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The End of a Long Road: The Connecticut Supreme Court Dismisses the Appeal of the *CCJEF* Plaintiffs

> Because we conclude that the trial court was correct in its initial determination that the plaintiffs failed to establish that the state's educational offerings are not minimally adequate under article eighth, § 1, and in its determination that the state has not violated their equal protection rights under the state constitution, the plaintiffs cannot prevail on their claims that the state has not provided them with a suitable and substantially equal educational opportunity.

With those words, Chief Justice Rogers of the Connecticut Supreme Court announced the end of a long road for the case of *Connecticut Coalition on Justice in Educational Funding v. Rell*, (SC 19768, January 17, 2018) (*CCJEF II*). Chief Justice Rogers was joined in the majority by Justices Eveleigh, Vertefeuille and Alvord. Dissenting in part were Justices Palmer, Robinson and Sheldon. Interestingly, Justices McDonald and D'Auria did not participate on the panel because of their involvement with the case prior to appointment to the Court. Justice D'Auria argued the case on behalf of the state when it was last before the Court in 2008, and Justice McDonald had been Corporation Counsel for the City of Stamford, which is a member of the plaintiff coalition. This landmark decision essentially leaves the burden of ensuring that all children in Connecticut receive substantially equal educational opportunities squarely in the hands of the legislature going forward. To understand how we arrived at this point, it is helpful to look briefly at the history of the case.

The *CCJEF* case was first brought in 2005, and it was resuscitated by the Connecticut Supreme Court in 2010, as described below. *Connecticut Coalition for Justice in Educational Funding, Inc. v. Rell*, 295 Conn. 240 (2010) (*CCJEF I*). The case was then tried in the Superior Court, and in 2016 Judge Moukawsher ruled that the state's system of funding education violates article eighth, § 1, of the Connecticut Constitution. On January 17, 2018, a divided Connecticut Supreme Court reversed the 2016 decision, and ordered judgment to be entered for the state.

The Superior Court had previously dismissed as non-justiciable the claims brought by parents, who alleged that the current system of education funding denies them their constitutional right to a "suitable" education for their children. *Carroll-Hall v. M. Jodi Rell*, 2007 Conn. Super. LEXIS 2478 (Conn. Super. 2007). However, after deliberating for almost two years, a deeply

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divided Connecticut Supreme Court decided in 2010 (without a majority opinion) that the plaintiffs could proceed with their claim that their children's right to a suitable education under article eighth, § 1, was violated by the current system of funding for education.

In *CCJEF I*, three justices opined that the claims brought concerning inadequate funding for education were justiciable, and three opined that the claims were not. Justice Palmer joined the plurality opinion in 2010, but in so doing, he emphasized that the court should be deferential to the role of the legislature, writing "the plaintiffs will not be able to prevail on their claims unless they are able to establish that what the state has done to discharge its obligations under article eighth, § 1, is so lacking as to be unreasonable by any fair or objective standard."

The majority in *CCJEF II* noted that Justice Palmer, as the deciding vote on the question of justiciability, established through his concurring opinion the appropriate standard for review going forward, and the *CCJEF II* court embraced the standard that he had announced in *CCJEF I*:

> With respect to the "qualitative component" of the right guaranteed by article eighth, § 1, Justice Palmer concluded that that provision "requires only that the legislature establish and maintain a minimally adequate system of free public schools." Id., 332. Specifically, Justice Palmer agreed with the four criteria adopted by the New York Court of Appeals in *Campaign I*, *supra,* 86 N.Y.2d 317 [*Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 317, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995) (*Campaign I*)], and adopted by the plurality as part of its constitutional standard. . . . In addition, Justice Palmer concluded that "a safe and secure environment also is an essential element of a constitutionally adequate education."

The majority opinion in *CCJEF II* thus described as the constitutional standard (per Justice Palmer in *CCJEF I*) for determining adequacy of education funding the standards that the New York courts had used in similar litigation:

> (1) 'minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn'; (2) 'minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks'; (3) 'minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies'; and (4) 'sufficient personnel adequately trained to teach those subject areas.' *[Campaign I]*

The *CCJEF II* majority also noted that Justice Palmer's concurring opinion in *CCJEF I* had added a fifth consideration through his observation that "a safe and secure environment also is an essential element of a constitutionally adequate education."

In describing this constitutional standard, the majority repeatedly emphasized that the analysis must focus on whether the "educational inputs are minimally adequate to enable a student who takes advantage of them to perform the basic functions of an adult," rather than on the educational outputs (i.e., achievement) because there are a myriad of factors that could affect student achievement beyond the control of the state or school districts, such as poverty, nutrition and parenting. The *CCJEF II* majority then affirmed the trial court in its finding that educational funding in Connecticut meets the "minimally adequate" standard under the criteria above. The *CCJEF* majority also affirmed the trial court's finding that the equal protection rights of the plaintiffs were not violated.

In reversing the decision of the trial court on the ultimate constitutional question of compliance with the requirements of article eighth, § 1, of the Connecticut Constitution, the *CCJEF II* court held that the trial court ruling should have ended with its finding that educational funding provided "minimally adequate" education. The court found fault with the trial court's further finding that the state's failure to "deploy in its schools resources and standards that are rationally, substantially and verifiably connected to teaching children" violated article eighth, § 1:

> We agree with the defendants, however, that the trial court went on to improperly apply a constitutional standard ***of its own devising*** after concluding that the state's schools satisfied the controlling *Campaign I* criteria. (Emphasis added).

