

AVOIDING CLAREMONT: Considering Yet Another Constitutional Amendment

By Andru Volinsky

The Legislature should reject any attempt to amend Article 83 of the New Hampshire Constitution, New Hampshire's Education Clause. Any of the proposed amendments will undermine the principles announced in the Claremont decisions.

In arguing against an amendment, some will argue that a constitutional amendment is unnecessary because the state may target aid under the current system. Still others will argue that we should continue to fund adequacy for all districts because a rising tide raises all ships. These are both sound arguments, but, for me, the answer is simple. The Legislature should not pass a constitutional amendment because the purpose of an amendment is to give future legislatures and governors complete discretion over school funding. Given our failing revenue infrastructure, they simply cannot be trusted to appropriate sufficient funds or to distribute funds fairly. This is both a legal and a political rationale for opposing amendment.

Legislators should not take my concerns personally. Efforts to amend the state constitution persist because the state cannot pay all of its current bills. Passage of an amendment would dramatically change the rules and allow the state to downshift the responsibility to fund education to local communities. This begs the question of how much of the cost of education, if any, will be paid by the state, if Article 83 were amended and how the available funds would be distributed.

Here is the rub. The equal protection analysis that the Supreme Court employed in the *Claremont* cases is well understood and limits the legislative prerogative in certain legitimate and predictable ways. If a proposed amendment passed, would any rules apply? What would be the binding principle that guides the state's efforts in the future? It does not really matter if the binding principle is a legal precedent. An economic principle or a principle of educational pedagogy may suffice, but no one advocating for an amendment, in any of its multiple forms, has yet to articulate the logic that will control if future legislatures are given a free hand. How low will the State's share drop after amend-

ment? How will the meager remaining funds be distributed? No one is saying, and without a constitutional foundation, the pronouncements of fairness made today will not bind the state in the future.

Education funding is a mathematical problem. Its parameters are both well known and immutable. Local communities simply cannot impose a given tax rate upon vastly different property values and hope to produce similar levels of funding in every school district across New Hampshire. A tax rate of \$2.50 multiplied times a per-pupil valuation of \$2,500,000, as is the case in Rye, will *always* produce more revenues than multiplying the same \$2.50 times the per-pupil property value of Allenstown, which is \$392,000 per child. This is why Allenstown's school tax rates were almost four times that of Rye's. Children living in school districts with very limited property values will never have opportunities that approach those of children living in wealthier districts unless the state commits to supporting the poorer communities in a clear and measurable way. So far, none of the proponents of a constitutional amendment have committed to any replacement funding formula.

If we are to sacrifice the *Claremont* precedents to support a constitutional amendment, how much money will be committed to supporting and improving education in the future? How will this amount be determined? And, how will the funds be distributed? If the equalized property values of Allenstown are the lowest in the state, and they are close to that, how much will the state add to their locally raised dollars so that Allenstown schools are competitively funded? Will the same be done for the other poor towns? How will we enforce these promises without constitutional precedents? Until we have the answers to these questions, the voters of the state should not be asked to simply act on trust.



Author

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New Hampshire Constitution [education portion highlighted]

Art.] 83. [Encouragement of Literature, etc.; Control of Corporations, Monopolies, etc.] **Knowledge and learning, generally diffused through a community, being essential to the preservation of a free government; and spreading the opportunities and advantages of education through the various parts of the country, being highly conducive to promote this end; it shall be the duty of the legislators and magistrates, in all future periods of this government, to cherish the interest of literature and the sciences,** and all seminaries and public schools, to encourage private and public institutions, rewards, and immunities for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and economy, honesty and punctuality, sincerity, sobriety, and all social affections, and generous sentiments, among the people: Provided, nevertheless, that no money raised

by taxation shall ever be granted or applied for the use of the schools of institutions of any religious sect or denomination. Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it. The size and functions of all corporations should be so limited and regulated as to prohibit fictitious capitalization and provision should be made for the supervision and government thereof. Therefore, all just power possessed by the state is hereby granted to the general court to enact laws to prevent the operations within the state of all persons and associations, and all trusts and corporations, foreign or domestic, and the officers thereof, who endeavor to raise the price of any article of commerce or to destroy free and fair competition in the trades and industries through combination, conspiracy, monopoly, or any other unfair means; to control and regulate the acts of all such persons, associations, corporations, trusts, and officials doing business within the state; to prevent fictitious capitalization; and to authorize civil and criminal proceedings in respect to all the wrongs herein declared against.