Docket No. X09-HHD-CV-05-4019406-S (CLD)

NEKITA CARROLL-HALL et al.	:	SUPERIOR COURT
Plaintiffs	:	
	:	COMPLEX LITIGATION DOCKET
v.	:	AT HARTFORD
	:	
M. JODI RELL, et al.	:	SEPTEMBER 13, 2006
Defendants	:	

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE

The defendants in the above matter respectfully submit this memorandum in support of their accompanying motion to strike.

I. Introduction

The first amended complaint in this action comprises some 56 pages. After certain conclusory introductory statements, the descriptions of the parties, and the obligatory class allegations, the first 50 pages assert a long series of alleged inadequacies and hardships facing certain Connecticut public school districts and their students, followed by a series of complaints regarding the alleged deficiencies of both the State's Educational Cost Sharing grant program, codified at Conn. Gen. Stat. §10-262f *et seq.*, as well as the other State grants supporting non-State school districts.

Throughout the first fifty pages, words or phrases referring to a "suitable" education or "suitable program of instruction," or words of similar effect appear, by defendants' count, some forty-seven (47) times.[1] The first, second and fourth counts, purportedly representing three of

[1] The word "suitable education" or some variant thereof appear at paragraphs 1, 2, 4, 39, 41, 44, 46 (including a. - c.), 49, 50, 53, 54, 57, 59, 61, 63, 65, 66, 75, 76, 78, 79, 80, 82, 89, 91, 98, 99, 106, 107, 111, 112, 115, 116, 125, 129, 135, 140, 142, 144, 147, 148, 149, 152, 154, 160, 163, 170, 172i, 172ii, and 172v of the first amended complaint.

the four separate causes of action asserted appear at page 51 and following. In particular, paragraphs 160 and 161 of the first count allege:

> 160. By failing to maintain a public school system with suitable and substantially equal educational opportunities, the State is violating Article Eighth, §1 and Article First, §§1 and 20 of the State Constitution.
> 161. As a result of this constitutional violation, plaintiffs are being irreparably harmed, for which there is no adequate remedy at law.

Paragraphs 163 and 164 of the second count allege:

> 163. By failing to maintain a public school system that provides plaintiffs with suitable educational opportunities, the State is violating Article Eighth, §1 of the State Constitution.
> 164. As a result of this constitutional violation, plaintiffs are being irreparably harmed, for which there is no adequate remedy at law.

In the fourth count, after alleging that the defendants were acting under color of state law, plaintiffs allege that:

> 170. The State's failure to maintain a public school system that provides the plaintiffs with suitable and substantially equal educational opportunities has disproportionately impacted African-American, Latino, and other minority students, in violation of Article Eighth, §1 and Article First, §§ 1 and 20 of the State Constitution, and 42 U.S.C. §1983.
> 171. As a result of this constitutional violation, plaintiffs are being irreparably harmed, for which there is no adequate remedy at law.[2]

The plaintiffs' allegations define a "suitable education" as "one that provides more than minimal skills." Rather, it "must prepare children who will, as adults, function as responsible citizens, compete in obtaining productive employment, and advance through higher education." (First Amended Complaint, para. 2). In other words, in the jargon of the first amended

[2] The third count of the first amended complaint alleges that plaintiffs have been denied substantially equal education opportunity in violation of these same constitutional provisions. Defendants have not moved to strike this count, since, at least as alleged, it asserts a viable cause of action under Connecticut law. Horton v. Meskill, 172 Conn. 615 (1977) ("Horton I"); Sheff v. O'Neill, 238 Conn. 1 (1996).

complaint, a "suitable education," as allegedly guaranteed by law, must attain certain measurable "educational outputs," *i.e.*, results, notwithstanding either the quantity or equality of the provision of educational "inputs," (*i.e.*, funding) (See First Amended Complaint at paras. 50-112). [3] In essence, the plaintiffs ask this Court to hold that the Connecticut Constitution guarantees that each student will attain the same *results* or level of achievement. While the plaintiffs couch their claims in terms of "substantially equal" or "suitable" opportunity, they are in fact claiming a constitutional right to "substantially equal" results. (First Amended Complaint paras. 44, 112). Plaintiffs propose to measure results by standardized test scores, retention rates, course completion rates, and graduation rates. Id. In order to obtain such substantially equal education results, they claim the Connecticut Constitution requires sufficient (and inferentially sometimes very different) educational "inputs." (See, *e.g.*, First Amended Complaint paras. 50-51). They seek nothing less than to have this Court order the State to exponentially increase state education spending on the wholly unproven theory that this will bring about substantially equal educational results.

