

SUPREME COURT OF THE STATE OF CONNECTICUT

S.C. 18032

CONNECTICUT COALITION FOR JUSTICE IN
EDUCATION FUNDING, ET AL.

V.

GOVERNOR M. JODI RELL, ET AL.

**BRIEF OF *AMICI CURIAE*
PROFESSOR CHRISTOPHER COLLIER and
DELEGATE SIMON BERNSTEIN**

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE

Pursuant to Connecticut Practice Book § 67-7, the Connecticut Historian Emeritus Christopher Collier and Delegate to the 1965 Connecticut Constitutional Convention Simon J. Bernstein submit this brief as *amici curiae* in support of Plaintiff-Appellants, Connecticut Coalition for Justice in Education Funding, et al., and urge the Court to conclude that trial court erred in finding the article eighth, § 1 of the Connecticut Constitution does not include a right to suitable educational opportunities. *Amici curiae* both represent particular expertise on Connecticut's constitutional history.

Christopher Collier, Ph. D., is a history scholar that has devoted his career to the study of Connecticut legal and constitutional history. He has served as Professor of History at the University of Connecticut and David S. Day Professor of History at the University of Bridgeport. He has authored numerous books and articles in scholarly journals on the history of Connecticut, including *All Politics is Local* (2003), *The Common Law and Individual Rights in Connecticut Before the Federal Bill of Rights*, 76 Conn. B.J. 1 (2002), and *Roger Sherman's Connecticut* (1971), which received a Pulitzer Prize nomination. He is currently writing a book on the history of education in Connecticut. Accordingly, *amicus curiae* has a professional interest in ensuring that the Court is fully and accurately informed about the historical context preceding and surrounding the passage of article eighth, § 1.

Simon Bernstein served as a delegate to the Connecticut Constitutional Convention of 1965, and was the principal proponent and drafter of article eighth, §1, of the Connecticut constitution. After that, Simon Bernstein served as Deputy Secretary of the State of Connecticut under Ella T. Grasso, and as a Connecticut superior court judge. Both because of his long career in the service of the state of Connecticut, and because of his

pivotal role in 1965 convention, *amicus curiae* is in a unique position to inform the Court about the history of article eighth, §1.

STATEMENT OF THE ISSUE

(1) Did the superior court err in concluding that article eighth, § 1, does not incorporate the qualitative guarantee of good education that prepares students for civic participation, recognized throughout Connecticut's history?

ARGUMENT

Amici curiae urge this Court to interpret article eighth, § 1 of the Connecticut Constitution in accordance with the state’s historical commitment to good education defined by its success in effectively preparing students for active participation as citizens of the state. The history of the right to education, and the adoption of article eighth, § 1, reveals that the clause was expressly intended to incorporate this historical commitment as part of the state’s affirmative obligation to Connecticut schoolchildren. Further, by tracing the history of education in the state, the Court may better understand the scope of the state’s duty under the education clause. The result of such a survey in Connecticut demonstrates that the state’s historical commitment to good education is one measured by the ability of the school system to effectively prepare students for active participation in the civic life of their communities. Connecticut’s history also demonstrates that as the demands of society change over time, its school system has reformed to ensure that all its students have the opportunity to be active, engaged citizens. In 1965, with the adoption of article eighth, §1, this historical commitment became a constitutional duty.

I. **CONNECTICUT’S EARLIEST SCHOOL LAWS DEMONSTRATE THE STATE’S COMMITMENT TO PROVIDING EDUCATION THAT PREPARES STUDENTS TO MEET THE DEMANDS OF CONTEMPORARY SOCIETY.**

Connecticut’s early education laws reveal two core principles that have continuously guided the state’s commitment to education. Connecticut’s colonial Code of 1650 (“Ludlow Code” or “the Code”)¹ and the 1795 school fund law demonstrate the state’s commitment

¹ As Connecticut’s first code of laws, the Ludlow Code is one of the foundational documents of Connecticut law. Some have even gone as far as to call it Connecticut’s first constitution. Henry Cohen, *Connecticut Constitutional History, 1636-1776*, 64 Conn. B. J.

to providing good schools. Second, Connecticut's early school laws demonstrate the state's belief, even from the time of its colonial charter, that good schools are schools that prepare students for the rigors of full participation in the political life of their community, and their state.

