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High court will address public education

In the television show "The West Wing," Sam Seaborn, an idealistic aide to the president, explained why he wanted each American child to have an opportunity for an excellent public education. "Education is the silver bullet. Education is everything. We don't need little changes; we need gigantic, monumental changes ... Schools should be incredibly expensive for government and absolutely free of charge for its citizens, just like national defense."

The simile is correct. Yet, we have not figured out how to finance our elementary and high schools to give each child a chance to be the best he or she can be. All 50 states are struggling with this problem and 45 states have experienced litigation on school financing. Several state Supreme Courts, most recently New Hampshire's, have held that school financing systems relying heavily on local property taxes to fund public schools violate their state constitutions. The rationale for each decision is usually that a child's access to school funds should not depend upon whether he or she lives in a property-wealthy district or a property-poor district.

The Illinois Supreme Court agreed to hear *Carr and Newell v. Koch, State Bd. of Educ., et al.* 960 N.E. 2d 640 (4th Dist. 2011), a case challenging Illinois' public education funding mechanism. *Carr and Newell* challenges the use of local tax assessments as a key variable in provisioning of state education payments to school districts.

Illinois finances its public schools through a combination of property taxation and state level assistance to the school districts. The state sets a minimum level of target funding for each student, known as the "foundation level." School districts must tax at or above a set minimum in order to qualify for financial assistance from the state. Poorer districts receive the full amount

of state assistance to reach the foundation level. Wealthier districts raise funds much in excess of the foundation level on their property taxes alone and on top of that receive a minimum grant from the state. Due to the disparity in wealth and property value among the districts, the wealthier districts can receive state aid and impose taxes at lower rates than poorer districts. In turn, the poorer districts must tax at a much higher rate than the wealthier districts. Even with full state assistance, they cannot attain a comparable level of funding.

The seminal case is *Committee For Education Rights v. Edgar*. 174 Ill.2d.1 (1996). The Illinois Supreme Court affirmed dismissal of all four counts in the complaint. Two of the counts were based on the equal protection clause of the Illinois Constitution, Article 1, Section 2. Count 1 alleged that the statutory school financing system itself violated the equal protection clause. The court said that it would decide Illinois equal protection claims "in lockstep

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BY ABRAHAM MATTHEW AND MATTHEW LOCKE

The authors are J.D. candidates at The John Marshall Law School. Abraham Matthew will focus his practice in Illinois civil litigation. Matthew Locke will focus his practice in public interest law.

with" the equal protection clause of the U.S. Constitution. Citing the landmark federal case, *Rodriguez v. San Antonio Independent School District*, 411 U.S. 1 (1973), the Illinois Supreme Court determined that there is no fundamental right to an education. The court noted that the language of Article X, Section 1 of the Illinois Constitution says that education is "a fundamental goal," not a "fundamental right," and that the word "efficient" in Article X, Section 1 of the Illinois Constitution guaranteed "some measure of equality in educational funding and opportunity."

The Illinois Supreme Court also disagreed with the second major argument brought by the plaintiff. The court said that the word "efficient" referred to the school district boundaries and school locations. Clearly, the Illinois Supreme Court was unwilling to enter the political thicket of school financing. It did concede that education is a "fundamental goal," but refused to determine that it was a "fundamental right." The court said that the means by which Illinois achieved that "fundamental goal" was an issue for the political process, not the courts.

The plaintiff's argument in *Carr and Newell* avoids direct conflict with the *Committee For Education Rights* ruling. Carr and Newell argue that the education finance scheme violates the equal protection clause of Illinois Constitution by forcing property owners in districts with low property values to pay a higher property tax rate than those in districts with higher property values. They contend that the federal No Child Left Behind Act and the Illinois

Learning Standards have so changed the focus of education that the present funding system is no longer rationally related to the current structure of public education. The plaintiffs point out that the state now mandates exams for all pupils and has increased its control over what were once school district powers and functions. Consequently, their argument runs, the financing of schools can no longer be such a preponderantly local responsibility.

We do not speculate how the Illinois Supreme Court will decide this case. By basing their equal protection claim on the property taxes levied and not the right to education, the plaintiffs avoid the major obstacle placed by *Committee for Education Rights*. However, the Illinois Supreme Court is not an "activist" court. As it said in *Committee for Education Rights*, education reforms should come from the legislature, not the bench.

Perhaps the result of *Carr and Newell* will be a political one: A revision of the school finance formula so that each child can have an adequately funded education no matter where he or she lives. This process will require participation by all the stakeholders. Kentucky worked out a compromise among the courts, the legislature and the school districts. In New Hampshire, by contrast, there is such opposition to the court decision holding the school funding system invalid that some advocate an amendment to the state constitution removing school funding issues from judicial review.

We hope that Illinois does not follow New Hampshire. With or without guidance from the Illinois Supreme Court, the people and legislature must try to help each pupil obtain a high quality education. As Sam Seaborn said in "The West Wing," education is the silver bullet, it is everything.