In so ruling, the CCJEF II majority opinion spoke at length about the need to defer to the legislature on such matters and quoted extensively from Justice Palmer on this point from his concurring opinion in CCJEF I. Once the state showed that it had met the "minimally adequate" standard that Justice Palmer announced in CCJEF I, the majority ruled, the courts had no further role to play in the policy judgments involved in allocating resources for education:

> Rather, if the state is providing a minimally adequate educational opportunity to all of its elementary and secondary school students under the *Campaign I* criteria, the fact that some educational policies and programs are not, in the trial court's ***personal view***, "rationally, substantially and verifiably connected to teaching children" is constitutionally irrelevant. (Emphasis added).

Indeed, in so ruling the court expressed concern that applying the new constitutional standard announced by the trial court would create "a very substantial likelihood that the court would violate constitutional separation of powers principles." Accordingly, the *CCJEF II* majority ended its decision as follows:

> The judgment is reversed with respect to the trial court's determination that the defendants are violating article eighth, § 1, of the Connecticut constitution and the case is remanded to that court with direction to render judgment for the defendants on that claim . . . .

The ruling here was anything but unanimous. Notwithstanding the reliance of the *CCJEF II* majority on Justice Palmer's concurring opinion in *CCJEF I*, Justice Palmer, joined by Justices Robinson and Sheldon, wrote a concurring and dissenting opinion in which he (1) argued that the trial court applied the wrong constitutional standard, (2) announced what he believed to be the correct constitutional standard, and (3) stated that the court should order a new trial so that the plaintiffs might make their arguments in light of that new constitutional standard.

Justice Palmer expressed the view that the trial court improperly separated his analysis of (1) whether educational funding in Connecticut was minimally adequate and (2) whether these resources were allocated in a rational manner. The question of rationality, Justice Palmer argued, should be incorporated into the review of whether educational funding in Connecticut meets constitutional standards:

> So what should the trial court have done? It should have performed a single legal analysis, applying the *Campaign I* test, as articulated in my concurrence in *Rell*, to the specific educational failings that the plaintiffs allege exist in specific schools and school districts. It should have determined whether, in light of its factual findings regarding both financial and nonfinancial considerations, the state's educational programs are reasonably calculated to satisfy each of the *Campaign I* criteria so as to ensure that students in those districts have the opportunity to secure the fruits of a minimally adequate education. And it should have made these determinations in light of the ''special needs of . . . particular local school system[s],'' as defined in Justice Borden's dissent in *Sheff v. O'Neill*, *supra,* 238 Conn. 143.

With this analytical framework in mind, Justice Palmer then argued that the case should be remanded for a new trial based on this framework. He noted that the trial court made a number of significant findings of deficiencies in the current system, including the observation that "a number of the state's schools are 'utterly failing.'" Justice Palmer stated further that he was not persuaded that it would be impossible for plaintiffs to make their case under the appropriate constitutional standard. He emphasized that where external factors that could be remedied through state interventions were preventing students from being able to access minimally adequate educational opportunities, it was the state, and not schools, whichh bear the constitutional obligation to provide financial and nonfinancial remedies necessary to ensure such students are able to avail themselves of minimally adequate educational opportunities. Here, he agreed with the majority that not all such remedies needed to be addressed through the schools, but underscored that where such challenges interfered with a student's ability to access minimally adequate educational opportunities, the state had the constitutional obligation to provide the interventions it could. Accordingly, Justice Palmer ended his lengthy dissent as follows:

> Because the plaintiffs were not afforded the opportunity to prove their case according to the correct legal standard, and because there is reason to believe that the trial court may have found one or more violations of *Campaign I* if that

test had been applied properly, I dissent from that portion of the majority opinion that directs judgment for the defendants. Instead, I would remand the case for a new trial.

The majority, however, ruled otherwise, and the *CCJEF II* case is now over.

Given this decision, the General Assembly must now step up to assure that all children in Connecticut receive a substantially equal educational opportunity by providing adequate funds and nonfinancial remedies to address the significant problems in Connecticut's low wealth school districts−problems that plaintiffs proved in court, as were so dramatically described in Judge Moukawsher's opinion. All the justices recognized that students in some communities are deprived of access to a minimally adequate education, but the majority decided that judgments about how to remedy such inadequacies "are quintessentially legislative in nature." Here, all can agree with the admonition of the majority that "the state [should] to do all that it reasonably can to ensure not only that all children in this state have the bare opportunity to receive the minimally adequate education required by article eighth, § 1, of the Connecticut constitution, but also that the neediest children have the support that they need to actually take advantage of that opportunity."

The majority and dissenting opinions can be read in their entirety at the following links:

- Majority Opinion, *Connecticut Coalition for Justice in Educational Funding, Inc. v. Rell* (January 17, 2018) [http://www.lawadmin.com/sg/gendocs/327CR19.pdf]
- Concurring and Dissenting Opinion, *Connecticut Coalition for Justice in Educational Funding, Inc. v. Rell* (January 17, 2018) [http://www.lawadmin.com/sg/gendocs/327CR19A.pdf]

Questions or Assistance:

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