Leaving aside the highly dubious proposition that the expenditure of more money -- particularly significantly more in those districts where educational testing and other measures reflect lower success rates -- will ensure success for those students who in plaintiffs' view are not succeeding at present, these allegations represent a radical departure from, and an unwarranted and ultimately unsupportable attempted expansion of the meaning and scope of the cited

[3] Plaintiff's dichotomy of educational "inputs," as opposed to "outputs," is off the mark, and either ignores or misapplies prior Connecticut jurisprudence on the issue. Both the Court in Horton I, 172 Conn. at 634-635, and Justice Borden's dissent in Sheff , 238 Conn. at 137 consider items such as textbooks, teacher qualifications, school supplies, facilities and the like as educational *outputs*, not inputs, resulting as they do from school board decisions about how best to utilize funds devoted to education. Here the plaintiffs use the term "outputs" to mean results or levels of student achievement. In other words, the plaintiffs contend that the Connecticut Constitution guarantees that all students will achieve at substantially the same levels.

provisions of the Connecticut Constitution, namely, the "*equality* of rights" provision (Article First, §1), the "*equal* protection" provision (Article First, §20), and the "free public schools" provision (Article Eight, §1). Again, the foundation of plaintiffs' claims rests upon their notion that our state constitution enshrines the right to substantially equal educational results. Consistent with this misconception, plaintiffs aver that the State Constitution guarantees and requires the provision of their list of "inputs" in order to obtain such substantially equal educational results. Thus, the critical inquiry at this juncture is *not* whether the plaintiffs' ideas reflect sound educational or public policy, but rather whether the Connecticut Constitution requires the State to guarantee substantially similar educational results.

As set forth more fully below, neither the Connecticut Constitution, as interpreted by our State's courts, nor the well reasoned law of other jurisdictions, guarantee plaintiffs' so-called "suitable" education, *i.e.*, substantially similar educational results -- as distinguished from a substantially equal educational opportunity -- and thus these claims should be stricken.

II. Discussion

A. Connecticut Law

Plaintiffs' first amended complaint is, at bottom, a legal attack on the constitutionality of state statutes -- primarily the ECS formula. It is well settled Connecticut courts are duty bound to presume the constitutionality of state laws unless their invalidity is established beyond a reasonable doubt. Horton v. Meskill, 172 Conn. 615 (1977) ("Horton I"); Moore v. Ganim, 223 Conn. 557, 571-572 (1995); Seymour v. Elections Enforcement Comm'n., 255 Conn. 78, 105 (2000).

The Horton cases, relying on precisely the state constitutional provisions the plaintiffs invoke here, were, of course, about *equalizing* the *resources available* to public school districts. The Horton I Court observed that

> [t]he wide disparities that exist in the amount spent on education by the various towns result primarily from the wide disparities that exist in the taxable wealth of the various towns; the present system of financing education in Connecticut ensures that, regardless of the educational needs or wants of children, more education dollars will be allotted to children who live in property rich towns than to children who live in property-poor towns.

Horton I, 172 Conn. at 633. In Horton III, 195 Conn. 24 (1985), the Court assessed the constitutionality of the legislation that was passed to respond to the Court's decision in Horton I. In so doing, the Horton III Court described its previous holding in Horton I this way:

> We … defined the state's constitutional obligation as a duty to allocate governmental support to education so that state funds, instead of equally benefiting all the towns by way of a flat grant, would offset the demonstrated significant disparities in the financial ability of local communities to finance education through the local property tax …. We held that the state was required to assure all students in Connecticut's free public elementary and secondary schools "a substantially equal educational opportunity."

Horton III, 195 Conn. at 35. [4]

While the Connecticut Supreme Court's decision in Moore v. Ganim, 233 Conn. at 557 did not involve either education or the education provision of the Connecticut Constitution, the ruling is instructive on the issue of constitutional analysis generally, and more specifically the Court's recognition of new constitutional rights. In Ganim, the plaintiffs sought to have the Court recognize a state constitutional right to subsistence. Noting that the Court "will not recognize a constitutionally incorporated right absent a 'clear indication' in our history that such a right existed at common law," Moore, 233 Conn. at 575 (quoting Kelley Property Development, Inc.

