Yale Law Students Argue Education Case to Connecticut Supreme Court

by Marcia Chambers | April 24, 2008 2:30 PM |

Neil Weare and David Noah.Photo by Marcia Chambers

Seven months ago Superior Court Judge Joseph Shortall gutted a lawsuit aimed at fixing the badly broken education cost sharing (ECS) formula the state uses to fund its public schools. This week two Yale Law School students asked the justices of the Supreme Court to restore the full lawsuit, saying the trial court "prematurely decided the case."

The law students, David Noah and Neil Weare, are members of the Yale Law Education Adequacy Project, a clinic type class that brought the lawsuit in 2005 on behalf of Connecticut Coalition for Justice in Education Funding (CCJEF). Several major cities and towns have joined the lawsuit. At this juncture, only one of four counts in the complaint remains.

Noah and Weare, both 27, sat at a table Monday in the well of the courtroom along with their professor, Robert Solomon. The class works under the supervision of Solomon and two attorneys, Robin Golden and Alex Knopp.

The lawsuit names Governor Jodi Rell and various state agencies as defendants. In fact, the governor has sought change but the Democratic leadership has been stubborn when it comes to overhauling the funding structure. Judge Shortall's decision was based not on the merits of the case (no discovery or evidence or testimony has yet been taken) but rather on a narrow reading of the education clause in the state constitution. The judge was also reluctant to have the courts get into deciding what constitutes an adequate education, arguments that would effect funding. These issues should be left to the legislature, he said.

At a constitutional convention in 1965, an education clause was adopted that entitled all Connecticut children to a free education. In putting a student's right to a public education into the Constitution, the delegates moved from a discretionary duty to an affirmative constitutional

duty. But the Constitution does not qualify free education; that is, it does not say if the education must be good or reasonable or suitable or appropriate.

Marcia Chambers Photo

The original drafter of the education clause was a Bloomfield town judge by the name of Simon Bernstein (pictured). Now 95, he sat in court and listened to the arguments.

“Back then I didn’t speak in terms of adequacy,” he told reporters afterwards on the steps of the courthouse. “I just wanted a good education. There was “no need to spell out what those words meant,” he said.

He, like the students, held out little hope that absent court intervention the legislature could or would act to correct the funding imbalances that cities and towns live with. Without a change in the formula, property taxes wind up paying for education, especially in towns.

“There must be a constitutional floor of what the principle of public education means,” said Weare, who graduates from Yale next month. He argued that in some high schools half or more of the students do not graduate and if they do, many cannot read. If they cannot read or write they cannot fulfill their role as a citizen and they are unlikely to get a decent job.

Weare’s position is that it is up to the courts to examine the process and if necessary to force the legislature to fix, change or discard the funding formula in order to effectuate the goals of education and comply with the Connecticut Constitution. The Constitutional mandate requires that students be educated and the presumption is that they will become functioning members of society.

But the attorney general’s representative, who represents the governor and the other defendants, argued it is not up to the courts to decide what constitutes an education.

Assistant Attorney General Gregory D'Auria maintained it is up to the legislature to fix the education problem, not the courts. He said the plaintiffs were trying to create a hook to create "an unenumerated right in the constitution." As far as he was concerned "the quality of those schools is determined by the legislature."

How D'Auria arrived at this conclusion seemed to baffle the judges. Justice Joette Katz was pointed: "I understand that qualitative suggests some high side and reasonableness suggests a low side. And I am hearing you say it's just not a factor."

D"Auria replied: "It's not a factor for this court."

Justice Katz: "So as long as it's equally bad, it's OK?"

D'Auria: "The democratic process will correct that," he said, meaning it is up to the legislature to decide.

At this point, Justice Flemming L. Norcott, Jr., who was sitting in for the chief judge, Chase T. Rogers, said: "If it's equally bad, there is not much to the fundamental right [to education]. The equally bad should be subject to review."

D'Auria had started down a road to nowhere and he was stuck with it. "The quality of education is determined by the democratic process," he said again.

In fact the legislature has done a dismal job. In an amicus brief filed with the court in this case, the Connecticut Conference of Municipalities said that the ECS funding formula is not only inadequate, but destructive. What's more, the legislature seems unable to fix it.

"For two decades, the state has been unwilling to craft an education funding system that is evidence-based and anchored to the actual cost of education. Instead the ECS has been repeatedly modified so as to arbitrarily limit state aid, shifting the bulk of the responsibility for raising public school funds to already overburdened municipalities. …Therefore it is the necessary and proper role of this Court to vindicate the constitutional rights of Connecticut school children."

Right now taxpayers in many towns are paying the entire cost of education. Branford, for example, received $371 per pupil per year in 2006-07, a pittance given that educating one school child is about $12,000 a year. If you add inflation to the equation this year, the number Branford receive moves into the minus column.

Nor are the cities getting anywhere near to the cost of educating a child, though places like Bridgeport received $6,500 per pupil in 2006-07 and New Haven $6,621 — still not enough.

Mayor Mark Lauretti of Shelton ($783.00 per pupil in 06-07) attended the oral arguments because he is the newly elected president of the CCJEF.

"In taking this appeal, our Supreme Court is going to be considering a fundamental question: What kind of education do our children deserve and is our state government—with its broken education formula—failing our children?" He knows the problem well. Education costs have doubled since he first became Mayor 17 years ago and 2/3 of his city's budget goes to the schools. Branford's situation is similar.

At the end of the day, the justices indicated through their questions that the system needed to be examined. And while one can never predict, it appeared that a majority of the justices were aligned with the students.

Before the justices left the bench, Justice Norcott complimented Noah and Weare for the "high quality" of their arguments. When the justices left, the place burst into applause.

Education Clinic. Marcia Chambers Photo

Professor Solomon took his place with the class to pose for a photo on the courthouse steps. Afterwards he said: "I'm delighted with the effort and the job the students put in — not just for the two who argued but for the whole team." He wouldn't predict the outcome. But he was smiling broadly.

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Full disclosure: This reporter has an appointment at the Yale Law School.

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