A. CONNECTICUT'S FIRST LEGAL CODE DEMONSTRATES THE STATE'S COMMITMENT TO EDUCATION GEARED TOWARDS CIVIC PARTICIPATION.

Connecticut's first legal code marks the state's first affirmation of a duty to provide students with a good education that prepared them for civic participation. The Puritan communities in places like Connecticut founded schools in the mid-17th century "so that all children would be able to read scripture, have a proper upbringing, be knowledgeable of the law, and find 'honest' work." A.E. Van Dusen, *Connecticut* 66 (1961) While religious ardor certainly played a role in the establishment of New England's early common schools, the Puritan settlers of Connecticut and Massachusetts educated their children as much to serve their community as to serve God. James Axtell, *The School Upon a Hill: Education and Society in Colonial New England* 13 (1976).

In 1650, Connecticut passed laws governing the establishment of schools and the state's duties to children. These laws were passed as part of the Ludlow Code, providing in the introduction to the chapter on children that "good education . . . is of singular behoofe and benefit." *The Code of 1650*, at 38 (photo. reprint 2003) (Hartford, Judd, Loomis, & Co. 1836) (emphasis added). Borrowing directly from the Massachusetts school law of 1647, Connecticut also required that each town with 50 households provide a schoolmaster to

5, 336 (1990) ("The Ludlow Code of 1650 is an important statute which is also part of the first 'constitution' of Connecticut").

“teach all such children as shall resorte to him, to write and read.” *Schooles, in The Ludlow Code of 1650, supra*, at 90. Likewise, the law followed Massachusetts in requiring that towns with more than 100 households provide a school “to instruct youths so farre as they may be fitted for the University.” *Id.* at 91. The fact that literacy rates in New England in the early 18th century approached 90 percent for both males and females, while barely 10 percent of the population in the rest of the colonies could read and write, attests to the commitment to good education in New England. Monaghan, *supra*, at 3. In fact, aside from the King James Bible, the most common reading primer used in American schools from 1680 to the 1830s was entitled the “New England Primer” (one early 18th century edition was actually titled “A Primer for the Colony of Connecticut”). Paul L. Ford, *The New England Primer* 19 (New York, Dodd, Mead and Co. 1897).

While Connecticut shared its tradition of quality education with other New England states, the Ludlow Code went beyond the 50 and 100 household requirements of the Massachusetts school law, establishing the most expansive school law in any of the 13 colonies. In the section on Children, the Code sought to ensure that children, regardless of the number of households in their town, received “so much learning as may inable them perfectly to read the English tongue, & knowledge of the Capital laws.” *Children, in The Ludlow Code of 1650, supra*, at 39. This commitment stemmed directly from the understanding that full membership in Puritan society required literacy. That is, without literacy children could not participate in the early communities of colonial Connecticut, politically or otherwise.

B. AFTER THE AMERICAN REVOLUTION, CONNECTICUT REAFFIRMED ITS COMMITMENT TO EDUCATION IN SERVICE OF PREPARING STUDENTS TO PARTICIPATE IN THE POLITICAL LIFE OF THE NEW NATION

Connecticut reaffirmed its commitment to education in the early years of the republic, reflecting the American belief that education is a necessary ingredient of republican government. At America's founding, republican thinkers—many of them educated in New England and steeped in its tradition of its common schools—considered education to be integral to the survival of the Republic. In his *Dissertation on the Canon and Feudal Law*, John Adams wrote that “Liberty cannot be preserved without a general knowledge among the people.” *In 3 Works of John Adams* 456 (Charles F. Adams ed., Boston, Little Brown and Co. 1851). Thomas Jefferson laid out these same arguments and the concurrent need for state-sponsored schools in the preamble to his ultimately unsuccessful 1779 free school bill in Virginia. Jefferson wrote that the state government required that citizens “choose leaders wisely, defeat ambition and corruption in politics, and protect liberty by keeping a vigilant eye on government.” Carl Kaestle, *Pillars of the Republic: Common Schools and American Society 1780-1860*, at 6 (1983).

In spite of this passionate commitment to education in the ideologies of both New Englanders like Adams and southerners like Jefferson, only the former New England colonies actually enacted broad public education statutes, hearkening back to their already century-old commitment to education. While Virginia's school law failed, Adams wrote education into the Massachusetts constitution in 1780, requiring the legislature “to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools, and grammar-schools in the towns” because “wisdom and knowledge, as well as virtue, diffused generally among the body of the

people, [is] necessary for the preservation of their rights and liberties” Mass. Const. of 1780, art. V .

