a requirement into section 1(a) would be contrary to the specific flexibility afforded the legislature in section 3(b), which provides the constitutional parameters for funding Missouri's public schools. The aspiration for a "general diffusion of knowledge and intelligence" concerns policy decisions that are left to the discretion of the other branches of government.

(4) The school funding formula does not violate the equal rights and opportunities guaranteed by article I, section 2 of the Missouri Constitution, and the plaintiffs' arguments to the contrary are without merit. Education is not a fundamental right under either the United States or Missouri constitution, and there is no constitutional basis for requiring equitable per-pupil expenditures among school districts. Rather, the constitution builds in certain variances in per-pupil spending across districts. Article IX, section 7 places penalties, forfeitures and fines in the school funds of individual counties, and article X, section 11(c) allows for varying tax levies in municipalities, counties and school districts by local vote. Because no fundamental right is impacted, this Court analyzes whether SB287's school funding formula rationally relates to a legitimate end. Funding free public schools clearly is a legitimate end, and doing so by combining state and local funds, with state funds going disproportionately to those schools with fewer local funds, is not irrational.

(5) The school funding formula does not violate the Hancock Amendment, contained in article X, sections 16 through 24 of the Missouri Constitution. The amendment's general purpose is to limit governmental expenditures, and under section 23, the only remedy taxpayers may seek is declaratory relief from a local government's duty to perform an inadequately funded service or activity required by the state. Here, the plaintiffs expressly disaffirm that they seek to have the school districts released from any alleged unfunded

obligations. Rather, they essentially seek a declaratory judgment that increases funding, which is not an available remedy under the Hancock Amendment.

(6) The school funding formula does not violate article X, sections 3, 4 and 14 of the Missouri Constitution or certain sections of chapter 138, RSMo, and the plaintiffs' arguments to the contrary are unpersuasive. The plaintiffs do not allege the legislature has promulgated a statute that levies non-uniform taxes in violation of section 3; rather, they allege the legislature wrongly relied on the state tax commission's 2004 property assessment data. Similarly, while section 14 requires the commission to equalize assessments, it does not indicate what the legislature may do regarding the assessments. Because the commission never was joined as a necessary party in this case, this Court cannot evaluate its actions. As such, because this Court cannot issue an advisory opinion, it today cannot decide the question of equalizing assessments. There is no constitutional bar on the legislature's plenary power to shape the school funding formula, and there is no basis on the record to hold that the legislature acted irrationally or arbitrarily in relying on the commission's 2004 tax assessment data. The plaintiffs' reliance on an October 2006 report by the Public Policy Research Center at the University of Missouri-St. Louis is misplaced, as the legislature did not have this information available when debating revisions to the school funding formula in 2005. Moreover, property assessment is not an exact science, and even were the commission's 2004 data imperfect, the legislature's use of that data was not irrational and, in fact, was permissible because it was a rational attempt toward the legitimate end of funding Missouri's free public schools. Hindsight evaluation of the quality of the data on which the legislature relied is not appropriate in this case because doing so would invade the legislature's deliberative process and violate the separation of powers between the judicial and legislative branches of government. Similarly, there is no basis to declare irrational either the decision to phase in SB287's new funding formula over seven years or the act of freezing in the 2004 data. Further, the plaintiffs' concern about possible funding deprivations after 2013 is merely speculative.

Opinion concurring in part and dissenting in part by Judge Wolff: The author agrees that the Missouri Constitution does not mandate equality among school districts and that the school funding law meets the constitutional requirement that the state spend no less than 25 percent of its revenue on public education, but he dissents from the Court's refusal to remedy the violation of specific constitutional requirements as to property tax assessments. Through SB287, the legislature is phasing in a new school funding system on the foundation of a property tax system that violates the constitution. When legislation perpetuates a constitutional violation, the Court has a duty to say so and to grant relief, just as it does when legislation directly violates the constitution.

The author would hold that, because the Missouri Constitution makes many provisions for education – a traditional role of state government – the proper approach is to inquire whether educating Missouri children is a fundamental purpose of state government. The specificity of the state constitution's provisions for education and taxation requires that

the Court apply those provisions faithfully. The majority faithfully applies the requirement of article IX, section 3(b) that the state fund public schools at no less than 25 percent of its revenue, but it fails to apply the taxation provisions of article X, section 14 that are a necessary part of the government's ability to perform this fundamental purpose.

The state does not provide equal resources to every school district within the state, and the constitution does not demand equality among those districts, though the author labels as "absurdly unfair" the disparities between the richest and poorest school districts. Litigation and legislation in recent years have focused on providing an "adequate" education to children in every district, regardless of a district's property wealth. The 1993 school funding formula was designed to give districts some "equal access" to funding, raising substantially more money for property-tax-poor districts, but large disparities with wealthy districts remained. The 2005 formula sets the threshold amount needed to provide an "adequate" education – initially \$6,117 per pupil – beyond which a district's ability to spend is influenced largely by its property tax wealth and the percent of those "adequacy" funds that must be spent on debt service and capital purposes. Accordingly, the author says, most school districts will not even achieve the defined "adequacy" standard, and districts that want to raise more than the "adequacy" level will be hampered if they are located in counties with defectively low assessed valuations. The overall result, the author argues, is that Missouri schools are not funded adequately to compete in the 21st century global marketplace.

By adopting 2004 valuations and freezing them until 2013, the 2005 law builds the school funding system on a flawed foundation that contravenes the constitution and the laws under which property tax assessments are to be equalized. The property tax system operates against school districts in counties where the valuations are not assessed properly. Where voters do not approve the tax rate that section 163.011, RSMo Supp. 2008, sets as the "performance levy" needed to qualify for funding to the "adequacy" level, the school districts never may get even to "adequacy." Further, there are substantial disparities in the way individual counties assess property tax under the state's current property tax assessment system. Although the assessed valuation for property tax purposes should not be less than 95 percent of the property's market value, data in many counties reveal that property tax valuations fall significantly below this level, frequently where the county bases assessments on a property's appraisal value, as reported by the county assessor, rather than on the "true," or market, value, based on comparable sales. Because section 163.011(10)(a) determines the proportion of school funding a county receives from "local effort" based on the 2004-2005 property tax assessment data – which reflect these disproportionate assessment values – the inequities of the current property tax assessment system affect the amount of school funding each school district receives from the state. As a result, counties where property assessments fall well below market value receive increased state funding for schools.

Article X, section 14 mandates creation of a commission “to equalize assessments as between counties” to prevent the disparity the current property tax assessment system and, by extension, the school funding formula, creates. If the commission believes the assessed valuation of a certain class of property in a county is below its “real value in money” – the market value of a particular class of property – section 138.390, RSMo Supp. 2008, requires the commission to equalize the assessed valuation by increasing the valuation to the “true value” of the class of property. As in *State ex rel. Sch. Dist. Of City of Independence v. Jones*, 653 S.W.2d 178 (Mo. banc 1983), this Court should evaluate the state’s property tax system for funding public schools. Here, because the commission adjusted the property assessments among counties based on appraisal rather than market values based on sales data, the 2004-2005 property tax assessment valuations are not equalized as required by article X, section 14. By disproportionately taxing some Missourians but not others, the current property tax assessment system also violates the requirement of article X, section 3 that taxes be uniform. As a result, it is constitutionally impermissible for the state to rely on these values in allocating state funding for public schools. If the present property tax structure is not brought up to constitutional standards and unlocked to allow distribution of state funds to be affected by equalized valuations, then this Court should require the legislature to use another basis for determining funding of Missouri’s public schools.