

## **The Legislature Should Vote NO on the Proposed Amendment**

**By: Scott F. Johnson**

In a recent editorial piece, Rep. Marjorie Smith said that people should vote for her version of the proposed constitutional amendment when it reaches the house floor on Wednesday because Governor Lynch campaigned on passing an amendment to be able to send “more money to communities that need it.” She said that the Governor’s overwhelming election shows that the people support that proposition.

I think just about everyone agrees that the State should send more money to some communities than others. I agree with that general statement. The questions are: 1) is an amendment necessary to do that; and 2) does this proposed amendment accomplish this goal.

The answer to the first question is no. There are a number of ways to send more money to communities that “need it” without amending the constitution. While the constitution currently requires the State to fund an adequate education in all communities, there is nothing that says that an adequate education has to cost the same amount in every community. The State can send more money to communities within adequacy funds based on any number of educational and related cost factors.

For example, the State could give more money to districts that have trouble attracting or retaining high quality teachers, or that have high percentages of at risk students, or students with special needs. It could give more money to districts to account for economies of scale and geographic factors that make costs such as transportation and technology more expensive in some places than others. It could give additional funding to schools to “make up” of prior under-funding of adequacy costs. Doing this would generally result in “property poor” communities receiving more adequacy funds than “property wealthy” districts.

Also, the State can target aid based on fiscal capacity, or local ability to pay, with funds above what it pays for adequacy. If the State made use of concepts such as “power equalization” for these funds, small amounts of state funding can go a long way to reducing property tax disparities.

The answer to the second question is also no. This proposed amendment goes far beyond allowing the State to target aid to “needy communities” and the targeting plan that the Governor wants to implement under the proposed amendment will not achieve the goal of sending more money to communities that need it in any meaningful way.

Governor Lynch campaigned on the need for a “narrow constitutional amendment to implement his plan.” He rejected his opponent’s calls for an amendment that would reduce the State’s obligation to provide an adequate education and limit the court’s involvement in the issue.

However, Rep. Smith's proposed amendment is not narrow. It includes many of the very components that Lynch's Republican opponent, Jim Coburn, talked about in his campaign. The language of the amendment could allow the State to walk away from its obligation to provide an adequate education and could severely limit the court's review of education funding and adequacy plans. Rep. Smith says including these provisions is a "compromise." However, following Rep. Smith's logic about Lynch's election, we can assume that the public overwhelmingly rejected these concepts since Lynch campaigned against them. Many elected legislators also campaigned against these concepts and should remain committed to that position when voting on the proposed amendment.

The overkill in the amendment is that it reduces the State's obligation to provide an adequate education to anything that is "reasonable." The language of the amendment does not require the State to fully fund the costs of an adequate education in any community, even the poorest, neediest ones. Rather, the State can pick and choose how much funding communities receive based on what it thinks is reasonable. That can be just about anything. It might even include reductions in the amounts allocated by the State due to a lack of state resources. That is how the State used to fund education prior to the Claremont decisions.

Under the pre-Claremont system of "discretionary funding," the State would say it was going to provide a certain amount of funds for education, but when state revenues did not come in as projected, or if the State decided to spend more money in some other area, it would just pro-rate the amount that it actually sent to schools. The language of the amendment could return us to this system. The problem is that local schools cannot pro-rate their costs. Items such as teacher contracts, health insurance premiums, and special education costs have to be paid regardless of what the State provides for funding. Local schools must make up this difference for these costs, and other costs, with local property taxes.

This same "reasonable" language reduces the court's ability to review funding plans to determine if they are constitutional or not. Currently, education is a fundamental right under our constitution which means the court can review funding plans under a "strict scrutiny" analysis. Other fundamental rights include the right to free speech, the right to raise and care for children, and the right to vote. The amendment is intended to strip that level of review away from the court and limit its review to see if the State's plan survives "rational basis" review. This is a very low level of review that the court uses for state actions that do not affect fundamental rights. For example, the court uses this level of review to assess the validity of local ordinances regarding set back requirements for septic systems.

On whether the amendment would achieve the goal of sending more money to communities that need it, we can look to Governor's Lynch's proposed education funding plan from prior legislative sessions since the purpose of the amendment is to allow that plan to be put in place. The New Hampshire Citizens' Voice Project analyzed his plan and we found the following:

1) The plan does not provide the poorest, or neediest, communities in the State with meaningful increases in State funds. It would have provided Pittsfield with \$285 additional dollars per student, Claremont with \$210 extra per student, and Allenstown with \$97 more per student. In the aggregate, that amounted to very little difference for these communities. For example, Lynch's proposal would mean that the State would pay 38 percent of Claremont's education budget. Contrast that for example with Massachusetts's education funding plan (which the Governor says we should try and emulate) which provides 98 percent of certain property poor communities' education budget.

2) The measly increases in state funding leaves the poorest, neediest communities in the state with unfunded state education mandates. Schools must pay for these mandates and for the rest of their educational costs with local property taxes.

3) Under Lynch's plan, local property taxes would still vary greatly from community to community for similar education costs. For example, our analysis showed that at that time Claremont's cost per pupil was \$9,350 and it had a local property tax rate of \$16.82 to raise that amount. By contrast, in nearby New London they had a cost per pupil of \$9,206 and only needed a tax rate of \$4.25 to raise that amount. Similarly, property wealthy communities like Rye had a cost per pupil of \$10,099 with a tax rate of \$5.13 and Moultonborough had a cost per pupil of \$11,223 with a tax rate of \$3.78.

The full analysis is on our website, [www.nhcvp.org](http://www.nhcvp.org) in a report called "Targeted Aid Plans Don't Fund the Gap, Who Will?"

This analysis shows that Governor Lynch's funding proposal is not a solution. It does not provide any meaningful increase in State education funding to the communities that need it most. It also does not reduce disparities between communities. It perpetuates them. Passing the proposed constitutional amendment in order to implement this plan will make these problems permanent. As I noted earlier, there are plenty of ways to send property poor communities even more than a couple of hundred dollars per student without amending the constitution.

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