Like the founding fathers, Connecticut thinkers widely acknowledged the importance of education; Noah Webster wrote, “an acquaintance with ethics and with the general principles of law, commerce, money and government is necessary for the yeomanry of a republican state.” Kaestle, *supra*, at 5. Connecticut responded to the ideals of the time by affirming her commitment to education in a statute.² The state’s 1795 school law marked a financial commitment to ensuring good education unique among the states at that time. Under the law, the state legislature sold all of its land in the Pennsylvania Western Reserve Territory for 1.2 million dollars, creating a permanent school fund. *Id.* at 10. The law also continued a statewide property tax of two dollars per thousand dollars of assessed value. *Id.* at 11. In reference to the passage of the school fund law, a member of the General Assembly commented “Is not Connecticut considered throughout the Union as the best nursery therein of the Arts and Sciences.” Henry Barnard, *History of the School Fund of Connecticut*, 41 (Hartford, Case, Lockwood & Brainard 1931). Speaker of the General Assembly Zephaniah Swift added, that “No country can boast of a more liberal and noble establishment for the support of schools of instruction, and millions yet unborn, will bless the extensive and patriotic views of the authors of this goodly work.”¹ Zephaniah Swift, *A System of Laws of the State of Connecticut* 151 (Windham, Jorn Byrne 1795). The act also carried over earlier legislation that required each community to appoint “committeemen” to

² Unlike Massachusetts and many other states, Connecticut did not draft a constitution immediately after the founding of the new nation. Rather, Connecticut jurists depended on their long statutory and common-law history, already more than a century old in 1776, to protect the rights of the state’s citizens. See generally Christopher Collier, *The Common Law and Individual Rights in Connecticut Before the Federal Bill of Rights*, 76 Conn. B. J. 1, 336 (2002).

“superintend, and direct the Instruction of the youth in Letters, in Morals, and in Manners” as an accountability mechanism. 8 State of Connecticut, *Public Records of the State of Connecticut* 239 (1951). Additional reforms followed in 1798 when the legislature transferred local school authority from ecclesiastical societies to newly formed school societies. R.F. Butts & L.A. Cremin, *History of Education in American Culture* 19 (1963). Even the time-honored “New England Primer,” which until then depended wholly on religious text, changed to reflect the more liberal-secular spirit of the times, adding questions like “Who saved America [George Washington]” to its catechism. Ford, *supra*, at 63, 99. These reforms demonstrate that Connecticut’s commitment to provide good education bridged the transition from colony to state, reforming as society changed. While local taxes, religious school societies, and Puritan texts predominated in 1650, the new century demanded state funds, secular school societies, and students schooled in the more secular values of American patriotism.

II. AS SOCIETY PROGRESSED BETWEEN 1800-1965, CONNECTICUT REFORMED ITS EDUCATIONAL SYSTEM TO MEET THE CHANGING DEMANDS OF SOCIETY.

In the 19th and early 20th centuries, Connecticut continued to reaffirm its commitment to good education. Further, the state continued to measure the success of its educational system by its ability to effectively promote republican values, and prepare students to participate in the civic life of the state.

A. IN THE MID-19TH CENTURY CONNECTICUT REAFFIRMED ITS COMMITMENT TO QUALITY EDUCATION IN THE SCHOOL REFORMS OF HENRY BARNARD.

From the early 19th century through the turn of the 20th century, Connecticut's leaders continually reformed the state's public school system in order to provide students with the skills necessary to be engaged and productive citizens. However, by the mid-19th century the state's school fund was no longer providing enough revenue to maintain quality schools. Yale professor and later Yale president (1871-1886) Noah Porter commented that, "There was a time when the Common Schools of Connecticut were esteemed the best in the world . . . It was a system suited to the state of society then existing," Noah Porter, *On the Necessity and Means of Improving the Common Schools of Connecticut*, in 14 Am. J. of Educ. 34, 244 (Henry Barnard ed., London, Trubner & Co. 1864), but added that by the mid 19th century "every newspaper and lecturer out of Connecticut . . . sneers at the Connecticut School Fund, and the present condition of Connecticut schools." *Id.* at 246. Most town school societies failed to supplement the resources provided by the school fund with local taxes or tuitions called rate-bills, so as the cost of education rose, the system gradually deteriorated in quality. L.A. Cremin, *American Education: The Colonial Experience, 1607-1783*, at 238 (1970), see also A.E. Van Dusen, *Connecticut* 348 (1961).

Connecticut observers of the period also commented on the effects of the lack of funding, and the likely cost to society. The 19th century Connecticut preacher Horace Bushnell observed that only the children of the poor attended the common schools, and "their parents ha[d] only a cold despairing interest in the forlorn establishment, to which they [we]re doomed to send them." 4 Conn. Common Sch. J., Sept. 1842, 184. Speaking of the state of education, Noah Porter added that "there has been commenced in Connecticut a permanent and anti-republican division of society," speaking of the division

between those who attended public common schools and those who could afford better private instruction. Porter, *supra*, at 257.

