

School Finance Reform: The Governor and Legislature v. The Courts

by George Lightbourn

Wisconsin's school finance system has a target on its chest. It's the program everyone loves to hate. In one corner of the school finance debate stands the teeming mob that wants to rewrite the formula, a group that includes the teachers' union, parent organizations, a clutch of legislators and just about every editorial writer in Wisconsin. Most of them don't pretend to understand the inner workings of the formula, but they know that they don't the way it squeeze local school budgets.

In the other corner, defending the formula stands . . . well, no one. That's right, no one has spoken up in defense of the formula. But in spite of the imbalance, it's almost a certainty that no significant changes in school funding are likely to come out of Madison in the legislative session that will commence in less than a month.

Even the most vocal proponents of change understand the reality that big changes are not in the offing. They know that they are up against the most formidable impediment to change, the printout, that age-old tabulation showing how much money each school district will get out of Madison. Any change that shows dozens of school districts will see a decline in state aid has almost no chance of succeeding. Only when there's enough new money to ensure all districts will see some growth, will the prospects of change improve. And that kind of money is nowhere on the horizon.

Also, as long as one wing of the Capitol is in Republican control, school cost controls are unlikely to be lifted. In spite of the November Democratic sweep, the State Assembly remains Republican. They see it as their obligation to defend and preserve the revenue caps and the QEO. They have ridden the coattails of fiscal restraint for over a decade and they are unlikely to change now.

Does this mean that we should expect that there are no changes in the offing? From the Governor and the Legislature that is almost certainly true, but keep your eye on the fourth wing of the Capitol. While Wisconsin has thus far avoided a court ordered school funding solution, that could change.

No one should be surprised if a challenge to Wisconsin's school finance system is on the Supreme Court docket within the next few years. It has been six years since the court last dealt with school finance in *Vincent v. Voight*. In that decision, a fractured court barely held that the school funding formula was constitutional, but only with the aid of some delicate, cloakroom maneuvers. While a slim four justice majority agreed the formula was constitutional, four judges also set a new standard for school finance. Justice Crooks joined the three dissenters in codifying the new standard.

Remarkably, the Court had both upheld the current school aid formula while also setting a new standard for school finance. Not only must Wisconsin's school finance system meet the uniformity test, now it must also meet the test of adequacy. Adequacy in school finance, they opined, would provide Wisconsin students with a "sound basic education . . . one that will equip students for their roles as citizens and enable them to succeed economically and personally." The Court further pronounced that it is the Legislature's job to provide the resources to ensure this new standard is met.

In setting the new standard, the Court clearly invited a challenge. The language in the decision was both specific (in that it cited statutory provisions aimed at student competencies) while remaining fuzzy enough to encourage debate even among like-minded people. In challenging the new adequacy standard, look for the challengers to enumerate the number of dog-eared textbooks and aging computers, etc. But also look for them to point to the results from Wisconsin's standardized test, those tests they have consistently opposed. Armed with wide gaps in test scores between the educational haves and have-nots, the education community is likely to challenge both the formula used to distribute state aids as well as the provisions that have suppressed spending on education. Raising these issues seems to be right in the sweet spot envisioned by those five justices that saw fit to define their own definition to adequacy.

Can the Governor and the Legislature do enough in the coming session to forestall a court challenge? Probably not, especially if the spring election adds another left-leaning justice to the Court. If the balance of the Court indeed tilts further left, then the path for those bent on reforming school finance will circumvent the Governor and the Legislature and lead right to the Supreme Court.