

Gov. Lynch's Proposed Amendment is a Monumental Mistake

In the early to mid 1980's Wendell Jesseman and some other New Hampshire citizens sued the state over education funding. The case was resolved by way of a settlement before any court rulings. The settlement included the creation of the Augenblick formula, a new state education funding statute. The Legislators who voted for it surely thought that it would improve education funding and provide more state funding to communities that "needed it."

However, the Augenblick formula allowed for state education funds to be based on available revenue, so the Legislature could reduce the amounts of state education funding by pro rating the amounts it distributed. In order to keep state taxes to a minimum (or "live within our means" as it is called today), subsequent political efforts generally were designed to provide the minimum amounts that would work under the formula. Funding amounts that were likely seen as minimum figures when the Augenblick formula was debated and passed into law quickly became maximum amounts.

The State never did fully fund Augenblick and the promise of more state funds to needy communities faded away. On one occasion, Governor Merrill vetoed a bill that attempted to fully fund Augenblick stating that the State did not have the necessary funds to do so.

Fortunately, the Augenblick formula was just a statute. When the *Claremont* cases interpreted the New Hampshire Constitution to require the State to fund an adequate education, the State had to repeal the Augenblick formula as it was never designed to do that. It has since replaced it with a variety of different statutes over the years, all of which provide more state funds to poor communities than the Augenblick formula ever did.

A little over twenty years later, we have a Democratic governor, who proposes a constitutional amendment as a solution to education funding. The amendment purportedly sets a floor of funding that requires the State to pay half of the cost of an adequate education statewide and allows the State to distribute more funds to "needy" communities.

A number of Democrats and Republicans that have previously supported the *Claremont* lawsuit now stand with the Governor in support of the amendment. I am sure they are thinking that it will be an improvement over the current funding situation because they think that they will come up with a good definition of an adequate education and a legitimate cost figure. But, realistically everyone knows that the Governor is not going to support an increase in the overall funding amount that will require new taxes. That means the overall amount of state funding will be about what it is now. As a result, the amounts that property poor communities will receive going forward will be pretty much what they are now since politically, there is only so much money that you can "take" from other communities to "give" to the "needy ones."

Also, even though they are unconstitutional, we have had targeted aid plans in place for a number of years now, so it is not like an amendment is going to pave the way for the State to do something new. It will just constitutionalize what the State has been doing for the past few years.

Given these factors, there seems to be very little upside of a constitutional amendment. There are a number of ways to distribute more money to the “needy” communities without amending the constitution.

The down side to the amendment is substantial. Under current funding plans, property poor communities generally receive more than 50 percent of what the State will likely develop as its adequacy costs. Under the amendment, the State could reduce the amount that these communities receive to half of the adequacy figure that it develops. In many cases, that could be a drastic reduction in funds that will require an equally drastic increase in local property taxes to offset the difference.

While I am sure our current Governor and Legislators that support the amendment believe that they would not do that, nor let it happen, they will not be in office forever. When the political winds change again, and they always do, we will at some point have a political majority that will want to drive state education funding amounts down to the constitutional minimum, or at least reduce it substantially and still be above the constitutional minimum.

Just imagine a subsequent Governor and Legislature at the helm with a choice between reducing state funding to property poor communities to the 50 percent that the constitution requires, or raising taxes. It would be easy to change the adequacy definitions and cost statutes that the current legislature may enact in order to have the so called floor become the ceiling for funding.

Unlike Augenblick, this time the minimum funding amounts will be sanctioned by the constitution, so the communities and students that are harmed by the reductions in state funding will not be able to seek recourse in the courts to require changes. Repealing the constitutional amendment once in place would be a difficult task at best.

Our current Governor and Legislators need to think beyond what they will put in place for education funding and recognize what a monumental and permanent mistake it would be to enact the amendment.

We have an incredible opportunity. We have a governor that is more popular than ice cream on a summer afternoon and a Legislature that is controlled by the same political party as the Governor. Is constitutionalizing the status quo with the potential to make things even worse than they are now really the best they can do? Is it really the legacy they want to leave behind?

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