In response to this situation, the state began a decades-long effort to reform the school system. Led by Henry Barnard, who became the state's first Superintendent of Common Schools in 1838, the General Assembly passed "An Act Concerning Public Schools" in 1841. C.L. Ames, *History of Education in Connecticut from 1818-1925* 203 in 5 *History of Connecticut* (N.G. Osborn ed. 1925). This act provided for more fiscal oversight of local school societies, and for boards of "visitors" to oversee teacher quality and classroom instruction in individual schools. 3 Conn. Common Sch. J., May 1841, 217. Barnard garnered national attention for his reforms, insisting that Connecticut had a responsibility to ensure that the common school "no longer be regarded as common because it is cheap, inferior and patronized only by the poor, and those who are indifferent to the education of their children, but common as the light and the air, because its blessings are open to all and enjoyed by all." 10 Am. J. of Educ. 24, 27 (Henry Barnard ed., Hartford, F.C. Brownell 1861). The goal of the reforms was to reaffirm the promise of good education: "The education, so far as it goes, is to be as good as money can secure...it is to be open alike to rich and poor. This is the theory, and was till within a few years, the practice of the 'Free School System' of Connecticut, and is now the practice of the other states of New England." 4 Conn. Common Sch. J., Dec. 1841, 5. In his 1847 annual message to the legislature, Governor Bissell added that "In a government resting on the virtue and intelligence of its citizens. . . the cause of education should ever be regarded as an object of paramount importance. It is, and ever has been so regarded by the people of this state." 14 Am. J. of Educ. 34, 264 (Henry Barnard ed., London, Trubner & Co. 1864)

The state followed these reforms with other progressive initiatives beginning in 1868. *Id.* Connecticut at this time experienced “a great awakening in the cause of public education,” leading it to pass a free school law, which required towns “to support their schools by a system of public taxation.” Ames, *supra*, at 183. The state followed this enactment with “an advance in all educational features—buildings, methods of teaching, better teachers, [and] supervision . . . put[ting] the public school system of Connecticut in the front rank.” *Id.* at 184. Over the ensuing decades, the state gradually lengthened the required school year and enacted its first compulsory school law. *Id.*

The reforms of the 19th century expanded the quality of education, and the number of children who had access to schools, but the state remained committed to the same basic purpose of education set down in the Ludlow Code more than a century earlier. Henry Barnard, along with Noah Porter and others, believed that the failure to provide an education that prepared all students to participate in the governing of the state was inimical to republican principles on which the nation was founded.

B. IN THE FIRST HALF OF THE 20TH CENTURY CONNECTICUT REFORMED ITS EDUCATIONAL SYSTEM TO ENSURE THAT THE STATE’S NEWLY ARRIVED CITIZENS WERE PREPARED FOR CIVIC LIFE.

As Connecticut’s cities absorbed thousands of European immigrants throughout the late 1800s and early 1900s, the state had to incorporate more English language and civics classes in order to train these new arrivals to meet the demands of citizenship. In fact, a 1919 statute temporarily created a Department of Americanization. 1919 Conn. Pub. Acts 2955.

The changes brought by the new waves of immigration continued into the middle of the 20th century. World War I and the large percentage of immigrants continuing to settle in Connecticut led to more changes in the school curriculum. New emphasis was given to courses in civics, social studies, and homemaking. D.C. Allen, *Three Centuries of North Haven School History* 136 (1956). “The public schools are maintained for the purpose of training the youth of the land for effective citizenship,” wrote Commissioner Albert Meredith in the 1923 edition of the Department’s Flag Day Manual. Meredith suggested that schools set aside special time “for the particular purpose of accentuating the fundamental principles of our representative democracy.” State of Conn., *Flag Day Manual Connecticut School Document No. 3* (Yale Binding 1923).³ Indeed, during the years between the world wars many districts established summer programs which stressed the merits of individual sacrifice and democratic participation. Allen, *supra*, at 136. Updated programs of “Americanization” were developed whereby foreigners would be taught to read and write English and study American customs and ideals. Ames, *supra*, 209.

