

December 11, 2003

Governor's Task Force on Educational Excellence
Madison, WI

HAND DELIVERED

Dear Chairman Spector and Task Force Members:

The American Civil Liberties Union of Wisconsin works daily in courts, legislatures and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by the Constitution and laws of the United States. Among its other actions, the ACLU of Wisconsin works to extend rights to those segments of our population that traditionally have been denied their rights, including children; people of color; people with disabilities; and the poor. To help protect these rights, in 1989 the ACLU of Wisconsin established its Poverty, Race & Civil Liberties Project.

As the attached friend of the court brief, which we submitted to the Wisconsin Supreme Court in the 2000 *Vincent v. Voight* case, makes clear, our concerns include ensuring that our state provides a meaningful opportunity for a sound basic education to all children in our state, regardless of race, income, ethnicity, or disability. Unfortunately, the existing school finance system often precludes such opportunities for the most vulnerable students. Clearly these disparities are at issue for many urban and rural districts, although not for most suburban districts. The costs of educating children rise due to increases in everything from increased special education costs to health insurance premiums for district employees to heating bills. Yet, because of such factors as spending caps and differences in local taxing ability based on variations in property wealth, districts often are unable to generate sufficient revenues to meet these needs.

Under the current system, per-pupil spending varies significantly. For example, the "Total Current Education Cost" per member in 2002-03 ranged from about \$6,066 in North Cape to about \$12,511 in Phelps.ⁱ In addition, students with special needs - due to poverty, lack of English fluency, or disability - who require special programs and therefore cost more to educate are often concentrated in districts with somewhat lower spending levels.

There is no question that the funding formulas lead to extreme disparities in "inputs" for students, from qualified teachers to functioning buildings to advanced educational programs.ⁱⁱ There are also significant disparities in "outputs" or student outcomes among districts. Fewer than 40% of Wisconsin pupils are "proficient" or above on national basic skills tests, with low-income students and students of color trailing other students by large margins.ⁱⁱⁱ High school graduation rates also tend to be lower among low-income students and students of color.

It is also clear that the disparities have a racial component, especially in Milwaukee and other urban communities.^{iv} Milwaukee has one of the highest black/white school segregation rates for students in the country.^v Between 1980-81 (when MPS had 54% students of color) and 1998-99 (when that increased to 79.8% students of color), the spending gap between suburban schools and MPS also increased dramatically.^{vi} “Concentrated poverty” within a given district or school has a particularly strong negative effect on student outcomes,^{vii} and poor African-Americans are much more likely to live in areas of concentrated poverty (defined as greater than 20% poverty rates, or greater than 10% family poverty rates) than are poor whites. For example, in 1990 in Milwaukee-Waukesha only 36% of poor whites, but 90% of poor blacks, lived in concentrated poverty. In Racine, it was 20% of poor whites and 73% of poor blacks, and in Kenosha 32% of poor whites and 73% of poor blacks.^{viii}

In our attached *amicus* brief, filed in 2000 in the *Vincent v. Voight* case,^{ix} we discuss the development of the state constitutional doctrine of educational adequacy, which exists in Wisconsin and around the country. In *Vincent*, students, parents and poor districts asked the Wisconsin Supreme Court to decide that the state’s school finance formula violated the uniformity and equal protection provisions of the Wisconsin constitution because “it fails to equalize access to financial resources among school districts.” Although the Court decided that the advocates had not proven beyond a reasonable doubt that the then-existing finance system violated either provision, the court went on to hold that:

Wisconsin students have a fundamental right to an equal opportunity for a sound basic education. An equal opportunity for a sound basic education is one that will equip students for their roles as citizens and enable them to succeed economically and personally. The legislature has articulated a standard for equal opportunity for a sound basic education in Wis. Stat. §§ 118.30(1g)(a)^x and 121.02(L) (1997-98) as the opportunity for students to be proficient in mathematics, science, reading and writing, geography, and history, and for them to receive instruction in the arts and music, vocational training, social sciences, health, physical education and foreign language,^{xi} in accordance with their age and aptitude. An equal opportunity for a sound basic education acknowledges that students and districts are not fungible and takes into account districts with disproportionate numbers of disabled students, economically disadvantaged students, and students with limited English language skills. So long as the legislature is providing sufficient resources so that school districts offer students the equal opportunity for a sound basic education as required by the constitution, the state school finance system will pass constitutional muster.