[4] There is nothing in Horton I or Horton II that suggests that plaintiffs' proposed list of "inputs" are constitutionally required.

v. Lebanon, 226 Conn. 314, 333 (1993)), the Moore Court "conclude[ed] that the state has no affirmative constitutional obligation to provide minimal subsistence to its poor citizens." Moore, 233 Conn. at 581. In reaching this determination, the Court observed that it was "especially hesitant to read into the constitution affirmative governmental obligations. In general, the declaration of rights in our state constitution was implemented not to impose affirmative obligations on the government, but rather to secure individual liberties against direct infringement through state action." Id. at 594. In this respect, the Moore Court considered its ruling consonant with federal constitutional jurisprudence, "in that the United States constitution neither requires the government to remove nongovernmentally imposed impediments to the exercise of fundamental rights by indigent persons … nor compels the government to provide funding for indigent persons' basic necessities such as housing." Id. at 589-590 (citing Youngberger v. Romeo, 457 U.S. 307, 317 (1982)) [5] Thus, the Moore Court noted, "this court never has held that the state constitution compels the state to provide economic entitlements. *Indeed, this court has not even recognized a state obligation to remove obstacles inhibiting the exercise of fundamental rights unless those barriers were constructed by the government."* Moore, 233 Conn. at 582 (citing Doe v. State, 216 Conn. 85, 104 (1990) (Article First, §10 does not require paying civil attorneys' fees to ensure indigent persons have access to the civil court system); Savage v. Aronson, 214 Conn. 256 (1990)) (Emphasis added).

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[5] Among the many illustrative U.S. Supreme Court cases cited by the Moore Court for this proposition was DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 196 (1989), from which the Moore Court selected the following quote: "[t]he Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty, or property interests of which the government itself may not deprive the individual." Moore, 233 Conn. at 590.

The Moore Court also made note of an important qualitative difference between Article Eight, §1, the "education clause," and the many other provisions of the State Constitution.

> The text of our constitution makes evident the fact that its drafters have been explicit when choosing to impose affirmative obligations on the State …. Indeed, the history of article eight, §1 is particularly instructive in the instant case. This explicit textual provision, and its counterparts, article eight, §2 (system of higher education), and article eight, §4 (school fund), are the *only* constitutional provisions, recognized to date, that impose affirmative obligations on the part of the state to expend public funds to afford benefits to its citizenry. Other provisions, *such as those in article first,* protect individuals from state intrusion …. Accordingly, to its proponents at the convention, the purpose of article eight, §1, was to give "our system of public education … the same constitutional sanctity" as our bill of rights …. *they did not consider this tradition in and of itself to create a state constitutional obligation* …. To the contrary, they found it appropriate to amend the constitution in order to give public education constitutional status.

Moore, 233 Conn. at 595-596 (Emphases added).[6] Thus, while it can be correctly asserted that Article Eight, §1 imposed a new affirmative duty upon the State -- albeit not of the nature plaintiffs here claim -- Article First, §§1 and 20 impose no such affirmative obligations.

While the Horton I Court had spoken in terms of a "fundamental right" to "elementary and secondary education," to which Connecticut's children were "entitled to equal enjoyment," (Horton I, 172 Conn. 648-64), the Court's subsequent decision in Sheff v. O'Neill, 238 Conn. 1 (1996), coming approximately a year after the decision in Moore, seemed to muddy the constitutional waters by "hold[ing] that, textually, article eight, Section 1, *as informed* by article

[6] At footnote 51 of the Moore decision, the majority discusses at some length the proceedings of the 1965 constitutional convention that adopted Article Eight, §1 of the State Constitution. The footnote describes the "education clause's" chief architect and proponent, Simon Bernstein, as being motivated by his surprise at learning that, unlike most other state constitutions, at that time the Connecticut Constitution did not enshrine a right to free public schools, and that this oversight or deficiency warranted correction. One would certainly need to seriously distort this history to conclude that the convention delegates intended or envisioned that they were creating a constitutional guarantee of certain levels of educational achievement or attainment -- in the plaintiffs' jargon, successful "educational outputs."

first, section 20, requires the legislature to take affirmative responsibility to remedy segregation in our public schools, regardless of whether that segregation has occurred de jure or de facto." Id. at 29-30 (Emphasis added). Thus although Moore had instructed that Article First of the State Constitution imposed *no* affirmative obligations, but rather was only a check on governmental action, the Sheff Court, albeit in accord with the spirit if not the precise holding of Horton I, found that affirmative obligations requiring governmental action could arise under Article Eight, §1, when read in conjunction with or "informed by" the provisions of Article First. In so ruling, the Sheff Court found its 1990 decision in Savage v. Aronson, 214 Conn. at 256, in which the Court had found the creation of an emergency housing program had not created a constitutional right to its continued existence, distinguishable because of the affirmative constitutional obligation to provide public elementary and secondary education, which had no analog with respect to housing. Sheff, 238 Conn. at 20. Even Sheff made clear, however, that while the Court was finding racial, ethnic and economic isolation in the Hartford schools unconstitutional, the legal touchstone for determining constitutionality was Horton's "substantially equal educational opportunity."