In order to continue to produce informed citizens, the educational system had to adapt to the times, and the state had to increase education funding. Conn. State Dep’t of Educ., *Redirection, Reorganization, and Retooling of Secondary Education* 43 (Bulletin 37, 1944). In spite of all the efforts to improve and adapt education to the changes brought by immigration and the First World War, a 1950 Governor’s Fact-Finding Commission on

³ This source is unusual, and its proper citation format is not covered by any legal convention. Generally, “Connecticut School Documents” is a multi-volume set containing all the documents published by the state board of education in that year. The two existing versions of the collection contain different numbers of volumes, and cover slightly different years. Both the Mudd Library at Yale University and the Connecticut State Library contain copies of the “Connecticut School Documents” volumes; however, different documents with different numbering are contained in the two versions. The version cited here is from the Mudd Library.

Education found serious deficiencies in Connecticut's educational system. As in Henry Barnard's day, citizens were again becoming critical of education and felt that there was a need to stress fundamentals. These included useful vocabulary, common math skills, and social studies. State of Conn., Governor's Fact-Finding Commission on Education, *Do Citizens and Education Mix?* 72 (O'Brien Suburban Press, 1950). In 1955, the state Department of Education prepared curriculum bulletins to help guide teachers in the instruction of many academic subjects. *Id.*

The period of immigration and industrialization in the late 19th century, and the vast technological and economic changes of first half of the 20th century wrought major changes to society. However, the goals of public education remained constant. The state was still committed to providing good education—an education that effectively prepared this new, more diverse student body for participation in the life of the state.

III. THE RATIFICATION OF ARTICLE EIGHTH, § 1, WAS INTENDED TO ENSHRINE THE STATE'S HISTORICAL COMMITMENT TO QUALITY PUBLIC EDUCATION INTO THE CONSTITUTION.

Throughout its history, the state has expressed a strong commitment to providing good education. Connecticut courts have recognized this commitment as a constitutional obligation. However, from 1650 until 1965, the state took on this obligation voluntarily, and reform depended entirely on the whim of the public and the legislature. Article eighth, § 1, was intended to “constitutionalize” the high aspirations expressed throughout the history of Connecticut's public school system, and the promise of an education that effectively prepared students to participate as citizens. The intention was to make access to good education a fundamental right, on par with free speech and free association—this fact was later recognized in *Horton v. Meskill*, 172 Conn. 615 (1977).

The floor statements of delegate Simon Bernstein at the Constitutional Convention of 1965, the drafter and chief proponent of article eighth, § 1, confirm this intention. As Bernstein explained at the convention:

[W]hen I use the word “good education” I am quoting, because if I may I would like to quote from the Connecticut code of 1650 which others I believe call the Ludlow Code. Quote “a good education of children is a singular of behoove and benefit to any Commonwealth” so we do have the tradition which goes back to our earliest days of free good public education.

3 Proceedings of the Connecticut Constitutional Convention at 1039-1040 (remarks of Delegate Simon Bernstein). Later in the convention, delegate Chase Woodhouse added her voice in support of incorporating this tradition: “I rise in support of this resolution. I think it is extremely fitting that we should finally put into our Constitution a reference to our great public schools because Henry Barnard of Connecticut is perhaps one of the greatest historical figures in this development of public school education.” 3 Proceedings of the Connecticut Constitutional Convention at 1062 (remarks of Delegate Chase G. Woodhouse). Further, delegate Bernstein related this tradition of good education specifically back to the purposes of education. Delegate Bernstein explained, “it goes without saying that if we are going to have a representative government elected by a public, that the education of the public is the first and best way of promoting the best representatives be elected.” 3 Proceedings of the Connecticut Constitutional Convention at 1069 (remarks of Delegate Simon Bernstein).

It is common knowledge that in spite of the guarantees of article eighth, § 1, and the Court’s decision in *Horton*, 172 Conn. 615, the public school system is failing a significant number of the state’s students. While the guarantee of a good education may have been a matter of historical tradition before 1965, article eighth, § 1, radically changed the nature of

the right to education, placing an affirmative duty on the state to ensure that all children receive an education that prepares them to participate in the civic life of their community, the state, and the nation. *Amici* urge the Court to recognize that article eighth, §1, includes this guarantee, and to ensure that the state fulfills its constitutional duty to all Connecticut children.

CONCLUSION

For the foregoing reasons, the Court should find that the right to education guaranteed under article eighth includes a right to a good education, designed to preserve our republican government and effectively prepare students to shoulder their civic responsibilities.

Respectfully Submitted,

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CERTIFICATION OF COMPLIANCE

This is to certify that the foregoing brief complies with the requirements of § 67-2 and § 62-7 of the Connecticut Practice Book.

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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing was mailed, by United States mail, first class postage prepaid, on this the 10th day of January 2008, to all counsel of record and to the trial court, as follows:

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