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School funding always a sore spot for Illinois

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SPRINGFIELD — Near the end of their convention, authors of the state constitution had a few days to choose between three ideas on what the document should say about funding public schools.

"I don't think the (first) amendment goes far enough, the (second) amendment doesn't go anywhere; I want to go home," Malcolm Kamin, one of the delegates, reportedly said at the time. "Let's vote."

The other delegates, tired from the proceedings that went from July to August 1970, clapped.

Although it may have sounded like a formality, compromise language they agreed on for the education article, Article 10, has reverberated loudly in the decades since it was approved, in part by making Illinois courts wary to step in to remedy a funding system many say is one of the most inequitable in the country.

The convention and Illinois' legal history with school-funding reform are detailed in "The Search for the Magic Formula: History of Illinois School Funding Reform," published by the University of Pennsylvania Journal of Law and Social Change last year and authored by Joshua J. Cahorn, an associate at Burke, Warren, MacKay & Serritella P.C.

"I would also say that at that convention there was some intent to continue that conversation to develop what the education article meant that was never

consummated," Cahorn said today.

Sen. Andy Manar, a Democrat from Bunker Hill who has been the primary proponent of funding reform during his three-year stint in the General Assembly, cited Cahorn's article last week as he introduced a new measure to overhaul the state's funding formula.

He called it "a wonderful piece of writing" as well as evidence that Illinoisans have known for years the system needs a makeover.

"About the only thing I reject is the idea that we should study this longer, that we should put into place a process to study something we all know needs to change," Manar told reporters.

The formula has generally allowed for an over reliance on property taxes to fund education as state dollars for public schools have declined through the years, critics say.

That means wealthier districts have gained bigger advantages by being able to continue to pay for teachers, equipment and extra programs for students.

Article 10 in the state constitution says educational development is a "fundamental goal," that the state "shall provide for an efficient system of high quality" public schools and has "the primary responsibility for financing the system of public education."

That idea was approved over one that would have made the state responsible for 90 percent of the funding for kindergarten through high school education and another that would have split the cost evenly between the

state and school districts.

Ann M. Lousin, a professor at The John Marshall Law School and state constitution expert who was a staffer at the convention in 1970, said the delegates chose the language deliberately because they were strong believers in local control.

"There was a real debate within the Education Committee on school financing and it was generally agreed, 'We've got a bunch of wealthy districts, and some that aren't so wealthy, but they don't want to be at the mercy of Springfield,'" she said.

And the approved language was never intended to be judicially enforceable. In other words, it was deliberately an aspiration rather than a mandate for the state.

And the Illinois Supreme Court, in the 1990 case of *Committee for Educational Rights v. Edgar*, in which 37 school districts challenged the state's funding as unconstitutionally disparate, held the framers did not define terms like "high quality" when they approved the education article.

Additionally, Cahorn wrote in his piece, the majority placed an emphasis on local control in school funding, writing the issue was "outside the scope of judicial enforcement."

That decision was affirmed in another case in 1999, *Lewis E. v. Spagnolo*, in which a class of schoolchildren in East St. Louis did not argue the funding formula created inequitable outcomes — but the state had failed to simply provide them with the resources for a basic education.

Justice Charles E. Freeman authored strong dissents in both

cases. He wrote in the second case that "[t]he judiciary was created as part of a system of checks and balances. We will not dodge our responsibility by asserting that this case involves a non-[j]udicial political question. To do so is unthinkable."

To supplement his legal authority, Freeman described the state of the school in East St. Louis as one where "[s]trangers wander in and out" while "fire alarms malfunction" and students wear heavy coats in the winter "because broken windows and faulty boilers go unprepared."

Cahorn said that was the most moving part of his research into the topic of school funding.

"You look at pictures from Lake Forest High School and it looks like a scene from 'Downton Abbey,'" he said. Whereas the images Freeman described in his dissent were like "a dystopian future."

"To have those two schools in the same state under the same formula — it just isn't right," Cahorn said.

Lousin said she thinks schools should be paid for with a combination of a guaranteed baseline level of state funding to go along with local income taxes that school districts could impose as they see fit.

She said even if the language on school funding in the constitution was a judicial matter, it would be difficult to craft a "one-size-fits-all" prescription.

"What is the Illinois Supreme Court supposed to do?" she said. "This is a state where there are many concepts of what constitutes public education."