Most notably, the Sheff Court explicitly eschewed ruling on any claim that there was a state constitutional right to an "adequate" education.

> In the third count of the plaintiffs' complaint, they invoked article first, Section 1 and 20, and article eighth, Section 1, for a different purpose. They alleged that the defendants have failed to provide schoolchildren in the Hartford public school system with the educational resources necessary to obtain a minimally adequate education. As pleaded in their complaint and as argued before the trial court, this claim was not expressly predicated upon the severe racial and ethnic isolation that exists in the Hartford public school system. Moreover, at oral argument, the plaintiffs conceded that they had claimed neither at trial or in their appellate brief, that the opportunity to participate in a racially and ethnically diverse education is a constitutionally required component of a minimally adequate education. Accordingly, we conclude that the third count of the plaintiffs' complaint does not implicate the right to a substantially equal educational opportunity as defined in

> part III A [of the majority opinion]. Because, however, the plaintiffs' remedial claims do not depend upon the validity of the third count of their complaint, we need not reach the merits of this claim.

Sheff, 238 Conn. at 36-37. The Court went on to note, however, that "[i]t is well established, under prevailing principles governing the law of equal protection, that poverty is not a suspect classification." Id. at 39. Plaintiffs' First Amended Complaint repeatedly asserts that plaintiffs come from impoverished districts, noting, for example, the prevalence of free and reduced lunch participation rates, the well-recognized shorthand for poverty among school students. (First Amended Complaint paras. 9, 11, 13, 14, 18, 19, 21, 23, 25, 27, 28).

Finally, in Broadley v. Board of Education of the City of Meriden, 229 Conn. 1 (1994), the plaintiff claimed that he "ha[d] a state constitutional right to receive a program of education specially designed to meet his individual needs as a gifted child." Id. at 4. More specifically, relying on the same constitutional provisions the plaintiffs here rely upon -- Article Eight, §1 and Article First, §§ 1 and 20 -- the plaintiff claimed "that his fundamental right to a free public education includes the right to a program of instruction that enables him to "progress effectively," as that term has been used General Statutes §10-76a(c), because the legislature has acknowledged that gifted children cannot achieve effective progress without a program of special education." Id. at 5-6. The Broadley Court resoundingly rejected these claims, observing that

> [i]n these circumstances, when neither the legislature nor the framers of our constitution have vested in gifted children any right to an individualized education program, we cannot conclude that the plaintiff's right to a free public education under article eighth, §1 of the Connecticut constitution includes a right to a special education program.

Id. at 8. As to the Article First, §§1 and 20 claims, the Broadley Court reiterated that these provisions simply "require 'the uniform treatment of persons standing in the same relation to the

government action questioned or challenged.'" Id. at 8 (quoting Reynolds v. Sims, 377 U.S. 533, 565 (1964) and Franklin v. Berger, 211 Conn. 591, 594 (1989)). While, not surprisingly, the Broadley plaintiff's case foundered on the fact that the state legislature had made special education programs for such youngsters optional and not mandatory (see Conn. Gen. Stat. §10-76(c)), what is most notable about the decision is that the legislature *had* determined that such students need specially designed instruction or different programming to progress effectively (although such effective progress was nowhere defined). Broadley, 229 Conn. at 6, n. 12. However, even in the face of such a legislative determination, the same state constitutional provisions the plaintiffs here rely upon did *not* mandate that the Broadley plaintiff's special needs and circumstances be met by his public school.

From these State Supreme Court precedents several important legal principles emerge. First, a claim that a state statutory scheme is unconstitutional must be established beyond a reasonable doubt. Second, Connecticut courts will not recognize new constitutionally incorporated rights absent a clear indication that such rights existed at common law. Third, courts are especially hesitant to read into the state constitution affirmative governmental obligations since constitutional provisions generally do not require the government to remove nongovernmentally imposed impediments to the exercise of even the most fundamental constitutional rights. Fourth, while free public elementary and secondary education is a fundamental right under Article Eight, §1 of the Connecticut Constitution, Article First, §§ 1 and 20 standing alone impose no affirmative obligations on the State, and, when read in conjunction with or when "informed by" Article Eight, §1, they impose only the duty to provide substantially equal educational *opportunity* -- not equality of results. Finally, even when different or extra

programming or resources are deemed necessary for certain students to make effective progress, equality of opportunity remains all the state constitution requires.