Vincent, 614 N.W.2d at 396-7.

Throughout the United States, state courts have evaluated state school systems to determine whether they provide an “adequate” education for state students. As a Kansas court made clear earlier this month, in finding the state’s school financing system unconstitutional:

No one, in the history of Kansas, has ever asked our schools what resources they need to provide a suitable education for our children. And this in a vital, constitutionally protected endeavor already consuming nearly four billion dollars (well over half the entire revenues of the State). Instead, these billions of tax dollars are distributed annually by legislative fiat (the financing scheme) without any requests, estimates, or other input on costs or needs from the “boots on the ground”superintendents, principals, or teachers in the field. Only after these legislatively “allotted” funds are received, does each school district then budget how to spend every cent that it has been given . . .^{xii}

We urge this Commission, and state officials, to ask those questions, to find out from those “on the ground” what is needed to fulfill the mandate of *Vincent*, and to make that constitutional mandate a reality.

Respectfully submitted,

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ENDNOTES

- i. See, *Comparative Cost Per Member 2002-2003* (Wisconsin Dept. of Public Instruction), at <http://www.dpi.state.wi.us/dpi/dfm/sfms/cmprvcst.html>. These are K-12 districts, but similar disparities exist in K-8 districts (e.g., from \$6632 in Genoa City J2 to \$14,438 in Boulder Junction J1). Similar disparities also exist in the *Total District Cost per Member*, which includes education, transportation, food service and construction debt costs. These figures exclude the non-representative districts of Lac du Flambeau #1 and Menomonee Indian, which have greater per-pupil spending because of extraordinarily high amounts of federal funding based on Native American enrollment, and Norris, which has much lower spending levels than other districts due to the presence of the state school.
- ii. For example, a study found that poor students are much more likely than wealthy students to attend school in older - and often inadequate - buildings. "Poor kids, aging schools: Records suggest more children in poverty at older buildings," *Milwaukee Journal-Sentinel* (6/16/02).
- iii. See, e.g., *Funding our Future: An Adequacy Model for Wisconsin School Finance* (Institute for Wisconsin's Future 6/02), App. 2 (available at www.wisconsinsfuture.org).
- iv. U.S. Department of Education regulations issued under Title VI of the Civil Rights Act, 34 C.F.R. Pt. 100, prohibit actions which have a disparate impact on persons of different races.
- v. *Choosing Segregation: Racial Imbalance in American Public Schools, 1990-2000* (Lewis Mumford Ctr. for Comparative Urban & Regional Research, SUNY-Albany, 1/18/02).
- vi. *The Return to Separate and Unequal: Metropolitan Milwaukee School Funding Through a Racial Lens* (Rethinking Schools 2001).
- vii. "Over the last 35 years, educational research has consistently shown that the greatest factors affecting student outcomes are the income and educational level of a child's parents followed closely by the same factors for the parents of a child's classmates." *Creating Livable Communities: Are We Going To Live Together?* David Rusk (9/28/01), pp. 6-7 (available at: www.gamaliel.org/strategic/StrategicpartnersRuskMadisonArticle.htm)
- viii. *Creating Livable Communities*, pp. 5-7. For additional citations to research on this issue, see, e.g., the ACLU-WIF Amicus brief submitted in *Vincent*.
- ix. 614 N.W.2d 388 (Wis. 2000).
- x. This section requires each school board to adopt pupil academic standards in math, science, reading and writing, geography, and history. The state Dept. of Public Instruction has developed model standards which districts can (but are not required to) adopt, available at: <http://www.dpi.state.wi.us/standards/index.html>

xi. Under §121.02(L)3, Stats., “access” to an educational program enabling students to study English, social studies, mathematics, science, vocational education, foreign language, physical education, art and music means “an opportunity to study through school district course offerings, independent study, cooperative educational service agencies or cooperative arrangements between school boards and postsecondary educational institutions.”

xii. *Eric and Ryan Montoy et al vs. State of Kansas*, No. 99-C-1738 (Shawnee Co. District Ct., Memorandum Decision and Preliminary Interim Order, Dec. 2, 2003), ¶ 18.