The logical application of these principles to this case reveals that plaintiffs' claims based on a purported state constitutional right to a "suitable" education, as determined by certain "outcome" measures of academic achievement, or other asserted measures of success, fail as a matter of law. Contrary to the these principles, plaintiffs in fact *do* seek to have the Court recognize a new "constitutional" right to successful educational outcomes, although no such right has ever existed at common law. Indeed, Article Eight, §1 was added precisely because of the concern that the state constitution did not even guarantee public schools, let alone equality of results. Moreover, while elementary and secondary public education is a fundamental right under the state constitution, plaintiffs' claims seek to read into the constitution a right to demand the State remove obstacles or impediments to the exercise of that right when such obstacles or impediments were not created or imposed by the State -- whether those alleged obstacles are poverty, English as a second language, a high prevalence of students entitled to special education services or other reasons. Finally, notwithstanding plaintiffs' attempts to frame them otherwise, these claims seek to impose a constitutional obligation well beyond the duty to provide substantially equal educational opportunity or ensuring rough equity in the provision of resources to school districts. Rather, these claims seek to ensure equality of *results*, a huge and unwarranted attempted enlargement of the meaning and scope of Article Eight, §1, even "as informed" by the provisions of Article First, §§1 and 20. [7] As such, these claims should be stricken.

[7] Plaintiffs will no doubt attempt to deluge the Court with the large number of aspirational statements and goals the State Board of Education, the State Commissioners of Education and even various Governors and legislators have articulated over the course of many years, as these

B. Relevant Law from Other States

The Connecticut Supreme Court has articulated the factors courts should consider in construing the contours of the state constitution. In addition to the text at issue, the holdings of the State's Supreme and Appellate Courts, relevant federal precedent, the history of the provisions and the debates of its framers, and economic and sociological considerations, courts may look to relevant decisions from sister states. State v. Geisler, 222 Conn. 672, 684-685 (1992); State v. Glenn, 251 Conn. 567, 571-572 (1999).

While decisional law from other states must be scrutinized and considered only with great care, given the differing language of the various state constitutions, certain relevant decisions from other states provide important guidance in this case.

In Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles, 680 So.2d 400 (1996), plaintiffs claimed the right to an "adequate" education pursuant to that state's constitution, which provided that "[a]dequate provision shall be made by law for a uniform system of free public schools …." Id. at 405. In this context, the Florida Supreme Court held that

> [t]he Florida constitution only requires that a system be provided that gives every student an equal *chance* to achieve basic educational goals prescribed by the legislature. The constitutional mandate is not that every school district in the state must receive equal funding nor that each educational program must be equivalent. Inherent inequities, varying revenues because of higher or lower property values, or differences in millage assessment will always favor or disfavor some districts.

Id. at 406. (Emphasis added). Moreover, the Court opined, "[t]o decide such an abstract question of 'adequate' funding, the courts would necessarily be required to subjectively evaluate the

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entities and individuals, in an inherently political process, seek to raise the achievement and educational attainment of Connecticut students, or subsets of those students. The Court should reject such attempts to use such iterations as the basis for recognizing or articulating new *constitutional* rights -- not only are these individual and entities not "framers" in the constitutional sense, they often candidly and correctly view themselves as partisan advocates in the political and sociological processes that result in the formation of public policy.

legislature's value judgments as to the spending priorities to be assigned to the state's many needs, education being one of them." Id. at 406-407. In short, plaintiffs had "failed to demonstrate … an appropriate standard for determining 'adequacy' that would not present a substantial risk of judicial intrusion into the powers and responsibilities, both generally (in determining appropriations) and specifically (in providing by law for an adequate and uniform system of education)." Id. at 408.

In Hancock v. Commissioner of Education, 443 Mass. 428, 822 N.E.2d 1134 (2005), the Massachusetts Supreme Judicial Court declined to endorse the opinion of a specially assigned Judge of the Superior Court, who had effectively endorsed a theory of educational "adequacy." A concurring opinion noted that even one of the dissenters agreed that "the education clause [of the Massachusetts Constitution] does not guarantee equal outcomes in all school districts according to certain measurable criteria." Id. at 457 (Internal quotations omitted). Even a dissenting Justice who had served on the panel that had decided McDuffy v. Secretary of the Office of Education, 415 Mass. 545, 615 N.E.2d 516 (1993), which had alluded to a constitutional duty to prepare Massachusetts students for civic life, noted that he could not agree with the Hancock plaintiffs that equal outcomes were required under the Massachusetts Constitution. Hancock, 443 Mass. at 457.

Many courts that have rejected educational "adequacy" or similar claims have done so because, as was well articulated by the Connecticut Supreme Court in Nielsen v. State, 236 Conn. 1 (1996), certain claims lack "judicially cognizable and manageable standards" by which their validity can be assessed by the courts. Id. at 10-11. Although the Nielsen Court was assessing the justiciability of plaintiffs' claims that the legislature had "wrongfully failed to enact statutory definitions" for the so-called "balanced budget provision," its analysis of the difficulties

inherent in ruling on plaintiffs' claims rings true here, where "we can discern no principled guidelines for the definitions contemplated," and the task "requires definitions [for which] no inherent meanings … are readily discernable through judicial processes." Id. at 12. While the Nielsen Court noted that the Court in Horton I had found the issue of school financing justiciable, notably it was because the constitutional commitment found was to "substantially equal educational opportunity," not an "adequate" or "suitable" education for each child, as the plaintiffs urge here. Nielsen, 236 Conn. at 10.[8]

It was on such a basis that the Rhode Island Supreme Court in City of Pawtucket v. Sundlun, 662 A.2d 40 (1995), rejected an attack under the education and equal protection provisions of that state's constitution on the school financing system. The education provision, not unlike Connecticut's (which establishes that "[t]here shall always be free public elementary and secondary schools" and that "[t]he general assembly shall implement this principle by appropriate legislation" (Article Eight, §1)) required "the [Rhode Island] general assembly to promote public schools…." According to the Rhode Island court, plaintiffs were required to seek their remedy at the legislature due to the lack of judicially enforceable standards. Id. The Sundlun Court also noted that it was motivated in part by a need to avoid being drawn into the "chaos" of repeated legislative and subsequent court challenges. Id. at 8. The Alabama Supreme Court cited Sundlun in its decision dismissing a school financing challenge in that state,

[8] Of course, when a case in nonjusticiable, the court lacks subject matter jurisdiction over it, and procedurally the issue is generally raised via a motion to dismiss (although certain Superior Court judges have questioned this rule). Nielsen, 236 Conn. at 4-5; Seymour v. Region One Board of Education, 261 Conn. 475 (2005). If the Court determines it cannot or should not entertain this particular issue in the context of this motion to strike, absent a motion to dismiss, defendants will duly file such a motion to dismiss, since subject matter jurisdiction cannot be waived. Broadnax v. City of New Haven, 270 Conn. 133, 153 (2004); Carpenter v. Law Offices of Dressler & Assoc., 85 Conn. App. 655, 661 (2004).

indicating the judiciary should exercise restraint by refusing to become embroiled in a subject that was clearly within the legislature's purview. Ex parte James, 836 So.2d 813 (2002).

Similarly, the Georgia Supreme Court in McDaniel v. Thomas, 248 Ga. 632, 285 S.E.2d 156 (1981) rejected a claim for educational "adequacy," noting the lack of judicially manageable standards, and that the area was one of legislative responsibility. Id. at 644. See also Danson v. Casey, 484 Pa. 415, 399 A.2d 360 (1979) (No judicially manageable standards by which courts can determine whether "thorough and efficient" education is being provided).[9]

Thus, much relevant law from sister jurisdictions, like Connecticut law, establishes that while equal educational opportunity is required, state constitutions do not enshrine a right to adequate or suitable education as determined by measurable outcomes -- in large measure because to adopt such a rule of law would both improperly infringe upon the legislative role and require courts to render determinations absent judicially cognizable and manageable standards.

[9] Although not litigated as an adequacy case, the Vermont Supreme Court in its decision in Brigham v. State of Vermont, 166 Vt. 246, 692 A.2d 384 (1997), noting that the Connecticut Constitution's education clause had the language closest to Vermont's, held that the provision only required substantial equality in funding among school districts.

III. Conclusion

For all these reasons, and for such further reasons as may appear at oral argument on the matter, the defendants respectfully urge the Court to grant their motion to strike the first, second and third counts of plaintiffs' First Amended Complaint.

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CERTIFICATION

I hereby certify that a true and accurate copy of the foregoing memorandum was mailed, first class postage prepaid, this 13th day of September, 2006 to:

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